

**TOWN OF STERLING**

**PROTECTIVE BY LAWS**

**Zoning bylaws**

Originally Voted February 4, 1957

**Zoning Map –Planning Board’s Office**



*A true copy*

Attest: \_\_\_\_\_  
Dawn E. Michanowicz  
Town Clerk

**Inclusive of ATM May 1, 2017**

Approved/published by the Attorney General Dec 11, 2017  
uploaded to the website Dec 18, 2017

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**ARTICLE 1. PURPOSE**

These regulations are enacted to promote the general welfare of the town of Sterling, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by the provisions of the Zoning Act, G.L. c40A, as amended, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

**ARTICLE 2. USE, DIMENSIONAL AND TIMING REGULATIONS**

**2.1 DISTRICTS**

**2.1.1 Establishment.** For the purposes of this By-law, the town of Sterling is hereby divided into the following districts:

- Rural Residence (RR)
- Neighborhood Residence (NR)
- Commercial ( C )
- Town Center (TC)
- Light Industrial (LI)
- Performance Zone 1

The boundaries of these districts are defined and set forth on the map entitled, Zoning Map of the Town of Sterling, Massachusetts (revised 8/3/95), as may be subsequently amended by vote of Town Meeting. This map is on file with the Town Clerk. The zoning map, with all explanatory matter thereon, is hereby made a part of this by-law.

The following overlay districts are also hereby created, the boundaries of which are set in the relevant sections of the By-law.

- Flood Plain District
- Stillwater River Protection District
- Aquifer and Water Resource Protection District

**2.1.2 Boundary Definition.** Except when labeled to the contrary, boundaries or dimension lines shown approximately following or terminating at street, railroad, or utility easement center or layout lines, boundary or lot lines at water body shoreline or the channel of a stream, shall be construed to be actually at those lines; when shown approximately parallel, perpendicular, or at an angle to such lines shall be actually parallel, perpendicular, or at an angle thereto. When not located in any other way, boundaries shall be determined by scale from the map.

**2.1.3 Split Lots.** When a lot is situated in more than one district, the uses permitted in the less restricted district may be extended into the more restricted district for a distance of thirty (30) feet.

**2.2 USE REGULATIONS.**

**2.2.1 General.** No structure shall be erected or used or land used except as set forth in Section 2.3, "Use Regulation Schedule", unless exempted by this by-law or by statute. Uses not expressly provided for herein are prohibited.

Symbols employed below shall mean the following:

- Y - A permitted use
- N - An excluded or prohibited use
- SP - A use authorized under special permit from the Board of Appeals as provided under Section 6.3
- PB - A use authorized under special permit from the Planning Board as provided under Section 6.3

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**2.2.2 Applicability.** When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

**2.2.3 Accessory Buildings and Uses.** Allowed accessory uses are limited to (a) uses customarily accessory and incidental to permitted principal uses, and (b) uses that are permitted as principal uses within the zoning district and that are clearly subordinate and incidental to the principal use on the lot. Accessory uses are permitted only in accordance with lawfully existing principal uses; provided, however, that uses accessory to principal uses which are nonresidential in nature shall be permitted only upon the issuance of a special permit by the Planning Board. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under special permit, its accessory use is also subject to the special permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 6.4, such addition such also require site plan review and approval.

**2.2.4 Non-conforming Uses and Structures.**

1. **Applicability.** This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c.40A, s.5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing non-conforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
2. **Non-conforming Uses.** The Board of Appeals may award a special permit to change a non-conforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. The following types of changes to non-conforming uses may be considered by the Board of Appeals:
  - a. Change or substantial extension of the use;
  - b. Change from one non-conforming use to another, less detrimental, non-conforming use.
3. **Non-conforming Structures.** The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a non-conforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood. The following types of changes to non-conforming structures may be considered by the Board of Appeals:
  - a. Reconstructed, extended or structurally changed;
  - b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
  - c. Reconstructed after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within eighteen (18) months after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original non-conforming structure.
4. The reconstruction, extension or structural change of a non-conforming structure other than a single or two family residence in such a manner as to increase an existing non-conformity, or create a new con-conformity, including the extension of an exterior wall at or along the same non-conforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals.
5. **Non-conforming Single and Two Family Residential Structures.** A proposed modification (including reconstruction, extension, alteration or change) to a non-conforming single or two family residential structure shall first require a determination by the Building Inspector as to whether the modification would increase the non-conforming nature of said structure. If the Building Inspector determines that proposed modification

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would not increase the non-conforming nature of the structure, the modification shall require the issuance of a building permit, if applicable. If the Building Inspector determines that the proposed modification would increase the non-conforming nature of the structure, the Board of Appeals may award a special permit for such modification only if it determines that the proposed modification will not be substantially more detrimental than the existing non-conforming structure to the neighborhood.

6. Abandonment or Non-Use. A non-conforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law.
7. Reversion to Non-conformity. No non-conforming use shall, if changed to a conforming use, revert back to a non-conforming use.

**2.3 USE REGULATIONS**

**2.3.1 Table of Principal Uses.**

PRINCIPAL USES	DISTRICTS				
	RR	NR	C	TC	LI
<b>A. RESIDENTIAL USES</b>					
1. Single Family Dwelling	Y	Y	Y	SP	N
2. Two Family Dwelling	Y	Y	Y	SP	N
3. Multifamily Dwelling	SP	SP	N	SP	N
4. Accessory Apartment	SP	SP	SP	SP	N
5. Boarding or Lodging House	SP	SP	N	N	N
6. Group Residence	SP	SP	SP	SP	N
7. Assisted Elderly Housing	SP	SP	SP	SP	N
<b>B. EXEMPT USES AND COMMUNITY FACILITIES</b>					
1. Use of land or structures for religious purposes	Y	Y	Y	Y	Y
2. Use of land or structures for educational purposes of land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation.	Y	Y	Y	Y	Y
3. Licensed day care facility for the daycare of six or fewer children	Y	Y	Y	Y	Y
4. Child care facility	Y	Y	Y	SP	Y
5. Municipal facility	SP	SP	Y	Y	Y
6. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y
7. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August and September of every year, or during the harvest season of the primary crop raised on the land of the owner or lessee, the majority of such products for sale based on either gross sales dollars or volume, have been produced by the owner of the land and that such land on which the facility is located contains more than five acres in area.	Y	Y	Y	Y	Y
8. Cemeteries	SP	SP	N	N	N
9. Nonprofit social or recreational club, lodge, sportsman's club or camp	SP	N	N	SP	N
10. Airport, airpark or heliport, whether public, private or accessory to dwelling	SP	N	N	N	SP
11. Essential services	SP	SP	SP	SP	SP
<b>C. COMMERCIAL USES</b>					
1. Nonexempt agricultural use, except fur farms and piggeries	Y	Y	Y	Y	Y
2. Nonexempt farm stand	Y	SP	Y	Y	Y
C. COMMERCIAL USES, cont.	DISTRICTS				
PRINCIPAL USE	RR	NR	C	TC	LI



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3. Nonexempt greenhouse			SP	SP	Y	Y	Y
4. Nonexempt educational use			N	N	SP	SP	SP
5. Morel, Hotel, Inn			SP	N	Y	SP	N
6. Convalescent or Nursing Home			SP	SP	N	SP	N
7. Hospital or Sanitarium			SP	SP	SP	SP	N
8. Commercial Recreation or Sports Facility			SP	N	Y	N	N
9. Commercial Automobile Parking Facility			N	N	Y	SP	N
10. Commercial Kennel, Animal Hospital, Veterinarian's Office			SP	N	SP	SP	N
11. Major commercial project			N	N	SP	SP	SP
12. Restaurant, service of food and/or alcoholic beverages			N	N	Y	Y	Y
13. Restaurant, Drive-in	N	N		SP	N		SP
14. Restaurant, Fast-food			N	N	SP	SP	SP
15. Retail sales, including antique shops			N	N	Y	Y	N
16. Service, repair, or trade shop			N	N	Y	Y	N
17. Business or professional office			N	N	Y	Y	N
18. Bank or financial institution			N	N	Y	Y	N
19. Sale, lease and manufacture of firearms and/or ammunition			SP	SP	SP	SP	SP
20. Open air display area; outdoor retail sales			N	N	SP	SP	N
21. Motor vehicle service station			N	N	SP	SP	N
22. Motor vehicle repair or body shop			N	N	SP	N	Y
23. Sale or rental of new or used cars in open lot	N	N		SP	N		N
24. Indoor sale or rental of new or used cars and trailers			N	N	Y	SP	N
25. Bed and Breakfast			SP	SP	SP	SP	N
26. Drive-in or freestanding ATM			N	N	SP	SP	SP
27. Place of amusement			N	N	SP	SP	SP
28. Adult Use			N	N	N	N	SP
<b>D. INDUSTRIAL, WHOLESALE OR EXTENSIVE USES</b>							
1. Bus or railroad station			N	N	Y	Y	Y
2. Rail or motor freight terminal; bus storage yard			N	N	SP	N	Y
3. Mobile home park			N	N	N	N	N
4. Wholesale, warehouse, or distribution facility			N	N	SP	N	Y
5. Open lot storage of building materials, contractor's equipment and similar materials			N	N	N	N	Y
6. Storage of coke, coal, sand or other minerals, whether indoors or not			N	N	N	N	Y
7. Earth removal <sup>1</sup>			N	N	N	N	Y
8. Manufacturing, assembly, processing, packaging or other industrial operation			N	N	N	N	Y
9. Junkyard or automobile graveyard			N	N	N	N	N

**2.3.2 Radio Active Waste Disposal** No land within any use district in the town of Sterling may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

**2.3.3 Construction Trailers** Temporary trailers, used as work offices and/or storage facilities in connection with construction work on the same site, may be allowed by the Board of Selectmen in any district through the issuance of a renewable 90-day permit. Such facilities shall not be used for human habitation.

**2.3.4 Adult Uses** Adult uses shall be allowed only by a special permit and only in the Light Industrial (LI) District. No Adult Use shall be located less than 750 feet from the boundary of a Rural Residence (RR) or Neighborhood Residence (NR) District.

2.3.5 Accessory Apartment Use

<sup>1</sup> See the Earth Removal By-law in the General By-laws.

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By special permit from the Board of Appeals, a group of rooms substantially within a single family residence may be used as a separate apartment with its own bathroom and kitchen facilities, provided that:

- (a) The group of rooms is not within, or attached to, a detached or attached accessory building (other than a common wall attached accessory building that is an enclosed garage and that has the apartment located above the parking area for the motor vehicles).
- (b) The single family residence is being used by the owner as a principal residence.
- (c) The apartment has a separate entrance from the outside.
- (d) The apartment contains kitchen and toilet facilities.
- (e) Evidence, verified in writing, by the Board of Health (or its qualified agent) submitted with, and as part of, the application for special permit, that there is an adequate supply of drinking water (town water or private well) and adequate provision for sewage disposal (private septic system).
- (f) The outside appearance of the premises is and remains that of a single family residence.
- (g) The apartment has heat that is adequately supplied and controlled by a thermostat located within the apartment.

The special permit shall be issued only if it contains the following limitations and precautions:

- (h) The apartment floor area will not exceed eight hundred (800) square feet.
- (i) The premises will continue to be used as the principal residence of an owner of the real estate.
- (j) All turnaround and parking areas will be provided on the lot.
- (k) Only one accessory apartment is allowed in any single family residence.
- (l) All dimensional controls in Section 2.5 for a single family residence must be adhered to.

**2.4 APPLICATION OF DIMENSIONAL REQUIREMENTS**

**2.4.1 Residence in Commercial Districts** A residential use located in a commercial district shall conform to the dimensional requirements of the nearest residential district.

**2.4.2 Single Family or Two Family Dwellings on Non-Conforming Lots.** In any district except a light industrial district, a single family or two family dwelling may be erected on a non-conforming lot in accordance with the provisions of G.L. c40A, s,6, para.4, which states, in pertinent part:

[a]ny increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law 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 proposed requirement but at least five

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thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date...to a lot for single and two family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to then existing requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided...further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership.

**2.4.3 Change in Lot Configuration.** No lot on which a building is located shall be reduced or changed in shape so that the building or lot fails to comply with the minimum lot area, lot width, minimum yard requirements, or other provisions of the by-law applicable to the lot or building.

**2.4.4 Multiple Buildings or Uses on a Lot.** Multiple principal uses or building on the same lot each must meet the dimensional requirements of Section 2.5 without counting any area, frontage or yard twice. Not more than one principal building shall be erected on a lot unless each such building is served by access and services determined by the Building Inspector to be functionally equivalent to those required for separate lots by the Planning Board in its Subdivision Regulations.

**2.4.5 Display Setback.** In all districts, open display of goods or products, gasoline, pumps, vending machine or similar commercial devices, or signs over two (2) square feet in area shall be located not less than twenty (20) feet from the front lot line.

**2.4.6 Multifamily Lot Area.** For multifamily dwellings, see Section 4.2.

**2.5 TABLE OF DIMENSIONAL CONTROLS**

**2.5.1 Single Family and Nonresidential Buildings**

ZONING DISTRICT	MINIMUM LOT SIZE	MINIMUM LOT FRONTAGE	FRONT YARD	EACH SIDE	REAR YARD	FLOOR AREA RATIO	MINIMUM LOT WIDTH
Rural Residence & Farming	2.00 acres	225'	40'	25'	40'	--	100'
Neighborhood Residence	0.50 acre	125'	40'	20'	25'	--	50'

**2.5.1 Single Family and Nonresidential Buildings cont.**

ZONING DISTRICT	MINIMUM LOT SIZE	MINIMUM LOT FRONTAGE	FRONT YARD	EACH SIDE	REAR YARD	FLOOR AREA RATIO	MINIMUM LOT WIDTH
Commercial	-----	----	40'	20'	25'	0.5	-----
Town Center	-----	-----	40'	10'	25'	---	-----
Light Industrial	-----	----	40'	35'	40'	0.4	-----

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**2.5.2 Two Family Residence**

ZONING DISTRICT	MINIMUM LOT SIZE	MINIMUM LOT FRONTAGE	FRONT YARD	EACH SIDE	REAR YARD	MINIMUM LOT WIDTH
Rural Residence & Farming	2.5 acres	270'	40'	25'	40'	150'
Neighborhood Residence	1.00 acre	185'	40'	25'	25'	100'

**2.5.3 Building Height** The height of a building, other than a church, above average grade at the building site, shall be less than 36 feet. For the purpose of this provision chimneys, ventilators, antennae, spires and similar unoccupied projections above the roof are not included in building height.

**2.5.4 Free Standing Uninhabited Buildings (up to 500 sq ft), Open Decks (up to 300 sq ft), Pools.**

ZONING DISTRICT	SIDE	REAR
Single Family		
Rural Residence & Farming	10 ft	10 ft
Neighborhood Residence	10 ft	10 ft
Two Family		
Rural Residence & Farming	10 ft	10 ft
Neighborhood Residence	10 ft	10 ft

The Building Inspector may issue a building permit for any structural change to lawfully pre existing residential dwellings provided the change complies with height and set back requirements of the Zoning By-law. The Building Inspector may issue a building permit for any lawfully accessory residential structure providing said structure complies with height and set back requirements of the Zoning By-law.

**ARTICLE 3. GENERAL REGULATIONS**

**3.1 SIGNS**

**3.1.1 Signs in Residence Districts** In a Neighborhood Residence District and in a Rural Residence and Farming District the following signs are permitted:

- (a) one non-flashing sign not over two (2) square feet in area for each family residing on the premises including the name of the owner or occupant and/or pertaining to a permitted accessory use.
- (b) two non-flashing signs aggregating not over ten (10) square feet in area pertaining to a permitted use on the premises other than a dwelling or use accessory thereto or pertaining to a use specifically authorized on the premises by the Board of Appeals.
- (c) temporary unlighted signs aggregating not over ten (10) square feet in area advertising the sale or lease of the premises.
- (d) unlighted directional signs not over two (2) square feet in area, indicating the route to, or location of, a lawful use located on another premises.
- (e) temporary Building Contractors' signs erected only during period of construction.

**3.1.2 Signs in Commercial Districts and Light Industrial Districts** In a commercial District and Light Industrial district the following signs are permitted:

- (a) signs painted on or attached flat against the wall of a building (without limitation on the number thereof), but having a total area not exceeding 40% of the area of any one wall.

