

# **Town of Erving Zoning Bylaws**



**Adopted May 18, 2023**

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# ERVING ZONING BYLAW

## May 18, 2023

### ARTICLE §230-1.0 PURPOSE AND AUTHORITY

**§230-1.1 PURPOSE.** This Zoning Bylaw (“this Bylaw”) has been enacted to promote and protect the public health, safety, convenience, and general welfare of the inhabitants of the Town of Erving and:

- To plan for the orderly growth of the Town of Erving;
- To promote the prosperity and well-being of its inhabitants while retaining the rural character of the Town;
- To prevent blight;
- To protect natural resources and prevent pollution of the environment;
- To encourage the appropriate use of land throughout the Town;
- To mitigate and reverse the effects of climate change; to encourage multi-modal transportation;
- To protect public health and safety;
- To prevent overcrowding and undue concentration of population while providing housing guidelines appropriate for residents of all income levels;
- To embrace and encourage racial, cultural, generational, and socioeconomic diversity;
- To support the development of adequate municipal services consistent with managed growth of the Town;
- To maintain the scenic characteristics of the area as an attraction for recreational and tourist activities; and
- To preserve historical and other cultural resources.

**§230-1.2 AUTHORITY.** This Bylaw is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

**§230-1.3 SCOPE.** For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

**§230-1.4 APPLICABILITY.** Except as set forth in Section 5.1 or as otherwise provided herein, all buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of this Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. When the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

**§230-1.5 AMENDMENTS.** This Bylaw may from time to time be changed by amendment, addition, or repeal by the Town in the manner provided in M.G.L. c. 40A, s.5, and any amendments thereto.

**1.5.1 Change of Zoning Boundary.** If geographic change of a zoning boundary description is proposed, words of boundary description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the Town of the zoning map change proposed, together with three black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

**1.5.2 Costs.** The costs of publication and of mailing of notices of hearing and the costs of holding such zoning hearing and of making a public record of the proceedings at such hearing, if such a record be made, shall be paid by the Planning Board, but the Planning Board may determine whether a fee to cover such costs shall be required of the nongovernmental proponent(s) of the zoning amendment.

**§230-1.6 SEVERABILITY.** The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision herein.

## **ARTICLE §230-2.0 DISTRICTS**

### **§230-2.1 ESTABLISHMENT OF DISTRICTS.**

The Town of Erving is hereby divided into the following types of districts:

Central Village (CV)  
Village Residential (VR)  
Rural Residential (RR)  
French King District (FK)

### **§230-2.2 OVERLAY DISTRICTS.**

The following types of overlay districts are located in the Town of Erving:

Floodplain Overlay District (FPOD)  
Groundwater Protection Overlay District (GPOD)

### **§230-2.3 ZONING MAP.**

The boundaries of the said districts are depicted on the map entitled "Official Zoning Map, Erving, Massachusetts" dated March 8, 2023, as may be amended. The Zoning Map, with all explanations thereon, is hereby made a part of this Bylaw.

### **§230-2.4 INTERPRETATION OF ZONING MAP.**

**2.4.1 Boundary Lines Based on Roads.** Boundary lines located outside of public and private ways and shown approximately parallel to their rights of way shall be regarded as parallel to them, with distances separating them being measured at right angles to the public or private way unless otherwise indicated.

**2.4.2 Boundary Lines Based on Zoning Map.** 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 Zoning Map, or by the scale of the Zoning Map.

**2.4.3 Contour Lines as Boundary Lines.** Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.

### **§230-2.5 LOTS SPLIT BY ZONING BOUNDARIES.**

**2.5.1 General.** Where a district boundary line (other than for an overlay district) divides any lot existing at the time such line is adopted, the following conditions shall apply:

1. If the Lot has frontage within only one district, the requirements of that district shall govern the entire lot.
2. If the lot has frontage within two or more districts, the owner may either:

- a. Follow the requirements of the more restrictive district in the entire lot, or
- b. Follow the requirements of the less restrictive district into the more restrictive district for a distance no greater than 30 feet.

#### **§230-2.6 CHANGING THE ZONING MAP**

Any change of the Zoning Map shall constitute an amendment to this Bylaw and the procedure for making such a change shall conform to the requirements for amending this Bylaw.

## ARTICLE §230-3.0 USE REGULATIONS

### §230-3.1 PRINCIPAL USES AND STRUCTURES.

**3.1.1 General.** No principal building or structure shall be constructed, and no building, structure or use of land, or plan thereof shall be used for any purpose or in any manner other than for one or more uses hereinafter set forth as permissible. Any uses not listed in the Use Regulation Schedule, Section 3.1.2, shall be considered prohibited. Unless otherwise authorized, not more than one principal structure or dwelling may be erected on a lot.

**3.1.2 Use Regulation Schedule.** Symbols employed in the following Use Regulation Schedule shall have the following meaning:

Y - Yes, the use is permitted by right in that Zoning District.

N - No, the use is not permitted in that Zoning District.

PB - The use may be permitted if a special permit is granted by the Planning Board.

BA - The use may be permitted if a special permit is granted by the Zoning Board of Appeals.

SB - The use may be permitted if a special permit is granted by the Select Board.

USE				
A. RESIDENTIAL USES	RR	VR	CV	FK
1. Single Unit dwelling	Y	Y	Y	Y
2. Two-Unit dwelling	Y	Y	Y	Y
3. Multi-Unit Dwelling	N	PB	PB	PB
4. Temporary mobile home (see Section 7.3)	Y	Y	Y	Y
5. Mobile home or mobile home park	N	N	N	N
6. Bed & Breakfast	Y	Y	Y	Y
7. Senior Housing (see Section 8.3)	PB	PB	PB	PB
8. Flexible Development (see Section 8.2)	PB	PB	PB	PB



<b>B. COMMUNITY USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Use of land or structures for religious purpose	Y	Y	Y	Y
2. Use of land or structures for educational 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 nonprofit educational corporation	Y	Y	Y	Y
3. Child Care Center/School Aged Child Care Program	Y	Y	Y	Y
4. Essential services	PB	PB	PB	PB
5. Municipal parks, playgrounds, senior center, offices, fire and police stations, municipal recreational uses, municipal wells, water storage and processing, sewage lift stations, municipal cemetery, and related building and parking facilities	Y	Y	Y	Y
6. Municipal yards and related facilities	PB	PB	PB	PB
7. Charitable or philanthropic use; Hospital	PB	PB	PB	PB
8. Community or private club, not conducted for profit	PB	PB	PB	PB
9. Private cemetery, not conducted for profit	PB	PB	PB	PB

<b>C. AGRICULTURAL, OPEN SPACE USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Agriculture, horticulture and floriculture on parcel five acres or more or two qualified acres	Y	Y	Y	Y
2. Commercial greenhouse and nursery uses on parcels five acres or more or two qualified acres	Y	Y	Y	Y
3. Commercial greenhouse and nursery uses on parcels less than five acres or two qualified acres	PB	PB	PB	PB
4. For properties under five acres or less than 2 qualified acres in size, the raising or keeping of livestock, including poultry, horses, or cows	SB	SB	SB	SB
5. Farm stand	Y	Y	Y	Y
6. Wildlife preserve, conservation uses, or passive recreational uses	Y	Y	Y	Y
7. Outdoor commercial recreation	PB	PB	PB	PB
8. Campground	PB	PB	PB	PB

<b>D. GENERAL BUSINESS USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Adult Entertainment Uses	N	N	PB	PB
2. Business or professional office, small	PB	PB	Y	Y
3. Business or professional office, large	PB	PB	Y	PB
4. Bank or financial establishment	N	N	Y	PB
5. Medical office, clinic	N	PB	Y	PB
6. Retail establishment, small	PB	PB	Y	Y
7. Retail establishment, medium	N	N	Y	Y
8. Retail establishment, large	N	N	PB	PB
9. Sales and storage of building materials	N	N	PB	PB
10. Personal or general service establishment	N	PB	Y	Y
11. Restaurant	PB	PB	Y	Y
12. Restaurant, with drive through window	N	N	PB	PB
13. Laundry, laundromat	N	N	PB	PB
14. Theater	N	N	PB	PB
15. Motel or hotel	PB	PB	PB	PB
16. Commercial kennel	PB	N	N	PB
17. Hobby kennel	Y	PB	PB	Y
18. Landscaper or contractor yard	PB	N	N	PB
19. Veterinary office or clinic	PB	PB	Y	Y
20. Printing and publishing establishment	N	N	Y	Y
21. Indoor commercial recreation	PB	PB	PB	PB
22. For profit educational establishment	PB	PB	PB	PB
23. Brewery, tavern, winery, or distillery	PB	PB	PB	PB
24. Sale of firearms	PB	PB	PB	PB

<b>E. MOTOR VEHICLE RELATED USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Motor vehicle light service station	N	N	PB	PB
2. Repair or body shop for motor vehicles	N	N	PB	PB
3. Motor vehicle or boat sales and service	N	N	PB	PB
4. Car wash	N	N	PB	PB
5. Electric vehicle charging station	Y	Y	Y	Y
6. Public parking or garaging of automobiles not incidental to another permitted use	PB	PB	PB	PB
7. Drive-in or drive-through window or facility	N	N	PB	PB

<b>F. MARIJUANA RELATED USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Medical Marijuana Treatment Center	N	N	PB	PB
2. Cultivation of medical and/or recreational marijuana occupying a building(s) or greenhouse(s) no greater than 10,000 square feet	PB	PB	PB	PB
3. Cultivation of medical and/or recreational marijuana occupying a building(s) or greenhouse(s) greater than 10,000 square feet	PB	PB	PB	PB
4. Indoor cultivation of medical and/or recreational marijuana, including craft marijuana cultivator cooperatives	PB	N	PB	PB
5. Retail marijuana product stores – Marijuana product sales and related paraphernalia including edibles of medical and recreational marijuana	N	N	PB	PB
6. Marijuana Social Consumption Establishment	N	N	PB	PB
7. Processing and product manufacturing of medical and/or recreational marijuana	PB	N	PB	PB
8. Independent testing laboratory facility for medical and recreational marijuana	PB	N	PB	PB
9. Marijuana Microbusiness	PB	PB	PB	PB
10. Marijuana, Delivery-Only Retailer	PB	PB	Y	Y

<b>G. INDUSTRIAL USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. Junk yard, dump, and landfill	N	N	N	N
2. Manufacturing, processing and laboratory	N	N	PB	PB
3. Freight or transportation facility	N	N	PB	N
4. Quarrying, gravel mining and earth removal	N	N	N	N
5. Sawmill	PB	PB	N	N
6. Bulk storage, warehouse	N	N	PB	PB
7. Self-storage warehouse	N	N	PB	PB
8. Energy storage system	PB	N	N	PB

<b>H. ACCESSORY USES</b>	<b>RR</b>	<b>VR</b>	<b>CV</b>	<b>FK</b>
1. One or two boarders in a single unit dwelling	Y	Y	Y	Y
2. Tennis court, or similar court when accessory to a dwelling	Y	Y	Y	Y
3. Accessory Dwelling Unit in detached building (See Section 8.1)	PB	PB	PB	PB
4. Home based business (See Section 3.2.2)	Y	Y	Y	Y
5. Accessory uses or structure on the same lot with and customarily incidental to a permitted main use on the same premises, including off-street parking	Y	Y	Y	Y
6. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production	PB	PB	PB	PB
7. Family day care home, large	PB	PB	PB	PB
8. Family day care home, small	Y	Y	Y	Y
9. Adult social day care	PB	PB	PB	PB
10. Energy storage system, accessory	Y	Y	Y	Y

## **§230-3.2 ACCESSORY USES.**

**3.2.1 General.** Accessory uses are allowed as set forth in the Schedule of Use Regulations, Section H. In addition, other accessory uses are allowed provided they meet the definition of “accessory use,” which is “a use incidental and subordinate to the principal use, and located on the same lot.”

