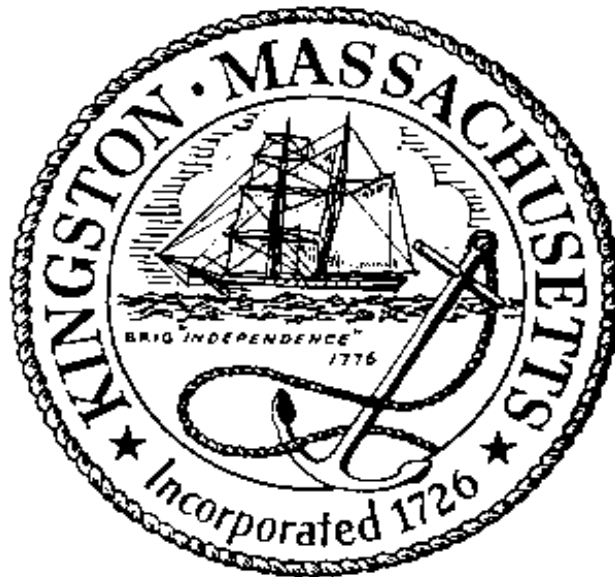


TOWN OF KINGSTON MASSACHUSETTS



ZONING BY-LAWS REVISED THRU JUNE 2018

TOWN OF KINGSTON ZONING BY-LAWS:
Revised thru June 2018
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APPENDIX A

Chapter 121 of the Acts of 2002 - An Act Relative to Zoning in the Town of Kingston.
(Setbacks for grandfathered vacant lots)

KINGSTON ZONING BY-LAWS June 2016

1.0. PURPOSE, AUTHORITY AND APPLICATION

1.1. Purpose

1.1.1. The purpose of this By-law is to achieve the objectives of the Zoning Act, Chapter 40A, as amended, as presented in Section 2A of Chapter 808 of the Acts of 1975, which include but are not limited to the following:

- To lessen congestion in the streets.
- To conserve health.
- To secure safety from fire, flood, panic and other dangers.
- To provide adequate light and air.
- To prevent overcrowding of land, to avoid undue concentration of population.
- To encourage housing for persons of all income levels.
- To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and building, including the conservation of natural resources and the prevention of blight and pollution of the environments.
- To encourage the most appropriate use of land throughout the Town, including consideration of recommendations of plans adopted by the Planning Board and the comprehensive plan of the regional planning agency.
- To preserve and increase amenities.

1.1.2. Additional purposes include but are not limited to the following:

- To protect aquifers and wetlands.

1.2. Authority

1.2.1. This By-law is adopted under the authority provided by, and in accordance with, the provisions of Chapter 40A of the General Laws, as amended, Article 89 of the amendments to the Massachusetts Constitution and every other power thereto enabling.

2.0. DEFINITIONS (Amended 4/27/96 ATM, Article 20; 5/3/99 ATM, Article 47; 4/5/10 ATM, Article 26, Article 27; Amended 6/5/17 Art 12 previously voted 11/14/17 as Art 50.)

2.1. Terms and Words

2.1.1. For the purposes of this By-law certain terms and words are defined as follows unless a contrary definition is required by the context or is specifically prescribed:

2.1.1.1. Words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular; the word shall is mandatory and not discretionary; the word land includes the words marsh and water; and the use of the masculine gender shall be deemed to include the feminine.

2.1.1.2. Accessory Use: A use customarily incidental to that of the main building or the use of the land; the exterior storage of junk, dismantled or abandoned cars, or any other storage detrimental to the health, safety or general welfare of neighbors or abutters are not accessory uses.

2.1.1.3. Amenities: Features which add to the attractiveness or pleasantness of a building or site.

2.1.1.4. Arts and Crafts Studio: A room or group of rooms used by artists and craftspeople in the creation of their work, including, but not limited to, painting, photography, sculpture, ceramics and other related arts and crafts.

2.1.1.5. Bed and Breakfast: The provision of a room overnight and of breakfast for a fee in a dwelling by the resident thereof to not more than six (6) transient guests.

2.1.1.6. Board House: A building or premises, other than a hotel, inn, motel, tourist house or lodging house, where rooms are let and where meals may be regularly served by pre-arrangement for compensation, but not open to transient guests, in contrast to hotels, restaurants, and tourist homes open to transients.

2.1.1.7. Buffer Zone: An open or landscaped strip of land established to separate and protect one type of land use from another. Buffer zones do not include parking or storage areas. See also 2.1.1.30. Landscaped Area and 2.1.1.42. Open Space.

2.1.1.8. Building: A structure having a roof or cover for the shelter, housing or enclosure of persons, animals, or property.

2.1.1.9. Building, Community: A building for the use of residents of a mobile home park containing, but not limited to, a television room, card room, sewing room, library, pool tables, kitchen, laundry solely for the use of residents, emergency toilet, lavatory, and bathing facilities for men and women.

2.1.1.10. Congregate Housing: A dwelling unit shared by six (6) or fewer residents, whether or not related to one another, each of whom is fifty-five (55) years of age or older.

2.1.1.11. Day Care Center: A licensed facility with no overnight care for the care of children, handicapped individuals, ambulatory or elderly adults. See also Family Day Care Home.

2.1.1.12. Dwelling: Any building, or part thereof, used for human habitation, but not including commercial accommodations for transient occupancy or a trailer or mobile home, however mounted or affixed.

a. Dwelling Unit: One (1) or more rooms with cooking, living, sanitary and sleeping facilities arranged for the use of one (1) or more persons living together as a single housekeeping unit.

b. Dwelling, Single Family: A detached structure containing one (1) dwelling unit intended and designed to be occupied by a single-family.

c. Dwelling, Multi-Family; Multiple Family House; Apartment; or Apartment House: A structure containing two (2) or more separate dwelling units.

2.1.1.13. Family: One (1) or more persons living together in one (1) dwelling unit, but not including sororities, fraternities and other communal living arrangements.

2.1.1.14. Family Day Care Home: Any private residence, which on a regular basis receives for temporary custody and care during part or all day, children under seven (7) years of age or children under sixteen (16) years of age if such children have special needs; provided, however, that the total number of children shall not exceed six (6), including participating children living in the residence.

2.1.1.15. Farm: An undivided parcel of land, five (5) acres or more in area, including necessary farm structures and the storage of equipment, used in the raising of agricultural products, live stock, poultry and dairy products, horticulture, floriculture or viticulture.

2.1.1.16. Fast Order Food: Food which is primarily intended for immediate consumption rather than for use as an ingredient in or component of meals, which is available upon a short waiting time, and which is packaged or presented in such a manner that it can be eaten outside the premises where it is sold.

2.1.1.17. Floor Area: The gross horizontal area of the several floors of a building excluding areas used for accessory garage purposes, attic and basement areas. All horizontal dimensions shall be taken from the exterior faces of walls.

2.1.1.18. Frontage: The linear extent of a lot measured in a continuous line along the street right-of-way from the intersection of one side lot line to the intersection of the other side lot line of the same lot.

2.1.1.19. Garage: Covered space for housing of motor vehicles.

a. Garage, Private: A garage which is part of or separate from a dwelling, trailer or mobile home, but not for the rental of more than one (1) stall.

b. Garage, Public: Any garage other than a private garage, available to the public, operated by a public authority or for profit, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles, or supplying of gasoline or oil to motor vehicles or fuel to any kind of self-propelled vehicles.

2.1.1.20. Gas Station/Service Station or Filling Station: An establishment which provides for the servicing of motor vehicles and operations incidental thereto.

2.1.1.21. Greenhouse: A building or accessory building where the products of plant culture are grown or processed.

a. Greenhouse, Commercial: A greenhouse where the products of plant culture are sold.

b. Greenhouse, Non-Commercial: A building or accessory building used to grow, cultivate or culture plants, from which no sales are processed or conducted.

2.1.1.22. Handicapped Space: A parking space reserved for use by a vehicle bearing an authorized handicapped license plate or permit.

2.1.1.23. Hazardous Material or Hazardous Waste, Toxic Materials: A substance or material, whether in gaseous, liquid or solid form, or a combination thereof, in a quantity or form that significantly contributes to serious illness or death, or that poses a substantial threat to human health or poses an unreasonable risk to health, safety, property or the environment when improperly managed, including all materials listed as hazardous by the Environmental Federal Resource Conservation and Recovery Act or similar authority, the Department of Energy or by the Commonwealth of Massachusetts pursuant to applicable General Laws.

Toxic or hazardous materials and wastes includes, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners.

Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous: airplane, boat and motor vehicle service and repair; chemical and bacteriological laboratory operation; cabinet making; dry cleaning; electronic circuit assembly; metal plating, finishing and polishing; motor and machinery service and assembly; painting, wood preserving, and furniture stripping; pesticide and herbicide application, photographic processing, printing; and chlorination of wastewater.

2.1.1.24. Hazardous Waste Facility: Any facility as defined in Chapter 21D of the General Laws of the Commonwealth of Massachusetts.

2.1.1.25. Height: The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck of a mansard roof; and to the average height between plate and ridge of a gable, hip or gambrel roof.

2.1.1.26. Home Occupation: An occupation conducted in the place of residence of the operator or in a building accessory thereto, but not including occupations requiring the use of hazardous or toxic materials.

2.1.1.27. Hotel, Inn, Motel or Lodging House: A building, or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of three (3) or more persons who are lodged, with or without meals, and in which major provisions for cooking may be made in a central kitchen but may not be in individual rooms or suites.

2.1.1.28. Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil provided, however, any project for which any application for a new or amended Certificate of Water Quality Compliance was filed with the Water Quality Review Committee on or before November 21, 1996, pursuant to Section 4.13. and 7.4. for new construction, additions, activities, or changes in operation shall be exempt here from.

2.1.1.29. Industrial Park: An industrial subdivision or an area with common areas and/or parking areas planned for occupancy for more than one (1) industrial building.

2.1.1.30. Landscaped Area: Land left substantially in a natural state or developed for recreational use, but not including public or private street rights-of-way, parking lots, service or loading areas, driveways, sidewalks, easements for above ground utilities, ground area covered by any structure other than those structures directly related to an open space or recreational use, or any other land deemed unsuitable by the Planning Board, including but not limited to swamps and wetlands.

2.1.1.31. Loading Space, Off-Street: An off-street space or berth, on the same lot with a building, for the temporary parking of vehicles while loading or unloading merchandise or material, which has access to a street or other appropriate means of ingress and egress.

2.1.1.32. Lot:

a. Lot: A parcel of land described by metes and bounds on a plan or deed duly recorded in the Plymouth County Registry of Deeds.

b. Lot, Building: That area of land described on a site plan submitted with an application for a building permit or an application for a permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a use is to be conducted, but not including any part of a street.

c. Lot Corner: A lot at the intersection of, and abutting one (1), two (2) or more streets where the angle of intersection is not more than one hundred and thirty-five (135) degrees, or where the intersection is bounded by a curve having a radius of less than one hundred (100) feet.

d. Lot Coverage: The area of a site occupied by impervious surface.

e. Lot Depth: The distance measured perpendicular to and at every point along the frontage required.

f. Lot Line: The established division line between lots or between a lot and a street.

1. Lot Line, Front: The dividing line or lines, between a street and the lot line.

2. Lot Line, Rear: The line, or lines, bounding a lot at the rear and approximately parallel to and at the maximum distance from the front line.

3. Lot Line, Side: The line, or lines, bounding a lot which extends from the street toward the rear in a direction approximately perpendicular to the street. In the case of a corner lot, or through lots, all lines extending from streets shall be considered side lot lines.

g. Lot, Width: The minimum distance between the side lot lines at the building line nearest the street line measured at right angles to the street line.

2.1.1.33. Membership Club: A private organization, including its building or grounds, which specifically includes country clubs and fraternities and other organizations to which membership is limited or controlled.

2.1.1.34. Mobile Home. A dwelling unit built or delivered on a chassis, containing electrical, plumbing and sanitary facilities, designed to be propelled either by an attached vehicle or otherwise, and designed to be mounted or affixed on a temporary or permanent foundation; but not including a vehicle known as a travel trailer or travel coach nor any prefabricated dwelling unit which contains detachable or expandable parts equal to or greater than fifty (50) percent of the gross floor area of the dwelling unit.

2.1.1.35. Mobile Home Lot: See Mobile Home Site.

2.1.1.36. Mobile Home Park: A parcel of land under single ownership which has been planned and improved for the placement of mobile homes for non-transient use designed to accommodate two (2) or more mobile homes.

2.1.1.37. Mobile Home Site: A parcel of land for the placement of a mobile home and the exclusive use of its occupants.

2.1.1.38. Mobile Home Stand: That part of a mobile home site which is reserved for the mobile home.

2.1.1.39. Non-Conforming Uses and Structures: An existing use of land or building which does not conform to a provision or requirement of the regulations of this By-law for the district in which such use of land or building exists.

a. Non-conforming Use or Structure, Pre-Existing: A use of land or of a structure which does not conform to a provision or requirement of this By-law but which was lawfully established prior to the time of the applicability of the provision or requirement.

- 2.1.1.40. Office, Executive or Administrative: A place in which functions such as directing, consulting, record keeping, clerical work, and sales, without the presence of merchandise, of a firm are carried on.
- 2.1.1.41. Office Park: A subdivision for office buildings or an area with common areas and/or parking areas planned for occupancy for more than one (1) office building.
- 2.1.1.42. Open Space: The area of land not covered by impervious surfaces, which is left in its natural state or landscaped with trees, shrubs, ground cover, plants or grass.
- 2.1.1.43. Parking Space: An area for the temporary or permanent storage of a vehicle.
- 2.1.1.44. Permittee: Any person, firm or corporation receiving a permit to conduct, operate, or maintain a mobile home park.
- 2.1.1.45. Person: Any individual, corporation, owner, lessee, licensee, and their agents.
- 2.1.1.46. Planned Residential Development: A unified development, including one or more of residential building types, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.
- 2.1.1.47. Recharge Area: The area encompassing land and water surfaces through which precipitation enters the groundwater body, and from which ground water flows naturally, or is drawn by pumping, into a water supply well.
- 2.1.1.48. Recorded: Recorded shall mean recorded in the Plymouth County District Registry of Deeds except that, as affecting registered land, it shall mean filed with the Recorder of the Land Court. (Section 81-L of Chapter 41 G.L.).
- 2.1.1.49. Restaurant: A place where meals or portions thereof are provided to the public.
- a. Fast Food Restaurant: An establishment whose primary business is the sale of fast order food for consumption on or off the premises.
- 2.1.1.50. Roof Sign: Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.
- 2.1.1.51. Rooming House: A building or premises, other than a hotel, inn, motel, or tourist home, where rooms are let, not open to transient guests, in contrast to hotels, inns, motels or transient homes open to transients.
- 2.1.1.52. Screen: Conceal from view in the manner described in Section 6.7.14 Fencing, Screening and Landscaping.
- 2.1.1.53. Setback: The minimum horizontal distance between the lot line and the part of the building nearest the lot line, such distance measured at a right angle to the lot line or to the lot line extended.
- 2.1.1.54. Shared Housing: See Congregate Housing.
- 2.1.1.55. Shopping Center: An area planned for occupancy by more than one (1) retail establishment with shared common facilities.
- 2.1.1.56. Sign: Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks, whether stationary or portable, by which anything is made known, such as are used to designate or locate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are visible from a public or private street or right-of-way and used to attract attention.
- 2.1.1.57. Site Plan: A plan prepared in accordance with Section 7.3., Site Plan.
- 2.1.1.58. Street: A public way or private way either shown on a plan approved in accordance with the Subdivision Control Law or otherwise qualifying a lot for frontage under the Subdivision Control Law.
- a. Street, Paper: A street shown on a plan or map which has not been constructed.
- b. Way, Private: A street which has not been accepted by the Town or certified by the Town Clerk as a public street under the Subdivision Control Law.
- c. Line, Street: The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out the way upon which the lot abuts; the sum total of lengths of front lot lines abutting a street.
- d. Street, Arterial: Roadways with statewide significance that link cities and large towns forming an integrated network on the county level. Includes major divided highways that serve corridor movements having trip lengths and travel densities characteristic of interstates. Principal function as an avenue for the circulation of traffic onto, out, or around the Town and carries high volumes of traffic.

- e. Street, Collector: Roadways that provide service to cities and towns and other traffic generators not being served by the arterial system; roads that link these places with the arterial system; and roads that serve the intra-county travel corridors. Principal function is to carry traffic between minor, local and sub-collector and arterial streets but may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used or is used to carry more than 800 trips per day.
- f. Street, Sub-Collector: Roads that bring traffic from local streets, collector roads, and roads that provide service to small communities and link traffic generators to the rural areas. Principal function is to provide access to abutting properties but is also designed to be used to connect minor and local streets with collector or arterial. Including residences indirectly served through connecting streets, it serves or is designed to serve at least 26 but not more than 100 dwelling units and is expected to or does handle between 200 and 800 trips per day.
- g. Street, Local: Roads that provide access to adjacent land and roads that provide service for relatively short distances. Includes all roads not classified as part of arterial or collector system. A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least 10 but not more than 25 dwelling units and is expected to or does handle between 75 and 200 trips per day.

h. Street, Minor: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than 9 dwelling units and is expected to or does handle up to 75 trips per day.

2.1.1.59. Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, viewing stand, bin, platform, swimming pool, fence, sign, flagpole, mast for radio antenna, satellite antenna or the like.

a. Structure, Accessory: A subordinate structure clearly incidental to and customarily found in connection with the principal use, building or structure and which is located on the same lot with the main use, building or structure. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited.

b. Structure, Principal: The primary or main structure, as distinguished from an accessory structure. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited. Unless otherwise expressly permitted under these By-Laws, there shall be only one principal structure per lot.

2.1.1.60. Tourist Home: A building, other than a boarding or rooming house, hotel, inn, motel or lodging house, where rooms for lodging for transients are available for compensation.

2.1.1.61. Toxic or Hazardous Materials: See Hazardous Material, Hazardous Waste, Toxic Materials.

2.1.1.62. Tract: See Lot.

2.1.1.63. Trailer: For the purpose of this By-law, the following shall be considered trailers:

a. Camping Trailer: A canvas, folding structure, mounted on wheels and designed for travel, recreation, and vacation use.

b. Motor Home: A portable, temporary dwelling to be used for travel, recreation or vacation, constructed as an integral part of a self-propelled vehicle.

c. Pick-Up Coach: A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation or vacation.

d. Travel Trailer: A portable structure built on a chassis designed as a temporary dwelling for travel, recreation, or vacation having a body width not exceeding eight (8) feet, and a body length not exceeding thirty-two (32) feet.

2.1.1.64. Transient: When referring to residency or guests, a short period of time, which is not expected to be extended or to continue, measured in periods of less than thirty (30) days.

2.1.1.65. Truck Garage and Terminal: Any premises where the principal use is the outdoor or indoor storage, service, maintenance or repair of truck, bus, van, automobile or other motor vehicle fleets.

2.1.1.66. Use: The purpose for which land or a building is designed, occupied or otherwise utilized.

a. Use, Accessory: A subordinate use, clearly incidental to and customarily found in connection with the principal use, building, or structure, and which is located on the same lot with the main use, building or structure. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited.

b. Use, Principal: The primary or main use of land, building or structure, as distinguished from an accessory use. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited.

2.1.1.67. Visual Corridor: An area encompassed by the eye, particularly pertaining to views to natural features cross country and along rivers, streams, highways and landscaped areas.

2.1.1.68. Wholesale: The sale of goods in large quantity for the purpose of resale.

2.1.1.69. Yard: An open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and a lot line, and is not occupied or obstructed from the ground upward by a building or a structure except for fences, flagpoles, mailboxes and retaining walls, and for pools as provided in Section 6.8.1.2.

a. Yard, Front: An open space extending across the full width of the lot and lying between the front lot line of the lot and the nearest line of the principal building. The depth of a front yard shall be the minimum distance between the principal building and front lot line.

b. Yard, Rear: A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the principal building. The depth of a rear yard shall be the minimum distance between the principal building and the rear lot line.

c. Yard, Side: A yard between the side lot line of the lot and nearest line of the principal building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines. The width of a side yard shall be the minimum distance between the principal building and the side lot line.

2.1.1.70. Premises shall mean one or more abutting lots or parcels which are, or are proposed to be, in the same ownership or use, together with all the buildings and structures thereon.

2.1.1.71. Adult Uses: An adult use shall include only an adult bookstore, an adult motion picture theater, an adult paraphernalia store and an adult video store, as defined by Massachusetts General Laws Chapter 40A, Section 9A, an adult cabaret and an adult dance club, as defined in this Zoning By-law.

2.1.1.72. Adult Bookstore: 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 Massachusetts General Laws Chapter 272, section 31.

2.1.1.73. Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws, Chapter 272, section 31.

2.1.1.74. Adult Dance Club: An entertainment establishment which permits a person or persons to perform in a state of nudity as defined by Massachusetts General Laws Chapter 272, section 31.

2.1.1.75. Adult Cabaret: A restaurant, or other establishment, licensed under Massachusetts General Laws Chapter 138, section 12, which regularly features exotic dancers, strippers, male or female impersonators or similar entertainers.

2.1.1.76. Adult Paraphernalia Store: 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 Massachusetts General Laws Chapter 272, section 31.

2.1.1.77. Adult Video Store: An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws Chapter 272, section 31.

2.1.1.78. Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

3.0. ESTABLISHMENTS OF DISTRICTS (Amended 4/27/96 ATM, Article 16; 4/9/03 ATM, Article 36; 4/9/07 ATM, Articles 15, 37; 4/5/08 ATM, Article 19; 4/5/10 ATM, Articles 18, 19; 4/2/11 ATM, Article 52;)

3.1. Districts: The Town of Kingston is hereby divided into several types of districts designated as:

General Residential 40 (R40)

Residential 20 District (R20)

Residential M - Mobile Home Park District (RM)

Town Center District (TC)

3A Design District (3ADD)

Commercial District (C)

Industrial District (I)

Commercial/Industrial Park District

Conservancy District (CON)

Flood Plain Overlay District

Water Resource Overlay District

Green Communities Wind Turbine Overlay District

1021 Kingston's Place Smart Growth District

Residential-80 District (R-80)

Solar PV Overlay District

3.2. Location of Districts (Amended 4/9/07 ATM, Article 37; 4/2/11 ATM, Article 52; 4/9/12 ATM, Article 30)

3.2.1. Except for the Flood Plain District and the Water Resource Overlay District, districts are hereby established as shown on a map entitled Zoning Map of Kingston, MA, dated December 17, 1993, with revisions. The map, with all explanatory matter thereon, and amendments thereto, is hereby incorporated and made a part of this By-law and is filed with the office of the Town Clerk.

3.2.2. The general boundaries of the Flood Plain Overlay District within the Town of Kingston are shown on the Plymouth County Flood Insurance Rate Maps (FIRMs) dated July 17, 2012 or November 4, 2016 and issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The exact boundaries of the District are defined by the one hundred (100) year base flood elevations shown on the FIRMs and further defined by the Flood Profiles contained in the current Flood Insurance Study dated November 4, 2016. These maps, as well as the accompanying Study, are incorporated herein by reference and are filed with the office of the Town Clerk, Planning Board, Inspector of Buildings and Conservation Commission.

3.2.3. The Water Resource Overlay District is established as covering the area described on the map entitled Water Resource Districts. The maps and all explanatory matter thereon is incorporated herein by reference and is filed with the office of the Town Clerk, Planning Board, Inspector of Buildings, and the Conservation Commission. Such water resource Districts shall be considered to be superimposed over any other districts established in this By-law. Land in a Water Resource District shall be subject to the requirements of this By-law as well as to all other requirements of this Zoning By-law and State Building Code which apply to the underlying districts. In the event there is a conflict, the more restrictive requirement shall prevail.

3.3. Boundaries of Districts

3.3.1. Where the boundary lines are shown upon the maps described in Section 3.2., Location of Districts, within the street lines of public and private ways, or utility transmission lines, the center lines of such ways or lines shall be the boundary lines, unless otherwise indicated.

3.3.2. Boundary lines located outside of street lines or transmission lines, and shown approximately parallel thereto, shall be regarded as parallel to said street or transmission lines, and dimensions shown in figures placed upon said map between boundary lines and transmission lines are the distances in feet of the boundary lines from said boundary lines, the distances being measured at right angles to lines unless otherwise indicated.

3.3.3. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.

3.3.4. When the boundary lines are shown upon said map along the boundary of brooks and streams or in brooks and streams, the center line of said brooks and streams shall be the boundary line. Where the boundary line is along or in a body of water, the high water line shall be the boundary line.

3.3.5. Contour lines used as boundary lines are the elevation above the datum sea level as indicated by the U.S. Coast and Geodetic maps of the Town of Kingston on file in the offices of the Planning Board and Town Clerk of the Town of Kingston.

3.3.6. See also Section 4.12. for the Flood Plain Overlay District and Section 4.13. for the Water Resource Overlay District boundaries.

3.3.7. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said zoning map, by the use of identifications as shown on the map, or by the scale of said zoning map.

3.4. Boundary Line Dividing a Lot

3.4.1. Where a District boundary line divides any lot existing at the time such line was adopted, the regulations for the less restricted portions of such lot shall extend not more than fifty (50) feet into the more restricted portion of such lot, provided that:

- a. The lot has frontage on a street in the less restricted District.
- b. The extension into the more restricted District is allowed by special permit by the Board of Appeals subject to appropriate conditions or safeguards where such are deemed necessary for safety or to provide a buffer between the use in the less restricted District and the more restricted District.
- c. The lot meets the conditions in Section 7.7.2.1.a. through e. of this By-law.

4.0. USE REGULATIONS Amended 5/17/17, session 3, Art 24

4.1. Application of Use Regulations

4.1.1. Any use of a building, structure or land not specifically permitted by this Section 4.0., Use Regulations, is prohibited in the Town.

4.2. Uses Permitted in All Districts

4.2.1. The following uses are permitted by right in all Districts.

4.2.1.1. The use of land or structure in any district for religious purposes or for education purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a non-profit educational corporation. See Massachusetts General Laws, Chapter 40A, Section 3.

4.2.1.2. Agriculture, horticulture, floriculture or viticulture, provided that such uses are located on parcels containing at least five (5) acres.

4.2.1.3. Easement for drainage, utilities, walkways, roads and driveways.

4.2.1.4. Small waste water treatment facilities designed and operated in accordance with the Kingston Planning Board regulations for the design, operation, and maintenance of small waste water treatment facilities and sewage pumping stations contained in the Planning Board Subdivision Regulations adopted pursuant to Massachusetts General Laws, Chapter 41, Section 81Q, provided that:

- a. The location of such plants shall be shown on a Site Plan approved by the Planning Board in accordance with Section 7.3., Site Plan.
- b. The facility shall be located on a lot in conformance with the dimensional regulations in Section 5.2., Dimensional Requirements, for the District in which it is located.
- c. No construction is undertaken prior to granting of a disposal works construction permit by the Board of Health.

4.2.2. The following uses are permitted in all Districts subject to Site Plan approval.

4.2.2.1. Private schools, commuter rail station, not including marshalling yards or repair facilities.

4.2.3. The following uses are permitted in all Districts by special permit granted by the Board of Appeals.

4.2.3.1. Uses accessory to activities otherwise permitted within the district as a matter of right, which activities are necessary in connection with scientific research or scientific activities permitted as a matter of right.

4.2.4. Uses Prohibited in all Districts.

4.2.4.1. Except as allowed in Section 4.8.4.3.b., no more than one unregistered vehicle within a lot unless within a structure or screened in accordance with Section 6.7.14. Fencing, Screening and Landscaping.

4.2.4.2. An unregistered vehicle in front yard.

4.2.4.3. The withdrawal of water for transport and sale outside the Town of Kingston.

4.2.4.4 Marijuana establishments as defined in G.L. c. 94G, §1

4.3. Residential-40 District (R40) (Amended 5/6/95 ATM, Articles 33, 34, 35; 10/10/95 STM, Article 11; 4/27/96 ATM, Article 18; 5/9/00 ATM, Article 25; 5/03/99 ATM, Article 47)

4.3.1. Purpose

4.3.1.1. The purpose of the Residential-40 District is to provide suitable areas for low density residential uses that will accommodate agriculture.

4.3.2. Uses Permitted

4.3.2.1.

- a. Farming, including crops, orchard, plant nursery, greenhouse or cranberry, raising livestock and poultry, the keeping of tame domestic animals normally considered pets, such as dogs and cats, by the resident of the premises, not for commercial sale, provided that:

- 1. Any stable enclosure or fence shall be in the rear yard and shall not be less than thirty (30) feet from any lot line.

2. There shall be no raising of swine or fur bearing animals, except as permitted in Section 3, Chapter 40A, Massachusetts General Laws.

b. Farm stand for the sale of produce raised on the premises by the resident proprietor, provided that:

1. All parking is provided in off-street facilities.

2. All storage of equipment shall be in the rear of the farm stand.

4.3.2.2. Single family detached dwelling.

4.3.2.3. Renting of not more than two (2) rooms by a resident occupying the dwelling to not more than three (3) non-transient persons.

4.3.2.4. Congregate housing.

4.3.2.5. Nursery school or day care center.

4.3.2.6. Home occupation provided that:

a. Parking shall not exceed the parking allowed for a single-family residential use.

b. No non-residents of the premises shall be employed at the premises.

c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.

d. There is no equipment used in connection with such home occupation visible from the street or abutting property.

e. No display of products is visible from the street.

4.3.2.7. Library, museum or civic center, public buildings and premises for government use.

4.3.2.8. Public recreational use.

4.3.2.9. Non-profit camp provided that:

a. Overnight accommodations are in tents.

b. There are no transient overnight accommodations.

4.3.3. Uses Permitted by Special Permit Granted by the Planning Board.

4.3.3.1. Residential Development Encouraging Open Space (RDEOS), in accordance with the provisions of Section 5.3.

4.3.3.2. [deleted by town meeting vote.]

4.3.3.3. Nurseries, and greenhouses for wholesale purposes with no retail uses.

4.3.3.4. One (1) accessory housing unit within a single family detached dwelling, provided that:

a. The principal residential structure is on a lot which meets or exceeds the minimum lot size in Section 5.0., Intensity of Use Regulations.

b. The principal residential structure has at least twelve hundred (1200) square feet.

c. The entire structure used for dwellings shall not occupy more than twenty five (25) percent of the lot area.

d. There is at least one (1) off-street parking space for each bedroom or accessory unit in the converted portion of the structure, which space shall not be provided in the front or side yard.

e. There is provision for screening by fencing or landscaping of outside storage areas.

f. Neither the principal residential structure nor accessory unit shall have a gross floor area of less than five hundred (500) square feet plus one hundred (100) square feet for each bedroom over one (1).

g. The gross floor area of the newly created unit shall not be more than thirty (30) percent of the normally habitable gross floor area excluding garage, unfinished attic crawl space, and other normally uninhabitable gross floor area of the principal residential structure, after conversion.

h. Each unit shall be a complete and independent housekeeping unit, containing a bedroom or bedroom/living room combination, bathroom and kitchen or kitchenette and shall have a separate entrance.

- i. The exterior appearance of the structure shall not be altered except for:
 - 1) Stairways and exits required by law, which shall be in the rear of the building.
 - 2) Restoration consistent with the original architecture of the structure.
- j. Either the apartment or the principal residence shall be occupied by the owner of the lot on which the accessory housing unit is located, except for bona fide temporary absences.
- k. If the accessory housing unit is discontinued and integrated into the original structure design, the owner shall notify the Inspector of Buildings and the Zoning Enforcement Officer in writing.
- l. No permit for an accessory housing unit granted hereunder shall take effect sooner than three (3) years after occupancy by the applicants of the principal residential structure.
- m. All permits for accessory housing must be secured before any construction is undertaken.
- n. All special permits granted under this section shall expire within two (2) years from the date of the special permit issued by the Planning Board. At the end of every two (2) years, renewal shall be automatically granted upon receipt of certification by the Planning Board that the property remains the principal residence of the owner and that all conditions met at the time of the original application remain unchanged. The Planning Board, in its sole discretion, may require a new application and a demonstration of compliance with all conditions necessary for a special permit.
- o. The applicant shall submit to the Planning Board, prior to the required public hearing, a written report obtained from the Board of Health which certifies that adequate provision has been made for the disposal of sewage, waste, and drainage in accordance with Title 5 of the State Sanitary Code and the requirements of the Board of Health.

4.3.3.5. Bed and breakfast.

4.3.3.6. Home occupation provided that:

- a. The home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- b. Not more than two (2) other persons other than residents of the premises are regularly employed therein in connection with such use.
- c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.
- d. There is no equipment used in connection with such home occupation visible from the street or abutting property.
- e. No display of products is visible from the street.
- f. There shall be adequate off-street parking in accordance with section 6.4., Off-Street Parking Requirements, for any employee or visitors in connection with such use. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. Vehicles used in connection with the occupation shall be parked in the rear or side yard or in a structure.

4.3.3.7 Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

4.3.4. Uses Permitted by Special Permit Granted by the Board of Appeals

4.3.4.1. Cemetery.

4.3.4.2. Riding stable.

4.3.4.3. Commercial breeding, sale or boarding of dogs, cats, swine or fur-bearing animals. Any kennel enclosure shall be no less than 30 feet from the lot lines.

4.3.4.4. Country or tennis club, or non-profit social, civic or recreational lodge or club, but not including any use the principal activity of which is customarily conducted as a business, provided that:

- a. Any function room shall have access from a collector street or arterial street.

4.3.4.5. Hospital; sanitarium; nursing, rest or convalescent home; charitable institution or other non-correctional institutional use.

4.3.4.6. Undertaking establishment, funeral home or crematorium, chapel.

4.4. Residential-20 District (R20) (Amended 4/27/96 ATM, Article 19; 5/03/99 ATM, Article 47; 4/6/04 ATM, Article 26)

4.4.1. Purpose

4.4.1.1. The Residential-20 District is intended to provide suitable areas for varied housing types at densities suitable for a small Town.

4.4.2. Uses Permitted

4.4.2.1. Farming, including crops, orchard, plant nursery, greenhouse or cranberry, and the keeping of tame domestic animals normally considered pets, such as dogs and cats, by residents of the premises, not for commercial sale, provided that:

- a. Any stable enclosure or fence shall be in rear yard and shall not be less than thirty (30) feet from any lot line.
- b. In addition to the minimum lot size regulations of Section 5.0., Intensity of Use Regulations, there shall be an additional acre for each horse, cow or other large animal.
- c. There shall be no raising of swine or fur bearing animals, except as permitted in Section 3, Chapter 40A, Massachusetts General Laws.

4.4.2.2. Public recreational use.

4.4.2.3. Single family detached dwelling.

4.4.2.4. Renting of not more than two (2) rooms by a resident occupying the dwelling to not more than three (3) non-transient persons.

4.4.2.5. Library, museum or civic center, public buildings and premises for government use.

4.4.2.6. Home occupation provided that:

- a. Parking shall not exceed the parking allowed for a single-family residential use.
- b. No non-residents of the premises shall be employed at the premises.
- c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.
- d. There is no equipment used in connection with such home occupation visible from the street or abutting property.
- e. No display of products is visible from the street.

4.4.2.7. Nursery school or day care center.

4.4.3. Uses Permitted on A Special Permit Granted by the Planning Board

4.4.3.1. Two family dwelling.

4.4.3.2. Multiple dwellings subject to the conditions of Section 5.4.

4.4.3.3. One (1) accessory housing unit within a single family detached dwelling, provided that:

- a. The principal residential structure is on a lot which meets or exceeds the minimum lot size in Section 5.0., Intensity of Use Regulations.
- b. The principal residential structure has at least twelve hundred (1200) square feet.
- c. The entire structure used for dwellings shall not occupy more than twenty-five (25) percent of the lot area.
- d. There is at least one (1) off-street parking space for each bedroom or accessory unit in the converted portion of the structure, which space shall not be provided in the front or side yard.
- e. There is provision for screening by fencing or landscaping of outside storage areas.
- f. Neither the principal residential structure nor accessory unit shall have a gross floor area of less than five hundred (500) square feet plus one hundred (100) square feet for each bedroom over one (1).
- g. The gross floor area of the newly created unit shall not be more than thirty (30) percent of the normally habitable gross floor area excluding garage, unfinished attic crawl space, and other normally uninhabitable gross floor area of the principal residential structure, after conversion.

- h. Each unit shall be a complete and independent housekeeping unit, containing a bedroom or bedroom/living room combination, bathroom and kitchen or kitchenette and shall have a separate entrance.
- i. The exterior appearance of the structure shall not be altered except for:
 - 1) Stairways and exits required by law, which shall be in the rear of the building.
 - 2) Restoration consistent with the original architecture of the structure.
- j. One of the units shall be occupied by the owner of the property, or, in the case of a realty trust, corporation or partnership, a beneficiary, shareholder or partner, respectively.
- k. If the accessory housing unit is discontinued and integrated into the original structure design, the owner shall notify the Inspector of Buildings and the Zoning Enforcement Officer in writing.
- l. No permit for an accessory housing unit granted hereunder shall take effect sooner than one (1) year after occupancy of the principal residential structure.
- m. All permits for accessory housing must be secured before any construction is undertaken.

