

## INFORMATION SHEET: Town of Lee Zoning Bylaw Recodification

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The Lee Zoning Bylaw is in dire need of reformatting and reorganization. Prior to addressing any substantive changes, the Planning Board wants to reformat and reorganize the current bylaw so when it begins to review any desired substantive changes, it is doing so from an organized, up to date and understandable document. The Planning Board is aware that bona fide disagreements may arise over substantive changes to any zoning bylaw and the Board took great strides to avoid proposing any such changes in the recodification that may jeopardize the simple reformat and reorganization that it is proposing. The Planning Board is ready and willing to listen to any substantive issues once the bylaw has been cleaned up.

With that awareness, the Planning Board is proposing a much needed reformat and reorganization of the zoning bylaw, with as few substantive changes as possible. **The intent of this proposed bylaw is to clean-up and re-organize the current bylaw into a better organized and more user friendly document.** Towards that end, the Planning Board has limited the number of changes to those which address the issues discussed below. Two documents are attached to this information sheet to assist your review of the proposed recodification.

1. Current bylaw - with proposed changes highlighted\*
2. Proposed bylaw with comments\*

*\*Note: These two documents are for explanation purposes only. The official proposed draft can be found on the Town website and at the Office of the Town Clerk.*

### **Issues with the Current Zoning Bylaw**

#### **✦ Lack of Organization**

- Amendments have been made to the zoning bylaw over the years in an uncoordinated and random manner. Sections of the bylaw regulating the same uses are scattered throughout the bylaw making it very difficult for a lay person to navigate through the bylaw.

#### **✦ Confusing Internal References**

- In order to determine whether a use is allowed in a certain district, a reader has to navigate go through several internal references to find his/ her answer.

#### **✦ Expired and Obsolete Language**

- Language for the prior business district is still in the current bylaw. Language for the expired wireless moratorium is still in the current bylaw.

#### **✦ Conflicting Provisions**

- The current bylaw contains a number of conflicting sections that should be resolved

★ **Provisions Adopted but not yet Incorporated into the Current Bylaw**

- Although these changes are not substantive, it is worth mentioning them here. Several recent zoning amendments adopted by the town have not been incorporated into the current version of the zoning bylaw, but they are incorporated in the proposed bylaw to ensure consistent numbering.

**How the Planning Board Proposes to Address these Issues**

- ✓ The proposed bylaw was reorganized into a more readable format with similar provisions being grouped into the same section.
- ✓ The proposed bylaw contains no confusing internal cross references in the List of Permitted Uses. All uses within a district are explicitly stated.
- ✓ Any expired and obsolete language from the current bylaw is not in the proposed bylaw
- ✓ The Planning Board undertook a good faith effort to identify and resolve any conflicting provisions in the proposed bylaw.

**Listing of the Key Changes in the Proposed Bylaw**

1. Reorganize, reformat and renumber the existing zoning text
2. Delete current table of contents and replace with the proposed table of contents
3. Update internal references to reflect any new numbering of sections and subsections
4. Delete reference to business district in § 199-5 and delete all references to the business district throughout the current bylaw.
5. Rename “Cluster Development” as “Flexible Development” in § 199-9 (B) and designated the PB as the Special Permit Granting Authority.
6. Remove all internal cross references in § 199-10 through § 199-20 to create a List of Permitted Uses as Section 4.2 (proposed) that explicitly lists all uses permitted in each district.
7. Delete § 199-13 Business District that had previously been dissolved.
8. Added “Motor Vehicle Repairs” and “Lease of building space for commercial purposes inside an existing commercial facility” to § 199-16 per adoption at previous town meeting, but the text never incorporated.
9. Conflict exists between § 199-16 (A) (3) & (4) and (F) & (G). These uses are permitted by-right and also by site plan review. Planning Board resolved conflict in favor of requiring site plan review for these uses.

10. Deleted § 199-17 because the language is duplicative of language in the proposed § 3.2
11. Conflict § 199-19 & § 199-20. Planning Board is uncertain whether certain uses are allowed by site plan review or special permit in the current bylaw because of the internal cross references. The Planning Board resolved this change in favor of requiring a special permit from the Planning Board. **(See 4.2 (G)(4)(a-e) and 4.2 (H)(4)(a-e) of the attached proposed bylaw)**
12. Renamed title of § 199-24 to “Dimensional Requirements for Accessory Buildings”
13. Deleted § 199-27 (B). This is language of an expired wireless moratorium
14. Deleted § 199-28 (D) (8) (a). The Planning Board thinks this language is unenforceable because a grandfathered sign cannot be limited in how long it is grandfathered.
15. Renamed title of § 199-30 “Restrictions on Watershed Land”
16. Renamed title of § 199-31 “Land or Structures for Certain Religious or Educational Purposes”
17. In § 199-40 changed 200 to 300 per adoption at previous town meeting, but the text never incorporated.
18. Other minor non-substantive changes as part of the reformatting of the zoning text.

*For reference please see the attached existing bylaw with the proposed changes highlighted and discussed, as well as the proposed bylaw with comments. You may find it useful to flip between the current highlighted version and the proposed version to track the proposed changes.*

**TEXT HIGHLIGHTED IN BLUE IS DIRECTORY (e.g. this section was moved to § 4.2)**

**TEXT HIGHLIGHTED IN YELLOW INDICATES A SUBSTANTIVE CHANGE**

**TEXT IN GREEN INDICATES A CHANGE RELATED TO FORMATTING**

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## CHAPTER 199 ZONING

The Table of Contents will be deleted and replaced with the Table of Contents from the Proposed Bylaw

Updates made to internal references to reflect any new numbering of sections and subsections are not highlighted in this draft, but have been made to the proposed bylaw.

### ARTICLE I General Provisions

- § 199-1. Title.
- § 199-2. Authority.
- § 199-3. Purpose.
- § 199-4. Definitions.

### ARTICLE II Establishment of Districts

- § 199-5. Types of Districts.
- § 199-6. Location of districts; Zoning Map.

### ARTICLE III Use Regulations

- § 199-7. Permitted and special permit uses; radioactive waste.
- § 199-8. Residential Districts (R-20 and R-30).
- § 199-9. Residential-Agricultural District (RA-40).
- § 199-10. Residential-Multiple Dwelling District (RM).
- § 199-11. Business-Multiple Dwelling District (BM).
- § 199-12. Conservation-Residential District (CR).
- § 199-13. Business District (B).
- § 199-14. Rural Business District (RB).

- § 199-15. Office Park and Light Industrial District (OPLI)
- § 199-16. Industrial District (I).
- § 199-17. Floodplain.
- § 199-18. Planned Commercial Village Center District (PCVC).
- § 199-19. Commercial Business Corridor District (CBC).
- § 199-20. Downtown Commercial Business Corridor District (DCBC)
- § 199-20A Adaptive Reuse Overlay District (AROD).

### ARTICLE IV Intensity Regulations

- § 199-21. Dimensional requirements.
- § 199-22. Buffer strips and driveways.

### ARTICLE V General Regulations

- § 199-23. Nonconforming structures, uses and lots.
- § 199-24. Accessory buildings.
- § 199-25. Floodplain District.
- § 199-26. Trailers and mobile homes.
- § 199-27. Prohibited uses.
- § 199-28. Signs.
- § 199-29. Visibility at corners.
- § 199-30. Restrictions on watershed lands.
- § 199-31. Uses permitted in all districts.
- § 199-32. Bed-and-breakfast uses.

### ARTICLE VI Administration

- § 199-33. Enforcement; violations and penalties.
- § 199-34. Board of Appeals.
- § 199-35. Site plan review.
- § 199-36. Special permits.

- § 199-37. Amendments; notice to nonresident property owners.
- § 199-38. When effective; severability.

#### **ARTICLE VII Off-Street Parking**

- § 199-39. Parking facilities required.
- § 199-40. Location of required parking facilities.
- § 199-41. Minimum area required.
- § 199-42. Surfacing; landscaping strip.
- § 199-43. Common driveways.
- § 199-44. Loading facilities.

#### **ARTICLE VIII Removal of Earth Materials**

- § 199-45. Permitted use in all districts.
- § 199-46. Special permit applications.

#### **ARTICLE IX Multiple-Dwelling Developments**

- § 199-47. Special permit; application.
- § 199-48. Location.
- § 199-49. Site plan required.
- § 199-50. Impact statement.
- § 199-51. Waiver of requirements.
- § 199-52. Access and internal ways.
- § 199-53. Off-street parking.
- § 199-54. Site plan review and approval.
- § 199-55. Certificate of occupancy.
- § 199-56. Bond required.
- § 199-57. Development standards.

#### **ARTICLE X Flexible Development**

- § 199-58. Flexible Development

#### **ARTICLE XI Office Park and Light Industry**

- § 199-59. Site plan approval required; storage; accessory uses.
- § 199-60. Design standards.

#### **ARTICLE XII Environmental and Performance Standards**

- § 199-61. Purpose; enforcement; measurements.
- § 199-62. Lighting.
- § 199-63. Noise.
- § 199-64. Vibration.
- § 199-65. Air pollution.
- § 199-66. Toxic or noxious matter; odors.
- § 199-67. Flammable and explosive materials.
- § 199-68. Radioactivity.
- § 199-69. Electrical disturbance.
- § 199-70. Water pollution.
- § 199-71. Waste material and refuse.
- § 199-72. Surface water runoff.
- § 199-73. Erosion control.
- § 199-74. Dish antennas.
- § 199-75. Wind energy conversion systems.
- § 199-76. Storage.

#### **ARTICLE XIII Planned Commercial Village Center**

- § 199-77. Purpose.
- § 199-78. Site plan approval required; accessory uses.
- § 199-79. Design standards.
- § 199-80. Operating center signs.
- § 199-81. Individual business signs.

#### **Article XIV Wireless Communication Bylaw**

- § 199-82. Purpose.
- § 199-83. Definitions.
- § 199-84. Exemptions.
- § 199-85. General Guidelines.
- § 199-86. Siting and Height Requirements.
- § 199-87. Design Requirements.
- § 199-88. Application Process.
- § 199-89. Approval.
- § 199-90. Conditions of Use.

#### **Table of Dimensional Requirements. Table of Dimensional Requirements for Multiple Dwellings.**

[**HISTORY:** This chapter contains the Zoning Bylaw of the Town of Lee. Amendments subsequent to 6-29-1987 are noted where applicable. ]

#### GENERAL REFERENCES

Planning Board – See Ch. 7, Art. VII.  
Floodplain management – See Ch. 108

Forest lands – See Ch. 213  
Subdivision of land – See Ch. 241

#### ~~ARTICLE I~~

**Renamed “Section 1”**

#### ~~General Provisions~~

**Renamed “Introduction & Authority”**

#### **§ 199-1. Title.**

**Moved to § 1.1**

This chapter shall be known as the "Zoning Bylaw of the Town of Lee, Massachusetts," hereinafter referred to as “this chapter.”

#### **§ 199-2. Authority.**

**Moved to § 1.2**

This chapter is adopted in accordance with the provisions of MGL c. 40A, as amended.

#### **§ 199-3. Purpose.**

**Moved to § 1.3**

The purpose of this chapter is to regulate the use of land, buildings and structures to the full extent of the town's independent constitutional powers as necessary to protect the health, safety and general welfare of the present and future inhabitants of the town. Protection of these interests shall include but not be limited to the following objectives:

- A. To prevent overcrowding of land, to secure safety from fire, flood, panic and other dangers and to lessen congestion in the streets.
- B. To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- C. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- D. To encourage the most appropriate use of land and bodies of water, including due consideration of:
  - (1) Protection of significant natural, scenic and aesthetic features.
  - (2) Conservation of natural resources and historic sites.
  - (3) The objectives of the town's Master Plan and growth policy.

- (4) The objectives of the Comprehensive Plan of the Berkshire County Regional Planning Commission.
- E. To preserve and increase amenities by the promulgation of these regulations to fulfill the above objectives in cooperation with other town agencies and measures they have taken under other legislative and town authority.

**§ 199-4. Definitions.****Moved to Section 14 Definitions**

The following words and terms shall have the meanings ascribed to them in this section:

**ACCESSORY BUILDING** Any building which is subordinate to and whose use is incidental and accessory to the use of the principal building on the same lot or an adjoining lot under the same ownership.

**ACCESSORY USE** A related minor use which is neither necessary to the operation or enjoyment of a lawful principal use or which is appropriate to, customarily incidental to and subordinate to any such use.

**ADULT BOOKSTORE.** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement, as defined in Massachusetts General Laws (“M.G.L.”) Chapter 272, Section 31.

**ADULT CABARET.** A night club, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31.

**ADULT CLUB.** An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in M.G.L. Chapter 272, Section 31; also an establishment offering activities or goods or providing services where employees, entertainers or patrons are engaging in nudity and sexual conduct or sexual excitement, as defined in Massachusetts General Laws Chapter 272, Section 31.

**ADULT MOTION PICTURE THEATER.** An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31.

**ADULT PARAPHERNALIA STORE.** An establishment that has a substantial or significant portion of its stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**ADULT USES.** Adult Bookstores, Adult Cabarets, Adult Clubs, Adult Motion Picture Theaters, Adult Paraphernalia Stores, and Adult Video Stores, as defined in this bylaw.

**ADULT VIDEO STORE.** An establishment having a substantial or significant portion of its stock in trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31

**ASSISTED LIVING** - A residential development subject to certification under MGL Chapter 19D, which provides room and board; provides assistance with activities of daily living for three or more



adult residents who are not related by consanguinity or affinity to their care provider; and collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance. Dwelling units in Assisted Living Residences shall not be considered to be Multiple-Dwellings for the purposes of this by-law. [Added 10-23-02 STM by Art. 8]

**BUILDING HEIGHT** The vertical distance from the average finished grade within 10 feet of the walls of the building to the highest point of flat or mansard roofs, including the top of a parapet, or to the mean level between the eaves and ridge for gable, hip or gambrel roofs.

**CLUB CONDUCTED FOR PROFIT** A business which is owned and operated by an individual as a commercial organization for the purpose of profit. Typical examples, among others, would include tennis and racquetball clubs. A distinction is made in this chapter between this definition and nonprofit fraternal clubs. [Added 5-11-1995 ATM by Art. 23]

**COMMERCIAL ESTABLISHMENT** A business whose main purpose is the offering of goods and products for sale to the public. [Added 7-14-1994 STM by Art. 3]

**CONVENIENCE STORE** A retail establishment selling a limited variety of groceries, beverages and small household items for the primary use of customers that need a few items in an expedient manner. [Added 5-11-1995 ATM by Art. 23]

**DRIVE-THROUGH BANK** A banking establishment that is oriented primarily to financial exchanges for customers while in motor vehicles. [Added 5-11-1995 ATM by Art. 23]

**DWELLING** Any building used exclusively for human habitation, including any permitted home occupation, but excluding hotels, motels, lodging houses, inns or mobile homes.

**DWELLING, MULTIPLE** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided, in which no portion of the building below the first story or above the second story is used for dwelling purposes, including:

- A. **APARTMENTS** - A group of multiple dwellings on a single lot designed for rental of the individual dwelling units or for sale as condominium or cooperative units having common open spaces and designed in accordance with the special requirements as set forth in this chapter.
- B. **TOWNHOUSES** - A group of attached one-family dwelling units, each unit having a separate entrance from the street and having a common open space as regulated in this chapter.

**DWELLING, MULTIPLE, CONVERSION** A residential building constructed prior to 1962 and originally designed and built as a single-family dwelling and converted for occupancy by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided. [Amended 2/23/98]

**DWELLING, MULTIPLE RESORT** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided and built in accordance with a special permit granted under provisions of section 199-9 A(4), in which no portion of the building below the first story or above the third story is used for dwelling purposes. [Amended 12/10/98]

**DWELLING, ONE-FAMILY** A detached building designed for or occupied by one family.

**DWELLING, TWO-FAMILY** A detached building designed for or occupied by two families living independently of each other.

**DWELLING UNIT** One room, or rooms connected together, with complete, independent housekeeping facilities, including permanently installed kitchen facilities, arranged or designed for use by only one family, which is physically separated from other rooms or dwelling units which may be in the same building.

**FAMILY** Any number of individuals related by blood, marriage or adoption living together as a single housekeeping unit, provided that a group of not more than five persons keeping house together, but not necessarily related by blood or marriage, may be considered a family.

**FAST-FOOD RESTAURANT** An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the building or off premises. [Added 5-11-1995 ATM by Art. 23]

**FOOD COURT** A group of retail businesses inside the building(s) serving food intended for the patrons of shopping or outlet centers and centering upon a common seating arrangement. [Added 7-14-1994 STM by Art. 3]

**FOOD KIOSK** A freestanding structure internal to a shopping center or outlet center that is intended to sell food to the patrons of said centers and at which there is no permanent seating. [Added 7-14-1994 STM by Art.3]

**HOTEL, LODGING HOUSE OR INN** A building rented or used for paying guests, transiently or permanently. **LOT** A clearly defined piece of land in one ownership, leasehold or control of sufficient area and dimensions to meet minimum zoning requirements for width, area, use and coverage and to provide such yards and other open spaces as are required herein and having a frontage on a public street or on a way qualifying under the Subdivision Control Law<sup>1</sup>.

**LOT AREA PER DWELLING UNIT** That portion of the lot area required for each dwelling unit located on a lot.

**LOT COVERAGE** The portion of the lot area, expressed as a percent, that is covered by buildings and structures. Structures below the finished grade shall not be included in calculating the lot coverage.

**LOT FRONTAGE** The distance between the side lot lines at the street line.

**LOT WIDTH** The distance between the side lot lines measured in a straight line at right angles to the mean direction of such lot lines, which line of measurement shall be at the building setback line. In the case of a corner lot, the width shall be similarly measured, and, for the purpose of this

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<sup>1</sup> Editor's Note: See MGL c41. § 81K et seq.

measurement only, the front lot line which has the least dimension shall be considered the front lot line, and the lot lines adjacent thereto shall be considered the side lot lines.

**MOTEL OR OVERNIGHT CABINS** Overnight accommodations for automobile tourists in the form of rows of attached sleeping units, each with separate entrances and toilet facilities and each with adjacent off-street parking space. In each case an office for the renting and management of accommodations may be included.

#### **MOTOR VEHICLE**

A. A vehicle constructed and designed for propulsion by power other than muscular power, including such vehicle when pulled or towed by another motor vehicle, except railroad and railway cars; vehicles operated by the system known as "trolley motor" or "trackless trolley" under MGL c. 163 or Section 10 of Chapter 544 of the Acts of 1947; vehicles running only upon rails or tracks; vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding 12 miles per hour and which are used exclusively for the building, repair and maintenance of highways or designed especially for use elsewhere than on the traveled part of ways; wheelchairs owned and operated by invalids; and vehicles which are operated or guided by a person on foot.

B. In doubtful cases, the registrar may determine whether or not any particular vehicle is a motor vehicle as herein defined. If the registrar determines that it should be so classified, he or she may require that it be registered under MGL c. 90, but such determination shall not be admissible as evidence in any action at law arising out of the use or operation of such vehicle previous to such determination.

**MUNICIPAL USE** Any use of land in accordance with the general laws governing municipal powers and functions.

**NONCONFORMING USE** A building structure or use of land existing at the time of this chapter which does not conform to the district in which it is located.

**OFFICE PARK/LIGHT INDUSTRIAL** An area planned for occupancy of more than one light industrial building, with shared common areas and/or parking areas as well as buildings designed for business offices or research laboratories. [Added 6-17-1992 STM by Art. 8]

**OPEN SPACE** Generally the land area on a lot not covered by buildings, structures or parking area, to be used for scenic, landscaping or recreational purposes, which is accessible and available to all occupants of dwelling units for whose use the space is intended.

**OPERATING CENTER** A series of retail shops and ancillary facilities functioning as one organization, under one management structure, within the PCVC District. [Added 7-14-1994 STM by Art. 3]

**PLACE OF AMUSEMENT/ASSEMBLY** An establishment engaged in providing amusement or entertainment for a fee or admission charge and which includes such activities as dance halls, studios, theatrical productions, bands, orchestras and other musical entertainment, bowling alleys and billiard and pool establishments, commercial sports, such as arenas, rings, racetracks and public

golf courses, and coin-operated devices, amusement parks, swimming pools and expositions. [Added 5-11-1995 ATM by Art. 23]

**PLANNED COMMERCIAL VILLAGE CENTER (PCVC)** A group of commercial establishments planned for a minimum fifty-acre lot, with no greater than 400,000 square feet per fifty-acre lot. Said group of commercial establishments involves one or more principal structures, with said structure or structures containing more than 8,000 square feet of gross floor area, with no one tenant occupying greater than 50,000 square feet, located on a site which has been planned, developed and is to be managed as one operating unit and includes parking, highway access, signage and other facilities shared by said establishments. A PCVC shall be subject to the standards in Article XIII. [Added 7-14-1994 STM by Art. 3]

**PLANNED UNIT OFFICE OR RESEARCH CENTER** A building or a group of physically interrelated buildings where the main function is the work usually conducted in professional business offices and/or the processing, compilation or analysis of records or data, research activity in the physical or social sciences or applied research in product development. No manufacturing shall be permitted. The dimensional and intensity requirements shall be the same as for a PCVC. [Added 7-14-1994 STM by Art. 3]

**RESORT** A recreational development in one ownership or time shared serving food and providing lodging to vacationers and guests, with a minimum of 50 rental units, and offering a variety of recreational facilities, such as swimming, golf, tennis, horseback riding and skiing. Any accessory use which is either necessary to the operation of a resort or customarily incidental to such use, including but not limited to restaurants, snack bars, shops, stables and marinas which are intended for guests, shall be permitted on the premises. [Amended 5/13/99]

**SITE PLAN** A plan indicating but not limited to the following: the location of existing and proposed buildings, structures, driveways, parking areas and other open spaces and all proposed site improvements, including recreational areas, fences, walks and signs. A site plan or any portion thereof involving engineering, architecture or land surveying shall be prepared by a registered engineer, architect, landscape architect or land surveyor. A site plan may be prepared on one or more sheets to show clearly the information required in this chapter and to facilitate the review and approval of the plan.

**SPECIAL PERMIT GRANTING AUTHORITY** The Board of Selectmen, Board of Appeals or Planning Board, whichever is designated by this chapter for the issuance of special permits for a particular use or purpose, shall for that use or purpose be deemed the special permit granting authority. [Added 6-17-1992 STM by Art. 8]

**STORY** That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than 1/2 of such portion vertically is below the average grade of the ground adjoining such building.

**STREET, ROAD, AVENUE, TERRACE, ETC** A public way, or a way qualifying under the Subdivision Control Law<sup>2</sup>, giving access to a lot or lots.

<sup>2</sup> Editor's Note: See MGL c41. § 81K et seq.

**SUBSTANTIAL OR SIGNIFICANT PORTION.** The term “substantial or significant portion” as used for all adult uses in this bylaw shall mean twenty-five percent (25%) or more of any one or more of the following: business inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time; annual number gross sales, rentals, or other business transactions; annual gross business revenue; hours during which the establishment is open and involved in Adult Uses

**TRAILER OR MOBILE HOME** Any vehicle or object on wheels and having no motive power of its own which is so constructed or reconstructed to permit use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundation and whether or not its mobility has been completely eliminated.

**WIRELESS COMMUNICATIONS FACILITIES** Any and all materials, equipment, storage structures, towers and antennas, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services. [Added 4-22-1997 STM by Art.11]

## **ARTICLE II**

### **Renamed “Section 2”**

#### **Establishment of Districts**

##### **§ 199-5. Types of districts.**

**Moved to § 2.1**

**Re-organized and reformed**

For the purpose of this chapter, the Town of Lee is hereby divided into the following types of use districts:

- A. Residential: comprising R-20 and R-30 Districts.
- B. Residential-Agricultural: comprising RA-40 Districts.
- C. Residential-Multiple Dwelling: comprising RM Districts.
- D. Business-Multiple Dwelling: comprising BM Districts.
- E. Conservation-Residential: comprising CR Districts.

~~F. Business: comprising B Districts.~~

**Comment [BD1]:** Deleted reference to the business district that no longer exists

- G. Rural Business: comprising RB Districts.
- H. Office Park and Light Industrial: comprising OPLI Districts. [Added 6-17-1992 STM by Art. 8]
- I. Industrial: comprising I Districts
- J. Planned Commercial Village Center: comprising PCVC Districts. [Added 7-14-1994 STM by Art.4]

K. Commercial Business Corridor (CBC): Compromising the CBC District[Added 5-11-1995 ATM by Art. 23] and [deleted May 12, 2005 adding May 12, 2005 Art 48]

L Downtown Commercial Business Corridor (DCBC): Compromising the DCBC District. [Added 2-9-1995 STM by Art. 15] [ And deleted May 12, 2005 adding May 12, 2005 Art 48]

#### § 199-6. Location of districts; Zoning Map.

Moved to § 2.4

The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of Lee, Massachusetts" dated April 16, 1974, and revised February 28, 1984, and revised May 27, 1992, and revised July 14, 1994, and revised February 9, 1995, and revised May 11, 1995, and revised November 22, 2004 and revised May 12, 2005, and revised May 8, 2006, bearing the signature of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matter thereon, is hereby made a part of this chapter.

A. Where a street constitutes a zone boundary, the centerline of that street is the boundary.

B. The floodplain shall be considered as overlying other districts. See Section 199-25.

### ARTICLE III

Renamed "Section 3"

#### Use Regulations

Renamed "Special Overlay Districts"

NEW SECTION 3.1 INSERTED TEXT FROM § 199-20A "Adaptive Reuse Overlay District"

NEW SECTION 3.2 INSERTED TEST FROM § 199-25 "Floodplain District"

INSERTED NEW "SECTION 4"

INSERTED NEW TITLE OF "USE REGULATIONS"

#### § 199-7. Permitted and special permit uses; radioactive waste.

Subsection (A) moved to § 4.1

Subsection (B) moved to § 4.4

A. No building or structure or land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by special permit in said district and so authorized.

B. No land within any use district in the Town of Lee may be used for the collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

#### § 199-8. Residential Districts (R-20 and R-30).

Moved to § 4.2 (A)

**Comment [BD2]:** USE REGULATIONS ARE MOVED TO SECTION 4 IN THE PROPOSED BYLAW.

THE AROD (199-20A) AND FLOODPLAIN DISTRICT (199-25) ARE MOVED TO THIS SECTION IN THE PROPOSED BYLAW FOR ORGANIZATION PURPOSES.

**Re-formated and re-organized the uses depending on how they are to be permitted**

## A. Permitted uses shall be as follows:

- (1) Detached one-family dwelling.
- (2) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements<sup>3</sup> and all other applicable provisions of this chapter.
- (3) Multiple dwelling by special permit from the Board of Selectmen, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Article IX herein, provided that no more than four dwelling units shall be built on a lot.
- (4) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
- (5) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes. **[Amended 1-20-1994 STM by Art. 10]**
- (6) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
  - (a) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises. **[Amended 5-17-1990 ATM by Art. 36]**
  - (b) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (7) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

## B. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 199-34B(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:

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<sup>3</sup> Editor's Note: The Table of Dimensional Requirements is located at the end of this chapter.

- (1) Private club not conducted for profit.
- (2) Hospital, sanitarium and convalescent and nursing home.
- (3) Golf course.
- (4) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

**§ 199-9. Residential-Agricultural District (RA-40).**

**Moved language in (4) to § 9.8**

**Moved to § 4.2 (B)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

**A. Permitted uses shall be as follows:**

- (1) Any use permitted and as regulated in a Residential District (R-20 and R-30).
- (2) Farm, forestry or nursery, including the display and sale of natural products raised in town and the raising of stock as limited in Subsection B(2) below. The raising of horses for personal use is permitted, provided that such action is carried on at least 300 feet from any property line.
- (3) Accessory uses.
- (4) Resort, as defined in this chapter, by special permit from the Board of Selectmen and subject to all applicable provisions of this chapter and to the following special requirements:
  - (a) The minimum area for such use shall be 200 acres;
  - (b) The minimum setback of all buildings or structures and unenclosed recreational and off-street parking areas from any adjacent property line shall be 100 feet;
  - (c) Off-street parking shall be provided on the premises for maximum use of all facilities;
  - (d) No public address system shall be permitted except when such system is inaudible at any property line;
  - (e) The resort shall comply with the Board of Health regulations pertaining to on-lot sewage disposal systems and water supply and any other laws and regulations regarding the establishment and maintenance of such use; and
  - (f) No special permit shall be issued for the establishment or expansion of such use unless the site plan has been reviewed by the Planning Board and Conservation Commission and approved, in writing, by the Board of Health and the Board of Selectmen.

**Comment [BD3]:** MOVED THIS TEXT TO SECTION 9.8 OF THE PROPOSED FOR ORGANIZATION PURPOSES.



(5) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

B. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 199-34B(3) of this chapter, and in compliance with all applicable provisions of this chapter, shall be as follows:

(1) Boat livery, riding stable and ski tow.

(2) The raising of hogs, pigs, poultry or fur bearing animals, provided that such activity is carried on at least 300 feet from any property line.

(3) Cluster development as regulated in Article X of this chapter.

#### § 199-10. Residential-Multiple Dwelling District (RM).

Moved to § 4.2 (C)

Re-formatted and re-organized the uses depending on how they are to be permitted

Permitted uses shall be as follows:

A. Any use permitted and as regulated in a Residential District (R-20 and R-30).

B. A multiple dwelling with more than four dwelling units may be authorized with a special permit by the Board of Selectmen, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Article IX of this chapter.

C. Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

#### § 199-11. Business-Multiple Dwelling District (BM).

Moved to § 4.2 (F)

Re-formatted and re-organized the uses depending on how they are to be permitted

Permitted uses shall be as follows:

A. Any use permitted and as regulated in a Residential-Multiple Dwelling District (RM).

B. Any use permitted and as regulated in a Business District (B).

C. Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

#### § 199-12. Conservation-Residential District (CR).

Moved to § 4.2 (D)

**Comment [BD4]:** RENAMED "FLEXIBLE DEVELOPMENT" TO MATCH LANGUAGE USED IN ARTICLE X.

FLEXIBLE DEVELOPMENT AND CLUSTER DEVELOPMENT HAVE THE SAME DEFINITION IN THE CURRENT BYLAW.

**Comment [BD5]: CONFLICT:** CLUSTER DEVELOPMENT IS ALLOWED BY SPECIAL PERMIT FROM THE ZONING BOARD OF APPEALS AND FLEXIBLE DEVELOPMENT IS ALLOWED BY SPECIAL PERMIT FROM THE PLANNING BOARD. CLUSTER DEVELOPMENT AND FLEXIBLE DEVELOPMENT REFER TO THE SAME TYPE OF DEVELOPMENT. **RESOLUTION:** FLEXIBLE DEVELOPMENT WILL BE ALLOWED BY SPECIAL PERMIT FROM THE PLANNING BOARD

**Comment [BD6]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**Comment [BD7]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**Comment [BD8]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**Re-formatted and re-organized the uses depending on how they are to be permitted**

A. Permitted uses. Permitted uses shall be as follows:

- (1) Any use permitted and as regulated in a Residential District (R-20 and R-30), except multiple dwellings.
- (2) Farm, forestry or nursery, including the display and sale of natural products raised in town and the raising of stock as limited in Subsection B(2) below.
- (3) Resort as regulated in a Residential-Agricultural District (RA-40).
- (4) Accessory use.
- (5) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

B. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 199-34B(3) of this chapter, and in compliance with all applicable provisions of this chapter, shall be as follows:

- (1) Golf course, boat livery, riding stable and ski tow.
- (2) The raising of hogs, pigs, poultry or fur bearing animals, provided that such activity is carried on at least 300 feet from any property line.

**Comment [BD9]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**§ 199-13. Business District (B).**

A. Permitted uses. Permitted uses shall be as follows:

- (1) Any use permitted and as regulated in a Residential District (R-20 and R-30).
- (2) Office, bank, newspaper or printing establishment.
- (3) Hotel, motel or restaurant.
- (4) Any wholesale or retail business, research laboratory, service or public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the customer.
- (5) Automobile service station, automobile repair shop, automobile storage garage or automobile salesroom or lot.
- (6) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

**Comment [BD10]:** THE OBSOLETE LANGUAGE TO THE OLD BUSINESS DISTRICT IS DELETED

~~B. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 199-34B(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:~~

~~(1) Place of amusement or assembly or club conducted for profit.~~

**§ 199-14. Rural Business District (RB).**

**Moved to § 4.2 (E)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

Permitted uses shall be as follows:

- A. ~~Any use permitted and as regulated in a Residential-Agricultural District (RA-40), except resorts and cluster developments.~~
- B. ~~Any business use permitted and as regulated in a Business District (B).~~
- C. Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

**Comment [BD11]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**Comment [BD12]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**§ 199-15. Office Park and Light Industrial District (OPLI). [Added 6-17-1992 STM by Art. 8]**

**Subsection (A) moved to § 2.3 (A)**

**Remaining text moved to § 4.2 (K)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

- A. Purpose. The purpose of the OPLI District is to:
  - (1) Provide an attractive setting for office, research and development and light industrial uses.
  - (2) Promote job creation along with growth in the town's tax base.
  - (3) Maintain aesthetic sensitivity and compatibility with the surrounding community.
  - (4) Ensure the efficient use of municipal services so that new industrial development does not create a burden on these services.
  - (5) Minimize the overall impact of development on the immediate environment.
  - (6) Maximize the use of the site's natural characteristics.
- B. **[Amended 7-14-1994 STM by Art. 4]** Permitted uses under site plan approval shall be as follows:
  - (1) Business offices, including the following services:
    - (a) Financial.
    - (b) Insurance.

- (c) Real estate.
  - (d) Engineering and management.
  - (e) Publishing and data processing.
  - (f) Communications (telegraph, telephone and radio and television studios).
  - (g) Legal.
  - (h) Environmental.
  - (i) Health services.
  - (j) Social services.
  - (k) Education.
  - (l) Public administration.
- (2) Research, medical, dental and technical service laboratories and offices accessory to these.
- (3) Light industry, including:
- (a) Apparel and other textile and leather products.
  - (b) Millwork, plywood and structural members.
  - (c) Household and office furniture.
  - (d) Envelopes and stationery products.
  - (e) Molded plastic products.
  - (f) Fabricated metal products, such as cutlery, hand tools, hardware and screw machine products.
  - (g) Industrial machinery, such as metalworking machinery, textile machinery, paper machinery, printing trades machinery, food products machinery and packaging machinery, but excluding ordnance.
  - (h) Computer and office equipment.
  - (i) Electronic and other electrical equipment.
  - (j) Instruments and related products.

(k) Paper, paperboard and plastic converting products.

(4) Retail sales where the sales area is not more than 20% of the total floor space and:

(a) The product(s) is manufactured on site.

(b) It is not the primary retail outlet for the product(s).

(c) Such sales are incidental to the primary use.

(5) Retail sales for products manufactured off site only if sales are conducted exclusively by phone and/or by mail.

(6) Distribution of commercial and industrial supplies and wholesale trade (except motor vehicles), provided that the space dedicated to storage of product shall not exceed 70% of the total floor area.

(7) Uses required by MGL c. 40A, Section 3, such as public and private nonprofit religious and educational institutions. (Refer to Section 199-31, Uses permitted in all districts.)

(8) Accessory structures and uses customary to the preceding uses.

(9) Municipal use.

C. Uses which may be allowed by special permit of the Planning Board in accordance with Section 199-36 shall be as follows:

(1) Processing of dairy, vegetable, grain and food materials for human consumption and for distribution.

(2) Express shipping offices.

(3) Warehousing.

(4) Light industry not previously permitted and which can be operated with a minimum of noise, smoke, fumes, odors and other nuisances and which does not create adverse impacts on adjacent uses. (See Article XII, Environmental and Performance Standards.)

(5) Accessory structures and uses customary to the preceding uses.

(6) Express parcel and letter delivery or pickup stations may be located within the development.

(a) The space for the station shall be provided by the developer.

(b) The station shall have a paved parking area able to accommodate a minimum of 600 square feet, and such parking area shall be connected to the public roadway by a paved driveway.

- (c) The station may be identified by one sign located on the station and not to exceed 100 square inches.

~~D. Refer to Article XI, Office Park and Light Industry, of this chapter.~~

Comment [BD13]: DELETED REFERENCE

**§ 199-16. Industrial District (I). [Amended 1992, 1994, and 5-9-02 TM by Art. 47, 5-4-06 Art 52]**

**Subsection (I) moved to § 2.3 (B)**

**Subsection (C) moved to § 9.4)**

**Remaining text moved to § 4.2 (J)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

- 1 Purpose. The purpose of the Industrial District (I) is to provide locations for manufacturing and other activities which will:

- A) Promote job creation and employment opportunities along with positive growth in the Town's tax base.
- B) Promote economic development.
- C) Encourage re-use of existing buildings, facilities and infrastructure.
- D) Assist in the preservation of open space, town character and its environment.

2

- A) Uses permitted by right:

- (1) Any manufacturing or industrial use, including processing, fabrication and assembly, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire. (See Environmental and Performance Standards, Article XII.)

- (2) Accessory uses and structures customary to the preceding uses.

- (3) Public and private nonprofit religious and educational institutions as required by MGL 6. 40A, Section 3.

- (4) Municipal use.

Comment [BD14]: CONFLICT: THE FOLLOWING HIGHLIGHTED USES (3-4) AND (F-G) ARE PERMITTED IN TWO DIFFERENT WAYS (SPECIAL PERMIT & SITE PLAN REVIEW)

RESOLUTION: THE HIGHLIGHTED USES ARE ALLOWED BY SITE PLAN REVIEW.

Comment [BD15]: See above

- B) Uses permitted by right with site-plan approval Business offices, excluding retail, but including the following:

- (1) Financial.
- (2) Insurance.
- (3) Engineering, development and management.
- (4) Publishing and data processing.

- (5) Telecommunication (subject to provisions of the telecommunications bylaws.)
- (6) Environmental.
- (7) Real Estate.
- (8) Legal.
- (9) Medical and Dental Services. Social Services.
- (10) Educational Services.

(11) .....

**Comment [BD16]:** Added two additional uses that were previously voted upon at town meeting. See Proposed Bylaw § 4.2 (J) (xii and xiii).

- C. Retail sale of products manufactured, assembled or processed on site or product associated therewith. The retail space shall not exceed 20% of the total floor area.
- D. Laboratories for the purpose of conducting research, or providing medical, dental and technical services, including offices accessory to these activities.
- E. Distribution of commercial and industrial supplies and wholesale trade (except motor vehicles) provided that the space dedicated to storage of the product shall not exceed 70% of the total floor area and the total floor area does not exceed 100,000 square feet.

F. Uses permitted by MGL C. 40A 3, such as public and private nonprofit religious and educational institutions.

**Comment [BD17]:** See above

G. Municipal use.

**Comment [BD18]:** See above

H. Accessory uses and structures customary to the preceding uses.

### 3 Uses Permitted by Special Permit.

- A) Outside storage of materials not used in the manufacturing process may be allowed by special permit of the Planning Board.
- B) The following uses may be permitted by special permit of the Planning Board as part of the re-use of existing structures:
  - (1) Retail.
  - (2) Apartments, lofts or other permanent residential uses.
  - (3) Warehousing.
  - (4) Hotel/conference center.
  - (5) New construction of facilities exceeding 100,000 square feet in floor space, where the facility will be used for distribution of commercial and industrial supplies and wholesale trade (except motor vehicles), provided that the space dedicated to storage of product shall not exceed 70% of the total floor area.

(6) In cases of special permits for building re-uses noted above, the special permit granting authority may authorize alteration or expansion of the existing building,

C) Adult Uses by Special Permit from the Planning Board.

(1) Purpose - It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of adult entertainment establishments and sexually oriented businesses. Secondary effects have been shown to include increased crime, adverse impacts on the business climate, adverse impacts on property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. It is not the intent and purpose of this bylaw to legalize or in anyway encourage the sale, rental, distribution, or exhibition of obscene or other illegal activities or Materials.

**Comment [BD19]:** THESE STANDARDS HAVE BEEN MOVED TO § 9.4 OF THE PROPOSED BYLAW.

(2) Public Hearing - Said permit will be considered only following a public hearing to be held within sixty-five (65) days after an application is received by the Town Clerk and the Planning Board.

(3) Separation Distances – Adult Uses may be permitted only when located outside an area that is situated at the following distances from the specified uses or zoning district boundaries listed below:

(a) Five Hundred (500') feet from the boundary of any other Adult Uses.

(b) Five Hundred (500') feet from any other zoning district corridor or boundary.

(c) Five Hundred (500') feet from the border of any residential property.

(d) Fifteen Hundred (1500') feet from the boundary of any school, child care or day care facility, or any church or place of worship.

(e) Three Hundred (300') feet from the boundary of any establishment licensed under M.G.L. Chapter 138, Section 12.

4. On Site Requirements - will be as follows:

(a) Parking will be in accordance with Article VII Off-Street Parking Section of this bylaw.

(b) All parking will be either on the side or rear of the structure.

(i) Parking areas will be screened along the front and sides of the parking area with evergreens at a minimum height of six (6') feet and spaced as defined in paragraph 4 below.

(ii) Parking areas will be lit with all lighting to be contained on property.



(c) Screening and buffering. A five (5') foot wide landscaping buffer shall be provided along the side and rear of the property lines consisting of evergreens not less than six (6') feet in height and spaced as defined in paragraph 4 below.

(d) All building openings, entries, and windows shall be screened in such a manner as to prevent visual access from the outside of the structure into the interior of the building.

(e) No Adult Use shall be allowed to display for advertising purposes any signs, placards, or other materials on the exterior of the building or in the interior of the building where they can be seen from the outside of the structure.

(f) Each business is allowed to have one sign that is sixteen (16) square feet in size with the highest part of the sign to be no higher than six (6') feet above the ground and not closer than fifteen (15') feet from the street right of way.

(i) Signs will be made out of wood or approved product that simulates wood and will be lit externally in such a way that all light is contained on the property.

(ii) No wording or design of the sign shall be allowed that may be construed as having "lascivious intent" as defined in M.G.L. Chapter 272, Section 31.

(g) The front yard dimensions shall be a minimum of one hundred (100') feet from the right of way line of the roadway.

(h) With the exception of Adult Cabarets or Adult Motion Picture Theaters, Adult Uses may not exceed three thousand five hundred (3,500') feet of usable floor area.

(i) No Adult Uses shall be allowed to disseminate or offer for sale any adult material or paraphernalia to minors.

(j) No Adult Uses shall be allowed within a building containing other retail, consumer or residential uses.

(k) No Adult Uses shall be allowed in a shopping center, shopping plaza or mall.

5. Application – The application under this section of the bylaw must be submitted in six (6) copies that are stamped and certified by an Architect or Engineer appropriately licensed within the Commonwealth of Massachusetts.

(a) Ownership and background information. The application must include the following information:

(i) Name and address of the legal owner of the adult business as well as that of the building owner.

(ii) Name and address of any person having a lawful ownership, equity, or security interest in the proposed establishment.

(iii) A sworn statement that the applicant, business owner, building owner, manager, or any person having a lawful ownership equity, or security interest in the proposed establishment has never been convicted of violating provisions of MGL 119, Section 63 or MGL 272, Section 28, or received any violation notice while operating or owning any establishment licensed under MGL 138 Section 12.

(b) Site plan as part of the application process must show all buildings, parking spaces, driveways, rights of way, service areas, along with screening or landscaping plans; and must include the distances from the nearest of each of the uses as listed in paragraph 199-16-D-3-c of this bylaw.

(6) Findings – The Planning Board may impose other reasonable conditions, safeguards, and limitations based on their review of the application.

(1) Special Permit for Adult Uses will be issued only to those owners who are listed in the application.

(2) The Special Permit will not run with the land. Any change in the ownership structure will require a new Special Permit process.

(3) Any Adult Use Special Permit shall lapse within one year if the proposed structure is unoccupied or if construction has not been completed. This time period may be extended by vote of the Planning Board after a public hearing is held on this matter.

(7) Severability – The provisions of this section of the bylaw are severable. In the event that any portion of this section of the bylaw is determined to be invalid for any reason, the remaining provisions shall remain in effect and in full force.

#### ~~§ 199-17. Floodplain.~~

~~Any use permitted and as regulated in the portion of any zoning district overlaid by the floodplain shall be permitted subject to the restrictions set forth in Section 199-25 of this chapter.~~

**Comment [BD20]:** DELETED DUPLICATIVE LANGUAGE THAT IS ALREADY FOUND IN THE FLOODPLAIN DISTRICT LANGUAGE IN PROPOSED SECTION 2.3.

**§ 199-18. Planned Commercial Village Center District (PCVC). [Added 7-14-1994 STM by Art. 3]****Subsection (A) moved to § 2.3 (C)****Remaining text moved to § 4.2 (I)****Re-formatted and re-organized the uses depending on how they are to be permitted****A. Purpose.** The purpose of the PCVC District is to:

- (1) Provide an attractive setting for large commercial retail and/or office or institutional structures in a village atmosphere.
- (2) Promote job creation along with growth in the town's tax base.
- (3) Maximize the use of the site's natural characteristics.
- (4) Maintain aesthetic sensitivity and compatibility with the surrounding community.
- (5) Minimize the overall impact of development on the immediate environment, neighborhood and community.

**B. Permitted uses shall be as follows:****(1) Principal uses.**

- (a) Planned commercial village center, as defined in Section 199-4, Definitions, provided that the total square feet of floor area does not exceed 75,000 square feet.
- (b) Planned unit office or research center, as defined in Section 199-4, Definitions, provided that the total square feet of floor area does not exceed 75,000 square feet.
- (c) Library.
- (d) Museum.
- (e) Municipal use.
- (f) Educational and religious uses as allowed by MGL c. 40A, Section I.
- (g) Agricultural uses as allowed by MGL c. 40A, Section 3.

**(2) Accessory uses.**

- (a) Tourist information center, whether operated by a public or private operator, in association with any of the principal uses in the district.

**C. Special permitted uses.** Uses which may be permitted within planned commercial village centers by the Planning Board in accordance with the regulations appearing in Section 199-34B(3) and Article XIII of this chapter and in compliance with all other applicable provisions of this chapter shall be as follows:

- (1) Planned commercial village center, as defined in Section 199-4, Definitions, provided that the total square feet of floor area exceeds 75,000 square feet.

- (2) Planned unit office or research center, as defined in Section 1994, Definitions, provided that the total square feet of floor area exceeds 75,000 square feet.

**§ 199-19. Commercial Business Corridor District (CBC). [Added 5-11-1995 ATM by Art. 23]**

**Subsection (A) moved to § 2.3 (D)**

**Remaining text moved to § 4.2 (G)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

**A. Purpose.**

- (1) It is the intent of this district to create an attractive and desirable entrance to the center of Lee that preserves the existing historical architectural character of the corridor and the surrounding area and that encompasses the highway corridor from the Massachusetts Turnpike, Exit 2 west, on U.S. Route 20 to High Street. A mix of commercial and residential uses is permitted, with restrictions on building size and parking locations. Landscaping requirements are mandated in the front setback. In order to limit access points on Route 20, access on other streets and the use of common parking areas and driveways are encouraged.
- (2) Additionally, the Town of Lee's intent for the Commercial Business Corridor District is to:
  - (a) Encourage types of uses such as real estate, insurance and finance.
  - (b) Preserve and/or reuse existing buildings and uses.
  - (c) Provide an attractive setting for commercial retail structures in a village atmosphere.
  - (d) Promote job creation along with growth in the town's tax base.
  - (e) Maximize the use of the site's natural characteristics.
  - (f) Maintain aesthetic sensitivity and compatibility with the surrounding community.
  - (g) Minimize the overall impact of development on the immediate environment and neighborhood and, in particular, reduce the impact of traffic and parking along the corridor.

