

# **WILMINGTON ZONING BYLAW**

**“Revised up to and including the Annual Town Meeting of April 29, 2023”**



**WILMINGTON, MASSACHUSETTS**

# TOWN OF WILMINGTON ZONING BYLAW

## TABLE OF CONTENTS

	Page
<b>INTRODUCTION</b>	
<b>INFORMATION RELATING TO LAWS AND REGULATIONS GOVERNING LAND USE</b>	5
<b>SECTION 1.</b>	
<b>AUTHORITY, PURPOSE AND DEFINITIONS</b>	6
1.1 Authority	6
1.2 Purpose	6
1.3 Definitions	6
<b>SECTION 2.</b>	
<b>ESTABLISHMENT OF DISTRICTS</b>	8
2.1 Classification	8
2.2 Zoning Map	8
2.3 Zoning Map Interpretation	8
<b>SECTION 3.</b>	
<b>PRINCIPAL USE REGULATIONS</b>	10
<b>TABLE I - PRINCIPAL USE REGULATIONS</b>	10
<b>TABLE II - STANDARD DIMENSIONAL REGULATIONS</b>	11
3.1 General Principal Use Provisions	12
3.2 Classification of Extensive Uses	12
3.3 Classification of Residential Uses	12
3.4 Classification of Governmental, Institutional and Public Service Uses	13
3.5 Classification of Business Uses	14
3.6 Classification of Industrial Uses	15
3.7 Classification of Prohibited Uses	16
3.8 Minimum Special Permit Criteria	17
<b>SECTION 4.</b>	
<b>ACCESSORY USE REGULATIONS</b>	23
4.1 Provisions for Accessory Uses	23
4.1.1 Residential Uses	23
4.1.2 Swimming Pools and Tennis Courts	23
4.1.3 Home Occupation	23
4.1.4 Renting Rooms and Boarding	23
4.1.5 Wind Machines	24
4.1.6 Garaging or Parking of Commercial Motor Vehicles	24
4.1.7 Temporary Residences and Offices/Storage	24
4.1.8 Farm Product Sales	24
4.1.9 Fairs, Bazaars, Antique Shows and Carnivals	24
4.1.10 Scientific Development	24
4.1.11 Watchman Accommodations	25
4.1.12 Company Stores and Employee Facilities	25
4.1.13 Used Vehicle Sales	25
4.2 Accessory Apartments	25

<b>SECTION 5.</b>	<b>DIMENSIONAL REGULATIONS .....</b>	<b>26</b>
5.1	Standard Dimensional Regulations .....	26
5.2	Provisions for Dimensional Regulations .....	26
5.3	Special Exceptions .....	28
5.3.1	Setback of Structures .....	28
5.3.2	Pre-Existing Lots .....	28
5.3.3	Frontage Exception Lots .....	28
5.3.4	Hammerhead Lots .....	28
5.3.5	Height of Buildings in Industrial Districts .....	29
<b>SECTION 6.</b>	<b>SPECIAL PROVISIONS .....</b>	<b>30</b>
6.1	Nonconforming Uses and Structures .....	30
6.2	Flood Plain District .....	32
6.3	Signs and Advertising Devices .....	36
6.4	Parking and Site Design Standards .....	40
6.5	Site Plan Review .....	46
6.6	Ground Water Protection District .....	48
6.7	Adult Use District .....	54
6.8	Wireless Communications Facilities .....	57
6.9	Body Art District .....	61
6.10	Registered Marijuana Dispensary .....	62
6.11	Inclusionary Housing .....	66
<b>SECTION 7.</b>	<b>PLANNED RESIDENTIAL DEVELOPMENT DISTRICT .....</b>	<b>71</b>
7.1	Purpose .....	71
7.2	Planned Residential Development Standard .....	71
7.3	Town Meeting Presentation and Rezoning .....	73
7.4	Procedure for Special Permit from the Planning Board .....	74
<b>SECTION 8.</b>	<b>CONSERVATION SUBDIVISION DESIGN .....</b>	<b>75</b>
8.1	Purpose and Intent .....	75
8.2	Eligibility .....	76
8.3	Special Permit Required .....	76
8.4	Pre-Application .....	77
8.5	Design Process .....	77
8.6	Procedures .....	78
8.7	Basic Maximum Number of Housing Units .....	80
8.8	Reduction of Dimensional Requirements .....	80
8.9	Open Space Requirements .....	81
8.10	Design Standards .....	82
8.11	Decision of the Planning Board .....	84
<b>SECTION 9.</b>	<b>OVER 55 HOUSING DISTRICT .....</b>	<b>84</b>
9.1	Purpose .....	84
9.2	Age Qualification .....	84
9.3	Boundaries .....	85
9.4	Special Permit .....	86
9.5	Permitted Uses .....	86
9.6	Dimensional Regulations .....	86
9.7	Parking Requirements .....	87
9.8	Affordable Housing .....	87
9.9	Stormwater Management .....	88
9.10	Private Roads .....	88