4.4.3.4. Salesroom or stand for the display or sale of horticultural products, the major portion of which is grown or produced on the premises by a resident proprietor.

4.4.3.5. Tourist home, but not including an over-night cabin, motel or hotel.

4.4.3.6. Home occupation provided that:

- a. The home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- b. Not more than two (2) other persons other than residents of the premises are regularly employed therein in connection with such use.
- c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.
- d. There is no equipment used in connection with such home occupation visible from the street or abutting property.
- e. No display of products is visible from the street.
- f. There shall be adequate off-street parking in accordance with section 6.4., Off-Street Parking Requirements, for any employee or visitors in connection with such use. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. Vehicles used in connection with the occupation shall be parked in the rear or side yard or in a structure.

4.4.3.7

Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

4.4.4. Uses Permitted on a Special Permit Granted by Board of Appeals

4.4.4.1. Cemetery.

4.4.4.2. Raising livestock and poultry, but not including the raising of swine or fur bearing animals.

4.4.4.3. Trailer camp, park or court.

4.4.4.4. Trailer, trailer coach or mobile home used as a dwelling provided that:

- a. It is not used as an office incidental to construction on the premises.
- b. It is not used for more than six (6) months in any calendar year.

4.4.4.5. Undertaking establishment or funeral home.

4.4.4.6. Commercial breeding, sale or boarding of dogs or cats.

- a. Any kennel enclosure shall be no less than 30 feet from lot lines.

4.4.4.7. Country or tennis club, or non-profit social, civic or recreational lodge or club, but not including any use, the principal activity of which is customarily conducted as a business, provided that:

a. Any function room shall have access from a collector street or arterial street.

4.4.4.8. Hospital; sanitarium; nursing, rest or convalescent home; charitable institution or other non-correctional institutional use.

4.4.4.9. Conversion of a publicly owned library, museum, office or other public use building into leasable professional office space, or private business not to include retail use.

4.5. Residential M-Mobile Home Park District (RM)

4.5.1. Purpose

4.5.1.1. The purpose of the Residential M District is to provide suitable areas for the siting of mobile home parks.

4.5.2. Uses Permitted on a Special Permit Granted by the Board of Appeals

4.5.2.1. Mobile home park, subject to the provisions of Section 5.5.

4.5.2.2. A one (1) family dwelling in a mobile home park for use as the manager's residence, provided that:

a. Such dwelling complies with the building requirements of the Town of Kingston.

b. A portion of such dwelling may be utilized for the management office.

c. Such dwelling shall occupy its own lot of twenty thousand (20,000) square feet minimum area within the mobile home park.

4.6. Town Center District (Amended 5/9/00 ATM, Article 28; 5/8/01 ATM, Article 31)

4.6.1. Purpose

4.6.1.1. The purpose of the Town Center District is to encourage a mix of commercial and residential uses on individual lots and throughout the district that will complement the Town's rich historical heritage and provide daily service for the convenience of the residents of the Town; to create a pedestrian-oriented environment by creating pedestrian links between existing and proposed areas of activity to better serve residents; to preserve and protect the distinctive characteristics of existing buildings and their architecture, and of places significant in the history of Kingston, and to encourage the maintenance and improvement of settings for such buildings and places; and to encourage architectural designs for the remodeling of such buildings and the construction of new structures that are compatible with the architectural character of the Town and traditional new England styles and building materials.

4.6.2. Uses Permitted

4.6.2.1. One (1) and two (2) family dwellings.

4.6.2.2. Retail store with a maximum gross floor area of five thousand (5000) square feet per floor.

4.6.2.3. Governmental services.

4.6.2.4. Service shop, such as a barber shop, beauty shop, dry cleaning pick-up shop, provided that:

a. There will be a maximum gross floor area of two thousand (2000) square feet.

b. There will be no on-site dry cleaning.

4.6.2.5. Repair shop, such as shoe repair, appliance or electronic repair, jewelry repair, with a maximum gross floor area of two thousand (2000) square feet.

4.6.2.6. Business or professional offices, artist studios and galleries..

4.6.2.7. Enclosed uses customarily accessory to the above.

4.6.3. Uses Allowed by Special Permit Granted by The Planning Board

4.6.3.1. Structures for not more than six (6) dwelling units, provided that:

a. The maximum coverage of the lot by buildings and structures shall be twenty (20) percent of the total lot area and the minimum landscaped area shall not be less than twenty-five (25) percent of the lot area.

- b. No portion of any enclosing wall of any building and no portion of any permissible structure shall be nearer to the street line of an existing public or private way than fifty (50) feet nor nearer the side lot line than thirty (30) feet nor nearer the rear lot line than thirty (30) feet and shall not be nearer than twenty (20) feet to any interior drive.
- c. No building in a group shall be closer to any other building on the lot or adjacent lot than a distance of fifty (50) feet.
- d. There shall be provided a permanent off-street parking area, indoors and/or outdoors sufficient in size to allow two (2) parking spaces for each dwelling unit to be accommodated.
- e. Elevations and floor plans shall be submitted in addition to all other requirements for a site plan as provided in Section 7.3 Site Plan.

4.6.3.2. Restaurant where food and beverages are consumed and where there is no drive-in or window service.

4.6.3.3. Banks, provided that:

- a. All drive-through window service is to the rear of the structure.
- b. No vehicles queue on the street.

4.6.3.4. Remodeling an existing dwelling or structure accessory to an existing dwelling to accommodate one (1) additional dwelling unit, provided that:

- a. The building was in existence on January 1, 1940.
 - b. The lot is in compliance with Section 5.0., Intensity of Use Regulations, of this By-law.
 - c. No more than twenty-five (25) percent of the lot area is covered by structures.
 - d. There is at least one (1) off-street parking space for each dwelling unit contained in the structure, which space shall be provided behind the set back line.
 - e. Outside storage areas shall be screened by fencing or landscaping.
 - f. The principal structure to be converted shall contain at least eleven hundred (1,100) square feet.
 - g. No unit shall have a gross floor area of less than three hundred fifty (350) square feet plus one hundred (100) square feet for each bedroom in excess of one (1).
 - h. The gross floor area of the newly created unit(s) shall be less than fifty (50) percent of the total gross floor area of the principal dwelling unit, after conversion.
 - i. The exterior appearance of the structure shall not be altered except for stairways and exits required by law.
 - j. One unit shall be occupied by the owner of the property, or, in the case of a realty trust, corporation or partnership, a beneficiary, shareholder or partner, respectively.
 - k. If the secondary unit is in an accessory building, approval of the Planning Board shall be obtained in accordance with Section 81-O of Chapter 41 of the General Laws and with the Planning Board Subdivision Regulations.
 - l. If the second unit is discontinued and integrated into the original structure design, the owner shall notify the Inspector of Buildings in writing.
- 4.6.3.5. Recreational, social, or cultural facilities such as theatres, playhouses, band shells, outdoor pavilions, museums and community centers.

4.6.3.6 Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

4.6.4. Uses Allowed on a Special Permit from the Board of Appeals

4.6.4.1. Undertaking establishment, funeral home and chapels.

4.7. 3A Design District (3ADD)

4.7.1. Purpose

4.7.1.1. The purposes of the 3A Design District are to preserve the structures which define the character of the community, to provide opportunity for use of these structures which is consistent with modern land use, and to encourage new construction which is compatible with the community.

4.7.2. Uses Permitted

4.7.2.1. One (1) and two (2) family dwellings.

4.7.2.2. Renting of not more than two (2) rooms by a resident occupying the dwelling to not more than three (3) non-transient persons.

4.7.2.3. Accessory building and uses as permitted in Section 6.3., Accessory Buildings and Uses.

4.7.3. Uses Allowed by Special Permit Granted by the Planning Board Subject to the Conditions of Section 4.7.4.

4.7.3.1. Uses allowed in Section 4.3.2.8., 4.6.2.4. and 4.6.2.5.

4.7.3.2. Business or professional offices.

4.7.3.3. Retail sales and services.

4.7.3.4. Nursery school or day care center.

4.7.3.5. Tourist home, bed and breakfast.

4.7.3.6. Arts and crafts studio, with products manufactured on the premises, provided that:

- a. The products are sold at retail directly to the customer on premises or by mail order only to consumers.
- b. The only machinery on the premises is powered by hand or by motors of not more than one and one half (1.5) horsepower.
- c. The products are indigenous to the arts or to the hand craft industries, such as hand loomed fabrics, hand blown glass, pottery, and painting, or specialty food products, such as baked goods and candy.
- d. There are no more than the equivalent of six (6) full-time employees on the premises at any one time.

4.7.3.7 Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

4.7.4. Conditions for Uses Permitted in Section 4.7.3. on a Special Permit

4.7.4.1. The architectural style of the original structure shall not be altered and new construction shall be of a compatible Cape Cod or Colonial residential style approved by the Planning Board.

4.7.4.2. There shall be no drive-in or window service unless:

- a. All drive-through window service is to the rear of the structure.
- b. No vehicles queue on street.

4.7.4.3. All parking shall be off-street, shall be located behind the set back line of the principal building, shall be landscaped and shall conform to provisions of Section 6.4., Off-Street Parking Requirements.

4.7.4.4. There shall be no exterior storage.

4.7.4.5. Except for parking as required in Sections 6.4., Off-Street Parking Requirements, and an announcement sign in accordance with the provisions of Section 6.6., Signs, there shall be no exterior evidence of the non-residential use of the structure.

4.8. Commercial District (C)

4.8.1. Purpose

4.8.1.1. The purpose of the Commercial District is to provide areas for retail businesses and services serving non-pedestrians and for automotive sales and services and distribution uses.

4.8.2. Uses Permitted

4.8.2.1. Retail business or services conducted within a structure not more than four thousand (4,000) square feet of gross floor area.

4.8.2.2. Offices for executive and/or administrative services.

4.8.2.3. Marina, boat livery, sales, or storage and repair of boats and other marine accessories.

4.8.3. Uses Permitted on a Special Permit Granted by the Planning Board

4.8.3.1. Retail business or services conducted within a structure over four thousand (4,000) square feet of gross floor area, and shopping centers and office parks, provided that:

a. In an office park or shopping center with condominium or cooperative ownership, an agreement of maintenance of common areas is filed with and approved by the Planning Board as a condition of the special permit.

4.8.3.2. Sale or leasing of farm implements, provided that:

a. All bulk sales, outside display and storage occurs to the rear of the principal building.

4.8.3.3. Restaurants, fast food restaurants, banks or other retail establishments with drive-in or window services, provided that:

a. No vehicles waiting for service shall park or stand on a public way.

b. The establishment shall be responsible for collecting and properly disposing of litter within five hundred (500) feet of the premises resulting from its sales at least daily, and more frequently if necessary, to prevent unsightly conditions caused by litter.

4.8.3.4. Wholesale office or showroom, warehouses and food distribution centers, provided that:

a. All bulk sales, outside display and storage occurs to the rear of the principal building.

4.8.3.5. Commercial indoor tennis club or recreation facilities, provided that:

a. The building is insulated and maintained so as to confine the noise to the premises.

b. The building is located not less than one hundred (100) feet from a Residential District.

4.8.3.6. Public utility building, or yards, contractor's offices and storage yards, provided that:

a. The use is screened from abutting lots or exterior streets by a solid landscaped screen and/or fence at least five (5) feet but no more than seven (7) feet in height.

4.8.3.7. Medical Marijuana Treatment Centers

4.8.3.7.1. Purpose

The purpose of this bylaw is to provide for the establishment of Medical Marijuana Treatment Centers in locations appropriate for the use and to regulate the use under strict conditions in accordance with the passage of the Citizens Initiative Petition #11-11 (Question #3 on the November, 2012 state ballot) and 105 CMR 725.100.

To minimize the adverse impacts of Medical Marijuana Treatment Centers on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said Facilities.

To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of Medical Marijuana Treatment Centers.

4.8.3.7.2. Applicability

No Medical Marijuana Treatment Center shall be established except in compliance with the provisions of Section 4.8.3.7. Nothing in this Bylaw shall be construed to supersede any state or federal laws or regulations governing the sale and

distribution of narcotic drugs. The commercial cultivation, production, processing, assembly, packaging, retail or wholesale, trade, distribution or dispensing of Marijuana for Medical Use is prohibited unless permitted as a Medical Marijuana Treatment Center under Section 4.8.3.7. of this bylaw.

4.8.3.7.3. Definitions

4.8.3.7.3.1. *Medical Marijuana Facility:* A “Medical Marijuana Treatment Center” shall mean a not-for-profit entity, as defined by Massachusetts law, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers. These facilities shall be located inside a structure or building.

4.8.3.7.3.2. *Marijuana for Medical Use:* Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions as set forth in the 2012 Citizens Petition ballot question #11-11.

4.8.3.7.3.3. *Marijuana:* All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. The term also includes marijuana infused products except where the context clearly indicates otherwise.

4.8.3.7.4. *General Requirements and Conditions for all Medical Marijuana Facilities.*

4.8.3.7.4.1. All non-exempt Medical Marijuana Treatment Centers shall be contained within a building or structure.

4.8.3.7.4.2. No Medical Marijuana Treatment Centers shall have a gross floor area of less than 2,500 square feet or in excess of 20,000 square feet.

4.8.3.7.4.3. Medical Marijuana Treatment Centers shall not be located in buildings that contain any medical doctor’s offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.

4.8.3.7.4.4. The hours of operation of Medical Marijuana Treatment Centers shall be set by the Planning Board who are the Special Permit Granting Authority, but in no event shall said Facilities be open and/or operating between the hours of 8:00 PM and 8:00 AM.

4.8.3.7.4.5. No Medical Marijuana Treatment Center shall be located on the same lot or a lot which abuts or which is within 100 feet any public or private school building, day care facility or any public playground, recreation facility, athletic field or other park where children congregate, or any residential zoning district.

4.8.3.7.4.6. No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a Medical Marijuana Treatment Center.

4.8.3.7.4.7. Medical Marijuana Treatment Centers shall not be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a trailer, recreational vehicle, movable or stationary mobile vehicle.

4.8.3.7.4.8. Notwithstanding any provisions of Section 6.6. of this Bylaw, Signage for all Medical Marijuana Treatment Centers shall include the following language: “Registration card issued by the MA Department of Public Health required.” The required text shall be a minimum of two inches in height. The sign shall be located in a visible location near the main entrance to the facility. Exterior signs shall identify the name of the establishment but shall not contain any other advertising information.

4.8.3.7.4.9. Medical Marijuana Treatment Centers shall provide the Kingston Police Department, Building Inspector and the Planning Board with the names, phone numbers and email addresses of all management staff and keyholders to whom one can provide notice if there are operating problems associated with the establishment and update that list whenever there is any change in management staff or keyholders.

4.8.3.7.5. *Special Permit Requirements.*

4.8.3.7.5.1. Medical Marijuana Treatment Centers shall only be allowed by Special Permit issued by the Kingston Planning Board in accordance with G.L. c. 40A, §9 and Section 7.7. of this Bylaw, subject to the following statements, regulations, requirements, conditions and limitations.

4.8.3.7.5.2. A Special Permit for a Medical Marijuana Treatment Center shall be limited to one or more of the following uses that shall be determined by the Planning Board:

- a. cultivation of Marijuana for Medical Use (horticulture) except that sites protected under Chapter 40A Section 3 shall not require a Special Permit;
- b. processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
- c. retail sale or distribution of Marijuana for Medical Use to Qualifying Patients;

4.8.3.7.5.3. In addition to the application requirements established by the Planning Board by rule and elsewhere in this Bylaw, a Special Permit application for a Medical Marijuana Treatment Center shall include the following:

- a. the name and address of each owner of the establishment and property owner;
- b. copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the establishment;
- c. evidence of the Applicant's right to use the site for the establishment, such as a deed, or lease;
- d. if the applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the applicant must disclose the names and addresses of all individuals associated with that entity;
- e. a certified abutters list of all parties in interest entitled to notice of the hearing for the Special Permit application, taken from the most recent tax list of the town and certified by the Town Assessor;
- f. Proposed security measures for the Medical Marijuana Treatment Center, including lighting, fencing, surveillance cameras, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft. The security measures shall be reviewed and approved by the Police Department.
- g. The facility shall provide service to qualified patients by appointment only.
- h. The facility shall provide free delivery to all qualified patients.
- i. No products shall be displayed in the facilities windows or be visible from any street or parking lot.
- j. All employees shall be 18 years of age or older.

4.8.3.7.5.4. Mandatory Findings: In addition to the findings required under Section 7.7., the Planning Board shall not issue a Special Permit for a Medical Marijuana Facility unless it finds that:

- a. the establishment is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- b. the applicant clearly demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable State laws and regulations; and
- c. the Applicant has satisfied all of the conditions and requirements of this Sections 4.8.3.7.;

4.8.3.7.5.5. Annual Reporting: All Medical Marijuana Treatment Centers permitted under this Bylaw shall as a condition of its Special Permit file an annual report with the Planning Board, Police Chief and the Town Clerk no later than January 31st of each year. The Annual Report shall include a copy of all current applicable state licenses for the establishment and/or its owners and demonstrate continued compliance with the conditions of the Special Permit. In the event that the Annual Report is not received by January 31st or if the report is incomplete, the owners of the

Medical Marijuana Treatment Center will be required to appear before the Planning Board to provide the required information.

4.8.3.7.5.6. A Special Permit granted under this Section shall have a term limited to the duration of the applicant's ownership or lease of the premises as a Medical Marijuana Treatment Center. A Special Permit may be transferred only with the approval of the Planning Board in the form of an amendment to the Special Permit with all information required in this Section 4.8.3.7.

4.8.3.7.6. Abandonment or Discontinuance of Use

4.8.3.7.6.1. The Planning Board shall require the applicant to post a bond prior to the issuance of a building permit to cover costs for the removal of the Medical Marijuana Treatment Center in the event the Town must remove the facility. The value of the bond shall be based upon the ability to completely remove all the items noted below in Section 4.8.3.7.6.3. and properly clean the facility at prevailing wages. The value of the bond shall be developed based upon the applicant providing the Planning Board with three (3) written bids to meet the noted requirements. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the Town to remove the improvement in compliance with law at prevailing wages.

4.8.3.7.6.2. A Special Permit shall lapse if not exercised within one year of issuance.

4.8.3.7.6.3. A Medical Marijuana Treatment Center shall be required to remove all materials, plants equipment and other paraphernalia:

- a. prior to surrendering its state issued licenses or permits; or
- b. within six months of ceasing operations; whichever comes first.

4.8.3.7.7. Severability

If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

4.8.4. Uses Allowed on a Special Permit from the Board of Appeals

4.8.4.1. Hotels and motels.

4.8.4.2. Public parking garages.

4.8.4.3. Gasoline service stations, including routine maintenance operations, provided that:

- a. All pump islands shall be set back at least fifteen (15) feet from the front lot line.
- b. No unregistered vehicle or vehicles in any inoperative condition are to remain on the site for more than a two (2) week period unless enclosed in a building or unless a screening is provided and maintained along adjoining properties and abutting public ways.
- c. Areas not covered by buildings or pavement shall be maintained as a landscaped area.

4.8.4.4. Motor vehicle sales and repair facilities, including repairing, painting, or storing motor vehicles, provided that:

- a. The vehicles to be repaired are screened from abutting lots and exterior streets by a solid landscaped screen and/or fence at least five (5) feet in height.
- b. No more than ten (10) vehicles for sale shall be displayed at one time in a manner visible from a public way.

4.8.4.5. Laundries or dry cleaning establishments.

4.8.4.6. Distribution and storage of lumber, building material and fuel, provided that:

- a. No petroleum products are stored above ground in tanks exceeding ten thousand (10,000) gallons in capacity.
- b. All bulk sales, outside display and storage occurs to the rear of the principal building.

4.8.4.7. Undertaking establishment, funeral home and chapels.

4.8.4.8. Commercial greenhouse, kennels, animal hospital or clinic, provided that:

- a. Adjacent properties are adequately screened from noise, odors and unsightly appearance.
- b. Cadavers and contaminated animals are disposed of in accordance with applicable Town and State Regulations.
- c. Animals are housed within a building and all facilities for boarding and treating animals are within a building.
- d. The area is completely enclosed in accordance with Section 6.7.14., Fencing, Screening and Landscaping.

4.9. Industrial District (I)

4.9.1. Purpose

4.9.1.1. The purpose of the Industrial District is to provide areas for manufacturing and distribution uses that operate in accordance with Section 6.7., Performance Standards.

4.9.2. Uses Permitted

4.9.2.1. The construction or alteration of ten thousand (10,000) square feet or less of gross floor area, or the development of one hundred and thirty thousand six hundred and eighty (130,680) square feet (three (3) acres) or less of land, limited to the following uses:

- a. Manufacturing, processing, or research.
- b. Professional or business office.
- c. Office Park.
- d. Industrial Park.
- e. Warehouse and food distribution centers, provided that:
 - 1. All bulk sales, outside display and storage occurs to the rear of the principle building.
- f. Trucking garages and terminals.
- g. Public utility building or yards, contractor's offices and storage yards, provided that:
 - 1. The use is screened from abutting lots or exterior streets by a solid landscaped screen and/or fence at least five (5) feet but not more than seven (7) feet in height.
- h. Public garages not including body repairs.
- i. Bottling or packaging of previously prepared products.
- j. Marina, boat livery, sales, or storage and repair of boats and other marine accessories.

4.9.3. Uses Allowed by a Special Permit Granted by the Planning Board

4.9.3.1. Offices, retail sales, and services related to a use permitted in 4.9.2.1.a. through 4.9.2.1.c.

4.9.3.2. Any use covered in Section 4.9.2.1. that involves the construction or alteration of more than ten thousand (10,000) square feet of gross floor area, or the development of more than one hundred and thirty thousand six hundred and eighty (130,680) square feet (three (3) acres) of land.

4.9.3.3. Motor vehicle and boat sales and service.

4.9.4. Uses Allowed on a Special Permit from the Board of Appeals

4.9.4.1. Laundries or dry cleaning establishments.

4.10. Commercial/Industrial Park District (Amended 4/27/96 ATM, Article 20, Amended 4/5/18 , Article 44,)

4.10.1. Purpose

4.10.1.1. The purpose of the Commercial/Industrial Park District is to provide areas that have sufficient size to allow for larger scale commercial, manufacturing, and distribution uses that operate in accordance with section 6.7., performance standards.

4.10.2. Uses Permitted

4.10.2.1. Retail business or services conducted within a structure up to twenty thousand (20,000) square feet of gross floor area provided that the lot size is large enough so that the gross floor area does not exceed 25% of the lot.

4.10.2.2. The construction or alteration of twenty thousand (20,000) square feet or less of gross floor area, or the development of one hundred and thirty thousand six hundred and eighty (130,680) square feet (three (3) acres) or less of land, limited to the following uses and provided that the lot size is large enough so that the gross floor area does not exceed 25% of the lot:

- a. Manufacturing, processing, or research.
- b. Professional or business office.
- c. Office Park.
- d. Industrial Park.
- e. Warehouse and food distribution centers, provided that:
 - 1. All bulk sales, outside display and storage occurs to the rear of the principle building.
- f. Trucking garages and terminals.
- g. Public utility building or yards, contractor's offices and storage yards, provided that:
 - 1. The use is screened from abutting lots or exterior streets by a solid landscaped screen and/or fence at least five (5) feet but not more than seven (7) feet in height.
- h. Public garages not including body repairs.
- i. Bottling or packaging of previously prepared products.

4.10.3. Uses Allowed on a Special Permit Granted by the Planning Board

4.10.3.1. Retail business or services conducted within a structure over twenty thousand (20,000) square feet of gross floor area and shopping centers and office parks, provided that:

- a. In an office park or shopping center with condominium or cooperative ownership, an agreement of maintenance of common areas is filed with and approved by the Planning Board as a condition of the special permit.

4.10.3.2. Sale or leasing of farm implements, provided that:

- a. All bulk sales, outside display and storage occurs to the rear of the principal building.

4.10.3.3. Restaurants, fast food restaurants, banks or other retail establishments with drive-in or window services, provided that:

- a. No vehicles waiting for service shall park or stand on a public way.
- b. The establishment shall be responsible for collecting and properly disposing of litter within five hundred (500) feet of the premises resulting from its sales at least daily, and more frequently if necessary, to prevent unsightly conditions caused by litter.

4.10.3.4. Commercial indoor tennis club or recreation facilities, provided that:

- a. The building is insulated and maintained so as to confine the noise to the premises.
- b. The building is located not less than one hundred (100) feet from a Residential District.

4.10.3.5. Motor vehicle sales and repair facilities, including repairing, painting, or storing motor vehicles, provided that:

- a. The vehicles to be repaired are screened from abutting lots and exterior streets by a solid landscaped screen and/or fence at least five (5) feet in height.

b. No more than ten (10) vehicles for sale shall be displayed at one time in a manner visible from a public way.

4.10.3.6. Public parking garages.

4.10.3.7. Any use covered in section 4.10.2.2. that involves the construction or alteration of more than twenty thousand (20,000) square feet of gross floor area, or the development of more than one hundred and thirty thousand six hundred and eighty (130,680) square feet, (three (3) acres) of land.

4.10.3.8. Motor vehicle and boat sales and service.

4.10.4. Uses Allowed on a Special Permit from the Board of Appeals

4.10.4.1. Hotels and motels.

4.10.4.2. Gasoline service stations, including routine maintenance operations, provided that:

a. All pump islands shall be set back at least fifteen (15) feet from the front lot line.

b. No unregistered vehicle or vehicles in any inoperative condition are to remain on the site for more than a two (2) week period unless enclosed in a building or unless a screening is provided and maintained along adjoining properties and abutting public ways.

c. Areas not covered by buildings or pavement shall be maintained as a landscaped area.

4.10.4.3. Laundries or dry cleaning establishments.

4.10.4.4. Distribution and storage of lumber, building material and fuel, provided that:

a. No petroleum products are stored above ground in tanks exceeding ten thousand (10,000) gallons in capacity.

b. All bulk sales, outside display and storage occurs to the rear of the principal building.

4.10.4.5. Undertaking establishment, funeral home and chapels.

4.10.4.6. Commercial greenhouse, kennels, animal hospital or clinic, provided that:

a. Adjacent properties are adequately screened from noise, odors and unsightly appearance.

b. Cadavers and contaminated animals are disposed of in accordance with applicable Town and State Regulations.

c. Animals are housed within a building and all facilities for boarding and treating animals are within a building.

d. The area is completely enclosed in accordance with Section 6.7.14., Fencing, Screening and Landscaping.

4.10.4.7. Adult Uses

Adult uses as defined in Section 2.0. of the Zoning By-law provided that the uses must comply with the intensity requirements of this District; the Considerations for Approval of a Special Permit set forth in Section 7.7.2.; and the following requirements:

a. A 500-foot minimum separation is required from existing residential districts.

b. A 2,500-foot minimum separation between different or any other adult uses is required.

c. A 500-foot minimum separation is required from:

- a public way or a way which the clerk of the Town certifies is maintained and used as a public way;
- a constructed way shown on a plan approved and endorsed with the subdivision control law; or
- a way in existence when the subdivision control law became effective in the Town in which the land lies.

d. A 1,000-foot minimum setback is required from educational uses, public parks, public recreation facilities, and religious uses.

e. A 500-foot minimum setback is required from any establishment licensed under the provisions of Massachusetts General Laws Chapter 138.

f. A 100-foot vegetative buffer containing adequate screening shall be provided between adult uses and abutting residential districts.

g. A 20-foot vegetative buffer containing adequate screening given the character of the neighborhood and the intensity of the use shall be provided between adult uses and abutting commercial use.

h. No special permit shall be issued to any person convicted of violating the provisions of Massachusetts General Laws Chapter 119, section 63 or Massachusetts General Laws Chapter 272, section 28.

4.10.4.8. Hospital; sanitarium; nursing, rest or convalescent home; charitable institution or other non-correctional institutional use.

4.11. Conservancy District (Amended 5/03/99 ATM, Article 47)

4.11.1. The purpose of the Conservancy District is to provide for conservation of water resources and water bodies, and preservation of open space.

4.11.2. Uses Permitted

4.11.2.1. Farming, including crops, orchard, plant nursery, greenhouse or cranberry, and the keeping of tame domestic animals normally considered pets, such as dogs and cats, by the resident of the premises, not for commercial sale, provided that:

- a. Any stable enclosure or fence shall be in the rear yard and shall not be less than thirty (30) feet from any lot line.
- b. There shall be no raising of swine or fur bearing animals, except as permitted in Section 3, Chapter 40A, Massachusetts General Laws.

4.11.2.2. Public recreational use.

4.11.2.3. Library, museum or civic center, public buildings and premises for government use.

4.11.3. Uses Permitted on a Special Permit Granted by the Board of Appeals

4.11.3.1. Cemetery.

4.11.3.2. Raising livestock and poultry, but not including the raising of swine or fur bearing animals.

4.11.3.3. Farm stand for the sale of produce raised on the premises by a resident proprietor, provided that:

- a. All parking is provided in off-street facilities.
- b. All storage of equipment shall be in the rear of the farm stand.

4.11.3.4. Riding stable.

4.11.3.5. Commercial greenhouse.

4.11.3.6. Non-profit or private camp, provided that:

- a. Overnight accommodations are in tents.
- b. There are no transient overnight accommodations.

4.11.3.7. Single family detached dwelling.

4.11.3.8. Trailer, trailer coach or mobile home used as a dwelling except as an office incidental to construction on the premises, and in no case for more than six (6) months in any calendar year.

4.11.3.9. Nursery school or day care center.

4.11.3.10. Country or tennis club, or non-profit social, civic or recreational lodge or club, but not including any use, the principal activity of which is customarily conducted as a business, provided that:

- a. Any function room shall have access from a collector street or arterial street.

4.11.3.11. Hospital; sanitarium; nursing, rest or convalescent home; charitable institution or other non-correction institutional use.

4.11.3.12. Undertaking establishment and funeral home.

4.11.3.13. Marina, boat livery, sales, or storage and repair of boats and other marine accessories.

4.11.3.14. Outdoor movie theater.

4.11.3.15. Commercial indoor or outdoor amusement or recreation place or place of assembly, not including outdoor movie theater, provided that:

- a. The building is so insulated and maintained as to confine the noise to the premises.
- b. The building is located not less than one hundred (100) feet from a residential district.

4.12. Flood Plain Overlay District (Amended 4/2/94 ATM, Article 35; 5/3/99 ATM, Article 32; 4/2/11 ATM, Article 53; 4/9/12 ATM, Article 31) (Amended Art 34; 6/21/2016 ATM)

4.12.1. Purpose

4.12.1.1. The purposes of the Flood Plain Overlay District are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the flood plain.

4.12.1.2. The Flood Plain Overlay District is established as an overlay district to all other districts. The Floodplain Overlay District includes all special flood hazard areas within the Town of Kingston designated as Zone A, AE, AO, and VE on the Plymouth County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Plymouth County FIRM that are wholly or partially within the Town of Kingston are panel numbers: 25023C0218J, 25023C0219J, 25023C0331J, 25023C0332J, 25023C0334J, 25023C0342J, 25023C0353J, 25023C0354J, and 25023C0361J, dated July 17, 2012, and 25023C0238K, 25023C0239K, 25023C0351K, 25023C0352K, and 25023C0356K, dated November 4, 2016. The exact boundaries of the District are defined by the 100-year base flood elevations shown on the FIRMs and further defined by the flood profiles contained in the Plymouth County Flood Insurance Study (FIS) report dated November 4, 2016. These maps and the accompanying FIS are incorporated herein by reference and are on file with the Building Department and the Conservation Commission. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of the Massachusetts State Building Code pertaining to construction in the flood plains and with the following:

- Code of Federal Regulations (CFR) for the National Flood Insurance Program (NFIP) (currently 44 CFR, 60.3);
- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR);
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal Sanitary Sewage, DEP (currently 310CMR 15, Title 5)

4.12.2. Uses Permitted

4.12.2.1. The following uses of low flood damage potential and causing no obstruction to flood flows shall be allowed provided that they are permitted in the underlying district, and they do not require structures, fill, or storage of materials or equipment.

- a. Agricultural uses such as, but not limited to, farming, grazing, truck farming, and horticulture.
- b. Forestry and nursery uses.
- c. Outdoor recreational uses, including, but not limited to, fishing, boating, and play areas.
- d. Conservation of water, plants, wildlife.
- e. Wildlife management areas, foot, bicycle, and/or horse paths.
- f. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage or sales of crops raised on the premises.

4.12.3. Development Regulations

4.12.3.1. Within Zone A, where the 100 year flood elevation is not provided on the Flood Insurance Rate Map, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Conservation Commission. If the data is sufficiently detailed and accurate, it shall be relied upon to determine compliance with this By-law and the State Building Code.

4.12.3.2. Located within the Floodplain Overlay District are areas designated as coastal high hazard areas (V Zones – as designated on FEMA flood insurance maps). Since these areas are extremely hazardous due to high velocity waters from tidal and storm surges, all new construction shall be landward of the reach of the velocity zone and be in accordance with paragraph 4.12.2.

4.12.3.3.

a. Floodway Data. In A Zones (A, AE, AO) along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

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

4.12.3.4.

a. In AE Zones along watercourses within the Town of Kingston that have a regulatory floodway designated on the Plymouth County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

b. Man-made alterations are prohibited within VE Zones which would increase potential flood damage.

c. All subdivision proposals are to be reviewed to assure that: a) such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

d. Placement of underground storage tanks for fuel is prohibited in A Zones and V Zones.

e. All new construction within Zones VE must be located landward of the reach of mean high tide.

4.12.3.5. Notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

-- Adjacent Communities

-- NFIP State Coordinator

Massachusetts Department of Conservation and
Recreation/Floodplain Management
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
Ph. 617-626-1406

-- NFIP Program Specialist

FEMA Region I
99 High Street, 6th Floor
Boston, MA 02110
Ph. 617-956-7506

4.13. Water Resource Overlay District (Amended 10/30/93 STM, Article 18; 4/2/94 ATM, Article 16; 5/6/95 ATM, Article 31, 6/8/98 ATM, Article 20, 5/9/00 ATM Article 30, 5/8/01 ATM, Article 30, 11/28/01 STM, Article 16)

4.13.1. Purpose

4.13.2. The purpose of the Water Resource Overlay District is, in the interest of public health, safety and general welfare, to preserve the quality and quantity of the Town's groundwater and surface water resources in order to insure a safe and healthy public water supply.

4.13.3. Uses Permitted

4.13.3.1. Within the boundaries of the Water Resource Overlay District, land use shall be subject to the same use and development provisions of the underlying district as may otherwise apply, except as herein provided.

4.13.4. Uses Prohibited

4.13.4.1. The following uses and activities are expressly prohibited within the Water Resource Overlay District:

a. Storage of liquid petroleum products except in connection with the following:

- i. normal household use and outdoor maintenance or the heating of a structure;
- ii. waste oil retention facilities required by M.G.L. c.21, 52A;
- iii. emergency generators required by State or Federal statute, rule or regulation;
- iv. treatment works approved under 314 C.M.R. 5.00 for treatment of ground or surface waters;

provided that such storage referred to in items i. through iv. above is in free-standing containers within buildings or above-ground, and has secondary containment adequate to contain a spill the size of the container's total storage capacity. In no event, however, shall such secondary containment capacity be less than one and one-half times the container's total storage capacity.

b. Landfills and dumps.

c. Storage and/or landfilling of sludge and septage as defined in 310 C.M.R. 32.05.

d. Junkyard.

e. Municipal or commercially operated wastewater treatment facilities, except for:

- i. replacement or repair of such facility that will not result in a design capacity greater than that of the existing facility; and
- ii. facilities treating contaminated ground or surface water.
- iii. Facilities for the treatment and/or disposal of treated wastewater from a municipally owned wastewater treatment facility including treated wastewater disposal beds and/or leaching fields within that portion of the Water Resource Overlay District, shown on the Town of Kingston zoning map, lying northeast of Muddy Pond, west and northwest of Smelt Pond, south of Second Brook Street, and east of Brookedge Road, that is tributary to the Second Brook Well provided the treated wastewater meets applicable Massachusetts drinking water regulations.

f. Car wash.

g. Stockpiling and disposal of snow and ice containing de-icing chemicals.

h. Stockpiling and storage of road salt and other de-icing chemicals.

i. Any use or activity, whether principal or incidental, which involves the generation, treatment, storage or disposal of toxic or hazardous materials or waste in quantities greater than those associated with normal household use.

j. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Soil Conservation Service.

k. Stockpiling or storage of bulk commercial fertilizers unless such storage is within a structure designed and constructed, in the opinion of the Water Quality Review Committee, to prevent contaminated runoff or leachate.

l. Dry cleaning establishments.

m. Metal plating.

n. Chemical and bacteriological laboratories.

o. Earth removal within ten feet of the United States Geological Survey historic high water table or equivalent data determined by the Water Quality Review Committee more specific to the site, except for excavations necessary for building foundations, roads and utilities.

p. Boat and motor vehicle service and repair.

q. Individual sewage disposal systems designed to receive more than four hundred forty (440) gallons per 40,000 sq. ft. under one ownership per day, provided that this prohibition shall not apply to the replacement or repair of a system in existence on the date of the adoption of this provision. For systems with a sewage design flow below 2000 gallons per day, an increase in calculated allowable nutrient loading per acre to 550 gallons per acre, may be allowed for the use of Department of Environmental Protection approved Certified Technology when the system technology, system design and the required maintenance program have been approved by the Water Quality Review Committee through the issuance of a Certificate of Water Quality Compliance

r. Any use or development of land which includes creation or maintenance of impervious surfaces covering more than fifteen (15) percent of the premises area.