**B. Permitted uses shall be as follows:**

- (1) Residential uses as permitted in the Residential-Multiple Dwelling District.

**C. Permitted uses under site plan review (also see Section 199-41 L and M) shall be as follows:**

- (1) Uses as permitted in the Business District (Section 199-13A only), with the following exceptions: fast-food restaurant, drive-through bank, convenience store, gas station, automobile dealer and service station, auto repair shop, auto storage garage, auto sales room or lot, place of amusement or assembly and club conducted for profit.

**D. Uses which may be permitted by special permit of the Planning Board in accordance with the regulations appearing in Section 199-36 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**

**Comment [BD21]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

**Comment [BD22]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

- (1) Fast-food restaurant.
- (2) Drive-through bank.
- (3) Convenience store.
- (4) Gas station.
- (5) Automobile dealer and service station.
- (6) Auto repair shop.
- (7) Auto storage garage.
- (8) Auto sales room or lot.
- (9) Place of amusement or assembly.
- (10) Club conducted for profit.

**§ 199-20. Downtown Commercial Business Corridor District (DCBC). [Added 2-9-1995 STM by Art. 15, Amended 10-23-02 STM by Art. 11]**

**Subsection (A) moved to § 2.3 (E)**

**Remaining text moved to § 4.2 (H)**

**Re-formatted and re-organized the uses depending on how they are to be permitted**

- A. Purpose. It is the intent of this district to preserve the architectural and commercial character of the historic downtown from Park Street through Center Street. A mix of commercial and residential uses is permitted, with restrictions on building height, parking locations and setbacks. Additionally, the Town of Lee's intent for the Downtown Commercial Business Corridor is to:
- (1) Encourage downtown commercial uses which will primarily serve the needs of the people of Lee and the surrounding communities and, secondarily, attract visitors to utilize the downtown.
  - (2) Maintain the historic "real town" scale and mix of retail and service establishments in the town center.
  - (3) Attract new investment and help create new jobs in the downtown.
  - (4) Improve the safety and comfort for pedestrians in the downtown.
  - (5) Encourage rehabilitation of existing structures and development of new buildings with high architectural standards which are compatible with the eclectic grouping of commercial and public buildings and which give downtown Lee its special character as a working New England town center.

B. Permitted uses under site plan review shall be as follows;

- (1) Uses as permitted in the Business District (Section 199-13A only), with the following exceptions: fast-food restaurant, drive-through bank, gas station, convenience store, automobile dealer and service station, auto storage garage, auto sales room or lot or auto repair shop.

**Comment [BD23]:** THE INTERNAL CROSS REFERENCE IS DELETED AND THE REFERENCED USES ARE LISTED IN THE PROPOSED BYLAW FOR CLARITY

C. Uses Permitted by Special Permit of the Board of Selectmen:

- (1) Conversion of existing buildings that are at least 10 years old to mixed use for business, professional offices and multiple family housing with more than four units, subject to all the applicable provisions of this chapter, provided the Special Permit Granting Authority finds, in addition to the other findings required by this chapter, that the proposed conversion maintains the existing architectural character of the corridor. **[Amended 5-8-03 ATM by Art. 39]**
- (2) Multiple dwelling with more than four dwelling units, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Article IX of this chapter, provided the Special Permit Granting Authority finds, in addition to the other findings required by this chapter, that the proposed conversion maintains the existing architectural character of the corridor.

**§ 199-20A. Adaptive Reuse Overlay District (AROD). [Added 10-23-02 STM by Art. 8]**

**Moved to § 3.1**

A. Purpose of District: The purpose of the Adaptive Reuse Overlay District (AROD) is to:

- (1) Provide specific regulations allowing for the reuse of private buildings, municipal buildings, public and private school buildings and as defined in paragraph 199-20A-b below.
- (2) Allow for the reuse of existing buildings as defined above throughout the town to increase the town's overall tax base, create employment opportunities and ensure efficient use of municipal services so as to not create an undue burden on them.
- (3) Ensure that such uses are compatible with their surroundings.
- (4) Maximize the use of the site's natural characteristics.

B. Eligibility for Conversion

- (1) Private buildings, municipal buildings or public or private school buildings as defined in (a) and (b) below and located in any zoning district is eligible for conversion to those uses listed in Section 1.3.1 of this bylaw, but only if it meets all of the following tests:
  - (a) It was used for not less than 15 years.
  - (b) It contains not less than 10,000 square feet in total gross floor area.

C. Scope of Authority

The AROD is superimposed over rather than replacing the underlying zoning districts. The regulations of this overlay district shall govern all reconstruction or expansion of privately owned buildings,

municipal buildings and public and private school buildings as defined in paragraph 199-20A, paragraph B above. Provisions of Section 1.0 shall supercede those of Article III Use Regulations and Article IV - Intensity Regulations in the Bylaw. On all other matters, the provisions of the underlying districts shall continue.

The Special Permit Granting Authority for this section shall be the Board of Selectmen. The Board of Selectmen shall require that any application for a special permit under this section shall be accompanied by a site plan in accordance with Section 199-35 of the Bylaw.

#### D. Uses Permitted

- (1) Uses allowed by right: Any uses permitted by right in the underlying zoning district in which this structure is located shall be permitted by right.
- (2) Uses allowed by Special Permit: The following uses are allowed by special permit and subject to site plan review.
  - (a) Assisted living.
  - (b) Senior housing.
  - (c) Nursing home.
  - (d) Multiple dwelling.
  - (e) Professional or administrative offices.
  - (f) Elder Care Facility.
  - (g) Community recreational center or personal training centers.
  - (h) Medical Clinic, Dental Office, Veterinarian Office, and Ancillary Offices and Facilities.
  - (i) Senior center, community center or conference center with meeting rooms.
  - (j) Studios for art, drama, speech or dance.
  - (k) Retail sales where the sales area is not more than 10% of the total floor space of primary use and such sales are incidental to the primary use.
  - (l) Research and Development uses including ancillary office use and electronic and computer laboratories, but not including ancillary manufacturing, assembly, sale or resale or storage for sale or resale of any goods, items, or material.
  - (m) Municipal use.
- (3) Multiple or Mixed Uses: Any combination of uses allowed by right in 1.3.1(1), and uses allowed by special permit in 1.3.1(2), may be allowed provided they are compatible with each other and maintain the public health, safety and welfare of the community.

- (4) Uses required by MGL c40A, Section 3, such as public and private non-profit religious and educational institutions are allowed in the AROD by right subject to Site Plan Review (Refer to Section 199-31, Uses permitted in all districts).

#### E. Development Standards

- (1) The lot area, lot frontage, coverage and setback requirements of the underlying districts shall govern development in the AROD. The SPGA may waive these requirements if the building meets the eligibility requirements in Section 1.2 and the reuse of the building necessitates enhancements, which are not designed to increase the building capacity, but are required to make the building functional for the intended new use (i.e. lighting, elevator, railings, heating and cooling ducts, etc) AND the converted premises will be adequately landscaped in a way that promotes harmony with the neighborhood.
- (2) Off-street parking spaces and loading and unloading spaces shall conform to the provisions of Sections 199-39 through 199-44. The SPGA may grant waivers if existing parking does not meet current parking requirements and additional space would be a detriment to compatibility of neighborhood character.
- (3) All proposed signs shall comply with Section 199-28 of the Bylaw, excepting that if the building and land on which situated are located in a single family district, the Special Permit Granting Authority may permit a sign of no larger than 6 square feet which identifies only the building and its occupants.

#### F. Additional Conditions

The SPGA may attach such additional conditions and limitations to a Special Permit granted under this Section as may be necessary to protect the neighborhood surrounding the property, and as may be necessary to encourage the most appropriate use of the land and building to be converted.

### **ARTICLE IV**

### **Renamed "Section 5"**

#### **Intensity Regulations**

#### **§ 199-21. Dimensional requirements. [Amended 6-17-1992 STM by Art. 8]**

#### **Moved to § 5.1**

#### **Reformatted**

No building or structure hereafter erected shall be located on a lot having less than the minimum requirements set forth in the Table of Dimensional Requirements located at the end of this chapter. Not more than one dwelling shall be located upon any such lot, except in the case of multiple dwellings as provided in Article DC of this chapter. In the case of public, institutional, commercial or industrial buildings, a group of buildings under the same ownership may be considered as occupying the same lot. No existing lot shall be changed as to size or shape so as to result in a violation of the requirements set forth in the Table of Dimensional Requirements.



- A. It will be understood that no lot will be considered adequate until it is first ascertained by the Board of Health through its proper agent by percolation tests, etc., that proper drainage and sewage disposal can be installed and maintained.
- B. No lot minimum will be given for nonresidential buildings in Business and Downtown Commercial Business Corridor Districts. However, these dimensions will be left up to the administrators of this chapter after consultation with the parties concerned. The type of business and the inclusion of adequate parking facilities, etc., would be an important factor in this decision in each individual case. **[Amended 2-9-1995 STM by Art. 15]**
- C. No height maximums will be given for buildings in Industrial Districts. However, these heights will be decided by the administrators of this chapter after consultation with the parties concerned.
- D. An existing lot or parcel of land having an area or a frontage of lesser amount than r required by this table may be considered as coming within the area and frontage requirements of this section if it complies with the provision of MGL c. 40A, Section 6, as amended. **[Amended 5-11-1995 ATM by Art. 23]**
- E. All measurements for depth of front yards will be from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel to the center line of the traveled way.
- F. The limitation on the height of a building shall not apply in any districts to chimneys, ventilators, towers, spires, air-conditioning equipment or any ornamental features customarily attached to a roof and accessory to the use of the building. **[Amended 5-11-1995 ATM by Art. 23]**
- G. If a building which is to be used for industry is to be built adjacent to a residence or a lot located in a residential area, the front and side yard dimensions will be a minimum of 50 feet, with the first 20 feet made up of lawn, shrubbery and evergreen trees to form a continuous natural screen. The same will apply to the rear yard dimensions when it is adjacent to a residence or lot in a residential district. If any part of the residence or residential area is being used as a business, the side and rear yard dimensions necessary for the above-mentioned building will not be less than 15 feet.
- H. If a building which is to be used for business is to be built on a lot adjacent to a residence or a lot located in a residential area, the side yard dimensions will be not less than 15 feet. The same will apply to the rear yard dimensions when the building to be built is adjacent to a residence or a lot in a residential area.

**§ 199-22. Buffer strips and driveways.**

**Moved to § 5.3**

A continuous strip not less than six feet wide shall be maintained between the street line and the balance of the lot in all Rural Business Districts, which strip shall be suitably landscaped and maintained in good appearance. This strip may be traversed by not more than two driveways, except that there may be one additional driveway for each additional 200 feet of frontage in excess of 200 feet. Unless otherwise approved by the Planning Board, driveways shall be not less than 20 feet nor more than 30 feet in width, measured at and parallel to the street line.

**ARTICLE V****Renamed "Section 6"****General Regulations****Renamed "Non-Conforming Structures, Uses and Lots"****§ 199-23. Nonconforming structures, uses and lots.****Moved to § 6.1**

A. Exemptions. Exemptions shall be as follows:

- (1) Structures and uses lawfully in existence prior to the effective date of this chapter.
- (2) A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning bylaw or amendment.
- (3) **Amended 2-9-1995 STM by Art. 17]** Any alteration, reconstruction, extension or structural change to a one-family or two-family structure, provided that this does not increase the nonconforming nature of such structure. In the following circumstances an alteration, reconstruction, extension or structural change to a one-family or two-family structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right:
  - (a) An alteration, reconstruction, extension or structural change which complies with all current dimensional requirements.
  - (b) An alteration, reconstruction, extension or structural change to the side or face of a one-family or two-family structure which encroaches upon current yard requirements, as

specified in the Table of Dimensional Requirements<sup>4</sup>, where an alteration, reconstruction, extension or structural change will not encroach upon such area to a distance greater than the existing structure.

- (4) Any alteration, reconstruction, extension or structural change to a one-family or two-family structure which will increase the existing nonconformity by further encroaching on required yard requirements or further increasing the maximum building coverage or building height as specified in the Table of Dimensional Requirements may be authorized by special permit from the Planning Board upon a finding that such alteration, reconstruction, extension or structural change shall not be more detrimental than the existing nonconforming structure to the neighborhood. **[Added 2-9-1995 STM by Art. 17]**
  - (5) The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
  - (6) Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Laws<sup>5</sup> are exempt from the provisions of this chapter to the extent and as provided in MGL c. 40A, Section 6.
- B. Requirements for extension, reconstruction or change in use. The Planning Board may authorize by special permit any extension, alteration or reconstruction of a nonconforming structure to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, provided that no such extension, alteration, reconstruction or change in use shall be permitted unless the Planning Board finds that:
- (1) Such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
  - (2) Such extended, altered or reconstructed structure or changed use shall not be in greater nonconformity with open space, yard and off-street parking requirements of this chapter.
- C. Reconstruction of structure damaged by fire, explosion or other catastrophe. A nonconforming structure damaged by fire, explosion or any other catastrophe may be rebuilt, provided that such rebuilding, reconstruction or restoration shall be undertaken within two years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this chapter. Such rebuilt, reconstructed or restored structure may be enlarged or changed in use in accordance with the provisions of Subsection B herein.
- D. Maintenance, repair and reconstruction of unsafe structure. Nothing in this chapter shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- E. Abandonment. Any nonconforming use which has been abandoned or not used for two years or more shall not be reestablished except by special permit from the Planning Board; otherwise, any future use of such premises shall conform to the provisions of this chapter.

<sup>4</sup> Editor's Note: The Table of Dimensional Requirements is included at the end of this chapter.

<sup>5</sup> Editor's Note: See MGL c. 41, §81K et seq.

- F. Conditions, safeguards and limitations. The Planning Board may impose reasonable conditions, safeguards or limitations on applications for special permits under this section, designed to lessen any possible adverse impact on adjacent uses or neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend or convert to another nonconforming use under the provisions of this section.

**§ 199-24. Accessory buildings. Renamed “Dimensional Requirements for Accessory Buildings”  
Moved to § 5.2**

No accessory building or structure shall be located within the required front yard area. No accessory building shall be located in any side yard area nearer to the side lot line than 10 feet or in a rear yard area nearer to the rear lot line than 10 feet. Lots located on the corner of the street, road, avenue, terrace or public way will require that no accessory building shall be located in any side yard area nearer to the side lot line than 25 feet. Note: Addition of a private detached garage must be 10 feet off the main structure.

**§ 199-25. Floodplain District.**

**Moved to § 3.2**

A. Purpose. The purposes of the Floodplain District are to protect the public health, safety and general welfare; to protect human life and property from hazards of periodic flooding; to preserve the natural flood-control characteristics and flood storage capacity of the floodplain; and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

A. District delineation.

- (1) The general boundaries of the Floodplain District are shown on the Lee Flood Insurance Rate Map (FIRM) dated June 1, 1982, as Zones A and A1-30 to indicate the one-hundred-year floodplain. The exact boundaries of the district are defined by the one-hundred-year water surface elevations shown on the FIRM and further defined by the flood profiles contained in the Flood Insurance Study dated June 1, 1982. The floodway boundaries are delineated on the Town of Lee Floodway Boundary Floodway Map (FBFM) dated June 1, 1982, and further defined by the floodway data tables contained in the Flood Insurance Study. These two maps, as well as the accompanying study, are incorporated herein by reference and are on file with the Town Clerk, Conservation Commission, Planning Board, Building Inspector and the Board of Selectmen.
- (2) Within Zone A, where the one-hundred-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this chapter and the State Building Code.

- B. Use regulations. The Floodplain District is established as an overlay district to all other districts. All development, including structural and nonstructural activities, whether permitted by right or special permit, must be in compliance with MGL c. 131, Section 40 and with the requirements of the Massachusetts State Building Code pertaining to construction in the floodplain (currently Section 744).

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

- (a) Agricultural uses such as fanning, grazing, truck farming, horticulture, etc.
  - (b) Forestry and nursery uses.
  - (c) Outdoor recreational uses, including fishing, boating, play areas, etc.
  - (d) Conservation of water, plants and wildlife.
  - (e) Wildlife management areas and foot, bicycle and/or horse paths.
  - (f) Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
  - (g) Buildings lawfully existing prior to the adoption of these provisions.
- (2) Special permits. No structure or building shall be erected, constructed, substantially improved or otherwise created or moved, and no earth or other materials shall be dumped, filled, excavated or transferred, unless a special permit is granted by the Zoning Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this chapter) if the application is compliant with the following provisions:
- (a) The proposed use shall comply in all respects with the provisions of the underlying district.
  - (b) Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector and Board of Public Works. Final action shall not be taken until reports have been received from the above boards or until 35 days have elapsed.
  - (c) All encroachments, including fill, new construction, substantial improvements to existing structures and other developments, are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in an increase in flood levels during the occurrence of the one-hundred-year flood.
  - (d) The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.
  - (e) In Zone AO, any new construction and any substantial improvements to existing buildings or structures must, in addition to the above requirements, comply with the following:
    - [1] Residential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the Town of Lee FIRM.
    - [2] Nonresidential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street or above the depth number specified on the community's FIRM or be flood proofed to or above that level. The term "flood proofed" is defined to mean watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**§ 199-26. Trailers and mobile homes.****Moved to § 9.5**

No trailer or mobile home used for residential purposes shall be placed or affixed on a foundation within the limits of the town except:

- A. With a written permit by the Board of Selectmen and approved by the Board of Health for temporary residence or office use during the construction of a building on the premises. In no case shall the trailer be so occupied for a period exceeding six months from the date of the permit.
- B. A trailer may be stored by its owner in a garage or other accessory building or in the rear half of the lot owned by the owner of the trailer. Outside stored trailers may not be used for living and for business purposes.

**§ 199-27. Prohibited uses.****Moved to § 4.3**

A. The following uses are specifically prohibited:

- (1) Garbage and refuse incinerators or the dumping of refuse matter not originating on the premises, except after a permit is issued by the Board of Selectmen.
- (2) Distillation of bones, rendering of fat or reduction of animal matter.
- (3) Manufacture of animal glue.
- (4) Oil refining.
- (5) Slaughterhouse, except a custom slaughterhouse.
- (6) Storage or treatment of ash or other similar material causing dirt.
- (7) Automobile junk and/or wrecking yards.

~~B. No commercial wireless communications facilities, including but not limited to towers and antennas, shall be constructed in the Town of Lee, nor shall a permit for said construction be issued for a period of six months from the effective date of this subsection. This subsection does not apply to the construction or use of facilities by a federally licensed amateur radio operator as protected by MGL c. 40A, Section 3. [Added 4-22-1997 STM by Art. 11]~~

**Comment [BD24]:** THIS LANGUAGE IS DELETED BECAUSE THE MORATORIUM HAS EXPIRED.

**Inserted New "Section 7"****Inserted New Title "Signs"****§ 199-28. Signs. [Amended 3-25-1993 STM by Art. 3]****Moved to § 7****Re-organized and re-formatted**

A. Purpose. Under the authority conferred by the Massachusetts General Laws, as amended, and every other power and authority thereto pertaining, the Town of Lee adopts this section for the regulation and restriction of billboards, signs and other advertising devices within the town on public ways, or any private way used by the public, or on private property within public view of any public way, public park or reservation in order to protect and enhance the visual environment of this town (its public and private investments in buildings and open spaces) and the safety, convenience and welfare of its residents. **[Amended 4-22-1997 STM by Art. 13]** Applicability. The provisions of this section shall apply to the construction, erection, alteration, use, dimensions, location and maintenance of all billboards, signs and other advertising devices located out-of-doors, affixed to any part of a building or window(s) thereof or placed for the express purpose of being visible from the exterior of the building.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**PERSON** Any person, corporation, society, associate, partnership or other legal entity.

**PUBLIC WAY** Any public way or private way that is open to public use.

**SIGN** Any display of lettering, logos, colors, lights or illuminated neon tubes visible to the public from outside of a building, or from a traveled way, which either conveys a message to the public or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted or goods, products, services or facilities available either on the lot or on any other premises, excluding window displays of merchandise.

(1) **ABANDONED SIGN** - Any sign that is located on property which becomes vacant and is unoccupied for a period of three months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of six months or more.

(2) **ACCESSORY SIGN** - Any sign which is mounted on the same post or pylon as the freestanding sign but is accessory to the freestanding sign and cannot be more than a total of six square feet and which displays a message that is standard to the industries, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA, etc.

- (3) **AWNING SIGN** - A sign painted on or attached to the cover of a metallic frame of the fixed, hinged, roll or folding type of awning.
- (4) **CANOPY SIGN** - A sign placed on a permanent structure built over gas pumps which provides shelter for gas pumps and patrons.
- (5) **FREE STANDING SIGN** - A self-supporting sign not attached to any building, wall or fence but in a fixed location. This does not include portable or trailer-type signs.
- (6) **GAS STATION PRICING POD** - A sign which displays the current price of gasoline and which can be located on the canopy or on the freestanding sign.
- (7) **LANDMARK SIGN** - A sign of artistic or historic merit, uniqueness or extraordinary significance to the town as identified by the local Historic Commission, or the Board of Selectmen in its absence. **[Amended 4-25-1996 STM by Art. 8]**
- (8) **MOVABLE SIGN** - A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.
- (9) **MUNICIPALLY CONTROLLED DIRECTORY SIGN BOARD** - In the Business (B) and Business-Multiple (BM) and Downtown Commercial Business Corridor (DCBC) Districts, a name-only directional sign to allow business and municipal uses within the districts but not directly located on Route 20 (Park, Main and West Center Streets) to be readily identified from the primary travel corridor. **[Amended 4-25-1996 STM by Art. 9]**
- (10) **NEON SIGN** - Any sign that provides illumination of the exposed gaseous tube type.
- (11) **NONCONFORMING SIGN** - Any sign that lawfully exists but does not conform to this section at the time of adoption.
- (12) **OFF-PREMISES SIGN** - Any sign which is not on the premises of the business, including a billboard.
- (13) **ROOF SIGN** - A sign which is located above, or projected above, the lowest point of the eaves or the top of the parapet wall of any building or which is painted on or fastened to a roof
- (14) **TEMPORARY SIGN** - Any sign, including its support structure, intended to be maintained for a continuous period of not more than 30 days in any calendar year.
- (15) **WALL SIGN** - Any sign which is painted on, incorporated into or affixed parallel to the wall of a building and which extends not more than 10 inches from the surface of that building.
- (16) **WINDOW DISPLAY SIGN** - Any sign which is mounted onto a window or which is hung directly inside the window with the purpose or effect of identifying any merchandise or product for sale visible from the sidewalk or street.

D. General regulations.



- (1) Signs permitted by right. The following signs shall only be allowed if they conform to Subsection F, General standards, of this section. If they conform, they will be allowed by right and they will not need a permit.
- (a) Window display sign.
  - (b) Address.
  - (c) Construction.
  - (d) Directional.
  - (e) Accessory sign.
  - (f) For sale/rent/lease.
  - (g) Landmark.
  - (h) Political.
  - (i) Public service.
- (2) Signs requiring permits. All signs other than those permitted by right which refer to a permitted use or an approved conditional use as set forth in this section are permitted, provided that such signs conform to the provisions of this section and are applied for and approved.
- (3) Signs prohibited.
- (a) No sign requiring a permit shall be erected without first receiving a permit.
  - (b) Flashing signs, roof signs, signs containing moving parts, any noisemaking sign or device and signs containing reflective elements which sparkle in the sunlight are not permitted. Signs indicating the current time and/or temperature are permitted, provided that they meet all other provisions of this section.
  - (c) Billboards, streamers, pennants, ribbons, banners, spinners or other similar devices shall not be constructed, posted or erected in any zone. Exceptions include grand openings, special events and charitable or civic events with the granting of a temporary permit by the Board of Selectmen for 10 days' duration or less. Decorations for state and national holidays are exempt from requiring a temporary sign permit so long as they are not deemed to be a public nuisance or hazard by the Sign Enforcement Officer.
  - (d) Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises is not permitted. Exceptions are granted to landmark signs, which may be preserved and maintained even if they no longer pertain to the present use of the premises.
  - (e) No sign, except for a traffic, regulatory or informational sign, shall use the words "stop," "caution" or "danger" or shall incorporate red, amber or green lights resembling traffic

signals or shall resemble a "stop," "yield" or other traffic sign in shape and color. No sign shall obstruct traffic sight lanes for drivers or pedestrians.

- (f) No billboard shall be permitted in any district in the Town of Lee.
- (g) Any sign hung from or in any way affixed to any other sign without express permission from the Planning Board and the Sign Enforcement Officer and with such permission and conditions noted on the permit is not permitted.
- (h) Any spotlight or illumination which is beamed or lights up a public street, highway, sidewalk or adjacent premises which causes a glare or reflection that by vote of the Board of Selectmen constitutes a traffic hazard or public nuisance is not permitted.
- (i) Any sign or other projection which protrudes more than 10 inches over a public right-of-way or public property is not permitted.
- (j) Any sign where the highest point would be greater than 25 feet above the ground on which it rests is not permitted.
- (k) (k) No trailer-style movable signs or vehicle used primarily or intentionally as a sign shall be permitted.
- (l) No awning signs shall be permitted except in the DCBC District. [**Amended 6-26-1997 STM by Art. 12**]
- (m) No off-premises signs shall be permitted.
- (n) Abandoned signs are prohibited and shall be removed by the owner of the sign or owner of the premises or by action of the Sign Officer.

(4) Exceptions. For the purposes of this section, the term "sign" shall not include:

- (a) Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, bylaw or other regulation.
- (b) A bulletin board or similar sign not exceeding 12 square feet in display area in connection with any church, museum, library, school or similar public or semipublic structure, provided that the top of such sign shall not be more than eight feet above ground level, provided that it is no closer than 10 feet from the public right-of-way unless attached to a building.
- (c) Signs relating to trespassing and hunting, not exceeding two square feet in area.
- (d) Any historical marker erected by a bona fide historical association or a government agency.

(5) Area of sign.

- (a) The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background on which they are displayed, any frame

around the sign and any cutouts or extensions, but shall not include any supporting structure or bracing.

- (b) The area of a sign consisting of individual letters, words or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters.
- (c) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- (d) In computing the area of signs, one side of identical back-to-back (two-sided) signs and symbols shall be considered as the total area.

(6) Illumination standards.

- (a) Zoning Districts R-20, R-30, RA-40, CR, RB, RM, CBC and DCBC. To preserve the rural character of the town, no internally illuminated signs shall be allowed. These signs may be externally illuminated by shielded light of a constant intensity of no more than 100 watts on each side.
- (b) Zoning Districts B, BM, I and CBC. Internally illuminated freestanding and wall signs will be considered as part of the site plan review process as delineated in Section 199-35 of this bylaw. **[Amended 2-9-1995 STM by Art. 15; 5-11-1995 ATM by Art. 23; 5-8-03 ATM by Art. 37]**
- (c) Zoning District OPLI. See the standards found in Section 199-60E(2), Sign illumination.
- (d) A sign shall not be illuminated between the hours of 12:00 midnight and 6:00 a.m. unless the premises on which it is located is open for business.
- (e) Any sign containing electrical wiring that is attached or intended to be attached to an electrical energy source shall be inspected by the Town Electrical Inspector and shall meet state code.
- (f) No person may erect a sign with exposed electrical wires.
- (g) Strings of bulbs are not permitted, except as part of a holiday celebration.
- (h) Any illumination provided for signs shall be white light only.
- (i) Sign illumination, decorative lighting or floodlighting (except that used for public recreational areas) shall be shielded at its source to prevent high-intensity light beams from shining onto any street or adjoining property.
- (j) No sign shall be designed to attract attention by a change of intensity or illumination or by repeated motion.

(7) Safety standards. No person may erect a sign which constitutes a hazard to public safety or health.

(8) Nonconforming signs.

~~(a) Continuance. A nonconforming sign lawfully permitted at the time of adoption or subsequent amendment of this section may continue for up to 10 years from the approval date of this amendment, although such sign does not conform to the provisions of this section. [Amended 5-11-1995 ATM by Art. 23]~~

(b) Maintenance. Any lawfully existing sign cannot be enlarged, reworded, redesigned or altered in any way, except to conform to the requirements of this section, and provided, further, that any such sign which has deteriorated to such an extent that the cost of restoration would exceed 35% of the replacement cost shall not be repaired, rebuilt or altered except to conform to the requirements of this section.

(c) Replacement. Any sign replacing a nonconforming sign shall conform to the provisions of this section, and the nonconforming sign shall no longer be displayed.

(d) Abandonment. If a nonconforming sign associated with a permitted use or structure has been abandoned for no less than six months (i.e., the permitted use or structure has not been occupied for six months), then the nonconforming sign shall be removed and its nonconformity shall not continue.

E. Administration and enforcement. No sign shall be erected, displayed, altered or enlarged until an application has been filed and a permit for such action has been issued. Applications shall be on forms prescribed by the Sign Officer. At a minimum, all applications shall include a scale drawing specifying dimensions, materials, illumination, letter sizes, colors, support systems and location on land or buildings, with all relevant measurements.

(1) Permits.

(a) A permit for a permanent sign shall be issued only after the following:

[1] The Planning Board examines the request for a permanent sign permit and finds it in compliance with this chapter.

[2] The Sign Officer determines that the sign complies or will comply with the State Building Code as per the section pertaining to signs.

[3] The Sign Officer and Planning Board shall review, within 10 business days of receipt, said application, together with the fee.

[4] A permanent sign permit shall be valid only when signed and dated by the Planning Board and the Sign Enforcement Official.

(b) A permit for a temporary sign shall be issued only after the following:

**Comment [BD25]:** DELETED: THE PLANNING BOARD BELIEVES THAT ONCE A SIGN IS GRANDFATHERED AS A PROTECTED NON-CONFORMING SIGN THE TOWN CANNOT REQUIRE ITS REMOVAL IN TEN YEARS.

[1] Temporary sign permits are issued only after the Sign Officer determines the sign complies or will comply with the State Building Code as per the section pertaining to signs and sends the permit on to the Selectmen.

[2] The Board of Selectmen shall be the issuing authority for temporary sign permits.

(2) Fees.

- (a) A schedule of fees for such permits may be established and amended from time to time by the Board of Selectmen.
- (b) Fees for municipally controlled directory sign boards (MCDSB) may be assessed and amended by the Board of Selectmen, as necessary, to cover the cost of erecting, maintaining or repairing of such signs because of damage from nature or vandalism.

(3) Enforcement.

- (a) The Board of Selectmen shall designate annually a Sign Officer, and that Sign Officer is hereby authorized to enforce this Section 199-28. The Sign Officer is authorized to order the repair or removal of any sign and supporting structure which is erected or maintained contrary to this section. Whenever a Sign Officer is designated, that person or board should notify the State Outdoor Advertising Board.
  - (b) Interpretation, implementation and enforcement of this section will lay with the Sign Officer serving as agent for the Board of Selectmen.
- (4) Maintenance and removal. Every sign shall be maintained in good structural condition at all times. The Sign Officer shall inspect and shall have the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence. Any sign which has been ordered removed by the Sign Officer or is abandoned or discontinued shall be removed by the person, firm or corporation responsible for his, her or its sign within 20 days of the written notice to remove.

(5) Removal of signs by the Sign Officer.

- (a) The Sign Officer shall cause to be removed any sign that endangers the public safety, such as an abandoned, dangerous or materially, electrically or structurally defective sign, or a sign for which no permit has been issued.
- (b) The Sign Officer shall prepare a notice which shall describe the sign and specify the violation involved and which shall state that if the sign is not removed or the violation is not corrected or appealed within 20 days, the sign shall be removed in accordance with the provisions of this section.
- (c) All notices mailed to sign owners or property owners by the Sign Officer shall be sent by certified mail. Any time periods provided in this section shall be deemed to commence on the date of the receipt of the certified mail.

- (d) Any person having an interest in the sign or the property may appeal the determination of the Sign Officer ordering removal or compliance by filing a written notice of appeal with the Lee Zoning Board of Appeals within 30 days. The Zoning Board of Appeals shall hold a hearing in order to determine if the Sign Officer's order of removal or compliance should be enforced. (See Section 199-34.)

(6) Penalties.

- (a) Whoever violates any of the provisions of this section shall forfeit and pay a fine not to exceed \$300 for each offense.
  - (b) Each day that such violation continues shall constitute a separate offense.
  - (c) The Sign Officer acting as agent for the Board of Selectmen shall be imposed to enforce this section.
  - (d) This chapter may be enforced by non-criminal disposition as provided for by MGL c. 40, Section 21D.
- (7) Variances for signs. Variances shall not be granted for any sign, as ample provision has been made for premises identification within this section and because true hardship as defined in state law cannot be demonstrated in signage situations.

F. General standards.

- (1) Accessory sign. Any sign which is mounted on the same post or pylon as the freestanding sign and cannot be more than a total of six square feet and which displays a message that is standard to the industries, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA, etc.
- (2) Address. One sign displaying the street number or name of the occupant of the premises, or both, may be attached to the building or may be on a post not more than four feet high and set back at least three feet from the public right-of-way. Such sign may not exceed two square feet in area.
- (3) Canopy. Such signs shall not exceed 20 square feet in area per side and may be located on no more than two sides of the canopy. If a canopy is used as a price pod location, 10 square feet may be used for the logo.
- (4) Gas station pricing pod.
  - (a) Such signs shall not exceed 20 square feet and shall be set back at least 10 feet from the lot line and may be in one of three places:
    - [1] Such sign may be incorporated on the same post or pylon as the freestanding sign.
    - [2] Such sign may be located at the pump island location.
    - [3] Twenty square feet may be placed on the canopy in such a manner as to comply with the canopy regulations [see Subsection F(3) of this section].

- (b) The fuel price pod will require permits for the initial installation or for a change in location or size. Changes in pricing are allowed and not regulated by this chapter.
- (5) Construction. An on-premises sign shall identify the contractor, architect, landscape architect and/or engineer's name, address and other pertinent information.
  - (a) Such signs shall not exceed 12 square feet in area and shall be set back at least 10 feet from the street lot line or V2 the building setback distance, whichever is less.
  - (b) Such sign may be maintained on the building or property for the interim of construction and not more than 30 days following the completion of said construction.
- (6) Directional. Directional signs solely indicating ingress and egress placed at driveway locations shall contain no advertising material. Display area of such signs shall not exceed three square feet or extend higher than four feet above ground level. Such sign will conform in all respects to the requirements of this section.
- (7) A for sale/rent/lease sign is an on-premises sign advertising the property being sold or rented.
  - (a) Such sign shall not exceed six square feet and shall advertise only the property on which the sign is located. A maximum of two such signs may be maintained on any property being sold or rented, and they shall be removed by the owner or agent within 30 days of sale, rent or lease.
  - (b) Such signs may be attached to the building or shall be set back at least 10 feet from the street lot line or 1/2 the building setback distance, whichever is less.
- (8) Freestanding sign. Such sign shall be securely attached at top and bottom to one or two posts or pylons. No lettering shall appear on the posts or pylons. No part of the sign shall protrude more than 10 inches over a public or private right-of-way.
- (9) Landmark sign. A landmark sign is a sign of artistic or historic merit, uniqueness or extraordinary significance to the town. The character of these signs warrants their preservation in original condition or their restoration. Any necessary restoration should follow the preservation guidelines outlined by the Lee Historical Commission and by its approval prior to a sign permit being issued.  
**[Amended 4-25-1996 STM by Art. 8]**
- (10) Municipally controlled directory sign board (MCDSB). Sizes, shape, colors, placement and other relevant issues will be determined by regulations set up and adjusted as necessary by the Board of Selectmen, after consultation with the Town Administrator, Board of Public Works, Planning Board and Sign Officer.
- (11) Political. A political sign is a sign designed to influence the action of voters for the passage or defeat of a measure or the election of a candidate to a public office at a national, state or local election.
  - (a) Such signs are permitted if they are stationary, unlighted and temporary. Such signs shall be displayed no earlier than 20 days prior to a voting day and shall be removed within five days after a voting day.

(b) Such signs may not exceed four square feet in area. A maximum of two signs per lot is allowed.

(12) Public service. A public service sign is a sign located for the purpose of providing direction toward or indication of use not readily visible from the street (e.g., restrooms, telephone, etc.).

(a) Such signs necessary for public safety and convenience shall not exceed two square feet. Such signs are not included in computing total sign area allowed.

(b) Such signs shall bear no advertising.

(13) Window display sign. A window display sign is any sign which is mounted onto a windowpane or which is hung directly inside the window with the purpose or effect of identifying any merchandise or products for sale, visible from the sidewalk or street. Window signs that are of the exposed-gaseous-tube type shall not exceed 25% of the window in which they are displayed. Permanent merchandise display signs hung inside windows shall be made of clear materials, such as Plexiglas, with lettering painted on them.

(14) Signs for nonprofits: All signs for nonprofit organizations regardless of size, construction, location and duration that are approved by town's temporary sign granting authority. See paragraph 199-28-E(1) {b}.

G. Districts and special regulations.

(1) R20, R30, RA-40, CR and RM District requirements. The following signs are permitted on the premises:

(a) Any signs listed as by right. [See Subsection D(1) of this section.]

(b) One sign not over six square feet in area and located 10 feet from the public right-of-way line or attached to the building to advertise an approved professional, artisan or home occupation.

(c) Illumination standards. [See Subsection D(6) of this section.]

(d) In District RA-40, signs are permitted to identify a farm or nursery, including the sale of natural products grown in the Town of Lee.

[1] Two signs no greater than six square feet in size will be allowed.

[2] The highest point of the sign can be no greater than 10 feet above ground and at least 10 feet from the public right-of-way.

(2) **[Amended 2-9-1995 STM by Art. 15; 5-11-1995 ATM by Art. 23; 5-8-1997 ATM by Art. 44; 6-26-1997 STM by Art. 13]** I, B, BM, RB and CBC District requirements. The following signs are permitted on the premises:

(a) Those signs permitted in Subsection G(1) of this section.



- (b) One sign on the building advertising the business or businesses carried on within the building. Such sign shall be limited in total area to two square feet for each horizontal running foot of the side of the building displaying the sign. In no case will the total signage of the building exceed 100 square feet.
- (c) Any building with more than 100 linear feet facing the public right-of-way shall be allowed to have a second building sign, provided that the total signage does not exceed 100 square feet.
- (d) Business buildings on corner lots may have two building signs, one sign on the building facing each roadside. The square footage of each sign shall not exceed two square feet per linear footage of the side it is mounted on. The total square footage of the building sign(s) shall not exceed 100 square feet.
- (e) One freestanding sign per property on a post or pylon will be allowed under the following conditions:
  - [1] The size of the sign for a single business will be no greater than 16 square feet. An additional eight square feet of signage will be allowed for each additional business on the property up to a maximum of 48 square feet.
  - [2] An additional six square feet will be allowed by right for standard accessory signs which are standard to the industries, such as vacancy/no vacancy, open/closed, dinner being served, credit card and AAA. Such signs must be securely attached to a post, pylon or sign or support structure as determined by the Sign Enforcement Official.
  - [3] In Zoning District I, the size will be no greater than 32 square feet per property.
  - [4] A lot with frontage of 300 continuous linear feet or more may have two freestanding signs not less than 100 feet apart.
  - [5] The sign will be a minimum of 15 feet from the public right-of-way line, and the highest point of the sign will be no greater than 25 feet above ground.
    - [a] In those locations where it is not possible to place a sign 15 feet from the public right-of-way line, the sign may be placed 1/2 the distance between the face of the building and the public right-of-way line.
    - [b] Placement will be such that no portion of the sign will be over the public right-of-way line by more than 10 inches.
  - [6] The construction and setting methods to be employed on freestanding signs on posts or pylons that are greater than 10 feet at their highest point must be reviewed and certified for safety by the Sign Officer and shall have structural drawings and specifications, including foundations, submitted by a registered professional engineer.
  - [7] When a business employs a sign on a post or pylon, it will still be allowed to have one additional sign. This sign may be on the building [see Subsection G(2)] or may be a canopy sign [see Subsections C and (F3)].
- (3) OPLI District requirements. Refer to Section 199-60E (Signs and sign illumination).

- (4) **[Amended 2-9-1995 STM by Art. 15]** B, BM and DCBC Districts; municipally controlled directory sign board. In the Business (B), Business Multiple (BM) and Downtown Commercial Business Corridor (DCBC) Districts, a municipally controlled directory sign board (MCDSB) may be erected as a name-only directional sign to allow business and municipal uses located on Canal, Eaton, Elm, Railroad and East Center Streets to be readily identified from Main Street or Center Street (Route 20).
- (a) Corner of Main and Eaton Streets. The MCDSB will list businesses and municipal uses on Eaton and Railroad Streets from the intersection of Eaton and Railroad to the halfway point toward Elm Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (b) Corner of Eaton and Railroad Streets. The MCDSB will list businesses and municipal uses on Railroad Street. This sign will be placed so as to be visible from Eaton Street.
- (c) Corner of Main and Elm Streets. The MCDSB will list businesses and municipal uses on Elm and Railroad Streets from the intersection of Elm and Railroad to the halfway point toward Eaton Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (d) Corner of Center and Canal Streets. The MCDSB will list businesses and municipal uses on Canal Street. This sign will be placed so as to be visible from Center Street (Route 20).
- (e) Corner of Main and East Center Streets. The MCDSB will list businesses and municipal uses on East Center Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (f) Corner of Main and School Streets; Main and Ferncliff Streets; Main and Academy Streets; Main and Franklin Streets; Main and Park Streets; High and Park Streets; and Park Place and Park Street. The MCDSB will list businesses and municipal uses not located on Main Street or Park Street. This sign will be placed so as to be visible from Main Street or Park Street.  
**[Amended 4-25-1996 STM by Art. 9]**
- (5) PCVC District requirements. Refer to Section 199-80 (Operating center signs). **[Added 7-14-1994 STM by Art. 3]**
- (6) **[Added 6-26-1997 STM by Art. 13]** DCBC District requirements. The following signs are permitted on the premises:
- (a) Those signs permitted in Subsection G (1) and G (2) e
- (b) One main sign on the building for each business within the building, advertising the business or businesses carried on within the building. Such sign shall be limited to two square feet for each linear foot of the face of the building displaying the sign and not to exceed an overall size of 40 square feet. The building signs shall be constructed of wood or material of similar weight and density.
- (c) Business buildings on corner lots may have two building signs (of wood or material of similar weight and density), one sign on the building facing each roadside. The square footage of each sign shall not exceed two square feet for each linear footage of the face of the business it is mounted on. The total square footage of the main sign shall not exceed 40 square feet

and the second sign on the side of the business shall not exceed 20 square feet.

- (d) Awning signs shall be limited to lettering on the front vertical lip of a ground floor awning which names the business only. The letters shall not exceed eight inches in height.
- (e) Window signs which are painted on, incorporated into or affixed to the window, with the purpose or effect of identifying the business located within, are not to exceed 10% of the total glass area.
- (f) Signs identifying the name of the businesses, which are two-sided and installed at a right angle to the building facade, are limited to four square feet. These signs shall be placed at least seven feet above the pedestrian-way and may not project more than three feet from the building facade. These signs shall be securely mounted to the building to prevent movement in windy conditions. The signs shall be constructed on wood or material of similar weight and density.
- (g) Rear entrance signs will be allowed with the lettering not to exceed four inches in height to identify doorways for delivery personnel or eight square feet in the case of a rear entrance for customers. The signs shall be constructed on wood or material of similar weight and density.
- (h) As an alternative to a building sign, one free standing sign, installed between two wooden posts, no larger than sixteen (16) square feet is allowed. The sign shall be constructed of wood or material of similar weight and density and the high point of the sign shall not exceed eight (8) feet above the ground. The sign will be a minimum of fifteen (15) feet from the public right-of-way. If the fifteen (15) feet from the public right-of-way is not possible, the sign may be placed one-half (1/2) the distance between the face of the building and the public right-of-way. It may be externally illuminated by 100 watts on each side. **[Amended 5-8-03 ATM. by Art. 36]**

#### **§ 199-29. Visibility at corners.**

**Moved to § 5.4**

On any corner lot there shall be no building, structure, fence, shrubbery or planting such as will obstruct street traffic visibility within the triangular area formed by the corner and the points 20 feet back from the corner.

#### **§ 199-30. ~~Restrictions on watered lands.~~ Renamed “Restrictions on Watershed Lands”**

**Moved to § 10.3**

- A. No construction requiring the installation of any type of sanitary sewer or waste disposal system shall be allowed within 500 feet of the following waterways unless the lot is connected into the town sanitary sewer system: Woods Pond, Laurel Lake, Goose Ponds, the Housatonic River or the Leahey or Upper Reservoir or any body of water in the town which is used for town water supply.
- B. This section will in no way interfere with the construction of pollution abatement equipment for industrial plants, provided that the installation is approved by the Lee Board of Health, appropriate Commonwealth of Massachusetts Pollution Control Boards and the Planning Board. This section will not prohibit the further development of the town sanitary sewer system.

C. The Zoning Board of Appeals, under authority granted to it in Section 199-34 of this chapter and after a duly advertised public hearing, may grant a variance to this portion of this chapter, provided that the following three conditions are met:

- (1) An undue economic hardship for the property owner would result from failure to grant a building permit.
- (2) Evidence is presented by the owner showing that a proposed project or construction would in no way pollute any waterway. Such evidence would include receipt of statements from the Commonwealth of Massachusetts Board of Health, the Commonwealth of Massachusetts Water Pollution Control District and the Lee Board of Health giving their approval of the construction and waste disposal system.
- (3) A certificate signed by a majority of the Department of Public Works is presented, stating that it will not be constructing sewers within a five-year period to serve the land in question.

**§ 199-31. ~~Uses permitted in all districts.~~ Renamed “Land or Structures for Certain Religious or Educational Purposes”.**

**Moved to § 9.6**

The use of land or structures for religious purposes or 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 an educational corporation shall be permitted, subject to the following regulations:

- A. Maximum building height shall be 2 1/2 stories or 35 feet.
- B. Maximum building coverage shall be 10%.
- C. Setback. A one-hundred-foot buffer shall be provided surrounding the property, to be kept undeveloped except for entrance, exit roadway and parking facilities, provided that such parking shall be provided with screening from abutting properties and a landscaped strip at least 25 feet wide along any property boundary line.
- D. Major access driveways or private roads and major parking areas subject to frequent use day or night shall be paved. Private drives or roads are to be 18 feet wide and shall not exceed a grade of 7 1/2%.
- E. Parking areas shall be located within 200 feet of the building served.
- F. Parking requirements.
  - (1) Places of assembly. Theaters, assembly halls or outdoor places of assembly must have 300 square feet for every three seats, plus 250 square feet for every person normally employed.
  - (2) Classrooms and/or dormitories. The following shall be provided:
    - (a) Grades one to 10: one space for each staff member.

(b) Grades 10 to 12: one space for each staff member plus one space for every two students.

(c) College: one space for each staff member plus two spaces for every three students.