9.11	Environmental Protection .....	88
9.12	Open Space Standard .....	88
9.13	Design Criteria .....	89
9.14	Performance Guarantee.....	89
9.15	Revisions and Amendments .....	89
<b>SECTION 10.</b>	<b>ADMINISTRATION AND ENFORCEMENT .....</b>	<b>89</b>
10.1	Enforcement .....	89
10.2	Building Permit .....	89
10.3	Board of Appeals .....	90
10.4	Rules and Regulations .....	90
10.5	Special Permit .....	90
10.6	Variance.....	92
10.7	Bylaw Construction.....	92
10.8	Validity and Separability .....	92

**NOTE:** The following Town of Wilmington Zoning Bylaw is revised up to and including the Annual Town Meeting of April 29, 2023.

The Table of Contents, the Introduction, entitled “Information Relative to the Laws and Regulations Governing Land Use,” the marginal notes and appendix is included for convenience for reference only and are not part of the Bylaw.

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## **INFORMATION RELATING TO LAWS AND REGULATIONS GOVERNING LAND USE**

Land use in the Town of Wilmington is subject to regulation under various Town Bylaws and Statutes of the Commonwealth. Included among these are the Wilmington Zoning Bylaw, adopted pursuant to Chapter 40A, "The Zoning Act" of the Commonwealth of Massachusetts, and the following:

THE REVISED BYLAWS OF THE INHABITANTS OF WILMINGTON sets forth the Town's general regulations including provisions pertaining to: sale of Town land, placing articles upon public ways or sidewalks, defacing property (posters, signs or advertisements), permits to occupy or use streets, moving buildings, house numbers, junk dealers' shops, discharge of fire arms, traffic visibility, fire lanes and earth removal.

SUBDIVISION RULES AND REGULATIONS sets forth the Planning Board's procedures and standards to be followed in the subdivision of land and the construction of ways.

OFFICIAL MAP sets forth the layout of public ways and shows the extent of private ways existing and used in common at the time of adoption of the map.

WILMINGTON INDIVIDUAL SEWAGE DISPOSAL SYSTEM REGULATIONS sets forth the Board of Health's local rules and regulations pertaining to the construction and installation of on-lot sewage disposal systems.

STATE ENVIRONMENTAL CODE - TITLE 5 sets forth the minimum standards for the protection of public health and the environment when circumstances require the use of individual systems for the disposal of sanitary sewage in areas where municipal sewage systems are not available.

STATE BUILDING CODE sets forth the regulations, administered by the Inspector of Buildings, relative to the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of buildings and structures and use or occupancy thereof.

STATE WETLANDS PROTECTION ACT is administered by the Conservation Commission and provides for public review of proposed projects which involve construction or other alterations of land in or near wetlands or land deemed subject to periodic flooding.

CHAPTER 139 OF THE ACTS OF 1998 which relates to lots under 10,000 sq.ft..