**3.2.2 Home Based Business.** A business or profession is allowed as an accessory use out of a dwelling (“home occupation”), provided that:

1. Such use is clearly secondary to the residential use and the home occupation shall be carried on within the principal building or an accessory building on the lot or an adjoining lot in common ownership. Such adjoining lot in common ownership must be either adjacent to or only separated by a public way from the lot on which the principal building is located.
2. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home occupation.
3. If the home occupation is located in an accessory building, the gross floor area devoted to the home occupation shall not exceed 50% of the gross floor area of the residence or 2,000 square feet, whichever is greater.
4. The home occupation shall be carried on by a resident of the principal dwelling and not more than two nonresidents shall be employed on the premises at any one time.
5. No external change is made which alters the residential appearance of the building on the lot.
6. Except for a permitted sign of not more than 6 square feet, per Section 6.2, there shall be no exterior display or other exterior indication of the home occupation or other variation from the residential character of the premises.
7. No outside storage shall be allowed unless a special permit is granted by the Planning Board and such outside storage is screened from neighboring properties and the public way by a fence or an evergreen hedge of sufficient depth or height to provide screening.
8. Traffic shall not exceed volumes normally expected in a residential neighborhood. For purposes of this Bylaw, this shall be defined as 15 trips per day per dwelling unit which is approximately 150% of the average weekday trip rate for single unit homes from the Institute for Traffic Engineers Trip Generation Manual.
9. Adequate off-street parking shall be provided. Parking areas shall not be within 20 feet of a street line or within any required side or rear yard and shall be adequately screened from neighboring residential uses. Parking areas shall not have more than four spaces per dwelling unit.
10. The home occupation shall comply with the environmental performance standards listed in Section 6.3.

11. Automotive repair shops operating out of a residential dwelling and which otherwise meet the criteria for a home occupation shall require a Special Permit from the Planning Board.

## ARTICLE §230-4.0 DIMENSIONAL REGULATIONS

### §230-4.1 GENERAL REQUIREMENTS.

A structure or accessory structure, shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following requirements, and not more than 1 dwelling shall be built upon any such lot, except as provided in Section 8.1.

### §230-4.2 TABLE OF DIMENSIONAL REQUIREMENTS.

District	Min. Lot Area (sf)	Min. Lot Frontage (ft)	Front Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Max. Height (ft)	Max. Lot Coverage (%)
Central Village	21,780	125	20	10	20	45	70
Village Residential	21,780	125	20	15	20	45	70
Rural Residential	65,340	175	20	20	20	45	50
French King	65,340	175	20	20	20	45	50

### §230-4.3 ACCESSORY STRUCTURES, BUILDINGS AND FENCES.

**4.3.1 Same Lot.** Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.

#### 4.3.2 Location and Size of Accessory Structure or Building.

District	Front Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Max. SF Accessory Building
Central Village	10	10	10	300
Village Residential	10	10	10	300
Rural Residential	20	20	20	300
French King Commercial	20	20	20	300

**4.3.3 Height.** Accessory building not more than 20 feet in height above the average grade level around the structure; provided, however, that a barn more than 20 feet in height may be allowed by special permit from the Zoning Board of Appeals.

**4.3.4 Setbacks and Code Compliance.** Swimming pools, game courts, and the like are accessory structures and shall comply with the State Building Code and all applicable setback requirements of this Zoning Bylaw.

#### **4.3.5 Fences.**

1. Fences may be located within the front, side, or rear yard provided that they are set back from the property line by at least 2 feet with the finished side facing towards the exterior of the property. In the case of a nonconforming lot, the fence may be set back from the property line 1 foot.
2. Boundary fences, walls, or hedges shall be permitted provided that they do not exceed 6 feet in height and provided that no fence which obstructs vision shall exceed 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.



## **ARTICLE §230-5.0 NONCONFORMING USES AND STRUCTURES**

### **§230-5.1 APPLICABILITY.**

Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or 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 in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two unit residential structure does not increase the nonconforming nature of said structure.

**5.1.1 Commencement of Construction or Operation.** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **§230-5.2 NONCONFORMING USES.**

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

**5.2.1 Permissible Changes.** The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use.
2. Change from one nonconforming use to another, less detrimental, nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

### **§230-5.3 NONCONFORMING STRUCTURES.**

The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**5.3.1 Permissible Changes.** The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed.

2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

#### **§230-5.4 VARIANCE REQUIRED.**

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

#### **§230-5.5 NONCONFORMING SINGLE AND TWO UNIT RESIDENTIAL STRUCTURES.**

Nonconforming single and two unit residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

**5.5.1 Permissible Changes.** The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area.* Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.
2. *Insufficient Frontage.* Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. *Encroachment.* Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Building Inspector determines that proposed alteration, extension or change exceeds the one or more of the criteria set forth above, the Zoning Board of Appeals may, by special permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. In the case of voluntary demolition of a single or two unit structure, reconstruction thereafter shall be governed by Section 5.7.

#### **§230-5.6 ABANDONMENT OR NON-USE.**

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming

use or structure otherwise abandoned or not used upon a finding that that the reestablished nonconforming use or structure will not result in substantial detriment to the neighborhood.

#### **§230-5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.**

Any nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

##### **5.7.1 Procedures.**

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.
2. A building may be reconstructed as of right if (a) it will be located on the same footprint as the original nonconforming structure and (b) it will not exceed the gross floor area of the original nonconforming structure.
3. A building may be reconstructed upon the grant of a special permit from the Zoning Board of Appeals if (a) the proposed reconstruction would cause the structure to exceed the gross floor area of the original nonconforming structure or (b) the proposed reconstruction would cause the structure to be located other than on the original footprint upon a finding that that the reconstruction will not result in substantial detriment to the neighborhood. Such special permit shall be obtained prior to voluntary demolition.

#### **§230-5.8 REVERSION TO NONCONFORMITY.**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

#### **§230-5.9 SUBSTANDARD LOTS.**

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity.

#### **§230-5.10 EMINENT DOMAIN.**

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 5.0.

## ARTICLE §230-6.0 GENERAL REGULATIONS

### §230-6.1 PARKING AND LOADING REQUIREMENTS.

**6.1.1 General.** Adequate off-road parking must be provided to service all increases in parking demand created by new structures, additions or change of use.

**6.1.2 Number of Required Spaces.** Unless a special permit is granted to provide relief under Section 6.1.7, the following number of spaces shall be required.

Use	Number of Required Spaces
Dwelling	2 parking spaces per dwelling unit.
Hotel, motel, guest house, and lodging house	1 space per guest unit.
Offices, Retail stores	2 spaces per 180 sq. ft. of floor area, but not fewer than 2 spaces per separate enterprise.
Restaurant, place of assembly	1 space per 3 persons maximum occupancy as allowed under the State Building Code.
Industrial Use	1 space per employee per shift.

**6.1.3 Location of Required Spaces.** Required spaces must be on the same lot as the use they serve, except that spaces on a separate lot in the same ownership may be credited if not further than 350 feet from the building entrance of the activity they serve.

**6.1.4 Commercial Vehicles.** Adequate off-road parking must be provided for commercial vehicles.

**6.1.5 Parking Areas for 10 or More Vehicles.** The following regulations shall apply:

1. Their use shall not require backing onto a public way;
2. There shall be not more than one entrance and one exit from such lots per 300 feet of frontage. To meet this requirement, legal arrangements may be made for shared access;
3. Such lots require screening from any abutting residential use by dense shrubs and trees or opaque fencing not inconsistent with the neighborhood character;
4. The parking area shall be located to the side or rear of the property to the maximum extent feasible;
5. On site parking and loading areas sufficient to accommodate employees and truck deliveries must be provided;
6. Adequate screening of parking areas from abutting residential parcels and roadways shall be provided;
7. A minimum 5 foot wide buffer area shall provide adequate screening of the parking area from abutting residential uses. Such buffer area shall be planted with a combination of

evergreen and deciduous shrubs that are at least 5 feet in height. Solid wood fencing may also be used which may reduce the buffer area required;

8. Adequate screening of refuse areas containing dumpsters or other containers shall be provided from abutting parcels and roadways. Solid wood fencing should be used unless an alternative acceptable to the Planning Board is approved;

9. Lighting shall be pedestrian in scale with fixtures not exceeding 16 feet in height and cut-off fixtures that direct light downward should be used; and

10. Lighting shall not produce direct illumination or glare beyond the property boundaries.

**6.1.6 Loading Requirements.** Adequate off-road 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. Facilities shall be so sized and arranged that no trucks need back onto or off a public way, or be parked on a public way while loading, unloading, or waiting to do so.

**6.1.7 Special Permit.** The Special Permit Granting Authority (SPGA) or the Planning Board, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

## **§230-6.2 SIGNS.**

**6.2.1 Purpose.** The following sign regulations are intended to allow the identification and location of activities or premises while protecting the visual character of the town and the safety of its residents. Any exterior sign or advertising device hereafter erected or maintained shall conform to the following regulations.

### **6.2.2 General Restrictions.**

1. All permanent signs erected or relocated, which are greater than 6 square feet shall require a permit issued by the Building Inspector.
2. No permanent exterior sign shall flash, move or display movement or generate music or an audible message.
3. Signs may be lighted internally or externally, but illumination of all signs shall be of a white light and shall be shielded and not be directed onto adjacent property, roadways or upward.
4. Signs may be illuminated only during normal business hours.
5. Neon signs are prohibited.
6. No sign shall be placed closer than 10 feet to a public right-of-way or within any side or rear yard requirement and it shall not impair pedestrian or vehicular traffic flow or sight.
7. Freestanding signs may be up to 15 feet in height above the ground, measured from the average ground grade on the premises to the top of the sign.

8. Signs attached to a building may be either flat against the wall or perpendicular to it but shall not project more than two feet above the eaves line of the building or more than three feet from the vertical plane of the wall. Signs attached to a parapet shall not project above the top of the parapet.

9. Double-sided signs with equal and parallel faces providing identical information on both sides shall be measured on one side only in determining square footage.

10. Non-accessory signs or billboards (general advertising not related to the premises) are prohibited.

### **6.2.3 On-Premises Signs.**

1. Any residential dwelling is allowed one sign for each household residing on the premises, indicating the name of the owner or occupant or the name of the building, or other non-commercial message. Such sign may pertain to a permitted accessory use. In special instances, the Zoning Board of Appeals may issue a special permit for a larger or second sign for a residential dwelling. In determining whether to grant an increase in signage under this subsection, the Zoning Board of Appeals shall consider the respective interests of the applicant, the adjacent property owners, and the interests of Town at large.

2. One announcement or bulletin board up to 12 square feet is allowed for a public, educational, charitable or religious organization.

3. Commercial and industrial uses shall be allowed two signs, one attached to the building and one freestanding. Any commercial message on such signs shall be limited to identification of the establishment and the products or services available or produced on the premises.

4. Businesses sharing a single building are allowed one wall sign per business up to 15 square feet, and one shared freestanding sign up to 20 square feet for the entire premises bearing the name of each business located there. In special instances, the Zoning Board of Appeals may issue a Special Permit to each business for larger signs herein before specified, which have an aggregate total of not more than 30 square feet for the freestanding sign, and 20 square feet for a wall sign, upon the Board's determination that the sign will serve the informational needs of the motoring public, will not obscure the legibility of existing signs on adjacent premises, will not obstruct sight distance of traffic on the highway, employs minimum wording to enhance legibility, and is consistent with the rural character of the neighborhood and Town. The Special Permit shall specify the size and location and maximum height of the sign(s), not to exceed 20 feet in height, and impose other terms and regulations as the Zoning Board of Appeals may deem to be in the public interest.

**6.2.4 Off-Premises Signs.** Off-premises signs are signs which are not located on the property where the business/establishment is operated. Off-premises signs are prohibited in the Town of Erving, with the following exceptions:

1. "Tourist Oriented Directional Signs" and associated "trailblazing signs," as defined by Mass Highway in the Rules and Standards for Tourist Oriented Directional Signing on

Conventional Roads. Such signs shall conform to both Mass Highway regulations and the following local regulation.

2. A Special Permit granted by the Zoning Board of Appeals shall be required as evidence of community approval for "trailblazing signs." Approval of a Special Permit for "trailblazing signs" shall be subject to a finding by the Zoning Board of Appeals that such signs will promote the public interest, will not endanger the public safety, and will be of such size, location and design as to not be detrimental to the neighborhood. The Zoning Board of Appeals shall have the authority to establish and amend rules and regulations pertaining to the design and placement of "trailblazing signs" within the Town of Erving. Such signs shall not exceed nine square feet in area or 10 feet in height.

**6.2.5 Electronic Changeable Message Signs (ECMS).** Notwithstanding any other requirements of this Section 6.2, the following regulations shall apply to ECMS:

1. An ECMS may not flash, animate, scroll, or otherwise move, or transition from one message to another in a moving manner. The transition between messages shall be instantaneous.
2. Each message shall be continuously displayed for a minimum of 30 seconds before changing to another message.
3. The ECMS must be equipped with a control system that automatically adjusts light emission level to ambient light conditions so as to not cause glare or excessive brightness.
4. In a Residence District the ECMS may only be lit between the hours of 7:00 AM and 8:00 PM and shall be equipped with an automatic timer control that assures compliance with these restrictions.