**§ 199-32. Bed-and-breakfast uses. [Added 1-20-1994 STM by Art. 10]**

**Moved to § 9.3**

A. Purpose. Under the authority conferred by MGL c. 40A, as amended, and every other power and authority thereto pertaining, the Town of Lee adopts this section for the regulation of bed-and-breakfast uses in districts zoned as residential and to achieve the following purposes:

- (1) To encourage the utilization of oversized homes in residential zoning districts which, because of their size or functional obsolescence, are costly and/or difficult to maintain as private residences and to further provide an economic incentive to maintain and to rehabilitate older, larger, uneconomic or obsolete structures.
- (2) To maintain and preserve the residential character, integrity and neighborhood attributes of residentially zoned districts.
- (3) To regulate bed-and-breakfast uses to ensure sensitivity and compatibility with the surrounding neighborhoods in residentially zoned districts through minimizing adverse impacts on neighboring residential uses.
- (4) To strengthen the economic base of the Town of Lee by allowing bed-and-breakfast establishments and bed-and-breakfast inns and to reinforce residential neighborhood viability without reducing residential characteristics.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**BED-AND-BREAKFAST COUNTRY INN** A recognized commercial entity located in a nonresidential zone where its functions are permitted by right as defined by the provisions of this section in regard to the zoning district. Full food service may be provided as part of the amenities available.

**BED-AND-BREAKFAST ESTABLISHMENT** A dwelling having a mixed use as a home for the residential owner and as guest lodging, with the lodging function often if not always superseding the home use. The home is to be the primary and legal residence of the owner. These dwellings would not be characterized as oversized or costly to maintain. The maximum number of guests that would be permitted at any one time is six. The maximum number of rooms for rent is three. The only food service for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

**BED-AND-BREAKFAST INN** A dwelling having a primary use as guest lodging with a home function for the resident owner clearly secondary to the business of renting rooms. The home is to be the primary and legal residence of the owner. These dwellings would be characterized as oversized homes as noted in Subsection A(1) of this section. The maximum number of guests that would be permitted at any one time is 20. The maximum number of rooms for rent is 10. The only food service

for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

**HOMESTAY** A dwelling the primary use of which is the private home for the residential owner, with lodging as a secondary use on an occasional basis. The home is to be the primary and legal residence of the owner. The maximum number of guests permitted at any one time is three. See Section 199-8A(5) of this chapter. The only food service for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

C. Applicability. The provisions of this section shall apply to the alteration or construction or conversion of an existing structure to one of the facilities above defined in Subsection B of this section for the purpose of operating guest rooms for overnight transient guests with the service of food as hereafter defined in a residential setting in residentially zoned districts.

C. General regulations.

- (1) The Planning Board may grant a special permit in accordance with Section 199-36 of this chapter and in compliance with all other applicable provisions of this chapter for conversion of an existing residential structure to a bed-and-breakfast use in residentially zoned districts only (R-20, R-30, RA-40, RM and CR Districts) upon the conditions set forth hereafter.
- (2) Each special permit issued in accordance with the provisions of this section shall show due consideration of the purposes set forth above and shall contain the following conditions:
  - (a) Any bed-and-breakfast use shall require one off-street parking space for each guest room available for rent, one for the resident owner and one for each employee regularly employed.
  - (b) The size, location and screening of such parking spaces shall be approved by the Planning Board during the permitting process, giving due consideration to the residential neighborhood characteristic and emphasizing the need to concentrate parking in as unobtrusive a location on the property as possible. Surfacing of the drives and parking areas shall be all-weather surface. The parking area in a given property shall not exceed 50% of the area of the property not covered by buildings. No parking may be permitted within the setbacks as defined in the Table of Dimensional Requirements<sup>6</sup>.
  - (c) Parking areas and exterior recreational facilities, such as swimming pools and tennis courts, if not located so as to be unobtrusive, shall be screened from view by plantings, fences or other suitable method approved by the Planning Board.
  - (d) All bed-and-breakfast facilities as defined above in Subsection B may have one freestanding sign, the top of which may not exceed six feet in height above ground level. Signs for home stay uses shall not exceed four square feet in area. Signs for bed-and-breakfast establishments and bed-and-breakfast inns may not exceed six square feet in area. All sign areas are to be determined in accordance with Section 199-28D(5) of this chapter. Signage may include such accessory and directory signs as approved by the Planning Board. Illumination for all signs described shall be external and positioned so as not to pose a nuisance to traffic or

<sup>6</sup> Editor's Note: The Table of Dimensional Requirements is located at the end of this chapter.

neighboring properties. Signage for bed-and-breakfast country inns shall be regulated by the provisions of Section 199-28.

- (d) To the extent practicable, fire escapes or other outside stairways shall be located on the rear or side of the building and shall not be located on the side of the building that faces a street.
- (e) Two structures may be utilized as the bed-and-breakfast inn facility as long as an outbuilding is used for housing at the time of the special permit application.
- (f) Kitchen facilities will be permitted only in a single central unit to serve both the resident owners and the guests.
- (g) No special permit shall be granted to expand or increase in size the footprint of the building to provide for guestrooms. No significant change in the outward appearance of the home is permitted without review and endorsement of the Planning Board during a special permitting process.
- (h) No bed-and-breakfast facility as described above shall offer public restaurant service or service of alcoholic beverages. The only food service permitted is breakfast for registered guests.
- (i) No other in-home business shall be permitted in a facility that houses a permitted bed-and-breakfast operation.
- (j) The maximum stay for the transient guests is to be for two weeks. However, for 10% of the guests, averaged over a three-month period, three months will be permitted.
- (k) Exterior lighting shall be so directed or shaded as to prevent direct illumination of off-premises property. All external lighting, except for demonstrated security needs, shall be extinguished by 1:00 A.M. The lighting shall be shielded from casting illumination onto abutting properties.
- (l) There shall be no activity permitted that creates excessive noise or other disturbance to the neighborhood at any time and especially after 9:00 p.m. or before 7:00 a.m.
- (m) Applicants for special permits under the provisions of this section shall provide such sketches, drawings or plans necessary to illustrate beyond a doubt conformance to the requirements of this chapter. The Planning Board may, at its discretion, require plans to be prepared by registered land surveyors, architects or engineers to illustrate the special permit application for the benefit of the Board and other town entities, such as the Building Inspector and the Board of Health. Illustration required may include, but not be limited to, parking and driveway plan, room layout, sanitary facilities, kitchen facilities, percentage of parking as to open space, etc.
- (n) All bed-and-breakfast facilities described in Subsection B above shall be connected to the water systems of the Town of Lee. All bed-and-breakfast facilities described in Subsection B above shall either be connected to the sewer systems of the Town of Lee or be served by a septic system. New bed-and-breakfast operations served by an existing septic system or existing bed-and-breakfast establishments proposing to expand facilities shall not be granted approval for operation until the Health Department confirms compliance with inspection

and/or design requirements as set forth in 310 CMR 15.301, 302, 303, 352 and 414, State Environmental Code Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage. [Amended 2-9-1995 STM by Art. 16]

- (o) Any complaint of noncompliance with the conditions set forth in the special permit must be submitted to the Building Inspector, in writing, as soon as possible.
- (p) All bed-and-breakfast facilities shall conform to the applicable state standards in regard to building and health codes. Information on these codes is available from the Lee Town Building Inspector and/or the Tri-Town Board of Health.

## **ARTICLE VI**

### **Administration**

#### **§ 199-33. Enforcement; violations and penalties.**

**Moved to § 13.1**

- A. Generally. This chapter shall be enforced by the Building Commissioner appointed by the Board of Selectmen as provided in the State Building Code.
  - (1) No permit shall be issued by the Building Commissioner unless the application for a permit indicates compliance with this chapter and any other applicable town bylaws and regulations, the State Sanitary Code and the Board of Health regulations, Chapter 241, Subdivision of Land, of the Code of the Town of Lee and the Wetlands Protection Act<sup>7</sup>, if applicable.

**Comment [BD26]:** DELETED THE HEADINGS. THE CONTENTS OF THIS SECTION ARE MOVED TO SECTIONS 13 AND 15

<sup>7</sup> Editor's Note: See MGL c.131, §§ 40 and 40 A.



- (2) No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this chapter.

B. Construction and use to be as provided in permits.

- (1) Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Zoning Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that which is authorized shall be deemed a violation of this chapter and punishable as provided herein.
- (2) Construction or operation under a building permit or special permit shall conform to any subsequent amendment of this chapter, unless the permit is issued before the first publication of the required notice of a public hearing by the Planning Board on such amendment and the use or construction is commenced within a period of not more than six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

C. Frontage requirement for building lots. No building permit shall be issued by the Building Commissioner unless the lot on which the construction is proposed has at least the required minimum frontage on an accepted public way, on a way shown on an approved and recorded subdivision plan or on a way otherwise qualifying or approved by the Planning Board under the Subdivision Control Law<sup>8</sup>.

D. Violation.

- (1) If the Building Commissioner is requested, in writing, to enforce this chapter against any person allegedly in violation of it and the Building Commissioner declines to act, he or she shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.
- (2) Whoever shall violate any provisions of this chapter or fail to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$300 for each offense. Each day such violation continues shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as it deems necessary to prevent or remedy any violation. **[Amended 5-9-1991 ATM by Art. 39]**
- (3) Non-criminal disposition. In addition to the procedures for enforcement as described above, the provisions of this chapter may also be enforced by the Building Inspector by non-criminal complaint pursuant to the provisions of MGL c. 40, Section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this chapter shall be \$50 for the first offense, \$100 for the second offense, \$200 for the third offense and \$300 for the fourth offense and subsequent offenses. **[Added 9-23-1993 STM by Art. 6]**

<sup>8</sup> Editor's Note: See MGL c.41, § 81K et seq.

**§ 199-34. Board of Appeals.****Moved to § 13.2**

- A. Membership and authority. There shall be a Zoning Board of Appeals consisting of five members and two associate members to be appointed by the Board of Selectmen as provided in MGL c. 40A, Section 12. The Board shall act within the statutory powers as provided in MGL c. 40A, Section 14 and on matters within its jurisdiction Under this chapter in a manner prescribed in MGL c. 40A, Section 15. The Zoning Board of Appeals, hereafter referred to as the "Board" or the "Board of Appeals" in this or any other section of this chapter, shall also serve as the Board of Appeals under the Subdivision Control Law as provided in MGL c. 41, Section 81Z.
- B. Statutory powers of the Zoning Board of Appeals.
- (1) Appeals. The Board is authorized to hear and decide an appeal, as provided in MGL c. 40A, Section 8, taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL c. 40A, by the Berkshire County Regional Planning Commission or by any person, including an officer or board of the town or of an abutting town, aggrieved by an order or decision of the Building Commissioner or other administrative official in violation of any provision of MGL c. 40A or of this chapter. Any such appeal must be taken within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal with the Town Clerk, as provided in MGL c. 40A, Section 15.
  - (2) Variances.
    - (a) The Board may authorize, upon appeal or upon petition with respect to a particular land or structure, a variance from the terms of this chapter where the Board specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of such land or structure and especially affecting such land or structure but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.
    - (b) Expiration of variance. If the rights authorized by a variance are not exercised within one year of the date of granting such variance they shall lapse and may be reestablished only after notice is given and a new bearing takes place as provided herein.
  - (3) Special permits. The Board of Appeals may hear and decide applications for special permits upon subjects which the Board of Appeals is specifically authorized to act under this chapter in accordance with all the applicable provisions of Section 199-36 herein.
  - (4) Conditions, safeguards and limitations. The Board of Appeals may impose conditions, safeguards or limitations, both of time and use, including the continued existence of any particular structure but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures in question by the same person.

- (5) Appeals, applications and petitions to the Board of Appeals. Any appeal, application or petition to the Board of Appeals must be filed with the Town Clerk, who shall forthwith transmit a copy thereof to the Board of Appeals.
- (6) Required public hearing. The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within 65 days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest, as provided in MGL c. 40A, Section 11, and after having notified the town's Planning Board and the Planning Boards of adjacent cities and towns, which may forward recommendations with respect to said matter for consideration of the Board of Appeals as provided in MGL c. 40A, Section 15
- (7) Review by other boards and agencies. The Board of Appeals shall, within 10 days after receipt of an appeal, application or petition, transmit a copy thereof for review to the Board of Health, Planning Board, Board of Selectmen, Conservation Commission, Town Engineer, School Committee, Traffic Commission, Department of Public Works and the Building Commissioner. Any board or agency to which matters are referred for review shall make such recommendations as it deems appropriate, in writing, to the Board of Appeals; provided, however, that failure to make recommendations within 35 days of receipt by such board or agency of the matter for review shall be deemed lack of opposition thereto.
- (8) Decision by the Board of Appeals.
  - (a) The decision of the Board of Appeals shall be made within 75 days after the date of the filing of an appeal, application or petition with the Town Clerk, except as provided for special permits in Section 199-36 herein. Failure by the Board to act within said 75 days shall be deemed to be the grant of the appeal, application or petition sought.
  - (b) The Zoning Board of Appeals shall file a copy of its decisions with the Town Clerk, Planning Board, Board of Selectmen and Building Commissioner. No variance or special permit shall take effect until a copy of the decision by the Zoning Board of Appeals is recorded by the applicant in the Registry of Deeds as provided in MGL c. 40A, Section 11.

**§ 199-35. Site plan review. [Added 6-17-1992 STM by Art. 8]****Moved to § 13.3****A. Purpose.**

- (1) The purpose of the site plan review process is to provide detailed review of certain uses and structures which have the potential for substantial impact on the town while protecting the natural, environmental, scenic and aesthetic qualities of the Town of Lee.
- (2) This review would include elements related to health, safety and general welfare of the public. Concerns related to impact on traffic, town services, the general environment and abutting properties must be addressed.

**B. Projects requiring site plan review. A site plan for review purposes shall be submitted before the issuance of a building permit for:**

- (1) **[Amended 7-14-1994 STM by Art. 3]** All nonresidential uses in an R-20, R-30, RA-40, RM, BM, CR, B, RB, OPLI, I and PCVC District that involve more than the following:
  - (a) Ten thousand square feet for new construction.
  - (b) Ten thousand square feet of gross floor area for expansion of existing construction.
  - (c) The generation of 500 vehicle trips per day calculated in accordance with the Institute of Traffic Engineers traffic standards currently in effect.
  - (d) The generation of more than 2,000 gallons of sewer flow per day calculated in accordance with the standards established by 310 CMR 15.00 (Title V of the State Sanitary Code). The direct alteration of 25 or more acres of land for new nonresidential construction (other than utility lines).
- (2) All uses in all districts which require a special permit.
- (3) All nonresidential uses in a CBC District. **[Added 5-11-1995 ATM by Art. 23]**

**C. Subdivision projects are governed by subdivision control regulations and are subject to the provisions of the regulations, which include the approval process for preliminary and definitive subdivision plans<sup>9</sup>.****D. Required site plan contents.**

- (1) Where necessary, each permit application shall be accompanied by a plan prepared and certified by a professional architect, landscape architect, registered professional engineer or registered professional land surveyor. Said plan shall be drawn at a suitable scale, preferably one inch equals 40 feet, on sheets no larger than 24 inches by 36 inches. When more than one sheet is required, a key sheet shall be provided. The plan submission shall include the following:

- (a) A plan or plans illustrating the following, as appropriate:

<sup>9</sup> Editor's Note: See Ch. 241, Subdivision of Land.

- [1] Location map at 600 feet per inch or such other scale as appropriate.
  - [2] The name(s) of the owner(s) of the property shown and the name of the applicant.
  - [3] Site boundaries, dimension and site areas.
  - [4] The use, ownership and zoning of the lot or lots subject to the application and of the adjacent land and the use of any buildings thereon within 200 feet of the subject property.
  - [5] Existing and proposed vegetation, ground culture or surface, including wetlands.
  - [6] Existing and proposed topography at ten-foot intervals. Sufficient information shall be provided to clearly indicate areas in the site and within 50 feet of the site where gravel or loam removal or filling is proposed and the approximate volume in cubic yards. All elevations shall refer to the nearest United States Coast and Geodetic Survey bench mark [National Geodetic Vertical Datum (NGVD)].
  - [7] Existing and proposed easements, if any.
  - [8] Existing and proposed watercourses, if any.
  - [9] Existing and proposed drainage and utility systems, including but not restricted to water and sewer, natural gas, electric, street lighting, natural features, telephone and cable television.
  - [10] All existing and proposed buildings, structures, parking spaces, pedestrian walks, driveways, internal roads, access and egress points, loading areas, service areas and natural areas on the subject property and the dimensions thereof.
  - [11] Proposed landscaping, including fencing, walls, planting areas, screening and surface treatments.
  - [12] The proposed location of open spaces and other recreational uses and land left in its natural state.
  - [13] Proposed signs, exterior storage and lighting, with height, size and materials indicated.
- (b) Facade elevations of any new construction and/or alteration to any existing building or structure. The Planning Board may waive this requirement if appropriate.
  - (c) Information describing proposed provisions for waste disposal, refuse removal, drainage, dust and erosion control and utilities and their appurtenances.
  - (d) Applications for the proposed building site and alterations and additions of existing structures, which shall include photographs showing the site, any existing structures to be altered and its/their relationship to adjacent properties.
  - (e) One or more tables indicating, by zoning classification, the required and proposed setback, side yard and rear yard distances, the intended use of the site, existing and proposed floor area and number of units and parking areas, with their locations.

- (e) For all proposed projects with generation of more than 500 vehicle trips per day (calculated in accordance with the Institute of Traffic Engineers traffic standards currently in effect), a study showing projected pedestrian movement and vehicular traffic flow within the site and in relation to adjacent areas or roads and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.
    - (f) Impacts on municipal services and/or such other pertinent information that the Planning Board deems necessary in order to perform a complete analysis.
  - (2) The Lee Planning Board may require with each submission a deposit sufficient to cover any expenses connected with the review of the plans, including but not limited to the costs of any consultant services necessary for review purposes, in accordance with the Planning Board's fee schedule.
- E. Waiver of requirements.
- (1) Compliance with any of the foregoing requirements may be waived by the Planning Board when, in the judgment of the Board, such waiver or waivers are not contrary to the public interest and not inconsistent with the provisions, intent and various purpose statements contained within this chapter. The applicant is responsible for applying for the waiver.
  - (2) When a developer provides the Board with covenants describing standards and restrictions within a subdivision, the Board may waive some or all of the site plan review requirements if, in the judgment of the Board, such waiver or waivers are not contrary to the public interest and not inconsistent with the provisions, intent and various purpose statements contained within this chapter. The applicant is responsible for applying for the waiver. Covenants must be part of a subdivision record and kept with the subdivision file.
- F. Submittal procedure. Seven copies of said plan and any related documents shall be submitted to the Planning Board at a regularly scheduled meeting of the Planning Board. Copies of the plan and related documents shall be distributed to the Conservation Commission, Board of Health, Board of Public Works, Board of Selectmen, Building Inspector and the Town Clerk by the Planning Board. The Traffic Commission shall be notified. The Planning Board shall post a notice of the date, time, place and subject of an informational meeting regarding the site plan review. The Planning Board will be the coordinating board in the case of permitted uses and uses by special permit. In the case of a special permit, it will forward the information to the appropriate permit granting authority.
- (1) Permitted uses. In the case of a use not requiring a special permit, the Planning Board, within 30 days of the receipt thereof, shall submit a report to the Building Inspector. Said report shall summarize the Board's findings with regard to the compliance of said plan with the provisions of this chapter and any recommendations of the Board.
  - (2) Building permit. The Building Inspector shall not issue a permit until the report of the Planning Board shall have been received or more than 30 days shall have elapsed without receipt of such report.
  - (3) Special permit.
    - (a) The application for a special permit shall necessitate the submittal of a site plan. Each board or commission listed above shall review the site plan and submit its report to the Planning

Board with recommendations within 30 days of receiving the site plan. If 30 days have elapsed without such report, it shall be determined that there is no opposition to the application.

- (b) The Planning Board will submit the recommendations of all review boards to the special permit granting authority within five days of receiving all review board reports and before the public hearing for the special permit application.
- (c) In considering the application for a special permit under this section, the special permit granting authority will give serious consideration to the facts and information contained in the site plan and impact statement and to the reports and recommendations from the involved town boards and agencies.
- (d) Any of the reviewing boards may recommend and the permit granting authority may impose such additional reasonable conditions on any such development as it finds necessary in the interests of the town and public health, safety and welfare, including fencing and screening for the protection of abutting residential uses.
- (e) Any site plan may be revised by following the same procedure as required for the original approval.
- (f) A site plan, once approved, shall become a part of the special permit.

G. Guidelines for review board. In considering any site plan submittal, the following concerns shall be reviewed:

- (1) The protection of visual corridors.
- (2) The use of landscaping to establish buffers between incompatible land uses. Plant type and location should be specified.
- (3) The provision of open spaces and pedestrian amenities available to the public.
- (4) The arrangement of access points, internal roads, driveways, parking areas and loading areas, lighting and pedestrian walkways in a manner which facilitates interior circulation and minimizes conflict between vehicles and pedestrians.
- (5) The ease of access, travel and on-site movement for fire and police equipment and other emergency services for public safety.
- (6) The presence of adequate underground electric, telephone, cable television and other such utilities where physically and environmentally feasible.
- (7) **[Amended 5-11-1995 ATM by Art. 23]** Relationship of the architectural style of the proposed building(s) to the prevailing character of and scale of buildings in the neighborhood and the Town of Lee. In the Commercial Business Corridor, the reuse of existing buildings shall be encouraged. In the event that new construction or substantial reconstruction is to occur, the site plan review board shall consider the following standards in evaluating a proposed action:

- (a) Height. The height of any proposed alteration should be compatible with the style and character of the surrounding buildings.
  - (b) Proportions of windows and doors. The proportions and relationships between windows and doors should be compatible with the architectural style and character of the surrounding area.
  - (c) Relationship of building masses and spaces. The relationship of a structure to the open space between it and adjoining structures should be compatible.
  - (d) Roof shape. The design of the roof should be compatible with the architectural style and character of the surrounding area.
  - (e) Landscape. The landscape should be compatible with the character and appearance of the surrounding area.
  - (f) Scale. The scale of a structure should be compatible with its architectural style and the character of the surrounding buildings.
  - (g) Directional expression. Facades shall blend with other structures in the surrounding area with regard to the dominant vertical or horizontal expression.
  - (h) Architectural details. Architectural details, including signs, materials, colors and textures, shall be treated so as to be compatible with the original architectural style and to preserve and enhance the character of the surrounding area.
- (8) Historical considerations and compatibility with abutting properties and the area in which it is located. The reuse of existing buildings shall be encouraged in the Commercial Business Corridor. **[Amended 5-11-1995 ATM by Art. 23]**
- (9) Provision for maintenance of common areas and special features.
- (10) Storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other potentially unsightly uses and their impact on the visual environment.
- (11) The existence of adequate provisions for storage, refuse storage and removal, drainage, dust and erosion control, water supply, wastewater disposal and power supply.
- (12) Absence of excessive demands on town services and infrastructure.
- H. Review. In reviewing applications under this section, the review board may require modifications, conditions and safeguards reasonably related to the contents of this section.
- (1) Permitted uses. Once a site plan has been reviewed by the respective boards, it may be accepted or accepted with comments by the Planning Board and a building permit shall be issued by the Building Inspector.
  - (2) Special permit. The special permit granting authority may approve, approve with conditions or disapprove the site plan. If disapproved, the plan may be revised and resubmitted without prejudice. No special permit shall be granted until such time as the site plan is approved or approved with conditions.



**§ 199-36. Special permits.****Moved to § 13.4****A. Special permit granting authority.**

- (1) Any board designated as special permit granting authority in this chapter may hear and decide applications for special permits upon which such board is specifically authorized to act under this chapter in accordance with the provisions in MGL c. 40A, Section 9.
- (2) The Board of Selectmen, acting pursuant to MGL c. 40A, Section 9, may appoint an associate member of the Planning Board who shall be available to serve as an associate member when the Planning Board acts as the designated special permit granting authority under this chapter. The Chair of the Planning Board may designate the associate member to sit on the Board for the purpose of acting on a special permit application in the case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board. **[Added 5.11-1995 STM by Art. 12]**

**B. Required hearing notice.** Special permits may be issued only following a public hearing held within 65 days after filing of an application with the special permit granting authority. Notice of public hearings shall be given by publication not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing and by mailing it to parties in interest as provided in MGL c. 40A, Section 11, which include the Planning Board and the Planning Boards of every abutting municipality, the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, all as they appear in the most recent applicable tax list.**C. Review by other boards and agencies.** The special permit granting authority shall, within 10 days after receipt of an application for special permit, transmit a copy thereof for review to the Board of Health, Planning Board, Board of Selectmen, Conservation Commission, Town Engineer, School Committee, Traffic Commission, Department of Public Works and the Building Commissioner. Any board or agency to which such application is referred for review shall make such recommendations it deems appropriate, in writing; provided, however, that failure to make recommendations within 35 days of receipt by such board or agency of the application for review shall be deemed a lack of opposition thereto.**D. Finding required.** Before granting a special permit for any use requiring such permit under the provisions of this chapter, the special permit granting authority shall find that the proposed use:

- (1) Is in compliance with all provisions and requirements of this chapter and in harmony with its general intent and purpose;
- (2) Is essential or desirable to the public convenience or welfare at the proposed location;
- (3) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- (4) Will not create undue traffic congestion or unduly impair pedestrian safety; and

- (5) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety or general welfare.
- E. Conditions, safeguards and limitations. Special permits may be issued subject to such conditions, safeguards or limitations as the special permit granting authority may impose for the protection of neighboring uses or otherwise serving the purposes of this chapter.
- (1) Such conditions, safeguards or limitations may include, but are not limited to, the following:
- (a) Front, side and rear yards greater than the minimum required by this chapter and screening buffers or planting strips, fences or walls as specified by the authority.
  - (b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit or extent of facilities.
  - (c) Regulation of the number and location of driveways or other traffic features and off-street parking or loading or other special features beyond the minimum required by this chapter.
- (2) Any conditions, safeguards or limitations shall be imposed in writing and shall be made part of the special permit and of the building permit, if any.
- F. Site plan required. Any application for a special permit shall be accompanied by a site plan drawn in accordance with Section 199-35 of this chapter. **[Amended 6-17-1992 STM by Art. 8]**
- G. Decision and vote requirements.
- (1) The special permit granting authority shall act within 90 days following the date of the public hearing. Failure to take final action upon an application for a special permit within said 90 days shall be deemed to be a grant of the permit application.
  - (2) Special permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.
  - (3) The special permit granting authority shall file copies of its decisions with the Town Clerk, Building Commissioner and the Planning Board.
  - (4) No special permit shall take effect until a copy of the decision by the special permit granting authority is recorded by the applicant in the Registry of Deeds as provided in MGL c. 40A, Section 11.
- H. Expiration of special permit. A special permit shall lapse in one year if a substantial use or construction has not begun under the permit by such date, except for a good cause.

**§ 199-37. Amendments; notice to nonresident property owners.****Moved to § 15**

- A. This chapter may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of MGL c. 40A, Section 5.
- B. No proposed zoning ordinance or bylaw which has been unfavorably acted upon by a Town Meeting shall be considered by a Town Meeting within two years after the date of such unfavorable action, unless the adoption of such proposed ordinance or bylaw is recommended in a final report of the Planning Board.
- C. Any nonresident property owner may request that notice of hearing by the Planning Board on any zoning bylaw amendment be sent by mail to him or her by the Town Clerk. Such request must be filed annually with the Town Clerk no later than January 1, accompanied by a fee of \$15. A separate, conspicuous statement shall be included annually with all property tax bills sent to nonresident property owners informing them of this provision.

**§ 199-38. When effective; severability.****Moved to § 15**

- A. This chapter or any amendment thereto shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.
- B. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

**ARTICLE VII****Renamed "Section 8"****Off-Street Parking****§ 199-39. Parking facilities required.****Moved to § 8.1**

Parking facilities off the street or highway right-of-way shall be provided to serve any building erected, moved or enlarged and all premises otherwise developed after the adoption of this chapter. Such facilities shall be sufficient to accommodate the motor vehicles of all occupants, employees, customers and other persons normally visiting such building or premises at any one time.

**§ 199-40. Location of required parking facilities.****Moved to § 8.2**

Required parking facilities shall be located on the same lot as the building or other use which they serve, except that upon the approval of the Planning Board required parking facilities may be located elsewhere, but not more than ~~200~~ 300 feet from such building or use, measured in a straight line to the nearest space for vehicular parking.

**Comment [BD27]:** THIS DISTANCE WAS CHANGED FROM 200 TO 300 AT A PREVIOUS TOWN MEETING.

**§ 199-41. Minimum area required.****Subsection (J) moved to § 8.4****Subsection (K) moved to § 8.3****Subsection (L) moved to § 8.5****Subsection (M) moved to § 8.6****Subsection (N) moved to § 8.7****Remaining text moved to § 8.3**

Unless otherwise specifically approved by the Planning Board, required parking facilities shall contain not less than the minimum areas set forth below, exclusive of driveways and ramps necessary for access. Rooftop or indoor parking may be included in the required area.

- A. Dwellings: 200 square feet for each dwelling unit. **[Amended 5-9-1991 ATM by Art. 40]**
- B. Offices and permitted home occupations: an area equal to twice the floor area used for such purposes.
- C. Financial institutions, retail stores, personal service shops and similar business buildings: an area equal to three times the floor area used for business, excluding storage.
- D. Theaters, assembly halls or outdoor places of assembly: 200 square feet for every three seats, plus 250 square feet for every person normally employed. **[Amended 5-9-1991 ATM by Art. 40]**
- E. Restaurants: an area equal to 200 square feet for every three seats, plus 200 square feet for every person normally employed. **[Amended 5-9-1991 ATM by Art. 40]**

- F. Places of public assembly or public recreation not otherwise listed, nursing homes and convalescent homes: 300 square feet for every three legal occupants, plus 300 square feet for every person normally employed.
- G. Motels, hotels, lodging or boarding houses and hospitals: 200 square feet for every guest or patient accommodated, plus 200 square feet for every person employed. **[Amended 5-9-1991 ATM by Art. 40]**
- H. Funeral homes: an area equal to three times the total floor space, exclusive of storage.
- I. Industrial plants, wholesale establishments and similar buildings: 300 square feet for every two persons normally employed.
- J. **[Added 6-17-1992 STM by Art. 8]** Office Park/Light Industrial District. All uses, both permitted and those allowed by special permit, shall provide parking as follows:
- (1) Office: 200 square feet for every 250 square feet of floor area, exclusive of storage, service areas and stairs.
  - (2) Light industrial and laboratories: 300 square feet for every two employees who work on the largest shift.
  - (3) Provision shall be made for visitor parking through consultation with the Planning Board.
- K. Where one building is used for more than one use, parking requirements shall be computed for each use.
- L. **[Added 7-14-1994 STM by Art. 3]** Parking standards for Planned Commercial Village Center. The proposed center must comply with the parking and off-street loading requirements in Sections 199-39, 199-40, 199-41 and 199-44 and the following standards:
- (1) Parking areas may be located to the side or rear of the structure. No parking shall be permitted within the front yard setback of a Planned Commercial Village Center.
  - (2) To the extent feasible, parking areas may be shared with adjacent businesses.
  - (3) A reduction in parking space requirements, based on industry standards, is permitted for a Planned Commercial Village Center with the approval of the Planning Board, provided that there are no fewer than four spaces per 1,000 square feet of retail space.
- M. Downtown Commercial Business Corridor (DCBC) District. **[Added 2-9-1995 STM by Art. 15]**
- (1) A twenty-percent reduction in the number of required parking spaces is allowed in the DCBC District when facilities are shared between two properties.
  - (2) No parking will be allowed in the front yard setback of any structure in the DCBC District.
- N. Commercial Business Corridor (CBC) District. **[Added 5-11-1995 ATM by Art. 23]**

- (1) A twenty-percent reduction in the Number of required parking spaces is allowed in the CBC District when facilities are shared between two properties.
- (2) Parking in the front yard setback will be permitted only by special permit of the Planning Board in the CBC District.
- (3) In the CBC District the size, location and screening of such parking spaces shall be approved by the Planning Board during the permitting process, giving due consideration to the neighborhood characteristic, emphasizing the need to concentrate parking in as unobtrusive a location on the side and rear of the property as possible. Surfacing of the drives and parking areas shall be all-weather surface. The parking area in a given property shall not exceed 50% of the area of the property not covered by buildings.

**§ 199-42. Surfacing; landscaped strip.**

**Moved to § 8.8**

Required minimum parking facilities shall have adequate all-weather surfacing capable of allowing free and safe movement of all vehicles customarily using the facility. Where an off-street parking facility is adjacent to a street line, there shall be a landscaped strip between such street line and the balance of the lot, which strip shall not be less than six feet wide in RA-40 and RB Districts and not less than three feet wide in other districts.

**§ 199-43. Common driveways. [Added 5-17-1990 ATM by Art. 33]**

**Moved to § 8.9**

Common driveways may be allowed with the approval of the Planning Board and review by the Board of Public Works. The common driveway length shall not exceed 750 feet. The minimum width shall be 18 feet. The common driveway shall be allowed to service two house lots which shall have legal access and frontage on an approved public way. The common driveway may never be used to satisfy zoning frontage to an approved road. A plan shall be recorded showing the easement, and the easement shall be recorded in the deed.

**§ 199-44. Loading facilities. [Added 6-17-1992 STM by Art. 8]**

**Moved to § 8.10**

Adequate off-street loading facilities and space must be provided to service all needs created by new construction or new use in Industrial and OPLI Districts.

**ARTICLE VIII**

**Renamed "Section 9"**

**Removal of Earth Materials**

**Renamed "Supplemental Use Regulations"**

**Insert New Section 9.1 "Removal of Earth Materials"**

**§ 199-45. Permitted use in all districts.****Moved to § 9.1 (A)**

The removal of earth materials, such as loam, sand, gravel, clay or stone, shall be permitted in all districts when incidental to or required in connection with the following operations:

- A. The erection of a building or any other construction for which a permit has been properly issued.
- B. Municipal or governmental construction or operation.
- C. The construction of a private road and grading in accordance with approved subdivision plans.
- D. Any accessory use incidental to a permitted use, including cultivation of land, planting, landscaping or drainage of land.

**§ 199-46. Special permit application.****Moved to § 9.1 (B)**

The removal of earth materials may be permitted under other circumstances by the Board of Appeals subject to the following restrictions, which are not, however, applicable to existing quarry operations or their expansion or any existing industry in gravel or stone removal:

- A. Removal of loam. The Board of Appeals may grant a special permit in any district for the removal of loam from any area, provided that no less than four inches of loam remains and provided, further, that the entire area disturbed is seeded with suitable cover crop or is put to cultivation.
- B. Removal of gravel, clay, sand or stone. The Board of Appeals may grant a special permit for the removal of gravel, clay, sand or stone in any district under the following conditions:
  - (1) The applicant shall submit a plan showing existing grades in the area from which the above material is to be removed, together with finished grades at the conclusion of the operation.
  - (2) The plan shall provide for proper drainage of the area of the operation during and after completion, and no bank shall exceed a slope of one foot of vertical rise in two feet of horizontal distance except in ledge rock. No removal shall take place within 20 feet of a property line, except that where the grade from a property line rises towards the lot where removal is to take place, material lying above the grade at the property line may be removed.
  - (3) At the conclusion of the operation or of any substantial portion thereof, the whole area where removal takes place shall be covered with not less than four inches of topsoil and seeded with a suitable cover crop, except where ledge rock is exposed.
- C. Before a special permit is granted under this section, the applicant shall post a bond with the Treasurer of the Town of Lee in an amount approved by the Planning Board as sufficient to guarantee conformity with the provisions of the permit issued hereunder.
- D. In issuing such special permit, the Board of Appeals may stipulate the hours of operation or impose other restrictions as it deems necessary.

**ARTICLE IX**  
**Multiple-Dwelling Developments**

**§ 199-47. Special permit; application.**

**Moved to § 9.2 (A)**

- A. The Board of Selectmen may grant, after a public hearing, under the provisions of MGL c. 40A, Section 4, a special permit for the construction of multiple dwellings in the districts as specified in Section 199-57, subject to all applicable provisions of this chapter and the following special requirements.
- B. Any application for a permit under this article shall be accompanied by such plans and information as are required herein or as may be reasonably required by the Board of Selectmen, Planning Board or Board of Health in order that the proposal of the applicant may be clearly understood and compliance with the provisions, intent and purposes of this chapter can be established. **[Amended 6-17-1992 STM by Art. 8]**

**§ 199-48. Location.**

**Moved to § 9.2 (B)**

An applicant shall provide such maps, plans, drawings or reports as are necessary to indicate that the proposed development shall be so located as not to create traffic hazards and that essential community services shall be available and adequate for the development or that suitable provisions will be made assuring these services.

**§ 199-49. Site plan required. [Amended 6-17-1992 STM by Art. 8]**

**Moved to § 9.2 (C)**

Any application for a special permit under this article shall be accompanied by a site plan as outlined in Section 199-35, Site plan review.

**§ 199-50. Impact statement.**

**Moved to § 9.2 (D)**

- A. Any application for a special permit under this article must be accompanied by an impact statement which details the probable effects of the proposed development on the following aspects of concern to the town:
- (1) Load on municipal utilities or future demand for them.
  - (2) Increases in vehicular traffic and public safety.
  - (3) Attendance at public schools.
  - (4) Provision of housing for town residents and for persons of low and moderate income.
  - (5) Increases in municipal service costs.



(6) Land erosion, loss of tree cover and pollution of water.

(7) Disturbance of other aspects of the natural ecology.

(8) Harmony with the character of surrounding developments.

B. The developer will conduct a housing survey within 1/2 mile of the locus of the property to determine the number of multiple-family and single-family living units within said area. The addresses and number of multiple-family units at each location will be left with the application for a building permit. This data may be reviewed and verified by the Town Clerk and Building Inspector.

**§ 199-51. Waiver of requirements.**

**Moved to § 9.2 (E)**

Strict compliance with any of the foregoing requirements may be waived upon written request by the applicant to the Board of Selectmen, or the Board may waive strict compliance when, in the judgment of the Selectmen, such waiver is not contrary to the public interests and not inconsistent with the provisions, intent and purposes of this chapter.

**§ 199-52. Access and internal ways.****Moved to § 9.2 (F)**

A multiple-dwelling development consisting of more than 40 dwelling units on the lot shall have a minimum of two access roadways from a public way. No access way shall be located within 30 feet of any property line in residential use. Within the development, vehicular and pedestrian circulation facilities shall be provided for safe and convenient use in accordance with reasonable site planning standards. All streets throughout the development shall conform to the standards as set forth in Chapter 241, Subdivision of Land, of the Code of the Town of Lee, except as waived by the Planning Board.

**§ 199-53. Off-street parking.****Moved to § 9.2 (G)**

Off-street parking shall be provided in accordance with the provisions of Article VII of this chapter, except that the minimum parking area per dwelling unit, if provided in a garage on the lot, may be reduced by 25%. No space shall be considered available for parking which reduces the effective width of a driveway providing access to more than one dwelling unit to less than 16 feet. Parking and play areas shall be so designated and located as to be safely and conveniently accessible from the buildings which they are intended to serve.

**§ 199-54. Site plan review and approval.****Moved to § 9.2 (H)**

- A. Any multiple-dwelling development authorized under this article shall be subject to site plan review by the Board of Health, Conservation Commission and the Planning Board. The Board of Selectmen shall not render any decision on the application for a special permit unless and until:
- (1) The Board of Health has approved those aspects of the development which come under its jurisdiction;
  - (2) The Planning Board has reviewed the site plan and has submitted its report with recommendations to the Selectmen, or until 30 days have elapsed without such report; and
  - (3) The Conservation Commission has made its report or until 30 days have elapsed without such report.
- B. In considering the application for a special permit under this article, the Board of Selectmen will give serious consideration to the facts and information contained in the site plan and impact statement and to the reports and recommendations from the involved town boards and agencies.
- C. The Planning Board and Conservation Commission may recommend and the Board of Selectmen may impose such additional reasonable conditions on any such development as they find necessary in the interests of the town and public health, safety and welfare, including fencing, screening and greater setback requirements for the protection of abutting residential uses.
- D. Any site plan may be revised by following the same procedure as required for the original approval.

E. A site plan, once approved, shall become a part of the permit.

**§ 199-55. Certificate of occupancy.**

**Moved to § 9.2 (I)**

No certificate of occupancy shall be issued for use of any building or structure or use of land under this article unless the building or structure is constructed or used or the land is developed or used in conformity with an approved site plan or any amendment of such plan. A certified copy of an as-built site plan must be filed prior to issuance of the certificate of occupancy.

**§ 199-56. Bond required.**

**Moved to § 9.2 (J)**

Unless the installation of public services and construction of common facilities, such as internal streets, walkways, parking and play areas, drainage, landscaping and screening, has been completed, no certificate of occupancy shall be issued by the Building Commissioner for any part of the development until the applicant shall have filed in the office of the Town Clerk a bond with surety satisfactory to the Selectmen and approved as to form and legality by the Town Counsel. Such bond shall be in an amount sufficient, in the judgment of the Department of Public Works, to secure the completion of such work in compliance with all applicable statutes, ordinances and regulations and in accordance with the approved site plan.

**§ 199-57. Development standards.**

**Moved to § 9.2 (K)**

- A. See the Table of Dimensional Requirements for Multiple Dwellings<sup>10</sup>.
- B. No more than 12 dwelling units shall be provided for in any one building.
- C. Multiple dwellings on the same lot shall be spaced at least 35 feet apart in the RM or BM District.
- D. No dwelling unit in a multiple dwelling shall contain more than two bedrooms.
- E. The minimum side yard requirements for any proposed multiple dwelling located on a lot which abuts a lot in residential use shall be increased by an additional 10 feet.
- F. Multiple-dwelling units erected in a Business-Multiple Dwelling (BM) District as a part of the same structure which houses other permitted uses in this district shall comply with all yard requirements as set forth in the above-mentioned table for Residential-Multiple Dwelling (RM) District in regard to that portion of the structure which contains dwelling units.
- G. The minimum area of developed playgrounds, recreational areas or other usable, suitably landscaped open space shall be at the rate of 500 square feet per bedroom.
- H. Front yards and all open areas shall be suitably landscaped and maintained with grass, trees, shrubs or walks.

<sup>10</sup> Editor's Note: The Table of Dimensional Requirements for Multiple Dwellings is included at the end of this chapter.

- I. Every multiple dwelling must be connected to town sanitary sewer and water systems.
- J. Standards and requirements set forth under Subsections F and G in this section may be modified or waived by the Board of Selectmen in the case of rehabilitation for multiple-dwelling use of buildings which existed at the effective date of this chapter.

~~ARTICLE X~~  
~~Flexible Development~~

**Comment [BD28]:** DELETED HEADINGS.  
THIS TEXT IS MOVED TO SECTION 11 IN THE  
PROPOSED BYLAW.

**§ 199-58 FLEXIBLE DEVELOPMENT [Amended 5-8-2008 ATM by Art. 45]**  
**Moved to Section 11**

**A. Purposes** The purposes of this section for flexible development are as follows:

1. To encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational uses;
2. To preserve historical and archeological resources; to protect the natural environment, including the town's varied landscapes and water resources;
3. To protect the value of real property;
4. To promote more sensitive siting of buildings and better overall site planning;
5. To perpetuate the appearance of the town's traditional New England landscape;
6. To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. To offer an alternative to standard subdivision development;
8. To promote the development of housing affordable to low, moderate, and median income families; and
9. To promote the development of housing for persons over the age of fifty-five.

**B. Definitions.** The following terms shall have the following definitions for the purposes of this section:

1. "Age restricted housing" shall for the purposes of this bylaw shall be defined as those structures reserved for occupants who have reached the age of fifty-five (55) years old.
2. "Affordable to persons or families qualifying as low income" shall mean affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development or it's successor agency earning less than 50% of the median income.
2. "Affordable to persons or families qualifying as moderate income" shall mean affordable to

persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development or its successor agency earning more than 50% but less than 80% of the median income.

3. "Contiguous open space" is defined as a minimum of 50% open area which is suitable and sufficient for those purposes as set forth in paragraph 199-58-A above. Such open space may be separated by the road(s) constructed within the flexible development. Contiguous open space shall not include required yards setbacks.

4. For the purposes of this bylaw, the terms "flexible development" and "cluster zoning" will have the identical meaning.

**C. 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 held in common ownership and located entirely within the town. Flexible development would be available in areas zoned R-20, R-30, RA-40 and CR.

**D. Procedures.** Flexible development may be authorized upon the issuance of a special permit by the Planning Board as detailed in Section 199-36. Applications for a flexible development shall be filed in eight (8) copies for distribution to the Board of Selectmen, Board of Health, Conservation Commission, Department of Public Works, Planning Board, Police Chief/Traffic Commission, Ambulance Squad/Fire Department and Building Commissioner for a thorough review. The application should include the following:

1. The application should include a preliminary plan in conformance with the town's Subdivision Control Regulations in order to establish the base number of dwelling units that may be allowed.
2. Wetland delineation shall be indicated on the preliminary plan.
3. Informal review: Applicants are urged to meet with the town's reviewing authorities prior to submitting a formal application for a flexible development. In this way, many of the issues and questions concerning a project can be resolved in advance.
4. Request for waivers should cite the appropriate Subdivision Rules and Regulation or Special Permit requirement.

**E. 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 all town authorities that this design process was considered in determining the layout of proposed streets, houselots, 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., roads, paths 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 and in harmony with the town's Master Plan.

5. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

**F. Modification of Lot Requirements.** Applicants are encouraged as part of a flexible development to modify lot size, shape, and other dimensional requirements for lots within a flexible development, subject to the following limitations:

1. Lots to be modified shall not have frontage on a street other than a street created by the flexible development, however, this requirement may be waived where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
2. At least 50% of the required frontage as well as side, rear, and front dimensions in the zoning district shall be maintained in the flexible development.

**G. Basic Maximum Number of Dwelling Units.** To qualify, a flexible development project shall have a minimum six (6) lots. The basic maximum number of dwelling units allowed in a flexible development shall not exceed the number of dwelling units which could reasonably be expected to be developed within the site under a conventional plan and in full conformance with all zoning and subdivision regulations, health regulations, wetlands regulations, Department of Public works regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such an alternative conventional subdivision plan.

**H. Density Bonus.** The applicant may be awarded a density bonus for open space to increase the number of dwelling units beyond the basic maximum number. In the aggregate, the density bonus shall not exceed fifty (50%) percent of the basic maximum number. All dwelling units awarded as density bonuses from all sources shall be two bedroom units; strict compliance with this requirement may be waived. Computations shall be rounded to the nearest number. A density bonus may be awarded in the following circumstances:

1. **Open Space** - For every ten (10%) percent over and above the area designated as open space, a bonus of five (5%) percent of the basic maximum number of lots allowed may also be awarded. In the aggregate, density bonuses for open space shall not exceed twenty-five (25%) percent of the basic maximum number of lots allowed.

2. **Age Restricted Housing** - For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that the elderly density bonus shall not exceed ten (10%) percent of the basic maximum number.

**I. Affordable Component.** As a condition of the grant of any special permit for a flexible development, dwelling units shall be restricted for a period not less than thirty (30) years in the following manner:

1. 10% of the units shall be affordable to persons or families qualifying as low income; or
2. 15% of the units shall be affordable to persons or families qualifying as moderate income.