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- (b) not more than two Free Standing signs aggregating not more than 40 square feet in total area and pertaining to a permitted use located on the premises.
- (c) signs may have flashing action but may contain no visible moving parts.
- (d) unlighted directional signs not over two (2) square feet in area, indicating the route to, or location of, a lawful use located on another premises.

**3.2: PARKING AND LOADING REQUIREMENTS**

**3.2.1 General**

Adequate off-street parking must be provided to service all parking demand created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Such parking shall be on the same premises as the activity it serves, or within 200 feet on a separate parcel, which may be jointly used with other premises for this purpose, provided that the continued joint use of such parcel be ensured through an agreement recorded in the Registry of Deeds.

**3.2.2 Reduction of Parking Requirement by Special Permit**

Notwithstanding the provisions of Section 3.2.1, the Planning Board may, by special permit, reduce the number of parking space required for nonresidential uses upon its determination that the intended use of the premises can be adequately served by fewer spaces. The Planning Board may consider on-street parking available near the premises as a factor in this determination.

**3.2.3 Table of Parking Requirements**

(a) Parking shall be provided in accordance with the following schedule.

Principal Use	Minimum Number of Parking Spaces
Single-family, single family with accessory apartment, two-family, or multifamily dwelling	2 per dwelling unit
Group residence	1 per 2 beds
Assisted elderly housing, Convalescent home or nursing home	1 per 4 beds
Home occupation	1 per room used for office plus 1 per non-resident employee (in addition to parking spaces for the principal residential use)
Day care facility	1 per 10 children of rated capacity of the facility, plus 1 for each staff person on the largest shift
School, elementary or junior high	1 per 15 students of rated capacity of the facility, or 1 per 4 seats in auditoriums and other places of assembly, whichever is greater
School, secondary	1 per 2 students, faculty and staff, based on design capacity, or 1 per 4 seats in auditoriums and other places of assembly, whichever is greater

**3.2.3 Table of Parking Requirements cont.**

(a) Parking shall be provided in accordance with the following schedule.

Principal Use	Minimum Number of Parking Spaces
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Nonprofit social or recreational club or lodge	1 space for every 3 persons of rated capacity
Place of assembly, with seating facilities (including theater, church or synagogue)	1 per 4 seats plus 1 per 2 employees
Place of assembly, without seating Facilities	1 per 200 square feet of gross floor area, or 1 space for each two persons of rated capacity, whichever is greater
Motel, hotel or inn	1 per sleeping room plus 1 per 2 employees
Bank or post office	1 per 100 square feet of gross floor area
Library or museum	1 per 400 square feet of gross floor area
General retail	1 per 200 square feet of gross floor area
Sale or rental of automobiles	1 per 500 square feet of gross floor area, plus 1 per 2,500 square feet of outdoor display area, plus 3 per service bay
Retail sales of furniture, nursery stock or other goods requiring extensive display area	1 per 800 square feet of gross floor area, plus 1 per 1,000 square feet of outdoor area used for display and sales
Restaurant	1 per two seats, or 1 per two persons of rated capacity, whichever is greater
Restaurant, drive-in	1 per 100 square feet of gross floor area, plus stacking lane spaces as required in 3.2.4(i)
General office	1 per 250 square feet of gross floor area
Medical or dental office	1 per 150 square feet of gross floor area
Motor vehicle service station or gas station	2 spaces, plus 4 spaces per service bay
Manufacturing or industrial	1 per 500 square feet of gross floor area
Warehousing and Storage	1 per 2,000 square feet of area devoted to indoor or outdoor storage
Commercial recreation or sports facility	1 per 4 seats, or 1 per 200 square feet of gross floor area, or 1 space per 4 persons of rated capacity, whichever is greater.

- (b) Where a use is not specifically included in (a), it is intended that the requirements for the most nearly comparable use specified shall apply, as determined by the Planning Board.
- (c) Any computation resulting in a fraction of a space shall be rounded to the highest whole number.
- (d) In the Town Center District, the required number of parking spaces shall be 50 percent of the number resulting from the computations in paragraph (a). The Planning Board, acting as Special Permit Granting Authority, may grant a special permit to reduce the required number of spaces

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further, provided that it finds that adequate parking spaces are available to serve the proposed use in reasonably proximity to the site.

**3.2.4 Parking Lot Design**

- (a) Parking spaces shall be at least nine feet (9') by eighteen feet (18').
- (b) All required parking areas, except those serving residential premises, shall be paved.
- (c) In parking areas with eight or more spaces, individual spaces shall be delineated by painted lines, wheel stops, or other means.
- (d) Parking lot aisles shall be designed in conformance with the following:

Parking Angle	Minimum Aisle Width (one-way traffic)	Minimum Aisle Width (two-way traffic)
0 degrees (parallel)	12 feet	20 feet
30 degrees	13 feet	20 feet
45 degrees	14 feet	21 feet
60 degrees	18 feet	23 feet
90 degrees	24 feet	24 feet

- (g) All artificial lighting shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. All parking facilities which are used at night shall be lighted as evenly and fully as possible within the maximum wattage limits established by the State Building Code.
- (h) Parking facilities shall provide specially designated parking stalls for the physically handicapped in accordance with the Rules and Regulations of the Architectural Barriers Board of the Commonwealth of Massachusetts Department of Public Safety or any agency superseding such agency. Handicapped stalls shall be clearly identified by a sign stating that such stalls are reserved for physically handicapped persons. Said stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Adequate access for the handicapped from the parking facility to the structure shall be provided.
- (i) Drive in facilities, such as drive-in banks or restaurants, shall provide stacking or waiting lanes, which shall be in addition to and separate from any aisle designed to provide access to off-street parking spaces. Such stacking or waiting lanes shall have sufficient length to accommodate eight vehicles for the first service window, ATM or other station, and six additional vehicles for each additional window, ATM or station.
- (j) In the Town Center District, required parking areas shall not be located forward of any building front line on the lot or on an adjacent lot.

**3.2.5 Driveway Design**

- (a) Access driveways to nonresidential premises shall be 10 feet wide for one-way traffic and 18 feet for two-way traffic; provided, however, that driveways serving two-way traffic may be reduced to 10 feet in width when the driveway does not exceed 50 feet in length, does not serve more than 5 parking spaces, is not regularly used by trucks, and provides sufficient turnaround so as not to require backing onto a public way. Driveways shall not exceed 22 feet in width.
- (b) To the extent feasible, lots and parking areas in nonresidential districts shall be served by common private access ways, in order to minimize the number of curb cuts. Such common access ways shall be in conformance with the functional standards of the Subdivision Rules and Regulations of the Planning Board for road construction, sidewalks, and drainage. Proposed documentation (in the form of easements, covenants, or contracts) shall be submitted with the application, demonstrating that proper

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maintenance, repair, and apportionment of liability for the common access way and any shared parking areas has been agreed upon by all lot owners proposing to use the common access way. Common access ways may serve any number of adjacent parcels deemed appropriate by the Planning Board.

**3.2.6 Landscaping Requirements for Parking Areas**

- (a) All open off-street parking and loading areas, storage areas, refuse storage and disposal areas, and service areas shall be screened from all adjoining lots and streets by a landscaped area with a width of 20 feet, except that in the Town Center District the required landscaped area shall be 5 feet.. Such landscaped area shall be densely planted with a mixture of deciduous and evergreen trees and shrubs, and shall create an effective visual barrier. This provision shall not apply to parking areas for single-family dwellings, or to side lot lines separating one commercial or industrial use from another.
- (b) Parking lots containing more than ten (10) parking spaces shall incorporate shade trees and green areas conforming to the following standards:
  - (1) Parking areas must be shaded by deciduous trees (either retained or planted by the developer) that have, or will have when fully mature, a trunk at least 12 inches in diameter.
  - (2) At least one (1) shade tree shall be planted in or adjacent to the parking area for each ten (10) parking spaces. In sites that are presently wooded the retention of a greater number of trees is encouraged.
  - (3) Each tree shall be presumed to shade a circular area having a radius of 15 feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, 20 percent of the parking area will be shaded.
  - (4) No paving may be placed within six (6) feet of any tree, whether newly planted or retained to comply with this section. All new trees shall be located so that they are surrounded by at least 200 square feet of unpaved area per tree.
  - (5) Parking areas shall be laid out and detailed to prevent vehicles from striking trees. Vehicles will be presumed to have a body overhang of three feet, six inches.
  - (6) Planting shall be done in accordance with proper landscaping practices. Minimum trunk size shall be two and one-half inches (2-1/2") caliper at planting measured four feet (4') from the ground. Native trees and shrubs shall be planted wherever possible. Trees which die or become diseased shall be replaced.

**3.2.7 Loading Requirements**

- (a) Adequate off-street loading facilities and space shall be provided to service all needs created by construction whether through additions, change of use, or new structures.
- (b) Facilities shall be so sized and arranged that no vehicle need regularly to back onto or off of a public way, or be parked on a public way while loading, unloading, or waiting to do so.
- (c) Loading areas shall be landscaped in accordance with Section 3.2.6.

**3.3 SITE DEVELOPMENT REQUIREMENTS**

**3.3.1 Deleted**

**3.3.2 Erosion Control**

3.3.2.1 Any area of bare earth exposed through non-residential and non-agricultural building development must be permanently stabilized through replanting, paving, or other means of eliminating wind or water erosion. Such stabilization must be completed prior to building occupancy, or a performance bond must be posted in an amount sufficient to assure completion of such work.

3.3.2.2 Any construction which will expose more than 60,000 square feet of bare earth during development through either removal or filling on the same parcel or on contiguous parcels in the same ownership must comply with the following:



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- (a) Stripping of vegetation, regrading or other development shall be done in a way that will minimize soil erosion. An erosion control plan shall be submitted, having sufficient information on existing and proposed topography, vegetation, and control measures to allow determination of compliance.
- (b) Whenever practical, natural vegetation shall be retained, protected and supplemented.
- (c) The disturbed area shall be kept to a minimum.
- (d) Where necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during development.
- (e) Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained when necessary to remove from runoff waters any sediment from land undergoing development.
- (f) The angle of graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or alternative proposed erosion control devices or structures. In any event, slopes left exposed must immediately be planted or otherwise provided with permanent ground cover or other means sufficient to retain erosion.
- (g) A ground cover sufficient to retain erosion must be planted or otherwise provided within 30 working days, season permitting, of any portion of the tract upon which further active construction is not being undertaken.
- (h) The development plan or land-disturbing activity shall be fitted to the topography and soils so as to create the least erosion potential.

3.3.2.3 The Building Inspector may require review of erosion control proposals by the Soil Conservation Service or others expert in soil mechanics in cases where doubt as to adequacy or proposed measures exists. Selection of techniques and determination of adequacy of measures shall, unless otherwise specified, be consistent with Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts, USDA Soil Conservation Service, 1975.

3.3.2.4 All storm water management systems for new development and redevelopment projects that result in a land disturbance of one or more acres and discharge storm water into the municipal system must comply with the Massachusetts Department of Environmental Protection (DEP) Storm water Management Policy Handbook and Technical Handbook, whether or not the project falls within the jurisdiction of the Wetland Protection Act (MGL Ch 131 S 40). This enforcement will include projects that are less than one acre if the project is part of a larger common plan development.

### 3.4 ACCESS

3.4.1 **Street Access** Every lot created shall be provided with access from a "Street" as defined herein. Every lot created for residential use shall be provided with access from a "Street" as defined herein and said access will be included within the 'lot frontage', as defined herein, of said lot except for a shared driveway as provided for in Section 3.4.2 (2<sup>nd</sup> sentence added 4/26/88). Determination that a parcel is not a buildable lot because of access inadequacy may be appealed to the Board of Appeals by any party having standing as provided in Chapter 40A, section 8, Massachusetts General Laws, as amended.

3.4.2 **Driveway Access** Required off-street parking and loading spaces shall have adequate vehicular access to a street as determined by the Building Inspector or, if site plan review is involved, the Planning Board. A shared driveway shall not be considered adequate access if serving parking spaces on more than two lots, except that by Special Permit from the Planning Board a shared driveway may be determined to provide adequate access to parking spaces on no more than four lots.

A shared driveway shall not be considered adequate access for any lot created for residential use, except that by Special Permit from the Planning Board a shared driveway may be determined to

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provide adequate access to parking spaces for no more than four (4) dwelling units. (amended 4/25/88)

**ARTICLE 4. SPECIAL REGULATIONS**

**4.1 HOME OCCUPATIONS**

**4.1.1 Allowed Occupations** Home occupations shall be allowed without need for a special permit only if meeting all of the following:

- (a) The occupation shall be operated by a person residing on the premises. At no time shall there be more than one employee present on the premises who is not also a resident thereon.
- (b) There shall be no evidence of the occupation through persistent or excessive sound, or through vibration, smell, or sight discernible at the boundaries of the premises, except for a sign as permitted by Section 3.1 or for display of produce raised on the premises.
- (c) Any exterior storage of materials or equipment or business-related parking shall be so located and so screened (through location, grade, or vegetative screening), as to be in compliance with (b) above.
- (d) Not more than two vehicles requiring registration as taxis, buses, or commercial vehicles shall be regularly parked outdoors on the premises.
- (e) Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from residential development considering volume, type, hours, and other traffic characteristics.

The occupation shall be conducted within a dwelling, with no use of accessory structures except for parking or incidental storage in an existing accessory structure.

**4.1.2 Occupation on Special Permit** A special permit from the Board of Appeals may authorize any or all of the following for a home occupation:

- (a) Employment on the premises of two or more persons not resident thereon. Not more than three such persons shall be authorized except when, because of the circumstances of the location or the occupation, such additional employment will not adversely affect the neighborhood.
- (b) Reasonable modification of the limitation in 4.1.1 (b) above.
- (c) Parking or outside storage not capable of being located and screened as required by 4.1.1 (b) above.
- (d) Parking of vehicles other than as allowed under 4.1.1 (d) above.
- (e) Activity likely to result in more traffic allowed under 4.1.1 (e) above.
- (f) Use of an existing accessory structure for other than parking or incidental storage.
- (g) Storage or equipment or materials on premises other than the residence of the operator.

Such special permit shall be granted only if the Board of Appeals determines that the activities will not create hazard, disturbance to any abutter, or injury to the neighborhood, and will not create unsightliness visible from any public way or neighboring property. Such special permit shall impose conditions and limitations as necessary to protect abutting properties and the public, including the limitation that the home occupation authorized by the special permit may not be transferred to a different operator without a new special permit, that the occupation shall be subject to compliance review by the Building Inspector at periods specified in the special permit, and that such special permit may be revoked by a majority vote of the Board of Appeals at any time after notice and hearing, upon the Board's determination that the terms of the special permit are being violated.

**4.1.3 Enforcement**

- (a) A certificate of Use and Occupancy must be obtained from the Building Inspector indicating compliance with these requirements prior to initiation of a home occupation.
- (b) Any person may request enforcement of these provisions by the Building Inspector where a violation is believed to exist, as provided in Chapter, 40A, section 7, Massachusetts General Laws, as amended, and if dissatisfied with the outcome, such person may bring an appeal to

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the Board of Appeals for hearing and action as provided in Chapter 40A, section 8,  
Massachusetts General Laws, as amended.

**4.2 MULTIFAMILY DEVELOPMENT**

**4.2.1 Procedures** Applications for a special permit for multifamily dwellings shall be accompanied by 8 copies of drawings indicating schematically the types of information required for Site Plan Review (see 1.2.5.3). Upon receipt, one copy each of the application and drawings shall be transmitted by the Board of Appeals to the Selectmen, Planning Board, Conservation Commission, Board of Health, and Department of Public Works for their advisory review. As specified in Chapter 40A, section 11, Massachusetts General Laws, as amended, failure of any such board or agency to make recommendations within 35 days of receipt of the materials shall be deemed lack of opposition thereto.

**4.2.2 Dimensional Requirements**

- (a) **Lot Area.** Minimum lot area shall be not less than the greater of : (i) five (5) acres; or (ii) the following minimum lot area per dwelling unit multiplied by the number of dwelling units shall not be less than the following:

District

Neighborhood Residence: 10,000 square feet<sup>1</sup>

Rural Residence and Farming: 15,000 square feet<sup>1</sup>

<sup>1</sup>Notwithstanding the provisions of Section 4.2.2(a), the lot area per dwelling unit for any multi-family dwelling consisting of only two (2) units shall be 20,000 square feet per dwelling unit.