**6.2.6 Nonconforming Signs.**

1. Continuation. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this Bylaw may continue although such sign does not conform to the provisions of this Section, but if the business being advertised is discontinued for a period of two years or more, then the use of the sign shall not be resumed and the sign shall be removed.
2. Maintenance. Any lawfully existing sign may be maintained, repaired or repainted, but shall not be expanded, extended or enlarged, in dimension or use, except in conformance with the provisions of this Bylaw.
3. Replacement. Any sign replacing a nonconforming sign shall conform to the provisions of this Bylaw, and the nonconforming sign shall not thereafter be displayed. If a nonconforming sign is destroyed by vandalism, act of God or other reason beyond the control of the owner, it may be restored or replaced within two years.

**6.2.7 Exempt Signs.** The following type of signs are exempt from this Bylaw:

1. Legal notices for identification, information, or providing direction created or required by governmental bodies.

2. Signs directing and guiding traffic and parking, but bearing no advertising matter, including name or products.
3. Signs of up to 5 square feet advertising rental or sale of the premises. Such signs shall be promptly removed within five days after the sale, rental or lease is consummated.
4. Tag Sale Signs, but only during the period that the sale is in progress. Allowed only for tag sales which occur no more often than once each month.
5. Seasonal Farm Stand Signs not to exceed a period of six months in a calendar year.
6. Contractor's sign which is removed within five days after the work is completed.
7. Temporary Commercial signs which are removed promptly upon completion of the activity to which they relate. Temporary commercial signs shall not exceed 12 square feet in area and 10 feet in height. Temporary Commercial signs shall not be in place more than 5 days per month.
8. A single portable or movable commercial sign is allowed during regular business hours, provided such sign stands on legs or wheels, and does not exceed 12 square feet.
9. Internal signs within a building or structure which are not viewable from a road are exempt from the provisions of this Bylaw.

**6.2.8 Special Permit.** The SPGA or the Planning Board, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

### **§230-6.3 PERFORMANCE STANDARDS.**

The following regulations shall be applied whenever the Planning Board, Select Board, or Zoning Board of Appeals is engaged as Special Permit Granting Authority (SPGA), or the Planning Board is engaged in site plan approval, or the Zoning Board of Appeals is engaged in consideration of a variance petition (taken together, the "Approval Authority"), except with regard to the permitting of single or two-unit dwelling.

**6.3.1 Erosion Control.** Site design, building design, or construction process be modified so as to protect soil from erosion or excessive uncontrolled surface water runoff. No grading or construction shall take place on slopes in excess of 25% except under special permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. To ensure compliance with these requirements, the Approval Authority may require topographic data at the developer's expense prior to acting upon an application for a special permit.

**6.3.2 Screening.** Open storage and loading or service areas shall be screened from any adjacent residence or public way by plantings. Junk, trash, or debris shall be confined out of sight.



**6.3.3 Hazard.** No use shall be allowed which would create hazard due to explosion, fire, or other causes. Potentially hazardous conditions shall be fenced, covered, or otherwise rendered safe.

**6.3.4 Flooding.** The floodway, as shown on the FIRM map for the Town of Erving, for any stream or river shall not be reduced by filling.

**6.3.5 Disturbances.** No use shall be allowed if it will cause vibration, odor, or flashing, more than 20 feet from the boundaries of the originating premises, except for warning devices, construction work, maintenance, or other special circumstances. Normal farming practices are exempt from the noise and odor requirements of this provision.

**6.3.6 Removal of Natural Materials.** The removal of sod, earth, mineral aggregates, stone or rock from a parcel of land hereafter shall require a special permit except where it is incidental to the construction of an approved building or is a routine part of normal farming or house maintenance operations.

**6.3.7 Hillside Areas.** Hillside areas shall be retained with vegetative cover as follows:

Average Slope (by %)	Minimum % of the slope that must remain covered with vegetation
10.0-14.9	25
15.0-19.9	40
20.0-24.9	55
25.0-29.9	70
30+	85

**6.3.8 Stormwater Management.** All development shall comply with the stormwater management regulations promulgated by the Massachusetts Department of Environmental Protection and the U.S. Environmental Protection Agency and other reasonable requirements established by the Planning Board, Highway Superintendent, or Town Engineer.

**6.3.9 Lighting.** The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing night time safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

1. Shielding. All outdoor light fixtures shall be shielded downward so as to meet the goals of this Section.
2. Light Trespass. Direct light from the light source is to be confined within the property boundaries.
3. Light Intensity. Outdoor lighting shall be designed to provide the minimum intensity needed at any particular time.
4. Searchlights. The operation of laser shows or searchlights for advertising purposes is prohibited; provided however, that same may be authorized for a period of not more than fourteen days by special permit issued by the Planning Board.

5. Indoor Lighting. Indoor light sources will not be projected outside in a manner to defeat the intent of this Bylaw.

6. Flickering and Flashing Lights. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.

7. Hours of Operation. Except as may be deemed appropriate for site safety or security, all external lighting, including lighting accessory to authorized signs, shall be extinguished one half hour after the facility is closed for the business day. Such lighting may be timed to resume one half hour prior to the arrival of the first employee on the premises.

**6.3.10 Noise.** The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise. Practices and systems shall reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; preserve property values; and preserve neighborhood character.

1. Hours of Operation. As a condition of any special permit or site plan approval, the Approval Authority may incorporate or require specific hours of operation for the following activities:

- a. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or other objects or materials for sale or storage or use in a manner that causes a condition of noise pollution at any time;
- b. Operating or permitting the operation of tools or equipment used in construction, drilling or demolition work;
- c. Operation of construction devices.

2. Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 10 dBA above ambient when measured at the property boundary of the receiving land use, all pursuant to the MassDEP Noise Policy, 710 CMR 7.01.

**6.3.11 Site Development Standards.** To the extent practicable, the proposed development shall be located to preserve and enhance the natural features of the site, to avoid disturbances of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the subdivision and the Town.

1. Phasing of Development. The Approval Authority may limit the extent of a site exposed at any one time through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

**6.3.12 Pedestrian and Vehicular Access; Traffic Management.** The proposed development and/or redevelopment shall be designed with a forecast for the next five years from the time of

application to minimize hazards to public health and safety as a result of traffic; provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles; provide off-site traffic mitigation, where required, to offset the impact of the development; reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimize the impact on scenic roads, historic districts, natural resources, and community character. The Development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. Access via roadways abutting residential districts shall be avoided where possible.
2. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Approval Authority.
3. Each development shall be served by an adequate driveway. The Approval Authority may, in certain circumstances, allow additional driveways as a condition of approval where the access is shared or the project has frontage on two separate streets.
4. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
5. Curb cuts shall comply with the Town's General Bylaw.
6. Interior Circulation. The proposed development shall assure safe interior circulation within its site by separating pedestrian, bikeways, and vehicular traffic.
7. The Approval Authority may require a traffic report or Traffic Impact Access Study to DEP standards, prepared by a qualified traffic engineer, detailing the expected traffic impacts.
8. Sight Distance. Acceptable sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the development.
9. Mitigation. Off-site improvements may be required to mitigate the impact of the proposed development.

**6.3.13 Exemptions.** The following are exempt from these standards:

1. Emergency Response. Emergency responses performed by a private entity or a public agency and fire or burglar alarms.
2. Municipal Uses and Structures. All municipal uses and structures, including schools;

3. Events. Parades, fairs or outdoor entertainment between the hours of 7:00 AM and 11:00 PM only provided that a permit for such activity has been granted by the Select Board and that said permit is for not more than ten (10) days.
4. Religious Structures and Services.

## **ARTICLE §230-7.0 SPECIAL REGULATIONS**

### **§230-7.1 ENERGY STORAGE SYSTEM.**

**7.1.1 General.** An Accessory Energy Storage System is allowed in all zoning districts by right, after site plan approval. All other Energy Storage Systems are allowed only in the RR or FK District(s), after the grant of a special permit by the Planning Board.

**7.1.2 Standards.** All Energy Storage Systems must meet the standards put forth in the National Fire Protection Association's NFPA 855 Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition (NFPA 855), as amended and updated, and comply with the State Fire Code 527 CMR 1.00, the State Electrical Code 527 CMR 12.00, and the State Building Code, 780 CMR 1.00 et seq.

**7.1.3 Operation and Maintenance Plan.** As part of the site plan approval process, the project applicant shall submit a plan for the operation and maintenance of any Energy Storage System, which shall include measures for maintaining safe access to the installation, fire suppression, stormwater management and vegetation controls, as well as general procedures for operation and maintenance of the installation.

### **§230-7.2 MARIJUANA ESTABLISHMENTS.**

**7.2.1 Purpose and Intent.** It is the purpose of this article to promote public health, safety and general welfare, and to support the availability of medical and recreational marijuana in accordance with State law. To mitigate potential impacts to adjacent areas this Bylaw will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young people in the vicinity of schools and public parks.

**7.2.2 Special Permit Granting Authority.** The Planning Board shall be the Special Permit Granting Authority (SPGA) under this Section in accordance with M.G.L. Chapter 40A, Sections 9 and 9A. Special permits issued by the Planning Board shall require a positive vote by a supermajority vote of Planning Board Members.

**7.2.3 Requirements Regarding Allowed Locations for Marijuana Establishments.** See Section 3.1 Use Regulations Schedule for locations for permitted Marijuana Establishments.

1. Marijuana Establishments shall not be located within 350 feet of any existing public, parochial, or private school. This setback shall include the grounds on which said public, parochial, or private school.

**7.2.4 Site Development and Permitting Standards.** Pursuant to Chapter 40A, Section 9A the following site improvements and amenities are required to protect public safety and neighboring property values, in addition to the special permit requirements found in Section 10.5 and the site plan review requirements found in Section 10.6. The Planning Board is empowered hereunder to review and approve special permit applications for Marijuana Establishments and impose requirements for: buffering; odor control; noise; outdoor lighting; parking; access to the site from public roads; hazardous materials; and landscaping and buildings. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

1. **Dimensional Requirements.** Any building or structure containing a Marijuana Establishment shall meet the setback requirements and other dimensional controls of the appropriate district as specified in these bylaws. For any property proposed to contain a Marijuana Establishment, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.

2. **Parking and Loading Requirements.** On-site parking and loading shall be provided in accordance with the requirements of Section 6.1 of this Bylaw. For any property proposed to contain a Marijuana Establishment Business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.

3. **Site Screening.** Rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening shall be by a fence that is 3.5 feet tall within 5 feet of the street and 6 feet tall elsewhere on the property and/or a 6-foot-wide vegetated planting of hardy evergreens and deciduous trees and shrubs no less than five (5) feet in height.

4. **Marijuana Establishments** may request a waiver from the site screening standard of rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening shall be by a fence that is 3.5 feet tall within 5 feet of the street and 6 feet tall elsewhere on the property and/or a 6-foot-wide vegetated planting of hardy evergreens and deciduous trees and shrubs no less than five (5) feet in height as required by Section 7.2.4.3. Such waiver may be granted in the Planning Board's sole discretion.

5. **Lighting and Security.** Energy efficient site lighting shall be maintained at a minimum lumen as determined by the Erving Police Department to ensure adequate visibility on the property to ensure public safety. Light standards may not exceed 20 feet in height and shall be reasonably shielded from abutting properties and shall incorporate full cut off fixtures to reduce light pollution. Additional security features recommended by the Erving Police Department shall be installed and maintained.

6. **Noise and Odors.** No noise or marijuana or other odors detectable at the property line of the Marijuana Establishment shall be allowed.

7. **Hazardous Materials.** Submission of a complete list of chemicals, pesticides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. The

Planning Board will require that a Hazardous Materials Management Plan be prepared to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism. The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces and must be approved by the Fire Chief.

8. **Signs.** All signs for a Marijuana Establishment must meet the requirements of Section 6.2 of this Bylaw and the State Regulations (935 CMR 500.000) including the requirement that, no advertising signs shall be located within twenty (20) feet of a public or private way and must be set back a minimum of twenty (20) feet from all property lines.

9. **Buildings.** Appearance of buildings for Marijuana Establishments shall not employ unusual color or building design which would attract attention to the premises. Reuse of existing vacant or underutilized mill buildings in the Central Village zoning district for marijuana cultivation, product manufacturing or testing may be possible by special permit.

10. **Marketing.** Marijuana Establishments shall not be allowed to disseminate or offer to disseminate marijuana marketing materials to minors or suffer minors to view displays or linger on the premises. No free samples may be provided by Marijuana Establishments to consumers.