The affordable dwelling units shall be in addition to those otherwise available as part of the basic maximum number and shall not be computed as part of any density bonus. The thirty year restriction shall be approved as to form by Town Counsel, and a right of first refusal upon the transfer of such restricted units shall be granted to the local Housing Authority for a period not less than one hundred and twenty (120) days after notice thereof.

**J. Types of Buildings.** The flexible development may consist of any combination of single-family, two-family, multiple single family, multifamily residential structures and accessory buildings. A multifamily or multiple single family structure shall not contain more than five (5) dwelling units. In the case of multifamily and multiple single family structures of more than three (3) dwelling units requires an additional Special Permit from the Board of Selectmen. The architecture of all multifamily or multiple single family buildings shall be residential in character and employing a variety of architectural designs. Residential structures should be oriented toward the street serving the premises and not the required parking area.

**K. Roads.** The principal roadway(s) serving the site shall be designed to conform with the standards set forth in the town's Subdivision Rules and Regulations. Applicants will be urged to maintain all roadways, infrastructure and open space as private. At an annual Town Meeting, the town may vote to accept the roadway provided that it meets the town's Subdivision Rules and Regulations in effect at the time of the vote. Private ways shall be adequate for their intended use, for vehicular traffic and shall be maintained by an association of unit owners or by the applicant.

**L. Parking.** Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages as well as the garage area it self may count in this computation.

**M. Contiguous Open Space.** A minimum of fifty (50%) percent 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 paragraph A, above. In no case shall the percentage of

contiguous open space which is wetlands exceed fifty (50%) of the tract.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor recreation, park purposes, or for 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, except that the applicant may permitted up to ten (10%) percent 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.

**N. Ownership of the Contiguous Open Space.** The contiguous open space shall 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 are 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, it shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform the work and all costs associated with the project shall be divided among the owners and payment to the town will be made through the Town Collector or Treasurer. 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 with the application for evaluation, and be approved by the Town Counsel and thereafter be recorded in the Registry of Deeds.

**O. Buffer Areas.** A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or residentially 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 or to meet the screening requirements. This requirement may be reduced to no less than fifty (50) feet for the following reasons: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the town for conservation or recreation purposes; or (iii) it is determined that a smaller buffer will suffice to accomplish the objectives set forth herein.

**P. Drainage.** Stormwater management shall be consistent with the requirements set forth in the town's Subdivision Rules and Regulations and the Department of Public Works specifications and all state and



federal requirements. Details of the stormwater plan should be a part of the application for flexible development.

**Q. Decision.** The application for flexible development may be approved, approved with conditions, or denied after determining whether the flexible development better promotes the purposes of paragraph A of this flexible development by-law than would occur through a standard subdivision development as defined by the town's Subdivision Regulations on the same tract.

**R. Relation to Other Requirements.** The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law. Particular attention should be paid to the requirements of Article IX (Paragraph 199-47) where multi-family and multiple single family housing is involved.

**S. Town Counsel Review:** The following matters shall be reviewed by the Town Counsel:

1. Documentation for the protection and maintenance plan for common property and infrastructure.
2. The Homeowner's Association Agreement.
3. Documentation establishing procedures for maintaining open space and for the selection of the agency for assuming this responsibility.
4. Documentation required for town ownership of sewer and water lines and for their maintenance and cost sharing as required by the town's Department of Public Works.
5. All performance guarantees, security deposits, release of guarantees, all easements, covenants and deed restrictions where appropriate.

**ARTICLE XI****Renamed "Section 10"****Inserted New Title "Supplemental District Regulations"****Office Park and Light Industry**  
**[Amended 6-17-1992 STM by Art. 8]****Inserted New Section 10.1 titled "Office Park and Light Industry (OPLI)"****§ 199-59. Site plan approval required; storage; accessory uses.****Moved to § 10.1 (A)**

- A. All uses within an Office Park and Light Industrial (OPLI) District are subject to a site plan approval in accordance with Section 199-35. **[Amended 7-14-1994 STM by Art. 4]**
- B. All storage areas shall have the necessary facilities to protect the environment from leakage and drainage of any noxious or harmful liquids from such storage.
- C. All outdoor storage shall be screened so that it is not visible from adjacent streets and drives or adjacent properties within 50 feet of the property line of the lot on which the storage occurs.
- D. Accessory uses not contained in the principal building shall be provided with safe access and shall be in a structure of an architectural style compatible with the principal structure or screened from view from a public way.

**§ 199-60. Design standards.****Moved to § 10.1 (B)**

- A. Access. The number of curb cuts on state and local roads shall be minimized.
  - (1) To the extent feasible, access to businesses within the industrial park shall be provided via one of the following:
    - (a) Access via a common driveway serving adjacent lots or premises.
    - (b) Access via an existing side street.
    - (c) Access via a cul-de-sac or loop road shared by adjacent lots or premises.
  - (2) One driveway per business shall be permitted as a matter of right. When deemed necessary by the Planning Board, two driveways may be permitted as part of the site plan approval process, which shall be clearly marked "entrance" and "exit."
  - (3) Curb cuts shall be limited to a minimum width of 18 feet, for safe entering and exiting, and shall in no case exceed 24 feet in width.

- (4) The proposed development shall assure safe interior circulation within its site by separating pedestrian and vehicular traffic, as needed.

B. Road standards. See Chapter 241, Subdivision of Land, of the Code of the Town of Lee.

C. Landscaping.

- (1) A coordinated landscape design for the entire project shall be reviewed by the Planning Board. Emphasis shall be on maintaining naturally vegetated buffers.
- (2) Natural vegetation shall be maintained within the fifty-foot buffer strip when abutting a residential district. In the absence of natural vegetation, the addition of dense, hardy evergreen plantings will be required. Vegetated buffer strips, landscaped or natural, shall be provided, 15 feet wide between lots and 30 feet wide adjacent to any public road. Where shared parking lots are involved, buffer strips may be reduced or waived.
- (3) Large parking areas shall be subdivided with landscaped islands. At least one tree (minimum two-inch caliper) per 35 parking spaces shall be provided.
- (4) Wherever possible, an attempt shall be made to screen a use from view from any residence in an abutting residential district. This screening may be accomplished through use of dense, hardy evergreen plantings or by earthen berms, a wall or tight fence, complemented by evergreen plantings.
- (5) Any outdoor area for storage or utilities shall be screened from view from neighboring properties and streets. Where there exists any potential safety hazard to children, physical screening shall prevent children from entering the premises.
- (6) All landscaped areas shall be properly maintained by the lot owner. Shrubs or trees which die shall be replaced within one growing season.

D. Parking.

- (1) Parking areas may be located to the side or rear of the structure and may be shared with adjacent businesses.  
Parking may be allowed in the front of the building only if in the opinion of the Planning Board, as part of the site plan review, the topography of the lot limits the parking areas available on the side or the rear of the building. In that case special emphasis will be placed on natural screening of those areas where parking is needed in front of the building. **[Added May 12, 2005 Art 50]**
- (2) See Sections 199-39, 199-40 and 199-41 for other parking requirements.
- (3) See Section 199-44, Loading facilities.

E. Signs and sign illumination.

(1) Signs. Each business within the OPLI District may be allowed two signs:

- (a) One sign located at the entrance to the office park/light industrial area as part of a directory sign may be allowed. The size, lettering and color will be in conformity with other signs located on this directory. Each sign will be accompanied by a designated lot or street number for identification purposes.

[1] The sign shall be of an integrated and uniform design.

[2] The directory sign shall be located at the entrance to the planned office park/light industrial area. The sign should be located so as not to prohibit visibility for incoming and outgoing traffic.

[3] The directory sign shall not exceed a total of 32 square feet. This square footage does not include the area dedicated to the support system for the sign. The name of the office park/light industrial area may be included as a crown sign to the aforementioned sign. The size of the crown sign shall be approved by the Planning Board.

[4] Each business shall be allowed an equal amount of square footage on the directory sign.

- (b) If a directory sign is not utilized, the name of the office park or light industrial area may be shown on a sign not to exceed 20 square feet. c) Each business within the district will be allowed one sign located on the premises accompanied by an identifying number.

[1] The size and style of signs will be in conformance with other businesses' signs within the district. They shall be freestanding and include their identifying number. The size shall not exceed 16 square feet.

[2] The location of each business' sign shall not obstruct visibility of traffic on the road and/or in and out of adjacent parking areas and shall be located 10 feet from the edge of the pavement. These signs shall be two-sided and shall be installed perpendicular to the roadway.

- (c) Directional signs. Internal directional signs may be allowed within the park.

[1] They shall be uniform in size and style and shall not exceed eight square feet.

[2] These signs are intended to direct the public to the street number only. No business name should appear on the sign.

[3] The directional signs shall be located within the road right-of-way so as not to prohibit visibility for incoming and outgoing traffic.

- (2) Sign illumination. Sign lighting shall be continuous, not intermittent or flashing or changing. Illumination for the sign may be by spotlighting or by internal means. Spotlighting shall be placed or hooded so that the light shall not shine onto the roadway and/or parking area or abutting properties or cause glare or reflection creating a traffic hazard or public nuisance.

**ARTICLE XII**  
**Environmental and Performance Standards**  
~~[Added 6-17-1992 STM by Art. 8]~~

**Comment [BD29]:** DELETED HEADINGS.  
ALL TEXT IN THIS SECTION MOVED TO  
SECTION 12 OF THE PROPOSED BYLAW.

**§ 199-61. Purpose; enforcement; measurements.**

**Moved to § 12.1**

- A. The purpose of these performance standards is to ensure that any allowed use can be conducted in a manner which would not adversely affect the surrounding natural or human environment by creating a dangerous, injurious or objectionable condition.
- B. These performance standards shall be enforced by the Building Inspector for the town and will be in force throughout the life of the use or related structure(s).
- C. Measurements to confirm compliance with these standards shall be provided by the applicant if requested by the Building Inspector. The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Measurements may be made by any public or private agency, firm or person competent to perform such activity.

**§ 199-62. Lighting.**

**Moved to § 12.2**

- A. Exterior area lighting, including but not limited to lighting for parking lots, recreational areas, walks, drives and outside building walls, shall be done in such a manner so as to direct light away from adjacent lots and public ways.
- B. Light overspill onto adjacent areas shall not exceed 0.5 foot-candle measured in residential districts or three foot-candles measured in nonresidential districts, except that if the ambient level exceeds that, then overspill shall not be such as to create observable shadows.
- C. No flickering or flashing lights shall be permitted.
- D. No light shall be attached to a freestanding pole or pylon taller than 25 feet except in the Planned Commercial Village Center, where poles or pylons up to 30 feet are allowed. Installation methods employed for lights located on posts or pylons that are greater than 10 feet at their highest point must be reviewed and certified for safety by the Building Inspector. Structural drawings and specifications for the installation, including the foundation, shall be submitted by a professional engineer registered in the Commonwealth of Massachusetts so as to conform to the State Building Code. **[Amended 7-14-1994 STM by Art. 3]**
- E. All streets shall be safely lit.

**§ 199-63. Noise.**<sup>11</sup>**Moved to § 12.3**

- A. Excessive noise at unreasonable hours shall be muffled so as not to be objectionable due to volume, frequency, shrillness or intermittence.
- B. No noise shall be in excess of 55 decibels at any lot line opposite or abutting a residential use or in excess of 90 decibels at any other line, except for temporary construction or maintenance work, agricultural activity, timber harvesting, traffic, church bells, emergency warning devices, parades or other similar special circumstances.
- C. In a residential district, noise shall not exceed 55 decibels between the hours of 9:00 p.m. and 7:00 a.m. and, at all other times, shall not exceed 55 decibels at any residential lot line for more than 20 minutes in each hour.

**§ 199-64. Vibration.****Moved to § 12.4**

No vibration shall be produced which is transmitted through the ground and is detectable without the aid of instruments at or at any point beyond the lot line, except for blasting and other activities within the jurisdiction of the Board of Fire Prevention Regulations.

**§ 199-65. Air pollution.****Moved to § 12.5**

Atmospheric emissions of gaseous or particulate matter generated by land use shall conform to the then-current regulations of the Massachusetts Division of Environmental Protection. The applicant may be required to produce plans and specifications of detail sufficient for review by the DEP at the request of the special permit granting authority and/or Board of Health. Determination by the DEP that potential exists for emissions in excess of allowable limits shall be grounds for permit refusal.

**§ 199-66. Toxic or noxious matter; odors.****Moved to § 12.6**

There shall be no emissions of toxic or noxious matter or objectionable odors of any kind in such quantity as to be readily detectable at the property line of the lot on which the use emitting the toxic or noxious material or odor is located. For the purposes of this section, "toxic or noxious matter" is any solid, liquid or gaseous matter, including but not limited to gases, vapors, dusts, fumes and mists, containing properties which, by chemical or other means, are inherently harmful to destroy life or impair health or capable of causing injury to the well-being of persons or damage to property.

**§ 199-67. Flammable and explosive materials.****Moved to § 12.7**

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<sup>11</sup> Editor's Note: See also Ch. 140, Noise.

- A. All activities and all storage of flammable and explosive materials at any point shall have adequate fire-fighting and fire-suppression devices and equipment.
- B. No highly flammable or explosive liquids, solids or gases shall be stored in bulk aboveground, unless they are located in anchored tanks at least 75 feet from any lot line or town way or 40 feet from the lot line for underground tanks. All relevant federal and state regulations shall be met.
- C. Propane gas tanks in one-hundred-pound cylinders (or smaller) shall be exempt from these safety regulations.

**§ 199-68. Radioactivity.**

**Moved to § 12.8**

No activities that emit dangerous radioactivity at any point shall be permitted.

**§ 199-69. Electrical disturbance.**

**Moved to § 12.9**

No electrical disturbance which adversely affects the operation at any point of any equipment, other than that of the creator of such disturbance, shall be permitted.

**§ 199-70. Water pollution.**

**Moved to § 12.10**

The use and discharge of substances into private sewer systems, lakes, streams, similar water bodies or directly into the ground shall not violate the rules and regulations of the Lee Conservation Commission, the Massachusetts Division of Environmental Protection or the Massachusetts Division of Water Pollution Control.

**§ 199-71. Waste material and refuse<sup>12</sup>.**

**Moved to § 12.11**

- A. No waste material, liquid or solid, or refuse shall be dumped upon, or permitted to remain upon, any part of the lot or tract outside of the buildings constructed thereon.
- B. Any waste material, liquid or solid, or refuse stored outside the buildings shall be sorted into secure containers in such a manner that wind, rain, other environmental factors, animals and humans cannot cause a nuisance or hazard by gaining access to the materials and allowing the materials to escape from the secure containers by scattering, leaking, draining or other means. It is equally important that edible wastes be secured from access to rodents or insects. Finally, it is intended that all waste that is currently recyclable be segregated into clearly identified containers for that use by the Commonwealth of Massachusetts.

**§ 199-72. Surface water runoff.**

**Moved to § 12.12**

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<sup>12</sup> Editor's Note: See also Ch. 172, Solid Waste.

The rate of surface water runoff from a site shall not show an increase after construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention ponds. Dry wells shall be used only where other methods are not feasible and shall require oil, grease and sediment traps to facilitate removal of contaminants.

**§ 199-73. Erosion control.**

**Moved to § 12.13**

- A. Whenever the existing contours of the land are altered during construction or otherwise, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped. Whenever a structure is involved, the remediation described above shall be accomplished within six months of occupancy of the structure.
- B. Dust control shall be used during grading operations.
- C. All requirements of the Lee Conservation Commission and the Massachusetts Department of Environmental Protection must be adhered to.

**§ 199-74. Dish antennas.**

**Moved to § 12.14**

Accessory dish antennas shall be located in the rear yard, shall be set back at least 10 feet from all property lines, principal buildings and accessory buildings and shall not have a diameter greater than 1/3 of the required rear yard. Satellite dish antennas with a diameter of four feet or less may be installed on rooftops as long as they are not obtrusive from the street.

**§ 199-75. Wind energy conversion systems.**

**Moved to § 12.15**

- A. Wind energy conversion systems, machinery and equipment shall not cause interference with radio and/or television broadcasting or reception and shall comply with the provisions of 47 CFR Part 15 (Federal Communications Commission), as it exists or as it may be amended.
- B. The base of a windmill shall be set back from all property lines and principal buildings at least the setback distance shown on the Wind Turbine Setback Graph, Northeast Solar Energy Center Report, March 1979.

**§ 199-76. Storage.**

**Moved to § 12.16**

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

**ARTICLE XIII**

**~~Planned Commercial Village Center~~**



~~[Added 7-14-1994 STM by Art. 3]~~

**Comment [BD30]:** DELETE HEADINGS. THIS TEXT IS PART OF SECTION 10.2 OF THE PROPOSED BYLAW.

## **Insert New Section 10.2 Titled “Planned Commercial Village Center”**

### **§ 199-77. Purpose.**

#### **Moved to § 10.2 (A)**

The purpose of the Planned Commercial Village Center shall be as follows:

- A. To provide an attractive setting for large commercial retail and/or office or institutional structures in a village atmosphere.
- B. To promote job creation along with growth in the town's tax base.
- C. To maximize the use of the site's natural characteristics.
- D. To maintain aesthetic sensitivity and compatibility with the surrounding community.
- E. To minimize the overall impact of development on the immediate environment, neighborhood and community.

### **§ 199-78. Site plan approval required; accessory uses.**

#### **Moved to § 10.2 (B)**

- A. All uses within a Planned Commercial Village Center District are subject to a site plan approval in accordance with site plan review provisions as spelled out in Section 199-35.
- B. Accessory uses not contained in the principal building or group of buildings shall be provided with safe vehicular and pedestrian access and shall be in a structure of an architectural style compatible with the principal structure and screened from view from a public way.

### **§ 199-79. Design standards.**

#### **Moved to § 10.2 (C)**

- A. All uses in a Planned Commercial Village Center (PCVC) shall be in conformity with the regulations set forth in the Table of Dimensional Requirements<sup>13</sup>.
- B. Uses shall be contained in one continuous building or grouping of buildings where such groups are consistent with the safety of the users of the development and are further consistent with the overall intent of this article.
- C. The following uses are limited in aggregate to 5% of the gross floor area of the PCVC: food courts, food kiosks, automatic teller bank machines, stamp machines, parcel shipping and postal activities.
- D. Unless the applicant provides data from existing uses, professionally reputed sources, such as the Institute of Transportation Engineers' publication Trip Generation, shall be used to calculate the number of vehicle trips per day for each proposed use.

<sup>13</sup> Editor's Note: The Table of Dimensional Requirements is included at the end of this chapter.

- E. The development shall be served by a public water and sewer system.
- F. All development in the PCVC District must comply with the commercial development and environmental performance standards of Article XII.
- G. Access standards. The number of curb cuts on state and local roads shall be minimized.
- (1) To the extent feasible, access to businesses shall be provided via one of the following:
    - (a) Access via a common driveway serving adjacent lots or premises.
    - (b) Access via a cul-de-sac or internal loop road.
  - (2) Where deemed necessary by the Planning Board, two driveways may be permitted as part of the site plan approval process which shall be clearly marked "entrance" and "exit."
  - (3) Curb cuts shall be limited to the minimum width for safe entering and exiting, based on recognized industry standards.
  - (4) All driveways shall be designed to afford motorists exiting to highways with safe sight distance.
  - (5) The proposed development shall assure safe interior circulation within its site by separating pedestrian, bicycle and vehicular traffic.
  - (6) Driveway design and placement must be in harmony with the internal circulation and parking design so that the entrance can absorb the maximum rate of inbound traffic during a normal weekday peak traffic period.
  - (7) The driveway entrance must be able to accommodate all vehicle types having occasion to enter the site, including delivery and emergency vehicles.
  - (8) The driveway placement should be such that loading and unloading activities will in no way hinder vehicle ingress or egress.
  - (9) An appropriate alternate access way for emergency vehicles is required.
- H. Pedestrian safety improvement. Internal pedestrian systems, including sidewalks, are required. Applicants are encouraged to link pedestrian systems between proposed new large developments and existing developments.
- (1) A landscaped buffer strip at least 15 feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium-height shrubs and conifers as well as shade trees (minimum two-inch caliper, planted at least every 50 feet along the road frontage). At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard. The sidewalk required above shall be incorporated into the buffer strip.

- (2) Large parking areas shall be subdivided with landscaped islands or by other means approved by the Planning Board so that no paved parking surface shall extend more than 150 feet in width. At least one tree (Minimum two-inch caliper) per 13 parking spaces shall be provided.
- (3) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings or earthen berms or a wall or tight fence complemented by evergreen plantings.
- I. Landscaping. A coordinated landscape design for the entire development shall be reviewed and approved by the Planning Board.
- J. All garbage and trash receptacles will be enclosed, concealed and sealed at all times.
- K. Fencing. Wherever deemed necessary for safety purposes, a minimum seven-foot-high fence shall be erected as specified by the Planning Board.

**199-80. Operating center signs.****Moved to § 10.2 (D)**

- A. Two exterior signs, in any combination presented below, are allowed per operating center in the PCVC. All signs are subject to site plan approval. They must conform to the following regulations:
  - (1) A wall sign identifying the center and consisting of no more than 65% of the square footage of a freestanding or retaining wall will be allowed. Said sign must be designed in harmony with the buildings and landscaping of the PCVC. Under no conditions will said sign extend more than 10 inches outward from the wall. Said signage may not extend more than 3 feet from the top of the retaining wall. The retaining wall may be painted to improve the visibility of the wall sign.
  - (2) A freestanding sign identifying the center will consist of no more than 20 square feet with a maximum height of 25 feet. Said sign will be designed in harmony with the buildings and landscaping of the PCVC.
  - (3) A berm sign identifying the center will consist of no more than 32 square feet, with a maximum height of eleven feet above a berm that will be no higher than four feet. The sign and berm, in aggregate, can be no higher than fifteen feet above the ground. Said sign may be two-sided. Under no conditions will any lettering extend beyond the edges of the sign. Said sign will be designed in harmony with the buildings and landscaping of the PCVC.
- B. Sign illumination. Sign lighting shall be continuous, not intermittent or flashing or changing. Illumination for the sign may be by spotlight or by internal means. Spotlighting shall be placed or hooded so that the light shall not shine onto the roadway and/or parking area or abutting properties or cause glare or reflection creating a traffic hazard or public nuisance.
- C. Signage Authority. In the event that the provisions of this section conflict with any of the provisions in Section 199-28, the provisions of this section shall apply.

**199-81 Individual business signs. [Added 4-22-1997 STM by Art. 12, Amended 5-9-02 TM by Art.44, Amended 5-8-2008 ATM by Article 45]**

**Moved to § 10.2 (E)**

A. The following signs shall be allowed by permit within the Planned Commercial Village Center:

- (1) Multiple tenants within a single building may place a sign (of wood or material similar in weight and density to wood) on the building exterior advertising the name and/or logo of the business according to the following criteria and restrictions:

- (a) No single sign and /or logo may exceed 40 square feet in area.
- (b) Each business with 60 or less linear feet of distance between its front interior side wall to its other front interior side wall may have one sign up to 40 square feet in size.
- (c) In instances where an architectural feature divides the facade, the allowed square footage for one Sign may be evenly divided.
- (d) Those businesses with more than 60 linear feet between front side walls may have two signs each up to 40 square feet in size.
- (e) Businesses occupying corner space fronting on a second public way other than the rear will be allowed a secondary sign no larger than 20 square feet for placement on the secondary exterior building wall.
- (f) The above signage will be no more than 24 inches high.

- (2) Businesses within a single tenant detached building will be allowed up to 110 square feet of exterior primary signs (of wood or material similar in weight and density to wood) to advertise the name and/or logo. No single sign may be larger than 40 square feet in size.

- (3) One sign, one foot by eight feet, will be allowed on the rear of each building identifying each business within the building.

- (4) Signs identifying the name of the business may be mounted above the public entrances to the business which are two-sided and installed at a right angle to the building façade. These signs shall be at least seven feet above the pedestrian way and shall be securely mounted to prevent movement in windy conditions. These signs are not illuminated and shall not exceed one foot by 3.5 feet in size. No sign is to be placed above eaves or on the peaks.

- (5) Additional store signage may be authorized by the Planning Board for those tenants whose storefronts are obstructed from customers' main street view by gazebos, porches or other permanent structures or are shaped to preclude main street viewing.

- (6) Full window coverings are permitted in the situation where the exterior windows are blocked off or where displaying signage or merchandise is not feasible.

(7) Exterior food court vendor signs (one foot by eight feet) are permitted at front and rear of food court entrances listing "Food Court" and the store names of the food court tenants.

(8) Store logos are permitted to be placed on the front perpendicular edge of the awnings of the stores. The logo will not exceed 12 inches in height. Only one permit per store is required.

(9) Window Vinyl Letters are permitted to be placed at the bottom of the store's windows. Stores may place reverse vinyl die-cut letters without opaque backgrounds directly on the inside face of the store's window to identify their trade name, web site and/or logo. Window vinyl letters may not exceed five inches in height. The window vinyl letters shall be placed four inches above the storefront knee wall and are not permitted on doors. Only one permit per store is required.

(10) Decorative light pole banners are permitted to be installed on the shopping center light poles and streetlights. Decorative designs and store names are permitted on the banners. Two banners may be placed on each pole. The banners may be double sided and will not exceed 28 square feet in total per side. One sign permit per type of banner is required.

B. The following signs shall be allowed by right within the Planned Commercial Village Center and do not require a permit:

(1) Each tenant may have a sign on the rear door used for delivery, which signs will identify the name and building number of the business. These signs will be uniform in nature and may not exceed four inches in height

(2) Directory sign boards and informational signs will be agreed to by the Planning Board. Issues such as size, shape, color, placement and all other relevant issues will be reviewed with the Police and Fire Departments, the Public Health and Public Works Boards and the Sign Officer. The Shopping Center's logo is permitted to be placed on informational signage for continuity and to promote the advertising theme of the shopping center.

(3) Informational parking lot signage is permitted to be placed on light poles and other areas to assist customers in locating their vehicles. Store names may be used to identify parking areas. The Planning Board will agree to the shape and size of these informational signs.

(4) Window display signs will be permitted by right. Window display signs will consist of non-illuminated interior signage announcing temporary sales, seasonal products or generic merchandising posters/signs. Window display signs will not be placed directly to the store's front windowpane. Suction cup holders attaching the signage to the windowpane are permitted. Window signs may be constructed of an opaque or clear material, but may not exceed 75% of the window that they are displayed in.

(5) Static cling signs are permitted to be placed on store front doors and adjacent storefront windows. These signs will be produced and installed by Landlord. Static cling signs will consist of general customer information such as, but not limited to hours of operation, no food, no pets, smoking prohibited, employment opportunities, exterior door safety signs such as "use other door", accepted credit cards and seasonal promotions.

(6) Portable, two-sided 22x28 inch poster sign holders are permitted at no more than eighteen (18) exterior locations throughout the outlet center to advertise shopping center activities, events, sales, mall hours, amenities etc. The landlord will determine use and frequency of these posters sign holders. Posters will be professionally or computer produced. The Planning Board may review and modify the number and location of such signs at their discretion.

C. For the purposes of this section, all logos, copywritten or not, are considered to be part of the sign and must be within the sign area permitted as above.

D. The following signs will not be permitted:

(1) Door signs, except as set forth in Subsection A(5) and A(12) above.

(2) Neon signs.

(3) Interior illuminated signs, except as placed inside the business at least five feet from the store window.

(4) Signs which simulate motion through alternating lighting or which have moving features.

(5) Plastic signs.

(6) Billboards, streamers, pennants, ribbons, banners, spinners or other similar devices shall not be constructed, posted or erected in any zone.

(7) Roof signs.

(8) Handwritten signs of any kind.

D. The administration and enforcement of this section shall be governed by Article V.

~~Article XIV~~  
~~Wireless Communication Bylaw~~  
~~[Amended 5/4/98]~~

**Comment [BD31]:** DELETED HEADING. THE TEXT OF THIS ARTICLE HAS BEEN MOVED TO SECTION 9.7 OF THE PROPOSED BYLAW.

**199-82. Purpose****Moved to § 9.7 (A)**

The purpose of this by-law is to outline the special permitting process to site a wireless communication facility within the Town of Lee, while minimizing potential damage and adverse visual impacts of wireless communication facilities on adjacent properties, residential neighborhoods, and areas of historic or high scenic value; to allow the provision of necessary wireless communication services in an orderly way; and to promote shared use of existing facilities which reduce the need for new facilities.

**199-83. Definitions****Moved to § 9.7 (B)**

**DISTANCE** shall be measured on a horizontal plane.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

**HEIGHT** shall be the distance measured from ground level to the highest point on the structure.

**NON-RESIDENTIAL STRUCTURE** shall mean such structures as, but not limited to buildings, grain silos, and water towers, but does not include houses or apartments.

**WIRELESS COMMUNICATION BUILDING** shall mean any building or shelter used to house equipment primarily for generating and detecting electromagnetic radiation and is an accessory to a wireless communications structure.

**WIRELESS COMMUNICATION DEVICE** shall mean any antenna, appurtenance, wiring or equipment used on connection with the reception or transmission of electromagnetic radiation which is attached to a structure.

**WIRELESS COMMUNICATION STRUCTURE** shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

**199-84. Exemptions****Moved to § 9.7 (C)**

The following shall be exempt from this by-law:

- A. Wireless communication facilities used for Town or State emergency services.
- B. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communications Commission and used solely for that purpose.
- C. Wireless communication structures and devices used expressly for home Television and radio reception.

**199-85. General Guidelines****Moved to § 9.7 (D)**

- A. No wireless communication facility shall be erected, constructed, or installed without a special permit from the Planning Board.
- B. Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- C. Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification.
- D. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on site, and shall be used only for the housing of equipment related to this particular site.
- E. Any change in use of the structure must be pre-approved by the Planning Board.

**199-86. Siting and Height Requirements****Moved to § 9.7 (E)****A. Setbacks**

- (1) The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure.
- (2) The minimum distance from any guy wire, anchor or brace to any property line or road right-of-way shall be equal to the length of the guy wire.
- (3) The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
- (4) The wireless communication structure shall be a minimum distance of three times the height from school buildings, including playgrounds and athletic fields, and abutting residences to prevent the structure from appearing to "tower" over, adversely affecting property values.

**B. The height shall be the minimum height necessary to accommodate anticipated and future use.**

- C. Wireless communication structures are encouraged on State lands, provided that said lands are not subject to the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts. If facilities predating this by-law exist on such lands, the shared use of such facilities is encouraged.
- D. The wireless communication structure shall, when possible, be sighted off ridgelines and where their visible impact is the least detrimental to valuable historic and scenic areas. "Valuable" should be determined by any appropriate Town Board(s) and can be views that the town has identified as scenic or views listed in the Massachusetts Dept. of Environmental Management, 1982.
- E. No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing wireless communication structure can



accommodate the Applicant's proposed wireless communication device. Evidence submitted to demonstrate that an existing structure cannot accommodate the Applicant's proposed device may consist of any of the following:

- (1) No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the Town of Lee and applicant's engineering requirements.
- (2) Existing wireless communication structures or non-residential structures are not sufficient height to meet the applicant's requirements.
- (3) Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be brought up to appropriate strength to support the proposed wireless communication device.
  - (4) The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
- (5) The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable.
- (6) The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

#### **199-87. Design Requirements**

**Moved to § 9.7 (F)**

- A. Wireless communication structures must be designed to accommodate the maximum number of users as technologically possible, and should be of monopole design.
- B. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication devices shall be colored, molded, and/or installed to blend into structure and/or landscape. Preference should be given to placing antennas on existing structures.
- D. The facility shall be fenced to control access.
- E. Night lighting of the facility shall be prohibited unless required by the FAA. If required by FAA, a copy of the FAA permit requiring lighting should be submitted with the application.
- F. There shall be a maximum of one parking space at each facility to be used in connection with maintenance of the site and shall not be used for the storage of vehicles or other equipment.
- G. Existing on-site vegetation shall be preserved to the maximum extent possible.
- H. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

#### **199-88. Application process**

**Moved to § 9.7 (G)**

Applications for a special permit for siting wireless communication facilities shall be filed in accordance with rules and regulations already established in the zoning by-law.

The Planning Board shall hold a public hearing within sixty-five days of filing of an application and shall issue a decision within ninety days following the date of the public hearing.

A. TO SITE A NEW WIRELESS COMMUNICATION STRUCTURE, the Applicant shall submit:

- (1) Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200', where appropriate, on as many sheets as necessary to show the following:
  - a. North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for the reviewing licensed engineer's seal.
  - b. Name and address of landowner and name and address of abutters.
  - c. Property lines and location of permanent structures or buildings within 500-foot radius of proposed wireless communication structure.
  - d. Existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contours at a maximum of 2-foot intervals and spot elevations at the base of all the proposed and existing structures.
  - e. Vegetation to be removed or altered.
  - f. Plans for drainage of surface water and plans to control erosion and sedimentation, both during construction and as a permanent measure.
  - g. Delineation of wetlands, if any.
  - h. Location of wireless communication structure, including supports or guy wires, if any.
  - i. Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
  - j. Plans for accessory buildings.
  - k. Layout and details of surfacing for access road and parking.
  - l. Amenities such as lighting, fencing, landscaping.
  - m. Four view lines in a one to three-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals and additional view lines from any historic, scenic, or other prominent areas of Town determined by the Planning Board.
  - n. Plans for a well or other water source, if any.
  - o. Plans for any septic system, if any.

- p. Plans for maintenance of roads necessary to access and maintain the property.
- (2) A map showing areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
- (3) A locus map at a scale 1" = 1000' which shall show streets, buildings, and landscape features.
- (4) A description of the soil and surficial geology at the proposed site.
- (5) A narrative report written by the carrier and licensed professional engineer which shall:
  - a. Describe the justification of proposed site.
  - b. Describe the structure and the technical, economic, and other reasons for the facility design.
  - c. Describe the capacity of the structure, including the number and the type of additional facilities it can accommodate.
  - d. Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - e. Describe the projected future needs of the carrier, and how the proposed wireless communications facilities fit with the future projections to serve the Town and adjacent towns.
  - f. Describe leasing agreement should another carrier decide to co-locate.
  - g. Describe special design features to minimize the visual impact of the proposed wireless communication facility.
  - h. Describe in detail the steps which the carrier will follow in the event of an emergency, such as fire or collapse of the tower. In particular, what are the responsibilities of the carrier and how are the town officials to be notified for the safety of personnel, town and personal properties?
- (6) Proof of approval of all other necessary permits needed for construction and operation.
- (7) If the proposed facility is taller than zone height restriction, after the application is submitted, and not more than 14 days before the public hearing, the applicant shall arrange to fly a two-foot-diameter balloon at the site of the proposed wireless communication structure at the maximum height of the proposed installation. The date and location of the flight shall be advertised at least 14 days, but not more than 21 days before the flights, and again in the public hearing advertisement in a newspaper with a general circulation in the town.

**B. TO SITE A WIRELESS COMMUNICATION DEVICE ON EXISTING WIRELESS COMMUNICATION STRUCTURES OR NON-RESIDENTIAL STRUCTURES, such as buildings, grain silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, the Applicant shall submit:**

- (1) Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 35" sheets at a scale of 1" = 40' or 1" = 200' on as many sheets as necessary which show the following:

- a. North arrow, date, scale, the seal(s) of the licensed professional(s) who prepared the plans and a space for reviewing licensed engineer's seal.
  - b. Plans for supporting and attaching the device, including specifications of hardware and all other building material.
  - c. Building plans for accessory buildings, if any.
  - d. Layout and details of surfacing for access road and parking, if it is to be altered from existing condition.
    - (2) A map showing the areas covered by proposed device(s) of different signal strengths and the interface with adjacent service areas.
- (3) A narrative report written by the carrier and licensed professional engineer which shall:
- a. Include a draft of the contract between the structure/building owner (whichever is appropriate) and the Applicant.
  - b. Demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such a device.
  - c. Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - d. Describe the projected future needs of the carrier and how the proposed facility fits with future projections.
  - e. Describe in detail the steps, which the carrier will follow in the event of an emergency, such as fire or collapse of the tower. In particular, what are the responsibilities of the carrier and how are the town officials to be notified for the safety of personnel, town and personal properties?
- (4) Proof of all other permits needed for construction and operation.
- (5) If the proposed facility adds more than five feet to the height of the structure at the effective date of this by-law and will exceed zone height restrictions, the Planning Board may require a balloon test as described above in VII.A(7).
- C. 12 (twelve) copies of the above information shall be submitted along with the application form to the Planning Board.

**199-89. Approval****Moved to § 9.7 (H)**

- A. In granting a special permit for wireless communications facilities, in addition to the findings required by the Town's Zoning By-Law for Special Permits, the Town of Lee Planning board shall find:
- (1) That the Applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this by-law have been met.
  - (2) That the size and height of the structure is the minimum necessary.

- (3) That the proposed wireless communication facilities will not adversely impact historic structures, scenic views, or residential neighborhoods.
  - (4) That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location of the proposed wireless communication facilities, including co-location, that would minimize their impact, and the applicant has exercised good faith in permitting future co-location of facilities at the site.
- B. When considering an application for wireless communication facility, the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and will encourage the use of existing structures.
- C. Any extension or construction of new or replacement towers or transmitters shall be subject to the Special Permit, following the same procedure as siting a new wireless communication device.

**199-90. Conditions of Use****Subsection (C) moved to § 9.7 (J)****Remaining text moved to § 9.7 (I)**

- A. An initial bond shall be posted by the applicant to cover construction costs and removal cost of facility in the event of non use and annual maintenance bond for the access road, site, and structure(s) in an amount approved by the Planning Board. An access road may include existing town roads not designed for heavy traffic and which are not paved.

**B. Regulatory Compliance**

- (1) Annual certification demonstrating structural integrity and continuing compliance with current standards of the FCC, FAA and the American National Standards Institute shall be filed with the Building Inspector by the Special Permit Holder, and shall be reviewed by a licensed professional engineer hired by the town and paid for by the Special Permit Holder.
- (2) If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within six months or earlier if a more stringent compliance schedule is included in the regulation.
- (3) Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, and devices at the owner's expense.

**C. Removal and Repair**

- (1) An applicant must either file a performance bond or a deposit of money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost of removal with the Town of Lee Planning Board agreeing to remove, within 180 days of notice from the town, the wireless communication facility not in operation for a period of twelve months, unless the reason for non-operation is the result of major damage. The board may hire professional consultants to determine the amount of bond or security required. Such bond or security, if filed and deposited, shall be approved as to form and manner of execution by Town Counsel, and shall be contingent on the completion of repairs or removal.
- (2) If the facility is not removed within 180 days, the town will remove said facility at the owner's expense.

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- (3) In the event of major damage, repair must begin immediately or as soon as possible. Major damage shall mean damage to the facility caused by no fault of the owner or operator.

**Town of Lee**  
**Table of Dimensional Requirements**  
**TABLE 1 of 2**

Zoning District	Areas (feet)	Individual Lot Frontage <sup>1</sup> (feet)	Area for Two-Family (square feet)	Individual Lot Yard Requirements			Maximum Building Height		Maximum Coverage for Buildings
				Front (feet)	Side (feet)	Rear (feet)	Feet	Stories	
Residential (R-20)	20,000	100	40,000 <sup>2</sup>	25	15	30	35	2 ½	25%
Residential (R-30)	30,000 <sup>3</sup>	125	60,000 <sup>2</sup>	35	25	50	35	2 ½	20%
Residential – Agricultural (RA-40)	40,000 <sup>2</sup>	125	60,000 <sup>2</sup>	35	25	50	35	2 ½	20%
Residential – Multiple Dwelling (RM)	10,000	75	15,000	25	15	30	35	2 ½	35%
Business – Multiple Dwelling (BM)	8,000	60	12,000	10	10	20	35	2 ½	35%
Conservation – Residential (CR)	3 acres	200	3 acres	35	25	50	35	2 ½	20%
Rural Business (RB)	40,000	200	60,000	75	25	40	35	2 ½	25%
Office Park and Light Industrial (OPLI) <sup>8</sup>	2 acres	125 <sup>9</sup>	--	40 <sup>9</sup>	25 <sup>9,10</sup>	40 <sup>9,10</sup>	35 <sup>11</sup>	--	50% <sup>12</sup>

**TABLE 1 of 2 (Continued)**

Zoning District	Areas (feet)	Individual Lot Frontage <sup>1</sup> (feet)	Area for Two-Family (square feet)	Individual Lot Yard Requirements			Maximum Building Height		Maximum Coverage for Buildings
				Front (feet)	Side (feet)	Rear (feet)	Feet	Stories	
Industrial (I)	40,000 <sup>5</sup>	125	Not Permitted	40	25	40	NR <sup>4</sup>	--	50% <sup>7</sup>
Floodplain (FP)	5 acres	200	5 acres	35	25	50	35	2 ½	
Planned Commercial Village Center (PCVC)	50 acres	1,000	--	150	150	150	35 <sup>15</sup>	--	20% <sup>16,17</sup>
Downtown Commercial Business Corridor (DCBC)	8,000	60	--	10 <sup>14</sup>	10	10	35	2 ½	35%
Commercial Business Corridor (CBC)	8,000	60	--	25 <sup>13</sup>	10	20	35 <sup>18</sup>	2 ½ <sup>18</sup>	35%



**Town of Lee**  
**Table of Dimensional Requirements**

**NOTES:**

1. Except lot width if the street is an arc of a curve with a radius of 300 feet or less, provided that there shall be in any event not less than 80% of the required lot frontage.
2. Minimum lot size as shown in the table may be reduced by 50% if the lot is serviced by both town sewer and water and by 25% if serviced by either own sewer or water.
3. Minimum lot size shown in the table may be reduced to 20,000 square feet if the lot is serviced by both town sewer and water.
4. NR indicates that there are no fixed dimensional requirements. Any proposed use in such cases must, however, be located on a lot of adequate size for the proposed use in order to meet, in the judgement of the Planning Board, off-street parking, increased yard and all other requirements under the provisions of this chapter.
5. No residential construction shall be permitted.
6. For additional dimensional requirements pertaining to educational or religious uses see Section 9.6.
7. The total nonvegetated area shall not exceed 75% of the total square footage of the lot. Planning Board approval of a plan illustrating sufficient vegetated screening of the industrial operation from public view is required.
8. Minimum OPLI area shall be 10 acres.
9. For each lot within the OPLI District.
10. When abutting a Residential District, setback shall be 50 feet.
11. Except 45 feet or three stories where a sprinkler system is designed to the satisfaction of the Lee Fire Chief and is approved with the site plan.
12. Maximum nonvegetated area is to be 66%.
13. A landscaped buffer strip, continuous except for approved driveways, shall be established adjacent to any public road, and major trees shall be planted parallel to and at least 15 feet from the curbline as well as in a manner compatible with the buildings in the area. A coordinated landscape design for the entire project shall be reviewed by the Planning Board and incorporated into site plan review and approval.
14. A coordinated landscape design for the entire project shall be reviewed by the Planning Board and incorporated into site plan review and approval
15. Maximum building height.

16. Maximum of building footprint.

17. The maximum percentage of the lot that can be rendered as impervious is 60%.

18. By Special Permit the Special Permit Granting Authority may allow structures to be erected that are greater than 2 ½ stories and up to 40 feet in height provided that the lot is a minimum of 1.75 acres.

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**Town of Lee**  
**Table of Dimensional Requirements for Multiple Dwellings**  
**TABLE 2 of 2**

Zoning District	Areas (feet)	Maximum Number of Dwelling Units (per acre)	Additional Square Feet per Dwelling Units	Minimum Frontage (feet)	Minimum Yard Dimensions			Maximum Lot Coverage
					Front (feet)	Side (feet)	Rear (feet)	
<b>R-20 and R-30</b>	<b>1 acre<sup>1</sup></b>	<b>4</b>	<b>Not Permitted</b>	<b>150</b>	<b>40</b>	<b>25</b>	<b>50</b>	<b>20%</b>
<b>RA-40</b>	<b>1 acre<sup>1</sup></b>	<b>4</b>	<b>Not Permitted</b>	<b>200</b>	<b>50</b>	<b>25</b>	<b>50</b>	<b>20%</b>
<b>RM</b>	<b>20,000 square feet</b>	<b>NR<sup>2</sup></b>	<b>5,000</b>	<b>75</b>	<b>25</b>	<b>15</b>	<b>30</b>	<b>35%</b>
<b>BM</b>	<b>15,000 square feet</b>	<b>NR<sup>2</sup></b>	<b>5,000</b>	<b>60</b>	<b>10</b>	<b>10</b>	<b>20</b>	<b>35%</b>
<b>CR</b>	<b>Not Permitted</b>							
<b>RB</b>	<b>1 acre<sup>1</sup></b>	<b>4</b>	<b>NR</b>	<b>200</b>	<b>75</b>	<b>25</b>	<b>40</b>	<b>25%</b>
<b>OPLI</b>	<b>Not Permitted</b>							
<b>I</b>	<b>Not Permitted</b>							
<b>FP</b>	<b>Not Permitted</b>							
<b>PCVC</b>	<b>Not Permitted</b>							
<b>DCBC<sup>3</sup></b>	<b>15,000</b>	<b>NR</b>	<b>NR</b>	<b>60</b>	<b>10</b>	<b>10</b>	<b>20</b>	<b>35%</b>
<b>CBC</b>	<b>Not Permitted</b>							

## NOTES:

1. Not more than one building may be placed on a lot.
2. NR indicates that there are not fixed dimensional requirements.
3. Conversion under Section 4.2 (H)(2)(b) will be permitted as long as the conversion does not increase the non-conformity of the existing structure.

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## **APPENDICES**

### **APPENDIX “A” Table of Dimensional Requirements**

## SECTION 1. INTRODUCTION & AUTHORITY

### 1.1 TITLE

This chapter shall be known as the “Zoning Bylaw of the Town of Lee, Massachusetts,” hereinafter referred to as “this chapter.”

Comment [BD1]: FROM § 199-1

### 1.2 AUTHORITY

This chapter is adopted in accordance with the provisions of M.G.L. c. 40A, as amended.

Comment [BD2]: FROM § 199-2

### 1.3 PURPOSE

The purpose of this chapter is to regulate the use of land, buildings and structures to the full extent of the town's independent constitutional powers as necessary to protect the health, safety and general welfare of the present and future inhabitants of the town. Protection of these interests shall include but not be limited to the following objectives:

Comment [BD3]: FROM § 199-3

- A) To prevent overcrowding of land, to secure safety from fire, flood, panic and other dangers and to lessen congestion in the streets.
- B) To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- C) To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- D) To encourage the most appropriate use of land and bodies of water, including due consideration of:
  - (1) Protection of significant natural, scenic and aesthetic features.
  - (2) Conservation of natural resources and historic sites.
  - (3) The objectives of the town's Master Plan and growth policy.
  - (4) The objectives of the Comprehensive Plan of the Berkshire County Regional Planning Commission.
- E) To preserve and increase amenities by the promulgation of these regulations to fulfill the above objectives in cooperation with other town agencies and measures they have taken under other legislative and town authority.