- (b) **Other requirements.** All other dimensional requirements of Section 2.5 shall apply, except as provided in 4.2.3 (f).

**4.2.3 Design Requirements**

The purposes of these design requirements are to ensure that multifamily dwellings and developments are consistent in scale and site design with the single-family residential character of the Town of Sterling; to protect the environment; to ensure traffic and pedestrian safety; and to minimize visual impacts.

(a) **Site Design**

- (1) All dwelling and structures shall be located a minimum of 200 feet from adjacent properties and public ways; provided, however, that any multi-family dwelling consisting of only two (2) dwelling units shall be located a minimum of 40 feet from adjacent properties and public ways. The Board of Appeals may authorize the set back reduction to a minimum of 100 feet upon its determination that existing natural vegetation and/or proposed plantings provide a protective visual screening.
- (2) Principal buildings on a lot of single ownership shall be no less than 100 feet apart from each other; provided, however principal multi-family buildings consisting of only two (2) dwelling units shall be no less than 15 feet apart from each other.
- (3) Peak stormwater runoff from the site shall not be increased in a ten-year storm

(b) **Building Design**

- (1) No structure shall contain more than eight (8) dwelling units, and no building entrance shall serve more than two (2) dwelling units.
- (2) Not more than five percent (5%) of the dwelling units in a multifamily development shall have more than two (2) bedrooms.
- (3) No floor except an unoccupied basement shall be below grade at its entire perimeter.

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(c) Circulation and Parking

- (1) No parking area shall contain more than sixteen (16) parking spaces. All parking areas shall be connected to the structures by walkways.
- (2) All parking areas shall conform to the design requirements set forth in Section 3.2.4; and all parking areas, loading areas, and refuse disposal areas shall conform to the landscaping requirements set forth in Section 3.2.6. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible.
- (3) Any road or driveway serving 12 or more dwelling units shall have at least 250 visibility in each travel direction, and shall be separated from all other driveways or intersecting streets by at least 150 feet.
- (4) Interior roads and utilities shall provide service functionally equivalent to that assured individual lots under the Planning Board's Subdivision Rules and Regulations.

(d) Open Space

- (1) At least sixty percent (60%) of the parcel shall be maintained as open space, and at least forty percent (40%) of the parcel shall be contiguous open space, excluding required yards and buffer areas.
- (2) The required open space shall be used for conservation, recreation, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purpose.
- (3) Underground utilities to serve the development may be located within the required open space.

(e) Exterior Lighting

- (1) Outdoor lighting fixtures shall be cut-off type, mounted no higher than 15 feet, and oriented and shielded to avoid glare on adjoining properties.
- (2) Plantings or other screening shall be used to block headlight glare from drives and parking lots onto adjoining premises.
- (3) No buildings shall be floodlit.

**4.2.4 Decision** In deciding on a Special Permit for Multifamily Dwellings, the following more detailed criteria shall be used in addition to those in Section 1.6. Such Special Permit shall be granted only if the Board of Appeals determines that the proposal would serve town interests better than would single-family development of the same area, considering the following:

- (a) Municipal costs and revenues
- (b) Effect of the range of available housing choice
- (c) Service to identified housing needs
- (d) Service to current Sterling residents
- (e) Support for local business activity
- (f) Impact on the natural environment
- (g) Impact on traffic safety and congestion, adequacy of water service, and the need for school facilities
- (h) Impacts on the visual environment through preservation or displacement of visual assets, and consistency with existing development in the area.

**4.3 RATE OF DEVELOPMENT**

**4.3.1 Purpose.** The purpose of this section, "Rate of Development", is to promote orderly growth in the town of Sterling, consistent with the rate of residential growth over the last seven (7) calendar years, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services, to provide the town, its boards and its agencies information, time, and capacity to incorporate such growth into the Master Plan for the community, as may be amended, and to preserve and enhance existing community character and the value of property.

**4.3.2 General.** Beginning on May 11, 1998, building permits for not more than thirty (30) dwelling units shall be issued in each of the fifteen full calendar years following said date, for the construction of new residential dwelling in the town of Sterling. This provision shall apply to any

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tract of land divided pursuant to any provision of G.L. c.41, ss.81K - 81GG, the Subdivision Control Act subsequent to such date. This provision shall apply to any proposed division or combination of properties which were in the same ownership and contiguous as of such date. For the purposes of this section, an accessory apartment pursuant to Section 2.3.4 shall constitute a dwelling unit.

4.3.3 **Procedures.** Any building permits issued shall be issued in accordance with the following procedures:

1. The Building Inspector shall act on each permit in order of submittal. Any permit application that is incomplete or inaccurate shall be returned to the applicant and shall require new submittal.
2. The Building Inspector shall mark each application with the time and date of submittal, and shall act on each application in a timely manner.
3. At the end of the calendar year in which this by-law is in effect, the Building Inspector shall retain all applications for which a building permit has not been issued. Upon being informed in writing by the applicant before the tenth of January of the succeeding calendar year that the applicant desires the application to remain in effect, the Building Inspector shall treat said application in accordance with subsection 4.3.3(1), above.

4.3.4 **Special Permit Exemption.** Upon a determination by the Planning Board under a special permit application that the building permits will be issued for dwelling units within a development that will provide special benefits to the community, said permits shall be exempt from this section in its entirety, and shall not count toward the thirty (30) permits to be issued annually. The Planning Board may grant a special permit under this section only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well conformance with Master Plan or Growth Management Plans, if any, prepared by the Planning Board pursuant to G.L. c.41, s81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of fifty percent (50%) or more.

4.3.5 **Exemptions.** The provisions of this section shall not apply to, nor limit in any way, the granting of building or occupancy permits required for the following purposes:

1. the construction, enlargement, restoration, or reconstruction of one single family or two family dwelling on a lot legally existing as of the date of passage of this by-law.
2. The construction of a single-family dwelling on land which, as of the date of passage of this by-law, was part of a lot held in separate ownership and containing one single or two family dwelling; provided that only one such new dwelling may be constructed in any year, and provided that the original lot shall be divided so that the existing dwelling and each new dwelling shall be on separate lots that conform to all zoning requirements for the district in which they are located.

4.3.6 **Time and Limitation and Extension.** This section shall expire on January 1, 2013; provided, however, that this section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to January 1, 2013.

4.3.7. The Planning Board may adopt reasonable rules and regulations for the administration of this Section 4.3.

**4.3A SUBDIVISION PHASING**

4.3A.1 **Purpose.** The purpose of this section, "Subdivision Phasing" is to assure that growth shall be phased so as not to unduly strain the town's ability to provide public facilities and services, so that it will not disturb the social fabric of the community, so that it will be in keeping with the community's desired rate of growth; and so that the town can study the impact of growth and plan accordingly.

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- 4.3A.2 **Applicability.** The issuance of building permits for any tract of land divided pursuant to any provisions of G.L. c.41,ss.81K-81GG, the Subdivision Control Act, into more than seven (7) lots after the effective date of this by-law shall be subject to the regulations and conditions set forth herein. This provision shall apply to any proposed division or combination of properties which were in the same ownership and contiguous as of May 11, 1998.
- 4.3A.3 **Phasing.** Not more than seven (7) building permits shall be issued in any twelve month period for construction of residential dwelling on any tract of land divided into more than seven (7) lots pursuant to any provision of G.L. c.41,ss. 81K-81GG, the Subdivision Control Act.
- 4.3A.4 **Exceptions.** Issuance of more than seven (7) building permits for the same tract of land in a twelve month period may be allowed in the following circumstances:
1. The owner of said land may apply for a special permit from the Planning Board for the issuance of more than seven building permits in any 12 month period. The Planning Board may grant a special permit only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well conformance with Master Plan or Growth Management plans as may be adopted or amended, prepared by the Planning Board pursuant to G.L. c.41, s.81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of fifty percent (50%) or more. Where such special permit is granted, any building permits issued for dwelling units within the division of land shall not count toward the 30 permits to be issued annually in Section 4.3.
  2. Where the tract of land will be divided into more than seventy (70) lots, the Planning Board may, by special permit, authorize development at a rate not to exceed ten percent (10%) of the units per year.
- 4.3A.5 **Zoning Change Protection.** The protection against subsequent zoning change granted by G.L. c.40A, s.6 to land in a subdivision shall, in the case of a development whose completion has been constrained by this section, be extended to ten years.
- 4.3A.6 **Relation to Real Estate Assessment.** Any land owner denied a building permit because of these provisions may appeal to the Board of Appeals, in conformity with G.L. c.59, s.59, for a determination as to the extent to which the temporary restriction on development use 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.
- 4.3A.7 The Planning Board may adopt reasonable rules and regulations for the administration of this Section 4.3A..

**4.4 FLOOD PLAIN DISTRICT**

- 4.4.1 **District Establishment.** The Flood Plain District is herein established as an overlay district. The underlying permitted uses are allowed provided that they meet the following additional requirements as well as those of the Massachusetts State Building Code dealing with construction in floodplains.
- The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Sterling Flood Insurance Rate Maps, (FIRM), and the Flood Boundary and Flood Way Maps, community-Panel Numbers 250336, 0001-0013, effective June 15, 1982, on file with the Town Clerk, Planning Board and Building Inspector. These maps as well as the accompanying Sterling Flood Insurance Study are incorporated herein by reference.
- 4.4.2 **Development Regulations.** The following requirements apply in the Flood Plain District:
- (a) Within Zone A, where the base flood elevation is not provided on the FIRM the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the

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Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.

(b) In the floodway designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

- (1) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect 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.
- (2) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.
- (3) The placement of mobile homes, except in an existing mobile park or mobile home subdivision is prohibited.

[c] Within the Zone A1-30, for new or substantially improved mobile home parks or subdivisions and for mobile home placement not in existing mobile home parks and subdivisions, the following provisions shall apply:

- (1) Stand or lots are elevated on compacted fill or pilings so that the lowest floor of the mobile home will be at or above the base flood level.
- (2) Adequate surface drainage and access for a hauler are provided.
- (3) In the instance of elevation and pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart, and reinforcement is provided for piers more than six (6) feet above the ground level.

**4.5 STILLWATER RIVER PROTECTION DISTRICT**

**4.5.1 Purpose.** The Stillwater River Protection District is herein established as an overlay district.

The purpose of this by-law is the preservation of the Stillwater River, the protection of wildlife and river resources and other public interests protected by the Wetlands Protection Act (Chapter 131, Section 40 and 40A, Massachusetts General Laws, as amended, and 310CMR 10.00).

**4.5.2 Determination.** Any person desiring to know whether or not a proposed activity or an area is subject to this by-law may request a determination from the Conservation Commission in writing. The Conservation Commission shall issue its determination, in writing, within twenty-one (21) days from the receipt of such request. The Conservation Commission, its agent, officers and employees, may enter upon the land upon which the proposed work is to be done in response to a request for a prior determination or for the purpose of carrying out its duties under this by-law and may make or cause to be made such examination or survey as deemed necessary.

**4.5.3 Geographical Applicability.**

- (a) This by-law shall apply to the waters of Stillwater River, Justice Brook and Washington Pond a/k/a Stuarts' Pond within the town of Sterling and a buffer extending one hundred (100) feet landward from each bank (as defined by 310CMR 10.00) of the Stillwater River, Justice Brook and Washington Pond a/k/a Stuarts' Pond.
- (b) This by-law shall also apply to a buffer extending one hundred (100) feet landward of the edge of the wetlands (as defined by 310CM 10.00) contiguous to the Stillwater River, Justice Brook and Washington Pond a/k/a Stuarts' Pond. The wetlands are those included in Zone A and Zone A5 on the Sterling Flood Insurance Rate Maps (FIRM) Community-Panel Numbers 250336 0011-0013, effective June 15, 1982.
- (c) Excluded are Babcock Brook and its contiguous wetlands further than 1100 feet from its' junction with the Stillwater River, Rocky brook and its contiguous wetlands further than 1000 feet from its junction with the Stillwater River and all other feeder streams and brooks not in Zone A or Zone A5 of the above FIRM maps. Any areas within Zone A or Zone A5 which are not wetlands are also excluded.

**4.5.4 Prohibited Uses in Any Area Affected by This By-law.**

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- (a) No structure of any kind may be located within the area subject to this by-law with the exception of docks which may be constructed, with prior approval of the Sterling Conservation Commission, in keeping with state and local law.
- (b) No dumping, filling, removing of material or dredging, except as may be required for the maintenance of Stillwater River, Justice Brook and Washington Pond a/k/a Stuarts' Pond; any such maintenance will be subject to the prior approval of the Sterling Conservation Commission.
- (c) There will be no clear cutting of existing vegetation and no more than minimal disruption of wildlife habitats. However, this section shall not apply in cases where the Conservation Commission determines that its application would adversely affect the purposes of Chapter 131, section 40 Massachusetts General Laws, as amended.

**4.5.5 Existing Uses.** Any existing structure or use of such structure lawful at the effective date of this by-law may continue although such structure or use does not conform to this by-law. Any existing structure may be repaired, maintained and improved but in no event made larger. Any non-conforming structure which is destroyed may be rebuilt on the same location but no larger than the original overall square footage.

**4.5.6 Hardship.** To avoid undue hardship, nothing in this by-law shall be deemed to require a change in the design, construction or intended use of any structure with respect to which a building permit was legally granted prior to the effective date of this by-law. Such construction must be substantially completed within a period of two (2) years from the effective date of this by-law, or such construction shall be required to conform to this by-law.

**4.5.7 Exceptions.** Any owner of a lot which is buildable at the time of the effective date of this by-law but which is made unbuildable due to said by-law, may apply to the Board of Appeals for a variance within three (3) years of the effective date of this by-law.

**4.5.8 Powers.** Nothing contained in this by-law is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws or by-laws, etc. of the Sterling Conservation Commission, the town of Sterling, or the Commonwealth of Massachusetts which pertain to the subject matter of this by-law. Unless otherwise indicated, this Stillwater River Protection District by-law shall govern and supersede all other provisions of the zoning by-law as applied within the geographically applicable areas of this by-law.

**4.5.9 Savings Clause.** If any section or part thereof of this by-law is held to be invalid the remainder of this by-law shall not be affected thereby.

**4.6 AQUIFER AND WATER RESOURCE PROTECTION DISTRICTS**

**4.6.1 Purpose.** The purposes of this Section, in addition to those enumerated in Section 1.1 of the *Town of Sterling Protective By-law*, are:

- (a) To preserve and maintain the quality of the ground water underlying the town of Sterling so as to preserve the present and future water supplies for the public health and safety of the inhabitants of the town and the Commonwealth.
- (b) To protect such ground water from the danger of accidental spills and discharge of petroleum products and other toxic and hazardous materials and from sewage discharge, all of which pose potential public health and safety hazards and threaten economic loss to the town and to the Commonwealth.
- (c) To enhance ground water recharge by minimizing the amount of impervious surface coverage in aquifer recharge areas.

**4.6.2 Geographical Applicability and Powers.**

- (a) The Aquifer Protection Districts are all land areas in the town of Sterling which overlie those portions of the Stillwater Aquifer which have a potential well yield greater than one hundred (100) gallons per minute as shown in the USGS Hydrological Investigation Atlas 276, and any future refinements thereof.



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- (b) The Water Resource Protection Districts are all land areas in the town of Sterling which are within either a delineated Zone II or are within a one-half mile radius of an existing municipal well which has no delineated Zone II.
- (c) The Aquifer Protection Districts and Water Resource Protection Districts shall be superimposed over all other Districts established by the *Town of Sterling Protective By-law*. All land in the instant Districts is subject to the regulations set forth in this Section 4.6 and such regulations shall be in addition to, rather than in place of, the requirements of the underlying Districts.
- (d) Nothing in this Section 4.6 is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws or by-laws, etc. of the town of Sterling or of the Commonwealth of Massachusetts which pertain to the subject matter of this Section 4.6 except that where the regulations contained herein are more restrictive than those contained elsewhere and where the regulations contained elsewhere are more restrictive than those contained herein, the more restrictive will prevail in all instances.
- (e) The boundaries of the Districts, as presented on any plan, must meet the approval of the Planning Board. Where bounds as delineated are in doubt or in dispute, the burden of proof shall be on the owner(s) of the land in question to show where they should property be located.