11. Cultivation: If marijuana products are to be grown outdoors plans will need to be approved by the planning board to ensure they minimize public nuisances including odors, noise, and lighting to neighboring properties

**7.2.5 Applications.** The applicant requesting permission to operate any Marijuana Establishment must file their application with the SPGA and the Town Clerk. Such application shall contain the information required by this Section and Section 10.6, and any rules and regulations established by the Special Permit Granting Authority and the State Cannabis Control Commission. The application shall also include:

1. Name and Address of the legal owner and Licensee of the Marijuana Establishment;
2. Name and Address of all persons having lawful, equity or security interests in the Marijuana Establishment;
3. Name and Address of the Manager of the Licensed Marijuana Establishment;
4. The number of proposed employees; and
5. Proposed security precautions.

**7.2.6 Site Plan Review.** No Marijuana Establishment shall be established prior to submission and approval of a site plan by the Planning Board, pursuant to Section 10.6. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed Marijuana Establishment and all existing uses within 350 feet of the property lines of the proposed Marijuana Establishment.

**7.2.7 Change in License or Owner.** The Owner and Licensee of any Marijuana Establishment issued a special permit under this Bylaw shall report, in writing, within 10 business days any change in the name of the legal owner of the Marijuana Establishment or any expiration or suspension of a license to the Building Inspector and Planning Board. Any failure to meet this requirement of this Bylaw will result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the special permit cease immediately.

**7.2.8 Change of Ownership.** A special permit issued under this Section shall lapse upon any transfer of ownership or legal interest of more than 10% or change in contractual interest in the subject premises or property. The special permit may be renewed thereafter only in accordance with this Section and Section 10.5.

**7.2.9 Host Community Agreement.** Applicant shall submit the proposed Host Community Agreement that is required between a Marijuana Establishment and the town it is operating in at the time they submit their Application.

**7.2.10 Expiration.** A special permit to operate a Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but shall be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the Special Permit Granting Authority at least 60 calendar days prior to said expiration and that no objection to said renewal is made and sustained based upon compliance with all conditions of the special permit as well as public safety factors applied at the time the special permit renewal is requested. In addition, a Host Community Agreement satisfactory to Erving shall be provided if requested by the Town.

### **§230-7.3 TEMPORARY MOBILE HOME.**

The owner or occupier of a residence which has been destroyed by fire or other natural holocaust can apply for a permit from the Building Inspector and a permit from the Board of Health to place a mobile home on the site of such residence and may reside in such mobile home for a period not to exceed 24 months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

### **§230-7.4 SOLAR ENERGY SYSTEMS.**

**7.4.1 Purpose.** The purpose of this Section is to establish appropriate criteria and standards for the placement, design, construction, operation, monitoring, modification and removal of new large-scale ground-mounted solar photovoltaic 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.

**7.4.2 Definitions.** See “Solar Energy System” in Section 11.0.

**7.4.3 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 existing installations or related equipment.

**7.4.4 Location.** Large-Scale Ground-Mounted Photovoltaic Installations shall be allowed by right with site plan review and approval for all parcels of land under single ownership that contain 40 contiguous acres or greater. Parcels 20 contiguous acres and greater, but less than 40 contiguous acres may be approved for Large-Scale Ground-Mounted Photovoltaic Installations by special permit from the Planning Board (the SPGA), upon a determination of compliance with the General Requirements for all Large-Scale Ground-Mounted Photovoltaic Installations - Section as set forth below, and Sections 10.5 and 10.6 of this Bylaw regarding special permit and site plan review.

**7.4.5 General Requirements: Large-Scale Ground-Mounted Photovoltaic Installations.** The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

1. Compliance with Laws, Bylaws and Regulations. The construction and operation of all large-scale solar photovoltaic installations shall meet 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, and further comply with all other provisions of the Erving Zoning bylaws.
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.
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.

**7.4.6 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 Erving Planning Board acting as the Site Plan Review Authority (SPRA) and obtain approval there from prior to construction, installation or modification as provided in this Section. No large-scale solar photovoltaic installation shall be added to, modified or changed without additional site plan review and approval from the SPRA without first obtaining a building permit.

**7.4.7 Site Plan Requirements.** All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts. Pursuant to the site plan review process, the project proponent shall provide a site plan showing:

1. Property lines and physical features, including roads and buildings, for the project site.
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, and a landscape plan (in plan view) identifying plant material to be used to screen all appurtenant structures and identifying plant material or fencing to be used to satisfy the requirement for a buffer between installation and property edge.

3. Blueprints 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.
4. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
5. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
6. Name, address, and contact information for proposed system installer.
7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any.
8. Name, contact information and signature of any agents representing the project proponent, if any.

**7.4.8 Required Documents.** Applicants for site plan approval shall also submit the following documents.

1. 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.
2. An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operational maintenance of the installation.
3. Proof of liability insurance.
4. Payment of financial surety that satisfies this Section.
5. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the SPRA 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.

**7.4.9 Design Standards.**

1. Dimensional and Density Requirements. All large-scale ground-mounted solar photovoltaic arrays shall have 75 foot set-backs to adjacent non-owned parcels, as well as compliance with the yard, space, coverage percentage, and height requirements of the zoning district(s) in which the installation is located.
2. 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. Lighting of the solar photovoltaic installation shall be

directed downward and inward and shall incorporate full cut off fixtures to reduce light pollution.

3. **Signage.** Signs shall comply with Section 6.2 of this Bylaw. A sign compliant with Section 6.2 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. **Utility Connections.** Reasonable efforts, as determined by the SPRA, 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.

5. **Appurtenant Structures.** All appurtenant structures to large-scale ground-mounted solar photovoltaic arrays shall conform to the setback requirements of the zoning district in which the installation is located. 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. All appurtenant structures shall have a Landscape Plan.

#### **7.4.10 Safety and Environmental Standards.**

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 provide the name, phone number, and email of the person responsible for public inquiries throughout the life of the installation.

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.

3. **Landscaped Buffer Strip.** A landscaped buffer strip is intended to provide in a reasonable time a visual barrier between the large-scale ground-mounted solar photovoltaic installation and adjacent parcels. Except for vehicular and pedestrian passways, the areas shall be used only for an interplanting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. The buffer must provide coverage of three feet in height from the proposed grade to the top of the majority of the planting material at time of installation. Reasonable leeway may be provided by the SPRA to allow for expected growth of the buffer strip over time. The buffer strip shall occupy at least 20% of the depth between the property line and the mandated setback of the zoning district where the installation is located. Where considered appropriate in the judgment of the site plan review authority, walls and fences may be used in addition to in lieu of plantings. A planting plan showing the types, sizes and locations of material to be used shall be subject

to the approval of the SPRA. The SPRA may waive the requirements of the visual barrier where it deems it advisable.

#### **7.4.11 Monitoring and Maintenance.**

1. **Installation Conditions.** The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good conditions. 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. 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.

2. **Modification Conditions.** Any material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the SPRA.

#### **7.4.12 Waivers.**

1. The SPRA may waive strict compliance with any requirement of the Section 6.0 of this Bylaw, or the rules and regulations promulgated hereunder, where:

- a. Such action is allowed by federal, state and local statutes and/or regulations;
- b. Is in the public interest; and
- c. Is not inconsistent with the purpose and intent of this Bylaw.

2. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaws does not further the purposes or objectives of this Bylaw.

3. All waiver requests shall be discussed and voted on by the SPRA.

4. If in the SPRA deems additional time or information is required in the review of a waiver request, the SPRA may continue the request for a waiver until such time as the SPRA deems it is ready to vote on said request.

#### **7.4.13 Abandonment or Decommissioning.**

1. **Removal Requirements.** Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned 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 SPRA 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 solar photovoltaic installations, arrays, structures, equipment, security barriers and above ground transmission lines from the site, if any.

- 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 SPRA may allow the owner or operator to leave landscaping or designated below grade foundations in order to minimize erosion and disruption to vegetation.

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 SPRA. 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, and/or take any other available legal or equitable action against the owner/applicant.

3. **Financial Surety.** Owner/applicant(s) of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety through escrow account cash or surety bond to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount determined to be reasonable by the SPRA, but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. 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.

## **§230-7.5 WIRELESS COMMUNICATIONS FACILITIES (WCF).**

**7.5.1 Purpose.** The purpose of this Section governing Wireless Communication Facilities (WCF) is to establish regulations to protect Erving's community character and minimize the harm to public health, safety, and general welfare.

**7.5.2 Definitions.** See "Wireless Communications Facilities" in Section 11.0.

**7.5.3 Special Permit Required.** A Wireless Communication Facility may only be erected after the grant of a special permit. The Special Permit Granting Authority (SPGA) shall be the Planning Board. In lieu of the criteria set forth in Section 10.5, a special permit may be granted if the SPGA determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts on the Town or neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site, the determination shall include the following:

1. Communication needs served by the facility;
2. Traffic flow and safety, including parking, loading, and distance to occupied structures;
3. Impacts on neighborhood character, including aesthetics;
4. Impacts on the natural environment;

5. Impacts to historical and scenic areas;
6. Potential fiscal impact, including impact on Town services, tax base, and employment; and
7. New towers or poles shall be considered only upon a finding that existing structures of facilities cannot accommodate the applicant.

**7.5.4 Design Requirements.** All special permits for Wireless Communication Facilities shall be subject to the following conditions:

1. To the extent possible, Wireless Communication Facilities shall be placed on existing structures, including water tanks, towers, and electrical transmission towers;
2. To the extent possible, Wireless Communication Facilities shall be co-located to minimize the impact to the community and environment;
3. Applicants should include a plan to accommodate foreseeable future users where technically practicable without increased impact to the community and environment;
4. To the extent possible, the design of the Wireless Communication Facility shall minimize the visual impact on the community and environment. Color schemes shall be utilized which blend in with the landscape, including the skyline. Landscaping shall be required to screen as much of the support structure as possible;
5. Fencing shall be required to control access to the Wireless Communication Facility, and shall be compatible with the scenic area;
6. Wireless Communication Facilities shall be maintained in good order and repair and appearance;
7. Wireless Communication Facilities which have not been used for their intended purpose for one year shall be dismantled and removed at the owner's expense;
8. Any new tower or monopole shall not be erected nearer to the property line than a distance equal to the vertical height of the structure, nor shall it be allowed within 500 feet of any residential structure, or 1000 feet from any school for safety reasons;
9. No new towers or monopoles may be erected in any scenic or historical area as identified by the Town's Open Space Plan or Master Plan;
10. Any and all signage shall comply with this Bylaw, and no advertising devices shall be allowed on any Wireless Communication Facility;
11. Lighting shall be limited to that needed for safety, emergencies, security, and/or as required by the Federal Aviation Administration;
12. There shall be a minimum of 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 any vehicles or equipment;

13. Applicant shall submit a written report inventorying existing Wireless Communication Facilities in Erving and adjacent towns and documenting why existing facilities cannot accommodate the applicant's requirements. No new facilities shall be permitted until the applicant proves, to the reasonable satisfaction of the Planning Board, that no existing facility can accommodate the applicant's requirements. New facilities will only be considered after a finding that existing facilities, or previously approved facilities cannot accommodate the proposed uses;

14. Applications for special permits may be approved with conditions upon fulfillment of the requirements contained in this Bylaw. Applicants for special permits shall be denied if the applicant cannot fulfill the requirements of this Bylaw. The SPGA may require a financial performance guarantee to ensure any of these conditions; and

15. Any replacement, modification, or additional user/carrier to an existing wireless communication facility shall require a separate special permit, subject to all of the requirements of this Bylaw.

**7.5.5 Submittal Requirements.** All special permit applications for a Wireless Communication Facility shall be made and filed in compliance with the procedural requirements of M.G.L. c. 40A, s. 9. In addition, 5 copies of the following information, professionally prepared, must be submitted for an application to be considered:

1. A locus plan at a scale of 1"=200' which shall show all property lines, the exact location of the proposed structure(s), street, topography, landscape features, all structures within 1000 feet, setback lines, and easements;
2. A detailed site plan and elevations at a scale of 1"=10' or larger;
3. A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed site, also, a prepared rendition illustrating a view of the facility from the nearest street or streets;
4. A description of the facility including technical specifications, height, and design, a statement of capacity of the facility including the number and type panels, antennas, and transmitter and/or receivers that it can accommodate and the basis for those calculations;
5. A certification that the proposed facility complies with, or is exempt from, all applicable federal and state requirements, including regulations administered by the Federal Aviation Administration, Federal Communication Commission, and the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health;
6. An estimated cost of demolition, removal, and to extent feasible, restoration of the site to its original condition, by an appropriately licensed contractor(s) independent from the owner or installer. Any estimate submitted must be valid for at least one year; and
7. In the event the SPGA, determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant.