4.13.5. Section deleted at 10/30/93 STM, Article 18.

4.13.6. Standards for Use

4.13.6.1. To preserve the natural land surface providing high quality recharge to the groundwater, to limit sewage flow and fertilizer application to amounts which will be diluted adequately by natural recharge, to prevent the formation of plumes of contamination in the groundwater system, and to prevent the discharge or leakage of toxic or hazardous substances into the groundwater, all uses other than single family dwellings shall meet the following performance standards:

a. The concentration of nitrate nitrogen resulting from wastewater disposal and from fertilizer application, when diluted by rainwater recharge on the premises, shall not exceed five (5) parts per million.

b. In no event shall sewage flow as determined by Title 5 of the State Environmental Code exceed twenty thousand (20,000) gallons per day for premises. The area of the premises maintained as cultivated lawn shall be less than ten (10) percent.

c. All toxic or hazardous materials shall be stored in product tight containers protected from corrosion, accidental damage or vandalism and shall be used and handled in such a way as to prevent spillage into the ground or surface waters. A product inventory shall be maintained and reconciled with purchase, use, sales, and disposal records at sufficient intervals to detect product loss.

d. No toxic or hazardous materials shall be present in wastes disposed on the premises. Wastes composed in part or entirely of toxic or hazardous materials shall be retained in product tight containers for removal and disposal by a hazardous waste transporter licensed by the Commonwealth or as directed by the Board of Health.

e. With the exception of the five (5) parts per million nitrate nitrogen limit as stated in paragraph 4.13.6.1.a., contaminant levels in groundwater resulting from disposal of process wastes from operations other than personal hygiene and food for residents, patrons and employees or from wastewater treatment and disposal systems greater than ten thousand (10,000) gallons per day capacity shall not exceed those levels specified in tables C and E of the Drinking Water Regulations of Massachusetts (Department of Environmental Quality Engineering, June 15, 1977) and as same may be amended, after allowing for dilution by natural recharge on the premises.

f. All runoff from impervious surfaces shall be recharged on the premises, diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminated solids. In the vicinity of chemical or fuel delivery points, provision shall be made for spill control.

g. Sand or gravel removal operations shall be limited in depth so that the water table will not be exposed at any time. Land area exposed at any time shall be minimized and land shall be returned to a natural vegetative state within one (1) year of completion of operations.

h. Where the premises are partially outside the Water Resource District such potential pollution sources as on-site waste disposal systems shall, to the degree feasible, be located outside the District.

4.13.6.2. The Water Quality Review Committee may, as provided in Section 7.4 and in accordance with Section 4.13.7., Certificate of Water Quality Compliance, exempt roof surfaces from the calculation of impervious surfaces provided that:

a. All runoff from the roof is recharged on the premises and diverted toward areas covered with vegetation.

b. When roof-top drainage is allowed to be subtracted from the impervious cover equation, the roof-top drainage allowance will be restricted to less than 60% of the total impervious area.

c. Provisions for recharge are shown in plans approved by the Water Quality Review Committee. Plans shall include all facilities for recharge, a maintenance plan, and provisions for compliance with the conditions of Section 4.13.6.1.

d. Roof surfaces of industrial uses that have air emissions of contaminants shall not be exempted from the calculation of impervious surface and drainage from such roof surfaces may not be recharged.

4.13.7. Certificate of Water Quality Compliance.

4.13.7.1. Irrespective of the requirements of Section 7.0., Administration, a Certificate of Water Quality Compliance shall be obtained by the owners of the premises from the Water Quality Review Committee for:

a. Erection of any new principal structure other than a single family dwelling; or,

b. No Building Permit or Certificate of Use and Occupancy shall be issued by the Building Inspector, other than for a single family dwelling, except in compliance with a certificate as required herein, which certificate has been duly recorded in the Plymouth County Registry of Deeds.

4.13.7.2. A certificate of Water Quality Compliance shall be granted only as follows:

a. For new construction or additions or new activities not involving structures, or for changes in occupancy or operation on previously developed premises, only if in full compliance with all conditions of use herein above enumerated.

4.13.7.3. In applying for a Certificate of Water Quality Compliance, five (5) sets of application materials shall be submitted to the Zoning Enforcement Officer who shall forward one set to each member of the Water Quality Review Committee. All information necessary to demonstrate compliance must be submitted including but not limited to the following:

a. A complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures to protect from vandalism, corrosion and leakage, and to provide for control of spills.

b. A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal methods.

c. Evidence of compliance with all requirements of conditions of use as herein above enumerated.

d. All multi-family developments which will have two (2) or more dwelling units, hotels and motels, clustered developments, planned developments, nursing homes and hospitals, and any project resulting in wastewater discharge of greater than one thousand (1,000) gallons per day per single acre shall be required to submit the following:

1. A water table contour map and a geologic description of the area in the vicinity of the proposed project to determine groundwater flow directions;

2. Projections of nitrogen levels in downgradient groundwater, simulation of contaminant movement in groundwater and delineation of plumes; and

3. A projection of the impacts on downgradient drinking water (public and private wells: existing, future and potential), on lakes and ponds, and on coastal waters.

4. The information submitted to the Water Quality Review Committee must demonstrate that no significant impact to downgradient water resources will occur as a result of the project.

4.13.7.4. The Water Quality Review Committee shall act within forty-five (45) days of acceptance of a complete application, approving it by issuing a Certificate of Compliance if a majority determine that the applicant has adequately demonstrated compliance with the requirements of the Water Resource District. and rejecting the application otherwise. Failure by the Water Quality Review Committee to take final action by either accepting or rejecting such an application shall not in any circumstance be deemed a constructive approval and shall not be interpreted to create any rights in the applicant.

4.13.7.5. Each three (3) years the Water Quality Review Committee shall review compliance with this By-law and the Certificate of Water Quality Compliance. Upon request, Certificate holders shall submit the following:

a. Description of any changes from the originally submitted materials.

b. Certification that the waste disposal system has been inspected by a Certified Title V System Inspector or Treatment Plant Operator within the preceding ninety (90) days and found to be in proper operating condition.

c. Results from analysis of leachate or waste waters as may be required by the Board of Health. Evidence of non-compliance shall be reported to the Inspector of Buildings and the Board of Health for enforcement action.

4.13.8. Enforcement

4.13.8.1. The provisions of this section 4.13., Water Resource Overlay District, shall be enforced by the Zoning Enforcement Officer or Agent of the Board of Health. The Zoning Enforcement Officer or Agent of the Board of Health may enter upon the premises at any reasonable time to inspect for compliance with the provisions of this By-law. Evidence of compliance with approved waste disposal plans may be required by the enforcing officers. All records pertaining to waste disposal and removal shall be retained by the property owner at the property. Nothing herein contained shall be construed to infringe upon the Inspector of Buildings responsibilities under the State Building Code and/or Zoning Act.

4.13.8.2. Written notice of any violations from the Zoning Enforcement Officer or agent of the Board of Health shall be provided to the holder of the Certificate of Water Quality Compliance, specifying a time for compliance including cleanup of any spilled materials which is reasonable in relation to the public health hazard involved and the difficulty of compliance, but in no event shall more than forty-five (45) days be allowed for either compliance or finalization of a plan for longer term compliance, approved by the Water Quality Review Committee.

4.14. **Residential-80 District (R80)** (Amended 10/10/95 STM, Article 14; 4/27/96 ATM, Article 17; 5/03/97 ATM, Article 36, 5/03/99 ATM, Article 47; 5/9/00 ATM, Article 25)

4.14.1. Purpose The purpose of the Residential-80 District is to provide suitable areas for low-density residential uses that will be compatible with other uses permitted within the boundaries of the Water Resource Overlay Districts.

4.14.2. Uses Permitted

4.14.2.1. (A) Farming, including crops, orchard, plant nursery, greenhouse or cranberry, raising livestock or poultry, the keeping of tame domestic animals normally considered pets, such as dogs and cats, by the resident of the premises, not for commercial sale, provided that:

1. Any stable enclosure or fence shall be in the rear yard and shall not be less than thirty (30) feet from any lot line.
2. There shall be no raising of swine or fur-bearing animals, except as permitted in Section 3, Chapter 40A, of the Massachusetts General Laws.

B) Farm stand for the sale of produce raised on the premises by the resident proprietor, provided that:

1. All parking is provided in off-street facilities.
2. All storage of equipment shall be in the rear of the farm stand.

4.14.2.2. Single-family detached dwelling.

4.14.2.3. Renting of not more than two (2) rooms by a resident occupying the dwelling to not more than three (3) non-transient persons.

4.14.2.4. Congregate housing.

4.14.2.5. Nursery school or day-care center.

4.14.2.6. Home occupation provided that:

- a. Parking shall not exceed the parking allowed for a single-family.
- b. No non-residents of the premises shall be employed at the premises.
- c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.
- d. There is no equipment used in connection with such home occupation visible from the street or abutting property.

4.14.2.7. Library, museum or civic center, public buildings and premises for government use.

4.14.2.8. Public recreational use.

4.14.2.9. Non profit camp, provided that:

- a. Overnight accommodations are in tents.
- b. There are no transient overnight accommodations.

4.14.3. Uses Permitted by Special Permit Granted by the Planning Board.

4.14.3.1. Residential Development Encouraging Open Space (RDEOS), in accordance with the provisions of Section 5.3.

4.14.3.2. Nurseries and greenhouses for wholesale purposes with no retail uses.

4.14.3.3. One (1) accessory housing unit within a single family detached dwelling, provided that:

- a. The principal residential structure is on a lot which meets or exceeds the minimum lot size in Section 5.0, Intensity of Use Regulations.
- b. The principal residential structure has at least twelve hundred (1200) square feet.
- c. The entire structure used for dwellings shall not occupy more than twenty-five (25) per cent of the lot area.
- d. There shall be at least one (1) off-street parking space for each bedroom or accessory unit in the converted portion of the structure, which space shall not be provided in the front or side yard.
- e. There is provision for screening by fencing or landscaping of outside storage areas.
- f. Neither the principal residential structure nor accessory unit shall have a gross floor area of less than five hundred (500) square feet plus one hundred (100) square feet for each bedroom over one (1).
- g. The gross floor area of the newly created unit shall not be more than thirty (30) per cent of the normally habitable gross floor area excluding garage, unfinished attic crawl space, and other normally uninhabitable gross floor area of the principal residential structure, after conversion.
- h. Each unit shall be a complete and independent housekeeping unit, containing a bedroom or bedroom/living room combination, bathroom and kitchen or kitchenette and shall have a separate entrance.
- i. The exterior appearance of the structure shall not be altered except for:
 - 1) Stairways and exits required by law, which shall be in the rear of the building
 - 2) Restoration consistent with the original architecture of the structure.
- j. Either the apartment or the principal residence shall be occupied by the owner of the lot on which the accessory housing unit is located, except for bona fide temporary absences.
- k. If the accessory housing unit is discontinued and integrated into the original structure design the owner shall notify the Inspector of Buildings and the Zoning Enforcement Officer in writing.
- l. No permit for an accessory housing unit granted hereunder shall take effect sooner than three (3) years after occupancy by the applicants of the principal residential structure.
- m. All permits for accessory housing must be secured before any construction is undertaken.
- n. All special permits granted under this section shall expire within two (2) years from the date of the special permit issued by the Planning Board. At the end of every two (2) years, renewal shall be automatically granted upon receipt of certification by the Planning Board that the property remains the principal residence of the owner and that all conditions met at the time of the original application remain unchanged. The Planning Board, in its sole discretion, may require a new application and a demonstration of compliance with all conditions necessary for a special permit.
- o. The applicant shall submit to the Planning Board, prior to the required public hearing, a written report obtained by the Board of Health which certified that adequate provision has been made for the disposal of sewage, waste, and drainage in accordance with Title 5 of the State Sanitary Code and the requirements of the Board of Health.

4.14.3.4. Bed and breakfast.

4.14.3.5. Home occupation, provided that:

- a. The home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- b. Not more than two (2) other persons other than residents of the premises are regularly employed therein in connection with such use.
- c. Not more than twenty-five (25) percent of the total gross floor area is regularly devoted to such use.
- d. There is no equipment used in connection with such home occupation visible from the street.
- e. No display of products is visible from the street.
- f. There shall be adequate off-street parking in accordance with section 6.4., Off-Street Parking Requirements, for any employee or visitors in connection with such use. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. Vehicles used in connection with the occupation shall be parked in the rear or side yard or in a structure.

4.14.3.6 Short term rental: a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed by Special Permit as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time. For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

4.14.4. Uses Permitted by Special Permit Granted by the Board of Appeals.

4.14.4.1. Cemetery.

4.14.4.2 Riding stable.

4.14.4.3. Commercial breeding, sale or boarding of dogs, cats, swine or fur-bearing animals. Any kennel shall be no less than 30 feet from the lot lines.

4.14.4.4. Country or tennis club, or non-profit social, civic, or recreational lodge or club, but not including any use the principal activity of which is customarily conducted as a business, provided that:

a. Any function room shall have access from a collector street or arterial street.

4.14.4.5. Hospital; sanitarium; nursing, rest or convalescent home; charitable institution or other non-correctional institutional use.

4.14.4.6. Undertaking establishment, funeral home or crematorium, chapel.

4.15. 1021 Kingston's Place Smart Growth District (4/9/07 ATM, Article 15; 4/5/10 ATM, Article 25)

4.15.1. Purposes. The purposes of the Smart Growth District are:

- 4.15.1.1. To provide an opportunity for residential, commercial and mixed-use development within a distinctive, attractive and livable environment.
- 4.15.1.2. To promote low impact, sustainable development that is pedestrian friendly, and to integrate the principles of smart growth and green building through conformance with the manual called "LEED for Neighborhood Developments Rating System - Preliminary Draft, September 6, 2005" (Draft Document), such that the Smart Growth District as a whole could be recognized by the U.S. Green Building Council as "LEED-ND-Certified" if the Draft Document were adopted as final.
- 4.15.1.3. To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Kingston and provides an environment with safety, convenience and amenity.
- 4.15.1.4. To provide for a diversified housing stock at a variety of costs within walking distance of the Kingston commuter rail station, including affordable housing, and in housing types that meet the needs of the Town's population.
- 4.15.1.5. To generate positive tax revenue, and to benefit from the financial incentives provided by M.G.L. c.40R, while providing the opportunity for new business growth and additional local jobs.

4.15.2. Scope and authority. The Smart Growth District is established pursuant to the authority of M.G.L. c.40R and 760 CMR 59.00, and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Kingston, as amended. At the option of the owner, development of land within the Smart Growth District may be undertaken by means of a Site Plan Approval pursuant to the zoning controls set forth in this Section 4.15., or by complying with all applicable zoning controls set forth in the Zoning By-Laws of the Town of Kingston. At such time as a building permit is issued for any Development Project for which Site Plan Approval has been granted, all of the land shown on the Site Plan shall be developed pursuant to this Section 4.15. and shall not be developed pursuant to the Underlying Zoning. Development Projects proceeding under this Section 4.15. shall be governed solely by the provisions of this Section 4.15. and shall be deemed exempt from the standards and/or procedures of the Underlying Zoning.

4.15.3. Establishment and delineation of Smart Growth District and Sub-Districts. Within the Smart Growth District, there are four Sub-Districts identified as Single-Family SG District, Mixed-Use Residential-Commercial SG Sub-District, Mixed-Use Live-Work SG Sub-District and Conservation/Recreation SG Sub-District. The boundaries of the Smart Growth District and the Sub-Districts are delineated on a sheet labeled “1021 Kingston’s Place Smart Growth District and Sub-Districts” and are also delineated on a marked copy of the Official Zoning Map of the Town of Kingston on file in the office of the Town Clerk. For purposes of the application of this Section 4.15., for a proposed development the uses permitted and the bulk and dimensional controls applicable in a Sub-District may be extended into the adjacent Sub-District to the extent of fifty (50) feet as long as the limit of said extension is reflected on the site plan for a proposed development for which Site Plan Approval is required under this Section 4.15. Unless the provision of Section 4.15.7.4. shall be applicable, any Dwelling Unit or portion thereof located within said extension shall not be included in the calculation of the maximum number of dwelling units allowed as specified in Section 4.15.7.3. in such adjacent Sub-District but shall be included in such calculation of the Sub-District to which such extension is made.

4.15.4. Definitions. As used in this Section 4.15., the following terms shall have the meanings set forth below:

- 4.15.4.1. AFFORDABLE UNIT - An Affordable Rental Unit or an Affordable Homeownership Unit - that is affordable to and occupied by an Eligible Household.
- 4.15.4.2. AFFORDABLE HOUSING RESTRICTION – A deed restriction of an Affordable Homeownership Unit meeting statutory requirements in M.G.L. c.184 § 31 and the requirements of Section 4.15.12. of this By-Law.
- 4.15.4.3. AFFORDABLE RENTAL UNIT – A dwelling unit required to be rented to an Eligible Household in accordance with the requirements of Section 4.15.12. of this By-Law.
- 4.15.4.4. AFFORDABLE HOMEOWNERSHIP UNIT – A dwelling unit required to be sold to an Eligible Household in accordance with the requirements of Section 4.15.12. of this By-Law.
- 4.15.4.5. ALLEY – A roadway or shared driveway on which no primary buildings have front doors and the primary purpose of which is to provide immediate access to garages and private parking spaces serving such buildings.
- 4.15.4.6. APPLICANT – A landowner or other petitioner that files a site plan for a Development Project subject to the provisions of the Smart Growth District.
- 4.15.4.7. APPROVING AUTHORITY – The Planning Board of the Town of Kingston acting as the authority designated to review projects and issue approvals under this Section 4.15.
- 4.15.4.8. AS-OF-RIGHT DEVELOPMENT - A Development Project allowable under this Section 4.15. without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Site Plan Review requirement of this Section 4.15. shall be considered an As-of-right Development.
- 4.15.4.9. BASEMENT - The lowest floor level of a building which is either fully or partially below grade, whether or not fully enclosed.
- 4.15.4.10. BUILDING ENVELOPE – In connection with the development of Single-Family Dwelling Units, the area within an individual lot on which a Single-Family Dwelling Unit is required under the Design Standards to be constructed; provided such area is part of a Development Lot shown on a Site Plan.
- 4.15.4.11. CONSERVATION AND RECREATION USE - Any woodland, grassland, wetland, agricultural, horticultural or active or passive recreational use of land or the use of land for the construction and use of ponds, storm water management facilities or a Parkway.
- 4.15.4.12. DHCD – The Department of Housing and Community Development of the Commonwealth of Massachusetts or any successor agency.

- 4.15.4.13. DESIGN STANDARDS – The document entitled “Kingston Smart Growth District Design Standards and Procedures” dated March 19, 2007 as amended. Such Design Standards shall be applicable to all Development Projects within the Smart Growth District that are subject to Site Plan Review by the Approving Authority.
- 4.15.4.14. DEVELOPMENT LOT – One or more lots which are designated as a Development Lot on a site plan for a development proposed within the Smart Growth District and for which Site Plan Approval is required under the provisions of this Section 14.15. The lots comprising a Development Lot need not be in the same ownership. Where the Development Lot consists of more than a single lot, the lots, in combination, shall be treated as the Development Lot, may be contiguous or non-contiguous and shall be considered as one lot for the purpose of calculating parking requirements; minimum open space; and dwelling units per acre. Any development undertaken on a Development Lot is subject to the Design Standards established under Section 14.15.9. of this By-Law.
- 4.15.4.15. DEVELOPMENT PROJECT – A residential, commercial or Mixed-Use Development undertaken under this Section 4.15. A Development Project shall be identified on the Site Plan which is submitted to the Approving Authority for Site Plan Review.
- 4.15.4.16. DWELLING UNIT — One (1) or more rooms with cooking, living, sanitary and sleeping facilities arranged for the use of one (1) or more persons living together as a single housekeeping unit inclusive of, if applicable, an In-Law Apartment. The following types of Dwelling Units are specifically defined:
- 4.15.4.16.a. SINGLE-FAMILY DETACHED DWELLING UNITS — A detached residential dwelling unit, other than a mobile home, designed for occupancy by one family only and which may or may not be in single ownership;
- 4.15.4.16.b. SINGLE-FAMILY ATTACHED DWELLING UNITS -- An attached residential dwelling unit, designed for occupancy by one family only and on a separate lot where the use of the lot is within the exclusive control of the owner thereof, subject to customary homeowner association controls on architectural design, landscaping and maintenance. A Single Family Attached Dwelling Unit that satisfies this definition shall not be considered a Multi-Family Dwelling Unit;
- 4.15.4.16.c. MULTI-FAMILY DWELLING UNITS – A residential building containing four or more dwelling units designed for occupancy by the same number of families as the number of dwelling units where the individual dwelling units are not located on separate lots; and
- 4.15.4.16.d. TWO-THREE FAMILY DWELLING UNITS -- A residential building containing two or three dwelling units designed for occupancy by the same number of families as the number of dwelling units and where the individual dwelling units are not located on separate lots.
- 4.15.4.17. ELIGIBLE HOUSEHOLD – An individual or household whose annual income is below eighty percent (80%) of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.
- 4.15.4.18. FAMILY – One (1) or more persons living together in one (1) dwelling unit, but not including sororities, fraternities and other communal living arrangements.
- 4.15.4.19. FRONTAGE - The linear extent of a lot measured in a continuous line along the street or from the intersection of one side lot line to the intersection of the other side lot line of the same lot. In case of a lot which has more than one lot line on a street or way, the applicant for a building permit may designate which of said lot lines is to serve as the basis for measurement of the lot's frontage.

- 4.15.4.20. FRONT YARD - The distance between a building and the curb-line of the street or way on which such building has frontage. Such curb-line shall be depicted on the Site Plan for such building.
- 4.15.4.21. GROSS LEASABLE AREA - The area of a building exclusive of hallways, mechanical rooms and other space not exclusively occupied by a single tenant or occupant.
- 4.15.4.22. HEIGHT - The distance between averaged finished grade adjacent to the building (exclusive of basements) and the ceiling of the upper-most heated space in the building in the case of flat roofs and in the case of buildings with pitched roofs, at the point at which such ceiling intersects with the exterior portion of the building. The calculation of building height shall not apply to roof tanks and their supports, roof decks, ventilating, air conditioning and similar building service equipment, chimneys, railings, skylights and other similar features of buildings which are in no way designed or used for living purposes nor the portion of the pitched roof above the intersection of the ceiling of the upper-most heated space and the exterior of the building. A loft that has floor area of less than twenty-five percent (25%) of the first floor area of the building in which it is located shall not be considered as heated space for purposes of determining the height of the building.
- 4.15.4.23. HOME OFFICE – The use of a room or rooms in a Dwelling Unit as an office or studio by a resident provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 square feet, is regularly devoted to such use.
- 4.15.4.24. HOUSEHOLD INCOME, MEDIAN – The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).
- 4.15.4.25. INFRASTRUCTURE LETTERS - The letters issued on behalf of the Town in fulfillment of M.G.L. C. 40R, § 6(a)(11) and 760 CMR 59.04(1)(h) identifying infrastructure improvements to be made incident to the construction of one or more Development Projects in the Smart Growth District.
- 4.15.4.26. IN-LAW APARTMENT - A separate dwelling unit located within a single-family detached dwelling or accessory building that is subordinate in size to and an accessory use to the single-family detached dwelling. The size of the in-law apartment shall not be less than 500 square feet plus 100 square feet for every bedroom over one (1) but not more than 30% of the normally habitable gross floor area of the principal residential structure. Either the in-law apartment or the principal residence shall be occupied by the owner of the lot on which the in-law apartment is located except for bona fide temporary absences.
- 4.15.4.27. LIVE/WORK USE – The use of a building or series of buildings devoted to commercial and residential use where the first floor of the building is primarily devoted to commercial use and the upper floors are primarily devoted to residential use.
- 4.15.4.28. LOT – A parcel of land described by metes and bounds on a plan or deed duly recorded in the Plymouth County Registry of Deeds.
- 4.15.4.29. MIXED-USE DEVELOPMENT PROJECT – A Development Project containing a residential Principal Use and one or more commercial or institutional Principal Uses.
- 4.15.4.30. OFFICE – A place in which functions such as directing, consulting, record keeping, brokerage, clerical work, and sales, without the presence of merchandise, of a firm are carried on. A place which provides medical or dental services on an out-of-pocket basis shall also be included in this definition.
- 4.15.4.31. PARKWAY - The principal collector road (within the Smart Growth District) designed as a landscaped parkway connecting the open space elements in the Smart Growth District and

providing access from public ways to the Development Projects within the Smart Growth District and the adjacent properties and identified as such on a Site Plan.

- 4.15.4.32. NOISE BUFFER - The area of a Development Project which is devoted principally to the construction and maintenance of noise attenuation structures and equipment for the benefit of residential structures located adjacent to railroad lines or other facilities.
- 4.15.4.33. SIDE YARD - The distance between a building and the lot line which is most nearly perpendicular to the lot line on which the frontage of the lot is measured. In the case of a corner lot, the applicant for a building permit may designate which of the lot lines is to serve as the basis for the measurement of the side yard.
- 4.15.4.34. REAR YARD - The distance between a building and the lot line which is most nearly parallel to the lot line on which the frontage of the lot is measured. Where the lot has lot lines on more than one street or way and is not a corner lot, the applicant for a building permit may designate which lot lines is to serve as the basis for measurement of the rear yard.
- 4.15.4.35. SHARED PARKING FACILITIES – Off-street parking facilities designed and intended to serve more than a single use as shown on a Site Plan.
- 4.15.4.36. SINGLE-FAMILY UNITS - Single-Family Detached Dwelling Units and Single-Family Attached Dwelling Units.
- 4.15.4.37. SITE PLAN - A plan depicting a proposed Development Project for all or a portion of the Smart Growth District and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of Section 4.15.13. of this By-Law.
- 4.15.4.38. SITE PLAN APPROVAL – The Approving Authority’s authorization for a proposed Development Project based on a finding of compliance with this Section 4.15. of the By-Law and Design Standards after the conduct of a Site Plan Review.
- 4.15.4.39. SITE PLAN REVIEW – The review procedure established by this Section 4.15. and administered by the Planning Board of the Town of Kingston as the Approving Authority.
- 4.15.4.40. SMART GROWTH DISTRICT – An overlay zoning district adopted pursuant to M.G.L. c.40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L. c.40A and approved by the Department of Housing and Community Development pursuant to M.G.L. c.40R and 760 CMR 59.00.
- 4.15.4.41. SUB-DISTRICT – A specific and defined area of land within the Smart Growth District that is subject to specific requirements for allowable uses or dimensional requirements that may differ from the requirements for allowable uses or dimensional requirements in other specific and defined areas within the Smart Growth District. The boundaries and the names of the Sub-Districts are referred to in Section 4.15.3. of this By-Law.
- 4.15.4.42. UNDERLYING ZONING – The zoning requirements adopted pursuant to M.G.L. c.40A that are otherwise applicable to the geographic area in which the Smart Growth District is located, as said requirements may be amended from time to time.
- 4.15.4.43. UNDULY RESTRICT – A provision of a Smart Growth District or a Design Standard that adds unreasonable costs or unreasonably impairs the economic feasibility of a proposed Development Project in a Smart Growth District.
- 4.15.4.44. UNRESTRICTED UNIT – A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.
- 4.15.4.45. USE, ACCESSORY – A use subordinate to the Principal Use on the same lot or in the same structure and serving a purpose customarily incidental to the Principal Use, and which does not, in effect, constitute conversion of the Principal Use of the lot, site or structure to a use not otherwise

permitted in the Smart Growth District. Accessory uses are permitted or prohibited in the Smart Growth District to the same extent as if such uses were Principal Uses.

- 4.15.4.46. **USE, PRINCIPAL** – The main or primary purpose for which a structure, building, or lot is designed, arranged, licensed, or intended, or for which it may be used, occupied, or maintained under this Section 4.15. More than one principal use is permitted as-of-right on a lot or within a Development Project in a Mixed-Use Residential-Commercial SG Sub-District and a Mixed-Use Live-Work SG Sub-District.
- 4.15.4.47. **YARD SETBACKS** – The distances between a principal building and the principal buildings located immediately adjacent to such principal building whether or not on the same lot. The Yard Setbacks shall be depicted on the Site Plan for such building.

4.15.5. Permitted uses.

- 4.15.5.1. The following uses shall be permitted in the following Sub-Districts As-of-right upon Site Plan Approval pursuant to the provisions of this Section 4.15.:

TABLE 4.15-1								
	Single Family Detached Dwelling Unit	Single Family Attached Dwelling Unit	Multi-Family Dwelling Unit	Retail, Restaurant and Personal Service Use	Office Use	Live Work Use	Conservation and Recreation Use; Municipal Use	Two and Three Family Dwelling Units
Single Family SG Sub-District	Yes	Yes	Yes, but as limited under Section 4.15.5.2.	No	No	No	Yes	Yes, but as limited under Section 4.15.5.2.
Mixed-Use Residential-Commercial SG Sub-District	Yes ¹	Yes ¹	Yes	Yes	Yes	Yes	Yes	Yes
Mixed-Use Live-Work SG Sub-District	Yes ¹	Yes ¹	Yes	Yes	Yes	Yes	Yes	Yes
Conservation/Recreation SG Sub-District	No	No	No	No	No	No	Yes	No

- 4.15.5.2. Multi-Family Dwelling Units as well as Two and Three Family Dwelling Units may be located in the Single Family SG Sub-District adjacent to either a Mixed-Use Residential-Commercial SG Sub-District or a Mixed-Use-Live-Work SG Sub-District at the density permitted in those Mixed-Use Sub-Districts in accordance with Table 4.15-3 provided the number of Multi-Family Dwelling Units and Two and Three Family Dwelling Units that could be constructed in the Mixed-Use SG Sub-Districts shall be reduced by the number of Multi-Family Dwelling Units and Two and Three Family Dwelling Units so constructed in the Single Family SG Sub-District but in no event shall the number of Single Family Dwelling Units that are permitted to be constructed in the Single Family SG Sub-Districts be reduced by the construction of such Multi-family Dwelling Units and Two and Three Family Dwelling Units within the Single Family SG Sub-Districts. No more than sixty (60) Multi-Family Dwelling Units and Two and Three Family Dwelling Units, in the aggregate, shall be located in the Single Family SG Sub-District.

- 4.15.5.3. In addition to the foregoing principal uses, accessory uses shall be permitted in each of the Sub-Districts and as accessory to residential use, the following specific uses shall also be permitted:

¹ Subject to the limitations of Section 4.15.7.4.

Home Office and In-Law Apartment. Home Office use shall be permitted as of the right as an accessory use; In-Law Apartment as an accessory use shall be permitted only by special permit issued by the Approving Authority. In as much as In-Law Apartments are an accessory use, permitted only by special permit in accordance with the requirements of G.L. 40A and the Kingston Zoning-By-Laws, they are not treated as Dwelling Units in the Smart Growth District.

4.15.6. Prohibited uses or activities in a Smart Growth District.

- 4.15.6.1. No more than one unregistered vehicle within a lot unless within a structure or screened from any adjacent residence or public way by a wall, fence, or densely planted trees or shrubs at least three (3) feet in height, or be equivalently obscured by natural vegetation.
- 4.15.6.2. Any unregistered vehicle in the front yard.
- 4.15.6.3. The withdrawal of water for transport and sale outside the Town of Kingston.
- 4.15.6.4. Any use not listed in Section 4.15. is expressly prohibited; provided, however, that uses permitted in the underlying zoning district are permitted as long as they are not exercised in connection with a Development Project.
- 4.15.6.5. All proposed uses of buildings, lots or premises within the Smart Growth District shall conform to the standards contained in Sections 4.15.6.5. through 4.15.6.16.
 - a. The applicant, at its own expense, shall furnish evidence sufficient to satisfy the Zoning Enforcement Officer that the proposed use of the building or premises will not produce any nuisances beyond the lot lines as measured by the performance standards listed in Sections 4.15.6.6. through 4.15.6.16. below or as existing in comparable operations allowed in the Smart Growth District.
 - b. Any nuisance produced in excess of the standards permitted in Sections 4.15.6.6. through 4.15.6.16. below or any other nuisance found after review by the Zoning Enforcement Officer in the course of his or her normal enforcement procedure to be excessive shall be reduced to acceptable standards or discontinued.
- 4.15.6.6. AIR POLLUTANTS - Except as is herein provided, all use and conditions of land, buildings and structures shall be in conformance with the Regulations 310 CMR 6.00 - 8.00 of the Department of Environmental Protection, Commonwealth of Massachusetts, Dec. 31, 1981 and amendments thereto.
- 4.15.6.7. NOISE
 - 4.15.6.7.a. No noise shall be in excess of sixty (60) decibels at any lot line opposite or abutting a Residential 80, Residential 40, Residential 20, or Residential M District nor in excess of ninety (90) decibels at any other line.
 - 4.15.6.7.b. In the Smart Growth District, noise shall not exceed sixty (60) decibels between the hours of 8:00 P.M. and 7:00 A.M. At all other times, noise shall not exceed sixty (60) decibels for more than twenty (20) minutes in each hour.
 - 4.15.6.7.c. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency or high frequency.
- 4.15.6.8. ODOR - Emissions as measured at the users property line shall not exceed the established threshold limit values for odors as outlined in T.M. Hellman and F.H. Small, Journal Air Pollution Control Association, 24(10), 979-982, (1974); and amendments thereto added by the Manufacturing Chemists Association, Inc., Washington, D.C.
- 4.15.6.9. HEAT, GLARE AND VIBRATION
 - 4.15.6.9.a. No heat, glare or vibration shall be discernible without instruments from the outside of any structure.
- 4.15.6.10. Wind energy conversion systems, machinery and equipment shall comply with the following provisions:

4.15.6.10.a. The system shall not cause interference with radio and/or television broadcasting or reception and shall comply with the provisions of 47 CFR Part 15 (Federal Communications Commission) as it exists, or as it may be amended.

4.15.6.10.b. The base of a windmill shall be set back from all property lines and principal buildings at least the setback distance shown on the "Wind Turbine Setback Graph" North East Solar Energy Center Report, March 1979.

4.15.6.11. WASTE DISPOSAL, WATER SUPPLY AND WATER QUALITY

4.15.6.11.a. Regulations of the Department of Public Health shall be met and when required by the Zoning Enforcement Officer, approval shall be indicated on the application for a Building Permit.

4.15.6.11.b. In no case shall discharge cause the waters of the receiving body to exceed the limits assigned by the Commonwealth of Massachusetts, Water Resources Commission, Division of Water Pollution Control, as published and entitled "Water Quality Standards", filed with the Secretary of State on September 21, 1978, and amendments thereto, for streams and water bodies within the Town.

4.15.6.11.c. Materials used on the exterior or cleanup of structures or vehicles or of any equipment shall be disposed of in accordance with the regulations of the Board of Health.

4.15.6.12. STORAGE - All materials, supplies and equipment shall be stored in accordance with the Fire Prevention Standards of the National Fire Protection Association and shall be screened from view from public ways or abutting properties.

4.15.6.13. HAZARDOUS AND TOXIC MATERIALS.

4.15.6.13.a. No use shall be allowed which would create clear or unlawful hazard through emission of dangerous elements into the air, any water body, or the ground; through vehicular egress at points of constricted visibility; through use of storage of toxic, hazardous, inflammable, radioactive, or explosive materials without evidence of compliance with all applicable regulations; or through lack of security measures to prevent exposure to potentially hazardous structural or site conditions.

4.15.6.13.b. All hazardous materials used, created, stored, processed, disposed of by processing, diluting, burying or containment, leaching or any other manner, or transported (including piping) in the Town shall be used, stored or transported in accordance with all applicable Federal, State and Local regulations.

4.15.6.13.c. A notice for use, creation, storage, processing, disposal and transport shall be filed with the Board of Selectmen, the Fire Department, the Board of Health, and the Water Board on such forms as they shall require.

4.15.6.13.c.1. Notification shall include, as a minimum, identification of material, the amount involved, the process, if any, the routes of transport, carrier and conveyance, if any.

4.15.6.14. EROSION CONTROL

4.15.6.14.a. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped.

4.15.6.14.b. No use shall be allowed if it will leave the earth exposed for greater than fourteen (14) days, unless erosion control measures as defined in "Erosion and Sediment Control in Site Development and Vegetative Practices in Site Development", are employed.

4.15.6.14.c. No use shall be allowed which will damage or harm adjoining properties, waterways, or public utilities through uncontrolled erosion and sedimentation.

4.15.6.15. ELECTRICAL INTERFERENCE - No equipment or process shall be used which creates [visual] or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

4.15.6.16. Except as required for municipal waste pick-up and removal, junk, trash, or debris shall be stored so as not to be visible from adjacent properties or any street.