**4.6.3 Definitions.** The following definitions apply to specialized words or terms associated with this Section 4.6:

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

**Ground Water.** The subsurface water present in aquifers and recharge areas.

**Hazardous or Toxic Material.** Any substance or mixture of substances whose physical, chemical, radiochemical or biological properties ore characteristics would cause it to pose a significant actual or potential hazard to a water supply, or other hazard to humans health, if such substance or mixture where discharged to land or waters of the town.

**Impervious Surface.** A surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes semi-impervious surfaces such as compacted clay as well as most conventionally surfaced streets, roofs, parking lots and other similar structures.

**Recharge Area.** That portion of a drainage basin where water enters the saturated zone and the net flow of ground water is directed from the saturated zone to a reservoir or aquifer.

**Soil Conditioner.** Any manipulated substance or mixture of substances whose primary function is to modify the physical structure of soils so as to favorable influence plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum. Examples of unmanipulated vegetable manures are hay, straw, peat and leaf mold. Charcoal, sand, pumice and clay are unmanipulated natural substances.

**Zone I.** The area within a 400 foot radius of an existing public well.

**Zone II.** The area above that portion of any aquifer that will contribute water to an existing public well, as determined by standard geologic and hydrogeologic investigations, under the most severe recharge and pumping conditions that can be realistically anticipated, that is pumping at a maximum safe yield for 180 days without recharge.

**Zone III.** The recharge area to an existing public well or the area that is expected, based on current information derived from standard geologic and hydrogeologic investigations, to recharge a future public well.

**4.6.4 Prohibited Uses in Any Aquifer (A) or Water Resource (W) Protection District.**

Prohibited uses are indicated by "N"

A) (W)

- (a) Underground Storage of liquid petroleum products of any kind, excluding the liquefied petroleum gases propane, propylene, butanes, butylenes and liquefied natural gas, except for replacement of tanks existing at the

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time of adoption of the by-law.	N	N
(b) Storage of liquid petroleum products of any kind excluding the liquefied petroleum gases propane, propylene, butanes, butylenes and liquefied natural gas except those incidental to:		N
(1) normal household use and outdoor maintenance or the heating of a structure		
(2) waste oil retention facilities required by MGL c.21,s52A		
(3) emergency generators required by statute, rule or regulation		
(4) treatment works required by the DEP designed in accordance with 314CMR 5.00 for the treatment of contaminated ground or surface waters, such storage to conform to 4.6.5 (a) & (b) below.		
(c)Underground storage of any liquid material or chemical which could degrade the quality of the ground water should it be released into or onto the ground. (Allowed aboveground storage of such liquids must conform to 4.6.5 (a) & (b) below.	N	N
Prohibited uses are indicated by “N”	<u>A)</u>	<u>(W)</u>
(d) Any use which involves the manufacture , generation, processing, packaging, repackaging, use, storage, treatment disposal or transportation of toxic or hazardous materials or waste, except the following:	N	N
(1) very small quantity generators as defined under 310CMR 30.00		
(2) household hazardous waste collection centers and events under 310CMR 30.390		
(3) waste oil retention facilities required by MGL c.21, s.52A		
(4) water remediation treatment works approved under 314CMR 5.00		
(e) The outdoor storage of road salt or other deicing chemicals	N	N
(f) The outdoor storage of fertilizers, soil conditioners, herbicides and pesticides		N
(g) Sanitary landfill or other disposal of solid waste, not including brush and stumps	N	N
(h) Municipal sewage treatment facilities	N	N
(i) Privately owned sewage treatment facilities	N	N
(j) the placement of the leaching field of a subsurface waste water disposal system less than six (6) feet above the maximum water table level as measured at the time of annual high water table.		N
(k) On-site discharge of greater than ten thousand (10,000) gallons per day of waste water other than storm water	N	N
(l) The excavation of gravel, sand or rock in any form to a depth greater than six (6) feet above the historic high ground water table, except when incidental to the construction of a foundation or basement of a permitted structure for which a foundation or building permit has been obtained	N	N
(m) The processing and washing of earth materials.	N	N
(n) The rendering impervious of more than fifty (50) percent of any lot.	N	N
(o) The rendering impervious of more than fifteen (15)		

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percent or 2500 square feet of any lot, unless artificial recharge for excess runoff is provided (see 4.6.5 (c) below) not to exceed 50% of any one lot.			N
(p) Dumping of snow and ice from outside of the District.		N	N
(q) Junk and salvage yards and automobile graveyards.		N	N
(r) Truck and bus terminals.		N	N
(s) Automobile distribution centers.		N	N
(t) Automotive service stations and repair shops.		N	N
(u) Car and truck washes.		N	N
(v) Dry-cleaning establishments.	N	N	
(w) Storage of manure or other animal wastes generated from outside the Protection District.		N	N
(x) Storage of animal manure unless covered and contained in accordance with the specifications of the U.S. Soil Conservation Service.			N
(y) Storage of sludge or septage.		N	N
(z) Land filling of sludge and septage as defined in 310CMR 32.05.		N	N
(aa) Individual sewage disposal systems designed in accordance with 310CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or more than 440 gallons of sewage per acre under one ownership per day.		N	N
Prohibited uses are indicated by "N"		<u>A</u>	<u>(W)</u>
(bb) The outdoor application of any pesticide on the most current groundwater protection list without adoption of, or inconsistent with, a Department of Food and Agriculture approved integrated pest management program or pesticide management plan pursuant to 333CMR 12.00, save for products that are: aerosol products, paint products, finished bait products or products applied directly to humans, domestic animals or livestock.			N

**4.6.5 Additional Requirements for Permitted Uses.**

- (a) Outdoor above ground storage tanks for liquid petroleum products and liquid hazardous materials will be surrounded by secure secondary storage and containment areas capable of holding at least one hundred and fifty (150) percent of the sum total volume of the tanks. The containment areas will be protected from the accumulation of storm water and will be kept in sound condition at all times.
- (b) Liquid petroleum products and liquid hazardous materials stored within a building shall be placed on a diked, impermeable surface capable of retaining at least one hundred and fifty (150) percent of their sum total volume, to prevent spills or leaks from reaching ground water.
- (c) All runoff from impervious surfaces or otherwise due to industrial and commercial development, or due to the construction of new roads, shall be recharged on site by being diverted to stormwater infiltration basins covered with natural vegetation for surface infiltration to the greatest extent possible, or as otherwise directed jointly by the Sterling Department of Public Works and the Sterling Conservation Commission. Stormwater infiltration basins must be designed to handle a fifty (50) year storm. Dry wells and leaching catch basins, when allowed by the Sterling Department of Public Works and the Sterling Conservation Commission must be preceded by oil, grease and sedimentation traps to facilitate removal of contaminants. Any and all infiltration and recharge

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structures shall be kept permanently in full working order by the owner of the site. An annual maintenance plan shall be submitted to, and approved by, the Building Inspector and the Sterling Department of Public Works to assure that the methods used for on site recharge and infiltration shall remain effective.

- (d) Any leachate or runoff from a transfer station, or from a composting facility composting material generated outside the Protection District, must be contained and disposed of outside the boundaries of the District.
- (e) All lawful uses not prohibited by the Section 4.6 which are wholly or partially within the areas regulated by the Section 4.6 and which are required to undergo site plan review under Section 1.2.5 of the *Town of Sterling Protective By-law* must conform to the following as part of that site plan review:
  - (1) The site plans must delineate the boundaries of the Aquifer and/or Water Resource Protection District(s),
  - (2) The plans will state the proposed use(s),
  - (3) The Planning Board must be satisfied that the project has been designed to eliminate any significant threat of contamination to the ground water. In making such a determination, the Planning Board shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree and threat to water quality which would result if the control measures fail.

Any modifications, deletions or additions to the plans required by the Planning Board for the purposes of insuring protection of the ground water must be made prior to the issuance of any Building Permit or Certificate of Use and Occupancy.

**4.6.6 Pre-existing Uses and Structures.**

- (a) Structures. Any existing structure, or use of such structure, lawful on the effective date of this Section 4.6 may continue although such structure or use does not conform to the requirements of this Section 4.6. Any such existing structure may be repaired, enlarged, maintained and improved, however, any enlargement must conform to the regulations contained in this section 4.6.
- (b) Uses Any existing use lawful on the effective date of this Section 4.6 may continue although such use does not conform to the requirements of this Section 4.6. Any change, expansion, extension or repair of such non-conforming use must, however, conform to the regulations contained in this Section 4.6, save for the repair or replacement, not to result in an increase in design capacity above the original design, of a private on site waste water disposal system which must conform as much as possible, in the opinion of the Sterling Board of Health, to the regulations contained in this Section and to the regulations of the Sterling Board of Health.
- (c) Hardship. To avoid undue hardship, nothing in this Section 4.6 shall be deemed to require a change in the design, construction or use of any structure with respect to which a building permit was legally issued prior to the effective date of this Section 4.6 and such building permit had not lapsed prior to the start of construction.

**4.6.7 Variance.** Use Variance solely from the provisions of Section 4.6 may be granted by the Sterling Board of Health, acting as the Permit Granting Authority in the stead of the Board of Appeals following the provisions of Section 1.4.3.1 (a) and (b) and any applicable Sections of Chapter 40A, Massachusetts General Laws, as amended.

**4.6.8 Enforcement and Violations.** The enforcement of this Section 4.6 shall be as described in Section 1.3 of this *Town of Sterling Protective By-law*.

**4.6.9 Savings Clause.** If any subsection or part thereof of this Section 4.6 is held to be invalid the remainder of this Section 4.6 shall no be affected thereby.

**4.7 PERFORMANCE ZONE I.**

**4.7.1 Purpose .** The purpose of this Section 4.7 is to promote the public health, safety, and welfare as follows:

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- 4.7.1.1 Protect environmental resources and aesthetic values; and minimize traffic congestion and nuisances.
- 4.7.1.2 Protect town services and infrastructure capacities by limiting impacts on them.
- 4.7.1.3 Encourage appropriate land use by permitting highway corridor uses sensitive to existing residences.
- 4.7.1.4 Encourage site design sensitive to environmental constraints, adjacent land uses and traffic impacts.
- 4.7.2 **Use Classification.** In this Section 4.7 uses are classified by their attributes as outlined below.
- 4.7.2.1 Prohibited Uses are prohibited from the district because of the difficulty in predicting or mitigating adverse impacts, or the likelihood of noncompliance.
- 4.7.2.2 Non-Performance Uses include all uses allowed in the Rural Residence and Farming District without a Special Permit.
- 4.7.2.3 Performance Uses include all uses except Prohibited and Non-Performance Uses which meet the Performance Standards.
- 4.7.2.4 Special Permit Performance Uses include all uses for which there is a secondary, less stringent Performance Standard. In order to obtain a Special Permit, additional plans and mitigation measures. And in some cases Performance Guarantees, are required. For example, the amount of traffic may be increased above the Performance Standard, up to Secondary Performance Standard levels, providing the impacts of increased daily trips are mitigated through measures such as line-of sight improvements.
- 4.7.3 Prohibited Uses.** The following uses are prohibited due to the difficulty in predicting and mitigating their adverse environmental impacts: radioactive waste disposal, as per Section 2.3.3 of the *Town of Sterling Protective By-law*, and all those uses listed as prohibited in the Water Resource Protection District in the *Town of Sterling Protective By-law*, Section 4.6.4 Aquifer and Water Resource Protection Districts, with the following exceptions, as enumerated in Section 4.6:
- (h) Municipal sewage treatment facilities;
  - (i) Privately owned sewage treatment facilities;
  - (j) The placement at the leaching field of a subsurface waste water disposal system less than six feet above the maximum water table level;
  - (k) On site discharge of greater than 10,000 gallons per day of waste water other than storm water;
  - (o) The rendering impervious of more than 15 percent or more of any lot, as described in Section 4.6. (o). (changed to 20 percent or more as per Section 4.7.5)
  - (r) Truck and bus terminals in compliance with the Underground Injection Control Program, 310CMr 27.00, and in compliance with the noise standards in 310CMR 7.00.
  - (u) Car and truck washes if all the water is recycled; and
  - (AA) Individual sewage disposal systems, as described in 4.6 (aa).
- 4.7.4 **Non-Performance Uses.** All uses currently permitted in the Rural Residence and Farming Zone without a Special Permit are permitted by right, and must comply with the current zoning requirements for that district.
- 4.7.5 **Performance Uses.**
- 4.7.5.1 Explanation. Performance Uses include by right all uses, except Prohibited and Non-Performance Uses and certain “additional exempt uses” which meet the Performance Standards listed in this Section 4.7.5. Any use which exceeds these standards is prohibited, or in some cases may meet Secondary Performance Standards with a Special Permit. The Performance Standards are based on State and Federal laws, with more stringent local standards in certain instances. Performance Guarantees may be required at the discretion of the Planning Board to ensure compliance. A Site Plan Review is required for all Performance Uses. Submission requirements may be contained in separate regulations adopted and from time to time amended by the Planning Board. Certain standards may be averaged over more than one lot within the Performance Zone 1 district, when denoted: “averaging permitted”. (See Section 4.7.6 Special Procedures for an explanation of averaging.) The following apply only when indicated in the subsections of the Section 4.7.5”

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- Special Permit Performance Uses permitted;
- Averaging permitted;
- Additional Exempt Uses permitted.

4.7.5.2 Ground and Surface Water Protection. The following standards are intended to protect ground and surface water quality from development impacts.

- (a) Impervious Surface: Impervious surface shall not exceed 20% of the total lot area by right. Up to 50% impervious surface is permitted with a Special Permit.
- (b) Storm Water Runoff: All development, except for exempt uses, shall be designed to maintain existing storm water runoff characteristics of volume, velocity, peak flow, and pollutant loads for storms of 1, 10, 25, 50 and 100 year recurrence intervals. No discharge of pollutants is permitted (see 4.7.9 Definitions).
  - (i) Compliance with these standards shall be demonstrated by a Storm Water Management Plan, acceptable to the Sterling Planning Board, which shall be developed in accordance with the Sterling Aquifer and Water Resource Protection Districts By-law 4.6.5 (c) and regulations promulgated by the Planning Board for this Section 4.7.
  - (ii) Special Permits are permitted when runoff is diverted onto adjoining property with mutual agreement, providing the lot receiving the diverted runoff does not exceed the requirements of Section 4.7.5.2 (b). Averaging is permitted in this case only.
  - (iii) Additional exempt uses: All new non-residential and non-agricultural development resulting in ten or less off-street parking spaces or less than 2,000 square foot gross floor area, and all residential development resulting in three or less units on the same lot; also, conversion of existing structures without increase in structure square footage.
- (c) Protective By-law shall be followed both during and after construction by all development except for the following:

Additional exempt uses: All new non-residential and non-agricultural development resulting in ten or less off street parking spaces or less than 2,000 square foot gross floor area, and all residential development resulting in three or less units on the same lot; also conversion of existing structures without increase in structure square footage.
- (d) Hazardous or Toxic Materials: No development shall discharge hazardous or toxic materials, as defined in Section 4.6.3 Definitions of Sterling Aquifer and Water Resource Protection Districts By-law, or industrial waste to any land area, surface water, groundwater, sanitary sewer, storm drain, floor drain and/or sink connected to a system which discharges to the ground and/or surface water. This prohibition does not apply to emissions of hazardous air pollutants, permitted under Section 112 of the Federal Clean Air Act (42 USC 7412), 40CFR 61 & 63, and Massachusetts Clean Air Act (MGL c.111, s142, A-J).
  - (i) Furthermore, all uses except for exempt uses, must store all hazardous or toxic material above ground, in product-tight containers, and on an impervious surface. Outdoor storage shall be protected from exposure to precipitation and be equipped to provide secondary containment designed to hold 150% of the stored volume. Indoor storage shall be designed to prevent any flow to exposed soils, floor drains or outside drains, and have secondary containment designed to hold 100% of the stored volume. All uses except very small quantity generators as defined under 310CMR 40.00 shall have a Spill Contingency Plan.
  - (ii) Additional exempt uses: All uses which are very small quantity generators as defined under 310CMR 40.00. (See Section 4.7.9 Definitions for the definition of very small quantity generators).

4.7.5.3 Nuisance Factors. The following standards are intended to protect adjoining uses from any nuisances and air-related health hazards caused by development in the Performance Zone 1.