### **7.5.6 Restrictions.**

1. In no event shall any tower be located closer than 150% of the vertical height of the tallest tower from any other tower.
2. Tower height shall not exceed 65 feet above the tree canopy. No Wireless Communication Facility shall exceed 90 feet on bare terrain in height as measured from the mean grade, out 25 feet, 4 points, 90 degrees apart, from the center point of the tower to the highest point. In an effort to encourage co-location of antennas or panels on any one facility, the height of the facility may be increased by 10 feet for each co-locator up to a maximum total of 120 feet. The tower must be structurally capable of providing space for six major co-locators on the tower. That tower plan must be stamped capable of the six co-locators by a Licensed Professional Engineer.
3. Traffic associated with the facility shall not adversely affect abutting ways.
4. Facilities shall be suitably screened from abutters and residential neighborhoods.
5. An annual statement shall be provided to the Select Board and Board of Assessors with the following information:
  - a. The name(s) and business addresses of all service companies using the facility;
  - b. An estimate of current demolition and removal costs and, to the extent feasible, restoration of the site to original condition.
6. Any restriction previously posed in any section of this Bylaw.

**7.5.7 Non-Use.** All structures associated with wireless communication facilities which have not been used for their intended purpose for 1 year shall be dismantled and removed at the owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town treasurer a bond or other form of financial security acceptable to said treasurer in an amount set by the Select Board. This amount may be adjusted annually based on estimated demolition, removal, and restoration costs. The amount shall be sufficient to cover demolition or removal costs in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures, or deems it was unused for 1 year. The Building Inspector shall give the applicant 45 days' written notice in advance of any demolition or removal actions.

### **7.5.8 Exemptions.**

1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission shall be exempt provided that the tower is not used or licensed for any commercial purposes and that the antennae structure shall be no higher than is required to effectively accommodate amateur radio communication needs.
2. Satellite dishes and antennas for residential use only.



3. Commercial entities using satellite dishes or antennas for which reception signals are a free service to their customers.

**7.5.9 Waiver.** The SPGA may (but is not required to) waive strict compliance with the Restriction set forth in Section 7.5.6 of this Bylaw when the applicant can prove, with engineering evidence, that service cannot otherwise be provided.

## **ARTICLE §230-8.0 SPECIAL RESIDENTIAL REGULATIONS**

### **§230-8.1 ACCESSORY DWELLING UNIT (ADU) IN DETACHED BUILDING.**

**8.1.1 Purpose.** The purpose of permitting an ADU in a detached building is to provide homeowners with a means of obtaining rental income, companionship, security, and services, by adding moderately priced rental units to the housing stock to meet the needs of smaller households.

**8.1.2 Conditions and Requirements.** The Planning Board (SPGA) may issue a special permit for the installation and use of an ADU in a detached building, subject to following conditions:

1. The ADU will be a complete dwelling unit with a separate entry and contain a kitchen and bathroom.
2. The gross floor area of the ADU shall not be greater than 900 square feet. Floor area means finished living space, but does not include unfinished attic space, unfinished basement space, unfinished garage or barn space, porch, or patio. An ADU cannot be enlarged by future additions.
3. Only one ADU may be created within a detached building or on the house lot.
4. An ADU shall be located within an existing accessory structure such as a garage or barn, or a new accessory structure located on the same lot as the principal single unit dwelling. The ADU must meet all front, side, and rear yard setbacks for the zoning district in which it is located according to Section 4.0 Dimensional Regulations, unless a special permit is issued by the SPGA.
5. The ADU must have a minimum of 1 off-street parking space provided in addition to the off-street parking spaces required for the single-unit dwelling.
6. The design and room sizes of the ADU must conform to all applicable standards in the health, building, and other codes. A permit for an ADU may only be approved subject to obtaining any required approvals from the Board of Health, including compliance with the State Sanitary Code 310 CMR 15 ("Title V") for septic systems, where applicable.
7. For dwellings served by on-site septic system, the owner must obtain a letter from the Board of Health stating the existing sewage disposal system is adequate for the proposed ADU before a building or special permit can be obtained.
8. An application for building permit or special permit for an ADU shall include any information necessary to show proposed interior and exterior changes and to determine compliance with the conditions of this subsection, including a plot plan and floor plans with proposed interior and exterior changes to the building.

**8.1.3 Modification or Waiver.** In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited motility, the Building Inspector or the SPGA may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons, all pursuant to M.G.L. c. 40A, s. 3.

## **§230-8.2 FLEXIBLE DEVELOPMENT.**

**8.2.1 Purpose.** The purpose of this Section, Flexible Development, is:

1. To encourage the preservation of undeveloped land for its scenic beauty; to protect the natural environment, including the Town's varied landscapes and water resources and to enhance opportunities for recreational uses;
2. To preserve historical and archeological resources;
3. To promote more sensitive siting of buildings and better overall site planning;
4. To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
5. To offer an alternative to standard subdivision development; and
6. To promote the development of housing affordable to low, moderate, and median income families.

**8.2.2 Definitions.** See "Flexible Development" in Section 11.0.

**8.2.3 Applicability.** In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels of 5 or more acres held in common ownership.

**8.2.4 Procedures.** Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board 6 copies and an electronic copy of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.
3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

**8.2.5 Design Process.** Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

**8.2.6 Modification of Lot Requirements.** The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
2. Side and rear setbacks shall be required as set forth in the host district, but the Planning Board may reduce setbacks but not more than 50% of the required side and rear yards in the district.

**8.2.7 Basic Maximum Number of Dwelling Units.** The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

**8.2.8 Affordable Component.** As a condition of any special permit, the Planning Board will require a minimum of 10% of the total number of dwelling units to be restricted in perpetuity as Affordable Units. In that case, the Basic Maximum Number shall be adjusted to include any required Affordable Units. During construction, 1 affordable unit shall be sold or occupied for each 4 market rate units issued a certificate of occupancy. The restriction for the Affordable Units shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted homeownership units shall be granted to the local Affordable Housing Trust for a period not less than 120 days after notice thereof.

**8.2.9 Types of Buildings.** The Flexible Development may consist of any combination of single-unit or two-unit residential structures. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

**8.2.10 Roads.** The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

**8.2.11 Parking.** Each dwelling unit shall be served by 2 off-street parking spaces. Parking spaces in front of garages may count in this computation.

**8.2.12 Contiguous Open Space.** A minimum of 20% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 1, above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 10% of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.
4. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

**8.2.13 Ownership of the Contiguous Open Space.** The contiguous open space shall, at the Applicant's election, be conveyed to:

1. The Town or its Conservation Commission.
2. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above.
3. A corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or

corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide 14 days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

**8.2.14 Buffer Areas.** A buffer area of 25 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

**8.2.15 Stormwater Management.** Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

**8.2.16 Condominium or Homeowners' Association.** In order to maintain and repair any common areas or the required open space, the developer shall create a condominium or homeowner's association. The documents establishing such association shall be approved as to form by Town Counsel.

**8.2.17 Decision.** The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 8.2.1 of this Flexible Development ByLaw than would a conventional subdivision development of the same locus.

**8.2.18 Relation to Other Requirements.** The submittals and permits of this Section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Bylaw.

### **§230-8.3 SENIOR HOUSING FACILITY.**

**8.3.1 Purpose.** The purpose of this Section is as follows:

1. To provide for the development and use of alternative housing and nursing care for the elderly;
2. To create home health care, housing and other supportive services for the senior population outside of an institutional setting;
3. To encourage the preservation of open space;
4. To provide alternative housing for seniors that cause relatively little demand on Town services;

5. To preserve the Town's residential character;
6. To provide such accommodations in a manner harmonious with the surrounding land uses while protecting natural resources and open space;
7. To provide housing which is affordable seniors who are Erving residents.

**8.3.2 Definitions.** See “Senior Housing Facility” in Section 11.0.

**8.3.3 Applicability.** The Planning Board may grant a special permit for a Senior Housing Facility as defined in Section 11.0 as set forth in the Table of Use Regulations, subject to the requirements of this Section.

1. This Section shall not apply to Senior Housing Facilities existing on the date of adoption of this Section.

**8.3.4 Dimensional Requirements and Design Standards.** Dimensional requirements and design standards shall be as follows:

1. **Minimum Lot Size.** The minimum lot size (square feet) shall be that required in the district.
2. **Building Height.** Any addition or new construction shall not exceed 35 feet in height as measured in accordance with the State Building Code. This shall not preclude the reuse and renovation of existing structures which may exceed this height limit.
3. **Building Setbacks.** Buildings shall be set back as required in the district for side and rear yards.
4. **Minimum Lot Frontage.** The minimum lot frontage shall conform to the requirements of the district where such use is located.
5. **Town Services.** Facilities shall be serviced by public or private water and wastewater systems of sufficient capacity to serve the project. Any extension and/or replacement of sewer and/or water lines necessary to provide sufficient capacity shall be the responsibility of the applicant.
6. **Parking.** The minimum number of parking spaces provided on the lot shall be 0.5 spaces per bedroom, plus spaces equal to the largest employee shift, plus one visitor space per every 10 bedrooms. These requirements may be reduced by the SPGA where public transit or the residents are unlikely to require such parking.
7. **Access and On-site Circulation.** Adequate on-site circulation shall be provided to and from the site, taking into consideration the adjacent sidewalks and streets and accessibility of the site and building(s) thereon for emergency vehicles. Adequate provision shall be made for off-street loading and unloading requirements of delivery vehicles and passengers using private transportation.

8. Public Safety. The facility shall have an integrated emergency call, telephone and other communication system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of residents with emphasis on ensuring the safety of residents with physical impairments.

9. Landscaping. Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations and loading areas. The minimum setback from all property lines of such parking lots, dumpster locations, and loading areas, except for their points of ingress and egress, shall be 15 feet.

**8.3.5 Accessory Uses.** The operator of the Senior Housing Facility may also provide optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the Senior Housing Facility and the accessory uses shall be wholly within a residential structure and shall have no exterior advertising display. Adult social day care may be provided as an accessory use.

**8.3.6 Special Permit Procedure.** The procedure for a special permit under this Section shall be governed by Section 10.5.



## **ARTICLE §230-9.0 SPECIAL DISTRICTS**

### **§230-9.1 FLOODPLAIN OVERLAY DISTRICT (FPOD)**

**9.1.1 Purpose.** The purpose of the Floodplain Overlay District (FPOD) is:

1. To ensure public safety through reducing the threats to life and personal injury;
2. To eliminate new hazards to emergency response officials;
3. To prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. To avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. To eliminate costs associated with the response and cleanup of flooding conditions; and
6. To reduce damage to public and private property resulting from flooding waters.

**9.1.2 Definitions.** See “Floodplain Overlay District” in Section 11.0.

**9.1.3 Overlay District.** The FPOD is hereby established as an overlay district. The FPOD includes all special flood hazard areas within Erving designated as Zone A, AE, AH, AO, or A99 on the Town of Erving Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, dated July 5, 1982 and on the Flood Boundary & Floodway Map dated July 5, 1982. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated January 5, 1982. The effective FIRM, FBFM, and FIS report are incorporated herein by reference and are on file with the Town Clerk and Building Official.

**9.1.4 Designation of Community Floodplain Administrator.** The Town hereby designates the position of Town Planner to be the official Floodplain Administrator.

**9.1.5 Building Permit.** A permit is required for all proposed development in the Floodplain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

**9.1.6 Other Permits.** An applicant for a permit shall demonstrate to the Building Inspector that all local, state and federal permits that will be necessary in order to carry out the proposed development in the FPOD have also been obtained. Prior to the issuance of a permit, the applicant shall acquire all necessary permits, and must demonstrate that all necessary permits have been acquired. This includes but is not limited to the permitting processes required by the local Conservation Commission

**9.1.7 Floodway Encroachment.** In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited, including fill, new construction, substantial

improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**9.1.8 Unnumbered A Zones.** In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

**9.1.9 AO and AH Zones Drainage Requirements.** Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

**9.1.10 Subdivision Proposals.** All subdivision proposals and development proposals in the FPOD shall be reviewed to assure that:

1. Such proposals minimize flood damage;
2. Public utilities and facilities are located & constructed so as to minimize flood damage; and
3. Adequate drainage is provided.