## SECTION 2. ESTABLISHMENT OF DISTRICTS

### 2.1 TYPES OF DISTRICTS

For the purpose of this chapter, the Town of Lee is hereby divided into the following types of use districts:

#### A) Residential

- |   |         |
|---|---------|
| (1) Residential 20 District                 | (R-20)  |
| (2) Residential 30 District                 | (R-30)  |
| (3) Residential-Agricultural District       | (RA-40) |
| (4) Residential- Multiple Dwelling District | (RM)    |
| (5) Conservation-Residential District       | (CR)    |

#### B) Business

- |   |        |
|---|--------|
| (1) Business-Multiple Dwelling District   | (BM)   |
| (2) Rural Business District               | (RB)   |
| (3) Planned Commercial Village Center     | (PCVC) |
| (4) Commercial Business Corridor District | (CBC)  |
| (5) Downtown Commercial Business Corridor | (DCBC) |

#### C) Industrial

- |   |        |
|---|--------|
| (1) Industrial District                       | (I)    |
| (2) Office Park and Light Industrial District | (OPLI) |

### 2.2 TYPES OF OVERLAY DISTRICTS

For the purposes of this chapter, the Town of Lee has established the following overlay districts:

- |                    |        |
|--------------------|--------|
| (1) Floodplain     | (FP)   |
| (2) Adaptive Reuse | (AROD) |

### 2.3 PURPOSE OF DISTRICTS

#### A) OPLI. The purpose of the OPLI District is to:

- (1) Provide an attractive setting for office, research and development and light industrial uses.
- (2) Promote job creation along with growth in the town's tax base.
- (3) Maintain aesthetic sensitivity and compatibility with the surrounding community.
- (4) Ensure the efficient use of municipal services so that new industrial development does not create a burden on these services.
- (5) Minimize the overall impact of development on the immediate environment.
- (6) Maximize the use of the site's natural characteristics.

**Comment [BD4]:** FROM § 199-5. This section has been reformatted and reorganized.

**Comment [BD5]:** Added this new section (2.2) to illustrate the fact that two overlay districts have been adopted by the town.

**Comment [BD6]:** These subsections have been moved here from various sections for better organization.

**Comment [BD7]:** FROM § 199-15 (A)



B) **I.** The purpose of the Industrial District (I) is to provide locations for manufacturing and other activities which will:

- (1) Promote job creation and employment opportunities along with positive growth in the Town's tax base.
- (2) Promote economic development.
- (3) Encourage re-use of existing buildings, facilities and infrastructure.
- (4) Assist in the preservation of open space, town character and its environment.

Comment [BD8]: FROM § 199-16 (1)

C) **PCVC.** The purpose of the PCVC District is to:

- (1) Provide an attractive setting for large commercial retail and/or office or institutional structures in a village atmosphere.
- (2) Promote job creation along with growth in the town's tax base.
- (3) Maximize the use of the site's natural characteristics.
- (4) Maintain aesthetic sensitivity and compatibility with the surrounding community.
- (5) Minimize the overall impact of development on the immediate environment, neighborhood and community.

Comment [BD9]: FROM § 199-18(A)

D) **CBC.**

Comment [BD10]: FROM § 199-19(A)

- (1) It is the intent of this district to create an attractive and desirable entrance to the center of Lee that preserves the existing historical architectural character of the corridor and the surrounding area and that encompasses the highway corridor from the Massachusetts Turnpike, Exit 2 west, on U.S. Route 20 to High Street. A mix of commercial and residential uses is permitted, with restrictions on building size and parking locations. Landscaping requirements are mandated in the front setback. In order to limit access points on Route 20, access on other streets and the use of common parking areas and driveways are encouraged.
- (2) Additionally, the Town of Lee's intent for the Commercial Business Corridor District is to:
  - (a) Encourage types of uses such as real estate, insurance and finance.
  - (b) Preserve and/or reuse existing buildings and uses.
  - (c) Provide an attractive setting for commercial retail structures in a village atmosphere.
  - (d) Promote job creation along with growth in the town's tax base.
  - (e) Maximize the use of the site's natural characteristics.
  - (f) Maintain aesthetic sensitivity and compatibility with the surrounding community.
  - (g) Minimize the overall impact of development on the immediate environment and neighborhood and, in particular, reduce the impact of traffic and parking along the corridor.

**E) DCBC****Comment [BD11]:** FROM § 199-20 (A)

- (1) It is the intent of this district to preserve the architectural and commercial character of the historic downtown from Park Street through Center Street. A mix of commercial and residential uses is permitted, with restrictions on building height, parking locations and setbacks. Additionally, the Town of Lee's intent for the Downtown Commercial Business Corridor is to:
- (a) Encourage downtown commercial uses which will primarily serve the needs of the people of Lee and the surrounding communities and, secondarily, attract visitors to utilize the downtown.
  - (b) Maintain the historic "real town" scale and mix of retail and service establishments in the town center.
  - (c) Attract new investment and help create new jobs in the downtown.
  - (d) Improve the safety and comfort for pedestrians in the downtown.
  - (e) Encourage rehabilitation of existing structures and development of new buildings with high architectural standards which are compatible with the eclectic grouping of commercial and public buildings and which give downtown Lee its special character as a working New England town center.

**2.4 LOCATION OF DISTRICTS; ZONING MAP****Comment [BD12]:** FROM § 199-6

The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of Lee, Massachusetts" dated April 16, 1974, and revised February 28, 1984, and revised May 27, 1992, and revised July 14, 1994, and revised February 9, 1995, and revised May 11, 1995, and revised November 22, 2004 and revised May 12, 2005, and revised May 8, 2006, bearing the signature of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matter thereon, is hereby made a part of this chapter.

- A) Where a street constitutes a zone boundary, the centerline of that street is the boundary.
- B) The floodplain shall be considered as overlying other districts. See Section 3.2.

**SECTION 3. SPECIAL OVERLAY DISTRICTS**

**Comment [BD13]:** For organizational purposes, the two zoning overlay districts in the town are grouped in the same section.

**3.1 ADAPTIVE REUSE OVERLAY DISTRICT (AROD)**

**Comment [BD14]:** FROM § 199-20A

**A) Purpose of District:** The purpose of the Adaptive Reuse Overlay District (AROD) is to:

- (1) Provide specific regulations allowing for the reuse of private buildings, municipal buildings, public and private school buildings and as defined in Section 3.1 (B) below.
- (2) Allow for the reuse of existing buildings as defined above throughout the town to increase the town's overall tax base, create employment opportunities and ensure efficient use of municipal services so as to not create an undue burden on them.
- (3) Ensure that such uses are compatible with their surroundings.
- (4) Maximize the use of the site's natural characteristics.

**B) Eligibility for Conversion.**

- (1) Private buildings, municipal buildings or public or private school buildings as defined in (a) and (b) below and located in any zoning district is eligible for conversion to those uses listed in Section 3.1 (D) of this bylaw, but only if it meets all of the following tests:
  - (a) It was used for not less than 15 years.
  - (b) It contains not less than 10,000 square feet in total gross floor area.

**C) Scope of Authority**

- (1) The AROD is superimposed over rather than replacing the underlying zoning districts. The regulations of this overlay district shall govern all reconstruction or expansion of privately owned buildings, municipal buildings and public and private school buildings as defined in Section 3.1 (B) above. Provisions of Section 3.1 shall supercede those of Section 4: Use Regulations and Section 5: Intensity Regulations in the Bylaw. On all other matters, the provisions of the underlying districts shall continue.
- (2) The Special Permit Granting Authority for this section shall be the Board of Selectmen. The Board of Selectmen shall require that any application for a special permit under this section shall be accompanied by a site plan in accordance with Section 13.3 of the Bylaw.

**D) Uses Permitted**

- (1) Uses allowed by right: Any uses permitted by right in the underlying zoning district in which this structure is located shall be permitted by right.
- (2) Uses allowed by Special Permit: The following uses are allowed by special permit and subject to site plan review.
  - (a) Assisted living.
  - (b) Senior housing.
  - (c) Nursing home.
  - (d) Multiple dwelling.

- (e) Professional or administrative offices.
  - (f) Elder Care Facility.
  - (g) Community recreational center or personal training centers.
  - (h) Medical Clinic, Dental Office, Veterinarian Office, and Ancillary Offices and Facilities.
  - (i) Senior center, community center or conference center with meeting rooms.
  - (j) Studios for art, drama, speech or dance.
  - (k) Retail sales where the sales area is not more than 10% of the total floor space of primary use and such sales are incidental to the primary use.
  - (l) Research and Development uses including ancillary office use and electronic and computer laboratories, but not including ancillary manufacturing, assembly, sale or resale or storage for sale or resale of any goods, items, or material.
  - (m) Municipal use.
- (3) Multiple or Mixed Uses: Any combination of uses allowed by right in Section 3.1 (D), and uses allowed by special permit in Section 3.1 (D) may be allowed provided they are compatible with each other and maintain the public health, safety and welfare of the community.
- (4) Uses required by MGL c40A, Section 3, such as public and private non-profit religious and educational institutions are allowed in the AROD by right subject to Site Plan Review (Refer to Section 9.6, Land or Structures for Certain Religious or Educational Purposes).

**E) Development Standards**

- (1) The lot area, lot frontage, coverage and setback requirements of the underlying districts shall govern development in the AROD. The SPGA may waive these requirements if the building meets the eligibility requirements in Section 3.1 (B) and the reuse of the building necessitates enhancements, which are not designed to increase the building capacity, but are required to make the building functional for the intended new use (i.e. lighting, elevator, railings, heating and cooling ducts, etc) AND the converted premises will be adequately landscaped in a way that promotes harmony with the neighborhood.
- (2) Off-street parking spaces and loading and unloading spaces shall conform to the provisions of Section 8. The SPGA may grant waivers if existing parking does not meet current parking requirements and additional space would be a detriment to compatibility of neighborhood character.
- (3) All proposed signs shall comply with Section 7 of the Bylaw, excepting that if the building and land on which situated are located in a single family district, the Special Permit Granting Authority may permit a sign of no larger than 6 square feet which identifies only the building and its occupants.

**F) Additional Conditions**

- (1) The SPGA may attach such additional conditions and limitations to a Special Permit granted under this Section as may be necessary to protect the neighborhood surrounding

the property, and as may be necessary to encourage the most appropriate use of the land and building to be converted.

### 3.2 FLOODPLAIN DISTRICT

Comment [BD15]: FROM § 199-25

- A) **Purpose.** The purposes of the Floodplain District are to protect the public health, safety and general welfare; to protect human life and property from hazards of periodic flooding; to preserve the natural flood-control characteristics and flood storage capacity of the floodplain; and to preserve and maintain the groundwater table and water recharge areas within the floodplain.
- B) **District Delineation.**
- (1) The general boundaries of the Floodplain District are shown on the Lee Flood Insurance Rate Map (FIRM) dated June 1, 1982, as Zones A and A1-30 to indicate the one-hundred-year floodplain. The exact boundaries of the district are defined by the one-hundred-year water surface elevations shown on the FIRM and further defined by the flood profiles contained in the Flood Insurance Study dated June 1, 1982. The floodway boundaries are delineated on the Town of Lee Floodway Boundary Floodway Map (FBFM) dated June 1, 1982, and further defined by the floodway data tables contained in the Flood Insurance Study. These two maps, as well as the accompanying study, are incorporated herein by reference and are on file with the Town Clerk, Conservation Commission, Planning Board, Building Inspector and the Board of Selectmen.
  - (2) Within Zone A, where the one-hundred-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this chapter and the State Building Code.
- C) **Use Regulations.** The Floodplain District is established as an overlay district to all other districts. All development, including structural and nonstructural activities, whether permitted by right or special permit, must be in compliance with MGL c. 131, Section 40 and with the requirements of the Massachusetts State Building Code pertaining to construction in the floodplain (currently Section 744).
- (1) Permitted uses. The following uses of low flood damage potential and causing no obstructions to flood flows shall be allowed, provided that they are permitted in the underlying district and do not require structures, fill or storage of materials or equipment:
    - (a) Agricultural uses such as fanning, grazing, truck farming, horticulture, etc.
    - (b) Forestry and nursery uses.
    - (c) Outdoor recreational uses, including fishing, boating, play areas, etc.
    - (d) Conservation of water, plants and wildlife.
    - (e) Wildlife management areas and foot, bicycle and/or horse paths.
    - (f) Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
    - (g) Buildings lawfully existing prior to the adoption of these provisions.

- (2) Special permits. No structure or building shall be erected, constructed, substantially improved or otherwise created or moved, and no earth or other materials shall be dumped, filled, excavated or transferred, unless a special permit is granted by the Zoning Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this chapter) if the application is compliant with the following provisions:
- (a) The proposed use shall comply in all respects with the provisions of the underlying district.
  - (b) Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector and Board of Public Works. Final action shall not be taken until reports have been received from the above boards or until 35 days have elapsed.
  - (c) All encroachments, including fill, new construction, substantial improvements to existing structures and other developments, are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in an increase in flood levels during the occurrence of the one-hundred-year flood.
  - (d) The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.
  - (e) In Zone AO, any new construction and any substantial improvements to existing buildings or structures must, in addition to the above requirements, comply with the following:
    - (i) Residential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the Town of Lee FIRM.
    - (ii) Nonresidential structures shall have the lowest floor (including basement) elevated above the crown of the nearest street or above the depth number specified on the community's FIRM or be flood proofed to or above that level. The term "flood proofed" is defined to mean watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

## SECTION 4. USE REGULATIONS

### 4.1 USE REGULATIONS

No building or structure or land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth in the List of Permitted Uses as permitted in the district in which such building, structure or land is located or set forth in the List of Permitted Uses as permissible by special permit in said district and so authorized.

**Comment [BD16]:** FROM § 199-7 (A)

### 4.2 LIST OF PERMITTED USES

#### A) Residential Districts (R-20 & R-30)

##### (1) Uses allowed by-right:

- (a) Detached one-family dwelling.
- (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
- (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
- (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
- (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
  - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

**Comment [BD17]:** LANGUAGE FOR THE OLD BUSINESS DISTRICT HAS BEEN DELETED.

**Comment [BD18]:** THE INTERNAL CROSS REFERENCES HAVE ALL BEEN REMOVED FROM THESE SECTIONS AND INSTEAD THE USES ARE EXPLICITLY LISTED FOR EACH SECTION TO IMPROVE THE READABILITY OF THE BYLAW.

**Comment [BD19]:** FROM § 199-8

(2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**

- (a) Multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.

(3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**

- (a) Private club not conducted for profit
- (b) Hospital, sanitarium and convalescent and nursing home
- (c) Golf course
- (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

B) **Residential-Agricultural District (RA-40)**

Comment [BD20]: FROM § 199-9

(1) **Uses allowed by-right:**

- (a) Detached one-family dwelling.
- (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
- (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
- (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
- (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
  - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.



- (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
  - (g) Farm, forestry or nursery, including the display and sale of natural products raised in town and the raising of stock as limited in Section 4.2 (B)(3)(f) below. The raising of horses for personal use is permitted, provided that such action is carried on at least 300 feet from any property line.
- (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.
  - (b) **Resort, subject to the special requirements in Section 9.8**
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with the regulations appearing in Section 13.2 (B)(3) of this chapter, and in compliance with all applicable provisions of this chapter, shall be as follows:**
  - (a) Private club not conducted for profit
  - (b) Hospital, sanitarium and convalescent and nursing home
  - (c) Golf course
  - (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
  - (e) Boat livery, riding stable and ski tow
  - (f) The raising of hogs, pigs, poultry or fur bearing animals, provided that such activity is carried on at least 300 feet from any property line.
- (4) **Uses requiring a special permit from the Planning Board in accordance with the regulations appearing in Section 13.4 of this chapter, and in compliance with all applicable provisions of this chapter, shall be as follows:**
  - (a) **Flexible development as regulated in Section 11 of this chapter**

**Comment [BD21]:** STANDARDS PREVIOUSLY LOCATED HERE HAVE BEEN MOVED TO § 9.8.

**Comment [BD22]:** THE TERM CLUSTER DEVELOPMENT HAS BEEN REMOVED IN FAVOR OF FLEXIBLE DEVELOPMENT TO MATCH LANGUAGE USED IN SECTION 11.

**Comment [BD23]:** FLEXIBLE DEVELOPMENT IS CURRENTLY ALLOWED BY A SPECIAL PERMIT FROM THE PLANNING BOARD AND CLUSTER DEVELOPMENT IS ALLOWED BY A SPECIAL PERMIT FROM THE ZBA. THE CONFLICT HAS BEEN RESOLVED IN FAVOR OF THE PLANNING BOARD.

**C) Residential-Multiple Dwelling Districts (RM)**

Comment [BD24]: FROM § 199-10

**(1) Uses allowed by-right:**

- (a) Detached one-family dwelling.
- (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
- (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
- (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
- (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
  - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.

**(2) Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**

- (a) A multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2 herein, provided that no more than four dwelling units shall be built on a lot.

- (b) A multiple dwelling with more than four dwelling units, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2 of this chapter.
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Private club not conducted for profit
  - (b) Hospital, sanitarium and convalescent and nursing home
  - (c) Golf course
  - (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
- D) **Conservation-Residential Districts (CR)**
  - (1) **Uses allowed by-right:**
    - (a) Detached one-family dwelling.
    - (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
    - (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
    - (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
    - (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
      - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
      - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies

Comment [BD25]: FROM § 199-12

and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.

- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
  - (g) Farm, forestry or nursery, including the display and sale of natural products raised in town and the raising of stock as limited in Section 4.2 (D)(3)(f).
  - (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
    - (a) Resort, subject to the special requirements in Section 9.8.
  - (3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
    - (a) Private club not conducted for profit
    - (b) Hospital, sanitarium and convalescent and nursing home
    - (c) Golf course
    - (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
    - (e) Boat livery, riding stable, ski tow
    - (f) The raising of hogs, pigs, poultry or fur bearing animals, provided that such activity is carried on at least 300 feet from any property line.
- E) **Rural Business District (RB)**
- (1) **Uses allowed by-right:**
    - (a) Detached one-family dwelling.
    - (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
    - (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
    - (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
    - (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:

Comment [BD26]: FROM § 199-14

- (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
- (g) Farm, forestry or nursery, including the display and sale of natural products raised in town and the raising of stock as limited in Section 4.2 (E)(3)(f). The raising of horses for personal use is permitted, provided that such action is carried on at least 300 feet from any property line.
- (h) Office, bank, newspaper or printing establishment.
- (i) Hotel, motel or restaurant.
- (j) Any wholesale or retail business, research laboratory, service or public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the customer.
- (k) Automobile service station, automobile repair shop, automobile storage garage or automobile salesroom or lot.
- (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with the regulations appearing in Section 13.2 (B)(3) of this chapter, and in compliance with all applicable provisions of this chapter, shall be as follows:**
  - (a) Private club not conducted for profit

- (b) Hospital, sanitarium and convalescent and nursing home
- (c) Golf course
- (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
- (e) Boat livery, riding stable and ski tow
- (f) The raising of hogs, pigs, poultry or fur bearing animals, provided that such activity is carried on at least 300 feet from any property line.
- (g) Place of amusement or assembly or club conducted for profit

**F) Business-Multiple Dwelling District (BM)**

**Comment [BD27]:** FROM § 199-11

**(1) Uses allowed by-right:**

- (a) Detached one-family dwelling.
- (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
- (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
- (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
- (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
  - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.

- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
  - (g) Office, bank, newspaper or printing establishment.
  - (h) Hotel, motel or restaurant.
  - (i) Any wholesale or retail business, research laboratory, service or public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the customer.
  - (j) Automobile service station, automobile repair shop, automobile storage garage or automobile salesroom or lot.
- (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
- (a) A multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.
  - (b) A multiple dwelling with more than four dwelling units, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2 of this chapter.
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
- (a) Private club not conducted for profit
  - (b) Hospital, sanitarium and convalescent and nursing home
  - (c) Golf course
  - (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
  - (e) Place of amusement or assembly or club conducted for profit
- G) Commercial Business Corridor (CBC)**
- (1) **Uses allowed by-right:**
- (a) Detached one-family dwelling.
  - (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
  - (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.

Comment [BD28]: FROM § 199-19

- (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
  - (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:
    - (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
    - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
- (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
- (a) A multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.
  - (b) A multiple dwelling with more than four dwelling units, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2 of this chapter.
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
- (a) Private club not conducted for profit
  - (b) Hospital, sanitarium and convalescent and nursing home
  - (c) Golf course



- (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
- (5) **Uses requiring a special permit from the Planning Board in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Office, newspaper or printing establishment
  - (b) Bank, without a drive-through.
  - (c) Hotel or motel
  - (d) Restaurant, no fast food.
  - (e) Any wholesale or retail business, research laboratory, service or public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the customer.
  - (f) Restaurant, fast food
  - (g) Bank, with drive- through
  - (h) Convenience store
  - (i) Gas Station
  - (j) Automobile dealer and service station
  - (k) Auto repair shop
  - (l) Auto storage garage
  - (m) Auto salesroom or lot
  - (n) Place of amusement or assembly
  - (o) Club conducted for profit

**Comment [BD29]: UNCERTAINTY:** THE PLANNING BOARD WAS UNCERTAIN WHETHER THESE USES WERE TO BE PERMITTED BY SITE PLAN APPROVAL OR SPECIAL PERMIT IN THE CURRENT BYLAW.

**RESOLUTION:** THESE USES ARE ALLOWED BY SPECIAL PERMIT.

#### H) **Downtown Commercial Business Corridor District (DCBC)**

**Comment [BD30]:** FROM § 199-20

- (1) **Uses allowed under site plan review by the Planning Board in accordance with Section 13.3:**
  - (a) Detached one-family dwelling.
  - (b) Detached two-family dwelling subject to the dimensional requirements set forth in the Table of Dimensional Requirements and all other applicable provisions of this chapter.
  - (c) The use of land or structures for the primary purpose of agriculture, horticulture or floriculture on lots of five or more acres.
  - (d) Renting of rooms or furnishing of board for not more than three persons in a dwelling regularly occupied for residential purposes.
  - (e) Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:

- (i) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking or candy making, or for the practice by a resident of a recognized profession, provided that the maximum accessory use shall be no more than 20% of the square footage of the dwelling, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that there is no external evidence of any business other than a permitted sign and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
  - (ii) Use of premises or building thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring two or more employees on the premises, in compliance with off-street parking and all other applicable provisions of this chapter, and provided that all storage of materials, supplies and equipment shall be kept within the principal building or within a suitable accessory building and that no undue burden shall be placed on the neighborhood by parking on the street or an excess of traffic or other noises.
- (f) Municipal use; provided, however, that no new municipal use shall be established and no existing municipal use shall be substantially expanded unless and until the representative town meeting votes an appropriation for said use.
- (2) **Uses requiring a special permit from the Board of Selectmen in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Multiple dwelling, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2, provided that no more than four dwelling units shall be built on a lot.
  - (b) Conversion of existing buildings that are at least 10 years old to mixed use for business, professional offices and multiple family housing with more than four units, subject to all the applicable provisions of this chapter, provided the Special Permit Granting Authority finds, in addition to the other findings required by this chapter, that the proposed conversion maintains the existing architectural character of the corridor.
  - (c) Multiple dwelling with more than four dwelling units, subject to all applicable provisions of this chapter and in compliance with the special requirements set forth in Section 9.2 of this chapter, provided the Special Permit Granting Authority finds, in addition to the other findings required by this chapter, that the proposed conversion maintains the existing architectural character of the corridor.
- (3) **Uses requiring a special permit from the Board of Appeals in accordance with Section 13.2 (B)(3) of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Private club not conducted for profit

- (b) Hospital, sanitarium and convalescent and nursing home
  - (c) Golf course
  - (d) Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
- (4) **Uses requiring a special permit from the Planning Board in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
- (a) Office, newspaper or printing establishment
  - (b) Bank, without a drive-through.
  - (c) Hotel or motel
  - (d) Restaurant, no fast food.
  - (e) Any wholesale or retail business, research laboratory, service or public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the customer.
- I) **Planned Commercial Village Center District (PCVC)**
- (1) **Uses allowed by-right:**
- (a) Planned commercial village center, as defined in Section 14, Definitions, provided that the total square feet of floor area does not exceed 75,000 square feet.
  - (b) Planned unit office or research center, as defined in Section 14, Definitions, provided that the total square feet of floor area does not exceed 75,000 square feet.
  - (c) Library
  - (d) Museum.
  - (e) Municipal use.
  - (f) Educational and religious uses as allowed by MGL c. 40A, Section 3.
  - (g) Agricultural uses as allowed by MGL c. 40A, Section 3.
  - (h) Accessory tourist information center, whether operated by a public or private operator, in association with any of the principal uses in the district.
- (2) **Uses requiring a special permit from the Planning Board in accordance with the regulations appearing in Section 13.4 and Section 10.2 of this chapter and in compliance with all other applicable provisions of this chapter shall be as follows:**
- (a) Planned commercial village center, as defined in Section 14, Definitions, provided that the total square feet of floor area exceeds 75,000 square feet.
  - (b) Planned unit office or research center, as defined in Section 14, Definitions, provided that the total square feet of floor area exceeds 75,000 square feet.

**Comment [BD31]: UNCERTAINTY:** THE PLANNING BOARD WAS UNCERTAIN WHETHER THESE USES WERE TO BE PERMITTED BY SITE PLAN APPROVAL OR SPECIAL PERMIT IN THE CURRENT BYLAW.

**RESOLUTION:** THESE USES ARE ALLOWED BY SPECIAL PERMIT.

**Comment [BD32]:** FROM § 199-18

**J) Industrial District (I)****Comment [BD33]:** FROM § 199-16**(1) Uses allowed by-right:**

- (a) Any manufacturing or industrial use, including processing, fabrication and assembly, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire. (See Environmental and Performance Standards, Section 12.)
- (b) Accessory uses and structures customary to the preceding uses.

**(2) Uses allowed under site plan review by the Planning Board in accordance with Section 13.3:**

- (a) Business offices, excluding retail, but including the following:
  - (i) Financial.
  - (ii) Insurance.
  - (iii) Engineering, development and management.
  - (iv) Publishing and data processing.
  - (v) Telecommunication (subject to provisions of the telecommunications bylaws.)
  - (vi) Environmental.
  - (vii) Real Estate.
  - (viii) Legal
  - (ix) Medical and Dental Services.
  - (x) Social Services.
  - (xi) Educational Services.
  - (xii) Motor Vehicle Repairs
  - (xiii) Leasing of building space for commercial purposes inside an existing commercial facility.
- (b) Retail sale of products manufactured, assembled or processed on site or product associated therewith. The retail space shall not exceed 20% of the total floor area.
- (c) Laboratories for the purpose of conducting research, or providing medical, dental and technical services, including offices accessory to these activities.
- (d) Distribution of commercial and industrial supplies and wholesale trade (except motor vehicles) provided that the space dedicated to storage of the product shall not exceed 70% of the total floor area and the total floor area does not exceed 100,000 square feet.
- (e) Uses permitted by MGL C. 40A, Section 3, such as public and private nonprofit religious and educational institutions.
- (f) Municipal use.

**Comment [BD34]:** THIS USE WAS ADOPTED BY THE TOWN AT A PREVIOUS TOWN MEETING, BUT NEVER INCORPORATED INTO THE OFFICIAL VERSION OF THE BYLAW.**Comment [BD35]:** THIS USE WAS ADOPTED BY THE TOWN AT A PREVIOUS TOWN MEETING, BUT NEVER INCORPORATED INTO THE OFFICIAL VERSION OF THE BYLAW.**Comment [BD36]:** THE PERMITTING OF THESE TWO USES ARE IN CONFLICT IN THE CURRENT BYLAW BECAUSE THEY ARE ALLOWED BY-RIGHT AND BY SITE PLAN REVIEW. THIS CONFLICT HAS BEEN RESOLVED IN FAVOR OF ALLOWING THESE USES BY SITE PLAN REVIEW.

- (g) Accessory uses and structures customary to the preceding uses.
  - (3) **Uses requiring a special permit from the Planning Board in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
    - (a) Outside storage of materials not used in the manufacturing process
    - (b) Adult uses, as regulated in Section 9.4 of this chapter.
  - (4) **Uses requiring a special permit from the Planning Board, as part of the re-use of existing structures, in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
    - (a) Retail.
    - (b) Apartments, lofts or other permanent residential uses.
    - (c) Warehousing.
    - (d) Hotel/conference center.
    - (e) New construction of facilities exceeding 100,000 square feet in floor space, where the facility will be used for distribution of commercial and industrial supplies and wholesale trade (except motor vehicles), provided that the space dedicated to storage of product shall not exceed 70% of the total floor area.
    - (f) In cases of special permits for building re-uses noted above, the special permit granting authority may authorize alteration or expansion of the existing building.
- K) Office Park and Light Industrial District (OPLD)**
- (1) **Uses allowed under site plan review by the Planning Board in accordance with Section 13.3:**
    - (a) Business offices, including the following services:
      - (i) Financial.
      - (ii) Insurance.
      - (iii) Real estate
      - (iv) Engineering and management.
      - (v) Publishing and data processing.
      - (vi) Communications (telegraph, telephone and radio and television studios)
      - (vii) Environmental.
      - (viii) Legal
      - (ix) Health services
      - (x) Social Services.
      - (xi) Education
      - (xii) Public administration.
    - (b) Research, medical, dental and technical service laboratories and offices accessory to these.

Comment [BD37]: FROM § 199-15

- (c) Light industry, including:
  - (i) Apparel and other textile and leather products.
  - (ii) Millwork, plywood and structural members.
  - (iii) Household and office furniture.
  - (iv) Envelopes and stationery products.
  - (v) Molded plastic products.
  - (vi) Fabricated metal products, such as cutlery, hand tools, hardware and screw machine products.
  - (vii) Industrial machinery, such as metalworking machinery, textile machinery, paper machinery, printing trades machinery, food products machinery and packaging machinery, but excluding ordnance.
  - (viii) Computer and office equipment.
  - (ix) Electronic and other electrical equipment.
  - (x) Instruments and related products.
  - (xi) Paper, paperboard and plastic converting products.
- (d) Retail sales where the sales area is not more than 20% of the total floor space and:
  - (i) The product(s) is manufactured on site.
  - (ii) It is not the primary retail outlet for the product(s).
  - (iii) Such sales are incidental to the primary use.
- (e) Retail sales for products manufactured off site only if sales are conducted exclusively by phone and/or by mail.
- (f) Distribution of commercial and industrial supplies and wholesale trade (except motor vehicles), provided that the space dedicated to storage of product shall not exceed 70% of the total floor area.
- (g) Uses required by MGL c. 40A, Section 3, such as public and private nonprofit religious and educational institutions. (Refer to Section 9.6, Land or Structures for Certain Religious or Education Purposes)
- (h) Accessory structures and uses customary to the preceding uses.
- (i) Municipal use.
- (2) **Uses requiring a special permit from the Planning Board in accordance with Section 13.4 of this chapter, and in compliance with all other applicable provisions of this chapter, shall be as follows:**
  - (a) Processing of dairy, vegetable, grain and food materials for human consumption and for distribution.
  - (b) Express shipping offices.
  - (c) Warehousing.
  - (d) Light industry not previously permitted and which can be operated with a minimum of noise, smoke, fumes, odors and other nuisances and which does not create adverse

impacts on adjacent uses. (See Section 12, Environmental and Performance Standards.)

- (e) Accessory structures and uses customary to the preceding uses.
- (f) Express parcel and letter delivery or pickup stations may be located within the development.
  - (i) The space for the station shall be provided by the developer.
  - (ii) The station shall have a paved parking area able to accommodate a minimum of 600 square feet, and such parking area shall be connected to the public roadway by a paved driveway.
  - (iii) The station may be identified by one sign located on the station and not to exceed 100 square inches.

#### 4.3 PROHIBITED USES

A) The following uses are specifically prohibited:

- (1) Garbage and refuse incinerators or the dumping of refuse matter not originating on the premises, except after a permit is issued by the Board of Selectmen.
- (2) Distillation of bones, rendering of fat or reduction of animal matter.
- (3) Manufacture of animal glue.
- (4) Oil refining.
- (5) Slaughterhouse, except a custom slaughterhouse.
- (6) Storage or treatment of ash or other similar material causing dirt.
- (7) Automobile junk and/or wrecking yards.

#### 4.4 RADIOACTIVE WASTE

No land within any use district in the Town of Lee may be used for the collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

**Comment [BD38]:** DELETED DUPLICATIVE FLOODPLAIN TEXT CURRENTLY LOCATED IN § 199-17 THAT IS COVERED BY PROPOSED SECTION 3.2

**Comment [BD39]:** FROM § 199-27

**Comment [BD40]:** DELETED EXPIRED WIRELESS MORATORIUM LANGUAGE CURRENTLY FOUND IN § 199-27 (B).

**Comment [BD41]:** FROM § 199-7 (B)

**Section 5. INTENSITY REGULATIONS****5.1 DIMENSIONAL REQUIREMENTS****Comment [BD42]:** FROM § 199-21

- A) No building or structure hereafter erected shall be located on a lot having less than the minimum requirements set forth in the Table of Dimensional Requirements located at the end of this chapter in Appendix “A”.
- (1) Not more than one dwelling shall be located upon any such lot, except in the case of multiple dwellings as provided in Section 9.2 of this chapter.
  - (2) In the case of public, institutional, commercial or industrial buildings, a group of buildings under the same ownership may be considered as occupying the same lot.
  - (3) No existing lot shall be changed as to size or shape so as to result in a violation of the requirements set forth in the Table of Dimensional Requirements.
  - (4) It will be understood that no lot will be considered adequate until it is first ascertained by the Board of Health through its proper agent by percolation tests, etc., that proper drainage and sewage disposal can be installed and maintained.
  - (5) No lot minimum will be given for nonresidential buildings in Business and Downtown Commercial Business Corridor Districts. However, these dimensions will be left up to the administrators of this chapter after consultation with the parties concerned. The type of business and the inclusion of adequate parking facilities, etc., would be an important factor in this decision in each individual case.
  - (6) No height maximums will be given for buildings in Industrial Districts. However, these heights will be decided by the administrators of this chapter after consultation with the parties concerned.
  - (7) An existing lot or parcel of land having an area or a frontage of lesser amount than are required by this table may be considered as coming within the area and frontage requirements of this section if it complies with the provision of MGL c. 40A, Section 6, as amended.
  - (8) All measurements for depth of front yards will be from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel to the center line of the traveled way.
  - (9) The limitation on the height of a building shall not apply in any districts to chimneys, ventilators, towers, spires, air-conditioning equipment or any ornamental features customarily attached to a roof and accessory to the use of the building.
  - (10) If a building which is to be used for industry is to be built adjacent to a residence or a lot located in a residential area, the front and side yard dimensions will be a minimum of 50 feet, with the first 20 feet made up of lawn, shrubbery and evergreen trees to form a continuous natural screen. The same will apply to the rear yard dimensions when it is adjacent to a residence or lot in a residential district. If any part of the residence or residential area is being used as a business, the side and rear yard dimensions necessary for the above-mentioned building will not be less than 15 feet.



- (11) If a building which is to be used for business is to be built on a lot adjacent to a residence or a lot located in a residential area, the side yard dimensions will be not less than 15 feet. The same will apply to the rear yard dimensions when the building to be built is adjacent to a residence or a lot in a residential area.

## **5.2 DIMENSIONAL REQUIREMENTS FOR ACCESSORY BUILDINGS**

No accessory building or structure shall be located within the required front yard area. No accessory building shall be located in any side yard area nearer to the side lot line than 10 feet or in a rear yard area nearer to the rear lot line than 10 feet. Lots located on the corner of the street, road, avenue, terrace or public way will require that no accessory building shall be located in any side yard area nearer to the side lot line than 25 feet. Note: Addition of a private detached garage must be 10 feet off the main structure.

Comment [BD43]: FROM § 199-24

Comment [BD44]: TITLE CHANGED FROM "ACCESSORY BUILDINGS"

## **5.3 BUFFER STRIPS AND DRIVEWAYS IN THE RURAL BUSINESS DISTRICT**

A continuous strip not less than six feet wide shall be maintained between the street line and the balance of the lot in all Rural Business Districts, which strip shall be suitably landscaped and maintained in good appearance. This strip may be traversed by not more than two driveways, except that there may be one additional driveway for each additional 200 feet of frontage in excess of 200 feet. Unless otherwise approved by the Planning Board, driveways shall be not less than 20 feet nor more than 30 feet in width, measured at and parallel to the street line.

Comment [BD45]: FROM § 199-22

## **5.4 VISIBILITY AT CORNERS**

On any corner lot there shall be no building, structure, fence, shrubbery or planting such as will obstruct street traffic visibility within the triangular area formed by the corner and the points 20 feet back from the corner.

Comment [BD46]: FROM § 199-29

**Section 6. NON-CONFORMING STRUCTURES, USES AND LOTS****6.1 NON-CONFORMING STRUCTURES, USES AND LOTS**

Comment [BD47]: FROM § 199-23

**A) Exemptions.** Exemptions shall be as follows:

- (1) Structures and uses lawfully in existence prior to the effective date of this chapter.
- (2) A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning bylaw or amendment.
- (3) Any alteration, reconstruction, extension or structural change to a one-family or two-family structure, provided that this does not increase the nonconforming nature of such structure. In the following circumstances an alteration, reconstruction, extension or structural change to a one-family or two-family structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right:
  - (a) An alteration, reconstruction, extension or structural change which complies with all current dimensional requirements.
  - (b) An alteration, reconstruction, extension or structural change to the side or face of a one-family or two-family structure which encroaches upon current yard requirements, as specified in the Table of Dimensional Requirements, where an alteration, reconstruction, extension or structural change will not encroach upon such area to a distance greater than the existing structure.
  - (c) Any alteration, reconstruction, extension or structural change to a one-family or two-family structure which will increase the existing nonconformity by further encroaching on required yard requirements or further increasing the maximum building coverage or building height as specified in the Table of Dimensional Requirements may be authorized by special permit from the Planning Board upon a finding that such alteration, reconstruction, extension or structural change shall not be more detrimental than the existing nonconforming structure to the neighborhood.
  - (d) The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
  - (e) Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Laws are exempt from the provisions of this chapter to the extent and as provided in MGL c. 40A, Section 6.

**B) Requirements for Extension, Reconstruction or Change in Use.** The Planning Board may authorize by special permit any extension, alteration or reconstruction of a nonconforming structure to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, provided that no such extension, alteration, reconstruction or change in use shall be permitted unless the Planning Board finds that:

- (1) Such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

- (2) Such extended, altered or reconstructed structure or changed use shall not be in greater nonconformity with open space, yard and off-street parking requirements of this chapter.
- C) **Reconstruction of Structure Damaged by Fire, Explosion or Other Catastrophe.** A nonconforming structure damaged by fire, explosion or any other catastrophe may be rebuilt, provided that such rebuilding, reconstruction or restoration shall be undertaken within two years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this chapter. Such rebuilt, reconstructed or restored structure may be enlarged or changed in use in accordance with the provisions of Section 6.3 (B) herein.
- D) **Maintenance, Repair and Reconstruction of Unsafe Structure.** Nothing in this chapter shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- E) **Abandonment.** Any nonconforming use which has been abandoned or not used for two years or more shall not be reestablished except by special permit from the Planning Board; otherwise, any future use of such premises shall conform to the provisions of this chapter.
- F) **Conditions, Safeguards and Limitations.** The Planning Board may impose reasonable conditions, safeguards or limitations on applications for special permits under this section, designed to lessen any possible adverse impact on adjacent uses or neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend or convert to another nonconforming use under the provisions of this section.

**Section 7. SIGNS**

Comment [BD48]: FROM § 199-28

**7.1 PURPOSE**

Comment [BD49]: FROM § 199-28 (A)

Under the authority conferred by the Massachusetts General Laws, as amended, and every other power and authority thereto pertaining, the Town of Lee adopts this section for the regulation and restriction of billboards, signs and other advertising devices within the town on public ways, or any private way used by the public, or on private property within public view of any public way, public park or reservation in order to protect and enhance the visual environment of this town (its public and private investments in buildings and open spaces) and the safety, convenience and welfare of its residents.

**7.2 APPLICABILITY**

Comment [BD50]: FROM § 199-28 (A)

The provisions of this section shall apply to the construction, erection, alteration, use, dimensions, location and maintenance of all billboards, signs and other advertising devices located out-of-doors, affixed to any part of a building or window(s) thereof or placed for the express purpose of being visible from the exterior of the building.

**7.3 DEFINITIONS**

Comment [BD51]: FROM § 199-28 (B)

As used in this section, the following terms shall have the meanings indicated:

**PERSON:** Any person, corporation, society, associate, partnership or other legal entity.

**PUBLIC WAY:** Any public way or private way that is open to public use.

**SIGN:** Any display of lettering, logos, colors, lights or illuminated neon tubes visible to the public from outside of a building, or from a traveled way, which either conveys a message to the public or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted or goods, products, services or facilities available either on the lot or on any other premises, excluding window displays of merchandise.

- A) **ABANDONED SIGN** - Any sign that is located on property which becomes vacant and is unoccupied for a period of three months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of six months or more.
- B) **ACCESSORY SIGN** - Any sign which is mounted on the same post or pylon as the freestanding sign but is accessory to the freestanding sign and cannot be more than a total of six square feet and which displays a message that is standard to the industries, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA, etc.
- C) **AWNING SIGN** - A sign painted on or attached to the cover of a metallic frame of the fixed, hinged, roll or folding type of awning.

- D) **CANOPY SIGN** - A sign placed on a permanent structure built over gas pumps which provides shelter for gas pumps and patrons.
- E) **FREE STANDING SIGN** - A self-supporting sign not attached to any building, wall or fence but in a fixed location. This does not include portable or trailer-type signs.
- F) **GAS STATION PRICING POD** - A sign which displays the current price of gasoline and which can be located on the canopy or on the freestanding sign.
- G) **LANDMARK SIGN** - A sign of artistic or historic merit, uniqueness or extraordinary significance to the town as identified by the local Historic Commission, or the Board of Selectmen in its absence.
- H) **MOVABLE SIGN** - A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.
- I) **MUNICIPALLY CONTROLLED DIRECTORY SIGN BOARD** - In the Business-Multiple (BM) and Downtown Commercial Business Corridor (DCBC) Districts, a name-only directional sign to allow business and municipal uses within the districts but not directly located on Route 20 (Park, Main and West Center Streets) to be readily identified from the primary travel corridor.
- J) **NEON SIGN** - Any sign that provides illumination of the exposed gaseous tube type.
- K) **NONCONFORMING SIGN** - Any sign that lawfully exists but does not conform to this section at the time of adoption.
- L) **OFF-PREMISES SIGN** - Any sign which is not on the premises of the business, including a billboard.
- M) **ROOF SIGN** - A sign which is located above, or projected above, the lowest point of the eaves or the top of the parapet wall of any building or which is painted on or fastened to a roof.
- N) **TEMPORARY SIGN** - Any sign, including its support structure, intended to be maintained for a continuous period of not more than 30 days in any calendar year.
- O) **WALL SIGN** - Any sign which is painted on, incorporated into or affixed parallel to the wall of a building and which extends not more than 10 inches from the surface of that building.
- P) **WINDOW DISPLAY SIGN** - Any sign which is mounted onto a window or which is hung directly inside the window with the purpose or effect of identifying any merchandise or product for sale visible from the sidewalk or street.

**7.4 GENERAL REGULATIONS****Comment [BD52]:** FROM § 199-28 (D)

- A) **Signs permitted by right.** The following signs shall only be allowed if they conform to Section 7.7, General Standards, of this section. If they conform, they will be allowed by right and they will not need a permit.
- (1) Window display sign.
  - (2) Address.
  - (3) Construction.
  - (4) Directional.
  - (5) Accessory sign.
  - (6) For sale/rent/lease.
  - (7) Landmark.
  - (8) Political.
  - (9) Public service.
- B) **Signs requiring permits.** All signs other than those permitted by right which refer to a permitted use or an approved conditional use as set forth in this section are permitted, provided that such signs conform to the provisions of this section and are applied for and approved.
- C) **Signs prohibited.**
- (1) No sign requiring a permit shall be erected without first receiving a permit.
  - (2) Flashing signs, roof signs, signs containing moving parts, any noisemaking sign or device and signs containing reflective elements which sparkle in the sunlight are not permitted. Signs indicating the current time and/or temperature are permitted, provided that they meet all other provisions of this section.
  - (3) Billboards, streamers, pennants, ribbons, banners, spinners or other similar devices shall not be constructed, posted or erected in any zone. Exceptions include grand openings, special events and charitable or civic events with the granting of a temporary permit by the Board of Selectmen for 10 days' duration or less. Decorations for state and national holidays are exempt from requiring a temporary sign permit so long as they are not deemed to be a public nuisance or hazard by the Sign Enforcement Officer.
  - (4) Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises is not permitted. Exceptions are granted to landmark signs, which may be preserved and maintained even if they no longer pertain to the present use of the premises.
  - (5) No sign, except for a traffic, regulatory or informational sign, shall use the words "stop," "caution" or "danger" or shall incorporate red, amber or green lights resembling traffic signals or shall resemble a "stop," "yield" or other traffic sign in shape and color. No sign shall obstruct traffic sight lanes for drivers or pedestrians.
  - (6) No billboard shall be permitted in any district in the Town of Lee.

- (7) Any sign hung from or in any way affixed to any other sign without express permission from the Planning Board and the Sign Enforcement Officer and with such permission and conditions noted on the permit is not permitted.
  - (8) Any spotlight or illumination which is beamed or lights up a public street, highway, sidewalk or adjacent premises which causes a glare or reflection that by vote of the Board of Selectmen constitutes a traffic hazard or public nuisance is not permitted.
  - (9) Any sign or other projection which protrudes more than 10 inches over a public right-of-way or public property is not permitted.
  - (10) Any sign where the highest point would be greater than 25 feet above the ground on which it rests is not permitted.
  - (11) No trailer-style movable signs or vehicle used primarily or intentionally as a sign shall be permitted.
  - (12) No awning signs shall be permitted except in the DCBC District.
  - (13) No off-premises signs shall be permitted.
  - (14) Abandoned signs are prohibited and shall be removed by the owner of the sign or owner of the premises or by action of the Sign Officer.
- D) **Exceptions.** For the purposes of this section, the term "sign" shall not include:
- (1) Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, bylaw or other regulation.
  - (2) A bulletin board or similar sign not exceeding 12 square feet in display area in connection with any church, museum, library, school or similar public or semipublic structure, provided that the top of such sign shall not be more than eight feet above ground level, provided that it is no closer than 10 feet from the public right-of-way unless attached to a building.
  - (3) Signs relating to trespassing and hunting, not exceeding two square feet in area.
  - (4) Any historical marker erected by a bona fide historical association or a government agency.
- E) **Area of sign.**
- (1) The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any cutouts or extensions, but shall not include any supporting structure or bracing.
  - (2) The area of a sign consisting of individual letters, words or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters.
  - (3) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
  - (4) In computing the area of signs, one side of identical back-to-back (two-sided) signs and symbols shall be considered as the total area.

**F) Illumination standards.**

- (1) Applicable to zoning districts R-20, R-30, RA-40, CR, RB, RM, CBC and DCBC. To preserve the rural character of the town, no internally illuminated signs shall be allowed. These signs may be externally illuminated by shielded light of a constant intensity of no more than 100 watts on each side.
- (2) Applicable to zoning districts BM, I and CBC. Internally illuminated freestanding and wall signs will be considered as part of the site plan review process as delineated in Section 13.3 of this bylaw.
- (3) Applicable to zoning district OPLI. See the standards found in Section 10.1 (B)(5), Signs and Sign Illumination.
- (4) Applicable to all zoning districts.
  - (a) A sign shall not be illuminated between the hours of 12:00 midnight and 6:00 a.m. unless the premises on which it is located is open for business.
  - (b) Any sign containing electrical wiring that is attached or intended to be attached to an electrical energy source shall be inspected by the Town Electrical Inspector and shall meet state code.
  - (c) No person may erect a sign with exposed electrical wires.
  - (d) Strings of bulbs are not permitted, except as part of a holiday celebration.
  - (e) Any illumination provided for signs shall be white light only.
  - (f) Sign illumination, decorative lighting or floodlighting (except that used for public recreational areas) shall be shielded at its source to prevent high-intensity light beams from shining onto any street or adjoining property.
  - (g) No sign shall be designed to attract attention by a change of intensity or illumination or by repeated motion.