4.15.7. Dimensional and other requirements.

- 4.15.7.1. Buildings and Development Lots within a Smart Growth District shall be subject to the following bulk and dimensional requirements based on the use of the Development Lot. In the case of the Mixed-Use of a Development Lot, the setback requirements shall be applied based on the use of the specific building in question.

TABLE 4.15-2				
	Single-Family SG Sub-District	Mixed-Use Residential-Commercial Sub-Districts ²	Live-Work SG Sub-District ²	Conservation Recreation SG Sub-Districts
Minimum Lot Area in Square Feet for All Uses other than Single-Family Dwelling Units ³	N/A	10,000 sf	10,000 sf	N/A
Frontage ³	N/A	50 linear ft	50 linear ft	N/A
Front Yard ³	N/A	10 linear ft	10 linear ft	N/A
Side Yard ³	N/A	20 linear ft	20 linear ft	N/A
Rear Yard ³	N/A	15 linear ft	15 linear ft	N/A
Height	35 ft	50 linear ft	50 linear ft	N/A

- 4.15.7.2. Number of buildings on a lot. In the Smart Growth District, more than one principal building may be erected on a lot.

² Not applicable to Single Family Dwellings Units. The provisions of Sections 4.15.10.1. and 4.15.10.2. shall be applicable in lieu thereof.

³ For Single-Family Dwelling Units, each must be located within a Development Lot and shall satisfy the criteria governing Single Family Dwelling Units set forth in Sections 4.15.10.1. and 4.15.10.2. of this By-Law. Buildings permitted to be located in a Single-Family Smart Growth Sub-District under Sections 4.15.5.2. or 4.15.5.3. shall be subject to the dimensional requirements of a Mixed-Use Residential-Commercial Sub-District.

- 4.15.7.3. Maximum Residential Development. The aggregate number of dwelling units that may be constructed in the Smart Growth District is 730 and is calculated for each of the Sub-Districts as follows:

TABLE 4.15-3			
Sub-District	Type of Residential Use	Units Per Acre ⁴	Number of Units
Single-Family SG Sub-District:	Single-family ⁵	8	260 ⁵
Mixed-Use Residential-Commercial SG Sub-District: ⁶	Multi-family ⁷	20	437 ⁵
Mixed-Use Live-Work SG Sub-District: ⁶	Multi-family ⁷	20	33 ⁵

- 4.15.7.4. To the extent Single Family Dwelling Units are constructed in the Single-Family SG Sub-District at lesser densities than are permitted therein, Single-Family Dwelling Units, to the extent of such shortfall, may be constructed on the balance of a Mixed-Use Residential-Commercial SG District and the Mixed-Use Live-Work SG Sub-District provided the requirements of the next following paragraph are satisfied.

No building permit shall be issued for the construction of any Single-Family Dwelling Units in the Mixed-Use Residential SG Sub-District or the Mixed-Use Live-Work SG Sub-District unless there shall have been filed with the Building Inspector a Site Plan depicting the location of such Single-Family Dwelling Units proposed to be constructed, as applicable, in the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District and the certificate of the owner of the portion of a Single-Family SG Sub-District confirming such owner's election not to construct such number of Single-Family Dwelling Units to the extent proposed on such Site Plan in such Single-Family SG Sub-District. Once such election is made, such Single-Family Dwelling Units may only be constructed in Mixed-Use Residential-Commercial Sub-District or Mixed-Use Live-Work SG Sub-District, and shall not be constructed in the Single-Family SG Sub-District. The number of Multi-Family Dwelling Units that are permitted to be constructed in the Mixed-Use SG Sub-Districts shall not be reduced by the construction of such Single Family Dwelling Units in the Mixed-Use SG Sub-District.

- 4.15.7.5. Total allowable non-residential uses. No single retail use in excess of 25,000 gross square feet shall be permitted in a Mixed-Use Development Project. Total allowable retail development permitted pursuant to this Section 4.15.7.5. shall not exceed 50,000 gross square feet. Total non-residential uses within the Smart Growth District, including retail, restaurant, office, and institutional uses, shall not exceed a total of 300,000 gross square feet.

⁴ This standard shall be applied to the Sub-District as a whole and not to individual Development Projects or portions thereof.

⁵ To the extent land within the Single-Family SG Sub-District may not be developed at the density provided in this Table 4.15-3 due to site or other development constraints recognized under M.G.L. c. 40R, the number of Single-Family Units (but not in excess 60) that cannot, as a result thereof, be constructed may instead be constructed as Multi-Family Units either in the Mixed-Use Residential-Commercial SG Sub-District, the Mixed-Use Live-Work SG Subdistrict or the portions of the Single-Family SG Sub-District adjacent to the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District.

⁶ Two-Three Family Dwelling Units may be constructed in the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District, but at no greater density than 12 units per acre.

⁷ Single-family dwelling use also permitted but at no greater density than 8 units per acre but subject to the limitations set forth in this Section 4.15.7.4.

4.15.8. Required parking.

- 4.15.8.1. Parking shall be provided in order to meet or exceed the following minimum requirements:

Table 4.15-4	
Use	Minimum Required Parking
Retail Business, Commercial or Personal Service Establishment	1 space per 250 square feet of gross leasable floor area
Office, Professional, Business or Public	1 space per 333 square feet of gross floor area
Medical or Dental Office or Clinic	4 spaces for each individual office or suite, plus 4 spaces for each additional doctor or dentist within a single office or suite
Restaurant or Place of Assembly	1 space for each 3 seats
Residential Use	1.5 spaces per Dwelling Unit with 2 bedrooms or less, and 2 spaces per Dwelling Unit with 3 bedrooms or more to be located within 300 feet of the Dwelling Unit

Parking shall be provided in either off-street parking facilities or in marked spaces along traveled ways as may be provided in the Design Standards.

- 4.15.8.2. The Planning Board may grant a Site Plan Approval making such modifications in the standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in the district. The Board may impose conditions of use or occupancy appropriate to such modifications.

- 4.15.8.3. Use of Shared Parking Facilities. For purposes of determining parking compliance, parking located in Shared Parking Facilities may be counted as serving more than one use as long as the Approving Authority finds as part of Site Plan Review for a Mixed-Used Development Project that the uses will produce different parking demands that will be compatible with joint use of the parking facilities in question.

The Shared Parking Facilities shall receive a 25% credit from the required parking calculated as if the Development Project's parking was to be provided separately. Shared Parking spaces within the lots shall be within 400 feet of the principal buildings served.

4.15.9. Design standards. To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Kingston in adopting Smart Growth Zoning, the Planning Board shall adopt the Design Standards, approved by DHCD and dated March 19, 2007, relative to the issuance of Site Plan Approvals for Development Projects within the Smart Growth District and shall file a copy with the Town Clerk. In addition to the standards set forth in this By-Law, the physical character of Development Projects within the Smart Growth District shall comply with such Design Standards.

4.15.10. Building envelopes, lot designation and yard setbacks for single-family dwelling units.

- 4.15.10.1. Building Envelopes and Lot Dimensions. Each Site Plan for a Development Project shall identify one or more Development Lots, the Building Envelopes in which Single-Family Dwelling Units are anticipated to be located and, at the option of the applicant, a lot plan, which lays out the anticipated subdivision of each of the Development Lots into individual lots on which Single-Family Dwelling Units are to be constructed. The individual lots for the Single-Family Dwelling Units shall be no less than 150% of the Building Envelope in total area and shall be configured in accordance with the Design Standards. The dimensions shown for such individual lots, once the Approving Authority has granted its approval of the Site Plan, shall be treated as the dimensions of the lots as required in the Smart Growth Zoning District for purposes of the establishment of such lots under the Subdivision Control Law.

- 4.15.10.2. Yard Setbacks. Single-Family Dwelling Units located in a Development Project shall conform to the Yard Setbacks shown between the Building Envelopes on the Site Plan approved by the Approving Authority. In no event, however, shall the Yard Setbacks between the sides of buildings be less than 12 feet nor less than 20 feet in the case of rear yards of buildings, provided, however, that steps and chimneys may be constructed within the Yard Setbacks as well as garages and other accessory structures.

4.15.11. Open spaces and recreational areas.

- 4.15.11.1. Design and location. The overall site design shall include a common open space and facilities system as required by the Design Standards.
- 4.15.11.2. Ownership and maintenance. The plans and documentation submitted to the Planning Board shall include a description of proposed ownership and maintenance of all common open space or facilities.
- 4.15.11.3. Plans. The plans and any necessary supporting documents submitted with an application for Site Plan Approval within the Smart Growth District shall show the general location, size, character, and general area within which common open space or facilities will be located.

4.15.12. Affordable housing.

- 4.15.12.1. Number of affordable units. Twenty percent (20%) of all dwelling units constructed in a Development Project shall be Affordable Units. Twenty-five percent (25%) of all rental dwelling units in a Development Project shall be Affordable Units. Provided however, for Development Projects in which all of the dwelling units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five percent (25%) of the dwelling units shall be Affordable Units, whether the dwelling units are rental or ownership units.
- 4.15.12.2. Fractional Units. When the application of the percentages specified above results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- 4.15.12.3. Affordable Units shall comply with the following requirements:
- 4.15.12.3.a. The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a Family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by DHCD shall apply;
- 4.15.12.3.b. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a Family size equal to the number of bedrooms in the unit plus one; and
- 4.15.12.3.c. Affordable Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- 4.15.12.4. Design and construction.
- 4.15.12.4.a. Design. Affordable Units must be dispersed throughout a Development Project and be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Units must have access to all on-site amenities. Affordable Units shall be finished housing units; and

- 4.15.12.4.b. Timing. All Affordable Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units and in Development Projects that are constructed in phases, Affordable Units must be constructed and occupied in proportion to the number of units in each phase of the Development Project.
- 4.15.12.5. Unit mix.
 - 4.15.12.5.a. The total number of bedrooms in the Affordable Units shall, so far as practicable, be in the same proportion to the total number of bedrooms in the Unrestricted Units; and
 - 4.15.12.5.b. If only one Affordable Unit is required and the other units in the Development Project have various numbers of bedrooms, the Approving Authority may select the number of bedrooms for that unit. If Affordable Units cannot mathematically be exactly proportioned in accordance with the Unrestricted Units, the unit mix shall be determined by the Approving Authority.
- 4.15.12.6. Affordable housing restriction. Each Affordable Unit shall be subject to an Affordable Housing Restriction which is recorded with the Plymouth County Registry of Deeds or Land Court Registry District of Plymouth County. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Section 4.15. of the Zoning By-Laws. All Affordable Housing Restrictions must include, at minimum, the following:
 - 4.15.12.6.a. Description of the Development Project, including whether the Affordable Unit will be rented or owner-occupied;
 - 4.15.12.6.b. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification.
 - 4.15.12.6.c. The term of the Affordable Housing Restriction shall be the longest period customarily allowed by law but shall be no less than 30 years;
 - 4.15.12.6.d. The name and address of an administering agency with a designation of its power to monitor and enforce the Affordable Housing Restriction;
 - 4.15.12.6.e. Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan shall provide for local preferences in resident selection to the maximum extent permitted under applicable law. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size;
 - 4.15.12.6.f. A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
 - 4.15.12.6.g. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set;
 - 4.15.12.6.h. A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit to another Eligible Household shall be given to the administering agency;

- 4.15.12.6.i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the administering agency;
- 4.15.12.6.j. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency and the Town of Kingston, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
- 4.15.12.6.k. Provisions that the restriction on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Administering Agency and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
- 4.15.12.6.l. Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the administering agency, in a form specified by that agency certifying compliance with the provisions of this By-Law and containing such other information as may be reasonably requested in order to ensure affordability;
- 4.15.12.6.m. A requirement that residents in Affordable Units provide such information as the administering agency may reasonably request in order to ensure affordability; and
- 4.15.12.6.n. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.
- 4.15.12.7. Administration. An administering agency for Affordable Units, which may be the Kingston Housing Authority or other qualified housing entity shall be designated by the Kingston Board of Selectmen and shall ensure the following:
 - 4.15.12.7.a. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
 - 4.15.12.7.b. Income eligibility of households applying for Affordable Units is properly and reliably determined;
 - 4.15.12.7.c. The housing marketing and resident selection plan conforms to all requirements and is properly administered;
 - 4.15.12.7.d. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
 - 4.15.12.7.e. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Plymouth County Registry of Deeds or Land Court Registry District of Plymouth County.
- 4.15.12.8. The housing marketing and selection plan may make provision for payment by the owner of reasonable costs to the administering agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements. Such payment shall not exceed one-half percent (1/2%) of the amount of rents of Affordable Rental Units (payable annually) or one percent (1%) of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale).
- 4.15.12.9. In the case where the administering agency cannot adequately carry out its administrative duties, upon certification of this fact by the Board of Selectmen or by the Department of Housing and Community Development, the administrative duties shall devolve to and thereafter be administered

by a qualified housing entity designated by the Board of Selectmen or, in the absence of such designation, by an entity designated by the Department of Housing and Community Development.

4.15.13. Administration. The Planning Board shall be the Approving Authority for Site Plan Approvals in the Smart Growth District, and shall adopt and file with the Town Clerk administrative rules relative to the application requirements and contents for Site Plan Review. Such administrative rules and any amendment thereto must be approved by the Department of Housing and Community Development. The Site Plan Review process encompasses the following:

- 4.15.13.1. Pre-application review. The applicant is encouraged to participate in a pre-application review at a regular meeting of the Planning Board. The purpose of the pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to obtain the advice and direction of the Planning Board prior to filing the application. At the pre-application review the applicant shall outline the proposal and seek preliminary feedback from the Planning Board, other municipal review entities, and members of the public. The applicant is also encouraged to request a site visit by the Planning Board and/or its designee in order to facilitate pre-application review.
- 4.15.13.2. Application procedures.
 - 4.15.13.2.a. The applicant shall file an original of the application with the Town Clerk for certification of the date and time of filing. Said filing shall include any required forms provided by the Planning Board. A copy of the application including the date and time of filing certified by the Town Clerk as well as the required number of copies of the application shall be filed forthwith by the applicant with the Planning Board and Building Inspector. As part of any application for Site Plan Approval for a Development Project within the Smart Growth District submitted under Section 4.15.13., the Applicant must submit the following documents to the Approving Authority and the Administering Agency: 1) evidence that the Development Project plans demonstrate compliance with the requirements of Section 4.15.12.4.; 2) a form of Affordable Housing Restriction that satisfies the requirements of Section 4.15.12.6.; and 3) evidence that the Development Project complies with the cost and eligibility requirements of Section 4.15.12.3.;
 - 4.15.13.2.b. Review fees. The applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Planning Board. Such fees shall be held by the Town of Kingston in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the Site Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith;
 - 4.15.13.2.c. Upon receipt by the Planning Board, applications shall be distributed to the Fire Chief, the Police Chief, Board of Health, Conservation Commission, Open Space Committee, the Board of Selectmen and the Boards of Water Commissioners and Sewer Commissioners. Any reports from these parties shall be submitted to the Planning Board within sixty (60) days of filing of the application; and
 - 4.15.13.2.d. Within thirty (30) days of filing of an application with the Planning Board, the Planning Board or its designee shall evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the applicant certifying the completeness of the application. The Board or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.
- 4.15.13.3. Public hearing. The Board shall hold a public hearing and review all applications according to the procedure specified in M.G.L. c.40R § 11 and 760 CMR 59.04(1)(f).

4.15.13.4. Site Plan Approval decision.

- 4.15.13.4.a. The Planning Board shall make a decision on the Site Plan application, and shall file said decision with the Town Clerk, within 120 days of the date the application was received by the Town Clerk. The time limit for public hearings and taking of action by the Planning Board may be extended by written agreement between the applicant and the Board. A copy of such agreement shall be filed with the Town Clerk;
- 4.15.13.4.b. Failure of the Planning Board to take action within 120 days or extended time, if applicable, shall be deemed to be an approval of the application;
- 4.15.13.4.c. An applicant who seeks approval because of the Planning Board's failure to act on an application within the 120 days or extended time, if applicable, must notify the Town Clerk in writing, within fourteen (14) days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the applicant to the parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to M.G.L. c.40R and shall be filed within twenty (20) days after the date the Town Clerk received such written notice from the applicant that the Planning Board failed to act within the time prescribed;
- 4.15.13.4.d. The Board's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Site Plan Approval application. The written decision shall contain the name and address of the applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision. The written decision shall certify that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the Planning Board;
- 4.15.13.4.e. The decision of the Planning Board, together with the detailed reasons therefor, shall be filed with the Town Clerk, the Board of Appeals and the Building Inspector. A certified copy of the decision shall be mailed to the owner and to the applicant if other than the owner. A notice of the decision shall be sent to the parties of interest and to persons who requested a notice at the public hearing; and
- 4.15.13.4.f. Effective date. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If the application is approved by reason of the failure of the Planning Board to timely act, the Town Clerk shall make such certification on a copy of the notice of application. A copy of the decision or notice of application shall be recorded with the title of the land in question in the Plymouth County Registry of Deeds or the Plymouth Land Registry District, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the owner of the land in question or the applicant.

4.15.13.5. Criteria for approval. The Planning Board shall approve the Development Project upon finding that it complies with the purposes and standards of the Smart Growth District and applicable Design Standards. Prior to the granting of Site Plan Approval for a Development Project, the Applicant must demonstrate, to the satisfaction of the Approving Agency that the method by which affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of Kingston.

- 4.15.13.6. Criteria for conditional approval. The Planning Board may impose conditions on a Development Project as necessary to ensure compliance with requirements of this Section 4.15., the applicable Design Standards or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as such conditions are compliant with the provisions of M.G.L. c.40R and applicable regulations and do not Unduly Restrict opportunities for development. The Planning Board may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address any extraordinary adverse Development Project impacts on nearby properties and with the implementation of the infrastructure improvements by the party designated as responsible under the Infrastructure Letters.
- 4.15.13.7. Criteria for denial. The Planning Board may deny an application for Site Plan Approval pursuant to this Section 4.15. of the By-Law if the Board finds one or more of the following:
- 4.15.13.7.a. The Development Project does not meet the conditions and requirements set forth in the Smart Growth Zoning or applicable Design Standards;
- 4.15.13.7.b. The applicant failed to submit information and fees required by the Smart Growth Zoning and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts; and
- 4.15.13.7.c. It is not possible to adequately mitigate significant adverse Development Project impacts on nearby properties by means of suitable conditions.
- 4.15.13.8. Time limit. A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the project proponent is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.
- 4.15.13.9. Appeals. Pursuant to M.G.L. c.40R, § 11, provided a bond thereby is duly posted, any person aggrieved by a decision of the Board may appeal to the Superior Court, the Land Court, the Southeast Housing Court or the District Court within twenty (20) days after the Site Plan decision has been filed in the office of the Town Clerk.

4.15.14. Waivers. The Planning Board may authorize waivers with respect to the standards set forth in this Section 4.15. in the Site Plan Approval upon a finding that such waiver will allow the Development Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this By-Law. However, the Board may not waive any portion of the Affordable Housing requirements in Section 4.15.12. except insofar as such waiver results in the creation of a number of Affordable Units in excess of the minimum number of required Affordable Units, nor may the Board waive the limitations on the number of allowable dwelling units in the Smart Growth District.

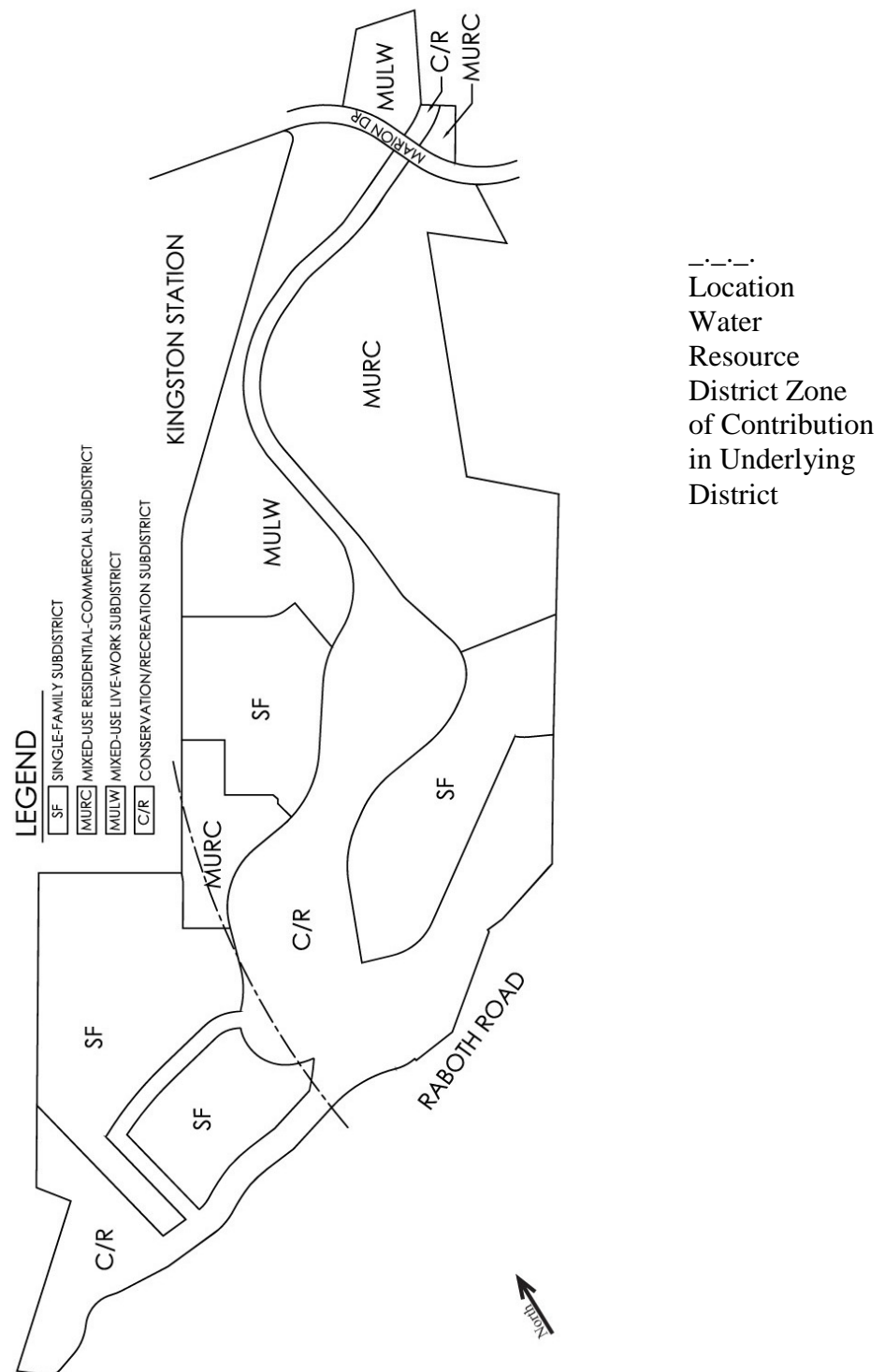
4.15.15. Fair Housing Requirement. All Development Projects within the Smart Growth District shall comply with applicable federal, state and local fair housing laws.

4.15.16. Annual update. On or before July 31 of each year, the Board of Selectmen shall cause to be filed an Annual Update with the Department of Housing and Community Development (DHCD) in a form to be prescribed by DHCD. The Annual Update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c.40S and accompanying regulations. The Town Clerk of the Town of Kingston shall maintain a copy of all updates transmitted to DHCD pursuant to this By-Law, with said copies to be made available upon request for public review.

4.15.17. Notification of issuance of building permits. Upon issuance of a residential building permit within the Smart Growth District, the Building Inspector of the Town of Kingston shall cause to be filed an application to the Department of Housing and Community Development (DHCD), in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit pursuant to M.G.L. c.40R. The application shall contain all information required in 760 CMR 59.06(2), as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c.40S and accompanying regulations. The Town Clerk of the Town of Kingston shall maintain a copy of all such applications transmitted to DHCD pursuant to this By-Law, with said copies to be made available upon request for public review.

4.15.18. Date of effect. The effective date of this By-Law shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of M.G.L. c.40A § 5.

4.15.19. Severability. The provisions of this section are severable. If any provision of this section is held invalid, the other provisions shall not be affected but shall remain in full force.



4.16. Green Communities Wind Turbine Overlay District (4/9/07 ATM, Article 37; Amended 4/5/08 ATM, Article 20; 4/5/10 ATM, Article 18)

4.16.1.0. Purpose The purpose of this by-law is to provide for the construction and operation of wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that

address public safety, minimize impacts on scenic, natural and historic resources of the city or town and provide adequate financial assurance for decommissioning.

The provisions set forth in this bylaw shall take precedence over all other bylaws when considering applications related to the construction, operation, and/or repair of land-based wind energy facilities.

4.16.1.1. Applicability This section applies to all utility-scale and on-site wind facilities proposed to be constructed after the effective date of this section. This section also pertains to any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate capacity.

4.16.2.0. Definitions

4.16.2.1. As-of-Right Siting: As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to non-discretionary site plan review to determine conformance with local zoning bylaws as well as state and federal law. As-of-right development projects that are consistent with zoning bylaws and with state and federal law cannot be prohibited.

4.16.2.2. Building Inspector: the inspector of buildings, building commissioner, or local inspector charged with the enforcement of the state building code. **Building Permit:** The permit issued in accordance with all applicable requirements of the Massachusetts State Building Code (780 CMR).

4.16.2.3. Designated Location: The locations designated by Town Meeting in accordance with M.G.L. c. 40A, section 5, where wind energy facilities may be sited as-of right. Said locations are shown on a Zoning Map of Kingston, Massachusetts dated December 17, 1993 revised through April 5, 2010. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Town Clerk.

4.16.2.4. Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

4.16.2.5. On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, or institutional facility that will consume more than 50% of the electricity generated by the project on site.

4.16.2.6. Municipal Wind Facility: A project initiated by the local government whose primary purpose is to provide power for municipal uses.

4.16.2.7. Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

4.16.2.8. Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

4.16.2.9. Site Plan Review Authority: Refers to the body of local government designated by the municipality to review site plans. In the Town of Kingston the Planning Board is the site plan review authority.

4.16.2.10. Substantial Evidence: Such evidence as a reasonable mind might accept as adequate to support a conclusion.

4.16.2.11. Wind Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

4.16.2.12. Wind Monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

4.16.2.13. Wind turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

4.16.2.14. Zoning Enforcement Authority: The Inspector of Buildings/Zoning Enforcement Officer.

4.16.3.0. General Requirements for all Wind Energy Facilities

4.16.3.1. Site Plan Review Authority No wind facility over 60 kilowatts of rated nameplate capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a site plan approval from the Planning Board. No wind energy system shall be erected, constructed, installed or modified as provided in this section without obtaining a building permit following site plan approval.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to reasonable regulations concerning the bulk and height of structures and determining yard-size, lot area, setbacks, open space, parking, and building coverage requirements.

4.16.3.2. Compliance with Laws, Ordinances and Regulations The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

4.16.3.3. Proof of Liability Insurance The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

4.16.3.4. Site Control At the time of its application for approval the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

4.16.3.5. Renewable or alternative energy research and development facilities, and renewable or alternative energy manufacturing facilities, subject to Site Plan Review by the Planning Board, pursuant to Section 7.3. and 4.16.10.3.2. Site Plan Approval and subject to the requirements of Section 4.16.4.0. General Siting Standards, 4.16.5.0. Design Standards, 4.16.6.0. Safety, Aesthetic and Environmental Standards, 4.16.7.0. Monitoring and Maintenance, 4.16.8.0. Abandonment or Decommissioning, 4.16.9.0. Term of Permit, and 4.16.10.0. Application Process Said Site Plan Approval shall be an "expedited" application and permitting process under which said facilities may be sited within one (1) year from the date of initial application to the date of final approval by the Planning Board.

4.16.4.0. General Siting Standards

4.16.4.1. Height Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that wind facilities may exceed 400 feet if:

- (a) the applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;
- (b) such excess height is necessary to prevent financial hardship to the applicant, and
- (c) the facility satisfies all other criteria for the granting of a site plan approval and a building permit under the provisions of this section.

4.16.4.2. Setbacks Wind turbines shall be set back a distance equal to 1.5 times the overall blade tip height of the wind turbine from the nearest existing residential or commercial structure and 100 feet from the nearest property line and private or public way.

4.16.4.2.1. Setback Waiver The Site Plan Review authority may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a site plan approval and a building permit under the provisions of this section.

4.16.5.0. Design Standards

4.16.5.1. Color and Finish The site plan approval granting authority shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.

4.16.5.2. Lighting and Signage

4.16.5.2.1. Lighting Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

4.16.5.2.2. Signage Signs on the wind facility shall comply with the requirements of the town's sign regulations, and shall be limited to:

- (a) Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- (b) Educational signs providing information about the facility and the benefits of renewable energy.

4.16.5.2.3. Advertising Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

4.16.5.2.4. Utility Connections Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

4.16.5.3. Appurtenant Structures All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

4.16.5.4. Support Towers Monopole towers are the preferred type of support for the Wind Facilities.

4.16.6.0. Safety, Aesthetic and Environmental Standards

4.16.6.1. Emergency Services The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the Site Plan Approval Authority. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

4.16.6.1.1. Unauthorized Access Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.

4.16.6.2. Shadow/Flicker Wind facilities shall be sited in a manner that minimizes 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 through either siting or mitigation.

4.16.6.3. Noise The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Site Plan Approval Authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

(a) Increases the broadband sound level by more than 10 dB(A) above ambient, or

(b) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The Site Plan Approval Authority, in consultation with the Department, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

4.16.6.4. Land Clearing, Soil Erosion and Habitat Impacts Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and ordinances.

4.16.7.0. Monitoring and Maintenance

4.16.7.1. Facility Conditions The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

4.16.7.2. Modifications All material modifications to a wind facility made after issuance of the site plan approval shall require approval by the Site Plan Approval authority as provided in this section.

4.16.8.0. Abandonment or Decommissioning

4.16.8.1. Removal Requirements Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind

facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other permitted use. More specifically, decommissioning shall consist of:

- (a) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The site plan approval authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

4.16.8.2. Abandonment Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the Site Plan Approval Authority. The Site Plan Approval Authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility.

4.16.8.3. Financial Surety The Site Plan Approval Authority at a date certain shall require the applicant for utility scale wind facilities to provide a form of surety at a date certain, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the Site Plan Approval Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.

4.16.9.0. Term of Permit An approval issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the Site Plan Approval Authority upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the site plan approval. Submitting a renewal request shall allow for continued operation of the facility until the Site Plan Approval Authority acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this section. The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

4.16.10.0. Application Process & Requirements

4.16.10.1. Application Procedures

4.16.10.1.1. General The application for a wind facility shall be filed in accordance with the rules and regulations of the Site Plan Approval Authority concerning site plan approval.

4.16.10.1.2. Application Each application for a site plan approval shall be filed by the applicant with the city or town clerk pursuant to section 9 of chapter 40A of the Massachusetts General Laws.

4.16.10.2. Required Documents

4.16.10.2.1. General

The applicant shall provide the Site Plan Approval Authority with 16 copies of the application. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

4.16.10.2.2. Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners, if any.

4.16.10.2.3. The name, contact information and signature of any agents representing the applicant.

4.16.10.2.4. Documentation of the legal right to use the wind facility site, including the requirements set forth in 4.16.3.4. of this section.

4.16.10.3. Siting and Design

The applicant shall provide the Site Plan Approval Authority with a description of the property which shall include:

4.16.10.3.1. Location Map (Modify for On-Site Wind Facilities) Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

4.16.10.3.2. Site Plan

A one inch equals 100 feet plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing the following:

- (a) Property lines for the site parcel and adjacent parcels within 300 feet.
- (b) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.
- (c) Location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.
- (d) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
- (e) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.
- (f) Location of priority points referenced below in 4.16.10.3.3. of this section.
- (g) Wetlands, Wildlife, Habitat and other natural features
- (h) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting (other than FAA lights), screening vegetation or structures;
- (i) Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;
- (j) Tower blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;
- (k) One or three line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- (l) Documentation of the wind energy facility's manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed), and foundation type/dimensions;
- (m) Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners, if any;
- (n) The name, contact information and signature of any agents representing the applicant; and
- (o) A maintenance plan for the wind energy facility;

4.16.10.3.3. Visualizations (Modify for On-Site Wind Facilities)

The Site Plan Approval Authority shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

- (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).
- (b) All view representations will include existing, or proposed, buildings or tree coverage.
- (c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).

4.16.10.4. Landscape Plan (Utility-Scale Wind Facilities Only) A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

4.16.10.5. Operation & Maintenance Plan The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility.

4.16.10.6. Compliance Documents If required under previous sections of this by-law, the applicant will provide with the application:

- (a) a description of financial surety that satisfies 4.16.8.3. of this section,
- (b) proof of liability insurance that satisfies Section 4.16.3.3. of this section,
- (c) certification of height approval from the FAA,
- (d) a statement that satisfies Section 4.16.6.3., listing existing and maximum projected noise levels from the wind facility.

4.16.10.7. Independent Consultants – (Utility-Scale Wind Facilities Only)

Upon submission of an application for a site plan approval, the Site Plan Approval Authority will be authorized to hire outside consultants, pursuant to section 53G of chapter 44 of the Massachusetts General Laws. As necessary, the applicant may be required to pay the consultant's costs.

4.17. Large-Scale Ground-Mounted Solar Photovoltaic Installations Overlay District (4/5/10 ATM, Article 19)

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

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations and shall follow the guidelines set forth in the MA DOER/MA DEP/Mass CEC Ground Mounted Solar PV Guide dated December 2012, as amended to the most current guideline.

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

4.17.2.0. Definitions

4.17.2.1. As-of-Right Siting: As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

4.17.2.2. Building Inspector: The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

4.17.2.3. Building Permit: A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar photovoltaic installations.

4.17.2.4. Designated Location: The locations designated by Town Meeting, in accordance with Massachusetts General Laws Chapter 40A, section 5, where ground-mounted large scale solar photovoltaic installations may be sited as-of right. Said locations are shown on a Zoning Map of Kingston, Massachusetts dated December 17, 1993 revised through April 5, 2010 pursuant to Massachusetts General Laws Chapter 40A Section 4. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Town Clerk.

4.17.2.5. Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

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

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

4.17.2.8. Site Plan Review: review by the Site Plan Review Authority to determine conformance with local zoning ordinances or bylaws.

4.17.2.9. Site Plan Review Authority: For purposes of this bylaw, Site Plan Review Authority refers to the body of local government designated as such by the municipality

4.17.2.10. Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

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

4.17.3.0. General Requirements for all Large Scale Solar Power Generation Installations The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

4.17.3.1. Compliance with Laws, Ordinances and Regulations

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

4.17.3.2. Building Permit and Building Inspection

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

4.17.3.3. Fees

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

4.17.3.4. Renewable or alternative energy research and development facilities, and renewable or alternative energy manufacturing facilities, subject to Site Plan Review by the Planning Board, pursuant to Section 7.3. and 4.17.3.5. Site Plan Review and subject to the dimensional requirements of Section 4.17.3.9. Dimension and Density Requirements. Said Site Plan Approval shall be an "expedited" application and permitting process under which said facilities may be sited within one (1) year from the date of initial application to the date of final approval by the Planning Board.

4.17.3.5. Site Plan Review

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Site Plan Review Authority prior to construction, installation or modification as provided in this section.

4.17.3.5.1. General

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

4.17.3.5.2. Required Documents

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

(a) A site plan showing:

- i.** Property lines and physical features, including roads, for the project site;
- ii.** Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- iii.** Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- iv.** One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices;
- v.** Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- vi.** Name, address, and contact information for proposed system installer;
- vii.** Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- viii.** The name, contact information and signature of any agents representing the project proponent; and

(b) Documentation of actual or prospective access and control of the project site (see also Section 4.17.3.6.);

- (c) An operation and maintenance plan (see also Section 4.17.3.7.);
- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance; and
- (f) Description of financial surety that satisfies Section 4.17.3.13.3.
- (g) A certified abutters list with pre addressed stamped envelopes to notify abutters within 500 feet of subject property.
- (h) A pre-construction modeling report using Solar Glare Hazard Analysis Tool (SGHAT) or comparable analysis to minimize any glare to surrounding areas.

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

4.17.3.6. Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

4.17.3.7. Operation & Maintenance Plan

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

4.17.3.8. Utility Notification

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

4.17.3.9. Dimension and Density Requirements (Amended 4/2/11 ATM, Article 54 - Amended 4/5/14, Art 46)

4.17.3.9.1. Setbacks

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

- (a) Front yard: The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the front yard shall not be less than 50 feet.
- (b) Side yard: Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the side yard shall not be less than 50 feet.
- (c) Rear yard: The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the rear yard shall not be less than 50 feet.

4.17.3.9.2. Appurtenant Structures

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

4.17.3.9.3. Protection of Forest Land

Not more than 1 acre of land shall be deforested for any one Ground-Mounted Industrial Solar Photovoltaic Installation, and no such installation shall be placed on such land that was deforested within the prior 5 years.