**9.1.11 Base Flood Elevation Data for Subdivision Proposals.** When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

**9.1.12 Recreational Vehicles.** In A1-30, AH, AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

**9.1.13 Watercourse Alterations or Relocations in Riverine Areas.** In a riverine situation, the Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, 8th floor, Boston, MA 02114
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I

**9.1.14 Requirement to Submit New Technical Data.** If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, 8th floor, Boston, MA 02114
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor, Boston, MA 02110

**9.1.15 Variances to Building Code Standards.** The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

**9.1.16 Variances to this Bylaw Related to Community Compliance with the National Flood Insurance Program (NFIP).** A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:

1. Good and sufficient cause and exceptional non-financial hardship exist;
2. The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
3. The variance is the minimum action necessary to afford relief.

**9.1.17 Abrogation and Greater Restrictions Control.** The floodplain management regulations found in this FPOD shall take precedence over any less restrictive conflicting local laws, bylaws or codes.

**9.1.18 Disclaimer of Liability.** The degree of flood protection required by this Section is considered reasonable but does not imply total flood protection.

## **§230-9.2 GROUNDWATER PROTECTION OVERLAY DISTRICT (GPOD).**

**9.2.1 Purpose.** The purpose of the Groundwater Protection Overlay District (GPOD) is:

1. To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Erving;
2. To preserve and protect existing and potential sources of drinking water supplies;
3. To conserve the natural resources of the Town; and
4. To prevent temporary and permanent contamination of the environment.

**9.2.2 Overlay District.** The GPOD is an overlay district superimposed on the zoning districts. The GPOD shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the GPOD must additionally comply with the requirements of this district. Uses that are prohibited in the underlying zoning districts shall not be permitted in the GPOD.

**9.2.3 Definitions.** See “Groundwater Protection Overlay District” in Section 11.0.

**9.2.4 Establishment and Delineation of Groundwater Protection Overlay District.** For the purpose of the GPOD, there are hereby established within the town certain groundwater protection areas consisting of aquifers or Zone II recharge areas identified by Tighe & Bond as part of their Source Water Assessment Program Conceptual Zone II Delineation report prepared for the Massachusetts DEP, September 1999. This map is entitled “Figure 2 – Zone II Delineation, Erving Well #1, Erving Water Department, Erving, Massachusetts” at a scale of 1:25,000. This map is hereby made a part of this Bylaw and is on file in the Office of the Town Clerk and areas that are shown as Zone II recharge areas are the Groundwater Protection Overlay District.

**9.2.5 GPOD Boundary Disputes.** If the location of the GPOD boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Select Board acting as Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

**9.2.6 Permitted Uses.** The following uses are permitted within the Groundwater Protection Overlay District, provided that all necessary permits, orders, or approvals required by local, state or federal law are also obtained:

1. Conservation of soil, water, plants and wildlife.
2. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted.
3. Foot, bicycle and/or horse paths, and bridges.
4. Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices.
5. Maintenance, repair, and enlargement of any existing structure, subject to Section 9.2.7 and Section 9.2.8.

6. Residential development, subject to Section 9.2.7 and Section 9.2.8.
7. Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 9.2.7 and Section 9.2.8.
8. Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

**9.2.7 Prohibited Uses.** The following uses are prohibited:

1. Underground storage tanks related to a Permitted Use are categorically not permitted.
2. Landfills and open dumps as defined in 310 CMR 19.006.
3. Storage of liquid petroleum products, except the following:
  - a. Normal household use, outdoor maintenance, and heating of a structure;
  - b. Waste oil retention facilities required by statute, rule, or regulation;
  - c. Emergency generators required by statute, rule, or regulation; or
  - d. Treatment works approved under 314 CMR 5.00 for treatment of ground or surface water; provided that such storage, listed in items a. through d. above, is in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage capacity.
4. Landfilling of sludge or septage as defined in 310 CMR 32.05.
5. Storage of sludge or septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
6. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater provided that:
  - a. The replacement or repair of a system, which will not result in an increase in design capacity, or the design capacity of 310 CMR 15.00, whichever is greater, shall be exempted; or
  - b. In cluster subdivisions the total sewage flow allowed shall be calculated based on the number of percable lots in the entire parcel.
7. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

8. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Natural Resource Conservation Service.
9. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 6 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works.
10. Facilities that generate, treat, store, or dispose of hazardous waste subject to M.G.L. Chapter 21C and 310 CMR 30.000, except the following:
  - a. Very small quantity generators as defined under 310 CMR 30.000;
  - b. Household hazardous waste centers and events under 310 CMR 30.390;
  - c. Waste oil retention facilities required by M.G.L. c. 21, s. 52A; and
  - d. Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
11. Automobile graveyards and junkyards, as defined in M.G.L. c. 140B, s. 1; treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
  - a. The replacement or repair of an existing treatment works that will not result in a design capacity greater than the existing treatment works;
  - b. The replacement of existing subsurface sewage disposal systems with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing systems;
  - c. Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater;
  - d. Sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality.
13. Storage of hazardous materials, as defined in M.G.L. Chapter 21E, unless they are in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage.
14. Industrial and commercial uses which discharge process wastewater on-site.
15. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district.

16. Storage of commercial fertilizers, as defined in M.G.L. c. 128, s. 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate.

17. The use of septic system cleaners which contain toxic or hazardous chemicals.

**9.2.8 Uses and Activities Requiring a Special Permit.** The following uses and activities are permitted only upon the issuance of a special permit by the SPGA under such conditions as they may require:

1. Enlargement or alteration of existing uses that do not conform to the GPOD.

2. Application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition, and sedimentation.

3. Those activities that involve the handling of toxic or hazardous materials in underlying zoning (except as prohibited under Section 4.3.6.B). Such activities shall require a special permit to prevent contamination of groundwater.

4. Construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity.

5. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

**9.2.9 Procedures for Issuance of Special Permit.** The SPGA under this Section shall be the Select Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Department of Public Works, the Water Department and the Planning Board, that the intent of this Section, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this Section unless the application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this Section. The SPGA shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision.

1. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, the Department of Public Works and the Water Department, for their written recommendations. Failure to respond within 35 days of receipt by the Board shall indicate approval or no desire to comment by said department. The applicant shall provide 7 copies of the application to the SPGA.

2. The application shall be processed in accordance with M.G.L. c. 40A, s. 9.

**9.2.10 Criteria.** The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 10 of this Bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the GPOD, and be designed to avoid disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

**9.2.11 Regulations.** The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the Planning Board.

**9.2.12 Application.** The applicant shall file 7 copies of a site plan and attachments with the SPGA. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information:

1. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

2. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and the Board of Health. The plan shall include:

- a. Provision to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;

- b. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

- c. Evidence of compliance with the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.

3. Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

**9.2.13 Violations.** Written notice of any violations of this Bylaw shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, the Conservation Commission, the Department of Public Works, and the Water Department. The cost of containment, clean up, or other action of compliance shall be borne



by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the GPOD, the Town of Erving, Building Inspector, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Erving, the Building Inspector, the Board of Health, or any of their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

## **ARTICLE §230-10.0 ADMINISTRATION AND PROCEDURES**

### **§230-10.1 PERMITS.**

**10.1.1 Building Inspector.** The office of the Building Inspector is responsible for the issuance of building permits. He shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this Bylaw and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this Bylaw. When a special permit, site plan approval, or variance has been granted with conditions, such conditions shall be enforced by the Building Inspector.

**10.1.2 Certificate of Occupancy.** No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Building Inspector stating that the use of land and structure, if any, complies with this Bylaw and other applicable codes in effect at the time of issuance.

### **§230-10.2 ENFORCEMENT.**

**10.2.1 Building Inspector.** The office of the Building Inspector is responsible for the enforcement of this Bylaw. The Building Inspector is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance.

**10.2.2 Penalties.** Any person violating any provision of this Bylaw, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

**10.2.3 Noncriminal Disposition.** In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this Bylaw may be enforced by the Building Inspector by noncriminal complaint pursuant to the provisions of M.G.L. c. 40, s. 21D. The penalty for violation of any provision of this Bylaw shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$200.00 for the fourth and each subsequent offense.

### **§230-10.3 ZONING BOARD OF APPEALS.**

**10.3.1 Appointment; Organization.** The Zoning Board of Appeals shall consist of three (3) regular members appointed by the Select Board, each member to be appointed for a term of 3 years, terms to be so arranged that the term of one member expires each year. The Select Board shall also appoint 2 associate members so that the Chair of the ZBA may designate any such associate member to sit on the board in case of absence, inability to act, or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board. The 2 associate members shall be appointed such that their terms do not expire the same year. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall elect one of its members as chair and one of its members as clerk, each to serve for a one year term.

**10.3.2 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Bylaw. The Board's powers are as follows:

1. To hear and decide applications for special permits when designated as the Special Permit Granting Authority.
2. To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in M.G.L. c. 40A, s. 10. The Board of Appeals shall not have the power to grant use variances.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c. 40A, ss. 8 and 15.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in M.G.L. c. 40B, ss. 20-23.

**10.3.3 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers.

**10.3.4 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

#### **§230-10.4 PLANNING BOARD.**

**10.4.1 Establishment.** The Planning Board shall consist of 5 elected members and two appointed associate members.

**10.4.2 Powers.** The Planning Board shall have the following powers:

1. To hear and decide applications for special permits, when designated as the SPGA in this Bylaw.
2. To hear and decide applications for site plan approval pursuant to Sections 10.5 and 10.8.

**10.4.3 Associate Members of the Planning Board.** Under M.G.L. c. 40A, s. 9, the Select Board shall appoint one associate member for a term of one year annually so that the chair of the planning board may designate an associate 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 of the board.

**10.4.4 Regulations.** The Planning Board may adopt rules and regulations for the administration of its powers.

**10.4.5 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review.

#### **§230-10.5 SPECIAL PERMITS.**

**10.5.1 Special Permit Granting Authority.** When designated by this Bylaw, the Board of Appeals, the Select Board, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

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

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

**10.5.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority and M.G.L. c. 40A, s. 11.

**10.5.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this Bylaw;
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;
3. Modification of the exterior features or appearance of any structure;
4. Limitation as to size, number of occupants, or method and time of operation of any proposed use;
5. Regulation of number, design and location of access drives and other traffic features;
6. Requirement of off-street parking and other special features;
7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit.

**10.5.5 Referral.** The Board of Appeals, Select Board and Planning Board, when serving as the SPGA, shall refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said special permit application. The SPGA may refer a special permit application to any other town agency, board, or department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations and send copies thereof to the SPGA and the applicant within 35 days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred board or agencies have been received, or said 35 days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

**10.5.6 Plans.** Unless otherwise provided by rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.6, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 5.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

**10.5.7 Regulations.** Pursuant to M.G.L. c. 40A, s. 9, the Planning Board may adopt rules relative to the issuance of special permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such special permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

**10.5.8 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**10.5.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

## **§230-10.6 SITE PLAN REVIEW.**

**10.6.1 Purpose.** The purpose of site plan review is to ensure the design and layout of certain developments permitted as a matter of right, by special permit, or by variance. Site plan review is intended to promote suitable development that will not result in a detriment to the neighborhood or the environment.

**10.6.2 Applicability.** The following activities shall require site plan approval from the Planning Board:

1. Any new development, expansion, or change of use other than a single-unit or two-unit residence which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.1, require 5 or more parking spaces, regardless of the number of parking spaces preexisting on the premises; and

2. Any site development which involves cutting or removal of vegetation shall be permitted only upon site plan approval from the Planning Board.

**10.6.3 Procedure.** The Planning Board shall serve as the approval authority for site plan review. All decisions shall be made by a majority of the Board, as constituted. The Planning Board shall hold a public hearing for consideration of an application of site plan approval. Said hearing shall be conducted in accordance with the procedures set forth in M.G.L. c. 40A, s. 11 for special permits. The written decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the public hearing. Failure to file the decision within 90 days of the close of the public hearing shall be constructive approval of the site plan application.

1. **Pre-Application Review.** A prospective applicant for site plan approval is encouraged to request a pre-application review with the staff of the Planning Board to address any questions regarding the process or the applicability of this Section 10.6.

**10.6.4 Site Plan Requirements.** Plans subject to site plan review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall be prepared at a scale no greater than 1" = 40', and shall show the following:

1. Locus map at a scale not greater than 1" = 2,000'.
2. All existing and proposed buildings and structures.
3. All existing and proposed contour elevations.
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas.
5. All existing and proposed facilities for sewage, refuse, and other waste disposal.
6. All wetlands, surface water, and areas subject to the 100-flood.
7. All existing and proposed facilities for surface water drainage.
8. All existing and proposed landscape features such as fences, walls trees and planting areas, walks and lighting.
9. All contiguous land owned by the applicant or by the owner of the property.