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- (a) Air Quality: All uses must comply with federal and state ambient air quality standards. No new major stationary source, as defined in the federal Clean Air Act (42 U.S.C. 7401 et seq) is permitted.
- (b) Noise: No use shall be permitted that produces noise in excess of 55 dBA, as measured at any point along the lot lines during the hours of 7:00AM to 7:00PM or 45 dBA during the hours of 7:00PM to 7:00AM. This standard may be relaxed along lot lines abutting I-190. No use may cause a pure tone condition.
- (c) Light: Exterior lighting, except for overhead street lighting and warning, emergency, or traffic signals, shall be installed in such a manner that the light source will be sufficiently obscured to prevent glare on public streets and walkways or onto other lots. Plantings or other screening shall be used when practicable to block head-light glare from drives and parking lots onto adjoining premises.

4.7.5.4 Traffic Generation.

- (a) Performance Uses: No more than 30 daily trip ends per day per acre will be permitted by right, except for exempt uses a listed in 4.7.5.4 (c). Averaging is permitted.
  
- (b) Special Permit Performance Uses: The by-right standard of 30 daily trip ends per day per acre may be exceeded and a Special Permit granted if it can be demonstrated to the satisfaction of the Planning Board acting as the Special Permit Granting Authority (SPGA) that the secondary Performance Standards specified below will not be exceeded. In its judgment of the ability of an applicant to meet these Performance Standards, the Planning Board may consider any mitigation measures that if finds substantially meet the intentions of this Section 4.7 and Performance Standards below.
  - (i) Full development of the Performance Zone 1 must not result in an increase in average daily traffic (ADT) in excess of the following limits, or result in a deterioration in level of service specified, as defined by the Highway Capacity Manual.
    - On Route 140, south of Dana Hill Road to the intersection of I-190, no increase in the ADT greater than 50% above existing ADT, and Level of Service D or better;
    - On Route 140, north of Dana Hill Road no increase in the ADT greater than 25% above existing ADT, and Level of Service B or better;
    - On Dana Hill Road, east of the I-190 underpass, no increase in the ADT greater than 50% above existing ADT;
    - On John Dee Road, between Route 140 and the I-190 underpass, no increase in the ADT greater than 50% above the existing ADT;
    - The intersection of Route 140 and Dana Hill Road, after safety improvements must function at Level of Service C or better.
  - (ii) Analysis shall consider existing and any other proposed development in the district, as well as any other proposed development outside the district which could affect the traffic volume on the district roadways. Analysis must establish how much traffic, expressed as new trips, may be accommodated on roads within the district while; maintaining the Performance Standards above. The baseline for analysis is the conditions existing at the time of the proposal. Trip ends established by analysis must be apportioned across the district by acre. No proposed use may exceed this proportional limit unless the Planning Board acting as the SPGA determines that acceptable mitigation measures would substantially meet the intent of this section. Averaging is permitted. Applicants shall provide analysis of the traffic impact consistent with guidelines contained in any regulations adopted and from time to time amended by the Planning Board for the explication of this Section 4.7.

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- (c) Additional Exempt Uses: Conversion of existing structures without increase in structure square footage, and any retail use under 2,000 square foot gross floor area not classified in the ITE Trip Generation Manual.

**4.7.5.5 Site Design**

There are no minimum requirements for lot size or floor area ratio for any use. However, the following standards do apply. Sections 4.7.5.5 (a) through (c) are use specific. Sections 4.7.5.5 (d) through (h) apply to all uses.

- (a) Dimensional Requirements (except setbacks) - Single Family and Duplex Residential:
  - (i) Density: The maximum permitted single-family and duplex residential density permitted by right is one dwelling unit per .88 acres, based on the maximum Non-Performance by-right residential density. Increases (averaging) in density may be permitted on Cartways only (see Section 4.7.9 Definitions) by Special Permit at the discretion of the Planning Board acting as the SPGA if there is adequate engineering proof that no other Performance Standards will be exceeded; or ;that no secondary Special Permit Performance Standards, when permitted by this Section 4.7 will be exceeded, with the stipulation that the remainder of (dwelling units x 0.88 acres) - (dwelling units x average area) will remain unbuildable.
  - (ii) Pork Chop Lots: Pork Chop Lots shall be permitted with a minimum frontage of 50', even though they do not meet the minimum lot frontage, requirements at the street boundary line, only when the total lot size is five acres or more. In any event, no more that twenty-five percent of the lots in a subdivision or fronting on a street in existence as of June 1, 1994 may be pork chop lots.
  - (iii) Frontage: A minimum of 180 feet of frontage is required for all single-family residential lots and 270 feet of frontage is required for all duplex residential lots, with the exception of the following: (1) pork chop lots (see above), which may be permitted with a Special Permit at the discretion of the Planning Board acting as the SPGA; (2) when density is averaged by Special Permit (see above).
  - (iv) Minimum Lot Width: A minimum of 50 foot width is required for all residential lots.
- (b) Dimensional Requirements (except setbacks - Multi-Family Residential: Multi-family residential dimensional and site development requirements shall be in accordance with Section 4.2 of the Sterling Protective By-law except for the following: (1) There is no minimum lot size. (2) Density, pork chop lots, frontage and minimum lot width shall follow the standards for single-family and duplex residential in Section 4.7.5.5 (a)(i). (3) Setback requirements shall follow the provisions in Section 4.7.5.5 (d).
- (c) Dimensional Requirements (except setbacks) - Non-Residential:
  - (i) Density: There is no formal density requirement for non-residential uses, but density is indirectly controlled by the height restriction in the Sterling Protective By-law, and by the impervious surface limitation, the traffic limitation and the other Performance Standards in this Section 4.7.
  - (ii) Frontage: Minimum required frontage is 20 feet.
  - (iii) Minimum Lot Width: There is no minimum lot width.
- (d) Setbacks/Buffer Yards: The purpose of perimeter buffer yards is to screen adjacent land uses from adversely impacting adjacent areas. No structures are permitted in any buffer areas except as in 4.7.5.5 (d)(vi) below. No vehicle parking is permitted in side or rear buffer yard areas. Required buffer yard widths are as follows:
  - (i) 100' wide where adjoining residential lots on Clemence Avenue;
  - (ii) 20' wide where adjoining I-190 right-of way;
  - (iii) 40' wide where adjoining any other zoning district, except as in (i)and(ii) above;
  - (iv) 25' wide where adjoining any interior road in this district;
  - (v) 25' wide for side and rear yards; and
  - (vi) 10' wide for free standing uninhabited buildings (up to 500 square feet) open decks(up to 300 square feet) and pools in side and rear yards.



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The Planning Board may at its discretion waive buffer requirements for reasons of public safety. Required buffer yard widths may be reduced for (iv) and (v) above only, if the applicant satisfies the Planning Board that appropriate screening materials will be used. Appropriate screening materials may be described in the Planning Board regulations pursuant to this Section 4.7.

(e) Landscaping: Landscaping is required for all new non “Approval Not Required” development as part of the buffering requirements. Additional tree planting requirements for parking lots are as follows: any lot which contains parking facilities for more than ten cars shall also provide interior landscaped areas within the parking lot equal to at least 10% of the gross parking area.

(f) Aesthetics: Construction shall be compatible with neighboring development and the architectural character of the town of Sterling in general, in terms of siting, building mass and architectural detailing. Exposed storage areas, machinery, service areas, truck loading areas, utility building and structures and other unsightly uses shall be set back or screened to protect the neighbors from objectionable features. Electric, telephone, cable TV, and other such utilities shall be underground where physically and environmentally feasible.

(g) Parking: Off-street parking and loading requirements shall follow Section 3.2 of the Sterling Protective By-law with the following exceptions:

- all industrial uses: one parking space for each 500 square feet of gross floor area;
- all office uses; one parking space for each 300 square feet of gross floor area; and
- all retail uses: one parking space for each 200 square feet of gross floor area.

(h) Site Plan Review: All applications for building permits or Certificates of Use and Occupancy involving creation of, addition to, or substantial alteration of either five or more off-street parking spaces or a non-residential and non-agricultural structure having gross floor area exceeding 1,000 square feet shall be subject to site plan review. Procedures for site plan submission and review are contained in Section 1.2.5.2 of the Sterling Protective By-law, except that for this Section 4.7, the Planning Board, rather than the Building Inspector, shall be the receiving and approving agency.

### **4.7.6 Special Procedures**

4.7.6.1 Performance Standards Compliance All applications for a building permit that is not for a Non-Performance use must submit to the Planning Board proof that their proposed project will comply with the Performance Standards in Section 4.7.5. Procedures for compliance with the Performance Standards may be contained in regulations pursuant to this Section 4.7 and from time to time amended by the Planning Board.

4.7.6.2 Engineering and Legal Review Fee Evidence of compliance with the Performance Standards shall be accompanied by site plans, as described in Section 1.2.5.3 of the Sterling Protective By-law, and a reasonable review fee set by the Planning Board to cover the cost of engineering and legal reviews.

4.7.6.3 Performance Guarantees In order to ensure conformance with the Performance Standards, the Planning Board, acting as the SPGA, may require the posting of a Performance Guarantee or bond not to exceed the cost of construction of the mitigation measures.

4.7.6.4 Site Plan Review Applicants exceeding the Site Plan Review thresholds in Section 4.7.5 must submit a site plan in accordance with Section 1.2.5 of the Sterling Protective By-law and Section 4.7.5.5 (h) of this Section 4.7. Prior to formal Site Plan Review, an applicant may submit an informal application to the Planning Board for Preliminary Site Plan Review. The informal application for Preliminary Site Plan Review shall consist of a verbal description of the project including anticipated Performance Standards compliance as per Section 4.7.5, and a site plan drawn to scale, but not necessarily stamped by an engineer or landscape architect.

4.7.6.5 Subdivision Requirements Applicants creating a subdivision, as per M.G.L. c.41, s.81L, shall follow the procedures for subdivision outlined in Sterling’s Rules and Regulations Governing the Subdivision of Land. The exception is, in a subdivision within this district, the required road rights-of-way and pavement widths may be reduced at the discretion of the Planning Board, upon adequate proof of the safety of the reduced standards.

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4.7.6.6 Special Permits Applicants exceeding indicated Performance Standard thresholds outlined in Section 4.7.5 may apply to the Planning Board acting as the SPGA for a Special Permit when there is a Secondary Performance Standard specified in 4.7.5. The Planning Board is the Special Permit Granting Authority. Special Permits may be granted by the Planning Board upon satisfactory proof that the secondary Performance Standard will be met. Special Permit authority, procedures and expiration are outlined in Section 1.6.1, 1.6.2, 1.6.4 and 1.6.5 of the Sterling Protective By-law. Section 1.6.3 has been replaced for the purposes of this Section 4.7 by Special Permit requirements outlined in Section 4.7.5.

4.7.6.7 Averaging The purpose of averaging is to allow for greater flexibility and creativity in development, while still meeting the purposes stated in Section 4.7.1. In the process of “averaging” the amount of impact permitted for certain Performance Standards for a given lot may be averaged with another lot in the district on a per acre basis. For example, density may be higher than the permitted .88 dwelling units per acre on one lot, if when averaged with a lot which is lower, the overall density of the two lots combined does not exceed the .88 dwelling units per acre standard. Averaging is permitted between lots under the same ownership and between lots under different ownership within the district. It is up to the individual owners to establish a price for this “transfer of performance rights”. After the averaging has been accepted by the Planning Board, it must be recorded in the registry of deeds as a deed restriction on the sending lot (the lot donating its Performance Standards) before a building permit may be issued for either lot. The procedure may be reversed only if the receiving lot has not been developed so as to use up the additional Performance Standards increases.

**4.7.7 Powers**

Nothing contained in the Section 4.7 is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws, or by-laws etc. of the Sterling Planning Board, the Sterling Board of Health, The Sterling Conservation Commission, the town of Sterling or the Commonwealth of Massachusetts which pertain to the subject matter of this section 4.7, with the following exception. Unless otherwise indicated, this Section 4.7 Performance Zone 1 by-law amendment shall govern and supersede any conflicting provisions of the Town of Sterling Protective By-law as applied within the geographically applicable areas of the Section 4.7. If no conflicting provision exists, the Sterling Protective By-law shall control.

**4.7.8 Savings Clause**

If any part of this Section 4.7 is held to be invalid, the remainder of this Section 4.7 shall not be affected.

**4.7.9 Definitions**

The following definitions apply to specialized words or terms associated with this Section 4.7.

Average Daily Traffic (ADT) The average daily traffic, in both directions, averaged over a year for a given facility (roadway segment or intersection).

Buffer Yard. A transitional protective area along lot lines. It consists of open space, supplemented with plant materials or aesthetically appropriate fences which form a screen between adjacent lots.

Cartway. A cartway is a street serving residential uses only which carries traffic equivalent to that generated by 12 or fewer dwelling units and has a 40 foot maximum width of the right-of-way and a 20 foot maximum width of the road surface.

Daily Trip Ends, from Trip Generation Manual, 1982 Institute of Transportation Engineers. The total of all trips entering plus all trips leaving a designated land-use or building type over a given period of time.

Discharge of Pollutants. The accidental or intentional disposal deposit, injection, dumping, spilling, leaking, incineration, or placing of pollutants or any constituent thereof which may enter the land or waters of the Commonwealth. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

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Highway Capacity Manual. (most recent version) Transportation Research Board, Special Report of the Transportation Research Board of the National Research Council. The Manual is a guide to the design and operational analysis of highway facilities.

Impervious Surface. A surface which has been compacted or covered with a layer of material so that it is resistant to infiltration by water. It includes semi-impervious surfaces such as compacted clay as well as most conventionally surfaced streets, roofs, parking lots and other similar structures.

Level of Service. Level of service, as defined in the Highway Capacity Manual, is a qualitative measurement of conditions within a traffic stream and their perception by motorists in terms of speed, travel time, freedom to maneuver, traffic interruptions, comfort, convenience, and safety. There are six levels of service applicable to each facility (roadway type or intersection). A through F, with A representing the best operating conditions and F indicating the worst.

Nuisance. An activity or omission which unreasonably interferes with a right common to the public or with the interest an individual has in the private use and enjoyment of land.

Pollutant. Any substance that can alter the biological, chemical, physical or radiological character of water, and in so doing, is likely to create a nuisance or render waters harmful, detrimental, or injurious to the health of humans, livestock or wildlife.

Pork Chop Lot. A lot shaped like a pork chop (also known as “dog leg” or “flag” lot), which has access to the street via a corridor which is part of the lot and does not meet the minimum frontage requirements.

Very Small Quantity Generator. One that does not generate more than 100 kg. or accumulate more than 600 kg. of regulated recyclable material or non-acutely hazardous waste (310 CMR 30.120 -125,130-135), and does not generate or accumulate any acutely hazardous waste (310 CMR 30.136), or residue or contaminated soil and/or water from a spill clean-up, and does not generate any container liners with residue from wastes.

**4.8. WIRELESS COMMUNICATIONS FACILITIES (WCF) OVERLAY DISTRICT BY-LAW**

- 4.8.1. **Purpose.** The purpose of this section is to establish areas in which wireless communications facilities may be provided while protecting Sterling's unique community character. The WCF Overlay District has been created (a) to provide for safe and appropriate siting of wireless communications facilities consistent with the Telecommunications Act of 1996, and (b) to minimize visual impacts from such facilities on residential districts and scenic areas within Sterling.
- 4.8.2. **Location.** The WCF District shall be located as follows:  
In Rural Residential (RR), Light Industrial (LI) and Commercial (C) districts, no wireless communication facility shall be located less than 500 feet from the boundary of a Neighborhood Residential district.
- 4.8.3. **Applicability.** The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superseded herein.
- 4.8.4. **Submittal Requirements.** As part of any application for a special permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at Section 6.4. Applicants shall also describe the capacity of the facility, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.
- 4.8.5. **Special Permit.** A wireless communication facility may be erected in the WCF District upon the issuance of a special permit by the Zoning Board of Appeals. If the Board determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts as to the town or the neighborhood, in view of the particular characteristics to the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
- a. communications needs served by the facility;

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- b. traffic flow and safety, including parking and loading;
- c. adequacy of utilities and other public services;
- d. impact on neighborhood character, including aesthetics;
- e. impacts on the natural environment, including visual impacts;
- f. potential fiscal impact, including impact on town services, tax base and employment;
- g. new monopolies shall be considered only upon a finding that existing or approved monopolies or facilities cannot accommodate the equipment planned for the proposed monopole.