4.17.3.10. Design Standards

4.17.3.10.1. Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

4.17.3.10.2. Signage

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

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

4.17.3.10.3. Utility Connections

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

4.17.3.11. Safety and Environmental Standards

4.17.3.11.1. Emergency Services

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

4.17.3.11.2. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

4.17.3.12. Monitoring and Maintenance

4.17.3.12.1. Solar Photovoltaic Installation Conditions

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

4.17.3.12.2. Modifications

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

4.17.3.13. Abandonment or Decommissioning

4.17.3.13.1. Removal Requirements

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 4.17.3.13.2. of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

4.17.3.13.2. Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

4.17.3.13.3. Financial Surety

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Site Plan Review Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

4.18. Small Wind Energy Systems (4/2/11 ATM, Article 55)

4.18.1. Purposes:

The purposes of this section 4.18. are to provide a permitting process for small wind energy systems (SWES) so that they can be utilized in a cost-effective, efficient and timely manner to reduce the consumption of utility-supplied electricity; to integrate these systems into the community in a manner that minimizes their impact on the character of neighborhoods, on property values and on the scenic, historic and environmental resources of the Town; and to protect health and safety, while allowing wind energy technologies to be utilized. For the purpose of this by-law Small Wind Energy Systems (SWES) are units that carry a nameplate rating of 50 kW or less. This by-law shall apply to any SWES that will exceed the height limitations of the zoning by-law section 5 intensity schedule.

4.18.2. Permit Requirement:

4.18.a. Small wind energy systems that comply with the requirements of this Section may be allowed by permit from the building department in accordance with the requirements set forth herein. The building department may grant a permit only if the application complies with the provisions of this bylaw and is consistent with the applicable criteria for granting permits. The building inspector may waive or adjust any of the requirements outlined below, consistent with the purposes of this Section, except for the special requirements for the reduction of setbacks in 4.18.3.c.3. below.

4.18.b. An existing site plan shall be modified if applicable or if no existing site plan is available a new plan shall be prepared to scale by a registered land surveyor or licensed civil engineer showing the location of the proposed SWES and any associated buildings or appurtenances, distances to all property lines and abutting residences, existing and proposed structures, existing and proposed elevations, above ground utility lines, any other significant features or appurtenances, any measures designed to mitigate the impacts of the SWES, and at the discretion of the building inspector:

4.18.b.1. Existing conditions and Proposed Improvement Maps including, without limitation, the following scaled information for both existing conditions and proposed improvements: locus map; adjacent streets and ways; lot boundaries; location and names of adjacent properties; easements and restrictions; land use districts; overlay districts (if any); topography including contours; wetlands; water bodies; watercourses; and areas subject to flooding; soil types; vegetation; farmland; trails; structures; and unique natural site features including screening, fencing, and plantings; open space or recreational areas; lighting; natural and man-made drainage infrastructure; vehicular circulation; signs; building plans and elevations; and other information required by the building inspector to properly evaluate the proposal.

4.18.b.2. Design features which will integrate the proposed SWES into the existing landscape, maintain neighborhood character, enhance aesthetic assets and screen objectionable features from neighbors and roadways; and control measures to prevent erosion and sedimentation during and after construction and to specify the sequence of grading and construction activities, location of temporary control measures and final stabilization of the site.

4.18.b.3. If the land will be developed in more than one phase, a comprehensive plan for an entire property showing intended future development.

4.18.c. Any submittals required in this subsection 4.18.2.a. may be waived if in the opinion of the building inspector the materials submitted are sufficient for the building inspector to make a decision.

4.18.3. Design Setbacks:

4.18.3.a. Tower Height:

On parcels of less than 90,000 square feet, the tower height shall not exceed 60 feet. For parcels of 90,000 square feet or more, the tower height shall not exceed 160 feet. For the purposes of this Section, tower height shall be measured from the existing grade to the upper most extension of the structure.

4.18.3.b. Fall Zone:

The fall zone is defined as a circular area equal to the height of the entire SWES measured from the top of the foundation to the point of greatest vertical extension.

4.18.3.c. Setbacks:

4.18.3.c.1. The minimum horizontal distance from the base of the tower structure to any property line or road right-of-way shall be the tower height plus 10 feet.

4.18.3.c.2. No part of the SWES, excluding guy wire and anchors, may extend closer to the property boundaries than the setback for the applicable zoning district.

4.18.3.c.3. The SWES shall be a minimum of three times its tower height from existing abutting residences.

4.18.3.c.4. The building inspector may reduce the above setback distances for the SWES in the course of his review of the application, consistent with the requirements of public health, safety, and welfare and the purposes of this section. If the setback distances are reduced to less than the height of the tower from abutting property such reduction shall only be permitted if the affected abutting property owner(s) executes a recorded easement allowing the fall zone to extend onto such abutting property.

4.18.3.d. Access:

All small wind energy systems shall be designed and maintained to securely prevent unauthorized access to any climbing apparatus.

4.18.3.e. Color and Finish:

A non-reflective exterior color designed to blend with the surrounding is encouraged. No commercial advertising, designs, decorations, or writing other than the manufacturer's standard identification shall be visible at or beyond the property line.

4.18.3.f. Visual Impact:

The applicant shall demonstrate through project site planning and proposed mitigation that the SWES minimizes impacts on the visual character of the surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design or appearance, buffering, screening, or lighting. All electrical conduits shall be underground.

4.18.3.g. Noise:

Small wind energy systems shall comply with the Massachusetts noise regulation (310 CMR 7.10)

4.18.3.h. Compliance with FAA Standards:

All SWES towers shall also comply with applicable FAA regulations.

4.18.4. General Requirements:

4.18.4.a. Construction:

The construction, operation, maintenance and removal of wind facilities shall be consistent with all other applicable Town, State and federal requirements, including all applicable health, safety, construction, environmental, electrical, communication and aviation requirements.

4.18.4.b. Operation and maintenance:

An application for a permit shall include a plan for the general procedures for safe and effective operation and maintenance of the facility.

4.18.4.c. Compliance with State Building Code:

Building permit applications for small wind energy systems shall comply with the state building code and all applicable electrical codes.

4.18.4.d. Utility Notification:

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off grid systems shall be exempt from this requirement.

4.18.5. Abandonment and Removal:

4.18.5.a. Abandonment:

A SWES 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. If the building inspector determines that a SWES is abandoned, the owner shall be required to physically remove the SWES within 90 days of written notice from the building inspector. The owner shall have the right to respond to the written notice of abandonment within 30 days of such notice. If the owner can provide information demonstrating the SWES has not been abandoned, the building inspector may withdraw the notice of abandonment. If the owner fails to remove the SWES in accordance with the requirements of this Section after 90 days of such notice and the building inspector has not

withdrawn such notice, the Town shall have the authority to enter the property and physically remove the facility at the owner's expense.

4.18.5.b. Removal:

"Physically Remove" shall include but not be limited to:

4.18.5.b.1. Removal of SWES, any equipment shelters, and security barriers from the subject property.

4.18.5.b.2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

4.18.5.b.3. Restoring the location of the SWES to its natural condition, except that any landscaping and grading shall remain in the after-condition.

4.19 Mixed Commerce District Overlay District (Accepted 6/5/2018 Art 48)

4.19.1. Purposes

The purposes of the Mixed Commerce Overlay District ("MCOD") is to establish an overlay district that allows for a mixture of various commercial and/or light industrial land uses as set forth herein which reflects the goals, vision and policies of the Town of Kingston, including but not limited to:

- (a) employ Town resources to attract businesses which are compatible with achieving beneficial economic development while and preserving the Town's character;
- (b) establish a design review process as an integral part of a streamlined and integrated permitting process;
- (c) promote economic development within the Town that results in expanded and new light industrial and high-tech businesses within the MCOD, provides new jobs and expands the Town's tax base and public services without increasing the tax burden on Town residents;
- (d) concentrate commercial and industrial development in the designated MCOD areas; and
- (e) provide additional employment opportunities.

4.19.2. Permitted Uses. Subject to receipt of a Special Permit from the Special Permit Granting Authority, as required below, the following uses are permitted in the MCOD:

4.19.2.1. Professional or business offices or Office Park.

4.19.2.2. Industrial Park.

4.19.2.3. Manufacturing, processing or research facilities.

4.19.2.4. Hotel, Inn, Motel or Lodging House.

4.19.2.5. Restaurant.

4.19.2.6. Banks, including drive-in or window services, provided that no vehicles waiting for service shall park or stand on a public way.

4.19.2.7. Showrooms.

4.19.2.8. Wholesale and/or food distribution centers, provided that all bulk sales, outside display and storage occur to the rear of the principal building.

4.19.2.9. Warehouse use.

4.19.3. Special Permit Procedures

4.19.3.1. Any applicant which desires to opt into the MCOD overlay zoning for any of the uses permitted under Section 4.19.2. above shall be required to undertake a two-step process with the Special Permit Granting Authority. Said two-step process shall entail (i) the issuance of a special permit and (i) site plan approval. First, the applicant shall apply to the Special Permit Granting Authority for a special permit for any tract of land located within the MCOD which meets the dimensional requirements of Section 4.19.3.2. below. The special permit shall (i) establish the permitted uses for the proposed site, (ii) set the maximum building and/or unit densities and floor area ratio, (iii) determine the maximum building height, (iv) set the site grades for the clearing and grading of the site, (v) impose any other standards which may be reasonably imposed by the Planning Board.

The second component of this process involves the issuance of a site plan approval by Special Permit Granting Authority ("Site Plan Approval"). The Site Plan Approval shall: (i) establish location and number of building lot(s) or development site(s) within the MCOD, (ii) identify specific tenants or occupants (if

known) within the proposed MCOD and the permitted uses on such lots, and (iii) determine the location of proposed building footprints, drive aisles, parking locations, lighting, signage, architectural designs and specifications, drainage, utilities and other such details. Final plans and specifications with respect thereto must be submitted to and approved by the Special Permit Granting Authority on a site plan approval basis only, as part of any second and/or subsequent Site Plan Review submissions for any given MCOD. The site plan approval process as set forth in Section 7.7. or regulation as may be promulgated by the Special Permit Granting Authority.

Notwithstanding the foregoing, nothing herein shall preclude an applicant from seeking a special permit and site plan approval concurrently. Should an applicant elect to do so, the hearing shall be combined, with the relevant deadlines and time periods to follow special permit procedure.

4.19.3.2. Table of Dimensional Requirements.

Dimensional Requirements

MCD

Minimum area of tract to qualify for a special permit in the MCD	80 acres
Minimum continuous frontage of tract on an existing public street, or on a way approved under the Subdivision Control Law (in feet)	500'

4.19.3.3. Special Permit Granting Authority ("SPGA")

The Planning Board shall be the SPGA for all projects in the MCOD. In acting upon applications for a special permit, the SPGA shall be governed by the provisions of this Section and by Section 7.7.

4.19.3.4. Special Permit Application Requirements

The application to the SPGA for a special permit under this Section shall be accompanied by a conceptual site plan, an existing conditions plan, and a conceptual subdivision plan where the Planning Board is the SPGA, as the Planning Board may describe in development regulations promulgated hereunder.

Where the applicant submits a definitive subdivision plan complying with the Subdivision Control Law and the Planning Board's "Development Regulations", insofar as practical, the public hearing on the application for the special permit and the definitive subdivision plan shall be held concurrently.

4.19.3.5. Environmental Considerations

The application to the SPGA for a special permit under this Section shall be accompanied by proposals for mitigating the environmental impacts of the proposed development such as:

(a) **Earth moving and grading activities**

The applicant shall design the project such that the site grades are transitioned to surrounding properties with no sand or gravel being removed from the site.

(b) **Landscaping and Irrigation**

The applicant shall incorporate measures to minimize the amount of water needed for maintaining outdoor landscaping, such as the use of native species and low-water-demand plantings, and the use of rain sensors and drip systems. The landscaping plan shall include a vegetated buffer along any adjacent protected open space properties of at least 25', with the design of such vegetated buffer to be coordinated with the grades and nature of any adjacent habitat areas.

(c) **Stormwater Management**

The applicant shall design the project in accordance with the Massachusetts Stormwater Management Standards. The Standards address water quality (pollutants) and water quantity (flooding, low base flow and recharge) by requiring the implementation of a wide variety of stormwater management strategies, including environmentally sensitive site design and Low Impact Development (LID) techniques to minimize impervious surface and land disturbance, source control and pollution prevention, structural BMPs, construction period erosion and sedimentation control, and the long-term operation and maintenance of stormwater management systems. The applicant shall utilize de-icing products that provide for safe roadways with less environmental impact than traditional road salt.

(d) **Water & Sewer Components**

The water system shall include low flow water fixtures to reduce water usage. The sewer system shall incorporate measures to reduce Inflow/Infiltration into the sewer system (such as watertight sewer

manholes with gasket rims) and to reduce groundwater transference within the sewer trench box (such as clay saddles).

(e) Traffic Demand Management

TDM features will be incorporated into the site design such as pedestrian connections, bike racks, bus stops, and preferred parking for vans and carpools. Occupants will be provided with information to encourage car-pooling, ride sharing, and other trip reducing measures.

(f)

(g) Energy Conservation / Greenhouse Gas Reduction

The design shall incorporate environmentally appropriate components for heating (such as high-efficiency boilers), lighting fixtures (interior and exterior), building components (windows, insulation, etc.), and HVAC systems. The applicant shall evaluate, and incorporate where feasible and practical, on-site energy generation opportunities, such as photo-voltaic and wind generation, including locating and positioning those opportunities to enhance their benefits.

4.19.3.6. Additional Information Required for Application

In addition to the materials described in Section 4.19.3.4., the application to the SPGA for a special permit for MCD shall be accompanied by the following materials:

- (a) A plot plan showing the proposed location of all buildings and structures on the lot, or proposed building envelopes, if applicable.
- (b) An off-street parking and loading plan.
- (c) A landscaping plan.
- (d) A traffic study evaluating traffic volume and traffic safety issues; and a proposal for mitigating measures to improve both safety and capacity or for trip reduction programs, if any.
- (f) Proposals for mitigating measures or the construction of improvements to deal with the impacts, other than traffic impacts, of the proposed development or to provide sufficient capacity in Town facilities or services, and any other material necessary for the SPGA to make the finding and determination required by the Zoning By-laws or as may be required by the written regulations or findings of the SPGA.
- (g) The SPGA may request other information, plans and studies as may be reasonably required

4.19.4 MCD District Boundary

The MCD boundary is an overlay district depicted on the Town's Zoning Map. It is an overlay district that cannot be construed as affecting or abridging the underlying Zoning Districts. All uses allowed in the underlying Zoning District shall continue to be allowed in the manner permitted under these zoning bylaws.

AND FURTHER,

(2) Amend the Zoning Map of the Town of Kingston to adopt a Mixed Commercial District overlay district on certain parcels of land located off of Route 44 on the Kingston/Plymouth Town Line and shown on Assessor's Map 99 Lot 3, and a portion of Map 99 Lot 2, and a remnant of Map 95 Lot 3;

AND FURTHER,

(3) Amend the Kingston Zoning Bylaw Section 5.2.1. by adding to the Intensity Schedule the dimensions for lots with the Mixed Commercial District as follows:

District	Minimum Lot Size		Max. Height Dimensions	Max. Lot Coverage by Bldg.	Min. Open Space	Minimum Yard Size				
	Lot Area in Square Feet	Continuous Frontage in Feet	Ft	In % (2)	In %	Side Yard in Feet	Rear Yard in Feet	Front Yard in Feet		
MCD	40,000 (6)	200	55	50	25	40	40	50	-	-

4.20. MIXED USE REDEVELOPMENT OVERLAY DISTRICT

4.20.1. Purpose

The purposes of the Mixed Use Redevelopment Overlay District (MUROD) is to establish an overlay district that allows for a mixture of residential, retail, commercial, entertainment and mixed-use development within a distinctive, attractive and livable environment that reflects the goals, vision and policies of the Town of Kingston.

4.20.2. Definitions

In addition to the Definitions contained elsewhere in the Kingston Zoning Bylaw, the following terms shall have the following meaning:

4.20.2.1. Mixed Use Redevelopment Overlay Zoning District. A zoning district that is overlaid, in whole or in part, upon one or more underlying zoning districts, as depicted on the Town's Zoning Map, and allows additional or alternative requirements or provisions that may not be allowed by the underlying zoning, while still allowing uses already permitted in the underlying district.

4.20.3. Site Plan Approval and Special Permit Granting Required.

Any development within the MUROD under this Bylaw shall require Site Plan Approval and, as may be set forth below, a Special Permit. The Planning Board shall act as the Site Plan Approval and Special Permit Granting Authority for any development proposals requiring Site Plan Approval and/or a Special Permit. The proceeding for Site Plan Approval shall be consolidated with the Special Permit proceedings, as may be applicable, with the deadlines required for Special Permit Applications applying to the Site Plan Approval proceeding. Where standards or other requirements that may be applicable to any development proposed hereunder may conflict with those in the underlying district, the overlay provisions shall apply; except when in conflict with the Water Resource Overlay District.

4.20.4. Permitted Uses. Subject to receipt of Site Plan Approval from the Site Plan Granting Authority, as required below, the following uses are permitted in the MUROD:

4.20.4.1. Hotels, Motels and Inns; not to exceed one hundred fifty (150) rooms or rental units for the entire overlay district.

4.20.4.2 On-Site Solar Photovoltaic Installations, including ground mounted and roof-top solar photovoltaic systems.

4.20.5. Special Permit Uses. Subject to receipt of Site Plan Approval and a Special Permit from the Special Permit Granting Authority, as required below, the following uses are permitted in the MUROD:

4.20.5.1. Multi-Family and Apartment Dwellings: up to a maximum of three hundred units for the entire overlay district with one or two bedrooms per unit, and no more than 5% of the total number of units having more than two bedrooms.

4.20.6 Dimensional Requirements

4.20.6.1. Height Limitations for Hotels, Motels, Inns, Multi-Family Dwellings, Apartments and Existing Mixed Use Buildings: Building height for hotels, motels, inns, multi-family, apartments or existing mixed use buildings shall not exceed the height restrictions of the underlying zoning district without prior written approval from the fire chief (said approval to be supplied to the Planning Board) and/or the Planning Board. No building shall have more than four (4) stories.

4.20.7 Parking Requirements.

4.20.7.1 Excepting as set forth herein, the base parking standards for the underlying Zoning Districts shall apply to individual uses in the MUROD.

a. Required Parking for Hotel, Motel and Inn Uses. For hotel and inn uses, one space shall be provided for each hotel, motel or inn room or suite.

4.20.7.2. Shared On-Site Parking.

a. Non-competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demands for noncompeting uses. Up to 60% of the requirements for the predominant use may be waived by the Planning Board during Site Plan Approval if the applicant can demonstrate that the peak demands for two uses do not overlap.

b. Competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements where peak demands do overlap. In these cases, the Planning Board during Site Plan Approval may reduce the parking requirements of the predominant use by up to 30%, provided that the Applicant demonstrates that such reduction will not result in a shortage of parking spaces.

- 4.20.8. Decision Criteria for the Planning Board. The Planning Board may approve, approve with conditions or deny an application for Site Plan Approval or a Special Permit within the MUROD. The criteria for this decision are as follows:
- 4.20.8.1. The degree to which the proposed development furthers the purposes of this Bylaw as listed in Section 4.20.1;
 - 4.20.8.2. Compliance with the requirements listed in the Kingston Zoning Bylaw;
 - 4.20.8.3. In the case of projects requiring Site Plan Approval, consistency with the findings required in Section 7.3.4 of the Bylaw;
 - 4.20.8.4. In the case of projects requiring Special Permits, consistency with the findings required in 7.7.2 of the Bylaw.
 - 4.20.8.5. The ability of the neighborhood to absorb the level of traffic that will result from the proposed development; and
 - 4.20.8.6. The ability of the applicant or Town to provide water and sewer service as proposed.
 - 4.20.8.7. The proposed project's benefits to the Town of Kingston, including but not limited to benefits relating to: economic development, housing choice and smart growth principles.

4.20.9. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

4.20.10.

The Planning Board may adopt regulations, not consistent with this Bylaw, for design standards, plan requirements and other essential guidelines that will facilitate developments proposed in the MUROD.

4.21. Marijuana Establishments: (6/26/18, Art 5)

4.21.1. Purpose:

- (a) To provide a permitting process for the placement of Marijuana Establishments, in accordance with the Regulation and Taxation of Marijuana Act, as amended, and as codified in G.L. c.94G, §1, *et seq.* (hereinafter G.L. c. 94G), and the Cannabis Control Commission (hereinafter CCC) Regulations promulgated thereunder, 935 CMR 500.000, as the same may be amended from time-to-time, in locations suitable for lawful Marijuana Establishments;
- (b) To minimize and mitigate adverse impacts of Marijuana Establishments on adjacent properties, public ways, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate, and other land uses potentially incompatible with said facilities, by regulating the siting, design, and placement of Marijuana Establishments.

4.21.2. Definitions:

(c) Definition of Marijuana and Marijuana Establishments:

Craft Marijuana Cultivator Cooperative is a marijuana cultivator comprised of residents of the Commonwealth organized as a limited liability company or limited liability partnership under the laws of the Commonwealth, or an appropriate business structure as determined by the CCC, and that is licensed to cultivate, obtain, manufacture, process, package, and brand marijuana and marijuana products to deliver marijuana to Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana or ***Marihuana*** is all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws; provided that "Marijuana" shall not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
- (2) Hemp; or
- (3) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Cultivator is an entity licensed to cultivate, process, and package marijuana, to deliver marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana Establishment is considered a cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, all as defined in G.L. c. 94G. Said Marijuana Establishments shall be deemed independent of any other definition in this by-law and not a subset or subcategory of any other category. Said Marijuana Establishments may never be considered an accessory use.

Marijuana Product Manufacturer is an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to Marijuana Establishments and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana Products are products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils, and tinctures, as defined in G.L. c. 94G.

Marijuana Retailer is an entity licensed to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers, as defined in G.L. c. 94G, further provided that a Marijuana Retailer may not be considered a Retail Business in any other context.

Marijuana Testing Facility is an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants, as defined in G.L. c. 94G.

- (d) Definition of other terms used in this section: Where not expressly defined in the Code of the Town of Kingston, Section 2.0., Zoning, terms used in this Section shall be interpreted as defined in The Regulation and Taxation Of Marijuana Act, as amended, and as codified in G.L. c.94G, and the CCC Regulations promulgated thereunder, 935 CMR 500.000, *et seq.*, as the same may be amended from time-to-time, and otherwise by their plain language.

4.21.3.

General Requirements:

- (e) A Special Permit shall be required for the establishment of a Marijuana Establishment. For the purposes of this Section, the Special Permit Granting Authority (SPGA) shall be the Planning Board.
- (f) All permitted Marijuana Establishments shall have received a provisional license from the CCC and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. Failure to obtain a final license from the CCC shall result in automatic rescission of the special permit as more fully described in 7(e) below. No Building Permit or Certificate of Occupancy shall be issued for a Marijuana Establishment that has not received a provisional license from the CCC.
- (g) The Special Permit shall be valid only for the Applicant(s), shall become invalid if the Applicant(s) cease operating the licensed Marijuana Establishment, and shall not transfer with a change in ownership of the business and/or property.
- (h) The Special Permit shall become invalid if the Applicant fails to obtain a final license from the CCC or upon the expiration or termination of the Marijuana Establishment's CCC license.
- (i) Parking and loading for a Marijuana Establishment shall be in accordance with Section 6.4 and Section 6.5 as well as the establishments applicable zoning. Off Street Parking, Access, and Loading of Kingston's Zoning By-Law. However, the SPGA may require a greater number of parking spaces and/or loading bays if it finds, based on the application materials submitted to the SPGA regarding operation of the Marijuana Establishment, that the minimum requirements are not sufficient.
- (j) All signage shall conform to the requirements of Section 6.6. Sign Regulations of Kingston's Zoning By-Law. Any exterior sign may identify the Establishment, but shall not contain any other advertisement. The SPGA may impose additional restrictions on signage as appropriate for the site, provided such regulations and restrictions do not conflict with state law or any CCC regulation.

- (k) All Marijuana Establishments shall operate within a fully enclosed building that is monitored by surveillance cameras, alarm systems, and all other security measures in accordance with CCC Regulations deemed appropriate to ensure patron and community safety and deter unauthorized access to the premises.
- (l) No products shall be displayed in the Marijuana Establishment's windows or visible from any street or parking lot.
- (m) Industry Best Management Practices shall be utilized to control odors inside and outside all types of Marijuana Establishments. No odors from marijuana or its processing shall be detectable by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining property or use.
- (n) Waste disposal shall be in accordance with the CCC Regulations and State and local regulations. No composting of waste materials may occur at the Marijuana Establishment. Outside storage of general solid waste not containing any usable marijuana shall be screened with a locked fence. Solid waste containing any usable marijuana shall be stored inside a designated locked, limited-access area located inside the main structure. Liquid waste from processing or disposal of marijuana shall not be discharged to surface waters or groundwater or septic systems or municipal sewer systems. Liquid waste must be stored pending disposal in an industrial wastewater holding tank in accordance with 314 CMR 18.00: *Industrial Wastewater Holding Tanks and Containers*.

4.21.4.

Location:

- (o) The Zoning Districts in which Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, and Marijuana Product Manufacturers, may be located are the Industrial District and the Commercial/Industrial Park District.

The Zoning Districts in which Marijuana Testing Facilities may be located are the Commercial District, the Industrial District, and the Commercial/Industrial District.

- (p) The Zoning District in which Marijuana Retailers may be located is the Commercial District.
- (q) No Marijuana Retailer may be located within 1,000 feet of the real property comprising any of the following:
 - 01) A public or private school;
 - 02) Licensed Daycare center; or
 - 03) A similar facility in which minors commonly congregate (e.g. library, playground, etc.).
- (r) No Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, Marijuana Product Manufacturers, and Marijuana Testing Facilities may be located within 500 feet of the real property comprising any of the following:
 - 01) A public or private school;
 - 02) Licensed Daycare center; or
 - 03) A similar facility in which minors commonly congregate (e.g. library, playground, etc.).
- (s) The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Section (4)(b), (4)(c), or (4)(d) above to the nearest point of the property line of the proposed Marijuana Establishment.

4.21.5.

Application Process and Requirements:

- (t) Application Procedures: The application for a Special Permit for a Marijuana Establishment shall be filed at a regularly scheduled Planning Board meeting and with the Town Clerk in accordance with § 97-11.C.(1) of Kingston's Zoning By-Law and with G.L. c. 40A § 9. The application shall be signed by a duly authorized officer of the Applicant.
- (u) Required Documents: The Applicant shall provide the SPGA with 15 copies of the application and the required fees. All plans and maps shall be prepared, stamped, and signed by a professional engineer or architect licensed to practice in Massachusetts. An application to the SPGA shall include, at a minimum, the following information:
- 01) The Applicant's name, address, telephone number, and email address;
 - 02) Evidence that the Applicant has site control and the right to use the site for a facility in the form of a deed or valid purchase and sale agreement, or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
 - 03) A certified copy of the provisional license issued by the CCC to the Applicant, along with copies of all other materials issued by the CCC to the Applicant, except for those materials that are deemed by the CCC to be confidential and therefore subject to the public records exemption;
 - 04) A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to, cultivating and processing of marijuana or marijuana products as defined in G.L. c. 94G, § 1, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities;
 - 05) A map depicting all properties and land uses within a one thousand-foot (1,000') radius (minimum) of the project site, whether such uses are located in Kingston or within surrounding communities, including, but not limited to, all educational uses, daycare, preschool and afterschool programs, playgrounds, libraries, public parks, houses of worship, and housing facilities owned by a public housing authority;
 - 06) A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of parking, the location of pedestrian and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type, and direction of all outdoor lighting on the site, and any landscape design;
 - 07) A plan or plans showing any proposed stormwater management system, which plan(s) shall meet the submission requirements of Kingston's Stormwater Management Rules and Regulations;
 - 08) Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are strongly recommended, but not required;
 - 09) A written Energy Use/Environmental Plan demonstrating best practices for energy conservation to ensure that there are no undue impacts on the natural environment; the plan shall include proposed energy and water conservation measures, including use of energy efficient lighting where appropriate, measures for controlling odors and effluent, and measures for disposal of solid waste.
 - 10) Traffic Impact Report;
 - 11) A Security Plan, to be submitted to the Kingston Police Department only, including all security measures for the site and for transportation of marijuana and marijuana products to and from off-site premises. The Security Plan shall include a site plan showing all exterior proposed security measures for the premises, including lighting, fencing, gates

and alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;

- 12) A description of waivers, if any, from the CCC Regulations issued for the Marijuana Establishment.

- (v) Within five business days of the receipt of the application, the SPGA shall refer copies of the application to the Building Commissioner, the Conservation Commission, the Board of Health, the Fire Department, and the Police Department. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 30 days of referral of the application shall be deemed lack of opposition.
- (w) After notice and public hearing and consideration of application materials, public comments, and the recommendations of other Town boards and departments, the SPGA shall act upon the application.

4.21.6. Decision Criteria: The SPGA shall issue a special permit for a Marijuana Establishment only if it finds that the Applicant has submitted sufficient information from which it can conclude that:

- (x) The Marijuana Establishment has received a provisional license from the CCC as required in (3)(b) above and complies with all applicable state and local laws, regulations, and requirements, including, but not limited to, health and safety regulations, and construction and environmental requirements;
- (y) The building and site have been designed to be reasonably compatible with other buildings in the area;
- (z) The siting of the Marijuana Establishment will be accomplished so as to minimize any adverse impacts on abutters and other parties in interest, as defined in G.L. c. 40A, § 11, including but not limited to compliance with the following:
 - i. proper location in accordance with the distance and location requirements in § 97-5.H (4) above
 - ii. design which ensures sufficient buffering, except to the extent that any part of such buffering is contrary to state law and the CCC Regulations;
 - iii. design which minimizes visual impacts, noise, odors, and light pollution or other undue nuisance;
 - iv. design which creates no hazard or congestion;
 - v. design which shields loading and service areas;
 - vi. design which ensures adequate waste disposal of products containing usable marijuana that does not adversely impact the environment or water resources.
- (aa) The Marijuana Establishment will create no substantial harm to the established or future character of the neighborhood or town.
- (bb) With due consideration to aesthetics, the Marijuana Establishment is designed to ensure convenient, safe and secure access as follows:
 - vii. personal safety of those working at or utilizing the facility;
 - viii. personal safety for clients and invitees; and
 - ix. loading and service areas are designed to be secure;
 - x. protection of the premises from theft.

(cc) The Applicant has not provided materially false documents or testimony.

(dd) The Applicant has satisfied all of the conditions and requirements of Kingston's Zoning By-Law.

4.21.7. Special Permit Conditions: The SPGA shall impose conditions reasonably appropriate to improve siting, design, placement, traffic flow, and public safety; protect water quality, air quality, and significant environmental resources; preserve the character of the surrounding area; and otherwise serve the purpose of this By-Law. In addition to any specific conditions applicable to the Marijuana Establishment, the SPGA shall include the following conditions in any special permit granted under this By-Law:

4.21.7.1. With 24 hours of creating an Incident Report required by the CCC Regulations, the permit holder shall file a copy of said Incident Report with the Board of Selectmen, with copies to the Zoning Enforcement Officer and the SPGA. Such reports may be redacted as necessary to comply with any and all applicable laws and regulations;

4.21.7.2. The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by the CCC or the Division of Administrative Law Appeals, as applicable, regarding the Marijuana Establishment with the Board of Selectmen, with copies to the Zoning Enforcement Officer and the SPGA, within 48 hours of receipt by the Marijuana Establishment;

4.21.7.3. The permit holder shall provide to the Board of Selectmen, the Zoning Enforcement Officer, the SPGA, the Police Chief, and the Fire Chief the name, telephone number and email address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder;

(ee) The Special Permit shall be limited to the current Applicant(s), shall become invalid if the permit holder ceases operating the Marijuana Establishment, and shall not transfer with a change in ownership of the business and/or property;

(ff) The Special Permit shall become invalid upon the expiration or termination of the applicant's CCC license or the failure of the Applicant to receive a final license from the CCC;

(gg) The permit holder shall notify the Board of Selectmen in writing, with copies to the Zoning Enforcement Officer, the Police Department, and the SPGA, within 48 hours of the cessation of operation of the Marijuana Establishment, notice by the CCC of denial of a final license, or the expiration or termination of the permit holder's CCC license;

(hh) In the event that the CCC revokes, fails or refuses to issue a final license to the Marijuana Establishment, a Special Permit issued by the Town for the Marijuana Establishment shall be deemed null and void;

4.21.8. Prohibition against Nuisances: The Marijuana Establishment shall not create a nuisance to abutters or to the surrounding area, or create any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent, or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

4.21.9. Conflicts with State Law and Regulations: If any provision, paragraph, sentence, or clause of this By-Law shall be determined to be in conflict with applicable State Law or Regulations, the provisions of said State Law or Regulations shall prevail.

4.21.10. Severability: The provisions of this By-Law are severable. If any provision, paragraph, sentence, or clause of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-Law.

Attachment 4 Table of Use Regulations as follows:

PRINCIPAL USE	DISTRICT
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5.0. INTENSITY OF USE REGULATIONS (Amended 10/10/95 STM, Article 12; 4/27/96 ATM, Article 17, Article 21 ; 5.8 Temp Moratorium Regulating Recreational Marijuana adopted 6/5/17, Art 52)

5.1. Application

5.1.1. A dwelling, building, or any structure hereafter constructed or altered in any district shall not be located on a lot having less than the minimum requirements, except as hereinafter provided.

5.1.2. There shall be only one (1) principal building on a lot, except as hereinafter provided.

5.1.3. A lot or parcel of land containing two (2) or more dwellings existing at the time of adoption of this Bylaw which cannot be divided in conformity with these requirements may, under a special permit by the Planning Board, be divided in a manner complying as closely as possible with these requirements.

5.1.4. Notwithstanding the provisions of Section 5.2.1.1., increased requirements respecting minimum lot area and frontage shall not apply to a lot for single-family residential use, whether or not held in common ownership with adjoining land, provided said lot was created under subdivision control legislation and conformed to all dimensional requirements of the Zoning Bylaw in effect at the time the lot was created, and provided further that the lot contains at least 20,000 square feet.

5.1.5. Increases in front, rear or side yard dimensional requirements shall not apply to existing dwellings, provided that a minimum front yard of 25 feet, minimum side yards of 15 feet, and a minimum rear yard of 20 feet are maintained.

5.2. Dimensional Requirements (Amended 5/3/99 ATM Article 48; 5/9/00 ATM Article 24)

5.2.1. Intensity Schedule

5.2.1.1. No building shall be erected unless in conformance with the requirements of the Intensity Schedule.

5.2.2. Lot Area

5.2.2.1. In all districts, no more than fifteen (15) percent of the required lot area, as defined in this Section 5.0., Intensity of Use Regulations, shall consist of slope over twenty-five (25) percent, wetlands, or swamp. The area within the lot lines on which the building will be situated shall be contiguous and the wetlands or swamp included within the lot lines shall not cross, dissect or otherwise interfere with this area. No part of the required lot area, as defined in this Section 5.0., Intensity of Use Regulations, shall consist of land under water.

5.2.3. Lot Frontage

5.2.3.1. The frontage of all lots shall be measured in a continuous line along the street right-of-way defined in Section 81L of Chapter 41 of the Massachusetts General Laws from the intersection of one side lot line to the intersection of the other side lot line of the same lot.

5.2.4. Exception for Back Lots

5.2.4.1. In R80, R40, and R20 zones, on a parcel of land that cannot be subdivided under the provisions of General Laws Chapter 41, Section 81P, the Planning Board may approve a single back lot under said section provided that:

- a. Said lot can be laid out with at least twenty (20) feet of frontage on an existing way as defined in Section 81L of Chapter 41 of the Massachusetts General Laws.
- b. The lot contains at least three (3) times the minimum lot area for the zoning district in which it is located.
- c. The lot is not distorted in configuration as to prevent or hinder access by emergency vehicles and personnel.
- d. The primary access to the lot is through a driveway over the lot itself.

5.2.4.2. The lot shall be shown on a plan showing the boundaries of the proposed lot, and of abutting lots as they appear on the most recent Assessors Map(s).

5.2.4.3. In case of subsequent redivision of said lot, the twenty (20) foot access strip shall not be deemed a way, public or private, furnishing access to any lots in the subdivision unless the proposed subdivision is in compliance with the provisions of these Bylaws and the Planning Board Subdivision Regulations applicable to lots and ways.

5.2.5. Yards

5.2.5.1. The minimum front yard dimensions required in the following schedule are to be measured from the street line where a plan of the street is on file with the Registry of Deeds, or, in the absence of such a plan, from a line twenty-five feet from the parallel with the apparent centerline of the traveled way or street.