## TOWN OF WILMINGTON ZONING BYLAW

### SECTION 1. AUTHORITY, PURPOSE AND DEFINITIONS

- 1.1 **Authority** - The Town of Wilmington Zoning Bylaw is adopted pursuant to and under the authority of "The Zoning Act" of the Commonwealth of Massachusetts, Chapter 40A of the General Laws.
- 1.2 **Purpose** - The purpose of this Bylaw is to implement the zoning powers granted to the Town of Wilmington under the Constitution and Statutes of the Commonwealth and includes, but is not limited to, the following objectives: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, supply, drainage, sewage disposal, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of all land and water resources throughout the Town including consideration of the recommendations of any special studies and master plans for the Town; to preserve and increase amenities; and to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.
- 1.3 **Definitions** - In this Bylaw the following terms shall have the following meanings:
- 1.3.1 **Board of Appeals:** The Town of Wilmington Zoning Board of Appeals which for the purpose of Chapter 40A shall be deemed the Permit Granting Authority.
- 1.3.2 **Building:** A structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. The word "building" shall be construed, where the context requires, as though followed by the words "or part or parts thereof."
- 1.3.3 **Building Code:** The State Building Code of the Commonwealth of Massachusetts, as the same may be amended from time to time. Terms used in the Bylaw shall have the same meaning as ascribed to them in Building Code unless the context of usage in this Bylaw clearly indicates another meaning.
- 1.3.4 **Bylaw:** Town of Wilmington Zoning Bylaw. All sections and subsections refer to section and subsections of this Bylaw unless otherwise specifically stated.
- 1.3.5 **Cosmetic Tattooing:** Also known as permanent cosmetics, micro pigment implantation or dermal pigmentation, means the implantation of permanent pigment around the eyes, lips and cheeks of the face and hair imitation, but not Body Art.
- 1.3.6 **Dwelling Unit:** A room or group of rooms providing or intended to provide living quarters including provisions for living, sleeping, eating, cooking and sanitation for not more than one family and used exclusively as a single housekeeping unit.
- 1.3.7 **Family:** An individual or two or more persons, related by blood, marriage, adoption or guardianship, or not more than three persons not so related, occupying a dwelling unit and living as a single housekeeping unit.
- 1.3.8 **Floor Area, Gross:** The total area of all floors of a building as measured by the exterior walls, excluding cellars, unenclosed porches, or any floor space intended for the parking of motor vehicles.

- 1.3.9      **Frontage:** A continuous line along the sideline of a street.
- 1.3.10     **Lot:** An area of land, undivided by any street, in one ownership with definitive boundaries ascertainable from a recorded deed or recorded plan meeting the applicable requirements of this Bylaw.
- 1.3.11     **Outdoor Patio:** A hardscaped full service outdoor dining area with defined bounds and accessed only through the restaurant.
- 1.3.12     **Planning Board:** The Town of Wilmington Planning Board which for the purposes of Chapter 40A shall be deemed the Special Permit Granting Authority for those petitions where the Bylaw specifically authorizes the Planning Board.
- 1.3.13     **Record, or Recorded:** Title to a lot as disclosed by (1) a deed recorded in the Middlesex County North District Registry of Deeds, or (2) a Certificate of Title issued by the Land Court and registered in the Land Court section of such Registry, or (3) record title disclosed by any and all pertinent public records.
- 1.3.14     **Street:** Street shall be either (1) an improved public way laid out by the Town of Wilmington, the Middlesex County Commissioners or the Commonwealth of Massachusetts, or (2) a way shown on a plan theretofore approved, endorsed and recorded in accordance with the Subdivision Control Law, or (3) a way placed on or made part of the Official Map of the Town of Wilmington. For the purposes of this Bylaw, Route 93 shall not be considered as a "street" with respect to providing frontage as herein required. Nor shall any way be considered as a "street" with respect to providing frontage for any lot unless in the residential districts such lot has at least 20 ft. of frontage on a street which provides a 20 ft. wide right of access to and over such street for vehicular traffic or in the nonresidential districts such lot has at least 50 feet of frontage on a street which provides a 50 foot wide right of access to and over such street for vehicular traffic.
- 1.3.15     **Structure:** A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. The work "structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof."
- 1.3.16     **Use, Accessory:** Any use which is accessory and incidental to a permitted principal use.
- 1.3.17     **Use or Structure, Nonconforming:** A use or structure which does not conform to one or more provisions of this Bylaw and (1) was lawfully in existence or begun at the time of adoption of this Bylaw (April 1928) or any subsequent amendment hereto, or (2) for which a building permit, special permit or variance has been issued before the first publication of notice of public hearing on the Bylaw or any amendment hereto.
- 1.3.18     **Use, Principal:** The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it is permitted to be used, occupied or maintained under this Bylaw.