- G) Safety standards.** No person may erect a sign which constitutes a hazard to public safety or health.

**7.5 NONCONFORMING SIGNS.**

- A) Maintenance.** Any lawfully existing sign cannot be enlarged, reworded, redesigned or altered in any way, except to conform to the requirements of this section, and provided, further, that any such sign which has deteriorated to such an extent that the cost of restoration would exceed 35% of the replacement cost shall not be repaired, rebuilt or altered except to conform to the requirements of this section.
- B) Replacement.** Any sign replacing a nonconforming sign shall conform to the provisions of this section, and the nonconforming sign shall no longer be displayed.
- C) Abandonment.** If a nonconforming sign associated with a permitted use or structure has been abandoned for no less than six months (i.e., the permitted use or structure has not been occupied for six months), then the nonconforming sign shall be removed and its nonconformity shall not continue.

**Comment [BD53]:** DELETED TEXT FROM § 199-28(D)(8)(a) ON THE CONTINUANCE OF LEGAL NON-CONFORMING SIGNS.

**Comment [BD54]:** FROM § 199-28 (D)(8)



**7.6 ADMINISTRATION AND ENFORCEMENT**

Comment [BD55]: FROM § 199-28 (E)

No sign shall be erected, displayed, altered or enlarged until an application has been filed and a permit for such action has been issued. Applications shall be on forms prescribed by the Sign Officer. At a minimum, all applications shall include a scale drawing specifying dimensions, materials, illumination, letter sizes, colors, support systems and location on land or buildings, with all relevant measurements.

**A) Permits.**

- (1) A permit for a permanent sign shall be issued only after the following:
  - (a) The Planning Board examines the request for a permanent sign permit and finds it in compliance with this chapter.
  - (b) The Sign Officer determines that the sign complies or will comply with the State Building Code as per the section pertaining to signs.
  - (c) The Sign Officer and Planning Board shall review, within 10 business days of receipt, said application, together with the fee.
  - (d) A permanent sign permit shall be valid only when signed and dated by the Planning Board and the Sign Enforcement Official.
- (2) A permit for a temporary sign shall be issued only after the following:
  - (a) Temporary sign permits are issued only after the Sign Officer determines the sign complies or will comply with the State Building Code as per the section pertaining to signs and sends the permit on to the Selectmen.
  - (b) The Board of Selectmen shall be the issuing authority for temporary sign permits.

**B) Fees.**

- (1) A schedule of fees for such permits may be established and amended from time to time by the Board of Selectmen.
- (2) Fees for municipally controlled directory sign boards (MCDSB) may be assessed and amended by the Board of Selectmen, as necessary, to cover the cost of erecting, maintaining or repairing of such signs because of damage from nature or vandalism.

**C) Enforcement.**

- (1) The Board of Selectmen shall designate annually a Sign Officer, and that Sign Officer is hereby authorized to enforce this Section 7. The Sign Officer is authorized to order the repair or removal of any sign and supporting structure which is erected or maintained contrary to this section. Whenever a Sign Officer is designated, that person or board should notify the State Outdoor Advertising Board.
- (2) Interpretation, implementation and enforcement of this section will lay with the Sign Officer serving as agent for the Board of Selectmen.

- D) Maintenance and removal.** Every sign shall be maintained in good structural condition at all times. The Sign Officer shall inspect and shall have the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence. Any sign which has been ordered removed by the Sign Officer or is abandoned or discontinued shall be removed by the

person, firm or corporation responsible for his, her or its sign within 20 days of the written notice to remove.

**E) Removal of signs by the Sign Officer.**

- (1) The Sign Officer shall cause to be removed any sign that endangers the public safety, such as an abandoned, dangerous or materially, electrically or structurally defective sign, or a sign for which no permit has been issued.
- (2) The Sign Officer shall prepare a notice which shall describe the sign and specify the violation involved and which shall state that if the sign is not removed or the violation is not corrected or appealed within 20 days, the sign shall be removed in accordance with the provisions of this section.
- (3) All notices mailed to sign owners or property owners by the Sign Officer shall be sent by certified mail. Any time periods provided in this section shall be deemed to commence on the date of the receipt of the certified mail.
- (4) Any person having an interest in the sign or the property may appeal the determination of the Sign Officer ordering removal or compliance by filing a written notice of appeal with the Lee Zoning Board of Appeals within 30 days. The Zoning Board of Appeals shall hold a hearing in order to determine if the Sign Officer's order of removal or compliance should be enforced. (See Section 13.2)

**F) Penalties.**

- (1) Whoever violates any of the provisions of this section shall forfeit and pay a fine not to exceed \$300 for each offense.
- (2) Each day that such violation continues shall constitute a separate offense.
- (3) The Sign Officer acting as agent for the Board of Selectmen shall be imposed to enforce this section.
- (4) This chapter may be enforced by non-criminal disposition as provided for by MGL c. 40, Section 21D.

- G) Variances for signs.** Variances shall not be granted for any sign, as ample provision has been made for premises identification within this section and because true hardship as defined in state law cannot be demonstrated in signage situations.

## 7.7 GENERAL STANDARDS

- A) **Accessory sign.** Any sign which is mounted on the same post or pylon as the freestanding sign and cannot be more than a total of six square feet and which displays a message that is standard to the industries, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA, etc.
- B) **Address.** One sign displaying the street number or name of the occupant of the premises, or both, may be attached to the building or may be on a post not more than four feet high and set back at least three feet from the public right-of-way. Such sign may not exceed two square feet in area.

Comment [BD56]: FROM § 199-28 (F)

- C) **Canopy.** Such signs shall not exceed 20 square feet in area per side and may be located on no more than two sides of the canopy. If a canopy is used as a price pod location, 10 square feet may be used for the logo.
- D) **Gas station pricing pod.**
- (1) Such signs shall not exceed 20 square feet and shall be set back at least 10 feet from the lot line and may be in one of three places:
    - (a) Such sign may be incorporated on the same post or pylon as the freestanding sign.
    - (b) Such sign may be located at the pump island location.
    - (c) Twenty square feet may be placed on the canopy in such a manner as to comply with the canopy regulations [See Section 7.7 (C) of this section].
  - (2) The fuel price pod will require permits for the initial installation or for a change in location or size. Changes in pricing are allowed and not regulated by this chapter.
- E) **Construction.** An on-premises sign shall identify the contractor, architect, landscape architect and/or engineer's name, address and other pertinent information.
- (1) Such signs shall not exceed 12 square feet in area and shall be set back at least 10 feet from the street lot line or V2 the building setback distance, whichever is less.
  - (2) Such sign may be maintained on the building or property for the interim of construction and not more than 30 days following the completion of said construction.
- F) **Directional.** Directional signs solely indicating ingress and egress placed at driveway locations shall contain no advertising material. Display area of such signs shall not exceed three square feet or extend higher than four feet above ground level. Such sign will conform in all respects to the requirements of this section.
- G) **A for sale/rent/lease sign** is an on-premises sign advertising the property being sold or rented.
- (1) Such sign shall not exceed six square feet and shall advertise only the property on which the sign is located. A maximum of two such signs may be maintained on any property being sold or rented, and they shall be removed by the owner or agent within 30 days of sale, rent or lease.
  - (2) Such signs may be attached to the building or shall be set back at least 10 feet from the street lot line or 1/2 the building setback distance, whichever is less.
- H) **Freestanding sign.** Such sign shall be securely attached at top and bottom to one or two posts or pylons. No lettering shall appear on the posts or pylons. No part of the sign shall protrude more than 10 inches over a public or private right-of-way.
- I) **Landmark sign.** A landmark sign is a sign of artistic or historic merit, uniqueness or extraordinary significance to the town. The character of these signs warrants their preservation in original condition or their restoration. Any necessary restoration should follow the preservation guidelines outlined by the Lee Historical Commission and by its approval prior to a sign permit being issued.
- J) **Municipally controlled directory sign board (MCDSB).** Sizes, shape, colors, placement and other relevant issues will be determined by regulations set up and adjusted as necessary

by the Board of Selectmen, after consultation with the Town Administrator, Board of Public Works, Planning Board and Sign Officer.

- K) **Political.** A political sign is a sign designed to influence the action of voters for the passage or defeat of a measure or the election of a candidate to a public office at a national, state or local election.
- (1) Such signs are permitted if they are stationary, unlighted and temporary. Such signs shall be displayed no earlier than 20 days prior to a voting day and shall be removed within five days after a voting day.
  - (2) Such signs may not exceed four square feet in area. A maximum of two signs per lot is allowed.
- L) **Public service.** A public service sign is a sign located for the purpose of providing direction toward or indication of use not readily visible from the street (e.g., restrooms, telephone, etc.).
- (1) Such signs necessary for public safety and convenience shall not exceed two square feet. Such signs are not included in computing total sign area allowed.
  - (2) Such signs shall bear no advertising.
- M) **Window display sign.** A window display sign is any sign which is mounted onto a windowpane or which is hung directly inside the window with the purpose or effect of identifying any merchandise or products for sale, visible from the sidewalk or street. Window signs that are of the exposed-gaseous-tube type shall not exceed 25% of the window in which they are displayed. Permanent merchandise display signs hung inside windows shall be made of clear materials, such as Plexiglas, with lettering painted on them.
- N) **Signs for nonprofits:** All signs for nonprofit organizations regardless of size, construction, location and duration that are approved by town's temporary sign granting authority. See Section 7.6 (A)(2).

## 7.8 DISTRICTS AND SPECIAL REGULATIONS

Comment [BD57]: FROM § 199-28 (G)

- A) **R20, R30, RA-40, CR and RM District requirements.** The following signs are permitted on the premises:
- (1) Any signs listed as by right. [See Section 7.4 (A) of this section]
  - (2) One sign not over six square feet in area and located 10 feet from the public right-of-way line or attached to the building to advertise an approved professional, artisan or home occupation.
  - (3) Illumination standards. [See Section 7.4 (F) of this section.]
  - (4) In District RA-40, signs are permitted to identify a farm or nursery, including the sale of natural products grown in the Town of Lee.
    - (a) Two signs no greater than six square feet in size will be allowed.
    - (b) The highest point of the sign can be no greater than 10 feet above ground and at least 10 feet from the public right-of-way.

B) **I, BM, RB and CBC District requirements.** The following signs are permitted on the premises:

- (1) Those signs permitted in Section 7.8 (A) of this section.
- (2) One sign on the building advertising the business or businesses carried on within the building. Such sign shall be limited in total area to two square feet for each horizontal running foot of the side of the building displaying the sign. In no case will the total signage of the building exceed 100 square feet.
- (3) Any building with more than 100 linear feet facing the public right-of-way shall be allowed to have a second building sign, provided that the total signage does not exceed 100 square feet.
- (4) Business buildings on corner lots may have two building signs, one sign on the building facing each roadside. The square footage of each sign shall not exceed two square feet per linear footage of the side it is mounted on. The total square footage of the building sign(s) shall not exceed 100 square feet.
- (5) One freestanding sign per property on a post or pylon will be allowed under the following conditions:
  - (a) The size of the sign for a single business will be no greater than 16 square feet. An additional eight square feet of signage will be allowed for each additional business on the property up to a maximum of 48 square feet.
  - (b) An additional six square feet will be allowed by right for standard accessory signs which are standard to the industries, such as vacancy/no vacancy, open/closed, dinner being served, credit card and AAA. Such signs must be securely attached to a post, pylon or sign or support structure as determined by the Sign Enforcement Official.
  - (c) In Zoning District I, the size will be no greater than 32 square feet per property.
  - (d) A lot with frontage of 300 continuous linear feet or more may have two freestanding signs not less than 100 feet apart.
  - (e) The sign will be a minimum of 15 feet from the public right-of-way line, and the highest point of the sign will be no greater than 25 feet above ground.
    - (i) In those locations where it is not possible to place a sign 15 feet from the public right-of-way line, the sign may be placed 1/2 the distance between the face of the building and the public right-of-way line.
    - (ii) Placement will be such that no portion of the sign will be over the public right-of-way line by more than 10 inches.
  - (f) The construction and setting methods to be employed on freestanding signs on posts or pylons that are greater than 10 feet at their highest point must be reviewed and certified for safety by the Sign Officer and shall have structural drawings and specifications, including foundations, submitted by a registered professional engineer.

- (g) When a business employs a sign on a post or pylon, it will still be allowed to have one additional sign. This sign may be on the building [see Section 7.8 (b) or may be a canopy sign [see Section 7.3 and Section 7.7 (C)].

C) **OPLI District requirements.** Refer to Section 10.1 (B)(5) (Signs and Sign Illumination).

D) **BM and DCBC Districts; municipally controlled directory sign board.** In the Business Multiple (BM) and Downtown Commercial Business Corridor (DCBC) Districts, a municipally controlled directory sign board (MCDSB) may be erected as a name-only directional sign to allow business and municipal uses located on Canal, Eaton, Elm, Railroad and East Center Streets to be readily identified from Main Street or Center Street (Route 20).

- (1) Corner of Main and Eaton Streets. The MCDSB will list businesses and municipal uses on Eaton and Railroad Streets from the intersection of Eaton and Railroad to the halfway point toward Elm Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (2) Corner of Eaton and Railroad Streets. The MCDSB will list businesses and municipal uses on Railroad Street. This sign will be placed so as to be visible from Eaton Street.
- (3) Corner of Main and Elm Streets. The MCDSB will list businesses and municipal uses on Elm and Railroad Streets from the intersection of Elm and Railroad to the halfway point toward Eaton Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (4) Corner of Center and Canal Streets. The MCDSB will list businesses and municipal uses on Canal Street. This sign will be placed so as to be visible from Center Street (Route 20).
- (5) Corner of Main and East Center Streets. The MCDSB will list businesses and municipal uses on East Center Street. This sign will be placed so as to be visible from Main Street (Route 20).
- (6) Corner of Main and School Streets; Main and Ferncliff Streets; Main and Academy Streets; Main and Franklin Streets; Main and Park Streets; High and Park Streets; and Park Place and Park Street. The MCDSB will list businesses and municipal uses not located on Main Street or Park Street. This sign will be placed so as to be visible from Main Street or Park Street.

E) **PCVC District requirements.** Refer to Section 10.2 (D) (Operating Center Signs).

F) **DCBC District requirements.** The following signs are permitted on the premises:

- (1) Those signs permitted in Section 7.8 (A) and Section 7.8 (B).
- (2) One main sign on the building for each business within the building, advertising the business or businesses carried on within the building. Such sign shall be limited to two square feet for each linear foot of the face of the building displaying the sign and not to exceed an overall size of 40 square feet. The building signs shall be constructed of wood or material of similar weight and density.
- (3) Business buildings on corner lots may have two building signs (of wood or material of similar weight and density), one sign on the building facing each roadside. The square footage of each sign shall not exceed two square feet for each linear footage of the face of

the business it is mounted on. The total square footage of the main sign shall not exceed 40 square feet and the second sign on the side of the business shall not exceed 20 square feet.

- (4) Awning signs shall be limited to lettering on the front vertical lip of a ground floor awning which names the business only. The letters shall not exceed eight inches in height.
- (5) Window signs which are painted on, incorporated into or affixed to the window, with the purpose or effect of identifying the business located within, are not to exceed 10% of the total glass area.
- (6) Signs identifying the name of the businesses, which are two-sided and installed at a right angle to the building facade, are limited to four square feet. These signs shall be placed at least seven feet above the pedestrian-way and may not project more than three feet from the building facade. These signs shall be securely mounted to the building to prevent movement in windy conditions. The signs shall be constructed on wood or material of similar weight and density.
- (7) Rear entrance signs will be allowed with the lettering not to exceed four inches in height to identify doorways for delivery personnel or eight square feet in the case of a rear entrance for customers. The signs shall be constructed on wood or material of similar weight and density.
- (8) As an alternative to a building sign, one free standing sign, installed between two wooden posts, no larger than sixteen (16) square feet is allowed. The sign shall be constructed of wood or material of similar weight and density and the high point of the sign shall not exceed eight (8) feet above the ground. The sign will be a minimum of fifteen (15) feet from the public right-of-way. If the fifteen (15) feet from the public right-of-way is not possible, the sign may be placed one-half (1/2) the distance between the face of the building and the public right-of-way. It may be externally illuminated by 100 watts on each side.

**Section 8. OFF-STREET PARKING**

Comment [BD58]: FROM ARTICLE 7

**8.1 PARKING FACILITIES REQUIRED**

Comment [BD59]: FROM § 199-39

Parking facilities off the street or highway right-of-way shall be provided to serve any building erected, moved or enlarged and all premises otherwise developed after the adoption of this chapter. Such facilities shall be sufficient to accommodate the motor vehicles of all occupants, employees, customers and other persons normally visiting such building or premises at any one time.

**8.2 LOCATION OF REQUIRED PARKING FACILITIES**

Comment [BD60]: FROM § 199-40

Required parking facilities shall be located on the same lot as the building or other use which they serve, except that upon the approval of the Planning Board required parking facilities may be located elsewhere, but not more than 300 feet from such building or use, measured in a straight line to the nearest space for vehicular parking.

Comment [BD61]: CHANGED FROM 200 to 300 PER VOTE AT PREVIOUS TOWN MEETING.

**8.3 MINIMUM AREA REQUIRED – GENERAL**

Comment [BD62]: FROM § 199-41

Unless otherwise specifically set forth herein or approved by the Planning Board, required parking facilities shall contain not less than the minimum areas set forth below, exclusive of driveways and ramps necessary for access. Rooftop or indoor parking may be included in the required area. Where one building is used for more than one use, parking requirements shall be computed for each use.

- A) **Dwellings:** 200 square feet for each dwelling unit.
- B) **Offices and permitted home occupations:** an area equal to twice the floor area used for such purposes.
- C) **Financial institutions, retail stores, personal service shops and similar business buildings:** an area equal to three times the floor area used for business, excluding storage.
- D) **Theaters, assembly halls or outdoor places of assembly:** 200 square feet for every three seats, plus 250 square feet for every person normally employed.
- E) **Restaurants:** an area equal to 200 square feet for every three seats, plus 200 square feet for every person normally employed.
- F) **Places of public assembly or public recreation not otherwise listed, nursing homes and convalescent homes:** 300 square feet for every three legal occupants, plus 300 square feet for every person normally employed.
- G) **Motels, hotels, lodging or boarding houses and hospitals:** 200 square feet for every guest or patient accommodated, plus 200 square feet for every person employed.
- H) **Funeral homes:** an area equal to three times the total floor space, exclusive of storage.
- I) **Industrial plants, wholesale establishments and similar buildings:** 300 square feet for every two persons normally employed.

**8.4 MINIMUM AREA REQUIRED - OFFICE PARK/LIGHT INDUSTRIAL DISTRICT**

Comment [BD63]: FROM § 199-41

All uses, both permitted and those allowed by special permit, shall provide parking as follows:



- A) **Office:** 200 square feet for every 250 square feet of floor area, exclusive of storage, service areas and stairs.
- B) **Light industrial and laboratories:** 300 square feet for every two employees who work on the largest shift.
- C) Provision shall be made for visitor parking through consultation with the Planning Board.

#### 8.5 SUPPLEMENTAL PARKING STANDARDS FOR PLANNED COMMERCIAL VILLAGE CENTER DISTRICT

Comment [BD64]: FROM § 199-41

The proposed center must comply with the parking and off-street loading requirements in Section 8.1 to Section 8.3 and Section 8.10 and the following standards:

- A) Parking areas may be located to the side or rear of the structure. No parking shall be permitted within the front yard setback of a Planned Commercial Village Center.
- B) To the extent feasible, parking areas may be shared with adjacent businesses.
- C) A reduction in parking space requirements, based on industry standards, is permitted for a Planned Commercial Village Center with the approval of the Planning Board, provided that there are no fewer than four spaces per 1,000 square feet of retail space.

#### 8.6 SUPPLEMENTAL PARKING STANDARDS FOR DOWNTOWN COMMERCIAL BUSINESS CORRIDOR DISTRICT

Comment [BD65]: FROM § 199-41

- A) A twenty-percent reduction in the number of required parking spaces is allowed in the DCBC District when facilities are shared between two properties.
- B) No parking will be allowed in the front yard setback of any structure in the DCBC District.

#### 8.7 SUPPLEMENTAL PARKING STANDARDS FOR COMMERCIAL BUSINESS CORRIDOR (CBC) DISTRICT

Comment [BD66]: FROM § 199-41

- A) A twenty-percent reduction in the Number of required parking spaces is allowed in the CBC District when facilities are shared between two properties.
- B) Parking in the front yard setback will be permitted only by special permit of the Planning Board in the CBC District.
- C) In the CBC District the size, location and screening of such parking spaces shall be approved by the Planning Board during the permitting process, giving due consideration to the neighborhood characteristic, emphasizing the need to concentrate parking in as unobtrusive a location on the side and rear of the property as possible. Surfacing of the drives and parking areas shall be all-weather surface. The parking area in a given property shall not exceed 50% of the area of the property not covered by buildings.

#### 8.8 SURFACING; LANDSCAPED STRIP

Comment [BD67]: FROM § 199-42

Required minimum parking facilities shall have adequate all-weather surfacing capable of allowing free and safe movement of all vehicles customarily using the facility. Where an off-street parking facility is adjacent to a street line, there shall be a landscaped strip between such street line and the balance of the

lot, which strip shall not be less than six feet wide in RA-40 and RB Districts and not less than three feet wide in other districts.

#### **8.9 COMMON DRIVEWAYS.**

Common driveways may be allowed with the approval of the Planning Board and review by the Board of Public Works. The common driveway length shall not exceed 750 feet. The minimum width shall be 18 feet. The common driveway shall be allowed to service two house lots which shall have legal access and frontage on an approved public way. The common driveway may never be used to satisfy zoning frontage to an approved road. A plan shall be recorded showing the easement, and the easement shall be recorded in the deed.

Comment [BD68]: FROM § 199-43

#### **8.10 LOADING FACILITIES.**

Adequate off-street loading facilities and space must be provided to service all needs created by new construction or new use in Industrial and OPLI Districts.

Comment [BD69]: FROM § 199-44

**Section 9. SUPPLEMENTAL USE REGULATIONS****9.1 REMOVAL OF EARTH MATERIALS**

- A) **Permitted Use in All Districts.** The removal of earth materials, such as loam, sand, gravel, clay or stone, shall be permitted in all districts when incidental to or required in connection with the following operations:
- (1) The erection of a building or any other construction for which a permit has been properly issued.
  - (2) Municipal or governmental construction or operation.
  - (3) The construction of a private road and grading in accordance with approved subdivision plans.
  - (4) Any accessory use incidental to a permitted use, including cultivation of land, planting, landscaping or drainage of land.
- B) **Special Permit Required.** The removal of earth materials may be permitted under other circumstances by the Board of Appeals subject to the following restrictions, which are not, however, applicable to existing quarry operations or their expansion or any existing industry in gravel or stone removal:
- (1) Removal of loam. The Board of Appeals may grant a special permit in any district for the removal of loam from any area, provided that no less than four inches of loam remains and provided, further, that the entire area disturbed is seeded with suitable cover crop or is put to cultivation.
  - (2) Removal of gravel, clay, sand or stone. The Board of Appeals may grant a special permit for the removal of gravel, clay, sand or stone in any district under the following conditions:
    - (a) The applicant shall submit a plan showing existing grades in the area from which the above material is to be removed, together with finished grades at the conclusion of the operation.
    - (b) The plan shall provide for proper drainage of the area of the operation during and after completion, and no bank shall exceed a slope of one foot of vertical rise in two feet of horizontal distance except in ledge rock. No removal shall take place within 20 feet of a property line, except that where the grade from a property line rises towards the lot where removal is to take place, material lying above the grade at the property line may be removed.
    - (c) At the conclusion of the operation or of any substantial portion thereof, the whole area where removal takes place shall be covered with not less than four inches of topsoil and seeded with a suitable cover crop, except where ledge rock is exposed.
  - (3) Before a special permit is granted under this section, the applicant shall post a bond with the Treasurer of the Town of Lee in an amount approved by the Planning Board as sufficient to guarantee conformity with the provisions of the permit issued hereunder.

**Comment [BD70]:** NEW SECTION CREATED TO ORGANIZE SUPPLEMENTAL USE REGULATIONS INTO ONE SPOT.

**Comment [BD71]:** FROM ARTICLE VIII

- (4) In issuing such special permit, the Board of Appeals may stipulate the hours of operation or impose other restrictions as it deems necessary.

## 9.2 MULTIPLE DWELLING DEVELOPMENTS

Comment [BD72]: FROM ARTICLE IX

### A) Special Permit Required.

- (1) The Board of Selectmen may grant, after a public hearing, under the provisions of MGL c. 40A, Section 4, a special permit for the construction of multiple dwellings in the districts as specified in Section 9.2 (K), subject to all applicable provisions of this chapter and the following special requirements.
- (2) Any application for a permit under this article shall be accompanied by such plans and information as are required herein or as may be reasonably required by the Board of Selectmen, Planning Board or Board of Health in order that the proposal of the applicant may be clearly understood and compliance with the provisions, intent and purposes of this chapter can be established.

### B) Location.

- (1) An applicant shall provide such maps, plans, drawings or reports as are necessary to indicate that the proposed development shall be so located as not to create traffic hazards and that essential community services shall be available and adequate for the development or that suitable provisions will be made assuring these services.

### C) Site Plan Required.

- (1) Any application for a special permit under this article shall be accompanied by a site plan as outlined in Section 13.3, Site plan review.

### D) Impact Statement.

- (1) Any application for a special permit under this article must be accompanied by an impact statement which details the probable effects of the proposed development on the following aspects of concern to the town:
  - (a) Load on municipal utilities or future demand for them.
  - (b) Increases in vehicular traffic and public safety.
  - (c) Attendance at public schools.
  - (d) Provision of housing for town residents and for persons of low and moderate income.
  - (e) Increases in municipal service costs.
  - (f) Land erosion, loss of tree cover and pollution of water.
  - (g) Disturbance of other aspects of the natural ecology.
  - (h) Harmony with the character of surrounding developments.
- (2) The developer will conduct a housing survey within 1/2 mile of the locus of the property to determine the number of multiple-family and single-family living units within said area. The addresses and number of multiple-family units at each location will be left with the application for a building permit. This data may be reviewed and verified by the Town Clerk and Building Inspector.

**E) Waiver of Requirements.**

- (1) Strict compliance with any of the foregoing requirements may be waived upon written request by the applicant to the Board of Selectmen, or the Board may waive strict compliance when, in the judgment of the Selectmen, such waiver is not contrary to the public interests and not inconsistent with the provisions, intent and purposes of this chapter.

**F) Access and Internal Ways.**

- (1) A multiple-dwelling development consisting of more than 40 dwelling units on the lot shall have a minimum of two access roadways from a public way. No access way shall be located within 30 feet of any property line in residential use. Within the development, vehicular and pedestrian circulation facilities shall be provided for safe and convenient use in accordance with reasonable site planning standards. All streets throughout the development shall conform to the standards as set forth in Chapter 241, Subdivision of Land, of the Code of the Town of Lee, except as waived by the Planning Board.

**G) Off-Street Parking.**

- (1) Off-street parking shall be provided in accordance with the provisions of Section 8 of this chapter, except that the minimum parking area per dwelling unit, if provided in a garage on the lot, may be reduced by 25%. No space shall be considered available for parking which reduces the effective width of a driveway providing access to more than one dwelling unit to less than 16 feet. Parking and play areas shall be so designated and located as to be safely and conveniently accessible from the buildings which they are intended to serve.

**H) Site Plan Review and Approval.**

- (1) Any multiple-dwelling development authorized under this article shall be subject to site plan review by the Board of Health, Conservation Commission and the Planning Board. The Board of Selectmen shall not render any decision on the application for a special permit unless and until:
  - (a) The Board of Health has approved those aspects of the development which come under its jurisdiction;
  - (b) The Planning Board has reviewed the site plan and has submitted its report with recommendations to the Selectmen, or until 30 days have elapsed without such report; and
  - (c) The Conservation Commission has made its report or until 30 days have elapsed without such report.
- (2) In considering the application for a special permit under this article, the Board of Selectmen will give serious consideration to the facts and information contained in the site plan and impact statement and to the reports and recommendations from the involved town boards and agencies.
- (3) The Planning Board and Conservation Commission may recommend and the Board of Selectmen may impose such additional reasonable conditions on any such development as they find necessary in the interests of the town and public health, safety and welfare,

including fencing, screening and greater setback requirements for the protection of abutting residential uses.

- (4) Any site plan may be revised by following the same procedure as required for the original approval.
- (5) A site plan, once approved, shall become a part of the permit.

**I) Certificate of Occupancy.**

- (1) No certificate of occupancy shall be issued for use of any building or structure or use of land under this article unless the building or structure is constructed or used or the land is developed or used in conformity with an approved site plan or any amendment of such plan. A certified copy of an as-built site plan must be filed prior to issuance of the certificate of occupancy.

**J) Bond Required.**

- (1) Unless the installation of public services and construction of common facilities, such as internal streets, walkways, parking and play areas, drainage, landscaping and screening, has been completed, no certificate of occupancy shall be issued by the Building Commissioner for any part of the development until the applicant shall have filed in the office of the Town Clerk a bond with surety satisfactory to the Selectmen and approved as to form and legality by the Town Counsel. Such bond shall be in an amount sufficient, in the judgment of the Department of Public Works, to secure the completion of such work in compliance with all applicable statutes, ordinances and regulations and in accordance with the approved site plan.

**K) Development Standards.**

- (1) See the Table of Dimensional Requirements for Multiple Dwellings.
- (2) No more than 12 dwelling units shall be provided for in any one building.
- (3) Multiple dwellings on the same lot shall be spaced at least 35 feet apart in the RM or BM District.
- (4) No dwelling unit in a multiple dwelling shall contain more than two bedrooms.
- (5) The minimum side yard requirements for any proposed multiple dwelling located on a lot which abuts a lot in residential use shall be increased by an additional 10 feet.
- (6) Multiple-dwelling units erected in a Business-Multiple Dwelling (BM) District as a part of the same structure which houses other permitted uses in this district shall comply with all yard requirements as set forth in the above-mentioned table for Residential-Multiple Dwelling (RM) District in regard to that portion of the structure which contains dwelling units.
- (7) The minimum area of developed playgrounds, recreational areas or other usable, suitably landscaped open space shall be at the rate of 500 square feet per bedroom.
- (8) Front yards and all open areas shall be suitably landscaped and maintained with grass, trees, shrubs or walks.
- (9) Every multiple dwelling must be connected to town sanitary sewer and water systems.

- (10) Standards and requirements set forth under Sections 9.2 (K)(6), (7) in this section may be modified or waived by the Board of Selectmen in the case of rehabilitation for multiple-dwelling use of buildings which existed at the effective date of this chapter.

### 9.3 BED AND BREAKFASTS USES

Comment [BD73]: FROM § 199-32

A) **Purpose.** Under the authority conferred by MGL c. 40A, as amended, and every other power and authority thereto pertaining, the Town of Lee adopts this section for the regulation of bed-and-breakfast uses in districts zoned as residential and to achieve the following purposes:

- (1) To encourage the utilization of oversized homes in residential zoning districts which, because of their size or functional obsolescence, are costly and/or difficult to maintain as private residences and to further provide an economic incentive to maintain and to rehabilitate older, larger, uneconomic or obsolete structures.
- (2) To maintain and preserve the residential character, integrity and neighborhood attributes of residentially zoned districts.
- (3) To regulate bed-and-breakfast uses to ensure sensitivity and compatibility with the surrounding neighborhoods in residentially zoned districts through minimizing adverse impacts on neighboring residential uses.
- (4) To strengthen the economic base of the Town of Lee by allowing bed-and-breakfast establishments and bed-and-breakfast inns and to reinforce residential neighborhood viability without reducing residential characteristics.

B) **Definitions.** As used in this section, the following terms shall have the meanings indicated:

**BED-AND-BREAKFAST COUNTRY INN:** A recognized commercial entity located in a nonresidential zone where its functions are permitted by right as defined by the provisions of this section in regard to the zoning district. Full food service may be provided as part of the amenities available.

**BED-AND-BREAKFAST ESTABLISHMENT:** A dwelling having a mixed use as a home for the residential owner and as guest lodging, with the lodging function often if not always superseding the home use. The home is to be the primary and legal residence of the owner. These dwellings would not be characterized as oversized or costly to maintain. The maximum number of guests that would be permitted at any one time is six. The maximum number of rooms for rent is three. The only food service for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

**BED-AND-BREAKFAST INN:** A dwelling having a primary use as guest lodging with a home function for the resident owner clearly secondary to the business of renting rooms. The home is to be the primary and legal residence of the owner. These dwellings would be characterized as oversized homes as noted in Section 9.3 (A)(1) of this section. The maximum number of guests that would be permitted at any one time is 20. The maximum number of rooms for rent is 10. The only food service for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

**HOMESTAY:** A dwelling the primary use of which is the private home for the residential owner, with lodging as a secondary use on an occasional basis. The home is to be the primary and legal residence of the owner. The maximum number of guests permitted at any one time is three. See Section 4.2 (A)(1)(d) of this chapter. The only food service for registered guests will be breakfast and high tea. High tea to be defined as an afternoon snack offered at no charge to guests.

C) **Applicability.** The provisions of this section shall apply to the alteration or construction or conversion of an existing structure to one of the facilities above defined in Section 9.3 (B) of this section for the purpose of operating guest rooms for overnight transient guests with the service of food as hereafter defined in a residential setting in residentially zoned districts.

D) **General Regulations.**

- (1) The Planning Board may grant a special permit in accordance with Section 13.4 of this chapter and in compliance with all other applicable provisions of this chapter for conversion of an existing residential structure to a bed-and-breakfast use in residentially zoned districts only (R-20, R-30, RA-40, RM and CR Districts) upon the conditions set forth hereafter.
- (2) Each special permit issued in accordance with the provisions of this section shall show due consideration of the purposes set forth above and shall contain the following conditions:
  - (a) Any bed-and-breakfast use shall require one off-street parking space for each guest room available for rent, one for the resident owner and one for each employee regularly employed.
  - (b) The size, location and screening of such parking spaces shall be approved by the Planning Board during the permitting process, giving due consideration to the residential neighborhood characteristic and emphasizing the need to concentrate parking in as unobtrusive a location on the property as possible. Surfacing of the drives and parking areas shall be all-weather surface. The parking area in a given property shall not exceed 50% of the area of the property not covered by buildings. No parking may be permitted within the setbacks as defined in the Table of Dimensional Requirements.
  - (c) Parking areas and exterior recreational facilities, such as swimming pools and tennis courts, if not located so as to be unobtrusive, shall be screened from view by plantings, fences or other suitable method approved by the Planning Board.
  - (d) All bed-and-breakfast facilities as defined above in Section 9.3 (B) may have one freestanding sign, the top of which may not exceed six feet in height above ground level. Signs for home stay uses shall not exceed four square feet in area. Signs for bed-and-breakfast establishments and bed-and-breakfast inns may not exceed six square feet in area. All sign areas are to be determined in accordance with Section 7.4 (E) of this chapter. Signage may include such accessory and directory signs as approved by the Planning Board. Illumination for all signs described shall be external and positioned so as not to pose a nuisance to traffic or neighboring properties. Signage for bed-and-breakfast country inns shall be regulated by the provisions of



## Section 7.

- (e) To the extent practicable, fire escapes or other outside stairways shall be located on the rear or side of the building and shall not be located on the side of the building that faces a street.
- (f) Two structures may be utilized as the bed-and-breakfast inn facility as long as an outbuilding is used for housing at the time of the special permit application.
- (g) Kitchen facilities will be permitted only in a single central unit to serve both the resident owners and the guests.
- (h) No special permit shall be granted to expand or increase in size the footprint of the building to provide for guestrooms. No significant change in the outward appearance of the home is permitted without review and endorsement of the Planning Board during a special permitting process.
- (i) No bed-and-breakfast facility as described above shall offer public restaurant service or service of alcoholic beverages. The only food service permitted is breakfast for registered guests.
- (j) No other in-home business shall be permitted in a facility that houses a permitted bed-and-breakfast operation.
- (k) The maximum stay for the transient guests is to be for two weeks. However, for 10% of the guests, averaged over a three-month period, three months will be permitted.
- (l) Exterior lighting shall be so directed or shaded as to prevent direct illumination of off-premises property. All external lighting, except for demonstrated security needs, shall be extinguished by 1:00 A.M. The lighting shall be shielded from casting illumination onto abutting properties.
- (m) There shall be no activity permitted that creates excessive noise or other disturbance to the neighborhood at any time and especially after 9:00 p.m. or before 7:00 a.m.
- (n) Applicants for special permits under the provisions of this section shall provide such sketches, drawings or plans necessary to illustrate beyond a doubt conformance to the requirements of this chapter. The Planning Board may, at its discretion, require plans to be prepared by registered land surveyors, architects or engineers to illustrate the special permit application for the benefit of the Board and other town entities, such as the Building Inspector and the Board of Health. Illustration required may include, but not be limited to, parking and driveway plan, room layout, sanitary facilities, kitchen facilities, percentage of parking as to open space, etc.
- (o) All bed-and-breakfast facilities described in Section 9.3 (B) above shall be connected to the water systems of the Town of Lee. All bed-and-breakfast facilities described in Section 9.3 (B) above shall either be connected to the sewer systems of the Town of Lee or be served by a septic system. New bed-and-breakfast operations served by an existing septic system or existing bed-and-breakfast establishments proposing to expand facilities shall not be granted approval for operation until the Health Department confirms compliance with inspection and/or design requirements as set

forth in 310 CMR 15.301, 302, 303, 352 and 414, State Environmental Code Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.

- (p) Any complaint of noncompliance with the conditions set forth in the special permit must be submitted to the Building Inspector, in writing, as soon as possible.
- (q) All bed-and-breakfast facilities shall conform to the applicable state standards in regard to building and health codes. Information on these codes is available from the Lee Town Building Inspector and/or the Tri-Town Board of Health.

#### 9.4 ADULT USES BY SPECIAL PERMIT FROM THE PLANNING BOARD.

Comment [BD74]: FROM §199-16 (C)

- A) **Purpose.** It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of adult entertainment establishments and sexually oriented businesses. Secondary effects have been shown to include increased crime, adverse impacts on the business climate, adverse impacts on property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. It is not the intent and purpose of this bylaw to legalize or in anyway encourage the sale, rental, distribution, or exhibition of obscene or other illegal activities or Materials.
- B) **Public Hearing.** Said permit will be considered only following a public hearing to be held within sixty-five (65) days after an application is received by the Town Clerk and the Planning Board.
- C) **Separation Distances.** Adult Uses may be permitted only when located outside an area that is situated at the following distances from the specified uses or zoning district boundaries listed below:
  - (1) Five Hundred (500') feet from the boundary of any other Adult Uses.
  - (2) Five Hundred (500') feet from any other zoning district corridor or boundary.
  - (3) Five Hundred (500') feet from the border of any residential property.
  - (4) Fifteen Hundred (1500') feet from the boundary of any school, child care or day care facility, or any church or place of worship.
  - (5) Three Hundred (300') feet from the boundary of any establishment licensed under M.G.L. Chapter 138, Section 12.
- D) **On Site Requirements**
  - (1) Parking will be in accordance with Section 8 the Off-Street Parking Section of this bylaw.
  - (2) All parking will be either on the side or rear of the structure.
    - (a) Parking areas will be screened along the front and sides of the parking area with evergreens at a minimum height of six (6') feet and spaced as defined in Section 9.4 (D) below.
    - (b) Parking areas will be lit with all lighting to be contained on property.

- (3) Screening and buffering. A five (5') foot wide landscaping buffer shall be provided along the side and rear of the property lines consisting of evergreens not less than six (6') feet in height and spaced as defined in Section 9.4 (D) below.
  - (4) All building openings, entries, and windows shall be screened in such a manner as to prevent visual access from the outside of the structure into the interior of the building.
  - (5) No Adult Use shall be allowed to display for advertising purposes any signs, placards, or other materials on the exterior of the building or in the interior of the building where they can be seen from the outside of the structure.
  - (6) Each business is allowed to have one sign that is sixteen (16) square feet in size with the highest part of the sign to be no higher than six (6') feet above the ground and not closer than fifteen (15') feet from the street right of way.
  - (7) Signs will be made out of wood or approved product that simulates wood and will be lit externally in such a way that all light is contained on the property.
  - (8) No wording or design of the sign shall be allowed that may be construed as having "lascivious intent" as defined in M.G.L. Chapter 272, Section 31.
  - (9) The front yard dimensions shall be a minimum of one hundred (100') feet from the right of way line of the roadway.
  - (10) With the exception of Adult Cabarets or Adult Motion Picture Theaters, Adult Uses may not exceed three thousand five hundred (3,500') feet of usable floor area.
  - (11) No Adult Uses shall be allowed to disseminate or offer for sale any adult material or paraphernalia to minors.
  - (12) No Adult Uses shall be allowed within a building containing other retail, consumer or residential uses.
  - (13) No Adult Uses shall be allowed in a shopping center, shopping plaza or mall.
- E) **Application.** The application under this section of the bylaw must be submitted in six (6) copies that are stamped and certified by an Architect or Engineer appropriately licensed within the Commonwealth of Massachusetts.
- (1) Ownership and background information. The application must include the following information:
    - (a) Name and address of the legal owner of the adult business as well as that of the building owner.
    - (b) Name and address of any person having a lawful ownership, equity, or security interest in the proposed establishment.
    - (c) A sworn statement that the applicant, business owner, building owner, manager, or any person having a lawful ownership equity, or security interest in the proposed establishment has never been convicted of violating provisions of MGL 119, Section 63 or MGL 272, Section 28, or received any violation notice while operating or owning any establishment licensed under MGL 138 Section 12.
    - (d) Site plan as part of the application process must show all buildings, parking spaces, driveways, rights of way, service areas, along with screening or landscaping plans;

and must include the distances from the nearest of each of the uses as listed in Section 9.4 (C) of this bylaw.

- F) **Findings.** The Planning Board may impose other reasonable conditions, safeguards, and limitations based on their review of the application.
- (1) Special Permit for Adult Uses will be issued only to those owners who are listed in the application.
  - (2) The Special Permit will not run with the land. Any change in the ownership structure will require a new Special Permit process.
  - (3) Any Adult Use Special Permit shall lapse within one year if the proposed structure is unoccupied or if construction has not been completed. This time period may be extended by vote of the Planning Board after a public hearing is held on this matter.
- G) **Severability.** The provisions of this section of the bylaw are severable. In the event that any portion of this section of the bylaw is determined to be invalid for any reason, the remaining provisions shall remain in effect and in full force.

#### 9.5 TRAILERS AND MOBILE HOMES.

Comment [BD75]: FROM § 199-26

No trailer or mobile home used for residential purposes shall be placed or affixed on a foundation within the limits of the town except:

- A) With a written permit by the Board of Selectmen and approved by the Board of Health for temporary residence or office use during the construction of a building on the premises. In no case shall the trailer be so occupied for a period exceeding six months from the date of the permit.
- B) A trailer may be stored by its owner in a garage or other accessory building or in the rear half of the lot owned by the owner of the trailer. Outside stored trailers may not be used for living and for business purposes.

#### 9.6 LAND OR STRUCTURES FOR CERTAIN RELIGIOUS OR EDUCATIONAL PURPOSES.

Comment [BD76]: FROM § 199-31

Comment [BD77]: CHANGED THE TITLE OF THIS SECTION. PRIOR TITLE WAS "USES PERMITTED IN ALL DISTRICTS."

The use of land or structures for religious purposes or 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 an educational corporation shall be permitted, subject to the following regulations:

- A) Maximum building height shall be 2 1/2 stories or 35 feet.
- B) Maximum building coverage shall be 10%.
- C) Setback. A one-hundred-foot buffer shall be provided surrounding the property, to be kept undeveloped except for entrance, exit roadway and parking facilities, provided that such parking shall be provided with screening from abutting properties and a landscaped strip at least 25 feet wide along any property boundary line.
- D) Major access driveways or private roads and major parking areas subject to frequent use day or night shall be paved. Private drives or roads are to be 18 feet wide and shall not exceed a grade of 7 1/2%.

- E) Parking areas shall be located within 200 feet of the building served.
- F) Parking requirements.
  - (1) Places of assembly. Theaters, assembly halls or outdoor places of assembly must have 300 square feet for every three seats, plus 250 square feet for every person normally employed.
  - (2) Classrooms and/or dormitories. The following shall be provided:
    - (a) Grades one to 10: one space for each staff member.
    - (b) Grades 10 to 12: one space for each staff member plus one space for every two students.
    - (c) College: one space for each staff member plus two spaces for every three students.

## 9.7 WIRELESS COMMUNICATIONS

Comment [BD78]: FROM ARTICLE XIV

- A) **Purpose.** The purpose of this by-law is to outline the special permitting process to site a wireless communication facility within the Town of Lee, while minimizing potential damage and adverse visual impacts of wireless communication facilities on adjacent properties, residential neighborhoods, and areas of historic or high scenic value; to allow the provision of necessary wireless communication services in an orderly way; and to promote shared use of existing facilities which reduce the need for new facilities.

### B) Definitions

**DISTANCE:** shall be measured on a horizontal plane.

**FAA:** shall mean the Federal Aviation Administration.

**FCC:** shall mean the Federal Communications Commission.

**HEIGHT:** shall be the distance measured from ground level to the highest point on the structure.

**NON-RESIDENTIAL STRUCTURE:** shall mean such structures as, but not limited to buildings, grain silos, and water towers, but does not include houses or apartments.

**WIRELESS COMMUNICATION BUILDING:** shall mean any building or shelter used to house equipment primarily for generating and detecting electromagnetic radiation and is an accessory to a wireless communications structure.

**WIRELESS COMMUNICATION DEVICE:** shall mean any antenna, appurtenance, wiring or equipment used on connection with the reception or transmission of electromagnetic radiation which is attached to a structure.

**WIRELESS COMMUNICATION STRUCTURE:** shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

- C) **Exemptions.** The following shall be exempt from this by-law:

- (1) Wireless communication facilities used for Town or State emergency services.
- (2) Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communications Commission and used solely for that purpose.
- (3) Wireless communication structures and devices used expressly for home Television and radio reception.

**D) General Guidelines.**

- (1) No wireless communication facility shall be erected, constructed, or installed without a special permit from the Planning Board.
- (2) Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- (3) Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification.
- (4) Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on site, and shall be used only for the housing of equipment related to this particular site.
- (5) Any change in use of the structure must be pre-approved by the Planning Board.