INTENSITY SCHEDULE

(Amended 5/3/99 ATM Article 48; 5/9/00 ATM Article 24)

	Minimum Lot Size		Max. Height Dimensions	Max. Lot Coverage by Bldg.	Min. Open Space	Minimum yard Size					
District	Lot Area in Square Feet	Continuous Frontage in Feet	Ft	In % (2)	In %	Side Yard in Feet	Rear Yard in Feet	Front Yard in Feet			
Conservancy	80,000	100	15	10	75	50	20	50	-	-	-
Industrial District	40,000 (6)	250	40	25	25	40	40	50	-	-	-
Commercial/Industrial	40,000 (6)	250	40	50	25	40	40	50	-	-	-
Commercial	40,000	200	35	50	30	40	40	50	-	-	-
Town Center	10,000	80	40	50	30	15	20	15	-	-	-
Residential Mobile Home Park	8000(5)	70	15	25	25	15	15	20	-	-	-
							Street Type	Arterial	Collector	Sub-Collector	Local or Minor
Residential 80	80,000	200	35	25	50	30	40	50	50	40	25
Residential 40	40,000	200	35	25	50	30	40	50	50	40	25
Residential 20	20,000 (3) 30,000 (4)	100	35	25	40	15	20	50	50	40	25
3A Design District	30,000	150	35	40	40	20	30	-	-	-	-
3A Design District	-	-	-	-	-	Maximum Front Building Setback		35	30	30	25

(1) Fences and flagpoles are allowed in the required front, side and rear yards

(2) Included accessory buildings

(3) Single family dwellings

(4) Two family dwellings

(5) Per mobile home unit. The minimum area of a mobile home park shall be fifty (50) acres. See Section 5.5.1.3.

(6) Per principal building or use. Where and if the lot abuts residential zone areas, the minimum side lot must be 50 feet .

5.2.6. Lot Size Exceptions

5.2.6.1. Increased requirements respecting lot area, frontage, width, yard and similar dimensions provided in this Bylaw or amendments thereto shall be subject to the exceptions provided in Section 6 of Chapter 40A of the General Laws, and 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 the then existing requirements and had less than the proposed requirements but had at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

5.2.7. Reduction of Occupied Lots

5.2.7.1. No lot on which a building is located in any district shall be reduced or changed in size or shape so that the building or lot fails to comply with lot area, width, setback or yard provisions of this Bylaw, or, if such building or lot already fails to

comply with said provisions, such reduction or change would bring about a greater degree of non-compliance with said provisions. This prohibition shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.

5.2.8. Corner Clearance

5.2.8.1. In all districts, no building shall be constructed within the triangular area formed by the exterior lines of intersecting streets and a line joining points on such lines fifty (50) feet distant from their point of intersection or, in the case of a rounded corner, the point of intersection of their tangents, and no structure other than a building, no foliage, shrubbery or other planting, and no open display, storage or other open use shall be located within said triangular area in such a manner as to interfere with traffic visibility across the corner.

5.2.9. Lot Configuration

5.2.9.1. The mean direction of the side lot lines shall be as close as possible to perpendicular to the street line or to this tangent at the point of intersection of the side lot line. In no case shall the direction of the side lot line form an angle of less than seventy-five (75) degrees with the street or the aforesaid tangent.

5.2.9.2. Lots which are so distorted in configuration as to be detrimental to public health, safety, welfare or convenience, even though complying with the dimensional requirements established herein, shall not be permitted.

5.2.10. Stream Setback

5.2.10.1. In any district, no part of a sewage disposal system for any new construction shall be within one hundred (100) feet of the normal spring high water level of any Great Pond, pond, stream, brook, river, swamp or wetland.

5.2.11. Projections

5.2.11.1. Nothing herein shall prevent the projection into any required setback area or yard of cornices, eaves, sills or ornamental features not over three (3) feet in width, or of steps of uncovered porches not over three (3) feet high above average finished grade, and nothing herein shall prevent the projection above a roof of chimneys or antenna, or of steeples, domes, towers or similar projections not used for human occupancy.

5.2.12. Commercial and Industrial Uses on Lots Abutting Private Dwellings

5.2.12.1. When commercial and industrial structures are erected or placed on lots abutting existing dwellings within a Town Center, Commercial or Industrial District, or within an adjacent Residential District, there shall be established and maintained on said lot(s) a dense screen of evergreen trees or tall shrubs or an opaque stockade fence not less than four (4) feet nor more than six (6) feet in height, nor less than the height required to screen objectionable features. All areas, where refuse is gathered, shall be adequately screened from view from the street or adjacent dwellings.

5.2.12.2. On side lines, said screen shall be as near the line of the street as the foundation of either dwelling or commercial or industrial structure, whichever is nearest, and shall extend along the side lot line a distance of not less than thirty-five (35) feet, nor less than the full length of the business structure. On the rear lot line, said screen shall extend the distance necessary to screen from the view of abutting residences.

5.3. Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD), Development with Significant Public Benefit (DSPB), and Planned Residential Development for Seniors (PRDS) (Amended 5/9/00 ATM, Article 25)

5.3.1. In the Residential-40 Districts and R-80 Districts, the following regulations shall apply to any grant of a special permit for Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) as well as Planned Residential Development for Seniors (PRDS) as may be authorized by the Planning Board pursuant to Section 7.0., Administration., pursuant to approval of a Definitive Plan in accordance with the Planning Board Subdivision Regulations, adopted by the Kingston Planning Board, said application shall be reviewed in accordance with the standard set forth in Massachusetts General Laws, Chapter 40A, Section 9; these by-laws; and Rules and Regulations promulgated by the Kingston Planning Board for granting of a Definitive Plan. Development with Significant Public Benefit (DSPB) are, subject to the above, only permitted in Residential -40 Districts. Due to the importance to the Town of Kingston of Water Resource Districts, aquifer recharge areas and Zone II areas and the significant public benefit afforded by these areas no density bonuses for Development with Significant Public Benefit (DSPB) will be permitted in the Residential (R-80) 80 Districts.

5.3.2. Purposes, Objectives and Applicability

The purposes of this section of the Town of Kingston Zoning Bylaw reflect the goals, policies and proposals of the Kingston Master Plan including the Land Use, Housing, Natural and Cultural Resources, and Community Facilities and Services elements. Those purposes include but are not limited to:

- a. To allow for greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is not greater than what is allowed in the district;
- b. To encourage the permanent preservation of open space areas for the conservation of natural resources, outdoor recreation, park purposes, or public access to open space, in conjunction with residential development;
- c. To facilitate the provision of streets, necessary utilities and community services in a more efficient and economical manner;
- d. To encourage the preservation, and minimum disruption, of the existing natural and man made features of land and to minimize impacts on environmentally sensitive areas and to protect the integrity of eco-systems and natural resources; ensuring the protection of water bodies and supplies, wetlands, floodplains, agricultural lands, wildlife, wildlife habitats, species diversity, forests and other natural resources;
- e. To encourage a less sprawling form of development that consumes less open land;
- f. To ensure that the development of additional housing does not detract from the livability, scale, character or economic value of existing residential neighborhoods;
- g. To encourage greater diversity and to provide greater choices of housing opportunities to meet the needs of a population which is diversified with respect to the varying needs of town residents in different stages of life, the number of persons in a household, and income;
- h. To encourage the development of affordable housing;
- i. To provide greater flexibility and design freedom in the development of those tracts of land which lend themselves to planned development;
- j. To promote a high standard in the design of development sites and of individual buildings;
- k. To ensure that such development will not create adverse impacts in the community
- l. To preserve historically or architecturally significant buildings or places;
- m. To permit ostensibly different types of structures and residential uses to be combined in a planned interrelationship;
- n. To facilitate a detailed review by town officials and by the public;
- o. To assure that the number of dwelling units allowed will be consistent with surrounding land uses, and that traffic and public services will not be adversely impacted;
- p. To allow flexibility in the standards and procedures for residential development that are a Residential Development Encouraging Open Space (RDEOS) or Planned Residential Development (PRD) that promote an improved design relationship between new buildings and public facilities and common open space;

5.3.3. The procedure for a Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) or a Development with Significant Public Benefit (DSPB) is not intended to be used as an alternative to allow the construction of a conventional subdivision that could not otherwise comply with the standards and requirements set forth in this Bylaw or in the "Rules and Regulations Governing the Subdivision of Land".

Permitted density of Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) are the same as the underlying zoning. One (1) dwelling unit per acre of developable site in the R-40 zone and one half (0.5) dwelling unit per acre of developable site in the R-80 zone. Developments with Significant Public Benefit (DSPB) and the associated density bonuses are permitted only in the R-40 zoning district. Density bonus associated with DSPB which are permitted only in the R-40 zone can achieve a maximum density bonus of one and a half (1.5) dwelling units per acre of developable site only with the provision of affordable housing units and other defined significant public benefits as described in §5.3.8 below.

5.3.4. Meaning of Terms

- a. A "Residential Development Encouraging Open Space" (RDEOS): shall mean a development in which single-family dwelling units are clustered together into one or more groups on the lot and the clusters are separated from each other and adjacent properties by permanently protected open space. Each individual property shall have access from the rear or side portion of the lot to this open space.
- b. A "Residential Development Encouraging Open Space (RDEOS) Subdivision" is a residential development in which a tract of land is divided into: 1) lots for constructing dwellings in one or more groups and 2) common open space. The common open space may be in one or more locations and may separate groups of dwellings from each other.

- c. A "Planned Residential Development (PRD) " is a unified residential development in which a tract of land is divided into:
- 1) one or more lots for constructing dwellings in one or more groups and 2) common open space. A "Planned Residential Development (PRD) " may have one or more lots used for developments in:
 - 1) condominium ownership,
 - 2) cooperative ownership, or
 - 3) single ownership with individual rented dwelling units
- d. A "Planned Residential Development Subdivision" dwelling units may include:
- 1) Dwelling single family detached – A detached structure containing one (1) dwelling unit intended and designed to be occupied by a single-family.
 - 2) Dwelling, single family attached (duplex) – A building containing two dwelling units which are attached to each other by a common vertical wall, each dwelling unit having open space on or yards on three sides and each dwelling unit having direct access to the ground.
 - 3) Dwelling, accessory apartments – A second dwelling unit either in or added to an existing single family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent living facility with provision within the accessory apartment for cooking, eating, sanitation, and sleeping. Such a unit is an accessory use to the main dwelling. A separate special permit as called for in §4.3.3.4. and § 4.14.3.3. are not required if permitted by special permit for RDEOS, PRD, or DSPB. Size requirements as stated in referenced by-laws are required.
 - 4) Dwelling, townhouse – A building containing three or four dwelling units in a row in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, and each dwelling unit is separated by from any other dwelling unit by one or more party walls.
- e. A "Development with Significant Public Benefit" (DSPB) is a RDEOS or a PRD in which the Planning Board has determined that there are sufficient benefits to the adjacent neighborhood and/or the Town generally to warrant a density bonus. The Planning Board may grant a density bonus of up to ten percent (10%) for each qualifying public benefit with a maximum density bonus of fifty percent (50%) with inclusion of affordable housing units. The maximum density bonus of fifty percent (50%) cannot be reached without the provision of affordable housing.
- f. A "Planned Residential for Seniors (PRDS)": A unified, self contained residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.
- g. A PRDS Community Center: A structure erected solely for the use of residents of the PRDS and their guests. The Community Center shall contain at a minimum, kitchen and separate toilet facilities for men and women and may contain dining areas, game rooms, entertainment rooms, library, laundry facilities, meeting rooms, exercise rooms, locker rooms and/or pool, all of which shall be designed and maintained in conformance with the latest Massachusetts' standards for accessibility for the handicapped.
- h. The developable site area for developments subject to this by-law shall be calculated by subtracting from the lot area, all land which is located in:
- 1) Wetlands areas as defined in Town of Kingston Wetlands Protection Bylaw or G.L. c 131, §40 and pertinent regulations including but not limited to any bank, riverfront area, freshwater wetlands, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on ocean or on any estuary, brook, creek, river, stream, pond or lake or any land under said waters or any land subject to tidal action, coastal storm flowage or flooding or area under Coastal Zone Management, or
 - 2) another zoning district in which the principal use of the lot is not also permitted
- i. Developments with Significant Public Development (DSPB) is Residential Development Encouraging Open Space (RDEOS) or a Planned Residential Development (PRD) in which the Planning Board has determined that there are sufficient benefits to the adjacent neighborhood and/or the Town generally to warrant a density bonus. Due to the public benefit of protecting aquifer recharge area, Water Resource Districts and Zone II areas a development with significant public benefit (DSPB) shall not be permitted in Residential-80 (R-80) Districts.

5.3.5. Dimension Requirements

	RDEOS	PRD	PRDS	DSPB
Minimum area of tract to qualify for development (SQ FT)	435,600	871,200	871,200	871,200
Minimum continuous frontage of tract on an existing public street (in Feet)	500	500	500	500
Minimum yard setback on perimeter of tract (in Feet)	50	100	100	100
Minimum yard setback within development	NR*	NR*	NR*	NR*
Maximum impervious surface ratio (%) (Incl bldg and pavement)	25	25	25	25
Minimum common open space (%)	25	25	25	25
Minimum usable open space per dwelling unit or equivalent(SQ FT)	5,000	5,000	5,000	5,000
Maximum height of dwellings (in ft)	35	35	35	35
Maximum height of dwellings (in stories)	2.5	2.5	2.5	2.5

* No Requirement

5.3.6. Open Space: Common and Usable

5.3.6.1. Purpose

a. Common open space is intended to provide open, natural area on a site for the general use of most, or all, the occupants of a residential development. It is intended to provide for the active and passive recreational use and visual enjoyment of the occupants of a residential development and, in some cases, for residents of the adjacent neighborhood and the public generally. (See Development of Significant Public Benefit)

b. Usable open space is intended to provide outdoor space for the recreational and leisure time use of, and in close proximity to, the occupants of dwelling units in a residential development with three or more dwelling units.

5.3.6.2. Relationship between Usable and Common Open Space

Common open space will qualify as usable open space provided it meets the criteria set forth in section 5.3.7.2. Usable open space will qualify as common open space provided it is not on a privately owned lot, or on a space designated for the exclusive use of one dwelling unit.

5.3.6.3. Condition

Where required or provided, common open space shall be land that:

- may be in one or more parcels of a size and shape appropriate for the intended use;
- meets the requirements for developable site area as that term is defined in section 5.3.4.h.; and
- all occupants of a development have the right to use.

5.3.6.4. Common Open Space Ownership and Management

a. Common open space in any Residential Development Encouraging Open Space shall be conveyed to: (1) The Town, and may be accepted by it for use as open space, conservation, recreation, or park lands; (2) A nonprofit corporation, the principal purpose of which is the conservation of open space; or (3) A corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership of open space shall pass with the conveyances of the lots. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be provided, including a recordable easement and recordable covenant, that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadway.

b. If the common open space is not to be conveyed to the Town, then the applicant shall include as part of the covenant, a provision that the common open space will be deeded to one of the above entities as approved by the Planning Board. In addition, the covenant shall not be released until proof of approved open space ownership has been provided to the Planning Board.

c. If the common open space is not to be conveyed to the Town, the applicant for an Residential Development Encouraging Open Space special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an easement empowering the Town to maintain the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform any maintenance work, the owners of lots within the Residential Development Encouraging Open Space shall be liable to pay the cost thereof and that cost shall constitute a lien upon their properties until said cost has been paid.

5.3.6.5. Accessory Parking or Structures

A maximum of 20 percent of common open space may be devoted to parking for use of the open space or structures used for, or accessory to, active outdoor recreation, provided such parking or structures are consistent with the open space uses of such land.

5.3.6.6. Amount of Usable Open Space Required

The minimum amount of usable open space provided shall be as set forth in the schedule in subsection 5.3.5.

5.3.6.7. Qualifying Usable Open Space

To qualify as usable open space, an area shall conform to the following standards:

a. Usability

The area must have a surface that is adequately drained, and permits recreational or leisure time use. Such surface may include any combination of grass, plant materials, wood, or paving materials of a type designed for pedestrian or recreational use. No open space shall be considered usable if:

- 1.the slope of the finished grade is more than 10 percent, unless the slope is left in its natural undisturbed state that minimizes the potential for erosion and possible sedimentation into watercourses and waterbodies.
- 2.the land does not meet the requirements for developable site area as that term is defined in section 5.3.4.h.

b. Location

The nearest part of the area shall be not more than 300 feet walking distance from the dwelling unit it serves. Usable open space may be located in an area which:

- 1.is on a privately owned lot, or a space designated for the exclusive use of one dwelling unit, or
- 2.qualifies as common open space as provided in section 5.3.6.

c. Size and Shape

It has a minimum horizontal area of 600 square feet and no dimension is less than 20 feet.

d. Structures and Facilities

It shall be open to the sky, and may include unroofed facilities such as a tennis court, swimming pool or similar open air recreational facilities. Accessory structures related to such unroofed facilities may be located within the area.

e. Access

The access to usable open space shall conform to the same standards set forth in a. 1 and a.2. above, but may have dimensions smaller than those set forth in c. above. If the dimensions of the access are smaller than those required in c. above, the access shall not be counted toward the minimum usable open space required 5.3.5.

5.3.7. Criteria for Approval of a Residential Development Encouraging Open Space (RDEOS) or Planned Residential Development (PRD)

Prior to the approval of a Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD), in addition to the findings and determinations required by under Special Permits with Site Plan Review, the Planning Board shall determine that the proposed development meets the following criteria:

a. the common open space includes:

- 1.some, or all, of the outstanding natural features of the site and of the man made features that enhance the land form;
- 2.land that also meets the standards for usable open space;

- 3.land that increases visual amenities for residents of the development and/or of the adjacent neighborhood;
- b. the common open space is readily accessible by one or more paths or entry points specifically designed for access purposes;
- c. the dwellings are sited and oriented in a complimentary relationship to:
 - 1.each other,
 - 2.the common open space, and
 - 3.the adjacent properties. If the development includes different types of dwellings, such as semi-attached dwellings or townhouses, those types of dwellings shall relate to the predominant characteristics of the adjacent single family detached dwellings with respect to scale, mass, setback, proportions and materials;
- d. negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;
- e. where opportunities exist, improved access is provided to, or additional links and connections are developed to, a town system of public facilities, such as open space, recreation facilities, footpaths, bicycle paths or multi-use trails;
- f. that any building which contains more than one dwelling unit is designed so that either:
 - 1. the building has the exterior appearance of a single family dwelling or,
 - 2. alternatively, if single-family attached dwellings and/or townhouses are constructed, each individual dwelling unit has direct access to ground level and an opportunity for a private yard, patio, or other private outdoor space;
- g. there are provisions for common facilities, such as recreation or parking, or for services such as the maintenance of streets, walkways, paths, or multi-use trails, utilities, landscaping or recreation facilities.

5.3.7.1. Special Permits, Dimensional Standards, Waivers, Types of Housing

The Planning Board, acting as Special Permit Granting Authority (SPGA), may, as part of the grant of a special permit with site plan review, also grant a special permit to:

- a. modify the standards:
 - 1. in Intensity Schedule §5.0 Intensity of Use Regulations, for minimum lot area, minimum lot frontage, minimum front yard, minimum side yard, minimum rear yard, maximum percentage of site coverage, and maximum height in stories;
 - 2. the provisions of 5.1.2. relative to the number of principal buildings on a lot;
 - 3. the minimum lot width in section 5.2. and Intensity Schedule;
 - 4. the provisions in subsection 5.3.4.h. relative to contiguous developable site area;
 - 5. in section 6.4. relative to the location of off-street parking spaces;
 - 6. in section 6.4 and Regulation of the Planning Board Governing the Design Construction and Maintenance of Off-Street Parking and Loading Areas relative to setbacks required for parking spaces and driveways; and
 - 7. in section 5.2.7.1. relative to the subdivision of land in relation to lots or buildings that are nonconforming or would not comply with this By-Law as a result of the proposed development;

all as they may apply to individual dwellings or lots within Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD):

- b. permit the types of buildings identified in 5.3.4.c as allowed by special permit;
- c. allow an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit, to be converted to a three-, or four-family dwelling, a multi-family dwelling, an independent living residence, an assisted living residence, or a congregate living facility, provided the Planning Board determines that:
 - 1.the structure can be modified for a residential use that does not have adverse impacts on the adjacent single family neighborhood;
 - 2.the exterior character of the structure is maintained and is consistent with the adjacent neighborhood of single-family dwellings;

3.modification of the existing structure maintains more of the site open than the alternative of removal of the structure and further subdivision of the lot into house lots;

d. allow a driveway on one lot to lead to a parking space on another lot, or to allow a driveway to straddle a lot line, as provided in Rules and Regulations Governing the Subdivision of Land

5.3.7.2. Common Open Space

In granting a special permit with site plan review for a planned residential development, the Planning Board may require a greater amount of common space than the minimum required. In making that determination, the Planning Board shall consider the need to protect the natural resources and features of the site, the type of housing to be constructed and its relationship to common open space, and potential public access to and use of the open space.

5.3.7.3. Accessory Apartment in Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD)

If an accessory apartment is included in a dwelling, in a Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD), it may be considered in the calculation of the density for the development.

5.3.8. Developments with Significant Public Benefit (DSPB)

5.3.8.1. Objectives

The objectives of this section are to allow additional flexibility in the standards and procedures for approval and to provide incentives for applicants to propose a development with significant public benefit and to:

- a. encourage the provision of more public facilities and services that benefit the adjacent neighborhood and the town generally;
- b. encourage types of housing that meet the needs of age groups, income groups, or persons with special needs, that are not adequately served by large single family dwellings;
- c. encourage a greater degree of review of the design features of a residential development;
- d. require a higher qualitative standard:
 1. of building design, and
 2. in the provision of public facilities and the provision of open space;
- e. further the objectives set forth in section 5.3.2.

than would otherwise apply in the administration of zoning and subdivision regulations.

The Planning Board may grant a density bonus of up to ten percent (10%) for each qualifying public benefit with a maximum density bonus of fifty percent (50%) with inclusion of affordable housing units. The maximum density bonus of fifty percent (50%) cannot be reached without the provision of affordable housing. An applicant is not entitled to the maximum development nor is the applicant entitled to approval of a Residential Development Encouraging Open Space (RDEOS), a Planned Residential Development (PRD), a Development with Significant Public Benefit (DSPB) or a Planned Residential Development for Seniors (PRDS). The amount of development permitted will be based on the Planning Board's evaluation of the proposed development and the extent to which it reflects the goals, objectives and recommendations of the Kingston Master Plan. Due to the public benefit of protecting aquifer recharge area, Water Resource Districts and Zone II areas a development with significant public benefit (DSPB) shall not be permitted in Residential-80 (R-80) Districts.

5.3.8.2. Significant Public Benefit Defined

5.3.8.2.1. Qualifying Significant Public Benefit

A significant public benefit shall be a benefit to the adjacent neighborhood and/or the Town generally as determined by the Planning Board. In general a qualifying public benefit shall be:

1. improvements in the adjacent neighborhood similar to the required improvements on the site -- such required improvements being those identified elsewhere in this By-Law or in subsection 5.0 of the Subdivision Regulations, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings;
2. improvements on the site that are, in the opinion of the Planning Board, well in excess of those otherwise required;
3. restrictions on, or special design or development features of, uses and buildings permitted in the zoning district.

A significant public benefit may be one or more of the following as determined by the Planning Board after consultation with the board, committee, commission, department or official indicated and such others as the Planning Board may determine:

- a. preservation of a historic structure or place -- with the Historical Commission;
- b. protection of integrity of eco-systems and natural resources and open land that is dry and otherwise developable, and potentially an important addition to the inventory of open space in the town -- with the Conservation Commission and the Open Space Committee. All of such open land shall be accessible to the public. The type of private homeowners association reserve, allowed in 5.3.6.4., from which the public could be excluded, shall not qualify;
- c. provision of public recreation facilities -- with the Recreation Committee;
- d. installation of paths or multi-use trails to provide pedestrian and bicycle access to open space or other public facilities in the adjacent neighborhood -- with the Recreation Committee, Open Space Committee and the Conservation Commission;
- e. placement underground of electric power lines and communication lines, such as, but not limited to telephone, fiber optic, security alarm and cable TV lines;
- f. provision of affordable units for moderate-income households -- with Kingston Housing Authority, and as applicable, or the Council on Aging;
- g. provision of housing units that, are set aside for affordable housing:
 - (a.) Ten (10) percent of the total dwelling units are set aside for affordable housing, defined as units affordable to households with incomes at or below eighty (80) percent of the median household income in the Boston Metropolitan Statistical Area as determined by the latest U.S. Census or as adjusted based on the formulas in use by the Massachusetts Executive Office of Communities and Development, which is on file with the Planning Board.
 - (b.) The increase shall not exceed twenty percent of the number of units otherwise allowed
 - (c.) The exterior appearance of the affordable units is consistent with the style of the market rate units in the development.
 - (d.) There is provision satisfactory to the Planning Board and enforceable by the Town that the units will be sold or leased at costs and be subject to occupant income limitations to assure that the units remain affordable. The Planning Board may impose reasonable conditions on the length of occupancy, resale, phasing and site development on the affordable units.
- h. provision of housing units that are of a size or type that meet the needs of segments of the town's population that, due to age or special needs, are not adequately served by large single family dwellings and the then current housing stock within the Town -- such as Planned Residential for Seniors (see 5.3.9.)
- i. provision of facilities for alternate transportation services that do not rely on the use of single occupant automobiles. The alternate transportation services may include a financial contribution to a service provided by the Town of Kingston, or a service provided by others and coordinated by the Town;
- j. provision of transportation facilities, such as a walk, path, multi-use trails or traffic engineering improvements -- with the Highway Department, the Recreation Committee or the Open Space Committee;
- k. provision of a utility or underground facility, including but not limited to water service, sanitary sewer service, storm water management systems, or the expansion in the capacity of an existing facility or system -- with the Water Commission or Sewer Commissioners.

5.3.8.2.2. Improvements Benefiting Adjacent Neighborhood

Qualifying improvements shall generally include those that benefit the adjacent neighborhood and or the Town generally or are provided on the site. If the Planning Board first determines that the type of improvements listed in 5.3.8.3.1. are not needed or cannot be provided in the adjacent neighborhood, or on the site, the Planning Board may consider instead a financial contribution to one or more Town funds established for the purposes listed in 5.3.8.3.1.

5.3.8.2.3. Improvements Not Qualifying as Significant Public Benefit

A significant public benefit shall not include any required improvement identified elsewhere in this By-Law or in section 5.0 of the Rules and Regulations Governing the Subdivision of Land, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings. A waiver from the requirements of the Rules and Regulations Governing the Subdivision of Land or of the usual requirements of this By-Law for a conventional subdivision shall not be considered to be a significant public benefit.

5.3.8.3. Criteria for Approval

Prior to the approval of a Development with a Significant Public Benefit, the Planning Board shall determine, in addition to the findings and determinations required by section 5.3.10.8.2. and section 5.3.7. of this By-Law, Criteria For Approval of a Residential Development Encouraging Open Space (RDEOS), a Planned Residential Development (PRD), a Development with Significant Public Benefit (DSPB) or a Planned Residential Development for Seniors (PRDS), that the proposed development meets the following criteria:

- a. that there are sufficient benefits to the adjacent neighborhood and/or the town generally to warrant an increase in the maximum development permitted; and
- b. that legally binding documents have been submitted to ensure the completion and continued availability of any proposed improvement or special condition that qualifies as a significant public benefit.

5.3.8.4. Special Permits, Types of Housing , Dimensional Standards, Waivers

The Planning Board, acting as Special Permit Granting Authority (SPGA,) and as part of the grant of a special permit with site plan review to approve a development with significant public benefit, may also grant any of the special permits described in section 5.3.7.1.

5.3.8.5. Common Open Space

The public shall have access to all common open space in a Development with Significant Public Benefit. The provisions of section 5.3.6.4.c. that allow exclusion of the public shall not apply in a Development with Significant Public Benefit.

5.3.9. Planned Residential Development for Seniors (PRDS)

5.3.9.1. Purpose and Meanings of Term

- a. Purpose: The purpose of PRDS is to provide alternative housing for residents who are 55 years in age or older.
- b. A unified, self contained residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

5.3.9.2. General Requirements (Amended 4/7/03 ATM, Article 29)

- a. Any PRDS shall contain a minimum area of not less than twenty (20) acres, of which at least ten (10) acres constitute a developable site as defined in Section 5.3.4.h. exclusive of any and all easements or covenants restricting in any way the use of said minimum area.
- b. Any person who resides in a PRDS shall be fifty-five years in age or older.
- c. Covenants or Deed Restrictions, reviewed by Town Counsel and accepted by the Planning Board shall provide that the dwelling units of the PRDS shall be occupied by persons fifty five (55) years of age and older except for guest visiting for short durations not to exceed thirty (30) days in a calendar year.
- d. The maximum number of dwelling units in any specific PRDS shall not exceed four percent (4%) of the total number of dwelling units in the Town as shown on the records of the Board of Assessors for the year in which the application is filed.
- e. Any PRDS shall be served by a minimum of two (2) access roads or drives unless a divided access road or drive is approved by the Planning Board.
- f. Any PRDS containing town houses shall have a continuous vegetated buffer of not less than fifty (50) feet around the entire development.
- g. Any PRDS shall contain a Community Center for the use, recreation, and enjoyment of the residents of the PRDS that is at a minimum, a gross floor area equivalent to one hundred (100) square feet for each dwelling unit in the PRDS. However in lieu of such Community Center, the Planning Board may authorize the substitution of some other public facility or service benefiting PRDS and the adjacent neighborhood and the Town generally, costing the applicant an amount equal to the documented cost of such Community Center.
- h. Building permits may be issued for twenty percent (20%) of the dwelling units in a PRDS prior to the construction of the Community Center or providing for the substitute public facility or service, if applicable. However, no additional building permits shall be issued until construction of said Community Center has been completed, or the substitute public facility or service provided for, to the satisfaction of the Planning Board.

- i. Dwelling units may be all single family, all duplex or all town house units providing that no town house unit contains more than ten dwelling units per structure. A mix of units is also permitted provided that no one dwelling type shall constitute more than sixty percent (60%) nor less than thirty percent (30%) of the total number of dwelling units.
- j. All dwelling units shall be constructed on site. No dwellings or dwelling units shall be of pre-fabricated, factory made, or modular construction, including but not limited to mobile homes, modular homes or manufactured homes.
- k. Each dwelling unit shall have a minimum of two (2) sides of full exterior exposure.
- l. Each dwelling unit shall have a view of the common open space.
- m. Each dwelling unit containing four (4) or more dwelling units shall be equipped with a fire protection residential sprinkler system approved by the Kingston Fire Department.
- n. Individual dwelling units shall not contain more than two (2) bedrooms per unit.
- o. Home occupations, taking in of boarders, or the renting of rooms shall not be allowed nor permitted.

5.3.10. Special Permits: Procedures. Criteria

5.3.10.1. Special permit with Site Plan Review (SPS) Required

No residential development subject to this by-law shall be initiated without first obtaining a special permit with site plan review in accordance with the provisions of this section and Section 7.7. The purpose of the special permit with site plan review is to provide detailed review of residential developments which have a substantial impact upon the character of the town, adjacent residential areas and the provision of public facilities and services. A special permit with site plan review (SPS) is a type of special permit in which a use, or one or more buildings that comprise a development, may be permitted if the proposed development of the site meets certain criteria, standards or conditions as set forth in the section of this By-Law that refers to the granting of a special permit with site plan review and to other standards and objectives as set forth in this section. The SPGA may, in its discretion, grant a special permit with site plan review but only in those cases where this By-law specifically refers to the granting of a special permit with site plan review and only in those cases where the SPGA makes a finding and determination, as set forth in Section 7.7.

An applicant is not entitled to a special permit with site plan review and the SPGA, in its discretion, may decline to grant a special permit with site plan review if it is unable to make a positive finding and determination as required in Section 7.7.

5.3.10.2. Special Permit Granting Authority (SPGA)

The Planning Board shall be the Special Permit Granting Authority for all residential development governed by this by-law. In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 5.3.10.4. and Section 7.7.

5.3.10.3. Special Permit Application Requirements

The application to the SPGA for a special permit with site plan review (SPS) under this section shall be accompanied by a site plan, an existing conditions plan, and a conceptual subdivision plan where the Planning Board is the SPGA, as the Planning Board may describe in its Development Regulations. A definitive sub division plan may be submitted rather than a conceptual plan.

Where the applicant submits a definitive subdivision plan complying with the Subdivision Control Law and the Planning Board's "Development Regulations", insofar as practical, the public hearing on the application for the special permit with site plan review and the definitive subdivision plan shall be held concurrently.

5.3.10.4. Procedures for Special Permits and Special Permits with Site Plan Review

5.3.10.4.1. Information Required for Application

The application to the SPGA for a special permit for Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD), Development with Significant Public Benefit (DSPB) or Planned Residential Development for Seniors (PRDS) shall be accompanied by the following materials:

- a. a plot plan, showing the location of all buildings and structures on the lot including existing conditions and proposed changes, if applicable. In the case of a building or structure which is, or is proposed to be, close to a minimum yard setback line, the SPGA may require submittal of a certified plot plan.
- b. if applicable, an off-street parking and loading plan,
- c. if applicable, a landscaping plan,

- d. if applicable, a copy of the determination of applicability issued by, or of a Notice of Intent filed with, the Conservation Commission pursuant to Kingston General By-Laws and Chapter 131, Section 40 MGL,
 - e. if applicable, a traffic study, and a proposal for mitigating measures to improve capacity or for trip reduction programs, if any,
 - f. if applicable, proposals for mitigating measures or the construction of improvements to deal with the impacts, other than traffic impacts, of the proposed development or to provide sufficient capacity in Town facilities or services; any other material necessary for the SPGA to make the finding and determination required by Town of Kingston Zoning Bylaw or as may be required by the written rules of the SPGA;
- and the application to the SPGA for a special permit with site plan review under Section 5.3.10.8. shall, in addition, be accompanied by the following material:

- g. a site plan
- h. the term "application" as used in this section shall include the accompanying materials described in a. through g. above.

Upon written request from the applicant prior to the filing of an application, the SPGA may waive the submission of such information, plans, studies or analyses, or parts thereof, as may not be needed for, or germane to, consideration of the application.

In the event a person seeks a special permit under more than one provision of this By-law as part of one building or site development proposal, he/she shall file an application that clearly identifies each provision of the By-law for which such special permit is sought. The SPGA may issue notice, conduct a hearing and issue a decision in a concurrent manner that does not require a separate application, notice, hearing and decision on each such special permit, provided that it clearly identifies the separate provisions of the By-law for which each special permit is sought or granted. In the event a person seeks a special permit and a variance as part of one building or site development proposal, he/she shall file a separate application for each and a separate decision shall be rendered for each.

5.3.10.5. Special Permit Provisions

In addition to the conditions cited in section 5.3.10.8.3., the SPGA may grant a special permit with site plan review for the development of a tract of land in a residential district provided it makes a determination that the proposed development is consistent with the standards and criteria set forth in subsection 5.3.7. and 5.3.8.4., subject to the following provisions:

- a. the special permit shall incorporate by reference the building design and definitive site development plans filed with the application for a special permit;
- b. that, where applicable, the special permit shall incorporate by reference, any legally binding document that has been submitted to ensure the completion and continued availability of any proposed improvement or special condition;
- c. The SPGA may require that the amount of development be less than that shown on the definitive site development plan if it determines that the criteria contained in subsections 5.3.7. or 5.3.8.4. so require.

5.3.10.6. Denial of Special Permit

The SPGA may deny an application for a special permit with site plan review hereunder and base its denial upon:

- a. a failure to comply with the provisions set forth in Section 5.3., or
- b. a finding that the proposed development would not be consistent with the general objectives for planned residential development set forth in subsection 5.3.2., or the criteria set forth in subsections 5.3.7. or 5.3.8.4. or
- c. a failure to conform with the goals, objectives, and recommendations of the Kingston Master Plan.

5.4. Multiple Dwellings

5.4.1. Intent and Purpose

5.4.1.1. It is the intent and purpose of this Bylaw to provide for the construction of multiple residences and/or multiple dwelling complexes in those zones to which this section applies after the approval of a preliminary site plan, the issuance of a special permit, and the subsequent approval of a definitive plan by the Planning Board. A special permit hereunder is only an authorization for specific use and does not exempt that particular parcel of land from conformance with the Zoning Bylaws, unless specified hereunder or in said permit, or from conformance with the Planning Board Subdivision Regulations. It is intended that any complex proposed hereunder will have buildings or groups of buildings placed on individual lots, which in turn have continuous frontage on a public or private way. Subsequent approval by the Planning Board and other appropriate

Town Boards or Departments will be required as set forth in the Planning Board Subdivision Regulations including approval of street, utility and sanitary disposal systems, whether or not the subject proposal is a subdivision as defined by the Subdivision Control Law.

5.4.2. Procedure

5.4.2.1. Before approval of the special permit, a preliminary site plan shall be submitted and approved in accordance with the provisions of Section 7.3., Site Plan, of this Bylaw.

5.4.2.2. If the application and site plan are approved, the applicant shall submit a "Definitive Site Plan" to the Planning Board in accordance with the Planning Board Subdivision Regulations.

5.4.2.3. In addition to the criteria listed in Section 7.3.4., Guidelines, the Planning Board shall consider the extent to which the proposed development conforms with sound land use principles and design. Violation of these principles may be grounds for disapproval of the plan, even though all other requirements are met.