4.8.6. **Conditions.** All wireless communications facilities shall be subject to the following conditions:

- a. To the extent feasible, service providers shall co-locate on a single facility. Monopoles shall be designed to structurally accommodate foreseeable users (within a ten year period) where technically practicable.
- b. No freestanding facilities shall be placed within three hundred (300) feet of any residentially occupied premises.
- c. New freestanding facilities shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed 100 feet above mean finished ground elevation at the base of the mounting structure; provided, however, that a monopole may be erected higher than 100 feet where co-location is approved or proposed, not to exceed a height of 130 feet above mean finished ground elevation at the base of the mounting structure.
- d. Wireless communications facilities may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission lines, and the like. In such cases, the facility height shall not exceed two (2) feet above the height of the existing structure or building.
- e. All structures associated with wireless communications facilities shall be removed within one year of cessation of use. The Board may require a performance guarantee to effect this result.
- f. To the extent feasible, all network interconnections from the communications facility shall be via land lines.
- g. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- h. The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping and screening.
- i. Traffic associated with the facility shall not adversely affect public ways.
- j. Fencing may be required to control unauthorized entry to wireless communications facilities.

**4.9 WIND ENERGY CONVERSION SYSTEMS (WECS)”**

**Adopted May 11, 2009 AG approved w/stipulations Sept 3, 2009 Posted Sept 10, 2009**

**4.9.1 Purpose.** The purpose of this by-law is to provide criteria for the development and use of wind power as an alternative energy source. The goal is to protect public health, safety and welfare; preservation of environmental, historic and scenic resources; control of noise levels and the prevention of electromagnetic interference.

**4.9.2 Applicability.** Any application to erect a stand-alone WECS, tower-mounted horizontal or vertical axis system that utilizes energy from wind shall comply with this by-law.

**4.9.3 Definitions.**

- a. Wind Energy Conversion Systems (WECS). For the purposes of this by-law, a residential wind energy conversion system that has a Rated Nameplate Capacity not

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to exceed 10kW and consists of a wind turbine, associated control or conversion electronics, and all equipment, machinery and structures utilized to convert wind to electrical energy.

- b. Wind Turbine. A single device that converts wind to electricity or other forms of energy, typically consisting of a rotor and blade assembly, electrical generator, and tower with or without guy wires.
- c. Special Permit. A permit provided by the Special Permit Granting Authority for the construction of a WECS.
- d. Rated Nameplate Capacity. The maximum rated output of electric power production equipment usually specified with a “nameplate” on the equipment. A nameplate designates the company or manufacturer of the wind turbine.
- e. Off Grid System. A WECS that is not interconnected to the utility power system.

**4.9.4 Special Permit Granting Authority.**

- a. The Town of Sterling Planning Board is hereby established as the Special Permit Granting Authority (SPGA) in connection with construction of a WECS. The SPGA shall grant a Special Permit only if it finds that the proposal complies with the provisions of this by-law and any other applicable Town by-laws.
- b. The Planning Board, working with the Manager of the Sterling Municipal Light Department (SMLD), may adopt reasonable rules and regulations for the administration of this by-law.

**4.9.5 Development Requirements.** The following requirements apply to all WECS.

- a. Proposed WECS shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental, communications and utility requirements.
- b. Applicants shall provide a complete description of the WECS including technical, economic, environmental, and other reasons for the proposed location, height and design.
- c. WECS shall be limited to one (1) tower per lot or on contiguous lots held in common ownership.
- d. Tower Height. Maximum height is one hundred (100) feet. This height may be increased but not to exceed one hundred and thirty (130) feet as part of the special permit process if the applicant can demonstrate that additional height is needed and that the additional benefits of the higher wind turbine does not increase any adverse impacts and that there are no reasonable objections from abutters.
- e. Monopole towers are the preferred type of support.
- f. Height Calculation. Overall height of the wind turbine shall be measured from the land in its natural state prior to grading or filling to the highest point reached by any part of the wind turbine.
- g. Height Restriction. No WECS located within 10,000 feet of the Sterling Airport’s Runway (Runway 1634) measured from the WECS to the closest point of Runway 1634 shall be erected without FAA approval. FAA approval is not required when the WECS is located beyond 10,000 feet from Runway 1634.
- h. Setbacks. The minimum setback for the wind turbine shall be maintained equal to the overall height calculation plus one hundred (100) feet from all property boundaries of the site on which the WECS is located. In addition, the WECS shall be set back a

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distance of the Height Calculation plus one hundred (100) feet from any ways, access easements, trails, ascertainable paths and above ground utility lines.

- i. Noise. The WECS and associated equipment shall conform to the Massachusetts Noise Regulation (310 CMR 7.10). An analysis, prepared by a qualified engineer, shall be presented to demonstrate compliance with these noise standards and be consistent with the Massachusetts Department of Environmental Protection guidance for noise measurement. Manufacturer's specifications may be accepted when, in the opinion of the Planning Board, the information provided satisfies the above requirements.
  1. Upon written notification of a complaint of excessive noise, the Building Inspector/Zoning Enforcement Officer or his designee, herein after referred to as the Enforcing Officer, shall record the filing of such complaint. The Enforcing Officer shall promptly investigate within ten (10) business days. If noise levels are determined to be excessive by the Enforcing Officer they shall require the WECS owner's qualified engineer to perform ambient and operating decibel measurements at the nearest point from the wind turbine to the property line of the complainant and to the nearest inhabited residence. The resulting written analysis from the qualified engineer must demonstrate compliance with the noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement.
  2. If the noise levels are found to have exceeded allowable limits, the Enforcing Officer shall notify the owner of the WECS in writing to correct the violation. If the noise violation is not remedied within forty-five (45) business days, the WECS shall remain inactive until the noise violation is remedied, which may include relocation or removal.
  3. If it is determined that allowable limits have not been exceeded, notice in writing shall be provided to the complainant and to the WECS owner stating that no further action is required. This must be done within twenty (20) business days of the receipt of the complaint. In addition, if compliance is demonstrated in writing and the complaint remains, mitigation must be jointly filed by both parties and approved by the Enforcing Officer.
- j. Shadowing/Flicker. The WECS shall be sited in a manner that does not result in significant shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
- k. Prevention of Access. The applicant/owner shall ensure that all related components of the WECS are protected from unlawful access.
- l. Visual Impact. The applicant shall employ all reasonable means, including alternative locations, to minimize the visual impact of all WECS components. All components of the WECS and its support structure shall be painted plain, non-reflective, muted colors without graphics or other decoration. In certain instances, the SPGA in its review may require the applicant to fly or raise a three (3) foot diameter balloon to the maximum height of the WECS at its proposed location. The applicant shall provide photographs of the balloon test from two to four vantage points previously designated by the SPGA.

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- m. Electromagnetic interference. The WECS shall be sited to minimize electromagnetic interference. If interference is alleged in writing via a complainant, the Building Inspector shall record the filing of such complaint and review it. The Enforcing Officer may seek assistance from the Sterling Municipal Light Department if necessary. If electromagnetic interference is found, the Enforcing Officer shall notify the owner of the property in writing to correct the violation. If the interference is not remedied within twenty (20) business days, the WECS shall remain inactive until the interference is remedied, which may include relocation or removal. In addition, the placement of any WECS will be sited so as not to interfere with any existing satellite installations for the surrounding property owners.
- n. Lighting. If lighting is proposed (other than required Federal Aviation Administration (FAA) lights), the applicant shall submit a plan indicating the horizontal foot candles at grade, to the property boundary. The plan shall also indicate the locations and types of luminaries proposed as well as the method to shield the abutter(s).
- o. Vegetation. Existing vegetation must be shown within 100 feet of the WECS including average height of trees and any proposed vegetation removal on the subject property or abutting properties. The Planning Board shall also consider the height of vegetation at maturity.
- p. The applicant must submit provisions for inspection and maintenance of the WECS.

**4.9.6 Procedural Requirements.**

- a. Site Plan. A site plan must be submitted, in accordance with Town of Sterling Protective by-laws, Section 6.4.3 Procedures, 6.4.4 Submittals, 6.4.5 Preparation of Plan and any other applicable Town of Sterling Protective by-laws. The site plan must be prepared to scale by a registered land surveyor or civil engineer showing the location of the proposed WECS, distances to all property lines, existing and proposed structures, existing and proposed elevations, public and private roads, above ground utility lines and any other significant features or appurtenances. Any portion of this site plan may be waived if, in the opinion of the Planning Board, the materials submitted are sufficient for the Board to make a decision.
- b. Telecommunications. WECS may include telecommunication antennas provided they comply with this by-law and with section 4.8 of the Town Of Sterling Protective By-law, “Wireless Communications Facilities (WCF) Overlay District By-law”.
- c. Compliance with Massachusetts State Building Codes. Building permit applications shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. Documentation showing compliance with the Massachusetts State Building Code certified by a Massachusetts licensed professional engineer shall also be submitted. Manufacturer specifications may be suitable at the discretion of the Building Inspector.
- d. Compliance with FAA Regulations. WECS must comply with applicable FAA regulations including any necessary approvals for installations close to airports.
- e. Compliance with the National Electrical Code. Building permit applications for WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- f. Utility Notification. No WECS shall be installed until evidence has been given that the Sterling Municipal Light Department has been informed and has approved that the installation’s impact is negligible for the power system and meets all of their

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installation/interconnection requirements. Off Grid Systems shall be exempt from this requirement.

- g. Abandonment. A WECS shall be considered to be abandoned if it is not operated for a period of two years, or if it is designated a safety hazard by the Building Inspector. Once a WECS is designated as abandoned, the owner shall be required to physically remove the WECS within 90 days of written notice. "Physically remove" shall include, but not be limited to:
  - 1. Removal of WECS, and any equipment shelters and security barriers from the subject property.
  - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - 3. Restoring the location of the WECS to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- h. Modifications. All modifications to a WECS made after issuance of the Special Permit shall require approval by the SPGA.
- i. Professional / Administrative Fees. The Planning Board may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a technical expert/consultant will be at the expense of the applicant in addition to administrative fees.

**4.9.7 Financial Security.**

- a. Requirement. In conjunction with the above special permit approval process, the Planning Board may require the posting of a financial security (bond) to assure satisfactory fulfillment of the above, in such sum and in accordance with such conditions as the Board may determine necessary.

**4.9.8 Savings Clause.**

If any part of this section 4.9 is held to be invalid the remainder of this section 4.9 shall not be affected.”

**4.9A Temporary Moratorium on Non-Medical Marijuana Establishments**

Adopted May 1, 2017 AG approved Sept 11, 2017 Posted Dec. 11, 2017

**Section 4.9A.1 Purpose**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for personal use (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, is effective 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 on or before April 1, 2018. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Marijuana Establishments for non-medical marijuana. The regulation of marijuana for personal use raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Marijuana Establishments for non-medical marijuana and address such issues, as well as to address the potential impact of the State regulations on local zoning



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and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Marijuana Establishments for non-medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Marijuana Establishments for non-medical marijuana so as to allow the Town sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

**Section 4.9A.2 Definition**

"Non-medical Marijuana Establishment" shall mean a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business as defined in G.L. c. 94G [MGL Ch 94G].

**Section 4.9A.3 Temporary Moratorium**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Non-Medical Marijuana Establishment 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 address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Non-Medical Marijuana Establishments, and shall consider adopting Zoning Bylaw amendments 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, (for medical marijuana), which are governed by Section of this Zoning By-law.

**ARTICLE 5. DEFINITIONS**

The intent of this section is to provide definitions for certain terms, words and/or series of words which are to be utilized in the interpretation of this ordinance, whether or not the definition stated herein in contrary to common usage or contrary to the definition as contained in a dictionary.

For the purpose of this ordinance and unless the context of usage clearly indicates another meaning, the following terms shall have the meanings indicated herein; words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used" or "occupied" include the words "designed", "arranged", "intended", or "offered", to be used or occupied; the words "building", "structure", "lot", "land", or "premises" shall be construed as though followed by the words "or any portion thereof", and the words "shall" is mandatory and directory, and "may" is permissive. Any word indicating gender, such as he or she, shall be construed to mean both genders.

Terms and words not defined herein but defined in the Commonwealth of Massachusetts Building Code shall have meanings given therein unless a contrary intention clearly appears. Words not defined in either this ordinance or the State Building Code shall have the meaning given in the most recent edition of Webster's Unabridged Dictionary. Uses listed in the Table of Use Regulations under the categories "Commercial" and Industrial" shall be defined by the Standard Industrial Classification Manual published by the U.S. Bureau of Census.

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The defined words and phrases are as follows:

**Accessory Apartment** shall mean a separate, complete dwelling unit that is; (a) contained substantially within the structure of a one-family residence, is served by a separate entry/exit and can be isolated from the principal one family dwelling unit, or (b) contained entirely within an attached accessory building that is an enclosed garage and that has the apartment located above the parking area for the motor vehicles.

**Accessory Building or Structure** shall mean a building or structure incidental and subordinate to a principal building or structure and customarily used to serve the purposes of that principal building. A building is accessory only where a principal building exists on the same lot.

**Accessory Use** shall mean a use customarily incidental to and located on the same lot with the principal use.

**Adult Bookstore** shall mean an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L.c.272, s.31.

**Adult Cabaret** shall mean a nightclub, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity, or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement as defined in G.L.c.272,s.31.

**Adult Motion Picture Theater** shall mean an enclosed building or any portion thereof used for presenting material (motion picture films, video cassettes, cable television, slides or any other such visual media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L.c.272, s.31.

**Adult Paraphernalia Store** shall mean an establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L.c.272,s.31.

**Adult Video Store** shall mean an establishment having a substantial or significant portion of its stock in trade for sale or rent motion picture films, video cassettes, and similar audio/visual media, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L.c.272,s31.

**Adult Use** shall mean Adult Bookstores, Adult Cabarets, Adult Motion Picture Theaters, Adult Paraphernalia Stores, and Adult Video Stores, alone or in combination, as defined in this by-law.

**Alteration** shall mean any construction, reconstruction or other action resulting in a change of the structural parts or height, number of stories, size, use or location of a building or other structure.

**Assisted Elderly Housing** shall mean a residential facility occupies by persons over the age of 55, their spouses or surviving spouses, including rooms occupied by resident staff personnel. Such a facility may include a full range of nursing care from total to partial assistance, and may provide food preparation services, limited residential food preparation areas, and common recreational, laundry, social, medical, religious and service facilities for the exclusive use of the residents.

**Bed and Breakfast** shall mean a private owner-occupied house with three or fewer guest rooms that includes a breakfast in the room rate. Parking to serve bed and breakfast guests shall not be located within the front yard between the residence and the street line except where the board of appeals finds that due to the considerable setback of the building from the street or other unique conditions pertaining to the lot, alternative off-street parking arrangements, such as an existing driveway, will not be detrimental to the neighborhood.

**Billboard** shall mean a large freestanding, permanent sign which directs attention to a business, commodity, services or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is located.

**Buffer or Buffer Strip** shall mean an area within a site which is adjacent to and parallel with the property line consisting of a continuous strip (except for required vehicle or pedestrian access points) of existing vegetation or created by the use of trees or shrubs, designed to minimize intrusion of dirt,

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dust, litter, noise, glare from motor vehicle headlights, artificial light (including ambient glare); or view of signs, unsightly buildings or parking lots.

**Building** shall mean a structure adapted to permanent or continuous occupancy for assembly, business, professional, education, industrial, institutional, residential, agricultural or storage purposes and the term “building” shall be construed as if followed by the words “or portion thereof”.

**Building Code or State Building Code** shall mean the Building Code of the Commonwealth of Massachusetts, as the same may be amended from time to time. Terms used in this by-law shall have the same meaning as ascribed to them in the building code unless the context of usage in this by-law clearly indicates another meaning.

**Building Height** for a building abutting a street, shall be measured from the natural grade on the street side(s) and, if not abutting a street from the mean ground level along its front to the highest point of the exterior in the case of a flat roof or to the ridge in the case of a pitched roof.

**Building Principal** shall mean the building in which is conducted the principal use of the lot on which said building is located.