## SECTION 2. ESTABLISHMENT OF DISTRICTS

- 2.1 **Classification** - For the purpose of this Bylaw, the Town of Wilmington is hereby divided into the following classes of zoning districts:

### **Residential Districts**

Residence 10	R10
Residence 20	R20
Residence 60	R60
Planned Residential Development	PRD
Over 55 Housing District	055H

### **Business Districts**

Neighborhood Business	NB
Neighborhood Mixed Use	NM
General Business	GB
Central Business	CB

### **Industrial Districts**

General Industrial	GI
Highway Industrial	HI
Light Industrial/Office	LI/O

### **Conservancy Districts**

Flood Plain	FP
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### **Ground Water Protection District**

GWPD

- 2.2 **Zoning Map** - Location and boundaries of the zoning districts shall be as shown on the following identified zoning maps as the same may be hereinafter amended, which maps are herein collectively referred to as "The Zoning Map". The zoning maps are hereby made part of this Bylaw and are on file in the office of the Town Clerk.

Zoning District Map of the Town of Wilmington, January 1983 revised through May 2016 (Scale 1" = 1200' consisting of a single sheet).

Wilmington Flood Insurance Rate Map (FIRM) dated July 6, 2016.

Ground Water Protection District Map, April 1999 (Scale 1" = 1200' consisting of a single sheet).

- 2.3 **Zoning Map Interpretation** - For the purposes of interpretation of the Zoning Map, the following shall apply:

- 2.3.1 Zoning district boundaries which follow streets, railroads, or water courses shall be deemed to coincide with the mean center line thereof.
- 2.3.2 Zoning district boundaries which follow a property or lot line, the exact location of which is not indicated by means of dimensions, shall coincide with the property or lot line.
- 2.3.3 Zoning district boundaries which run parallel to the sideline of streets shall be regarded as parallel or concentric to such sidelines. Dimensions between the zoning district boundary lines and sidelines of streets shall be measured perpendicular or radial to the sideline of the street right-of-way.
- 2.3.4 Where a zoning district boundary, other than an overlay district boundary, divides a lot in single ownership upon the effective date of this Bylaw (April 1928) or upon the effective date of any amendment changing the boundaries of one of the zoning districts in which the lot lies, the regulations applicable to either zoning district may be extended to as much of the lot that lies within 30 feet of the zoning district boundary, provided the

lot has the required minimum frontage on a street in the zoning district from which the regulations are being extended.

- 2.3.5 The GWPD is an overlay district whose boundaries and regulations are superimposed on the residential, business and industrial districts established by this Bylaw. The boundary shall be as shown on the GWPD map. The boundaries of the GWPD are also delineated onto a set of Assessor's Maps kept at the Town Hall.
- 2.3.6 The Over 55 Housing District is an overlay district whose boundaries and regulations are superimposed on the residential, business and industrial districts established by this Bylaw.

# TABLE 1 PRINCIPAL USE REGULATIONS

NOTE: All principal uses are subject to definitions and conditions in corresponding classification of uses contained in Section 3 of this Bylaw. Further, special permits allowed by this bylaw may be subject to minimum special permit; see Section 3.8.