**10.6.5 Additional Application Requirements.** The applicant shall also submit the following in accordance with Section 6.4:

1. Such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.

2. Such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors.
3. Such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

**10.6.6 Waiver of Technical Compliance.** The Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

**10.6.7 Decision; Criteria.** Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. The Planning Board shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this Bylaw in considering all site plans, in order to promote the following goals:

1. Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air.
2. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas.
3. Adequacy of facilities of handling and disposal of refuse and other production by-products.
4. Protection of environmental features on the site and in adjacent area.
5. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood.
6. Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood.
7. Compliance with all applicable sections of this Bylaw.

**10.6.8 Performance Guarantee.** As a condition of site plan approval, the Planning Board may require that construction and site alteration permitted and specified by said approval be secured by one, or in part by one and in part by the other, of the methods set forth in M.G.L. c. 41, s. 81U (except for the statutory covenant).

**10.6.9 Release of Guarantee.** Performance guarantees may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the Planning Board. The Planning Board shall then release the interest of the town in such bond and return any bond

or deposit to the person who furnished the same. Request for all releases shall be by certified, return receipt letter to the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted site plan approval. If the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the site plan approval and upon failure to do so within 45 days after the receipt by said Town Clerk of said request by the applicant, all obligations under any bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

**10.6.10 Lapse.** Site plan approval shall lapse after 3 years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**10.6.11 Regulations.** The Board may adopt reasonable regulations for the administration of site plan review.

**10.6.12 Fee.** The Board may adopt reasonable administrative fees and technical review fees for site plan review.

**10.6.13 Appeal.** Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with M.G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## **§230-10.7 SITE PLAN REVIEW FOR DOVER AMENDMENT USES.**

**10.7.1 Purpose.** The purpose of this Section is to provide for site plan review of religious uses, educational uses, and child care centers otherwise “exempt” pursuant to M.G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use and Parking Regulations.

**10.7.2 Site Plan Review Required.** Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Use and Parking Regulations, shall require site plan approval from the Planning Board pursuant to this Section.

**10.7.3 Scope of Site Plan Review.** Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under M.G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

**10.7.4 Required Information.** All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;



2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with M.G.L. c. 40A, s. 3; and
4. Reason that relief is requested from otherwise applicable zoning requirements.
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with M.G.L. c. 40A, s. 3, specifying in detail the information required.

**10.7.5 Additional Required Information.** The Planning Board may require additional information reasonably necessary to determine the scope of regulations that shall be applied to the Dover Amendment Use.

**10.7.6 Decision.** The Planning Board may approve, or approve with conditions, an application for site plan approval. In making its decision, the Board shall be guided exclusively by M.G.L. c. 40A, s. 3. Denial of an application shall be based solely on lack of qualifications under M.G.L. c. 40A, s. 3, or an incomplete application. The Board shall file a written decision with the Town Clerk within 90 days of receipt of the application. Failure to file a decision within 90 days shall constitute approval of the site plan.

**10.7.7 Appeal.** Any appeal of the Planning Board's decision shall be made pursuant to M.G.L. c. 40A, s. 17, to a court of competent jurisdiction.

## **§230-10.8 REQUEST FOR REASONABLE ACCOMMODATION.**

**10.8.1 Purpose.** Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. Section 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12102(b)(5). See also M.G.L. c. 40A, s. 3. The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

**10.8.2 Request.** Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

**10.8.3 Zoning Board of Appeals.** All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

**10.8.4 Information.** All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation;
2. Name and address of property owner;
3. Name and address of dwelling or facility at which accommodation is requested;
4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;
5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and
6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).
7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

**10.8.5 ZBA Procedures.** The ZBA shall decide a request for reasonable accommodation by majority vote. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice.

**10.8.6 Decision.** After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request;
2. Grant the request subject to specified conditions; or
3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with M.G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by M.G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

**10.8.7 Appeal.** The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with M.G.L. c. 40A, s. 17 or otherwise.

**10.8.8 File.** The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

**10.8.9 Other Laws.** While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

## ARTICLE §230-11.0 DEFINITIONS

In this Bylaw, the following terms shall have the meanings here assigned to them:

**Accessory Building or Structure:** A subordinate building or structure, the use of which is incidental to the main or principal use on the lot, as permitted in the Zoning district. Where an accessory building is attached to the main building, such accessory building shall be counted as part of the main building.

**Accessory Dwelling Unit (ADU), Detached:** Accessory dwelling unit, detached shall mean the creation of one additional dwelling unit on a single-unit house lot in an existing or new detached accessory structure. The accessory apartment shall consist of no more than 900 square feet of living area. A detached accessory dwelling unit shall not be a trailer or camper, as defined in this Bylaw.

**Accessory Use:** A use located on the same lot with (or in) the main building or main use which is subordinate and customarily incidental to the use of the main building or the land.

**Adult Day Care Facility:** A "Social Day Care (SDC) Program" or "Adult Day Health" Program as those terms are defined by the Commonwealth's Executive Office of Elder Affairs (EOEA), serving not more than 15 persons.

**Adult Use:** Shall include and be defined as follows:

**Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade printed matter, books, magazines, picture periodicals, motion picture films, video cassettes, or coin operated motion picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "sexual conduct" as that term is defined in M.G.L. c. 272, s. 31; "Sexual Devices" or an establishment having for sale sexual devices which shall mean any artificial human penis, vagina or anus or other device primarily designed, promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or anal area, including: dildos, penisators, vibrators, penis rings, erection enlargement or prolonging creams or other preparations or an establishment with a segment or section devoted to the sale or display of such materials.

**Adult Live Entertainment Establishments:** Establishments which feature live entertainment which consists of entertainers engaging in "sexual conduct" or "nudity" as defined in M.G.L. c. 272, s. 31.

**Adult Mini Motion Picture Theater:** An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to "sexual conduct" as defined in M.G.L. c. 272, s. 31 (as defined below) for observation by patrons therein.

**Adult Motion Picture Theater:** An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "sexual conduct" as defined in M.G.L. c. 272, s. 31, for observation by patrons therein.

**Applicant:** An owner, or the authorized agent or representative of the owner.

**Approval Authority:** For the purposes of Section 6.3, the Approval Authority shall mean the Planning Board, Select Board, or Zoning Board of Appeals when engaged as Special Permit Granting Authority (SPGA), or the Planning Board when engaged in site plan approval, or the Zoning Board of Appeals when engaged in consideration of a variance petition (taken together, the "Approval Authority"), except with regard to the permitting of single or two-unit dwelling.

**Bed and Breakfast:** A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**Brewery:** Any plant or premise where malt beverages are produced from the fermentation of malt with or without cereal grains or fermentable sugars, or of hops.

**Building:** A combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. The word "building" shall be construed where the text requires, as being followed by the words "or part(s) thereof. "

**Building Height (in feet):** The vertical distance from the average finished exterior grade on the street side of a building to the highest point of the roof or parapet for flat or shed roofs, to the deck line for mansard roof, or the mean level of the highest gable or slope of a hip pitch or sloped roof. Height limitations shall not apply to chimneys, spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space.

**Building, Principal:** The main or most important building on a lot in which is conducted the principal use of the lot. Attached structures such as garages, greenhouses, and similar structures are to be considered as part of the principal building.

**Campground:** A parcel of land used or intended to be used, let, or rented for temporary short-term occupancy (not to exceed 150 days) by campers or transient tourists utilizing tents, trailer coaches, or other types of movable or temporary shelter.

**Car Wash:** A facility using mechanical equipment for purposes of cleaning automobiles and other vehicles, having not more than 4 bays.

**Certified:** Shall mean certified by a Planning Board, as applied to a plan or other instrument required or authorized by the Subdivision Control Law to be recorded, and shall mean bearing a certificate or endorsement signed by a majority of the members of the Planning Board.

**Child Care Center:** A day care center or school age child care program, as those terms are defined in M.G.L. c. 15D, s. 1A.

**Commercial:** Of or relating to the buying, selling and trading of goods and services.

**Commercial Kennel:** A structure or parcel of land used for the harboring or care of more than 15 dogs that are more than 6 months old. There may be retail sales to pet stores or puppy brokers or boarding for a fee. Commercial Kennels must be located on a lot 5 acres or greater. In addition, the location on the parcel where the dogs are harbored or exercised must be set back 200 feet from each lot line to minimize the impacts to neighbors from noise and odors.

**Commercial Recreation, Indoor:** Theater, motion picture house, bowling alley, dance hall, pool room, and the like.

**Commercial Recreation, Outdoor:** Boat livery, outdoor ice skating rink, recreational camp, ski ground, riding academy or stable, golf driving range, miniature golf course, and the like.

**Contractor's or Landscaper's Yard:** Facility serving entities engaged in building, HVAC, electrical, plumbing, or landscaping services.

**Disposal Facility:** A place where garbage, refuse, etc., is deposited.

**Distillery:** Any plan or premise where distilled spirits are produced, manufactured or distilled.

**Drainage:** The flow of surface and subsurface water.

**Drive-In or Drive-Through:** A business or commercial establishment that incorporates facilities which allow customers to purchase or perform business or commercial activities while seated in a motor vehicle.

**Dwelling:** Any building designed for residential use and containing kitchen and sanitary facilities.

**Dwelling, Multi-Unit:** A dwelling containing 3 or more units separated by vertical walls or horizontal floors.

**Dwelling, Single-Unit:** A building containing one dwelling unit.

**Dwelling, Two-Unit:** A building containing two dwelling units, also known as a duplex.

**Dwelling Unit:** Living quarters for a single household with cooking, living, sanitary, and sleeping facilities substantially independent of those of any other unit. Not more than 1 household is permitted per dwelling unit.

**Electronic Changeable Message Sign (ECMS):** A sign or portion thereof, which utilizes lights (including but not limited to light emitting diodes (LED) or screens, to form a message in the form of copy, text or images, and is capable of changing message through electronic controls. ECMS shall include prices of motor fuels displayed in LED's. Time and temperature signs shall not be deemed ECMS.

**Energy Storage System:** A system to store energy as defined in M.G.L. c. 164, s. 1.

**Energy Storage System, Accessory:** A system to store energy as defined in M.G.L. c. 164, s. 1 that is accessory to a Small-Scale, Medium-Scale, Large-Scale, or Very Large-Scale Ground-Mounted Solar Electric Generating Installation and located on the same lot.

**Essential Services:** Services provided by a private utility or public utility through erection, construction or alteration or maintenance of gas, electrical, steam or water transmission or distribution systems and collection, communication, supply or disposal systems. Facilities necessary for the provision of "essential services" include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, street name signs, hydrants and other similar equipment and accessories in connection herewith. Specifically excluded from

this definition are buildings necessary for the furnishing of adequate service by such private or public utilities for the public health, safety or general welfare and private utility substations and/or transformer stations or similar facilities.

**Family Day Care Home, Large:** Any private residence operating a facility as defined in M.G.L. c. 15D, s. 1A.

**Family Day Care Home, Small:** Any private residence operating a facility as defined in M.G.L. c. 15D, s. 1A.

**Flexible Development:** For the purposes of Section 8.2, the following definitions shall apply:

**Affordable Unit:** A dwelling unit, whether for sale or for rent, that is eligible for inclusion on the Subsidized Housing Inventory of the Department of Housing and Community Development.

**Floodplain Overlay District (FPOD):** For the purposes of Section 9.1, the following definitions shall apply:

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [U.S. Code of Federal Regulations, Title 44, Part 59]

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

**Floodway:** The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

**Functionally Dependent Use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [U.S. Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

**Highest Adjacent Grade:** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [U.S. Code of Federal Regulations, Title 44, Part 59]

**Historic Structure:** Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district

or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (1) By an approved state program as determined by the Secretary of the Interior; or
  - (2) directly by the Secretary of the Interior in states without approved programs.
- [U.S. Code of Federal Regulations, Title 44, Part 59]

**New Construction:** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, bylaw, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

**Recreational Vehicle:** A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [U.S. Code of Federal Regulations, Title 44, Part 59]

**Regulatory Floodway:** See **Floodway**.

**Special Flood Hazard Area:** The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, or AH. [Base Code, Chapter 2, Section 202]

**Start of Construction:** The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

**Structure:** For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [U.S. Code of Federal Regulations, Title 44, Part 59]

**Substantial Repair of a Foundation:** When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a

pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

**Variance:** A grant of relief by a community from the terms of a floodplain management regulation. [U.S. Code of Federal Regulations, Title 44, Part 59]

**Violation:** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3 is presumed to be in violation until such time as that documentation is provided. [U.S. Code of Federal Regulations, Title 44, Part 59]

**Groundwater Protection Overlay District (GPOD):** For the purposes of Section 9.2, the following words and phrases shall have the following meaning:

**Aquifer:** Geological formation composed of rock and sand, or gravel that contains significant amounts of potentially recoverable water.