**E) Siting and Height Requirements.**

- (1) Setbacks.
  - (a) The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure.
  - (b) The minimum distance from any guy wire, anchor or brace to any property line or road right-of-way shall be equal to the length of the guy wire.
  - (c) The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
  - (d) The wireless communication structure shall be a minimum distance of three times the height from school buildings, including playgrounds and athletic fields, and abutting residences to prevent the structure from appearing to "tower" over, adversely affecting property values.
- (2) Height. The height shall be the minimum height necessary to accommodate anticipated and future use.
- (3) Wireless communication structures are encouraged on State lands, provided that said lands are not subject to the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts. If facilities predating this by-law exist on such lands, the shared use of such facilities is encouraged.
- (4) The wireless communication structure shall, when possible, be sighted off ridgelines and where their visible impact is the least detrimental to valuable historic and scenic areas. "Valuable" should be determined by any appropriate Town Board(s) and can be views

that the town has identified as scenic or views listed In the Massachusetts Dept. of Environmental Management, 1982.

- (5) No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing wireless communication structure can accommodate the Applicant's proposed wireless communication device. Evidence submitted to demonstrate that an existing structure cannot accommodate the Applicant's proposed device may consist of any of the following:
- (a) No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the Town of Lee and applicant's engineering requirements.
  - (b) Existing wireless communication structures or non-residential structures are not sufficient height to meet the applicant's requirements.
  - (c) Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be brought up to appropriate strength to support the proposed wireless communication device.
  - (d) The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
  - (e) The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable.
  - (f) The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

**F) Design Requirements.**

- (1) Wireless communication structures must be designed to accommodate the maximum number of users as technologically possible, and should be of monopole design.
- (2) There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.
- (3) All wireless communication devices shall be colored, molded, and/or installed to blend into structure and/or landscape. Preference should be given to placing antennas on existing structures.
- (4) The facility shall be fenced to control access.
- (5) Night lighting of the facility shall be prohibited unless required by the FAA. If required by FAA, a copy of the FAA permit requiring lighting should be submitted with the application.
- (6) There shall be a maximum of one parking space at each facility to be used in connection with maintenance of the site and shall not be used for the storage of vehicles or other equipment.

- (7) Existing on-site vegetation shall be preserved to the maximum extent possible.
- (8) Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.
- G) **Application Process.** Applications for a special permit for siting wireless communication facilities shall be filed in accordance with rules and regulations already established in the zoning by-law. The Planning Board shall hold a public hearing within sixty-five days of filing of an application and shall issue a decision within ninety days following the date of the public hearing.
  - (1) To Site a new wireless communication structure, the Applicant shall submit:
    - (a) Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200', where appropriate, on as many sheets as necessary to show the following:
      - (i) North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for the reviewing licensed engineer's seal.
      - (ii) Name and address of landowner and name and address of abutters.
      - (iii) Property lines and location of permanent structures or buildings within 500-foot radius of proposed wireless communication structure.
      - (iv) Existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contours at a maximum of 2-foot intervals and spot elevations at the base of all the proposed and existing structures.
      - (v) Vegetation to be removed or altered.
      - (vi) Plans for drainage of surface water and plans to control erosion and sedimentation, both during construction and as a permanent measure.
      - (vii) Delineation of wetlands, if any.
      - (viii) Location of wireless communication structure, including supports or guy wires, if any.
      - (ix) Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
      - (x) Plans for accessory buildings.
      - (xi) Layout and details of surfacing for access road and parking.
      - (xii) Amenities such as lighting, fencing, landscaping.
      - (xiii) Four view lines in a one to three-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals and additional view lines from any historic, scenic, or other prominent areas of Town determined by the Planning Board.
      - (xiv) Plans for a well or other water source, if any.
      - (xv) Plans for any septic system, if any.



- (xvi) Plans for maintenance of roads necessary to access and maintain the property.
- (b) A map showing areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
- (c) A locus map at a scale 1" = 1000' which shall show streets, buildings, and landscape features.
- (d) A description of the soil and surficial geology at the proposed site.
- (e) A narrative report written by the carrier and licensed professional engineer which shall:
  - (i) Describe the justification of proposed site.
  - (ii) Describe the structure and the technical, economic, and other reasons for the facility design.
  - (iii) Describe the capacity of the structure, including the number and the type of additional facilities it can accommodate.
  - (iv) Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - (v) Describe the projected future needs of the carrier, and how the proposed wireless communications facilities fit with the future projections to serve the Town and adjacent towns.
  - (vi) Describe leasing agreement should another carrier decide to co-locate.
  - (vii) Describe special design features to minimize the visual impact of the proposed wireless communication facility.
  - (viii) Describe in detail the steps which the carrier will follow in the event of an emergency, such as fire or collapse of the tower. In particular, what are the responsibilities of the carrier and how are the town officials to be notified for the safety of personnel, town and personal properties?
- (f) Proof of approval of all other necessary permits needed for construction and operation.
- (g) If the proposed facility is taller than zone height restriction, after the application is submitted, and not more than 14 days before the public hearing, the applicant shall arrange to fly a two-foot-diameter balloon at the site of the proposed wireless communication structure at the maximum height of the proposed installation. The date and location of the flight shall be advertised at least 14 days, but not more than 21 days before the flights, and again in the public hearing advertisement in a newspaper with a general circulation in the town.
- (2) To site a wireless communication device on existing wireless communication structures or non-residential structures, such as buildings, grain silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, the Applicant shall submit:

- (a) Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 35" sheets at a scale of 1" = 40' or 1" = 200' on as many sheets as necessary which show the following:
  - (i) North arrow, date, scale, the seal(s) of the licensed professional(s) who prepared the plans and a space for reviewing licensed engineer's seal.
  - (ii) Plans for supporting and attaching the device, including specifications of hardware and all other building material.
  - (iii) Building plans for accessory buildings, if any.
  - (iv) Layout and details of surfacing for access road and parking, if it is to be altered from existing condition.
- (b) A map showing the areas covered by proposed device(s) of different signal strengths and the interface with adjacent service areas.
- (c) A narrative report written by the carrier and licensed professional engineer which shall:
  - (i) Include a draft of the contract between the structure/building owner (whichever is appropriate) and the Applicant.
  - (ii) Demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such a device.
  - (iii) Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - (iv) Describe the projected future needs of the carrier and how the proposed facility fits with future projections.
  - (v) Describe in detail the steps, which the carrier will follow in the event of an emergency, such as fire or collapse of the tower. In particular, what are the responsibilities of the carrier and how are the town officials to be notified for the safety of personnel, town and personal properties?
- (d) Proof of all other permits needed for construction and operation.
- (e) If the proposed facility adds more than five feet to the height of the structure at the effective date of this by-law and will exceed zone height restrictions, the Planning Board may require a balloon test as described above in Section 9.7 (G)(1)(g).
- (3) 12 (twelve) copies of the above information shall be submitted along with the application form to the Planning Board.

#### H) **Approval.**

- (1) In granting a special permit for wireless communications facilities, in addition to the findings required by the Town's Zoning By-Law for Special Permits, the Town of Lee Planning board shall find:
  - (a) That the Applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this by-law have been met.

- (b) That the size and height of the structure is the minimum necessary.
  - (c) That the proposed wireless communication facilities will not adversely impact historic structures, scenic views, or residential neighborhoods.
  - (d) That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location of the proposed wireless communication facilities, including co-location, that would minimize their impact, and the applicant has exercised good faith in permitting future co-location of facilities at the site.
- (2) When considering an application for wireless communication facility, the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and will encourage the use of existing structures.
  - (3) Any extension or construction of new or replacement towers or transmitters shall be subject to the Special Permit, following the same procedure as siting a new wireless communication device.

**I) Conditions of Use**

- (1) An initial bond shall be posted by the applicant to cover construction costs and removal cost of facility in the event of non use and annual maintenance bond for the access road, site, and structure(s) in an amount approved by the Planning Board. An access road may include existing town roads not designed for heavy traffic and which are not paved.
- (2) Regulatory Compliance.
  - (a) Annual certification demonstrating structural integrity and continuing compliance with current standards of the FCC, FAA and the American National Standards Institute shall be filed with the Building Inspector by the Special Permit Holder, and shall be reviewed by a licensed professional engineer hired by the town and paid for by the Special Permit Holder.
  - (b) If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within six months or earlier if a more stringent compliance schedule is included in the regulation.
  - (c) Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, and devices at the owner's expense.

**J) Removal and Repair.**

- (1) An applicant must either file a performance bond or a deposit of money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost of removal with the Town of Lee Planning Board agreeing to remove, within 180 days of notice from the town, the wireless communication facility not in operation for a period of twelve months, unless the reason for non-operation is the result of major damage. The board may hire professional consultants to determine the amount of bond or security required. Such bond or security, if filed and deposited, shall be approved as to form and manner of execution by Town Counsel, and shall be contingent on the completion of repairs or removal.

- (2) If the facility is not removed within 180 days, the town will remove said facility at the owner's expense.
- (3) In the event of major damage, repair must begin immediately or as soon as possible. Major damage shall mean damage to the facility caused by no fault of the owner or operator.

## 9.8 RESORTS

Resorts are subject to the following special regulations:

- A) The minimum area for such use shall be 200 acres;
- B) The minimum setback of all buildings or structures and unenclosed recreational and off-street parking areas from any adjacent property line shall be 100 feet;
- C) Off-street parking shall be provided on the premises for maximum use of all facilities;
- D) No public address system shall be permitted except when such system is inaudible at any property line;
- E) The resort shall comply with the Board of Health regulations pertaining to on-lot sewage disposal systems and water supply and any other laws and regulations regarding the establishment and maintenance of such use; and
- F) No special permit shall be issued for the establishment or expansion of such use unless the site plan has been reviewed by the Planning Board and Conservation Commission and approved, in writing, by the Board of Health and the Board of Selectmen.

**Comment [BD79]:** FROM § 199-9 (A)(4)

## 9.9 WIND ENERGY FACILITY BYLAW

### A) Purpose & Applicability

- (1) The purpose of this bylaw is to outline the special permitting process for and encourage the responsible development of the town's wind energy resources. By providing standards for the design, placement, construction, monitoring, modification and removal of wind energy facilities this bylaw is intended to address public health and safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurances for decommissioning.
- (2) This bylaw applies to all wind energy facilities to be constructed after the effective date of this bylaw. This bylaw also applies to physical modifications to any existing wind energy facility that materially alter its type, number, location, height or configuration.

### B) Definitions

**Fall Zone** – The area on the ground measured from the base of the tower that forms a circle with a radius equal to 1.5 times the height of the wind energy facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**Height** – The height from the existing grade of the fixed portion of the tower to the blade tip of the turbine at the highest point of its rotation or the highest point of the wind energy facility.

**Comment [BD80]:** THIS TEXT WAS ADOPTED AT A PREVIOUS TOWN MEETING AND IS BEING INCORPORATED INTO THE BYLAW.

**Large Wind Energy Facility** – A wind energy facility with a height greater than two-hundred feet (200').

**Meteorological Tower** – A tower used for supporting anemometers, wind vanes and other equipment to assess wind resources at a predetermined height above ground.

**Nacelle** – The frame and housing at the top of the tower that encloses the gearbox and generator to protect them from weather.

**Rotor** – The blades and hub of the wind turbine that rotate during turbine operation.

**Small Wind Energy Facility** – A wind energy facility with a height of less than two-hundred (200') feet.

**Wind Energy Facility** – All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, stormwater control measures, access roads and other appurtenant structures, facilities and equipment.

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

C) **Use Regulations.** No wind energy facility shall be erected, constructed, or installed without first obtaining a special permit from the Planning Board. Physical modifications to an existing wind energy facility that materially alter its type, number, location, height or configuration shall also require a special permit from the Planning Board.

D) **General Requirements**

- (1) **Compliance.** The construction, operation, modification and removal of all wind energy facilities shall comply with all local, state and federal laws.
- (2) **Site Control.** The applicant shall demonstrate actual control over and legal access to the proposed site sufficient to allow for the construction and operation of a wind energy facility.
- (3) **Utility Notification** The applicant shall demonstrate the utility company that controls the electric grid in the area of the proposed site has been informed of the applicant's intent to install an interconnected wind energy facility. Off-grid wind energy facilities shall be exempt from this requirement.
- (4) **Operation & Maintenance.** The operator(s) of a wind energy facility shall maintain the facility in good condition. The applicant shall submit an operation and maintenance plan for the anticipated life expectancy of the wind energy facility, showing how the operator(s) will inspect and maintain the wind energy facility in good condition.
- (5) **Inspection Reports** The operator(s) of a wind energy facility shall submit inspection reports to the Building Official every five (5) years. The inspection report must be completed by a licensed professional structural engineer.

- (6) **Unsafe Structure** Should the inspection of any wind energy facility reveal structural defects or safety concerns that in the opinion of the licensed professional structural engineer render the wind energy facility unsafe, the following actions must be taken. At the discretion of the Building Official, the operation of the wind energy facility shall be terminated until the structural defects and/ or safety concerns have been addressed. Within thirty (30) business days of notification of an unsafe structure, the operator(s) of the wind energy facility shall submit a plan to remediate the structural or safety defects to the Building Official. Failure to remediate the structural or safety defects within six (6) months from the date of initial notice shall be a violation of the special permit and subject to the penalties and fines as allowed by law. Such penalties and fines shall be payable by the operator(s) until compliance is achieved.
  - (7) **Contingency Plan.** The applicant shall submit a contingency plan that outlines the protocols to be followed to mitigate unacceptable adverse impacts to the town, its residents and the environment. At a minimum, the plan shall include mitigation steps to address the possibility of excessive noise, excessive shadow & flicker and excessive wildlife injuries or mortalities as determined by the state or federal agency with jurisdiction over the impacted species.
  - (8) **Liability Insurance** The owner of the wind energy facility shall obtain and keep current insurance policy or policies, against loss or damage to persons or property, including personal injury or death resulting from the construction, operation and decommissioning of the wind energy facility. The Planning Board shall determine the minimum amount of liability insurance required. The owner of the wind energy facility shall provide the Planning Board with proof of liability insurance, in the amount determined by the Planning Board, prior to the issuance of a building permit and on an annual basis thereafter.
  - (9) **Removal Plan & Cost Estimate.** The applicant shall submit, as part of the special permit application, a detailed plan for the removal of the wind energy facility and restoration of the site to its pre-existing condition upon abandonment or decommissioning. The removal plan shall be certified by a licensed professional engineer and include a detailed estimate of the anticipated removal and site restoration costs that includes a mechanism to account for inflation.
- E) **Financial Surety.** The owner(s) of the wind energy facility shall provide the Planning Board with financial surety for the following purpose prior to the issuance of a building permit. The Planning Board may require that a qualified consultant, chosen by the Town and paid for by the applicant, give the estimate of the dollar amount of the surety to be posted. All surety, if filed and deposited, shall be approved as to form and manner of execution by Town Counsel.
- (1) Surety to ensure that the wind energy facility project site is properly stabilized to protect downslope properties and public ways. The amount and form of surety shall be determined by the Planning Board.
  - (2) Surety to cover possible damage to public ways and public lands damaged during the transportation of the wind energy facility components. The amount and form of surety shall be determined by the Planning Board.

- (3) Surety to cover the cost of removal of the wind energy facility and the restoration of the site in the event the town must remove the wind energy facility and restore the site. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed one-hundred twenty-five (125%) percent of the total estimated cost of removal.
- (4) No less than ninety (90) days prior to the expiration of any financial surety required by this bylaw, the current owner(s) of the wind energy facility shall provide the Planning Board with renewed, extended or replacement financial surety.

**F) Design Standards**

- (1) **Meteorological Towers.** All meteorological towers shall be setback at least 1.5 times its height from all public ways and off-site buildings. No meteorological tower shall exceed four-hundred twenty (420') feet in height.
- (2) **Height.** No wind energy facility shall exceed four-hundred twenty (420') feet in height.
- (3) **Appearance.** All wind energy facilities shall be finished in a neutral (white or gray) non-reflective color to minimize visual impacts.
- (4) **Signage.** Signs listing the 24-hour contact information of the wind energy facility operator shall be installed in an easily accessible and noticeable location at the wind energy facility site. All signs shall comply with the Town of Lee sign bylaw Section 7. Sign locations may be determined by the Planning Board.
- (5) **Lighting.** A wind energy facility shall contain a beacon light or lights as required by the Federal Aviation Administration (FAA). A wind energy facility may include lights necessary for the safe operation of the large wind energy system. All operational lighting shall be directed downwards and screened from roadways and abutting properties.
- (6) **Shadow/Flicker.** No wind energy facility shall cause more than thirty (30) shadow/flicker hours per year on any off-site inhabited building or undeveloped lot. In calculating the number of shadow/flicker hours per year, the applicant may incorporate sunshine probabilities and meteorological data when calculating the shadow/flicker hours per year. The Planning Board may allow more than thirty (30) shadow/flicker hours per year on an off-site inhabited building or an undeveloped lot only if written permission is granted by all individuals or entities with control over the affected real property.
- (7) **Appurtenant Structures & Equipment.** All appurtenant structures, and equipment shall comply with the dimensional requirements of the underlying zoning district, including but not limited to setbacks and height.
- (8) **Noise Regulations.** All wind energy facilities and appurtenant equipment shall comply with the provisions of the Massachusetts Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10).
- (9) **Setbacks.**
  - (a) No wind energy facility shall be located within the following distances from the nearest off-site inhabited building in existence on the date the application to construct a wind energy facility is received by the Planning Board.

- (b) For a wind energy facility consisting of a single tower: three (3) times the height of the wind energy facility measured from the base of the tower nearest the property in question.
  - (c) For a wind energy facility consisting of two or more towers: one-quarter mile (1320) feet measured from the base of the tower nearest the property in question.
  - (d) All wind energy facilities shall be set back a distance equal to one and one-half (1.5) times the height of the wind energy facility from property lines, on-site inhabited buildings, public rights of way and recreational trails. The Planning Board may reduce the setback requirement from property lines, if written permission is granted by all individuals or entities with control over the affected real property.
- (10) **Unauthorized Access.** All wind energy facilities shall construct security barriers to prevent unauthorized persons from gaining access to the facility.
  - (11) **Emergency Response Access.** The wind energy facility and access roads shall be constructed and maintained to allow for safe access at all times by local emergency vehicles. Local public safety officials shall be provided with the ability to access the system as needed to respond to emergencies.
  - (12) **Stormwater Management.** All stormwater controls installed at the wind energy facility site and on associated roadways shall be constructed and managed according to the Massachusetts Stormwater Policy.

**G) Large Wind Energy Site Assessments**

- (1) **Balloon/Crane Test.** After the application is submitted, and not more than fourteen (14) days before the public hearing, the applicant shall arrange to fly a brightly colored four-foot diameter balloon at the site of the proposed wind energy facility at the maximum height of the wind energy facility. A balloon shall be flown for each proposed wind turbine and each balloon shall contain a beacon light similar in color and output to the beacon light to be required by the FAA. The balloons shall be flown for a period of time to be determined by the Planning Board. The date and location of the flight shall be advertised at least fourteen (14) days, but no more than twenty-one (21) days, before the flights, and again in the public hearing advertisement in a newspaper with a general circulation in the town. If visibility and weather conditions are inadequate for observers the Planning Board may require additional tests.
- (2) **Sight Line Simulations.** The Planning Board shall select up to five (5) locations from which the applicant shall conduct and submit sight line simulations from the chosen locations to the proposed wind energy facility site. All simulations shall be in color and provide an accurate representation of the height, width and breadth of the proposed wind energy facility.
- (3) **Noise Analysis.** The applicant shall submit the results of a noise analysis to the Planning Board. The noise analysis shall be conducted in accordance with industry standards and certified by a qualified independent acoustical engineer. The noise analysis shall contain sufficient information for the Planning Board to determine whether the operation of the proposed wind energy facility will comply with Massachusetts Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10).



In completing the noise analysis, the acoustical engineer shall consider the unique topography of the surrounding area, both daytime and nighttime ambient noise levels, seasonal conditions, nearby residences, prevailing wind direction and atmospheric conditions, such as high wind shear or thermal inversion that may affect the propagation of sound emitted from the wind energy facility. The noise analysis shall also analyze and discuss the anticipated impacts of low frequency noise emitted from the wind energy facility.

- (4) **Shadow/Flicker Analysis.** The applicant shall conduct a shadow/flicker analysis and submit its findings to the Planning Board. The analysis shall include a detailed discussion of the anticipated shadow/flicker impacts for all off-site inhabited buildings and undeveloped lots estimated to receive thirty (30) or more shadow/flicker hours per year – worst case scenario. At least fourteen (14) days prior to the public hearing, the applicant shall notify, by certified mail, all the owners of off-site inhabited buildings and undeveloped lots expected to receive thirty (30) or more shadow/flicker hours per year – worst case scenario. The applicant shall submit proof of notification to the Planning Board.
- (5) **Avian & Bat Species Analysis.** The applicant shall submit the results of an avian and bat species analysis to the Planning Board. The avian and bat species analysis shall be conducted and certified by a qualified independent wildlife biologist. The avian and bat species analysis shall contain sufficient information to fully characterize and determine the risk posed by the proposed wind energy facility to avian and bat species. Applicants shall comply with the most recent US Fish & Wildlife Service Wind Turbine Guidelines Advisory Committee Recommended Guidelines: Recommendations on developing effective measures to mitigate impacts to wildlife and their habitats related to land-based wind energy facilities, when planning and conducting studies to meet the requirements of this section. For one year following the onset of the wind facility operation, the operator shall conduct monitoring of bat and avian species injuries and mortality. The monitoring will be conducted by a professional approved by the Planning Board and reported to the Board at the end of the first year of operation.
- H) **Application Procedures.** Upon receipt of a complete application for a wind energy facility, the Planning Board shall review and take action upon the application in accordance with the special permit procedures set for in Section 13.4 and this section.
- I) **Consultant Review.** Upon submission of an application for a wind energy facility special permit, the Planning Board will be authorized to hire independent consultants at the applicant's expense, pursuant to M.G.L. Chapter 44, Section 53G, to assist the Planning Board with its review of the application.
- J) **Reasonable Conditions & Mitigation.** The Planning Board may impose reasonable conditions, safeguards and limitations on time of use of the facility and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind energy facility should they occur.
- K) **Application Requirements.** The applicant shall submit the following required information as part of the application for a wind energy facility Special Permit. All site plans shall be

signed and sealed by a registered land surveyor in consultation with a licensed professional engineer.

- (1) **Contact Information.** Name, address, phone number, e-mail and signature of the applicant, as well as all co-applicants and property owners, if any and the name contact information and the signature of any agents representing the applicant.
- (2) **Site Identification.** Identify the location of the proposed wind energy facility. Provide the street address, if any, and the tax map and parcel number(s).
- (3) **Location Map.** A relevant portion of the most recent USGS Quadrangle Maps at a scale of 1" = 25,000' or similar scale showing the proposed wind energy facility site, associated roadways, transmission lines and the area within at least a five mile radius of the proposed site.
- (4) **Vicinity Map.** A map of the proposed wind energy facility site at a scale of 1" = 300' or similar scale, with existing contour intervals no greater than ten (10') feet showing the entire area within a ½ mile radius of the proposed wind energy facility and shall include:
  - (a) Existing topography, public and private roads, recreation trails, property lines of all lots, structures including their use, historic site, cultural sites, wetlands, known bat hibernacula, known critical habitat areas, other environmentally sensitive areas, location of existing and proposed electric distribution lines, transformers, substations, and access easements.
- (5) **Site Plan.** A site plan with a scale of 1" = 40', unless otherwise noted with contour intervals no greater than two (2') feet showing the following:
  - (a) Property lines of the proposed wind energy facility site and adjacent parcel within two (2) times the height of the wind energy facility.
  - (b) Outline of all existing structures, including their uses, located within two (2) times the height of the wind energy facility with the exact distances to the base of the nearest turbine listed.
  - (c) Existing and proposed public and private roads, driveways, and recreational trails within two (2) times the height of the wind energy facility.
  - (d) Representations, dimensioned and to scale, of the proposed wind energy facility including, but not limited to, tower foundations, guy anchors, cable locations, associated equipment and structures, fencing, electric distribution infrastructure, parking and access roads.
  - (e) All proposed changes to the existing site, associated roadways and transmission lines, including but not limited to areas of temporary clearing, areas of permanent clearing, areas of grading, and areas of cut and fill.
  - (f) Delineation of all wetland resource areas and buffers on the proposed wind energy facility site, associated roadways and transmission lines.
  - (g) Location of known habitat areas for rare species, endangered species and species of special concern.

- (h) A cross section of the proposed access road indicating its width, crown, depth of gravel, drainage, and paving or other surface material.
- (6) **Elevations.** Siting elevations or views at grade from north, south, west and east for a distance equal to 1.5 times the height of the wind energy facility. Elevations shall be at one quarter inch equals one foot or similar scale and showing the following:
  - (a) The proposed wind energy facility, associated equipment, existing and proposed structures, and security barriers with total elevation dimensions.
  - (b) Existing and proposed trees and shrubs at the time of application with approximate elevations dimensioned.
- (7) **Technical Information.**
  - (a) Documentation of the wind energy facility's stated nameplate capacity, manufacturer, model number, tower height, rotor diameter, braking mechanisms, other safety mechanisms, tower type, color, foundation type and foundation dimensions.
  - (b) One or three line electrical diagram detailing the wind energy facility, associated components and electrical interconnection methods with all National Electrical Code compliant disconnects and overcurrent devices.
- (8) **Stormwater Control Plans.** Engineering plans showing the drainage of surface water and detailed plans to control erosion and sedimentation, during construction and as a permanent measure, which show conformance to the Massachusetts Stormwater Policy.
- (9) **Transportation Plans.** A written transportation plan discussing the anticipated transportation issues created by the transportation of the wind energy facility components, which shall include the following:
  - (a) A map showing the anticipated transportation route commencing at the Massachusetts state line.
  - (b) All locations in the Town of Lee where land alterations and clearing of vegetation will be required, regardless of ownership, including the approximate square footage of each land alteration and clearing.
  - (c) A detailed list of all bridges and culverts to be crossed in the Town of Lee during the transportation of the wind energy facility components that include the applicable width and weight restrictions of each bridge and culvert.
  - (d) Detailed site plans for all anticipated road, bridge, or culvert alterations in the Town of Lee along the anticipated transportation route, regardless of ownership.
  - (e) A list of the anticipated combined weight of the delivery vehicles and cargo.
  - (f) A list of the turning radii of the delivery vehicles with cargo.
  - (g) All anticipated road closures and traffic disruptions including those that may affect emergency response vehicles, and plans to manage, in cooperation with local and state officials, these road closures and traffic disruptions.
- L) **Waiver.** Upon written request of the applicant, the Planning Board may waive any of the application requirements contained Section 9.9 (K), as the Planning Board, at its discretion, deems appropriate.

**M) Damage to Public Ways & Public Lands.** The applicant shall be responsible for the cost of repairing any damage to public and/or private ways and public and/or private lands in the Town of Lee in connection with the transportation, construction, operation, maintenance and decommissioning of the wind energy facility.

- (1) In furtherance of this section, an independent licensed professional engineer, paid for by the applicant and selected by the Town, shall document the condition of all public and/or private ways and public and/or private lands along the anticipated transportation route prior to the transportation of any wind energy facility.
- (2) Within thirty (30) days after all wind energy facilities components have been transported, the independent licensed professional engineer, paid for by the applicant and selected by the Town, shall re-document the condition of all public and/or private ways and public and/or private lands along the actual transportation route to determine whether the public and/or private ways and public and/or private lands have been damaged by the applicant and if so, the total cost to repair such damage. The applicant is responsible for the total cost of all repairs even if this exceeds the amount of the surety held by the Town.

**N) Abandonment & Removal of Large Wind Energy Facilities**

- (1) The most recent wind energy facility owner(s) shall remove the wind energy facility, at the end of its useful life or when it is abandoned, and restore the site in accordance with facility's previously submitted removal plan. The most recent operator shall notify the Building Official by certified mail of the proposed date of discontinuance. Without notice of a proposed date of discontinuance, the wind energy facility shall be presumed to be abandoned if it is not operated for a period of six (6) months.
- (2) After six (6) months of non-operation, the Building Official shall issue a written notice of abandonment to the most recent owner(s). The most recent operator or current owner(s) shall have thirty (30) days to rebut the presumption of abandonment by submitting information to the Building Official that demonstrates that wind energy facility has operated within the six (6) month period or the wind energy facility will return to operation at a date specified not to exceed one year. If the most recent operator or owner(s) does not submit any information to the Building Official or the wind energy facility has not been returned to operation within one year from the date of the written notice of abandonment it shall be deemed abandoned.
- (3) The most recent owner(s) shall physically remove the wind energy facility and restore the site within one-hundred eighty (180) days from the date of discontinuance or abandonment. If the most recent owner(s) fails to remove the wind energy facility within the one-hundred eighty (180) day period, the town shall have the right to enter onto the site and physically remove the wind energy facility and restore the site at the sole expense of the most recent owner(s).

**O) Lapse of Approval.** Any Special Permit approved to construct, operate or modify a wind energy facility pursuant to this bylaw shall automatically expire if:

- (1) The wind energy facility is not installed and operating within two (2) years from the date of approval; or

(2) The wind energy facility becomes abandoned or discontinued.

- P) **Violation.** It is unlawful for any person or entity to construct, install, modify or operate a wind energy facility that is not in compliance with this bylaw or with any condition contained in a Special Permit, issued pursuant to this section
- Q) **Penalties.** Any person or entity that fails to comply with any provision of this bylaw or any condition contained in a Special Permit, issued pursuant to this section shall be subject to enforcement and penalties as allowed by applicable law.
- R) **Severability.** The provisions of this bylaw are severable, and the invalidity of any section, subdivision, subsection, paragraph or other part of this bylaw shall not affect the validity or effectiveness of the remainder of this bylaw.

**9.10 \*\*RESERVED\*\***

**9.11 \*\*RESERVED\*\***

**Section 10. SUPPLEMENTAL DISTRICT REGULATIONS**

**Comment [BD81]:** NEW SECTION CREATED IN ORDER TO GROUP SUPPLEMENTAL REGULATIONS THAT PERTAIN TO AN INDIVIDUAL DISTRICTS

**10.1 OFFICE PARK & LIGHT INDUSTRY**

**Comment [BD82]:** FROM ARTICLE XI

**A) Site Plan Approval Required; Storage; Accessory Uses.**

- (1) All uses within an Office Park and Light Industrial (OPLI) District are subject to a site plan approval in accordance with Section 13.3.
- (2) All storage areas shall have the necessary facilities to protect the environment from leakage and drainage of any noxious or harmful liquids from such storage.
- (3) All outdoor storage shall be screened so that it is not visible from adjacent streets and drives or adjacent properties within 50 feet of the property line of the lot on which the storage occurs.
- (4) Accessory uses not contained in the principal building shall be provided with safe access and shall be in a structure of an architectural style compatible with the principal structure or screened from view from a public way.

**B) Design Standards.**

- (1) **Access.** The number of curb cuts on state and local roads shall be minimized.
  - (a) To the extent feasible, access to businesses within the industrial park shall be provided via one of the following:
    - (i) Access via a common driveway serving adjacent lots or premises.
    - (ii) Access via an existing side street.
    - (iii) Access via a cul-de-sac or loop road shared by adjacent lots or premises.
  - (b) One driveway per business shall be permitted as a matter of right. When deemed necessary by the Planning Board, two driveways may be permitted as part of the site plan approval process, which shall be clearly marked "entrance" and "exit."
  - (c) Curb cuts shall be limited to a minimum width of 18 feet, for safe entering and exiting, and shall in no case exceed 24 feet in width.
  - (d) The proposed development shall assure safe interior circulation within its site by separating pedestrian and vehicular traffic, as needed.
- (2) **Road Standards.** See Chapter 241, Subdivision of Land, of the Code of the Town of Lee.
- (3) **Landscaping.**
  - (a) A coordinated landscape design for the entire project shall be reviewed by the Planning Board. Emphasis shall be on maintaining naturally vegetated buffers.
  - (b) Natural vegetation shall be maintained within the fifty-foot buffer strip when abutting a residential district. In the absence of natural vegetation, the addition of dense, hardy evergreen plantings will be required. Vegetated buffer strips, landscaped or natural, shall be provided, 15 feet wide between lots and 30 feet wide adjacent to any public

road. Where shared parking lots are involved, buffer strips may be reduced or waived.

- (c) Large parking areas shall be subdivided with landscaped islands. At least one tree (minimum two-inch caliper) per 35 parking spaces shall be provided.
- (d) Wherever possible, an attempt shall be made to screen a use from view from any residence in an abutting residential district. This screening may be accomplished through use of dense, hardy evergreen plantings or by earthen berms, a wall or tight fence, complemented by evergreen plantings.
- (e) Any outdoor area for storage or utilities shall be screened from view from neighboring properties and streets. Where there exists any potential safety hazard to children, physical screening shall prevent children from entering the premises.
- (f) All landscaped areas shall be properly maintained by the lot owner. Shrubs or trees which die shall be replaced within one growing season.

**(4) Parking.**

- (a) Parking areas may be located to the side or rear of the structure and may be shared with adjacent businesses. Parking may be allowed in the front of the building only if in the opinion of the Planning Board, as part of the site plan review, the topography of the lot limits the parking areas available on the side or the rear of the building. In that case special emphasis will be placed on natural screening of those areas where parking is needed in front of the building.
- (b) See Sections 8.1, 8.2 and 8.3 for other parking requirements.
- (c) See Section 8.10, Loading Facilities

**(5) Signs and Sign Illumination.**

- (a) **Signs.** Each business within the OPLI District may be allowed two signs:
  - (i) One sign located at the entrance to the office park/light industrial area as part of a directory sign may be allowed. The size, lettering and color will be in conformity with other signs located on this directory. Each sign will be accompanied by a designated lot or street number for identification purposes.
    - 1. The sign shall be of an integrated and uniform design.
    - 2. The directory sign shall be located at the entrance to the planned office park/light industrial area. The sign should be located so as not to prohibit visibility for incoming and outgoing traffic.
    - 3. The directory sign shall not exceed a total of 32 square feet. This square footage does not include the area dedicated to the support system for the sign. The name of the office park/light industrial area may be included as a crown sign to the aforementioned sign. The size of the crown sign shall be approved by the Planning Board.
    - 4. Each business shall be allowed an equal amount of square footage on the directory sign.

- (ii) If a directory sign is not utilized, the name of the office park or light industrial area may be shown on a sign not to exceed 20 square feet.
- (iii) Each business within the district will be allowed one sign located on the premises accompanied by an identifying number.
  - 1. The size and style of signs will be in conformance with other businesses' signs within the district. They shall be freestanding and include their identifying number. The size shall not exceed 16 square feet.
  - 2. The location of each business' sign shall not obstruct visibility of traffic on the road and/or in and out of adjacent parking areas and shall be located 10 feet from the edge of the pavement. These signs shall be two-sided and shall be installed perpendicular to the roadway.
- (iv) Directional signs. Internal directional signs may be allowed within the park.
  - 1. They shall be uniform in size and style and shall not exceed eight square feet.
  - 2. These signs are intended to direct the public to the street number only. No business name should appear on the sign.
  - 3. The directional signs shall be located within the road right-of-way so as not to prohibit visibility for incoming and outgoing traffic.
- (b) **Sign illumination.** Sign lighting shall be continuous, not intermittent or flashing or changing. Illumination for the sign may be by spotlighting or by internal means. Spotlighting shall be placed or hooded so that the light shall not shine onto the roadway and/or parking area or abutting properties or cause glare or reflection creating a traffic hazard or public nuisance.

## 10.2 PLANNED COMMERCIAL VILLAGE CENTER

Comment [BD83]: FROM ARTICLE XIII

### A) **Purpose.** The purpose of the Planned Commercial Village Center shall be as follows:

- (1) To provide an attractive setting for large commercial retail and/or office or institutional structures in a village atmosphere.
- (2) To promote job creation along with growth in the town's tax base.
- (3) To maximize the use of the site's natural characteristics.
- (4) To maintain aesthetic sensitivity and compatibility with the surrounding community.
- (5) To minimize the overall impact of development on the immediate environment, neighborhood and community.

### B) **Site Plan Approval Required; Accessory Uses.**

- (1) All uses within a Planned Commercial Village Center District are subject to a site plan approval in accordance with site plan review provisions as spelled out in Section 13.3.
- (2) Accessory uses not contained in the principal building or group of buildings shall be provided with safe vehicular and pedestrian access and shall be in a structure of an architectural style compatible with the principal structure and screened from view from a public way.



**C) Design Standards.**

- (1) All uses in a Planned Commercial Village Center (PCVC) shall be in conformity with the regulations set forth in the Table of Dimensional Requirements.
- (2) Uses shall be contained in one continuous building or grouping of buildings where such groups are consistent with the safety of the users of the development and are further consistent with the overall intent of this article.
- (3) The following uses are limited in aggregate to 5% of the gross floor area of the PCVC: food courts, food kiosks, automatic teller bank machines, stamp machines, parcel shipping and postal activities.
- (4) Unless the applicant provides data from existing uses, professionally reputed sources, such as the Institute of Transportation Engineers' publication Trip Generation, shall be used to calculate the number of vehicle trips per day for each proposed use.
- (5) The development shall be served by a public water and sewer system.
- (6) All development in the PCVC District must comply with the commercial development and environmental performance standards of Section 12.
- (7) Access standards. The number of curb cuts on state and local roads shall be minimized.
  - (a) To the extent feasible, access to businesses shall be provided via one of the following:
    - (i) Access via a common driveway serving adjacent lots or premises.
    - (ii) Access via a cul-de-sac or internal loop road.
  - (b) Where deemed necessary by the Planning Board, two driveways may be permitted as part of the site plan approval process which shall be clearly marked "entrance" and exit."
  - (c) Curb cuts shall be limited to the minimum width for safe entering and exiting, based on recognized industry standards.
  - (d) All driveways shall be designed to afford motorists exiting to highways with safe sight distance.
  - (e) The proposed development shall assure safe interior circulation within its site by separating pedestrian, bicycle and vehicular traffic.
  - (f) Driveway design and placement must be in harmony with the internal circulation and parking design so that the entrance can absorb the maximum rate of inbound traffic during a normal weekday peak traffic period.
  - (g) The driveway entrance must be able to accommodate all vehicle types having occasion to enter the site, including delivery and emergency vehicles.
  - (h) The driveway placement should be such that loading and unloading activities will in no way hinder vehicle ingress or egress.
  - (i) An appropriate alternate access way for emergency vehicles is required.

- (8) Pedestrian safety improvement. Internal pedestrian systems, including sidewalks, are required. Applicants are encouraged to link pedestrian systems between proposed new large developments and existing developments.
  - (a) A landscaped buffer strip at least 15 feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium-height shrubs and conifers as well as shade trees (minimum two-inch caliper, planted at least every 50 feet along the road frontage). At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard. The sidewalk required above shall be incorporated into the buffer strip.
  - (b) Large parking areas shall be subdivided with landscaped islands or by other means approved by the Planning Board so that no paved parking surface shall extend more than 150 feet in width. At least one tree (Minimum two-inch caliper) per 13 parking spaces shall be provided.
  - (c) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings or earthen berms or a wall or tight fence complemented by evergreen plantings.
- (9) Landscaping. A coordinated landscape design for the entire development shall be reviewed and approved by the Planning Board.
- (10) All garbage and trash receptacles will be enclosed, concealed and sealed at all times.
- (11) Fencing. Wherever deemed necessary for safety purposes, a minimum seven-foot-high fence shall be erected as specified by the Planning Board.

**D) Operating Center Signs.**

- (1) Two exterior signs, in any combination presented below, are allowed per operating center in the PCVC. All signs are subject to site plan approval. They must conform to the following regulations:
  - (a) A wall sign identifying the center and consisting of no more than 65% of the square footage of a freestanding or retaining wall will be allowed. Said sign must be designed in harmony with the buildings and landscaping of the PCVC. Under no conditions will said sign extend more than 10 inches outward from the wall. Said signage may not extend more than 3 feet from the top of the retaining wall. The retaining wall may be painted to improve the visibility of the wall sign.
  - (b) A freestanding sign identifying the center will consist of no more than 20 square feet with a maximum height of 25 feet. Said sign will be designed in harmony with the buildings and landscaping of the PCVC.
  - (c) A berm sign identifying the center will consist of no more than 32 square feet, with a maximum height of eleven feet above a berm that will be no higher than four feet. The sign and berm, in aggregate, can be no higher than fifteen feet above the ground. Said sign may be two-sided. Under no conditions will any lettering extend beyond

the edges of the sign. Said sign will be designed in harmony with the buildings and landscaping of the PCVC.

- (2) Sign illumination. Sign lighting shall be continuous, not intermittent or flashing or changing. Illumination for the sign may be by spotlight or by internal means. Spotlighting shall be placed or hooded so that the light shall not shine onto the roadway and/or parking area or abutting properties or cause glare or reflection creating a traffic hazard or public nuisance.
- (3) Signage Authority. In the event that the provisions of this section conflict with any of the provisions in Section 7, the provisions of this section shall apply.

**E) Individual Business Signs.**

- (1) The following signs shall be allowed by permit within the Planned Commercial Village Center:
  - (a) Multiple tenants within a single building may place a sign (of wood or material similar in weight and density to wood) on the building exterior advertising the name and/or logo of the business according to the following criteria and restrictions:
    - (i) No single sign and /or logo may exceed 40 square feet in area.
    - (ii) Each business with 60 or less linear feet of distance between its front interior side wall to its other front interior side wall may have one sign up to 40 square feet in size.
    - (iii) In instances where an architectural feature divides the facade, the allowed square footage for one Sign may be evenly divided.
    - (iv) Those businesses with more than 60 linear feet between front side walls may have two signs each up to 40 square feet in size.
    - (v) Businesses occupying corner space fronting on a second public way other than the rear will be allowed a secondary sign no larger than 20 square feet for placement on the secondary exterior building wall.
    - (vi) The above signage will be no more than 24 inches high.
  - (b) Businesses within a single tenant detached building will be allowed up to 110 square feet of exterior primary signs (of wood or material similar in weight and density to wood) to advertise the name and/or logo. No single sign may be larger than 40 square feet in size.
  - (c) One sign, one foot by eight feet, will be allowed on the rear of each building identifying each business within the building.
  - (d) Signs identifying the name of the business may be mounted above the public entrances to the business which are two-sided and installed at a right angle to the building façade. These signs shall be at least seven feet above the pedestrian way and shall be securely mounted to prevent movement in windy conditions. These signs are not illuminated and shall not exceed one foot by 3.5 feet in size. No sign is to be placed above eaves or on the peaks.

- (e) Additional store signage may be authorized by the Planning Board for those tenants whose storefronts are obstructed from customers' main street view by gazebos, porches or other permanent structures or are shaped to preclude main street viewing.
  - (f) Full window coverings are permitted in the situation where the exterior windows are blocked off or where displaying signage or merchandise is not feasible.
  - (g) Exterior food court vendor signs (one foot by eight feet) are permitted at front and rear of food court entrances listing "Food Court" and the store names of the food court tenants.
  - (h) Store logos are permitted to be placed on the front perpendicular edge of the awnings of the stores. The logo will not exceed 12 inches in height. Only one permit per store is required.
  - (i) Window Vinyl Letters are permitted to be placed at the bottom of the store's windows. Stores may place reverse vinyl die-cut letters without opaque backgrounds directly on the inside face of the store's window to identify their trade name, web site and/or logo. Window vinyl letters may not exceed five inches in height. The window vinyl letters shall be placed four inches above the storefront knee wall and are not permitted on doors. Only one permit per store is required.
  - (j) Decorative light pole banners are permitted to be installed on the shopping center light poles and streetlights. Decorative designs and store names are permitted on the banners. Two banners may be placed on each pole. The banners may be double sided and will not exceed 28 square feet in total per side. One sign permit per type of banner is required.
- (2) The following signs shall be allowed by right within the Planned Commercial Village Center and do not require a permit:
- (a) Each tenant may have a sign on the rear door used for delivery, which signs will identify the name and building number of the business. These signs will be uniform in nature and may not exceed four inches in height.
  - (b) Directory sign boards and informational signs will be agreed to by the Planning Board. Issues such as size, shape, color, placement and all other relevant issues will be reviewed with the Police and Fire Departments, the Public Health and Public Works Boards and the Sign Officer. The Shopping Center's logo is permitted to be placed on informational signage for continuity and to promote the advertising theme of the shopping center.
  - (c) Informational parking lot signage is permitted to be placed on light poles and other areas to assist customers in locating their vehicles. Store names may be used to identify parking areas. The Planning Board will agree to the shape and size of these informational signs.
  - (d) Window display signs will be permitted by right. Window display signs will consist of non-illuminated interior signage announcing temporary sales, seasonal products or generic merchandising posters/signs. Window display signs will not be placed directly to the store's front windowpane. Suction cup holders attaching the signage

to the windowpane are permitted. Window signs may be constructed of an opaque or clear material, but may not exceed 75% of the window that they are displayed in.

- (e) Static cling signs are permitted to be placed on store front doors and adjacent storefront windows. These signs will be produced and installed by Landlord. Static cling signs will consist of general customer information such as, but not limited to hours of operation, no food, no pets, smoking prohibited, employment opportunities, exterior door safety signs such as “use other door”, accepted credit cards and seasonal promotions.
- (f) Portable, two-sided 22x28 inch poster sign holders are permitted at no more than eighteen (18) exterior locations throughout the outlet center to advertise shopping center activities, events, sales, mall hours, amenities etc. The landlord will determine use and frequency of these posters sign holders. Posters will be professionally or computer produced. The Planning Board may review and modify the number and location of such signs at their discretion.
- (3) For the purposes of this section, all logos, copywritten or not, are considered to be part of the sign and must be within the sign area permitted as above.
- (4) The following signs will not be permitted:
  - (a) Door signs, except as set forth in Section 10.2 (E)(1)(e) above.
  - (b) Neon signs.
  - (c) Interior illuminated signs, except as placed inside the business at least five feet from the store window.
  - (d) Signs which simulate motion through alternating lighting or which have moving features.
  - (e) Plastic signs.
  - (f) Billboards, streamers, pennants, ribbons, banners, spinners or other similar devices shall not be constructed, posted or erected in any zone.
  - (g) Roof signs.
  - (h) Handwritten signs of any kind.
- (5) The administration and enforcement of this section shall be governed by Section 13.

### 10.3 RESTRICTIONS ON WATERSHED LANDS

Comment [BD84]: FROM § 199-30

- A) No construction requiring the installation of any type of sanitary sewer or waste disposal system shall be allowed within 500 feet of the following waterways unless the lot is connected into the town sanitary sewer system: Woods Pond, Laurel Lake, Goose Ponds, the Housatonic River or the Leahey or Upper Reservoir or any body of water in the town which is used for town water supply.
- B) This section will in no way interfere with the construction of pollution abatement equipment for industrial plants, provided that the installation is approved by the Lee Board of Health, appropriate Commonwealth of Massachusetts Pollution Control Boards and the Planning

Board. This section will not prohibit the further development of the town sanitary sewer system.

- C) The Zoning Board of Appeals, under authority granted to it in Section 13.2 of this chapter and after a duly advertised public hearing, may grant a variance to this portion of this chapter, provided that the following three conditions are met:
- (1) An undue economic hardship for the property owner would result from failure to grant a building permit.
  - (2) Evidence is presented by the owner showing that a proposed project or construction would in no way pollute any waterway. Such evidence would include receipt of statements from the Commonwealth of Massachusetts Board of Health, the Commonwealth of Massachusetts Water Pollution Control District and the Lee Board of Health giving their approval of the construction and waste disposal system.
  - (3) A certificate signed by a majority of the Department of Public Works is presented, stating that it will not be constructing sewers within a five-year period to serve the land in question.