**Change or substantial extension of a non-conforming use** shall mean change to a use that does not reflect the ‘nature and purpose’ of the use prevailing when the zoning by-law took effect; or change so as to create a difference in the quality or character, as well as the degree, of use; or change ‘different in kind in its effect on the neighborhood’. See *Town of Bridgewater v. Chuchran*, 351 Mass. 20, 23 (1966).

**Commercial recreation or sports facility** shall mean, golf course/driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in the By-law. This definition is intended to include facilities designed primarily for participatory recreation by the general public and/or members, but to exclude facilities which derive a significant portion of their income from entrance fees paid by spectators.

**Contractor’s yard** shall mean premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking or wheeled or portable equipment.

**Cooking Facilities** shall mean any facilities (including without limitation a hot plate or portable oven, but not including an outdoor grill) which permits the occupant to prepare meals in the building on a regular basis.

**Driveway** shall mean an improved access (other than a street) connecting between a street and one or more parking or loading spaces.

**Dwelling** shall mean any building containing one or more dwelling units, but excluding mobile homes and accessory apartments.

**Dwelling, Single Family** shall mean a dwelling containing not more than one (1) dwelling unit.

**Dwelling, Two-Family** shall mean a single building containing two (2) dwelling units, neither of which is an accessory apartment.

**Dwelling, Multifamily** shall mean a single building containing at least two (2) dwelling units, but not more than four (4) units.

**Dwelling Unit** shall mean a building or part of a building occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary and sleeping facilities, but excluding a unit in a facility offering transient lodging accommodations to the general public.

**Earth Removal** shall mean the removal of clay, gravel, sand, sod, loam, soil, stone or other earth materials as may be permitted pursuant to the By-laws of the town of Sterling.

**Essential services** shall mean services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam or water transmission or distribution systems and collection, communication, ‘supply’ or disposal systems whether underground or overhead. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

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**Family** shall mean a number of individuals living and cooking together on the premises as a single unit, but not more than five unrelated individuals.

**Farm Stand** shall mean a structure of semi-permanent or temporary type located in a district in which agricultural uses are allowed, from which raw products and other goods, the majority of which are raised on the premises, are offered for sale to the public.

**Floor Area, Gross** shall mean the sum of the horizontal areas of the several floors of a building excluding areas used for accessory garage purposes and such basement and cellar areas as are devoted exclusively to uses accessory to the operation of the building. All measurements shall be taken from the exterior faces of the walls, including the exterior of any enclosed porches.

**Floor Area, Ratio** shall mean the ratio of the gross floor area of the building or buildings on one lot to the total area of the lot.

**Frontage** shall mean the boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by the town, county, or state, or along ways shown of the Definitive Plans of approved subdivisions, through which actual access to the potential building site shall be required unless otherwise exempted herein. A street may provide frontage only upon a determination by the Planning Board that it provides adequate access for fire, police, and emergency vehicles. Lot frontage shall be measured continuously along street lines between side lot lines. Lots with interrupted or discontinuous frontage must demonstrate that the required length along the street may be obtained from one (1) continuous frontage section, without any totaling of discontinuous frontage sections.

**Hazardous or Toxic Material** shall mean a material which is hazardous to human health or to the environment, as defined by the U.S. Environmental Protection Agency and under 40 CFR 250 and the regulation of the Massachusetts Hazardous Waste Act, G.L.21C.

**Home Occupation** shall mean an occupation, business, trade, service or profession subordinate and incidental to the principal residential use of property conducted on the premises by the owner/occupant thereof.

**Homeowner's Association** shall mean a corporation or trust owned or to be owned by the owners of lots or residential units within a site, which holds the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

**Hotel or Motel** shall mean a building or group of buildings providing accommodations on a transient basis for compensation.

**Junkyard or Automobile Graveyard** shall mean the outdoor use of any area of any lot for the storage, salvage, keeping or abandonment of junk, scrap, or discarded materials, or the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof.

**Kennel, Commercial** shall mean one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting, or other purposes, and including any shop where dogs are on sale, and also including every pack or collection of more than four (4) dogs, three months old or older, owned or kept by a person on a single premises regardless of the purposes for which they are maintained or kept.

**Loading Space** shall mean an off-street space at least twelve (12) feet in width, fifty (50) feet in length and with a vertical clearance of a least fourteen (14) feet, having an area of not less than one thousand three hundred (1,300) square feet which includes access and maneuvering space used exclusively for loading and unloading of goods and materials from one vehicle. The dimensions of the loading space may be reduced by the building inspector to not less than three hundred (300) square feet which includes access and maneuvering space, when it is clearly evident that service vehicles utilizing said space will not require the area set forth above.

**Lodging House** shall mean a dwelling in which the person resident therein provides sleeping accommodations for not more than four paying guests who are not provided with meals or individual or shared cooking facilities.

**Lot** shall mean a single area of land in common ownership defined by metes and bounds or boundary lines in a recorded deed or on a recorded plan.

**Lot Area** shall mean the area of the lot excluding any area in a public or private street, nor any water area more than 10 feet from the shoreline.

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**Lot, Corner** shall mean a lot at the junction of and fronting on two (2) or more intersecting streets.

**Lot, Coverage** shall mean the gross ground area of all buildings and paved surfaces.

**Lot Line** shall mean a line which separates one or more lots or a lot and a street.

**Lot Width** shall mean the width of a lot as measured at the front line of the principal building thereupon, or at such other location as may be designated by the by-law.

**Major Commercial Project** shall mean one or more buildings containing allowed or allowable nonresidential or nonagricultural uses, other than retail uses, with 50,000 or more square feet of building floor space.

**Marina** shall mean a facility which provided dockage or berthing for more than five vessels and may also provide facilities for the servicing of vessels.

**Minimum Lot Width** shall mean the shortest distance between side lot lines as measured anywhere between the Lot Frontage and the existing or proposed main building on the lot.

**Mobile Home** shall mean a dwelling unit on a chassis and containing complete electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation or permanent living quarters.

**Mobile Home Park** shall mean a lot used, designed or advertised as a site for two or more mobile homes used for living purposes.

**Motor Vehicle Repair or Body Shop** shall mean any building used for the keeping of motor vehicles and in which a business or industry dealing with the repair or servicing of such vehicles is maintained, including body work or painting.

**Motor Vehicle Service Station** shall mean a building or part thereof with no more than two service bays whose chief activity is the selling of gasoline, oil and related products for motor vehicles or the provision of lubricating service, car washing services or minor auto repairs such as tire servicing and repair, but not recapping or regrooving, replacement of miscellaneous parts and minor adjustments.

**Multifamily** shall mean three or more dwelling units on a single lot, including any mix of single-family, two-family or multifamily structures, whether or not attached, and regardless of form of tenure.

**Municipal Facilities** shall mean facilities owned or operated by the town of Sterling.

**Non-conforming uses or Structures** shall mean any structure or use of land lawfully existing at the effective date of this by-law or subsequent amendment which does not conform to one or more provisions of the by-law.

**Office** shall mean a place for the transaction of a professional service or business, not including the sale of articles at retail.

**Open Space** shall mean ground space other than that occupied by structures, walkways, drives, parking or other surfaces. Required yard setbacks may be included as open space if in conformance with the above specifications.

**Overlay District** shall mean a zoning district superimposed over an underlying district, superseding, where applicable, the less stringent requirements of the underlying district.

**Parking Space (non-handicapped)** shall mean an area measuring at least 9' x 18', suitable for parking a car, and except for residences, having adequate access for entry and exit while other adjacent parking spaces are occupied.

**Place of Amusement** shall mean bowling alley, movie theater, and other indoor recreational facilities, but shall not include pool halls and video arcades.

**Principal Building, Use, or Structure** shall mean any building or structure containing any principal use as indicated in Section 2.3.1, except where such use is a home occupation. Where more than one principal use is conducted on a lot and such uses are in more than one building or structure, each building or structure shall be considered a principal building or structure.

**Rail or Motor Freight Terminal** shall mean land or buildings in which freight brought by rail or truck is assembled and/or stored for routing or reshipment, or in which semi-trailers, including tractor and/or trailer units and other trucks, or freight cars are parked or stored.

**Restaurant** shall mean an establishment in which food is prepared and served and customers' orders are taken and served at dining tables. A single inside takeout station may be considered accessory to a conventional restaurant.

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**Restaurant, Drive-In** shall mean a restaurant where food or drinks are usually served to or consumed by persons while they are seated in their vehicle or off the premises.

**Restaurant, Fast Food** shall mean an establishment for the immediate sale of food or drink prepared on or off the premises and served in disposable containers or wrappers for consumption on or off premises unless such sales are wholly incidental to a conventional restaurant or food market or other use defined in this by-law. Service is usually cafeteria style or from a serving counter. Such establishment may include inside seating, but table service is usually not provided or is only incidental. All restaurant establishments providing in-car, drive-through service are included in this definition.

**Retail** shall mean a facility selling goods but not specifically listed in the Table of Use Regulations.

**Service Shops** shall mean a facility providing service to the public for compensation, such as, but not limited to, dry cleaning, photographic studio, printing, barber, beauty salon, and picture framing shop.

**Setback** shall mean the minimum horizontal distance between the street or front lot line and the building nearest the street or front lot line, such distance measured at a right angle to the street or front lot line.

**Sign** shall mean any temporary or permanent lettering, word, numeral, billboard, pictorial representation, display, emblem, trademark, device, banner, pennant, insignia or other figure or similar character, located outdoors, whether constituting a structure or any part thereof, or attached, painted on, or in any other manner represented on a building or other structure, and which is used to announce, direct, attract, advertise or promote.

**Sign, Accessory** shall mean any sign relating to an allowed accessory use of the premises.

**Sign Area** shall mean a surface area within a single continuous perimeter enclosing all of the display area, but not including structural members not bearing advertising matter unless internally or decoratively lighted. One side only of flat, back to back signs shall be counted.

**Sign, Business** shall mean a sign identifying the business, company or agency located on the premises. An advertising sign used to direct attention to a product and/or a service or activity not performed on the premises shall not be considered a business sign, such signs are not allowed in Sterling.

**Sign, Directional** shall mean a sign which directs and gives guidance, but does not contain any advertising.

**Sign, Freestanding** shall mean a sign not supported by a wall nor building and supported by its own permanent base or foundation on or in the ground.

**Sign, Portable or Mobile** shall mean a sign, not including banners, pennants and the like which is not supported by its own permanent base nor foundation in the ground.

**Sign, Projecting** shall mean a sign which is attached to a building, extends more than twelve inches therefrom and provides necessary clearance for pedestrians and vehicles.

**Sign, Roof** shall mean a sign which is mounted on the roof of a building above the eave line. The top of the sign may not extend higher than the highest point of the roof on which it is mounted.

**Sign, Wall-Mounted** shall mean a sign which is attached directly to the wall of a building and does not extend more than twelve inches therefrom and provides necessary clearance for pedestrians.

**Special Permit** shall mean a permit issued pursuant to G.L.c.40A,s.9 and this by-law. In accordance with case law, neither the Zoning Act nor the town zoning by-law gives an absolute right to a special permit. The special permit granting authority is not compelled to grant the permit; it has discretionary power in acting thereon. See, *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass.635,638-639 (1970).

**Story** shall mean a portion of a building between the surface of any floor and the surface of the floor or ceiling next above it. A half-story is a space under a sloping roof which has the line of intersection of the roof and wall space not more than three feet above floor level, in which space the possible floor area with head room of five feet or less occupies at least 40% of the floor area of the story directly beneath it.

**Street** shall mean an existing way providing access to the premises in question if that way is either shown on an approved definitive subdivision plan or on the Sterling Official Map as adopted pursuant to G.L.c.41,ss.81E-81H, as a public way.

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**Structure** shall mean a combination of materials to form a construction including among others, buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, water tanks, play tower, swimming pools, trestles, sheds, shelters, fences over six feet high, display signs, flagpoles, masts for radio antenna, courts for tennis or similar games, backstops, backboards; the term “structure” shall be construed as if followed by the words “or portion thereof”. A vessel shall not be considered to be a structure.

**Wholesale, warehouse, or distribution facility** shall mean a structure used primarily for the storage of goods and materials, with or without wholesale sales.

**Yard** shall mean an open space on a lot unoccupied and unobstructed by any building or structure (except for free standing uninhabited buildings up to 500 sq. ft. in area, open decks up to 300 sq. ft. in area, and pools, all of which are subject to the separate provisions of Section 2.5.4). Front, side and rear yards shall be measured from the nearest point of any structure or dwelling to each front, side or rear lot line. Uncovered steps, ramps and bulkheads or the construction of wall or fences not exceeding six feet in height shall not be considered part of the structure for the purposes of measuring setbacks. A chimney and all types of decks shall be considered part of a structure.

**Yard, Front** shall mean a yard extending between lot side lines across the lot adjacent to the front lot line.

**Yard, Rear** shall mean a yard extending between lot side lines adjacent to the rear of the lot.

**Yard, Side** shall mean a yard extending along each side line of a lot between front and rear yards.

**ARTICLE 6. ADMINISTRATION AND PROCEDURES.**

**6.1 ADMINISTRATION**

6.1.1 **Permits.** This by-law shall be administered by the Building Inspector. Pursuant to the State Building Code, the Building Inspector may require such plans and specification as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principle use and land may not be substantially altered or changed in principal use without written certification by the Building Inspector that such action is in compliance with then-applicable zoning, and that all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth’s Sate Building Code, may serve as such certification.

6.1.2 **Enforcement.** The Building Inspector shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of the By-law and of permits and variances issued thereunder, including notification of non-compliance and request for legal action through the Selectmen to Town Counsel.

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

**6.2 BOARD OF APPEALS**

6.2.1 **Establishment.** A Board of Appeals shall be appointed by the Board of Selectmen as provided in G.L.40A, consisting of five (5) members and three (3) associate members.

6.2.2 **Powers.** The Board of Appeals shall have and exercise all the powers granted to it by G.L.c.40A, c40B and c.41 and by this By-law. The Boards powers are a follows:

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section 6.3, or as otherwise specified.
2. To hear and decide appeals or petitions for variances from the terms of this By-law, with respect to particular land or structures, as set forth in G.L.c.40A, s.10.

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- a. Use Variances from the provisions of Section 2.3 may be granted only if the requirements of G.L.c.40A, s.10 are satisfied, and only if the Board of Appeals finds that the following conditions will be met:
  1. no building shall be more than two stories nor shall it occupy more than 2,500 square feet of land area;
  2. no building or site alterations shall cause damage to the established character of the area;
  3. signs shall be as permitted in Section 3.1, unless otherwise authorized by the board of Appeals;
  4. in RR or NR Districts, no soil shall be removed from the premises except to facilitate grading for a proposed building for which a variance or a building permit has been granted, or to serve an established agricultural operation or an extension thereof. Removal of less than 1000 cubic yards of soil from any premises does not require a variance, nor does removal of soil necessary for building the infrastructure of a Definitive Subdivision Plan approved by the Planning Board. Removal of soil in an amount greater than or equal to 1000 cubic yards does require a variance. (Note: Reference should also be made to the Earth Removal By-law of the town of Sterling's General By-laws.)
  5. in RR or NR Districts, no traffic shall be generated inconsistent with the district.
  6. no noise, vibration, dust, smoke, odor, heat or glare shall be created observable at the lot lines in an amount exceeding that normally permitted in the district.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provision of G.L.c.40A,ss.8 and 15.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L.c.40B,ss.20-23.

**6.3 SPECIAL PERMITS.**

**6.3.1 Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

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

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

**6.3.3 Procedures.** Whenever an application for a special permit is filed with a special permit granting authority, the applicant shall also file, within five (5) working days of the filing of the completed application with said authority, copies of the application, accompanying site plan, and other documentation, to the Planning Board, Board of Health, Conservation Commission, Building Inspector, Director of Public Works, Police Chief, and Fire Chief for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. An application shall not be deemed complete until all copies of required information and documentation have been filed with the special permit granting authority. Said authority shall notify applicants by registered or certified mail, within 14 days of submittal, of incomplete



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application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time shall result in a return of all materials to the applicant, without prejudice. Reports from other boards and officials shall be submitted to the special permit granting authority by the date of the public hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the special permit granting authority is held prior to the expiration of the 35 day period, said authority shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period. The Decision/Findings of the special permit granting authority shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

**6.3.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-law.

**6.3.5 Plans** An applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 6.4.4, herein.

**6.3.6 Lapse** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L.c.40A, s 17, from the grant thereof) with the Town Clerk.