**Groundwater Protection District:** The zoning district defined to overlay other zoning districts in the Town of Erving. The groundwater protection district may include specifically designated recharge areas.

**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.

**Mining:** The removal or relocation of geological materials such as topsoil, sand, gravel, metallic ores, or bedrock.

**Recharge Areas:** Areas that collect precipitation or surface water and carry it to aquifers. Recharge Areas may include areas designated as Zone I, Zone II, or Zone III.

**Toxic or Hazardous Materials:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Erving. Toxic or hazardous materials include, without limitation, synthetic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (M.G.L.) Chapter 21C and 21E and 310 Code of Massachusetts Regulations (CMR) 30.00, and also includes such products as solvents and thinners in quantities greater than normal household use.

**Zone II:** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at a safe yield with no precipitation), as defined in 310 CMR 22.00.

**Hobby Kennel:** A structure or parcel of land used for the harboring or care of 5 to 15 dogs that are more than six (6) months old, with no retail sales to pet stores or puppy brokers or boarding



for a fee. Hobby Kennels must be located on a lot two acres or greater. The harboring or care of 4 dogs or less is not considered a Kennel for the purposes of Erving's Zoning Bylaw.

**Hotel:** A building containing rooms used or designed to be used for sleeping purposes by transient guests where the only kitchen and dining facilities provided are for public use within the building or in an accessory building.

**Industry:** The production and sale of goods or materials.

**Junkyard:** An area or structure used for the storage and/or sale of old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris; waste, junked, dismantled or wrecked automobiles, or parts thereof; iron steel, and other old or scrap ferrous or nonferrous materials; and any item that contains a hazardous material as defined by the Mass. Department of Environmental Protection (DEP).

**Laboratory, Research:** Laboratory or research establishments including biotechnology companies, but excluding laboratories categorized as Level 3 or Level 4 by the National Institutes for Health.

**Living Area:** The outside dimensions of a dwelling unit commonly used as living quarters excluding attached garage, porch and breezeways.

**Lot:** A plot or parcel of land with definite boundaries, ascertainable by recorded deed or plan, having frontage on a street and occupied or capable of being occupied by one principal building.

**Lot Coverage:** The area of a lot occupied by structures, walkways, drives, parking or other impervious or semi-pervious surfaces.

**Lot Frontage:** The boundary of a lot coinciding with a street line provided that there must be both rights-of-access and potential vehicular access across that boundary to a potential building site and the street has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Erving Subdivision Regulations currently in effect. Lot frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius. The portion of a lot fronting on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval Not Required Plans. Access to a building lot must be via the front lot line which provides the Minimum Lot Frontage required.

**Lot Line (Front):** The line separating the lot from the public way across which access is gained to the property.

**Lot Line (Rear):** The lot line opposite to and most distant from the front lot line.

**Lot Line (Side):** Any lot line not a front lot line or rear lot line.

**Lumber or Wood Processing Plant:** Any business that uses logs as a raw material, including sawmills, pulp mills and mechanized cordwood mills.

**Manufacturing:** The fabrication of raw materials or assembly of parts or materials fabricated off site.

**Marijuana Establishments:** For the purposes of Section 7.2, the following definitions shall apply:

**Craft Marijuana Cultivator Cooperative:** 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 Cannabis Control Commission, that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products for delivery to marijuana establishments but not to consumers.

**Host Community Agreement:** A marijuana establishment seeking to operate in Erving shall execute an agreement with the host community setting forth the conditions for having a marijuana establishment located within the host community. Such Host Community Agreement shall include, but not be limited to, all stipulations of responsibilities between Erving and the marijuana establishment. A Host Community Agreement between a marijuana establishment and a host community will include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 percent of the gross sales of the marijuana establishment or a greater amount if allowed by the State. Such Host Community Agreement shall be effective for 5 years and can be renewed for successive 5-year periods at the option of the Town. Any cost to Erving imposed by the operation of a marijuana establishment shall be documented and considered a public record.

**Independent Testing Laboratory:** A laboratory that is licensed by the State Cannabis Control commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Cannabis Control Commission.

**Licensee:** A person or entity licensed by the State Cannabis Control commission to operate a marijuana establishment.

**Marijuana Cultivator:** 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. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

**Marijuana Delivery-Only Retailer:** An entity that is authorized to deliver directly to Consumers, Registered Qualifying Patients or Caregivers from a licensed Marijuana Retailer and does not provide a retail location accessible to the public.

**Marijuana Establishment:** A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

**Marijuana Microbusiness:** A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, pursuant to 935 CMR 500.000 et seq., in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

**Marijuana Product Manufacturer:** An entity licensed to obtain, manufacture, process and package 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.

**Marijuana Products:** 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.

**Marijuana Retailer:** 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.

**Marijuana Social Consumption Establishment:** An entity licensed to purchase Marijuana or Marijuana Products from a cultivator, manufacturer or Microbusiness, sell Marijuana or Marijuana Products to Consumers at an approved premise, and allow Consumers to consume Marijuana or Marijuana Products at this premise.

**Medical Marijuana Treatment Center:** Also known as a Registered Marijuana Dispensary (RMD) - An entity registered and approved by the Cannabis Control Commission in accordance with M.G.L. c. 94I and 935 CMR 501.00 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use. The cultivation and processing of medical marijuana is considered to be a manufacturing use and is not agriculturally exempt from zoning.

**Mobile Home:** A movable or portable dwelling unit on a chassis, designed for connection to utilities when in use and designed with or without the necessity of a permanent foundation for year-round living. This definition shall not include those vehicles known as camping or travel trailers or motor homes.

**Mobile Home Park:** Premises which have been planned and improved for the placement of mobile homes for non-transient use.

**Motel:** Attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.

**Motor Vehicle Light Service Station:** A building or premises used for the dispensing, sales or offering for sale of motor fuels directly to users of motor vehicles. Other sales activities and any repairs shall be activities minor in scope and clearly subordinate to the sale of motor fuels, oils and lubricants. No drive-through facilities are permitted without further zoning relief.

**Motor Vehicle Repair:** A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance, or cleaning of motor vehicle equipment.

**Motor Vehicle Sales or Leasing:** Premises for the sale or lease of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

**Occupancy:** The state of habitation by people.

**Office, Business or Professional, Large:** Office serving business, real estate, insurance, accountant, architect, attorney, or the like with 6 or more employees.

**Office, Business or Professional, Small:** Office serving business, real estate, insurance, accountant, architect, attorney, or the like with less than 6 employees.

**Office, Medical/Dental, or Clinic:** Office serving physician, dentist, psychologist or psychiatrist, or other trained medical provider.

**Public Way:** Publicly controlled way accepted by the Town, County, or State government for use as a road or street.

**Qualified Acre:** A parcel 2 acres or more where the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

**Recorded:** Recorded in the Franklin County Registry of Deeds except that as affecting registered land, it shall mean filed with the Recorder of the Land Court.

**Restaurant, Drive-Through:** A restaurant that incorporates facilities such as a drive-through window that allows customers to purchase food or drinks while seated in a motor vehicle.

**Restaurant, Other:** Premises for which the principal use is the preparation and sale of food or drink to be consumed on-site.

**Retail Establishment, Large:** A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with more than 5,000 s.f. gross floor area.

**Retail Establishment, Medium:** A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with more than 2,500 s.f. gross floor area but less than 5,000 s.f. gross floor area.

**Retail Establishment, Small:** A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with less than 2,500 s.f. gross floor area.

**Senior Housing Facility:** For the purposes of Section 8.3, the following definitions shall apply:

**Assisted Living Facility:** A residential development subject to certification by the Executive Office of Elder Affairs under M.G.L. c. 19D and 651 CMR 12.00.

**Continuing Care Facility:** A facility regulated by M.G.L. c. 93, s. 76.

**Independent Living Facility:** A facility providing apartments for rent, with optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the facility.

**Long Term Care Facility:** A facility, including a convalescent or Senior Housing Facility, rest home, infirmary maintained in towns, and charitable homes for the aged, as defined and regulated in 105 CMR 150.001.

**Senior Housing:** Housing for persons over the age of 55 subject to the Senior Housing Laws, as defined herein.

**Senior Housing Facility:** An Assisted Living Facility, Continuing Care Facility, Independent Living Facility, or Long Term Care Facility, whether operated as a free-standing facility or in combination with another type of facility on the same lot or adjacent lot in common control.

**Senior Housing Laws:** Collectively and separately, the Fair Housing Act, 42 U.S.C. Section 3607(b), 24 CFR Subtitle B, Ch. 1, Section 100.300 et seq. and M.G.L. c. 151B, s. 4.

**Service Establishment, General:** Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, carpenter, caterer, lawn mower service person, mason, painter, or roofer.

**Service Establishment, Personal:** A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

**Sign:** Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, symbol, trade flag, or representation used as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye, either by its presence or by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way or public park or reservation.

**Sign Area:** The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed and frame around the sign and any extensions. The supporting structure

is not included and only one side of a sign shall be counted in computing the total square feet of signs.

**Site Plan Review Authority:** For purposes of this Bylaw, Site Plan Review Authority refers to the Town of Erving Planning Board.

**Sludge:** The semi-solid or liquid residual generated from a municipal, commercial, or industrial wastewater treatment plant.

**Solar Energy System:** For the purposes of Section 7.4, the following definitions shall apply:

**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, local inspector, or if there is none in a town, the Select Board, or person or board designated by local ordinance or bylaw.

**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 this Bylaw.

**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.

**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 250kWDC.

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

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

**Store:** Any place of business where goods or products are sold at wholesale or retail rates.

**Street:** A way meeting the description of one of the ways contained within the definition of "subdivision" in M.G.L. c. 41, s. 81L.

**Structure:** Anything constructed or erected the use of which requires a fixed location on the ground, or attachment to something located on the ground to give support or shelter, including buildings, sheds, billboards, fences, satellite dishes, tanks, or the like, or the parts thereof, and swimming pools. The word "structure" shall be construed where the text requires, as being followed by the words "or part(s) thereof".

**Subdivision:** A division of land which creates one or more lots which do not have frontage on an existing public way as further defined in M.G.L. c. 41, s. 81L.

**Tavern:** An establishment where alcoholic beverages may be sold with or without food, to be served to and drunk by patrons in plain view of other patrons, all entrances to which shall open directly from a public way. The business conducted therein shall be open to public view from the sidewalk level and the establishment shall be properly lighted. No window facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said tavern.

**Travel Trailer, Camp Trailer or Motor Home:** A mobile unit either supported on its own wheels, or those of another vehicle, which is intended as a temporary dwelling not for permanent residency. Such trailers may be occupied for a maximum of 90 days per year and shall be maintained so as to remain mobile. No permanent structure or service, including but not limited to electrical, gas or septic, may be attached to it. There is a limit of two mobile units per parcel. This definition does not include Mobile Homes and does not apply to mobile units which are being privately stored when not in use.

**Veterinary Office or Clinic:** A building providing for the diagnosis and treatment of ailments of animals other than human, including facilities for overnight care, but not including crematory facilities.

**Warehouse:** A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises, but not including open storage or bailing of junk, scrap metal, rags, waste paper or used rubber.

**Warehouse, Self Storage:** A facility where individuals rent containers or units of space within a large warehouse to store possessions.

**Wetlands:** Areas defined by the Massachusetts Wetlands Protection Act including swamps, marshes, ponds, lakes, watercourses, and areas subject to flooding.

**Winery:** Any plant or premise where wine is produced, rectified, blended or fortified from fruits, flowers, herbs or vegetables.

**Wireless Communications Facilities (WCF):** For the purposes of Section 7.5, the following definitions shall apply:

**Wireless Communication Facility:** Fixtures and/or equipment used by a public utility or a Federal Communication Commission licensed commercial entity for the transmission and reception of radio signals including: (1) reception and transmission equipment and fixtures such as antennas, communication dishes, and similar devices; and (2) buildings, towers, and monopoles that are erected and used primarily to support such equipment. A Wireless Communication Facility may also include accessory mechanical, electronic, or teletronic equipment necessary to operate such a facility, provided however that the facility shall be for transmission and reception, and not a principal facility for conducting a communications business.

**Wireless Communication Services:** the provision of the following types of services: (1) cellular telephone service; (2) personal communications; and (3) enhanced specialized mobile radio service.

**Wireless Communication Towers:** A structure (with antennas if any) designed to facilitate wireless communication services.