**Section 11. FLEXIBLE DEVELOPMENT**

Comment [BD85]: FROM § 199-58

**11.1 PURPOSES**

Comment [BD86]: FROM § 199-58

The purposes of this section for flexible development are as follows:

- A) To encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational uses;
- B) To preserve historical and archeological resources; to protect the natural environment, including the town's varied landscapes and water resources;
- C) To protect the value of real property;
- D) To promote more sensitive siting of buildings and better overall site planning;
- E) To perpetuate the appearance of the town's traditional New England landscape;
- F) To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- G) To offer an alternative to standard subdivision development;
- H) To promote the development of housing affordable to low, moderate, and median income families; and
- I) To promote the development of housing for persons over the age of fifty-five.

**11.2 Definitions**

Comment [BD87]: FROM § 199-58

The following terms shall have the following definitions for the purposes of this section:

**AGE RESTRICTED HOUSING:** shall for the purposes of this bylaw shall be defined as those structures reserved for occupants who have reached the age of fifty-five (55) years old.

**AFFORDABLE TO PERSONS OR FAMILIES QUALIFYING AS LOW INCOME:** shall mean affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development or it's successor agency earning less than 50% of the median income.

**AFFORDABLE TO PERSONS OR FAMILIES QUALIFYING AS MODERATE INCOME:** shall mean affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development or it's successor agency earning more than 50% but less than 80% of the median income.

**CONTIGUOUS OPEN SPACE:** is defined as a minimum of 50% open area which is suitable and sufficient for those purposes as set forth in Section 11.1 above. Such open space may be separated by the road(s) constructed within the flexible development. Contiguous open space shall not include required yards setbacks.

### 11.3 APPLICABILITY

Comment [BD88]: FROM § 199-58

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 held in common ownership and located entirely within the town. Flexible development would be available in areas zoned R-20, R-30, RA-40 and CR.

### 11.4 PROCEDURES

Comment [BD89]: FROM § 199-58

Flexible development may be authorized upon the issuance of a special permit by the Planning Board as detailed in Section 13.4. Applications for a flexible development shall be filed in eight (8) copies for distribution to the Board of Selectmen, Board of Health, Conservation Commission, Department of Public Works, Planning Board, Police Chief/Traffic Commission, Ambulance Squad/ Fire Department and Building Commissioner for a thorough review. The application should include the following:

- A) The application should include a preliminary plan in conformance with the town's Subdivision Control Regulations in order to establish the base number of dwelling units that may be allowed.
- B) Wetland delineation shall be indicated on the preliminary plan.
- C) Informal review: Applicants are urged to meet with the town's reviewing authorities prior to submitting a formal application for a flexible development. In this way, many of the issues and questions concerning a project can be resolved in advance.
- D) Request for waivers should cite the appropriate Subdivision Rules and Regulation or Special Permit requirement.

### 11.5 DESIGN PROCESS

Comment [BD90]: FROM § 199-58

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to all town authorities that this design process was considered in determining the layout of proposed streets, houselots, and contiguous open space.

- A) **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.
- B) **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., roads, paths and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
- C) **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.
- D) **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 and in harmony with the town's Master Plan.

- E) **Lot Lines.** The final step is simply to draw in the lot lines (if applicable).

#### 11.6 MODIFICATION OF LOT REQUIREMENTS

Comment [BD91]: FROM § 199-58

Applicants are encouraged as part of a flexible development to modify lot size, shape, and other dimensional requirements for lots within a flexible development, subject to the following limitations:

- A) Lots to be modified shall not have frontage on a street other than a street created by the flexible development, however, this requirement may be waived where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
- B) At least 50% of the required frontage as well as side, rear, and front dimensions in the zoning district shall be maintained in the flexible development.

#### 11.7 BASIC MAXIMUM NUMBER OF DWELLING UNITS

Comment [BD92]: FROM § 199-58

To qualify, a flexible development project shall have a minimum six (6) lots. The basic maximum number of dwelling units allowed in a flexible development shall not exceed the number of dwelling units which could reasonably be expected to be developed within the site under a conventional plan and in full conformance with all zoning and subdivision regulations, health regulations, wetlands regulations, Department of Public works regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such an alternative conventional subdivision plan.

#### 11.8 DENSITY BONUS

Comment [BD93]: FROM § 199-58

The applicant may be awarded a density bonus for open space to increase the number of dwelling units beyond the basic maximum number. In the aggregate, the density bonus shall not exceed fifty (50%) percent of the basic maximum number. All dwelling units awarded as density bonuses from all sources shall be two bedroom units; strict compliance with this requirement may be waived. Computations shall be rounded to the nearest number. A density bonus may be awarded in the following circumstances:

- A) **Open Space** - For every ten (10%) percent over and above the area designated as open space, a bonus of five (5%) percent of the basic maximum number of lots allowed may also be awarded. In the aggregate, density bonuses for open space shall not exceed twenty-five (25%) percent of the basic maximum number of lots allowed.
- B) **Age Restricted Housing** - For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that the elderly density bonus shall not exceed ten (10%) percent of the basic maximum number.

#### 11.9 AFFORDABLE COMPONENT

Comment [BD94]: FROM § 199-58

As a condition of the grant of any special permit for a flexible development, dwelling units shall be restricted for a period not less than thirty (30) years in the following manner:

- A) 10% of the units shall be affordable to persons or families qualifying as low income; or
- B) 15% of the units shall be affordable to persons or families qualifying as moderate income.

The affordable dwelling units shall be in addition to those otherwise available as part of the basic maximum number and shall not be computed as part of any density bonus. The thirty year restriction shall be approved as to form by Town Counsel, and a right of first refusal upon the transfer of such restricted units shall be granted to the local Housing Authority for a period not less than one hundred and twenty (120) days after notice thereof.

#### **11.10 TYPES OF BUILDINGS.**

Comment [BD95]: FROM § 199-58

The flexible development may consist of any combination of single-family, two-family, multiple single family, multifamily residential structures and accessory buildings. A multifamily or multiple single family structure shall not contain more than five (5) dwelling units. In the case of multifamily and multiple single family structures of more than three (3) dwelling units requires an additional Special Permit from the Board of Selectmen. The architecture of all multifamily or multiple single family buildings shall be residential in character and employing a variety of architectural designs. Residential structures should be oriented toward the street serving the premises and not the required parking area.

#### **11.11 ROADS.**

Comment [BD96]: FROM § 199-58

The principal roadway(s) serving the site shall be designed to conform with the standards set forth in the town's Subdivision Rules and Regulations. Applicants will be urged to maintain all roadways, infrastructure and open space as private. At an annual Town Meeting, the town may vote to accept the roadway provided that it meets the town's Subdivision Rules and Regulations in effect at the time of the vote. Private ways shall be adequate for their intended use, for vehicular traffic and shall be maintained by an association of unit owners or by the applicant.

#### **11.12 PARKING.**

Comment [BD97]: FROM § 199-58

Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages as well as the garage area it self may count in this computation.

#### **11.13 CONTIGUOUS OPEN SPACE.**

Comment [BD98]: FROM § 199-58

A minimum of fifty (50%) percent 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.

- A) 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 11.1 above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

- B) The contiguous open space shall be used for conservation, historic preservation and education, outdoor recreation, park purposes, or for agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
- C) The contiguous open space shall remain unbuilt upon, except that the applicant may permitted up to ten (10%) percent 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.
- D) Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

#### **11.14 OWNERSHIP OF THE CONTIGUOUS OPEN SPACE.**

Comment [BD99]: FROM § 199-58

The contiguous open space shall be conveyed to:

- A) The town or its Conservation Commission;
- B) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space are set forth above;
- C) 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, it shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform the work and all costs associated with the project shall be divided among the owners and payment to the town will be made through the Town Collector or Treasurer. 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 with the application for evaluation, and be approved by the Town Counsel and thereafter be recorded in the Registry of Deeds.

#### **11.15 BUFFER AREAS.**

Comment [BD100]: FROM § 199-58

A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or residentially 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 or to meet the screening requirements. This requirement may be reduced to no less than fifty (50) feet for the following reasons: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the town for conservation or recreation purposes; or (iii) it is determined that a smaller buffer will suffice to accomplish the objectives set forth herein.

**11.16 DRAINAGE**

Stormwater management shall be consistent with the requirements set forth in the town's Subdivision Rules and Regulations and the Department of Public Works specifications and all state and federal requirements. Details of the stormwater plan should be a part of the application for flexible development.

Comment [BD101]: FROM § 199-58

**11.17 DECISION**

The application for flexible development may be approved, approved with conditions, or denied after determining whether the flexible development better promotes the purposes of Section 11.1 of this flexible development by-law than would occur through a standard subdivision development as defined by the town's Subdivision Regulations on the same tract.

Comment [BD102]: FROM § 199-58

**11.18 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 Zoning By-Law. Particular attention should be paid to the requirements of Section 9.2 where multi-family and multiple single family housing is involved.

Comment [BD103]: FROM § 199-58

**11.19 TOWN COUNSEL REVIEW**

The following matters shall be reviewed by the Town Counsel:

- A) Documentation for the protection and maintenance plan for common property and infrastructure.
- B) The Homeowner's Association Agreement.
- C) Documentation establishing procedures for maintaining open space and for the selection of the agency for assuming this responsibility.
- D) Documentation required for town ownership of sewer and water lines and for their maintenance and cost sharing as required by the town's Department of Public Works.
- E) All performance guarantees, security deposits, release of guarantees, all easements, covenants and deed restrictions where appropriate.

Comment [BD104]: FROM § 199-58

**Section 12. ENVIRONMENTAL & PERFORMANCE STANDARDS**

Comment [BD105]: FROM ARTICLE XII

**12.1 PURPOSE; ENFORCEMENT; MEASUREMENTS**

Comment [BD106]: FROM § 199-61

- A) The purpose of these performance standards is to ensure that any allowed use can be conducted in a manner which would not adversely affect the surrounding natural or human environment by creating a dangerous, injurious or objectionable condition.
- B) These performance standards shall be enforced by the Building Inspector for the town and will be in force throughout the life of the use or related structure(s).
- C) Measurements to confirm compliance with these standards shall be provided by the applicant if requested by the Building Inspector. The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Measurements may be made by any public or private agency, firm or person competent to perform such activity.

**12.2 LIGHTING**

Comment [BD107]: FROM § 199-62

- A) Exterior area lighting, including but not limited to lighting for parking lots, recreational areas, walks, drives and outside building walls, shall be done in such a manner so as to direct light away from adjacent lots and public ways.
- B) Light overspill onto adjacent areas shall not exceed 0.5 foot-candle measured in residential districts or three foot-candles measured in nonresidential districts, except that if the ambient level exceeds that, then overspill shall not be such as to create observable shadows.
- C) No flickering or flashing lights shall be permitted.
- D) No light shall be attached to a freestanding pole or pylon taller than 25 feet except in the Planned Commercial Village Center, where poles or pylons up to 30 feet are allowed. Installation methods employed for lights located on posts or pylons that are greater than 10 feet at their highest point must be reviewed and certified for safety by the Building Inspector. Structural drawings and specifications for the installation, including the foundation, shall be submitted by a professional engineer registered in the Commonwealth of Massachusetts so as to conform to the State Building Code.
- E) All streets shall be safely lit.

**12.3 NOISE**

Comment [BD108]: FROM § 199-63

- A) Excessive noise at unreasonable hours shall be muffled so as not to be objectionable due to volume, frequency, shrillness or intermittence.
- B) No noise shall be in excess of 55 decibels at any lot line opposite or abutting a residential use or in excess of 90 decibels at any other line, except for temporary construction or maintenance work, agricultural activity, timber harvesting, traffic, church bells, emergency warning devices, parades or other similar special circumstances.

- C) In a residential district, noise shall not exceed 55 decibels between the hours of 9:00 p.m. and 7:00 a.m. and, at all other times, shall not exceed 55 decibels at any residential lot line for more than 20 minutes in each hour.

#### 12.4 VIBRATION

Comment [BD109]: FROM § 199-64

No vibration shall be produced which is transmitted through the ground and is detectable without the aid of instruments at or at any point beyond the lot line, except for blasting and other activities within the jurisdiction of the Board of Fire Prevention Regulations.

#### 12.5 AIR POLLUTION

Comment [BD110]: FROM § 199-65

Atmospheric emissions of gaseous or particulate matter generated by land use shall conform to the then-current regulations of the Massachusetts Division of Environmental Protection. The applicant may be required to produce plans and specifications of detail sufficient for review by the DEP at the request of the special permit granting authority and/or Board of Health. Determination by the DEP that potential exists for emissions in excess of allowable limits shall be grounds for permit refusal.

#### 12.6 TOXIC OR NOXIOUS MATTER; ODORS

Comment [BD111]: FROM § 199-66

There shall be no emissions of toxic or noxious matter or objectionable odors of any kind in such quantity as to be readily detectable at the property line of the lot on which the use emitting the toxic or noxious material or odor is located. For the purposes of this section, "toxic or noxious matter" is any solid, liquid or gaseous matter, including but not limited to gases, vapors, dusts, fumes and mists, containing properties which, by chemical or other means, are inherently harmful to destroy life or impair health or capable of causing injury to the well-being of persons or damage to property.

#### 12.7 FLAMMABLE AND EXPLOSIVE MATERIALS

Comment [BD112]: FROM § 199-67

- A) All activities and all storage of flammable and explosive materials at any point shall have adequate fire-fighting and fire-suppression devices and equipment.
- B) No highly flammable or explosive liquids, solids or gases shall be stored in bulk aboveground, unless they are located in anchored tanks at least 75 feet from any lot line or town way or 40 feet from the lot line for underground tanks. All relevant federal and state regulations shall be met.
- C) Propane gas tanks in one-hundred-pound cylinders (or smaller) shall be exempt from these safety regulations.

#### 12.8 RADIOACTIVITY

Comment [BD113]: FROM § 199-68

No activities that emit dangerous radioactivity at any point shall be permitted.

#### 12.9 ELECTRICAL DISTURBANCE

Comment [BD114]: FROM § 199-69

No electrical disturbance which adversely affects the operation at any point of any equipment, other than that of the creator of such disturbance, shall be permitted.

**12.10 WATER POLLUTION**

The use and discharge of substances into private sewer systems, lakes, streams, similar water bodies or directly into the ground shall not violate the rules and regulations of the Lee Conservation Commission, the Massachusetts Division of Environmental Protection or the Massachusetts Division of Water Pollution Control.

Comment [BD115]: FROM § 199-70

**12.11 WASTE MATERIAL AND REFUSE**

- A) No waste material, liquid or solid, or refuse shall be dumped upon, or permitted to remain upon, any part of the lot or tract outside of the buildings constructed thereon.
- B) Any waste material, liquid or solid, or refuse stored outside the buildings shall be sorted into secure containers in such a manner that wind, rain, other environmental factors, animals and humans cannot cause a nuisance or hazard by gaining access to the materials and allowing the materials to escape from the secure containers by scattering, leaking, draining or other means. It is equally important that edible wastes be secured from access to rodents or insects. Finally, it is intended that all waste that is currently recyclable be segregated into clearly identified containers for that use by the Commonwealth of Massachusetts.

Comment [BD116]: FROM § 199-71

**12.12 SURFACE WATER RUNOFF**

The rate of surface water runoff from a site shall not show an increase after construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention ponds. Dry wells shall be used only where other methods are not feasible and shall require oil, grease and sediment traps to facilitate removal of contaminants.

Comment [BD117]: FROM § 199-72

**12.13 EROSION CONTROL**

- A) Whenever the existing contours of the land are altered during construction or otherwise, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped. Whenever a structure is involved, the remediation described above shall be accomplished within six months of occupancy of the structure.
- B) Dust control shall be used during grading operations.
- C) All requirements of the Lee Conservation Commission and the Massachusetts Department of Environmental Protection must be adhered to.

Comment [BD118]: FROM § 199-73

**12.14 DISH ANTENNAS**

Accessory dish antennas shall be located in the rear yard, shall be set back at least 10 feet from all property lines, principal buildings and accessory buildings and shall not have a diameter greater than 1/3 of the required rear yard. Satellite dish antennas with a diameter of four feet or less may be installed on rooftops as long as they are not obtrusive from the street.

Comment [BD119]: FROM § 199-74

**12.15 WIND ENERGY CONVERSION SYSTEMS.**

- A) Wind energy conversion systems, machinery and equipment shall not cause interference with radio and/or television broadcasting or reception and shall comply with the provisions of 47 CFR Part 15 (Federal Communications Commission), as it exists or as it may be amended.
- B) The base of a windmill shall be set back from all property lines and principal buildings at least the setback distance shown on the Wind Turbine Setback Graph, Northeast Solar Energy Center Report, March 1979.

Comment [BD120]: FROM § 199-75

**12.16 STORAGE.**

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

Comment [BD121]: FROM § 199-76



**Section 13. ADMINISTRATION**

Comment [BD122]: FROM ARTICLE VI

**13.1 ENFORCEMENT; VIOLATIONS AND PENALTIES**

Comment [BD123]: FROM § 199-33

- A) **Generally.** This chapter shall be enforced by the Building Commissioner appointed by the Board of Selectmen as provided in the State Building Code.
- (1) No permit shall be issued by the Building Commissioner unless the application for a permit indicates compliance with this chapter and any other applicable town bylaws and regulations, the State Sanitary Code and the Board of Health regulations, Chapter 241, Subdivision of Land, of the Code of the Town of Lee and the Wetlands Protection Act , if applicable.
- (2) No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this chapter.
- B) **Construction and use to be as provided in permits.**
- (1) Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Zoning Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that which is authorized shall be deemed a violation of this chapter and punishable as provided herein.
- (2) Construction or operation under a building permit or special permit shall conform to any subsequent amendment of this chapter, unless the permit is issued before the first publication of the required notice of a public hearing by the Planning Board on such amendment and the use or construction is commenced within a period of not more than six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
- C) **Frontage requirement for building lots.** No building permit shall be issued by the Building Commissioner unless the lot on which the construction is proposed has at least the required minimum frontage on an accepted public way, on a way shown on an approved and recorded subdivision plan or on a way otherwise qualifying or approved by the Planning Board under the Subdivision Control Law.
- D) **Violation.**
- (1) If the Building Commissioner is requested, in writing, to enforce this chapter against any person allegedly in violation of it and the Building Commissioner declines to act, he or she shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.
- (2) Whoever shall violate any provisions of this chapter or fail to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$300 for each offense. Each day such violation continues shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as it deems necessary to prevent or remedy any violation.

- (3) Non-criminal disposition. In addition to the procedures for enforcement as described above, the provisions of this chapter may also be enforced by the Building Inspector by non-criminal complaint pursuant to the provisions of MGL c. 40, Section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this chapter shall be \$50 for the first offense, \$100 for the second offense, \$200 for the third offense and \$300 for the fourth offense and subsequent offenses.

### 13.2 BOARD OF APPEALS

Comment [BD124]: FROM § 199-34

- A) **Membership and authority.** There shall be a Zoning Board of Appeals consisting of five members and two associate members to be appointed by the Board of Selectmen as provided in MGL c. 40A, Section 12. The Board shall act within the statutory powers as provided in MGL c. 40A, Section 14 and on matters within its jurisdiction Under this chapter in a manner prescribed in MGL c. 40A, Section 15. The Zoning Board of Appeals, hereafter referred to as the "Board" or the "Board of Appeals" in this or any other section of this chapter, shall also serve as the Board of Appeals under the Subdivision Control Law as provided in MGL c. 41, Section 81Z.
- B) **Statutory powers of the Zoning Board of Appeals.**
- (1) Appeals. The Board is authorized to hear and decide an appeal, as provided in MGL c. 40A, Section 8, taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL c. 40A, by the Berkshire County Regional Planning Commission or by any person, including an officer or board of the town or of an abutting town, aggrieved by an order or decision of the Building Commissioner or other administrative official in violation of any provision of MGL c. 40A or of this chapter. Any such appeal must be taken within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal with the Town Clerk, as provided in MGL c. 40A, Section 15.
- (2) Variances.
- (a) The Board may authorize, upon appeal or upon petition with respect to a particular land or structure, a variance from the terms of this chapter where the Board specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of such land or structure and especially affecting such land or structure but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.
- (b) Expiration of variance. If the rights authorized by a variance are not exercised within one year of the date of granting such variance they shall lapse and may be reestablished only after notice is given and a new bearing takes place as provided herein.

- (3) Special permits. The Board of Appeals may hear and decide applications for special permits upon subjects which the Board of Appeals is specifically authorized to act under this chapter in accordance with all the applicable provisions of Section 13.4 herein.
- (4) Conditions, safeguards and limitations. The Board of Appeals may impose conditions, safeguards or limitations, both of time and use, including the continued existence of any particular structure but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures in question by the same person.
- (5) Appeals, applications and petitions to the Board of Appeals. Any appeal, application or petition to the Board of Appeals must be filed with the Town Clerk, who shall forthwith transmit a copy thereof to the Board of Appeals.
- (6) Required public hearing. The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within 65 days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest, as provided in MGL c. 40A, Section 11, and after having notified the town's Planning Board and the Planning Boards of adjacent cities and towns, which may forward recommendations with respect to said matter for consideration of the Board of Appeals as provided in MGL c. 40A, Section 15.
- (7) Review by other boards and agencies. The Board of Appeals shall, within 10 days after receipt of an appeal, application or petition, transmit a copy thereof for review to the Board of Health, Planning Board, Board of Selectmen, Conservation Commission, Town Engineer, School Committee, Traffic Commission, Department of Public Works and the Building Commissioner. Any board or agency to which matters are referred for review shall make such recommendations as it deems appropriate, in writing, to the Board of Appeals; provided, however, that failure to make recommendations within 35 days of receipt by such board or agency of the matter for review shall be deemed lack of opposition thereto.
- (8) Decision by the Board of Appeals.
  - (a) The decision of the Board of Appeals shall be made within 75 days after the date of the filing of an appeal, application or petition with the Town Clerk, except as provided for special permits in Section 13.4 herein. Failure by the Board to act within said 75 days shall be deemed to be the grant of the appeal, application or petition sought.
  - (b) The Zoning Board of Appeals shall file a copy of its decisions with the Town Clerk, Planning Board, Board of Selectmen and Building Commissioner. No variance or special permit shall take effect until a copy of the decision by the Zoning Board of Appeals is recorded by the applicant in the Registry of Deeds as provided in MGL c. 40A, Section 11.

**13.3 SITE PLAN REVIEW**

Comment [BD125]: FROM § 199-35

**A) Purpose.**

- (1) The purpose of the site plan review process is to provide detailed review of certain uses and structures which have the potential for substantial impact on the town while protecting the natural, environmental, scenic and aesthetic qualities of the Town of Lee.
- (2) This review would include elements related to health, safety and general welfare of the public. Concerns related to impact on traffic, town services, the general environment and abutting properties must be addressed.

**B) Projects requiring site plan review.** A site plan for review purposes shall be submitted before the issuance of a building permit for:

- (1) All nonresidential uses in an R-20, R-30, RA-40, RM, BM, CR, RB, OPLI, I and PCVC District that involve more than the following:
  - (a) Ten thousand square feet for new construction.
  - (b) Ten thousand square feet of gross floor area for expansion of existing construction.
  - (c) The generation of 500 vehicle trips per day calculated in accordance with the Institute of Traffic Engineers traffic standards currently in effect.
  - (d) The generation of more than 2,000 gallons of sewer flow per day calculated in accordance with the standards established by 310 CMR 15.00 (Title V of the State Sanitary Code). The direct alteration of 25 or more acres of land for new nonresidential construction (other than utility lines).
- (2) All uses in all districts which require a special permit.
- (3) All nonresidential uses in a CBC District.

**C) Subdivision projects.** Subdivision projects are governed by subdivision control regulations and are subject to the provisions of the regulations, which include the approval process for preliminary and definitive subdivision plans.**D) Required site plan contents.**

- (1) Where necessary, each permit application shall be accompanied by a plan prepared and certified by a professional architect, landscape architect, registered professional engineer or registered professional land surveyor. Said plan shall be drawn at a suitable scale, preferably one inch equals 40 feet, on sheets no larger than 24 inches by 36 inches. When more than one sheet is required, a key sheet shall be provided. The plan submission shall include the following:
  - (a) A plan or plans illustrating the following, as appropriate:
    - (i) Location map at 600 feet per inch or such other scale as appropriate.
    - (ii) The name(s) of the owner(s) of the property shown and the name of the applicant.
    - (iii) Site boundaries, dimension and site areas.

- (iv) The use, ownership and zoning of the lot or lots subject to the application and of the adjacent land and the use of any buildings thereon within 200 feet of the subject property.
- (v) Existing and proposed vegetation, ground culture or surface, including wetlands.
- (vi) Existing and proposed topography at ten-foot intervals. Sufficient information shall be provided to clearly indicate areas in the site and within 50 feet of the site where gravel or loam removal or filling is proposed and the approximate volume in cubic yards. All elevations shall refer to the nearest United States Coast and Geodetic Survey bench mark [National Geodetic Vertical Datum (NGVD)].
- (vii) Existing and proposed easements, if any.
- (viii) Existing and proposed watercourses, if any.
- (ix) Existing and proposed drainage and utility systems, including but not restricted to water and sewer, natural gas, electric, street lighting, natural features, telephone and cable television.
- (x) All existing and proposed buildings, structures, parking spaces, pedestrian walks, driveways, internal roads, access and egress points, loading areas, service areas and natural areas on the subject property and the dimensions thereof.
- (xi) Proposed landscaping, including fencing, walls, planting areas, screening and surface treatments.
- (xii) The proposed location of open spaces and other recreational uses and land left in its natural state.
- (xiii) Proposed signs, exterior storage and lighting, with height, size and materials indicated.
- (b) Facade elevations of any new construction and/or alteration to any existing building or structure. The Planning Board may waive this requirement if appropriate.
- (c) Information describing proposed provisions for waste disposal, refuse removal, drainage, dust and erosion control and utilities and their appurtenances.
- (d) Applications for the proposed building site and alterations and additions of existing structures, which shall include photographs showing the site, any existing structures to be altered and its/their relationship to adjacent properties.
- (e) One or more tables indicating, by zoning classification, the required and proposed setback, side yard and rear yard distances, the intended use of the site, existing and proposed floor area and number of units and parking areas, with their locations.
- (f) For all proposed projects with generation of more than 500 vehicle trips per day (calculated in accordance with the Institute of Traffic Engineers traffic standards currently in effect), a study showing projected pedestrian movement and vehicular traffic flow within the site and in relation to adjacent areas or roads and an estimation

of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

- (g) Impacts on municipal services and/or such other pertinent information that the Planning Board deems necessary in order to perform a complete analysis.
- (2) The Lee Planning Board may require with each submission a deposit sufficient to cover any expenses connected with the review of the plans, including but not limited to the costs of any consultant services necessary for review purposes, in accordance with the Planning Board's fee schedule.

**E) Waiver of requirements.**

- (1) Compliance with any of the foregoing requirements may be waived by the Planning Board when, in the judgment of the Board, such waiver or waivers are not contrary to the public interest and not inconsistent with the provisions, intent and various purpose statements contained within this chapter. The applicant is responsible for applying for the waiver.
- (2) When a developer provides the Board with covenants describing standards and restrictions within a subdivision, the Board may waive some or all of the site plan review requirements if, in the judgment of the Board, such waiver or waivers are not contrary to the public interest and not inconsistent with the provisions, intent and various purpose statements contained within this chapter. The applicant is responsible for applying for the waiver. Covenants must be part of a subdivision record and kept with the subdivision file.

**F) Submittal procedure.** Seven copies of said plan and any related documents shall be submitted to the Planning Board at a regularly scheduled meeting of the Planning Board. Copies of the plan and related documents shall be distributed to the Conservation Commission, Board of Health, Board of Public Works, Board of Selectmen, Building Inspector and the Town Clerk by the Planning Board. The Traffic Commission shall be notified. The Planning Board shall post a notice of the date, time, place and subject of an informational meeting regarding the site plan review. The Planning Board will be the coordinating board in the case of permitted uses and uses by special permit. In the case of a special permit, it will forward the information to the appropriate permit granting authority.

- (1) Permitted uses. In the case of a use not requiring a special permit, the Planning Board, within 30 days of the receipt thereof, shall submit a report to the Building Inspector. Said report shall summarize the Board's findings with regard to the compliance of said plan with the provisions of this chapter and any recommendations of the Board.
- (2) Building permit. The Building Inspector shall not issue a permit until the report of the Planning Board shall have been received or more than 30 days shall have elapsed without receipt of such report.
- (3) Special permit.
  - (a) The application for a special permit shall necessitate the submittal of a site plan. Each board or commission listed above shall review the site plan and submit its report to the Planning Board with recommendations within 30 days of receiving the site plan.

If 30 days have elapsed without such report, it shall be determined that there is no opposition to the application.

- (b) The Planning Board will submit the recommendations of all review boards to the special permit granting authority within five days of receiving all review board reports and before the public hearing for the special permit application.
  - (c) In considering the application for a special permit under this section, the special permit granting authority will give serious consideration to the facts and information contained in the site plan and impact statement and to the reports and recommendations from the involved town boards and agencies.
  - (d) Any of the reviewing boards may recommend and the permit granting authority may impose such additional reasonable conditions on any such development as it finds necessary in the interests of the town and public health, safety and welfare, including fencing and screening for the protection of abutting residential uses.
  - (e) Any site plan may be revised by following the same procedure as required for the original approval.
  - (f) A site plan, once approved, shall become a part of the special permit.
- G) **Guidelines for review board.** In considering any site plan submittal, the following concerns shall be reviewed:
- (1) The protection of visual corridors.
  - (2) The use of landscaping to establish buffers between incompatible land uses. Plant type and location should be specified.
  - (3) The provision of open spaces and pedestrian amenities available to the public.
  - (4) The arrangement of access points, internal roads, driveways, parking areas and loading areas, lighting and pedestrian walkways in a manner which facilitates interior circulation and minimizes conflict between vehicles and pedestrians.
  - (5) The ease of access, travel and on-site movement for fire and police equipment and other emergency services for public safety.
  - (6) The presence of adequate underground electric, telephone, cable television and other such utilities where physically and environmentally feasible.
  - (7) Relationship of the architectural style of the proposed building(s) to the prevailing character of and scale of buildings in the neighborhood and the Town of Lee. In the Commercial Business Corridor, the reuse of existing buildings shall be encouraged. In the event that new construction or substantial reconstruction is to occur, the site plan review board shall consider the following standards in evaluating a proposed action:
    - (a) Height. The height of any proposed alteration should be compatible with the style and character of the surrounding buildings.
    - (b) Proportions of windows and doors. The proportions and relationships between windows and doors should be compatible with the architectural style and character of the surrounding area.

- (c) Relationship of building masses and spaces. The relationship of a structure to the open space between it and adjoining structures should be compatible.
- (d) Roof shape. The design of the roof should be compatible with the architectural style and character of the surrounding area.
- (e) Landscape. The landscape should be compatible with the character and appearance of the surrounding area.
- (f) Scale. The scale of a structure should be compatible with its architectural style and the character of the surrounding buildings.
- (g) Directional expression. Facades shall blend with other structures in the surrounding area with regard to the dominant vertical or horizontal expression.
- (h) Architectural details. Architectural details, including signs, materials, colors and textures, shall be treated so as to be compatible with the original architectural style and to preserve and enhance the character of the surrounding area.
- (8) Historical considerations and compatibility with abutting properties and the area in which it is located. The reuse of existing buildings shall be encouraged in the Commercial Business Corridor.
- (9) Provision for maintenance of common areas and special features.
- (10) Storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other potentially unsightly uses and their impact on the visual environment.
- (11) The existence of adequate provisions for storage, refuse storage and removal, drainage, dust and erosion control, water supply, wastewater disposal and power supply.
- (12) Absence of excessive demands on town services and infrastructure.
- H) **Review.** In reviewing applications under this section, the review board may require modifications, conditions and safeguards reasonably related to the contents of this section.
  - (1) Permitted uses. Once a site plan has been reviewed by the respective boards, it may be accepted or accepted with comments by the Planning Board and a building permit shall be issued by the Building Inspector.
  - (2) Special permit. The special permit granting authority may approve, approve with conditions or disapprove the site plan. If disapproved, the plan may be revised and resubmitted without prejudice. No special permit shall be granted until such time as the site plan is approved or approved with conditions.

#### 13.4 SPECIAL PERMITS.

Comment [BD126]: FROM §199-36

##### A) Special permit granting authority.

- (1) Any board designated as special permit granting authority in this chapter may hear and decide applications for special permits upon which such board is specifically authorized to act under this chapter in accordance with the provisions in MGL c. 40A, Section 9.
- (2) The Board of Selectmen, acting pursuant to MGL c. 40A, Section 9, may appoint an associate member of the Planning Board who shall be available to serve as an associate



member when the Planning Board acts as the designated special permit granting authority under this chapter. The Chair of the Planning Board may designate the associate member to sit on the Board for the purpose of acting on a special permit application in the case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.

- B) **Required hearing notice.** Special permits may be issued only following a public hearing held within 65 days after filing of an application with the special permit granting authority. Notice of public hearings shall be given by publication not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing and by mailing it to parties in interest as provided in MGL c. 40A, Section 11, which include the Planning Board and the Planning Boards of every abutting municipality, the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, all as they appear in the most recent applicable tax list.
- C) **Review by other boards and agencies.** The special permit granting authority shall, within 10 days after receipt of an application for special permit, transmit a copy thereof for review to the Board of Health, Planning Board, Board of Selectmen, Conservation Commission, Town Engineer, School Committee, Traffic Commission, Department of Public Works and the Building Commissioner. Any board or agency to which such application is referred for review shall make such recommendations it deems appropriate, in writing; provided, however, that failure to make recommendations within 35 days of receipt by such board or agency of the application for review shall be deemed a lack of opposition thereto.
- D) **Finding required.** Before granting a special permit for any use requiring such permit under the provisions of this chapter, the special permit granting authority shall find that the proposed use:
- (1) Is in compliance with all provisions and requirements of this chapter and in harmony with its general intent and purpose;
  - (2) Is essential or desirable to the public convenience or welfare at the proposed location;
  - (3) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
  - (4) Will not create undue traffic congestion or unduly impair pedestrian safety; and
  - (5) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety or general welfare.
- E) **Conditions, safeguards and limitations.** Special permits may be issued subject to such conditions, safeguards or limitations as the special permit granting authority may impose for the protection of neighboring uses or otherwise serving the purposes of this chapter.
- (1) Such conditions, safeguards or limitations may include, but are not limited to, the following:

- (a) Front, side and rear yards greater than the minimum required by this chapter and screening buffers or planting strips, fences or walls as specified by the authority.
  - (b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit or extent of facilities.
  - (c) Regulation of the number and location of driveways or other traffic features and off-street parking or loading or other special features beyond the minimum required by this chapter.
- (2) Any conditions, safeguards or limitations shall be imposed in writing and shall be made part of the special permit and of the building permit, if any.
- F) **Site plan required.** Any application for a special permit shall be accompanied by a site plan drawn in accordance with Section 13.3 of this chapter.
- G) **Decision and vote requirements.**
  - (1) The special permit granting authority shall act within 90 days following the date of the public hearing. Failure to take final action upon an application for a special permit within said 90 days shall be deemed to be a grant of the permit application.
  - (2) Special permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.
  - (3) The special permit granting authority shall file copies of its decisions with the Town Clerk, Building Commissioner and the Planning Board.
  - (4) No special permit shall take effect until a copy of the decision by the special permit granting authority is recorded by the applicant in the Registry of Deeds as provided in MGL c. 40A, Section 11.
- H) **Expiration of special permit.** A special permit shall lapse in one year if a substantial use or construction has not begun under the permit by such date, except for a good cause.

**Section 14. DEFINITIONS**

Comment [BD127]: FROM § 199-4

The following words and terms shall have the meanings ascribed to them in this section:

**ACCESSORY BUILDING:** Any building which is subordinate to and whose use is incidental and accessory to the use of the principal building on the same lot or an adjoining lot under the same ownership.

**ACCESSORY USE:** A related minor use which is neither necessary to the operation or enjoyment of a lawful principal use or which is appropriate to, customarily incidental to and subordinate to any such use.

**ADULT BOOKSTORE:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement, as defined in Massachusetts General Laws ("M.G.L.") Chapter 272, Section 31.

**ADULT CABARET:** A night club, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31.

**ADULT CLUB:** An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in M.G.L. Chapter 272, Section 31; also an establishment offering activities or goods or providing services where employees, entertainers or patrons are engaging in nudity and sexual conduct or sexual excitement, as defined in Massachusetts General Laws Chapter 272, Section 31.

**ADULT MOTION PICTURE THEATER:** An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31.

**ADULT PARAPHERNALIA STORE:** An establishment that has a substantial or significant portion of its stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**ADULT USES:** Adult Bookstores, Adult Cabarets, Adult Clubs, Adult Motion Picture Theaters, Adult Paraphernalia Stores, and Adult Video Stores, as defined in this bylaw.

**ADULT VIDEO STORE:** An establishment having a substantial or significant portion of its stock in trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement, as defined in M.G.L. Chapter 272, Section 31

**ASSISTED LIVING:** A residential development subject to certification under MGL Chapter 19D, which provides room and board; provides assistance with activities of daily living for three or more adult residents who are not related by consanguinity or affinity to their care provider; and collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance. Dwelling units in Assisted Living Residences shall not be considered to be Multiple-Dwellings for the purposes of this by-law.

**BUILDING HEIGHT:** The vertical distance from the average finished grade within 10 feet of the walls of the building to the highest point of flat or mansard roofs, including the top of a parapet, or to the mean level between the eaves and ridge for gable, hip or gambrel roofs.

**CLUB CONDUCTED FOR PROFIT:** A business which is owned and operated by an individual as a commercial organization for the purpose of profit. Typical examples, among others, would include tennis and racquetball clubs. A distinction is made in this chapter between this definition and nonprofit fraternal clubs.

**COMMERCIAL ESTABLISHMENT:** A business whose main purpose is the offering of goods and products for sale to the public.

**CONVENIENCE STORE:** A retail establishment selling a limited variety of groceries, beverages and small household items for the primary use of customers that need a few items in an expedient manner.

**DRIVE-THROUGH BANK:** A banking establishment that is oriented primarily to financial exchanges for customers while in motor vehicles.

**DWELLING:** Any building used exclusively for human habitation, including any permitted home occupation, but excluding hotels, motels, lodging houses, inns or mobile homes.

**DWELLING, MULTIPLE:** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided, in which no portion of the building below the first story or above the second story is used for dwelling purposes, including:

**APARTMENTS** - A group of multiple dwellings on a single lot designed for rental of the individual dwelling units or for sale as condominium or cooperative units having common open spaces and designed in accordance with the special requirements as set forth in this chapter.

**TOWNHOUSES** - A group of attached one-family dwelling units, each unit having a separate entrance from the street and having a common open space as regulated in this chapter.

**DWELLING, MULTIPLE, CONVERSION:** A residential building constructed prior to 1962 and originally designed and built as a single-family dwelling and converted for occupancy by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**DWELLING, MULTIPLE RESORT:** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided and built in accordance with a special permit granted under provisions of Section 9.8, in which no portion of the building below the first story or above the third story is used for dwelling purposes.

**DWELLING, ONE-FAMILY:** A detached building designed for or occupied by one family.

**DWELLING, TWO-FAMILY:** A detached building designed for or occupied by two families living independently of each other.

**DWELLING UNIT:** One room, or rooms connected together, with complete, independent housekeeping facilities, including permanently installed kitchen facilities, arranged or designed for use by only one family, which is physically separated from other rooms or dwelling units which may be in the same building.

**FAMILY:** Any number of individuals related by blood, marriage or adoption living together as a single housekeeping unit, provided that a group of not more than five persons keeping house together, but not necessarily related by blood or marriage, may be considered a family.

**FAST-FOOD RESTAURANT:** An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the building or off premises.

**FOOD COURT:** A group of retail businesses inside the building(s) serving food intended for the patrons of shopping or outlet centers and centering upon a common seating arrangement.

**FOOD KIOSK:** A freestanding structure internal to a shopping center or outlet center that is intended to sell food to the patrons of said centers and at which there is no permanent seating.

**HOTEL, LODGING HOUSE OR INN:** A building rented or used for paying guests, transiently or permanently.

**LOT:** A clearly defined piece of land in one ownership, leasehold or control of sufficient area and dimensions to meet minimum zoning requirements for width, area, use and coverage and to provide such yards and other open spaces as are required herein and having a frontage on a public street or on a way qualifying under the Subdivision Control Law .

**LOT AREA PER DWELLING UNIT:** That portion of the lot area required for each dwelling unit located on a lot.

**LOT COVERAGE:** The portion of the lot area, expressed as a percent, that is covered by buildings and structures. Structures below the finished grade shall not be included in calculating the lot coverage.

**LOT FRONTAGE:** The distance between the side lot lines at the street line.

**LOT WIDTH:** The distance between the side lot lines measured in a straight line at right angles to the mean direction of such lot lines, which line of measurement shall be at the building setback line. In the case of a corner lot, the width shall be similarly measured, and, for the purpose of this measurement only, the front lot line which has the least dimension shall be considered the front lot line, and the lot lines adjacent thereto shall be considered the side lot lines.

**MOTEL OR OVERNIGHT CABINS:** Overnight accommodations for automobile tourists in the form of rows of attached sleeping units, each with separate entrances and toilet facilities and each with adjacent off-street parking space. In each case an office for the renting and management of accommodations may be included.

**MOTOR VEHICLE:** A vehicle constructed and designed for propulsion by power other than muscular power, including such vehicle when pulled or towed by another motor vehicle, except railroad and railway cars; vehicles operated by the system known as "trolley motor" or "trackless trolley" under MGL c. 163 or Section 10 of Chapter 544 of the Acts of 1947; vehicles running only upon rails or tracks; vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding 12 miles per hour and which are used exclusively for the building, repair and maintenance of highways or designed especially for use elsewhere than on the traveled part of ways; wheelchairs owned and operated by invalids; and vehicles which are operated or guided by a person on foot.

In doubtful cases, the registrar may determine whether or not any particular vehicle is a motor vehicle as herein defined. If the registrar determines that it should be so classified, he or she may require that it be registered under MGL c. 90, but such determination shall not be admissible as evidence in any action at law arising out of the use or operation of such vehicle previous to such determination.

**MUNICIPAL USE:** Any use of land in accordance with the general laws governing municipal powers and functions.

**NONCONFORMING USE:** A building structure or use of land existing at the time of this chapter which does not conform to the district in which it is located.

**OFFICE PARK/LIGHT INDUSTRIAL:** An area planned for occupancy of more than one light industrial building, with shared common areas and/or parking areas as well as buildings designed for business offices or research laboratories.

**OPEN SPACE:** Generally the land area on a lot not covered by buildings, structures or parking area, to be used for scenic, landscaping or recreational purposes, which is accessible and available to all occupants of dwelling units for whose use the space is intended.

**OPERATING CENTER:** A series of retail shops and ancillary facilities functioning as one organization, under one management structure, within the PCVC District.

**PLACE OF AMUSEMENT/ASSEMBLY:** An establishment engaged in providing amusement or entertainment for a fee or admission charge and which includes such activities as dance halls, studios, theatrical productions, bands, orchestras and other musical entertainment, bowling alleys and billiard and pool establishments, commercial sports, such as arenas, rings, racetracks and public golf courses, and coin-operated devices, amusement parks, swimming pools and expositions.

**PLANNED COMMERCIAL VILLAGE CENTER (PCVC):** A group of commercial establishments planned for a minimum fifty-acre lot, with no greater than 400,000 square feet per fifty-acre lot. Said group of commercial establishments involves one or more principal structures, with said structure or structures containing more than 8,000 square feet of gross floor area, with no one tenant occupying greater than 50,000 square feet, located on a site which has been planned, developed and is to be managed as one operating unit and includes parking, highway access, signage and other facilities shared by said establishments. A PCVC shall be subject to the standards in Section 10.3.

**PLANNED UNIT OFFICE OR RESEARCH CENTER:** A building or a group of physically interrelated buildings where the main function is the work usually conducted in professional business offices and/or the processing, compilation or analysis of records or data, research activity in the physical or social sciences or applied research in product development. No manufacturing shall be permitted. The dimensional and intensity requirements shall be the same as for a PCVC.

**RESORT:** A recreational development in one ownership or time shared serving food and providing lodging to vacationers and guests, with a minimum of 50 rental units, and offering a variety of recreational facilities, such as swimming, golf, tennis, horseback riding and skiing. Any accessory use which is either necessary to the operation of a resort or customarily incidental to such use, including but not limited to restaurants, snack bars, shops, stables and marinas which are intended for guests, shall be permitted on the premises.

**SITE PLAN:** A plan indicating but not limited to the following: the location of existing and proposed buildings, structures, driveways, parking areas and other open spaces and all proposed site improvements, including recreational areas, fences, walks and signs. A site plan or any portion thereof involving engineering, architecture or land surveying shall be prepared by a registered engineer, architect, landscape architect or land surveyor. A site plan may be prepared on one or more sheets to show clearly the information required in this chapter and to facilitate the review and approval of the plan.

**SPECIAL PERMIT GRANTING AUTHORITY:** The Board of Selectmen, Board of Appeals or Planning Board, whichever is designated by this chapter for the issuance of special permits for a particular use or purpose, shall for that use or purpose be deemed the special permit granting authority.

**STORY:** That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than 1/2 of such portion vertically is below the average grade of the ground adjoining such building.

**STREET, ROAD, AVENUE, TERRACE, ETC:** A public way, or a way qualifying under the Subdivision Control Law, giving access to a lot or lots.

**SUBSTANTIAL OR SIGNIFICANT PORTION:** The term “substantial or significant portion” as used for all adult uses in this bylaw shall mean twenty-five percent (25%) or more of any one or more of the following: business inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time; annual number gross sales, rentals, or other business transactions; annual gross business revenue; hours during which the establishment is open and involved in Adult Uses

**TRAILER OR MOBILE HOME:** Any vehicle or object on wheels and having no motive power of its own which is so constructed or reconstructed to permit use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundation and whether or not its mobility has been completely eliminated.

**WIRELESS COMMUNICATIONS FACILITIES:** Any and all materials, equipment, storage structures, towers and antennas, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

## **Section 15. AMENDMENTS & SEVERABILITY**

### **15.1 AMENDMENTS; NOTICE TO NONRESIDENT PROPERTY OWNERS**

**Comment [BD128]:** FROM § 199-37

- A) This chapter may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of MGL c. 40A, Section 5.
- B) No proposed zoning ordinance or bylaw which has been unfavorably acted upon by a Town Meeting shall be considered by a Town Meeting within two years after the date of such unfavorable action, unless the adoption of such proposed ordinance or bylaw is recommended in a final report of the Planning Board.
- C) Any nonresident property owner may request that notice of hearing by the Planning Board on any zoning bylaw amendment be sent by mail to him or her by the Town Clerk. Such request must be filed annually with the Town Clerk no later than January 1, accompanied by a fee of \$15. A separate, conspicuous statement shall be included annually with all property tax bills sent to nonresident property owners informing them of this provision.

### **15.2 WHEN EFFECTIVE; SEVERABILITY**

**Comment [BD129]:** FROM § 199-38

- A) This chapter or any amendment thereto shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.
- B) The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.



APPENDIX A

TABLE OF DIMENSIONAL REQUIREMENTS