**6.4 SITE PLAN REVIEW.**

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

1. Construction, exterior alteration or exterior expansion of, or change of use within a municipal, institutional, commercial, industrial or multi-family structure involving more than 500 square feet;
2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose;
3. Grading or clearing more than ten percent (10%) of a lot, except for the following: landscaping on a lot with an existing structure or a proposed single or two-family dwelling; clearing necessary for percolation and other site tests; work incidental to agricultural activity, work in conjunction with an approved subdivision plan, or work pursuant to an earth removal permit.

**6.4.2 Exemptions**

1. A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.

**6.4.3 Procedures.**

1. Use, Structure, or Activity Available As of Right. An application for a building permit to perform work as set forth in Section 6.4.1 available as of right shall be accompanied by an approved Site Plan. Prior to the commencement of any activity set forth in Section 6.4.1 or available as of right, the project proponent shall obtain site plan approval from the Planning Board. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Health, Director of Public Works, Police Chief, Fire Chief, the Building Inspector and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the

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Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

2. Use or Structure Available by Special Permit or Variance. An application for a special permit or a variance to perform work as set forth in Section 6.4.1 shall be accompanied by an approved Site Plan. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the town Engineer, the Board of Health, Director of Public Works, Police Chief, Fire Chief, the Building Inspector and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No special permit or variance shall be issued by the Board of appeals without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board. Where the Planning Board approves a site plan “with conditions”, and said site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.
3. Where the Planning Board serves as the special permit granting authority; it shall consolidate its site plan review and special permit procedures.
4. An application for site plan approval shall be accompanied by a fee, as set forth in the Planning Board’s Rules and Regulations.

**6.4.4 Submittals.** The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Planning Board may require that such narrative assessments be prepared by qualified experts. In addition, a site plan shall show:

1. All boundary line information pertaining to the land sufficient to permit location of same on ground with existing and proposed topography at 2 foot contour intervals;
2. Existing and proposed building and structures, including fences, loading areas, accessory buildings, signs, waste disposal areas, and storage areas. Existing building elevations or renderings shall be submitted;
3. Water provision, including fire protection measurers;
4. All wetlands and waterbodies on the property and within 100 feet of the property;
5. Sanitary sewerage and storm drainage, including means of ultimate disposal and calculations to support maintenance of the requirements in the Planning Board’s Subdivision Rules and Regulation;
6. Parking, walkways, driveways, and other access and egress provisions;
7. Existing trees 10” caliper or better and existing tree/shrub masses; proposed planting landscaping and screening;
8. Existing and proposed exterior lighting;
9. Compliance with all applicable provisions of this Zoning By-law.
10. All storm water management systems for new development and redevelopment projects that result in a land disturbance of one or more acres and discharge storm water into the municipal system must comply with the Massachusetts Department of Environmental Protection (DEP) Storm water Management Policy Handbook and Technical Handbook, whether or not the project falls within the jurisdiction of the Wetland Protection Act (MGL ch 131 S 40). This enforcement will include projects that are less than one acre if the project is part of a larger common plan development”

**6.4.5 Preparation of Plan.** Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that

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all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=200'.

- 6.4.6 **Waiver of Technical Compliance.** The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 6.4.4 or 6.4.5 where the project involves relatively simple development plans or constitutes a minor site plan. Applications for permits to build, alter or expand any non-residential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by Section 6.4.4; provided, however, that the scale of the site plan may be 1"=80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.
- 6.4.7 **Approval.** Site Plan approval shall be granted upon determination by the Planning Board that the following conditions have been satisfied. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to ensure that the following conditions have been satisfied. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:
1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
  2. Maximize pedestrian and vehicular safety both on the site and egressing from it;
  3. Minimize obstruction of scenic views from publicly accessible locations;
  4. Minimize visual intrusion by controlling visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
  5. Minimize glare from headlights through plantings or other screening;
  6. Minimize lighting intrusion through use of devices confining illumination to the site;
  7. Minimize unreasonable departure from the color, character, scale and architectural style of buildings in the vicinity, as viewed from public ways;
  8. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;
  9. Compliance with the provisions of this Zoning By-law, including parking and landscaping.
- 6.4.8 **Lapse.** Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.
- 6.4.9 **Regulations.** The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines.
- 6.4.10 **As-Built Plan.** Within thirty (30) days after completion of the project an As-Built Plan will be submitted to the Planning Board in both paper and digital form as specified by the Planning Board."

**6.5 AMENDMENTS.**

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

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**6.6 APPLICABILITY.**

6.6.1 **Other Laws.** Where the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control.

6.6.2 **Conformance.** Construction or operations under a Building Permit shall conform to any subsequent amendment of this By-law unless the use or construction is commenced within a period of 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.

**6.7 SEPARABILITY.**

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

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**APPENDIX 1.                    AMENDMENTS TO ORIGINAL BY-LAW**

Original & Map	Adopted February 4, 1957;    Approved April 25, 1957; Published May 11,13, 20, 1957
Amendment to Map Only (#1)	Adopted August 12, 1959;    Approved October 7, 1959; Published October 15, ??, 1959 (Kendall Hill Road and North Cove Road area)
Amendment to Map Only (#2)	Adopted December 27, 1960;    Approved January 5, 1961; Published January 10, 16, 23, 1961 (School Street, Worcester Road to Railroad)
Complete Revision (#3)	Adopted March 6, 1965;        Approved June 16, 1965 Published June 20, 23, 24, 1965
Amendment (#4)	Adopted March 5, 1966;        Approved March 22, 1966 Published March 28 and April 4, 11, 1966 (Sec.9            Permitted Uses    #58, 59, 60 Sec. 12A        Dimensional Requirements - open display 20' back Sec. 16           Definitions - Trailer Coach)
Amendment (#5)	Adopted November 6, 1967;    Approved November 30, 1967; Published December 8, 15, 22, 1967 (Sec. 9           Permitted Uses #61 Sec. 12A        Dimensional Requirements Multi dwelling 10,000 SF Sec. 13           Parking Requirements Neighborhood 2 spaces)
Amendment to Map Only (#6)	Adopted September 16, 1968;    Approved September 20, 1968 Published September 27, 30 & October 7, 1968 (Rt. 62, Pratts Jct. and Flanagan Hill Roads area)
Amendment and Map (#7)	Adopted March 7, 1970;        Approved April 3, 1970 Published April 24, May 1, 8, 1970 (Add            amendment, validity and violations Sec. 7           Non conforming uses - eliminate 1 & 2 and add Sec. 15 paragraph 3 of Ch.40A, MGL Sec. 5A        Board of Appeals wording add - "appeal ... within 30 days" and; substitute "special permit for an exception" where "Special Authority" is used) (Map - Pratts Junction Road area)
Amendment (#8)	Adopted November 1, 1971;    Approved December 16, 1971; Published January 12, 17, 24, 1972 (Sec. 7           Non conforming use - abandonment within 3 years remove words "to authorize" and substitute "Board of Appeals may authorize". Violations:    Sum of \$50 where \$20 is used Definitions:    Abandonment
Amendment (#9)	Adopted May 3, 1975;        Approved June 16, 1975; Published July 7, 8, 9, 1975

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(Sec. 9 Sec 12A Definitions	Permitted uses - #'s 16,17,18,19,27,30,31,36,42,50,58,63. Dimensional Requirements increase 20,000 SF for each unit in excess of 2 Trailer or Mobile Home, Campground)
Amendment to Map Only (#10)	Adopted November 5, 1979;      Approved February 6, 1980; Published February 15, 19, 1980 (Worcester and Mortimer Roads area)
Amendment and Map (#11)	Adopted April 28, 1980;      Approved August 21, 1980; Published August 28, & September 5, 1980 (Sec. 7      Non Conforming Uses - good for one (1) year .....) (Map - Gates Terrace area)
Amendment (#12)	Adopted April 27, 1981;      Approved August 24, 1981; Published September 1, 8, 1981 (Sec. 3      Application of Regulations - administration Sec. 6      Special Authorization - procedure Sec. 7      Non Conforming Uses - extension or alteration Sec. 9      Permitted Uses - delete #'s 20, 21,22,23,26, and add new #'s 5, 20, 21,22,58,62 Amendment      correction to change Sec. 6, Ch.40A to Sec. 5, Ch.40A)
Amendment (#13)	Adopted June 29, 1981;      Approved October 19, 1981; Did not publish it as it is only reorganization and renumbering of the Zoning By-law into a decimal system, and the Attorney General said it did not have to be published. Published notice of change only on 10/26/81 and 11/2/81.
Amendment and Map (#14)	Adopted October 5, 1981;      Approved January 11, 1982; Published January 15, 22, 1982 (Sec. 2.3      Add 2.3.1 Sec. 2.3.2      Radio Active Disposal Sec. 3.3      Site Development Requirements Sec. 3.3.2      Erosion Control Sec. 1.2.5      Site Plan Review) (Map - Chocksett and Albright Roads area)
Amendment and Map (#15)	Adopted April 26, 1982;      Approved September 2, 1982; Published September 13, 20, 1982 (Sec. 4.3      Development Scheduling Sec. 4.2      Multi-family Development Sec. 4.4      Flood Plain District) (Map - Chocksett and Leominster Roads area)
Amendment to Map Only (#16)	Adopted September 13, 1982;      Approved January 3, 1983; Published January 17, 24, 1983 (Taft, Foster, Bean, Jewett, Worcester Roads area)
Amendment (#17)	Adopted November 7, 1983;      Approved January 13, 1984; Published January 23, 30, 1984 (Sec. 2.3.1      Use Regulations #25)

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Amendment (#18)	Adopted August 5, 1985;      Approved September 11, 1985; Published September 17, 24, 1985 (Sec. 2.4.4      Multi buildings Sec. 2.3.1      delete 9,10C,23,26,39,62, and renumber 10A-4A, 10B-5A Sec. 4.1      Home Occupation Sec. 5.2      Definitions - Home Occupation)
Amendment to Map Only (#19)	Adopted September 16, 1985;      Approved October 23, 1985; Published November 1, 4, 1985 (Sunset Drive, Griffin Road, Muddy Pond Road & Hilltop Drive areas)
Amendment to Map Only (#20)	Adopted January 13, 1986;      Approved February 25, 1986; Published February 28, and March 3, 1986 (Greenland Road area)
Amendment (#21)	Adopted September 22, 1986;      Approved October 16, 1986; Published October 27, and November 3, 1986 (Sec. 2.5.2      2 Family Dimensional Sec. 2.3      In Law Apartment Sec. 2.3.4      Accessory Apartment Use Sec. 2.3.1      Use Regulations #9 and #10 Sec. 2.5.1      Single Family Dimensional Sec. 3.4      Street Access Sec. 5.2      Definition of Lot Frontage and Street Sec. 4.5      New Section STILLRIVER PROTECTION DISTRICT)
Not Town Meeting Vote	Error noticed on publication of 2.3.1, #'S16,29,27,30,31,36,42,50,54,55, 61,63. Proper symbols not listed correctly in original publication. (Published May 11, 1987)
Amendment and Map (#22)	Adopted December 14, 1987;      Approved January 21, 1988; Published February 1 & 8, 1988; also July 1 & 8, 1988 (to correct publication error). (Sec. 2.5.1      New Column - Minimum Lot Width Sec. 2.5.2      New Column - Minimum Lot Width Sec. 5.2      Definitions - Minimum Lot Width) (Map - Route #12, I-190 and Con Railroad area)
Amendment (#23)	Adopted April 25, 1988;      Approved June 14, 1988; Published August 1, 8, 1988 (Sec. 3.4.1      Street Access Sec. 3.4.2      Driveway Access)
Amendment and Map (#24)	Adopted February 27, 1989;      Approved March 16, 1989; Published March 24 & 31, 1989 (Sec. 2.5.3      Add Building Height Sec. 5.2      Delete Street Frontage Sec. 5.2      Change to Lot Frontage) (Map - Re-zone Worcester and Boutelle Road area)
Amendment (#25)	Adopted June 6, 1989;      Approved October 5, 1989; Published October 16, 23, 30, 1989 (Sec. 2.3.1      Permitted Uses - Sale, Lease Firearms)

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Amendment to Map Only (#26)	Adopted May 17, 1990;                      Approved August 13, 1990; Published August 29, & September 5, 1990 (Re-zone Blanchflower land south of Leominster town line) (Leominster and Pratts Junction Roads area)
Amendment and Map (#27)	Adopted May 20, 1993;                      Approved August 20, 1993; Posted August 24, 1993 (Sec. 2.5                      Add 2.5.4 - Free Standing Buildings Sec. 4.6                      Add - Aquifer Protection By-law) (Map - Aquifer Protection District)
Amendment and Map (#28)	Adopted May 23, 1994;                      Approved August 26, 1994; Posted August 30, 1994 (Sec. 4.7                      Add - Performance Zone) (Map - Add Performance Zone area)
Amendment to Map Only (#29)	Adopted May 22, 1995;                      Approved July 27, 1995; Posted August 7, 1995 (Jewett Road area)
Amendment (#30)	Adopted February 19, 1997;                      Approved May 22, 1997; Posted May 27, 1997 (Sec. 2.5.1                      Rural Residence/Farming Lot Size Frontage Sec. 2.5.2                      Rural Residence/Farming Lot Size Frontage Sec. 2.5.2                      Add paragraph at end)
Amendment and Map (#31)	Adopted May 11, 1998;                      Approved September 4, 1998; Posted September 9, 1998 (Sec. 2.4.2                      Non-Conforming Lots Article 1                      Purpose Article 2                      Use, Dimensional and Timing Regulations 2.1 & 2.2 Article 3                      3.3.1 deleted Article 6                      Administration and Procedure Added Sec. 4.3                      Rate of Development Sec. 4.3A                      New Subdivision Phasing Sec. 2.3                      Use Regulations 2.3.1 (delete 2.3.3, 2.3.4) Article 5                      Definitions)
Art.#44	(Map - Worcester Road area)



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Amendment and Map (#32)	Adopted May 17, 1999; Approved September 7, 1999 Posted September 22, 1999 (Sec. 2.1 Town Center District Sec 2.2.3 Accessory Uses and Buildings Sec 2.3.1 Principal Uses/District Town Center/B-3,B-4/C-28 Sec 2.3.3 Construction Trailers Sec 2.3.4 Adult Uses Sec 2.5 Dimensional Controls – Town Center Sec 3.2 Off Street Parking (3.2.3(d), 3.2.4(I), 3.2.6(a) Sec 4.2.3 Design Requirements Sec 4.8 Wireless Communications) Sec 6.2.2.2.a.4 Removal of Soil) (Map - Pratts Junction Road area & Town Center District)
Amendment (#33)	Adopted December 13, 1999 Approved February 24, 2000 Posted March 10, 2000 (Article 5 Definitions “Frontage”)
Amendment (#34)	Adopted May 13, 2002 Approved June 28, 2002 Posted July 8, 2002 (Sec. 4.3.2 General Sec. 4.3.6 Time and Limitation and Extension)
Amendment to Map only (#35)	Adopted May 14, 2007 Approved September 5, 2007 Posted September 20, 2007
Amendment to Map only Art#41	Adopted May 12, 2008 AG Approved July 28, 2008
Amendment (#36)	Adopted October 15, 2007 Approved February 13, 2008 Posted February 21, 2008 (Sec. 3.3 Site Development Sec. 4.3 Rate of Development Sec. 4.3.2 General Sec. 4.3.6 Time and Limitation Sec. 4.6.4 Prohibited Uses in Aquifer Sec. 6.4 Site Plan Review
Amendment	Adopted May 11/12, 2009 AG approved Sept 3, 2009 (Sec. 2.3.5 Accessory Apt. use Sec. 3.2.3 Table of Parking requirements Sec. 4.9 Wind Energy Conversion)
Amendment (#40)	Adopted May 13, 2013 AG approved Oct 7, 2013 Sec. 4.2.2(a) Sec. 4.2.3(a)(1) and (2) and (3) minimum feet fm properties Change definition of “Dwelling, multi-family”
Amendment (Art. 29)	Voted May 1, 2017 AG approved/published Dec 11, 2017 Sec. 4.9A.1-2-3 Moratorium on Non-medical marijuana Establishments