PRINCIPAL USES		RESIDENTIAL DISTRICTS				NEIGHBORHOOD MIXED USE	BUSINESS DISTRICTS				INDUSTRIAL DISTRICTS			SITE PLAN REV	GW PD
		R10	R20	R60	O55	NM	NB	GB	CB	GI	HI	LI/O			
<b>3.2</b>	<b>EXTENSIVE USES</b>														
3.2.1	Agriculture	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	NR	*	
3.2.2	Greenhouses	No	SP	SP		Yes	SP	Yes	No	Yes	Yes	Yes	R	*	
3.2.3	Conservation	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	NR	*	
3.2.4	Recreation	SP	SP	SP		Yes	SP	Yes	No	Yes	Yes	Yes	R	*	
3.2.5	Earth Removal	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	No	NR	*	
<b>3.3</b>	<b>RESIDENTIAL USES</b>														
3.3.1	Single Family Dwelling	Yes	Yes	Yes		No	Yes	No	No	No	No	No	NR	*	
3.3.2	Accessory Apartments	Yes	Yes	Yes		No	Yes	No	No	No	No	No	N	*	
3.3.3	Community Housing Facility	SP	SP	SP		SP	SP	SP	SP	No	No	No	NR	*	
3.3.4	Municipal Building Reuse	SP	SP	SP		SP	SP	SP	SP	No	No	No	NR	*	
3.3.5	Multi-Family Housing	No	No	No		PB	No	No	PB	No	No	No	R	*	
3.3.6	Over 55 Housing	No	No	No	PB	No	No	No	No	No	No	No	R	*	
<b>3.4</b>	<b>GOVERNMENTAL, INSTITUTIONAL AND PUBLIC SERVICE USES</b>														
3.4.1	Municipal Use	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	NR	*	
3.4.2	Educational	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	NR	*	
3.4.3	Religious	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	NR	*	
3.4.4	Philanthropic	SP	SP	SP		Yes	Yes	Yes	Yes	Yes	Yes	Yes	R	*	
3.4.5	Nursery School	SP	SP	SP		Yes	Yes	Yes	Yes	No	No	No	R	*	
3.4.6	Hospital & Nursing Home	No	No	No	No	No	No	No	No	SP	SP	No	R	*	
3.4.7	Public Service Utility	SP	SP	SP		Yes	Yes	Yes	Yes	Yes	Yes	Yes	R	*	
3.4.8	Wireless Communications **	No	No	No		No	No	SP	No	SP	SP	SP	R	*	
<b>3.5</b>	<b>BUSINESS USES</b>														
3.5.1.1	Retail Store under 30,000 sf	No	No	No		Yes	Yes	Yes	Yes	SP	SP	SP	R	*	
3.5.1.2	Retail Store over 30,000 sf	No	No	No		No	No	No	No	No	SP	SP	R	*	
3.5.2	Business/Professional Office	No	No	No		Yes	Yes	Yes	Yes	Yes	Yes	Yes	R	*	
3.5.3	Bank	No	No	No		Yes	Yes	Yes	Yes	Yes	Yes	Yes	R	*	
3.5.4	Limited Service Restaurant	No	No	No		SP	No	SP	Yes	SP	Yes	SP	R	*	
3.5.5	General Service Restaurant	No	No	No		Yes	No	Yes	Yes	No	Yes	No	R	*	
3.5.6	Hotel or Motel	No	No	No		SP	No	SP	SP	SP	SP	SP	R	*	
3.5.7	Lodge and Club	No	No	No		Yes	SP	Yes	Yes	Yes	Yes	Yes	R	*	
3.5.8	Funeral Home	PB	No	No		Yes	No	Yes	No	No	No	No	R	*	
3.5.9	Veterinary Care	No	No	No		SP	No	SP	SP	SP	SP	SP	R	*	
3.5.10	Personal Service Shop	No	No	No		Yes	Yes	Yes	Yes	No	Yes	No	R	*	
3.5.11	Craft Shop/Bldg Trade	No	No	No		Yes	Yes	Yes	Yes	Yes	Yes	Yes	R	*	
3.5.12	Commercial/Trade School	No	No	No		Yes	SP	Yes	SP	Yes	Yes	Yes	R	*	
3.5.13	Amusement Facility	No	No	No		No	No	Yes	SP	Yes	Yes	Yes	R	*	
3.5.14	Auto Service /Car Wash	No	No	No		No	No	SP	No	No	No	No	R	*	
3.5.15	Auto Repair/Body Shop/Rental	No	No	No		No	No	SP	No	SP	SP	No	R	*	
3.5.16	Vehicular Dealership	No	No	No		No	No	SP	No	No	No	No	R	*	
3.5.17	Parking Facility	No	No	No		Yes	No	Yes	Yes	Yes	Yes	Yes	R	*	
3.5.18	Adult Uses***														
3.5.19	Pet Care Facility	No	No	No		PB	No	PB	No	PB	PB	No	R	*	
3.5.20	Reg. Marijuana Dispensary	No	No	No		No	No	No	No	PB	PB	No	R	*	
3.5.21	Brew Pub	No	No	No		Yes	No	Yes	Yes	No	Yes	No	R	*	
<b>3.6</b>	<b>INDUSTRIAL USES</b>														
3.6.1	Warehouse	No	No	No		No	No	No	No	Yes	Yes	Yes	R	*	
3.6.2	Bulk Material Storage/Sales	No	No	No		No	No	No	No	Yes	Yes	No	R	*	
3.6.3	Heavy Vehicular Dealer/Repair/Rental	No	No	No		No	No	No	No	SP	SP	No	R	*	
3.6.4	Light Industrial	No	No	No		No	No	No	No	Yes	Yes	Yes	R	*	
3.6.5	Limited Manufacturing	No	No	No		No	No	No	No	SP	SP	SP	R	*	
3.6.6	General Manufacturing	No	No	No		No	No	No	No	SP	SP	No	R	*	
3.6.7	Research and Development	No	No	No		No	No	No	No	SP	Yes	No	R	*	
<b>3.7</b>	<b>PROHIBITED USES</b>														
3.7.1	Prohibited Uses	No	No	No		No	No	No	No	No	No	No	NR	*	
3.7.2	Marijuana Establishments	No	No	No		No	No	No	No	No	No	No	NR	*	