5.4.3. General Requirements

5.4.3.1. The minimum area for any multiple dwelling development shall be five (5) acres.

5.4.3.2. The minimum lot and yard dimensions, maximum building dimensions, and maximum lot coverage shall be in accordance with the following Multiple Dwelling Intensity Schedule.

MULTIPLE DWELLING INTENSITY SCHEDULE

Minimum Lot Dimensions		Minimum yard dimensions			Maximum Building Dimensions		Max. Lot Coverage by Bldg. In Percent (1)	Minimum Open Space in Percent
Lot Area in Square Feet	Continuous Frontage in Feet	Front Yard in Feet	Side Yard in Feet	Rear Yard in Ft	Height in Feet	Building Length in Feet		
40,000	200	50	50	50	35	150	25%	50%
plus 10,000 sq. ft. for each dwelling unit over three dwelling units							(1) including accessory buildings	

5.4.3.3. If there is more than one building on a single lot as defined in Section 2.1.1.32, there shall be a minimum of fifty (50) feet between such buildings. No building shall be located closer than one hundred (100) feet of an existing paved Town way.

5.4.3.4. Off-street parking shall be provided in accordance with Section 6.4.1., Required Parking. Parking areas shall not be located closer than twenty-five (25) feet of the side and rear lot lines and one hundred (100) feet of an existing paved Town way. No on-street parking will be permitted.

5.5. Mobile Home Parks (Amended 4/9/07 ATM, Article 41)

5.5.1. Residential M - Mobile Home Park District (RM), in accordance with Section 4.5., of this Bylaw, mobile home parks in the Town of Kingston shall comply with the following provisions:

5.5.1.1. For every five thousand (5,000) persons resident in the Town of Kingston or any fraction thereof, one (1) mobile home park may be permitted by the Board of Appeals. For this purpose, the latest accurate census of the Town of Kingston shall be used if certified by the Town Clerk. In the absence of such certification, the latest United States Census shall govern.

5.5.1.2. In no case shall the total aggregate number of mobile homes in all complexes exceed fifteen (15) percent of the total number of dwelling units in existence in the Town of Kingston at the time of application. For this purpose the most recent figures of the Kingston Board of Assessors shall govern. The maximum number of mobile homes permitted in any one mobile home park shall be three hundred and fifty (350).

5.5.1.3. The minimum area of the mobile home park shall be fifty (50) acres.

5.5.1.4. The minimum lot area, continuous lot frontage, yard dimensions, and maximum lot coverage including accessory buildings shall be in conformance with the Schedule of Intensity Regulations in Section 5.0., Intensity of Use Regulations. Screened and roofed porches and open decks may be constructed in side and rear yards, but not closer than ten (10) feet of said lot lines.

5.5.1.5. There shall not be more than one (1) mobile home per lot.

5.5.1.6. All mobile home lots shall abut on a roadway. All roads within the park shall conform to the Subdivision Regulations, Section V and shall be maintained in good and proper condition. All roads, utilities, and drainage shall be installed and approved by the Planning Board before occupancy will be allowed in said park. The Planning Board may approve said park in sections for occupancy. Completion of the park must be within seven (7) years of the Planning Board's final approval.

5.5.1.7. No mobile home shall be located closer than three hundred (300) feet from any public highway and shall be properly screened therefrom. The remaining perimeter of the mobile home park shall be screened for a minimum width of twenty (20) feet with natural growth, hedges and the like. All screening shall be established and maintained in a manner satisfactory to the Board of Appeals. No mobile home lot shall be included within the screening area.

5.5.1.8. Each mobile home site shall be provided with an approved underground electrical connection specifically metered unless such underground electrical connection is waived by the Board of Appeals.

5.5.1.9. Street lights of not less than three thousand (3,000) lumens each shall be installed by the permittee at intervals of not more than one hundred and fifty (150) feet apart.

5.5.1.10. No occupied travel trailer, pick-up coach, motor home, or camping trailer shall be permitted in a mobile home park as a dwelling.

5.5.1.11. Each building and mobile home stand shall be an element of an overall plan of site development.

5.5.1.12. Where possible, mobile home stands shall be oriented with respect to scenic vistas, natural landscape features, topographic and natural drainage areas. Development proposals shall include a landscape program to illustrate the proposed treatment of space, roads, paths, service, and parking areas. Screening devices shall not impair pedestrian or vehicular safety.

5.5.1.13. All utilities shall be installed underground wherever possible. All transformer boxes, substations, pumping stations, and meters shall be located and designed so as not to be unsightly or hazardous to the public.

5.5.1.14. Residential open space within the allowable density limits shall be allocated to the recreational amenity and environmental enhancement of the mobile home park and shall be designed as such on the site plan for the proposed development.

5.5.1.15. After approval of a proposed mobile home park there shall be no further subdivision of land within the proposed development which would increase the allowable net density.

5.5.1.16. Mobile home stands shall be provided with a minimum of twelve (12) piers resting on a six (6) inch concrete pad slab. There shall be no storage of any material whatsoever underneath the perimeter of the mobile home. Approved anchoring must be provided to be attached to the concrete slab.

5.5.1.17. All individual mobile homes shall be equipped with aluminum slat skirts or other suitable type of enclosure and must be maintained in a suitable condition at all times. A mobile home owner after having established his mobile home in a mobile home park shall have thirty (30) days to conform with the requirement.

5.5.1.18. Enclosed tenant storage must be provided for material which is used only seasonally or infrequently, and which cannot be conveniently stored in a mobile home. The permittee may provide community storage or may provide storage by constructing individual storage buildings for mobile home sites. Such individual storage buildings must be uniformly constructed, must be approved by the Town Building Official as to construction, must be erected on a six (6) inch concrete slab with approved anchoring and the outside dimensions must be a minimum of six (6) feet by eight (8) feet or a maximum of eight (8) feet by twenty (20) feet along the sides and eight (8) feet in height. Such storage buildings shall be located in the rear corner of the unit space and shall be located not less than ten (10) feet from any side yard and shall be not less than five (5) feet from any rear lot line.

5.5.1.19. No permanent additions, such as lean-tos, enclosures, or rooms shall be added to any mobile home; provided, however, that open porches with awnings and removable skirting may be installed; provided, however, that such additions do not infringe in front, side or back yard minimum dimensions in accordance with Section 5.0., Intensity of Use Regulations.

5.5.1.20. All residents of the park must be fifty-five (55) years of age or over. Community building must be constructed for the exclusive use by the residents and their guests before fifty-one (51) percent of the dwelling units are occupied. Parking spaces shall be provided in accordance with Section 6.4. with an adjacent area available should the need arise.

5.5.1.21. Before occupancy is allowed for any mobile home with on site sewage and/or a water well, a certified “as build” plot plan showing the exact placement of the mobile home porches and sheds on the lot (and all its related appurtenances) must be given to the Inspector of Buildings.

5.5.1.22. Natural gas and liquefied petroleum gas systems shall comply with all applicable codes and regulations. All fuel oil supply systems shall be constructed and installed underground in each mobile home lot in accordance with all applicable codes and regulations.

5.5.1.23. A person to whom a special permit is issued shall operate the park in compliance with all regulations, and provide adequate supervision to maintain the park, its facilities, and equipment in good order and in clean and sanitary condition.

5.5.1.24. The sale of mobile homes shall be limited to mobile homes being placed within the park. No more mobile homes shall be allowed unless they are placed on a mobile home lot as if to be used as a residence.

5.5.1.25. No business of any kind is to be conducted in the park with the exception of coin-operated vending machines located within the confines of the community building.

5.5.1.26. All roads in the mobile home park shall be maintained by the permittee. They shall be kept passable and in good condition at all time. Snow and ice removal shall be done by the permittee at his expense.

5.6. Deleted 5/9/00 ATM Article 25

Section 5.7.1. Purpose

In January 2012, MassDEP released for public review and comment a *Wind Turbine Health Impact Study*. The study was conducted by an independent expert panel, and included several recommended best practices for addressing wind turbine noise. After reviewing the study and over 500 comments, many accompanied by additional information for MassDEP review, MassDEP concluded that the information currently available suggests the need to consider revisions to MassDEP’s noise regulations and policy to address wind turbine noise.

In response to the *Wind Turbine Health Impact Study* and comments received, in June 2013, MassDEP convened the MassDEP Wind Turbine and Noise Technical Advisory Group (WNTAG) a technical advisory group to consider potential revisions to its noise regulations and policy.

The purpose of the MassDEP Wind Turbine and Noise Technical Advisory Group (WNTAG) is to provide technical advice to MassDEP on how best to craft effective regulatory and policy responses to wind turbine installations and possible noise impacts. MassDEP seeks a policy and regulations for wind turbine noise that encourage appropriate wind development, provides regulatory clarity for developers, towns and communities, and are protective of public health and the environment.

The scope of the Technical Advisory Group includes offering advice to MassDEP on the following:

- Potential revisions to the existing noise policy and regulations to explicitly address unique characteristics of wind turbine sounds, including amplitude modulation.
- Technical issues associated with technical implementation of the policy, and with monitoring ambient and project sound levels.
- A possible pre-construction permitting requirement for wind turbines, including discussion of modeling requirements.

Currently under the Kingston Zoning Bylaw, Wind Turbines are permitted by right. Based upon the findings of the MassDEP Wind Turbine and Noise Technical Advisory Group (WNTAG) the Town may consider amending the current bylaws.

The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Utility Scale Wind Turbines so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

Section 5.7.2. Temporary Moratorium (ATM April 5, 2015 - AG Approval 9/2/14 see AG Bulletin for notes)

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 utility scale wind turbines. The temporary moratorium shall not affect the permits or approvals for turbines that have been approved prior to the effective date of the

moratorium. The moratorium shall be in effect through April 15, 2016. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of wind turbines in the Town, consider the WNTAG recommendations regarding Wind Turbines and shall consider amending its current Zoning Bylaws to address the impact and operation of Wind Turbines and related uses.

Section 5.8. Temporary Moratorium Regulating Recreational Marijuana

5.8.1.1. Purpose.

The Initiative Petition for the Regulation and Taxation of Marijuana, also known as Ballot Question Four, Acts 2016, Chapter 334, was approved by voters at the Massachusetts State election on November 8, 2016 (the "Act"). The purpose of the Act is to control the cultivation, production, distribution and sale of marijuana under a system that licenses, regulates and taxes the entities engaged in such activities in a manner similar to alcohol and to make the use of marijuana legal for adults 21 years of age or older. The Act took effect on December 15, 2016, which effective date was postponed for six months pursuant to Acts of 2016, Chapter 351. Section 5 of the Act provides that a town may adopt by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with the Act or with regulations made pursuant to the Act. However, the Act contains certain ambiguities and, to date, regulations and anticipated legislative amendments have not been adopted. As a consequence, the means by which a municipality may regulate the sale, distribution and use of recreational marijuana are unclear.

Under the current zoning by-law, a marijuana establishment is not defined and is not a specified permitted use in the town. As this is a new type of land use in the state, there will be unique and new aspects to the use that could require oversight and regulations. These local impacts, which could be legal, land use, public safety, and public health, should be evaluated and addressed in a comprehensive manner in the zoning by-law prior to the permitting of a marijuana establishment. The moratorium, of a finite duration, will allow the town to carefully study the potential impacts, both primary and secondary, of such establishments and, through a directed planning process, recommend zoning by-law amendments to address the town's concerns in the context of comprehensive land-use planning and other town planning goals and objectives.

5.8.1.2. Definitions. "Marijuana Establishment", a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business. The definitions set forth in the Act, as amended, shall apply equally to this article. This definition does not include the cultivation, distribution and/or sale of medical marijuana, which is expressly excluded from regulation under the Act.

5.8.1.3. Establishment and Duration.

- a. Moratorium - No building permit, special permit, variance, site plan or other permit may be issued under this zoning bylaw, and no use of land or structures shall be allowed for the purpose of establishing a Marijuana Establishment.
- b. The moratorium shall be in effect through and including June 30, 2018, or until such time as zoning amendments are adopted that address marijuana establishments, whichever shall be sooner.

5.8.1.4. Applicability. This Bylaw shall be effective in all zoning districts in the town, including overlay districts. This Bylaw does not apply to the cultivation, distribution or sale of medical marijuana.
or take any other relative thereto.

6.0 GENERAL PROVISIONS AFFECTING ALL DISTRICTS (Amended 4/27/96 ATM, Article 17, Article 22; 5/03/97 ATM, Article 35; 4/5/10 ATM, Article 29)

6.1. Application

6.1.1. Non-conforming: Any principle or accessory structure or use which does not conform to the requirements of the By-law but which was lawfully in existence or lawfully begun or for which a building permit or special permit has been issued before the first notice of the public hearing on this By-law or any amendment thereto shall be deemed to be a non-conforming structure or use.

6.1.2. This By-law and any amendment thereto shall not apply to any non-conforming use but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

6.2. Non-Conforming Use of Building or Land (Amended 6/8/98 ATM, Article 30, 5/8/01 ATM, Article 33, 5/8/01 ATM, Article 34; 4/5/10 ATM, Article 30, Article 31)

6.2.1. Restoration or Reconstruction

6.2.1.1. Necessary repairs to and/or rebuilding of a structure for a non-conforming use after damage by fire, storm or similar disaster, are permitted provided they are accomplished without undue delay and do not substantially change the character or size of the building, nor the use to which it was put prior to such damage.

6.2.2. Change, Extension or Alteration

6.2.2.1. Non-conforming structures or uses may be extended or altered, provided that:

a. No such extension or alteration shall be permitted unless authorized by special permit of the Board of Appeals which shall find that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood.

b. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of Sections 29 through 33, inclusive, of Chapter 93, and to Chapter 93D of the Massachusetts General Laws.

c. Each application for a Special Permit shall be subject to the provisions of Section 7.3., entitled "Site Plan".

6.2.2.2. Notwithstanding 6.2.2.1., non-conforming structures may be altered without a special permit providing that such alteration is within the existing building footprint and does not increase the floor area.

6.2.2.3. Notwithstanding Sections 6.2.2.1. and 6.2.2.2., non-conforming single and two family residential structures may be altered or enlarged without a special permit providing the following minimum dimensional requirements are met.

a. Alteration, enlargement, extension or structural change is in conformity with yard requirements applicable at the time of original construction or, if there were none, conformity with the following minimum standards:

Front yard – 25 feet

Side yard – 15 feet

Rear yard – 20 feet

6.2.3. Abandonment

6.2.3.1. Non-conforming uses discontinued for a period of two (2) or more years shall be deemed to be abandoned.

6.3. Accessory Buildings and Uses

6.3.1. Use Regulation

6.3.1.1. Accessory uses are permitted in the same manner as principal uses, subject to the same requirements; that is, a use which would be allowed as a principal use is also allowed as an accessory use, but not otherwise.

6.3.2. Dimensional Regulation

6.3.2.1. No accessory building or structure shall be located within the required front yard area. No accessory building shall be located in any side yard area nearer to the side lot line than ten (10) feet, or in a rear yard nearer to the lot line than five (5) feet. In no case shall accessory buildings cover more than twenty-five (25) percent of the total rear yard area.

6.4. Off-Street Parking Requirements (Amended 6/8/98 ATM, Article 31; 5/9/00 ATM, Article 29 - Amended 6/11/16 Article 40 ATM)

6.4.1. Required Parking

6.4.1.1. All parking demand created by new structures or uses, additions to existing structures or uses, and change of use in existing structures shall be accommodated entirely off-street on the same premises as the activity it services, or located within three hundred (300) feet of the building entrance on a separate parcel, not being separated by an aerial, collector or sub collector street and in a zoning district allowing such activity. The following minimums must be met, unless these are reduced on a special permit from the Planning Board upon determination that special circumstances render a lesser provision adequate for all parking needs:

a. Residential use: 1.5 spaces per Dwelling Unit with 2 bedrooms or less, and 2 spaces per Dwelling Unit with 3 bedrooms or more to be located within 300 feet of the Dwelling Unit.

b. Retail business, commercial or personal service establishment: 1 space per 250 square feet of gross leasable floor area.

c. Office, professional, business or public: 1 space per 333 square feet of gross floor area.

d. Medical or dental office or clinic: Four (4) parking spaces for each individual office or suite, plus four (4) parking spaces for each additional doctor or dentist within a single office or suite.

e. Manufacturing, processing, wholesale: One (1) parking space per each thousand (1,000) square feet of gross floor area, plus one (1) space for each three (3) employees on the largest shift.

f. Place of assembly, restaurant: One (1) parking space per every three (3) seats.

g. Other Use Categories: Use categories to be determined by the Planning Board or the Inspector of Buildings, as appropriate, at the time of Site Plan Review when required by the Inspector of Buildings; in other cases where Site Plan Review is not required, use categories shall be determined in accordance with standards contained in Time-Saver Standards for Site Planning, Joseph De Chiara and Lee E. Koppelman, McGraw Hill, New York City, 1984.

h. Pre-School/Day Care Facilities: The minimum reasonable parking requirements for such facilities shall be as follows: (1) one off-street parking space shall be required for each faculty member who is required to be present at the facility pursuant to the facility's state license, based upon the maximum number of children for which the facility is licensed; (2) one parking space or queue shall be required for every four children based upon the maximum number of children for which the facility is licensed; and (3) whenever safe to do so, pick up and drop off of children without the parking of a vehicle.

6.4.2. Location of Parking Areas

6.4.2.1. Except in Residential M, Mobile Home Parks, no off-street parking area shall be located within twenty (20) feet of a street line or within ten (10) feet of all other property lines.

6.4.2.2. No parking area shall be located or designed so as to allow backing onto or off a public way.

6.4.3. Development and Maintenance of Parking Areas

6.4.3.1. For parking areas of six (6) cars or more the following shall apply:

a. Off-street parking areas shall be designed and constructed in accordance with The Regulations of the Planning Board Governing the Design, Construction and Maintenance of Off-Street Parking and Loading Areas.

b. There shall not be more than one (1) entrance and one (1) exit from such lots per three hundred (300) feet of street frontage or fraction thereof. If necessary to meet this requirement, uses shall be arranged for shared egress and ingress.

6.4.3.2. Parking areas must be so located and parking so designed that egresses likely to be used for more than two hundred (200) trips per day, serving more than forty (40) dwelling units or eighty (80) employees or forty (40) restaurant seats or one (1) gas pump shall provide four hundred (400) feet visibility in both directions of a street.

6.5. Off-Street Loading Requirements

6.5.1. Required Off-Street Loading

6.5.1.1. Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures.

6.5.2. Development and Maintenance of Off-Street Loading Facilities

6.5.2.1. Facilities shall be so sized and arranged that no trucks need back onto or off of a public way, or be parked on a public way while loading, unloading, or waiting to do so.

6.5.2.2. Off-street loading areas shall be designed and constructed in accordance with The Regulations of the Planning Board Governing the Design, Construction and Maintenance of Off-Street Parking and Loading Areas.

6.6. Signs

6.6.1. Purpose

6.6.1.1. It is the intention of these sign regulations to promote the public safety, protect property values, create an attractive business climate and enhance the physical appearance of the community.

6.6.2. General Requirements

6.6.2.1. All signs together with their supports, braces, guys, and anchors shall be kept in good repair and in safe condition. The owner of the premises on which a sign is erected shall be directly responsible for keeping such sign and premises around it in a safe, sanitary, neat and clean condition.

6.6.2.2. Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and shall be designed, located, erected and maintained only for the purposes of illuminating the subject sign and/or premises. The illumination of signs shall be permitted only between seven (7) o'clock in the morning and eleven (11) o'clock in the evening, except during such hours as such establishments are open to the public.

6.6.2.3. A sign pertaining to a use, an occupancy or an ownership, which sign does not conform to this By-law, shall be removed within sixty (60) days after it is changed.

6.6.2.4. Any change to the size, shape, type or other characteristics of a non-conforming sign shall be in conformance with this By-law.

6.6.3. Signs Permitted In All Districts

6.6.3.1. The following signs are permitted in all districts provided they meet the General Requirements of Section 6.6.1., Purpose:

- a. One (1) non-illuminated identification sign not to exceed three (3) square feet in area nor eight (8) feet in height, stating the name and address of the occupant.
- b. One (1) temporary non-illuminated real estate sign pertaining to the lease, sale or use of a lot or building on which such sign is placed not exceeding a total area of six (6) square feet.
- c. One (1) sign for identification of professional and home occupations, or of the occupant, not exceeding a total area of three (3) square feet.
- d. A marker not to exceed two (2) square feet identifying a historic building.
- e. Street numbers and any sign erected by a Town, State or Federal Government.
- f. A sign erected by a public carrier for direct information concerning its service at the location.
- g. Signs and displays associated with an approved stand for the retail sale of agricultural or farm produce not exceeding twelve (12) square feet in total area.
- h. A sign erected by any fraternal, civic, religious or service organization or club, merely announcing its presence in the Town of Kingston and the time and place of its regular meeting, provided such sign shall not exceed three (3) feet in diameter nor nine (9) square feet in area.
- i. Any flag, badge, insignia or device of any governmental agency or civic, charitable, religious, patriotic, political, fraternal or similar non-profit organization when displayed along a line of march of any parade, or in sockets along any street during a fund raising drive.
- j. Temporary political signs displayed not more than twenty-one (21) days prior to an election and three (3) days after the election provided no sign shall exceed four (4) square feet in a Residence District, 3A Design District and Conservancy District, and twenty-four (24) square feet in other Districts.
- k. A temporary construction sign is permitted in any district provided the sign is non-illuminated, does not exceed thirty-two (32) square feet in area, identifies an engineer, architect and/or contractor engaged in the development of land or construction or alteration of buildings and further provided such sign is set back at least ten (10) feet from any street line and is removed upon completion of construction.

6.6.3.2. Signs Permitted In Residential, 3A Design District, and Conservancy Districts

- a. The following signs are permitted in all Residential Districts, the 3A Design District and the Conservancy District:

1. One (1) non-illuminated or indirectly illuminated identification sign for each separate street line of an approved special permit use. Said sign shall be subject to the applicable side and rear yard requirements for principal buildings and shall be set back a minimum of fifty (50) percent of the applicable front yard requirements for principal buildings. The height of such sign shall not be greater than the distance it is located from any lot line, and the square foot area of such sign shall not be greater than one-half (0.5) the linear foot distance it is located from any lot line; however, in no case shall the sign exceed sixteen (16) square feet in area nor eight (8) feet in height.

2. Other signs shall be limited to directional signs necessary for public safety or convenience and shall be designated and approved as an integral part of the Site Plan for an allowable Special Permit use.

6.6.4. Signs Permitted in Town Center District and Commercial District

6.6.4.1. The following signs are permitted in the Town Center District and Commercial District provided they meet general requirements of Section 6.6.1., Purpose:

- a. One (1) sign advertising goods and services available on the premises, not exceeding one (1) square foot for every linear foot of store frontage and in no case exceeding a total area of thirty-six (36) square feet per lot.
- b. One (1) sign for identification of the business, company or agency on a wall or parapet of a main building not exceeding thirty (30) square feet for each separate business in the Commercial District.
- c. For the purpose of identifying the business or commercial development or shopping center, one (1) free-standing sign with a total of thirty-six (36) square feet of area for each street on which the business or manufacturing development or shopping center fronts.
- d. For the purpose of advertising the sale or lease of the premises, said sign not to exceed thirty-two (32) square feet in signboard area.
- e. A sign attached to a building shall not:

1. project more than one (1) foot from the building wall when the building bounds on a lot line.
2. project into or over the paved portion of a street or a right-of-way.
3. exceed the height of the building.

6.6.5. Signs in the Industrial District and the Commercial/Industrial Park District

6.6.5.1. The following signs are permitted in the Industrial District and the Commercial/Industrial Park District, provided they meet general requirements of Section 6.6.1., Purpose:

- a. Two (2) signs pertaining to each establishment or occupancy in a building or office the total area of which shall not exceed two hundred (200) square feet, provided that:
 1. One (1) of these signs may be free standing which does not exceed fifteen (15) percent of the area of the building face or sixty (60) square feet, whichever is smaller.
 2. In the case of an open-air use containing no building, one (1) free standing sign not exceeding sixty (60) square feet shall be permitted for each one hundred (100) feet of lot frontage on the street on which the use has direct frontage.

6.6.6. Prohibited Signs

6.6.6.1. The prohibitions contained in this Section shall apply to all signs, all artificial lighting and all districts, regardless of designation.

6.6.6.2. No permitted sign, including projecting signs, shall be located in any street right-of-way.

6.6.6.3. No sign or advertising device shall be erected, used or maintained which in any way simulates official directional or warning signs erected or maintained by Federal, State or Town Governments for the protection of the public health and safety.

6.6.6.4. No sign or advertising device shall be erected or maintained in such a manner as to obstruct or interfere with the free and clear vision on any street or driveway.

6.6.6.5. No sign or advertising device shall be erected or maintained with any lighting or control mechanism which may cause radio or television interference.

- 6.6.6.6. No illumination sign or lighting device shall be placed or directed on any property in a manner that would permit the light beams and illumination therefrom to be directed or beamed onto a right-of-way or walkway, or onto adjoining properties so as to cause glare or reflection that might constitute a traffic hazard or public nuisance.
- 6.6.6.7. No animated sign or advertising device shall be erected.
- 6.6.6.8. No flashing signs or advertising device which creates intermittent or varying light intensity shall be erected.
- 6.6.6.9. No sign shall extend more than twelve (12) inches beyond the building walls or parts thereof, except as otherwise provided in these sign regulations.
- 6.6.6.10. No roof signs shall be erected.
- 6.6.6.11. No building or part thereof, such as a gable, roof, or wall, shall be outlined by direct illumination for the purpose of commercial advertising.
- 6.6.6.12. No sign shall be attached to or be erected or maintained in such a manner as to obstruct any fire escape, window, door, or other building opening used for egress and ingress, ventilation or other fire fighting purpose.
- 6.6.6.13. No sign whose content does not relate exclusively to the premises on which it is located, or to products, accommodations, services or activities on those premises shall be allowed, except as otherwise provided in Section 6.6.4., Signs Permitted In Town Center District and Commercial District hereof.
- 6.6.6.14. No free-standing sign shall be erected to exceed a height of thirty (30) feet.
- 6.6.6.15. There shall be no temporary signs, banners, streamers, or placards erected, suspended, posted or affixed in any manner outdoors on a building exterior or premises except those granted by right upon written application to the Inspector of Buildings which in no case shall exceed a period of sixty (60) days.

6.7. Performance Standards

6.7.1. Administration and interpretation

- 6.7.1.1. All proposed uses of buildings, lots or premises within any District after the passage of this By-law shall conform to the standards contained in this Section:
- a. The applicant, at his own expense, shall furnish evidence sufficient to satisfy the Zoning Enforcement Officer that the proposed use of the building or premises will not produce any nuisances beyond the lot lines as measured by the performance standards listed below or as existing in comparable operations allowed in the District.
- b. Any nuisance produced in excess of the standards permitted below or any other nuisance found after review by the Zoning Enforcement Officer in the course of his or her normal enforcement procedure to be excessive shall be reduced to acceptable standards or discontinued.

6.7.2. Air Pollutants

- 6.7.2.1. Except as is herein provided, all use and conditions of land, buildings and structures shall be in conformance with the Regulations 310 CMR 6.00 8.00 of the Department of Environmental Protection, Commonwealth of Massachusetts, Dec. 31, 1981 and amendments thereto.

6.7.3. Noise

- 6.7.3.1. No noise shall be in excess of sixty (60) decibels at any lot line opposite or abutting a Residential 80, Residential 40, Residential 20, or Residential M District nor in excess of ninety (90) decibels at any other line.
- 6.7.3.2. In a Residential 80, Residential 40, Residential 20, or Residential M District, noise shall not exceed sixty (60) decibels between the hours of 8:00 P.M. and 7:00 A.M. At all other times, noise shall not exceed sixty (60) decibels for more than twenty (20) minutes in each hour.
- 6.7.3.3. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency or high frequency.

6.7.4. Odor

- 6.7.4.1. Emissions as measured at the users property line shall not exceed the established threshold limit values for odors as outlined in T.M. Hellman and F.H. Small, Journal Air Pollution Control Association, 24(10), 979-982, (1974); and amendments thereto added by the Manufacturing Chemists Association, Inc., Washington, D.C.

6.7.5. Heat, Glare and Vibration

- 6.7.5.1. No heat, glare or vibration shall be discernible without instruments from the outside of any structure.

6.7.5.2. Wind energy conversion systems, machinery and equipment shall comply with the following provisions:

- a. The system shall not cause interference with radio and/or television broadcasting or reception and shall comply with the provisions of 47 CFR Part 15 (Federal Communications Commission) as it exists, or as it may be amended.
- b. The base of a windmill shall be set back from all property lines and principal buildings at least the setback distance shown on the "Wind Turbine Setback Graph" North East Solar Energy Center Report, March 1979.

6.7.6. Waste Disposal, Water Supply and Water Quality

6.7.6.1. Regulations of the Department of Public Health, Commonwealth of Massachusetts, shall be met and when required by The Zoning Enforcement Officer, approval shall be indicated on the application for a Building Permit.

a. In no case shall discharge cause the waters of the receiving body to exceed the limits assigned by the Commonwealth of Massachusetts, Water Resources Commission, Division of Water Pollution Control, as published and entitled "Water Quality Standards", filed with the Secretary of State on September 21, 1978, and amendments thereto, for streams and water bodies within the Town.

b. Materials used on the exterior or cleanup of structures or vehicles or of any equipment shall be disposed of in accordance with the regulations of the Board of Health.

6.7.7. Storage

6.7.7.1. All materials, supplies and equipment shall be stored in accordance with the Fire Prevention Standards of the National Fire Protection Association and shall be screened from view from public ways or abutting properties.

6.7.8. Exterior Lighting

6.7.8.1. No exterior lighting, other than street lighting approved by the Department of Public Works, shall shine on adjacent properties or toward any street.

6.7.8.2. Exterior illumination of buildings or grounds in a Residential 80, Residential 40, Residential 20, or Residential M District, except as may be permitted for required parking areas, shall:

- a. Be permitted only for non-commercial uses open to the public, such as a church or playground; and
- b. Be shown on a site plan approved by the Zoning Enforcement Officer.

6.7.8.3. Any lighting shall be continuous and non-flashing.

6.7.9. Building Construction

6.7.9.1. All buildings shall be of construction prescribed in the State Building Code.

6.7.9.2. No building permit shall be granted unless the application for such permit is filed in accordance with the State Building Code.

6.7.10. Hazardous and Toxic Materials.

6.7.10.1. No use shall be allowed which would create clear or unlawful hazard through emission of dangerous elements into the air, any water body, or the ground; through vehicular egress at points of constricted visibility; through use of storage of toxic, hazardous, inflammable, radioactive, or explosive materials without evidence of compliance with all applicable regulations; or through lack of security measures to prevent exposure to potentially hazardous structural or site conditions.

6.7.10.2. All hazardous materials used, created, stored, processed, disposed of by processing, diluting, burying or containment, leaching or any other manner, or transported (including piping) in the Town shall be used, stored or transported in accordance with all applicable Federal, State and Local regulations.

6.7.10.3. A notice for use, creation, storage, processing, disposal and transport shall be filed with the Board of Selectmen, the Fire Department, the Board of Health, and the Water Board on such forms as they shall require.

- a. Notification shall include, as a minimum, identification of material, the amount involved, the process, if any, the routes of transport, carrier and conveyance, if any.
- b. The Board of Selectmen may require a bond be posted to cover any and all possible damage to person, property and environment.

6.7.11. Erosion Control

6.7.11.1. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped.

6.7.11.2. No use shall be allowed if it will leave the earth exposed for greater than fourteen (14) days, unless erosion control measures as defined in "Erosion and Sediment Control in Site Development and Vegetative Practices in Site Development", are employed.

6.7.11.3. No use shall be allowed which will damage or harm adjoining properties, waterways, or public utilities through uncontrolled erosion and sedimentation.

6.7.12. Dish Antennae and Radio Antenna Towers

6.7.12.1. Accessory dish antennae shall be located in the rear yard, shall be set back at least ten (10) feet from all property lines, principal buildings and accessory buildings, and shall not have a diameter greater than one-third (1/3) of the required rear yard.

6.7.13. Electrical Interference

6.7.13.1. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

6.7.14. Fencing, Screening and Landscaping

6.7.14.1. Boundary fences, walls, or hedges shall be permitted provided that they do not exceed six (6) feet in height, and provided that no fence which obstructs vision shall exceed thirty-six (36) inches in height within twenty (20) feet of the street line or within twelve (12) horizontal feet of a habitable room in an abutting dwelling.

6.7.14.2. Open storage, loading, or service areas, mobile home parks and parking lots for six (6) or more cars shall be screened from any adjacent residence or public way by a wall, fence, or densely planted trees or shrubs at least three (3) feet in height, or be equivalently obscured by natural vegetation.

6.7.14.3. Except as required for municipal waste pick-up and removal, junk, trash, or debris shall be stored so as not to be visible from adjacent properties or any street.

6.7.14.4. No more than fifty (50) percent of required front yard shall be covered by impervious surfaces and except for walkways, driveway and walls impervious surfaces shall not be within ten (10) feet of the right-of-way line.

6.8. Swimming Pools

6.8.1. General Requirements

6.8.1.1. Pools used for swimming or bathing shall be in conformance with all applicable and pertinent State and local codes, rules and regulations.

6.8.1.2. Private swimming pools shall not be allowed on any front yard area and shall not be located less than twelve (12) feet from the side and rear property lines.

6.8.1.3. Swimming pools must be constructed to conform to the State Building Code and any local or State regulations.

6.8.1.4. Plans shall be filed with the Inspector of Buildings and shall be accurately prepared by a registered professional engineer or registered land surveyor and shall indicate dimensions of the pool with respect to the lot, septic system and structures located on the lot.

6.8.1.5. Every person owning land on which there is situated a swimming pool shall erect and maintain an adequate fence or wall either surrounding the property or pool area, said fence to be at least four (4) feet from the pool edge. The swimming pool shall be completely enclosed at all times, whether or not it is filled with water.

a. The fence or wall shall not be less than five (5) feet in height including gates or doors and shall not have openings greater than four (4) inches in any direction.

b. All gates or doors opening to such enclosure shall be equipped with a self-closing and latching device located not less than four (4) feet above the ground or otherwise inaccessible from the outside by small children. The gate or door is also to be provided with a suitable lock.

c. Above ground pools with a depth of four (4) feet only at any point having a two (2) foot suitable enclosure on top with a locking retractable ladder may be approved by the Inspector of Buildings for the purpose of conforming to this Section 6.8.

6.8.1.6. If an in-ground pool is to be constructed, the contractor or owner shall state where the excess fill is to be used or the location of its disposal shall be indicated. If the excess fill is to be removed from the property, permission must be first granted by the Board of Selectmen, in accordance with all applicable local by-laws and regulations.

6.8.1.7. No pool is to be filled without first notifying the Water Department twenty-four (24) hours in advance and only then with the approval of the Water Commissioners or Superintendent shall such swimming pool be filled. The swimming pool may be subject to filling under the supervision of the Water Commissioners or Superintendents.

6.8.1.8. The treatment and cleaning of swimming pools are subject to the Massachusetts State Sanitary Code and the rules and regulations of the Kingston Board of Health.

6.8.1.9. The swimming pool and equipment shall be equipped to be completely emptied of water and the discharged water shall be disposed of in a manner approved by the Board of Health that will not create a nuisance to abutting property.

6.9. Conservation Restrictions

6.9.1. Streams or watercourses shall be located within easements conforming substantially with the lines of their courses whose width shall not be less than twenty (20) feet and whose boundaries shall not be closer than five (5) feet horizontally from the mean high water line, parallel streets or pedestrian ways. Appropriate access may be required in connection therewith. Streams or watercourses shall remain open, except at street crossings. The Board of Appeals may require that other areas be included within a conservation restriction.

6.9.2. Due regard shall be shown for all natural features, such as large trees, watercourses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to lots.

6.10. Residential Development Scheduling

6.10.1. Intent and Purpose

6.10.1.1. It is the intent and purpose of this By-law to regulate the timing of development in residential subdivisions and other developments in a manner that promotes the health, safety, convenience, and welfare of the inhabitants of Kingston. It is the intent of this section to regulate the rate at which residential construction occurs without imposing undue economic burden on those involved in housing development. Residential development scheduling will insure that periods of accelerated residential growth will not disrupt the Town of Kingston's long-term capital improvement process nor adversely affect public safety or general welfare of Town residents. This By-law has the following purposes;

- a. To promote a manageable growth rate in Kingston and reduce extreme fluctuations in the Towns growth rate,
- b. To prevent the development of traffic conditions that are hazardous to pedestrian and vehicular travel,
- c. To allow development to proceed in a manner that allows a proper and complete evaluation of demand on municipal services; namely, public schools, water supplies, fire and police protection, solid waste, and other public services,
- d. To coordinate the timing of land development in Kingston with the provision of public services,
- e. To preserve unique natural, historic and cultural features,
- f. To allow the implementation of appropriate mitigation methods in order to minimize potentially adverse impacts of development on the natural environment.

6.10.2. Definitions

6.10.2.1. Applicant - Individuals, partnerships, corporations, trusts, and other legal entities in which the applicant of record holds a legal or beneficial ownership of greater than one (1) per cent.

6.10.2.2. Calendar Year - The period beginning January 1 and ending December 31.

6.10.3. General Requirements

6.10.3.1. No building permit for a new residential dwelling unit or units shall be issued unless in accordance with this by-law.

6.10.3.2. Applicability. This By-law shall apply to definitive subdivision plans, division of land pursuant to Massachusetts General Laws, Chapter 41, Section 81P, and variances and special permits which would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development, for all purposes of this section if located either on a single parcel or contiguous parcels of land which have been in the same ownership at any time subsequent to the date of the adoption of this by-law. Two-family and multi-family dwellings shall be considered to have one building permit per dwelling unit for the purpose of this By-law.

6.10.3.3. Activation: This By-law shall be activated upon vote of Town Meeting. During the first calendar year it is in effect, the total number of building permits for residential units issued between January 1 of that year and the vote of Town Meeting shall count toward the seventy- (70-) permit total described in Section 6.10.4.

6.10.4. Procedure

6.10.4.1. Rate of Residential Development. The Building Inspector shall issue permits for construction of new residential dwelling units only if permit construction will not result in authorizing construction of a total of more than seventy (70) dwelling units in a single calendar year. This rate is intended to insure that the Town, with prudent reliance on local and other financial resources, and in compliance with the revenue generating limitations of Proposition 2 1/2, can and will provide infrastructure and operate in a manner that provides an adequate and responsible level of town services.

6.10.4.2. The Building Inspector shall issue building permits for construction of new dwelling units in residential subdivisions (or contiguous parcels which have been in the same ownership at any time subsequent to the adoption of this by-law) given final approval after passage of this by-law, only if permit issuance will result in authorizing construction within a twelve (12) month period of up to fifteen (15) units but not more than twenty (20) per cent of the units potentially allowed in each subdivision.

6.10.5. Exemptions (Amended 4/7/03 ATM, Article 28)

6.10.5.1. Subdivisions or Approval-Not-Required Plans of two (2) lots or less.

6.10.5.2. All exempt units as described in section 6.10.5.1 above shall be counted towards the seventy- (70-) permit total described in section 6.10.4.

6.10.5.3. Planned Residential Developments For Seniors (PRDS) shall be exempt from the Provisions of Section 6.10. Residential Development Scheduling.

6.10.5.4. Insofar as the subdivision is not exempted by Massachusetts General Laws Chapter 40A Section 6 from the provisions of this by-law, the period of time provided under Chapter 40A in which a subdivision is not affected by zoning changes is hereby extended during the duration of this by-law, so as to protect such phased subdivisions against further changes in use and density requirements.

6.11. Communications Towers and Wireless Communications Facilities (Amended 6/8/98 ATM, Article 28, Article 29; 5/3/99 ATM, Article 45)

6.11.1. Purpose: The purpose of this By-law is to establish appropriate siting criteria and standards for wireless communications towers and facilities, while minimizing adverse impacts on adjacent properties and residential neighborhoods, minimizing the overall height of such facilities to only what is essential, and promoting the shared use of existing facilities to reduce the need for new facilities. This By-law does not apply to satellite dishes and antenna for residential use.

6.11.2. General Requirements

6.11.2.1. No wireless communications facility shall be erected or installed except in compliance with the provisions of this By-law. In all cases, a Special Permit is required from the Zoning Board of Appeals "the Board". Any proposed extension in height, addition of cells, antenna or panels, or construction of a new or replacement of a facility shall be subject to a new application for a special permit.

6.11.2.2. Wireless communications facilities may be allowed by Special permit on all land located in the Industrial Districts (I) and in the Commercial/Industrial Park Districts. Wireless communications antennas, including panels, may be mounted on or attached to existing structures, including but not limited to water towers and church steeples, in any district. All wireless communications facilities must be designed and screened as required by Section 6.11.4.4.

6.11.2.3. Whenever possible, wireless communications facilities shall be located in the two (2) non-residential zoning districts described in Section 6.11.2.2. and shall be suitably screened from abutters and residential neighborhoods.

6.11.2.4. Only free-standing monopoles, with associated antenna and/or panels are allowed as specified in Section 6.11.4. below. Lattice style towers and similar facilities requiring three or more legs and/or guy wires are not allowed. Wireless communications panels may be facade-mounted on existing structures such as water towers and church steeples provided that they be properly screened and conform to applicable design guidelines set forth in Section 6.11.4.

6.11.2.5. Structures shall be removed within one (1) year of cessation of use. If applicable, annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Inspector of Buildings by the Special Permit holder.

6.11.2.6. Nothing contained herein shall be deemed to prohibit construction or use of an amateur structure by a federally licensed amateur radio operator.

6.11.2.7. Stealth Technology

6.11.2.7.1. Upon issuance by the site plan reviewing authority and the special permit granting authority of a finding that a proposed antennae or other wireless communication equipment would blend with the natural surroundings and show no evidence of being a communication facility, a special permit may be granted to allow the proposed antennae or equipment in any non-residential area, provided that all dimensional requirements are satisfied.

6.11.3. Application procedures shall include:

6.11.3.1. A locus plan at a scale of 1"=1,000' which shall show all property lines, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within five hundred (500) feet of the facility.

6.11.3.2. A color photograph or rendition of the proposed monopole with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the monopole from the nearest street or streets.

6.11.3.3. The following information prepared by one or more professional engineers:

- a. A description of the monopole and the technical, economic and other reasons for the proposed location, height and design
- b. Confirmation that the monopole complies with all Federal and State standards
- c. A description of the capacity of the monopole including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations.

6.11.4. Design Guidelines: The following guidelines shall be used when preparing for the siting and construction of wireless communications facilities:

6.11.4.1. All monopoles shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use. The setback of a monopole from the property line of the lot on which it is located shall be at least equal to the height of the monopole.

6.11.4.2. No monopole, or attached accessory antenna on a monopole, shall exceed 120 feet in height as measured from ground level to the top of the highest point of the structure. Co-location (in other words, more than one carrier locating on a monopole) shall occur if possible for all monopoles. No monopole shall be constructed which requires guy wires. Monopoles shall not be located on buildings.

6.11.4.3. No monopole shall be located closer than 1.3 times the height of the structure from any dwelling. A building or structure containing communication equipment adjacent to a communication tower shall comply with the applicable provisions of this by-law, but shall be exempt from the 1.3 fall zone requirement, provided that said building or structure is not used as a dwelling.

6.11.4.4. All wireless communications facilities shall be sited in such a manner that the view of the facility from adjacent abutters, residential neighborhoods and other areas of Town shall be as limited as possible. All monopoles shall be painted or otherwise colored so that they will blend in with the landscape or the structure on which they are located. A differing coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line.

6.11.4.5. Wireless communications facilities shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of facilities which will be required to be located within the community.

6.11.4.6. Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the scenic character of the Town.

6.11.4.7. There shall be no signs, except for those required by the FCC, no trespassing signs and a required sign giving a phone number where the pole owner can be reached on a twenty-four (24) hour basis. All signs shall conform with the Sign By-law (Section 6.6. of the Kingston Zoning By-law).

6.11.4.8. Night lighting of the facilities shall be prohibited unless required by the Federal Aviation Administration (FAA).

Lighting shall be limited to that needed for emergencies and/or as required by the FAA.

6.11.4.9. There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of vehicles or other equipment.

6.11.4.10. Applicants proposing to erect facilities on municipally owned land and structures shall provide evidence of contractual authorization from the Town of Kingston to conduct wireless communications services on municipally owned property.

6.11.5. Procedure for a Special Permit

6.11.5.1. Applications for Special Permits under this by-law shall be approved or approved with conditions if the petitioner can fulfill the requirements of this Bylaw at 6.11.2. and 6.11.4. to the satisfaction of the Board, and the Considerations for Approval of Special Permits defined in Section 7.7.2. of the Kingston Zoning Bylaw.

6.11.5.2. Applications for Special Permits under this Bylaw may be denied if the petitioner cannot fulfill or address the requirements of these regulations to the satisfaction of the Board.

6.11.5.3. When considering an application for a wireless communications facility, the Board shall place great emphasis on the proximity of the facility to residential dwellings and its impact on these residences. New facilities shall only be considered after a finding that existing(or previously approved) facilities cannot accommodate the proposed use(s).

6.12. Inclusionary Housing (Amended 10/6/03 STM Article 10, Amended 6/5/2017, Art 49)

6.12.1. Purpose and Intent

6.12.1.1. The purpose of this Bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Kingston Master Plan, G.L. c. 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from this Bylaw qualify as low or moderate income housing in compliance with the requirements for the same as specified by the Department of Community Affairs, Department of Housing and Community Development ("DHCD") and that said units count toward the Town's subsidized housing inventory, as maintained by DHCD. All projects to which this Bylaw applies shall require a Special permit from the Planning Board.

6.12.2. Definitions

6.12.2.1. Affordable housing unit. A dwelling unit that qualifies as a low or moderate income housing unit for purposes of listing in the subsidized housing inventory as maintained by DHCD.

6.12.2.2. Qualified affordable housing unit purchaser. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

6.12.3. Applicability

In all zoning districts, the inclusionary zoning provisions of this section shall apply to any and all residential developments of property, whether the dwelling units are rental or for sale, where any such project results in a net increase of [six (6)] or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space. This Bylaw shall apply to both single family, two family and multi development proposed under any permitting process, including, but not limited to: definitive subdivisions under G.L. c. 41, §81U, an Approval Not Required (ANR) division of land proposed under G.L. c. 41, §81P, or a multi-family condominium or apartment building proposed under these bylaws.

6.12.4. Mandatory Provision of Affordable Units

The Planning Board shall, as a condition of approval of any development hereunder, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 6.12.5.

6.12.5. Provision of Affordable Units

The Planning Board shall deny any application for a special permit development or, under Section 5.3. or Section 5.4., and this section if the applicant for special permit approval does not agree that:

6.12.5.1. At least ten (10) percent of the lots in a division of land or units in a multiple unit development, **whether rental or for sale**, subject to this Bylaw shall be established as affordable housing in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) units shall require one (1) affordable units and so on.

6.12.5.1.a. Constructed or rehabilitated on the locus subject to the special permit;

6.12.5.1.b. Constructed or rehabilitated on a locus different than the one subject to the special permit (see Section 6.12.8.);

6.12.5.1.c. An applicant may offer, and the Planning Board, in concert with the Board of Selectmen, may accept, donations of land in fee simple, on or off-site, that the Planning Board determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the

value of the construction or set-aside of the affordable units. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this By-law, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value;

The applicant may offer, and the Planning Board may accept, any combination of the Section 6.12.5.1.a – 6.12.5.1.c. requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this Bylaw.

6.12.5.2. As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction in a form acceptable to the Planning Board, along with any other document required by DHCD. The restriction and any other related regulatory, monitoring or lottery agreements shall ensure that the required number of affordable units shall be restricted in perpetuity and shall only be sold or rented to qualifying low or moderate income households. Any such restriction must be recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings prior to the issuance of any building permits.

6.12.5.3 To facilitate the objectives of this Section 6.12.5. modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may (but is not required to) approve a Density Bonus where the SPGA may allow the addition of two additional market rate units for each additional affordable unit provided as part of compliance with the Special Permit. The minimum lot area per dwelling unit normally required in the applicable zoning district may be reduced by that amount necessary to permit the additional units.

6.12.6. Provisions Applicable to Affordable Housing Units On Site

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

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

6.12.6.3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<u>Market Rate Unit %</u>	<u>Affordable Housing Unit %</u>
Up to 30%	None Required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Fractions of units shall not be counted

6.12.7. Marketing Plan for Affordable Units

Applicant under this Bylaw shall submit a marketing plan or other method approved by the Planning Board, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen, in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program.

6.12.8. Provision of Affordable Housing Units Off-Site

As an alternative to the requirements of Section 6.12.6.3, an applicant subject to the Bylaw may, with the approval of the Planning Board, develop, construct or otherwise provide the affordable units required hereunder off-site. All relevant requirements of this Bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the special permit review and approval process.

7.0. ADMINISTRATION

7.1. Permits

7.1.1. Zoning Permit

7.1.1.1. Any person seeking a building permit shall first receive from the Zoning Enforcement Officer a Zoning Permit indicating compliance with the provisions of this By-law. The Inspector of Buildings shall not issue a building permit until a Zoning Permit has been issued by the Zoning Enforcement Officer.

7.1.2. Procedure

7.1.2.1. Application for Zoning Permit shall be made to the Zoning Enforcement Officer on forms available from the Zoning Enforcement Officer. The application shall be accompanied by information sufficient to determine compliance with the provisions of this By-law. At a minimum, said information shall include:

- a. A site plan for those uses listed in Section 7.3.1.1. Said site plan shall be drawn in conformance with the provisions of Section 7.3., Site Plan.
- b. Where the proposed use requires site plan or special permit approval, evidence of such approval, including conditions of approval.

7.1.2.2. The Zoning Enforcement Officer shall review the application and support material for compliance with the provisions of this By-law and shall, within fourteen (14) days of submittal of the application, issue a Zoning Permit if the proposed use is in compliance with the provisions of this By-law. If said use is inconsistent with the provisions of this By-law, the Zoning Enforcement Officer shall notify the applicant in writing of the provisions with which the use is not in compliance.

7.1.3. Building Permit

7.1.3.1. It shall be unlawful for any person to erect, construct, reconstruct, alter a structure or establish a different use for an existing structure or lot without applying for and receiving from the Inspector of Buildings a permit.

7.1.3.2. Such permit shall be applied for in writing to the Inspector of Buildings. The application will be on a form available from the Inspector of Buildings and shall be accompanied by a plot plan.

7.1.3.3. No permit shall be issued unless the plans therefor and the intended use thereof fulfill in all respects the provisions of this By-law, except as may have been specifically permitted otherwise by action of the Board of Appeals and provided that a written copy of the terms governing such permission are submitted and attached to an application for and the resulting permit issued.

7.1.4. Occupancy Permit

7.1.4.1. No premises, building, structure or land shall be occupied, used or changed in use without an occupancy permit signed by the Inspector of Buildings, which permit shall not be issued until the buildings, structure, or premises and its uses comply in all respects with this By-law.

7.1.4.2. A temporary occupancy permit may be issued in appropriate cases.

7.2. Enforcement

7.2.1. Zoning Enforcement Officer

7.2.1.1. This By-law shall be administered by the Zoning Enforcement Officer, who shall be the Inspector of Buildings.

7.2.2. Violations

7.2.2.1. If a violation shall be determined by the Zoning Enforcement Officer after an investigation of the facts and inspection of the premises, a written notice thereof shall be transmitted to the owner or his duly authorized agent. Such notice shall order that any use or condition of the premises contrary to the provisions of this By-law shall cease immediately. A copy of such notice shall also be delivered to the Board of Selectmen by the Zoning Enforcement Officer.

7.2.2.2. If after such notice the premises continue to be used or remain in a condition contrary to the conditions of this By-law, the Board of Selectmen shall institute appropriate legal proceedings to enforce the provisions of this By-law.

7.2.2.3. Each day, or portion of a day, that any violation is continued after an order to cease and desist, shall constitute a separate offense.

7.2.2.4. If the Zoning Enforcement Officer is requested in writing to enforce the provisions of this By-law against any person allegedly in violation of this By-law and the Zoning Enforcement Officer declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days of receipt of such request.

7.2.3. Penalties

7.2.3.1. In addition to the procedures for enforcement, as described above, the provisions of this Zoning By-law may also be enforced by the Selectmen or appointed representative of the Selectmen by noncriminal complaint pursuant to the provisions of Massachusetts General Law Chapter 40, Section 21D.

7.2.3.2. Penalties for violations of any provision of this By-law may, upon conviction, be affixed in the maximum amount allowed by law for each offense.

7.3. Site Plan (Amended 6/8/98 ATM, Article 27; 5/9/00 ATM, Article 26; 4/5/10 ATM, Article 33, Article 34)

7.3.1. Site Plan Required

7.3.1.1. A site plan approved in accordance with this Section is required before the issuance of a building permit for:

- a. All uses for which a special permit or variance is required, except for one and two family dwellings.
- b. All uses or change in use requiring off-street parking or loading, except one (1) and two (2) family dwellings and farming and/or for a change of use which does not require new or additional off-street parking spaces.
- c. All sites containing more than one (1) principal use.

7.3.2. Submission Procedure (Amended 10/6/03, STM Article 9)

7.3.2.1 Submission must include 16 copies of the site plan, a project notification form and an application form supplied by the Zoning Enforcement Officer. The submission will be filed with the approving authority as specified in by-law Sections 7.3.2.5., a, and b.

- a. All uses of four thousand (4,000) square feet or less of gross floor area or ten (10) parking spaces or less shall be reviewed and acted on by the Zoning Enforcement Officer unless a special permit or variance is requested.
- b. All other uses shall be reviewed by the Zoning Enforcement Officer and, if the submission is complete, forwarded to the Planning Board.

7.3.2.2. For all uses for which site plan submittal to the Zoning Enforcement Officer is required, the application for site plan review and the site plan may be submitted at the same time as the application for a building permit. For all uses for which site plan submittal to the Planning Board is required, the application for site plan review and the site plan shall be submitted at least twenty-one (21) days prior to the application for a building permit.

7.3.2.3. The approving authority shall submit forthwith after receiving a site plan which complies with all submission requirements, six (6) copies of the site plan to the Planning Board, one copy to the Zoning Enforcement Officer, and one copy of the site plan to each of the following:

- Board of Selectmen, Conservation Commission, Board of Health, Board of Appeals, Fire Department, Police Department, Water Department, Superintendent of Streets, Trees, and Parks, and Sewer Departments, each of whom shall return comments within thirty (30) days to the Zoning Enforcement Officer or Planning Board, whichever is appropriate.

Failure to return comments within the specified time period shall mean that the reviewing Board or Official does not take issue with the site plan.

7.3.2.4. Unless otherwise required by law, the special permit or variance granting authority shall not conduct a public hearing for a special permit or variance until a report has been received from the site plan approving authority or 45 days has elapsed since the site plan was officially submitted to the Town.

7.3.2.5. Approval of a site plan shall be by:

- a. The Zoning Enforcement Officer for uses covered by paragraph 7.3.2.1.a. above.
- b. The Planning Board for all other uses.

7.3.2.6. If the site plan complies with this By-law, it may be approved or approved with conditions, if needed, to assure compliance. If it does not comply with the purposes and specifications of this By-law, it may be disapproved. If disapproved, the plan can be revised and resubmitted without prejudice. Within forty-five (45) days from the date of submission of the plan, the Planning Board shall, in the case of a special permit or a variance, transmit to the Special Permit Granting Authority or Board of Appeals a report accompanying such materials, maps or plans as will aid the Special Permit Granting Authority

or Board of Appeals in judging the application for special permit or variance, and, in all other cases, notify the applicant of the action taken. Failure to act within forty-five (45) days shall constitute approval of the site plan as submitted.

7.3.2.7. If a use shown on an approved site plan is to be changed or expanded, a revised site plan shall be submitted for approval in the same manner as the original submittal.

7.3.2.8. No building permit shall be issued for any building or structure for which site plan approval is required unless approval thereof shall have been obtained in compliance with this Section.

7.3.2.9. Municipal Use

7.3.2.9.1. Site plan approval shall be required for all projects that fall under the jurisdiction of this Section.

7.3.3. Contents and Format

7.3.3.1. Said site plan shall be prepared and certified by a registered landscape architect and one or more of the following: 1) professional architect, 2) registered professional land surveyor, or 3) registered professional engineer as required by the General Laws, Chapter 112, and shall show each of the following for the entire site, whether or not development is to be phased, unless an item or items are waived in writing by the Zoning Enforcement Officer or Planning Board, as appropriate.

7.3.3.2. For all site plans:

a. Location map at six hundred (600) feet per inch or such other scale as is appropriate.

b. The name(s) and address(es) of the owner(s) of property shown and the name(s) and address(es) of the applicant, designer, engineer and surveyor.

c. Names of all abutters as determined from the most recent local tax list.

d. Date, north point, and scale (preferably forty (40) feet to the inch).

e. Perimeter survey of lot, indicating locations of all easements, rights-of-way, property boundaries, dimensions, lot area and zoning district boundaries, existing and proposed.

f. Topographic plan indicating existing and proposed contours at intervals not greater than two (2) feet. Sufficient information to clearly indicate areas in the site and within fifty (50) feet of the site where gravel or loam removal or filling is proposed and the approximate volume in cubic yards. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark (NGVD).

g. The location and boundaries of all wetlands as defined by the General Laws, Chapter 131 and the one hundred (100) year flood line as defined by Federal Emergency Management Act (FEMA) maps on file with the Town Clerk.

h. All other data required to make a determination of compliance with off-street parking and loading requirements.

i. Photographs and/or slides in sufficient quality and detail to indicate the environmental features of the site, including, but not limited to topography, views of the water, if any, adjacent or nearby open space and adjacent structures and/or uses of land.

j. Schematic design plans which accurately locate all existing and proposed buildings and structures, parking areas, driveways, driveway openings, service areas, common areas, usable open space, landscaped areas and the proposed treatment thereof (including fences, walls, planting areas and walks), lighting, signs, all facilities for storm drainage, sewage disposal, refuse, other waste disposal, and other utility systems (including fire alarms and hydrants), and which define all materials, finishes, structural and mechanical systems and gross floor areas (including the proposed uses thereof).

k. Elevations and perspective drawings which thoroughly illustrate and define the features of the entire project.

l. Business signs, traffic signs and street, security or parking lot lights located on site and within one hundred fifty (150) feet of the site, and the size, dimension, height, color, and illumination (type and candlepower) of all signs or lights.

m. Traffic flow patterns within the site, egress and entrances, loading and unloading areas, curb cuts on site and within one hundred and fifty (150) feet of the site, surface construction, estimated daily hour and peak traffic levels on site and all abutting public and private ways.

n. A plan for control of erosion, dust and silt, both during and after construction. Such plan shall include all existing and proposed slopes, construction sequencing, temporary and permanent erosion control, special construction and swale and stream scour protection.

o. One (1) or more tables indicating, by zoning classifications, the required and proposed setback, side yard and rear yard distances, the intended use of the site and all buildings, the number of people anticipated on site, existing and proposed gross floor area and number of units and parking areas, with their locations.

7.3.4. Finding and Determination

7.3.4.1. Prior to approving a site plan, the Planning Board shall make a finding and determination that the proposed development of the site:

a. is consistent with general purposes of this By-law and with the more specific objectives and purposes applicable to the proposed use or requested special permit which may be set forth elsewhere in this By-Law, such as, but not limited to, those in Section 4.2. through Section 4.14., Section 5.2. through Section 5.6., and Section 6.6. through Section 6.11 0.

b. complies with such criteria or standards as may be set forth in the section of this By-Law and the standards for the zoning district for the intended use

c. is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area;

d. meets accepted design standards and criteria for the functional design of facilities, structures and site construction;

e. will not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the street system for vehicular traffic, the sidewalks and footpaths for pedestrian traffic, and, in addition, for residential developments, the recreational facilities, which adverse impacts can not be mitigated by such services and facilities, or where there is insufficient capacity in such services and facilities, improvements will be made to provide sufficient capacity;

f. will not create other adverse impacts, including those that may occur off the site, or such potential adverse impacts will be mitigated in connection with the approved development, so that the development will be compatible with the surrounding area;

7.3.4.2. Where the Planning Board determines that one or more of the following objectives is applicable to the particular application for a proposed use or special permit, the Planning Board shall make a finding and determination that the objective will be met:

a. that the proposed development will not present a demonstrable adverse impact on the surrounding area resulting from:

1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area,

2) emission or discharge of noxious or hazardous materials or substances,

3) pollution of water ways or ground water, or

4) transmission of signals that interfere with radio or television reception;

b. that the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of vegetation that may result there from, particularly from development on steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption;

c. that buildings are located:

1) harmoniously with the land form, vegetation and other natural features of the site,

2) effectively for solar and wind orientation for energy conservation, and

3) advantageously for views from the building while minimizing the intrusion on views from other buildings;

d. that a system of routes for pedestrians, including bicycles, with minimal conflicts with vehicles, is provided;

e. that all measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area of a proposed development are taken, such as, but not limited to, minimizing the velocities of water runoff, maximizing protection of disturbed areas from stormwater runoff, and retaining sediment within the development site as early as possible following disturbances;

f. the removal or substantial alteration of buildings of historic or architectural significance is minimized and that new uses or the erection of new buildings are compatible with buildings or places of historic or architectural significance;

- g. that the natural character and appearance of the town is enhanced. Awareness of the existence of a development, particularly a non-residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, single family neighborhoods or Town property by the effective use of existing land forms, or alterations thereto, such as berms, and by existing vegetation or supplemental planting;
- h. that open space on the site, particularly such common open space and usable open space as may be required by this By-Law, is located and designed so as to increase the visual amenities for the surrounding area as well as for the occupants of the development;
- i. that the scale, massing and detailing of buildings are compatible with those prevalent in the surrounding area, without specifying any particular architectural style;
- j. that construction on the site conforms to good design practice for features such as parking and loading, grading, landscaping, drainage, utilities, lighting;
- k. that there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment;
- l. that there is improved access to, or the development of additional links and connections to, a Town system of public facilities such as conservation areas, recreation facilities, footpaths or bicycle paths, streets or utility systems;
- m. that the location of intersections of access drives with the Town's arterial or collector streets minimizes traffic congestion;
- n. that electric, telephone, cable TV and other such lines and equipment are either placed underground or are as inconspicuous as possible; that support facilities such as storage, refuse disposal, utility buildings and structures for recreational activities are located, and screened, to form as effective a visual screen of them as is possible;
- o. that no development shall cause downstream properties, water courses, channels, or conduits to receive stormwater runoff from a proposed development at a higher peak flow rate, or to receive other unreasonable impacts, than would have resulted from the same storm event occurring over the site of the proposed development in its natural undeveloped condition;
- p. that adequate water quality standards are promoted giving due regard to the conservation of surface and groundwaters for the protection of fish and wildlife, recreational purposes and the use of such water for public water supply in communities which are downstream, by requiring that adequate pollution abatement controls be incorporated into the drainage design of the proposed development;
- q. has adequate provisions for the maintenance of common areas;
- r. has adequate measures proposed to mitigate impacts of development.

7.4. Water Quality Review Committee

7.4.1. Establishment

7.4.1.1. There shall be a Water Quality Review Committee, which is comprised of the members of the Board of Water Commissioners or their designees.

7.4.2. Powers

7.4.2.1. The Water Quality Review Committee shall have the following powers:

- a. Certificate of Water Quality Compliance. The Committee may grant a Certificate of Water Quality Compliance in accordance with the provisions of Section 4.13., Water Resource Overlay District.
- b. Review of Compliance. The Committee shall have the power to review compliance with Section 4.13., Water Resource Overlay District, of this By-law and with the Certificate of Water Quality Compliance.
- c. Rules, Regulations, Fees and Payment. The Water Quality Review Committee shall be authorized to establish rules and regulations concerning the orderly administration and enforcement of the Water resources overlay section, including application requirements and a schedule of fees, costs, and fines as may be reasonably required to process applications and investigate, document or abate violations.

7.5. Board of Appeals (Amended 10/10/95 STM, Article 10)

7.5.1. Establishment

7.5.1.1. There shall be a Board of Appeals of five (5) members and two (2) associate members.

7.5.1.2. Members of the Board in office at the effective date of this By-law shall continue in office. Hereafter, as terms expire or vacancies occur, the Board of Selectmen shall make appointments pursuant to the requirements of Chapter 40A, M.G.L., Section 12.

7.5.2. Powers

7.5.2.1. The Board of Appeals shall have the following powers:

- a. To hear and decide upon an appeal by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative official under the provisions of Chapter 40A of M.G.L., as amended, or of this By-law, or by any person including an officer or the Board of the Town aggrieved by an order or decision rendered pursuant to Massachusetts General Laws Chapter 40A provided any such appeal is filed within thirty (30) days from the date of the receipt of written notice of such order or decision and not otherwise.
- b. The Board may grant a special permit when authorized by this By-law in accordance with the provisions of Section 7.5., Board of Appeals.
- c. The Board shall have the power to hear and decide petitions for variances in accordance with Section 10 of Chapter 40A of the General Laws, as amended from the terms of this Bylaw, after public hearing for which notice has been given in accordance with Chapter 40A, provided that:
 1. No variance may authorize a use or activity not otherwise permitted in the District in which the land or structure is located.
 2. The Board shall require evidence be heard and specifically find that owing to circumstances relating to soil conditions, shape, or topography of such land or structure and especially affecting such land or structures but not affecting generally the zoning district in which it is located, that a literal enforcement of the provisions of the By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially deviating from the intent of this By-law.
 3. The Board may impose conditions, safeguards, and limitation of time and for use, including the continued existence of any particular structures but excluding any particular condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant petitioner or any owner. If rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be reinstated only after notice and a new public hearing.

7.5.3. Board of Appeals Procedure

7.5.3.1. The Board shall adopt rules to govern its proceedings pursuant to chapter 40A and 40B. Such rules shall be made available to the public and a copy shall be filed with the Town Clerk.

7.5.3.2. Within sixty-five (65) days of receipt of appeal or petition for a variance, or a request for a special permit, the Board of Appeals shall hold a hearing giving notice thereof in accordance with Chapter 40A, M.G.L.

7.5.3.3. The Board of Appeals shall make a decision on the appeal or petition for a variance within one hundred (100) days of filing, unless extended by written agreement between the Board of Appeals and the applicant, and on the request for a Special Permit within ninety (90) days of the public hearing, unless extended by written agreement between the Board of Appeals and the applicant.

a. The decision of the Board of Appeals shall be filed with the Town Clerk along with a copy of all plans finally approved. The decision shall recite the evidence heard, specific findings made on the evidence heard, the Board's vote on each of the findings required by M.G.L., Chapter 40A, and shall recite the overall decision of the Board and the vote.

b. The Board shall not grant greater relief, use or rights than that requested in the application for appeal, petition or request for special permit.

c. A copy of the decision of the Board shall also be sent to the Selectmen, Inspector of Buildings, the Planning Board, Zoning Enforcement Officer and to the applicant.

7.5.3.4. No appeal or petition from the terms of this By-law with respect to a building or lot of land and no application for a special exception to the terms of this By-law which has been acted upon unfavorably to the applicant by the Board of Appeals shall be considered on its merits by said Board within two (2) years after the date of such unfavorable action except with the consent of all but one member of the Planning Board.

7.6. Special Permit Granting Authority

7.6.1. The Special Permit Granting Authority will issue permits in accordance with the procedure and provisions of the Rules and Regulations of the Special Permit Granting Authority adopted in accordance with Section 9 of Chapter 40A and of Section 7.7., Special Permit, of this By-law.

7.6.2. Unless otherwise specified in this By-law, the Special Permit Granting Authority is the Board of Appeals.

7.6.3. An associate member of the Planning Board shall be appointed jointly by the Planning Board and the Board of Selectmen for a three (3) year term. Once the associate member is appointed, the chairman of the Planning Board may designate said member to sit on the Board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board or in the event of a vacancy on the Board.

7.7. Special Permit (Amended 5/9/00 ATM, Article 27)

7.7.1. Procedure

7.7.1.1. A special permit shall be required for all uses which are designated in this By-law as requiring a Special Permit before the Inspector of Buildings may issue a building or occupancy permit or before the Zoning Enforcement Officer may issue a Zoning Permit.

7.7.1.2. Each application for a special permit shall be on forms supplied by the Zoning Enforcement Officer and shall be filed with the Town Clerk and in quadruplicate with the appropriate Special Permit Granting Authority who shall transmit copies thereof to the Zoning Enforcement Officer and to the Planning Board, if it is not the Special Permit Granting Authority.

The copies filed with the Special Permit Granting Authority shall include the date and time of filing certified by the Town Clerk.

The Planning Board or the Zoning Enforcement Officer, as appropriate, shall transmit to the appropriate Special Permit Granting Authority, a report accompanied by such materials, maps or plans as will aid the Special Permit Granting Authority in judging the application and in determining special conditions and safeguards.

7.7.1.3. Each application for a Special Permit shall be subject to the provisions of Section 7.3., Site Plan.

7.7.1.4. The Special Permit Granting Authority shall, at the expense of the applicant, give public notice of the hearing in the manner provided in Chapter 40A, Sections 9 and 11 of the General Laws.

a. The decision of the Special Permit Granting Authority must be made within ninety (90) days following the date of public hearing, and failure of the said Board to take final action within said ninety (90) days shall be deemed to be a grant of the special permit.

7.7.1.5. Any approval which has been granted by the Special Permit Granting Authority under the provisions of paragraph 7.6., Special Permit Granting Authority, shall lapse within two (2) years from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

7.7.1.6. The Special Permit Granting Authority shall not render any decision on an application for a special permit before any one of the following has taken place:

a. The public hearing has been held without notification from the Planning Board to the Board of Appeals that the Planning Board will submit a report.

b. Fourteen (14) days have expired since the public hearing without receipt of said report.

7.7.2. Considerations for Approval of Special Permit

7.7.2.1. The special permit granting authority shall not approve any such application for a special permit unless it finds that, in its judgement, the use of the site is in harmony with the general purposes and intent of this by-law and the following are met:

a. the use as developed and operated will not adversely affect the neighborhood

b. the developed facilities adequately provide for all proposed and appropriate operations of the use

c. the site is an appropriate location for such use, structure or site condition

d. access to the site is over streets and through areas appropriate for the type of vehicle involved

e. access by vehicles required for the use will not create traffic volumes greater than existing street capacity or cause nuisance or hazard to vehicles or pedestrians

f. site design is compatible with existing natural features of this site and surrounding areas

g. site design and use may not create adverse impacts to the surrounding areas off site. Potential off-site adverse impacts must be identified and mitigated during development to insure compatibility with surrounding areas.

h. the use as developed shall not create negative impacts on public services or infrastructure including but not limited to:

- 1) municipal sewerage system
- 2) public ways and storm drainage systems
- 3) public water supply
- 4) pedestrian sidewalks and footpaths

i. residential developments must provide for adequate recreational facilities. Such facilities may be on site, or improvements may be made off site if such provides better services and improvements more compatible with existing facilities.

7.7.3. Conditions of Special Permit

7.7.3.1. In approving a special permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the district and the Town. No special permit shall take effect until such notice is recorded in the Registry of Deeds. They may include but are not limited to the following:

a. street, side or rear yard setback dimensions greater than the minimum required

b. specific design guidelines for the exterior features and appearances of the structures

c. limitations on the number or size of signs

d. regulation of design and location of access drives, traffic features and all site illumination

e. requirement of increase in parking or site special features beyond minimum standards in areas of:

- 1) number of spaces
- 2) number of loading bays
- 3) amount of landscaping or screening plants

f. increased areas of screening at lot lines or street lines through the use of walls, fences, plantings or other devices

g. limitations on the density of a development in areas of:

- 1) number of units or buildings
- 2) total area (square footage) of buildings or improvements

h. requirement of on site or off site mitigation activities to address adverse impacts to Town facilities or services

i. limitation on time special permit will be in effect

j. limitations on development construction activity including hours of construction activity, movement of trucks and equipment, and measures to control erosion, dust, dirt and damage to vegetation

k. requirement of filing of an annual certificate of compliance with conditions of approval

l. requirements to provide adequate security

m. requirement to instigate operational techniques to facilitate traffic trip reductions or coordinate peak Town service demands to availability of those Town services.

n. where an applicant offers to make a financial contribution to the Town for the construction of improvements to increase the capacity of Town facilities or services, with the work not to be performed by the applicant, the SPGA shall make the special permit, if approved, conditional upon the receipt of the funds and to link the stages of construction of the proposed development to the stages of the completion of the improvement.

7.7.4. Construction Under Special Permit

7.7.4.1. Construction or operations under a building or special permit shall conform to any subsequent amendment of the Bylaw unless the use or construction is commenced within period of not more than six (6) months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.8. Fees

7.8.1. Establishment of fee schedule: The Board of Selectmen shall establish a schedule of fees and expenses for building permits, appeals, applications and other matters pertaining to this By-law. The schedule of fees shall be posted in the office of the Inspector of Buildings and may be altered or amended only by the Board of Selectmen.

7.8.2. A development fee shall be paid for all uses requiring a Special Permit in accordance with a schedule adopted by the Board of Selectmen.

7.8.3. Failure to pay all applicable fees, charges and expenses in full will be considered grounds for denial of any application or appeal.

8.0. APPLICABILITY

8.1. Other Laws

8.1.1. When this by-law imposes greater restriction of the use of buildings, structures, or premises, or on height of buildings or requires larger yards or open spaces than are imposed or required by any regulations or permits, or by any restrictions, easements, covenants, or agreements, then the provisions of this by-law shall control except only in the case of a variance granted by the Board of Appeals.

8.2. Validity

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

8.3. Amendment

8.3.1 This By-law may from time to time be changed by amendment, addition or repeal in the manner provided in Section 5 of Chapter 40A of the General Laws.