\*Uses within the Ground Water Protection Districts may be subject to additional regulation. See Section 6.6 Ground Water Protection Districts.

\*\*Monopoles allowed by SP on Town-owned land; and attachments allowed by SP on existing structures in all zoning districts.

\*\*\*Overlay District. See Section 6.7

## TABLE II STANDARD DIMENSIONAL REGULATIONS

**NOTES:** (1) All Standard Dimensional Regulations are subject to the definitions and conditions in corresponding provisions for dimensional regulations contained in Section 5 of this Bylaw.  
(2) Special exceptions to these Dimensional Regulations are contained in Subsection 5.3 of this Bylaw.

ZONING DISTRICTS	MIN. LOT AREA IN SQ FT	MIN. LOT FRONTAGE IN FT	MIN. LOT WIDTH IN FT	MIN. FRONT YARD IN FT	MINIMUM SIDE & REAR YARD IN FT	MINIMUM OPEN SPACE IN %	MAX BLDG COVER IN %	MAX HGT IN FT	MAX HGT IN STORIES
<b>RESIDENCE 10</b>	10,000	100	100	30	15	--	--	35	2 ½
<b>RESIDENCE 20</b>	20,000	125	125	40	20	--	--	35	2 ½
<b>RESIDENCE 60</b>	60,000	200	200	50	25	--	--	35	2 ½
<b>OVER 55 HOUSING</b>	7 ACRES	50	50	50	40	35%	--	36	2 ½
<b>NEIGHBORHOOD BUSINESS</b>	10,000	100	100	30	15	30% in all cases and where a business or industrial use abuts a residential district or use, a landscape buffer shall be provided	35%	35	2 ½
<b>NEIGHBORHOOD MIXED USE</b>	20,000	125	125	20	20' side and rear yard in all cases provided that where such use abuts a residential district, the yard shall be increased to 50'	20% in all cases and where a business or industrial use abuts a residential district or use, a landscape buffer shall be provided	35%	35	3
<b>GENERAL BUSINESS</b>	20,000	125	125	20	20' side and rear yard in all cases provided that where such use abuts a residential district, the yard shall be increased to 50'	20% in all cases and where a business or industrial use abuts a residential district or use, a landscape buffer shall be provided	35%	35	3
<b>CENTRAL BUSINESS</b>	10,000	40	40	5	20' where such use abuts a residential district, 20' rear yard in all cases, 0 ft for a side yard where such a use abuts a commercial use	None, however, where such use abuts a residential district or use a landscape buffer consistent with §5.2.6.1 shall be provided	50%	40	3
<b>GENERAL INDUSTRIAL</b>	20,000	125	125	50	20' side and rear yard that where such use abuts a residential district the yard shall increase to 50'	30% in all cases and where a business or industrial use abuts a residential district, a landscape buffer shall be provided	35%	40	3
<b>HIGHWAY INDUSTRIAL</b>	80,000								
<b>LIGHT INDUSTRIAL/OFFICE</b>	20,000								

## SECTION 3. PRINCIPAL USE REGULATIONS

- 3.1 **General Principal Use Provisions** - Except as provided by the Zoning Act, in each district no land, structure or building shall be used except for the purposes permitted in the district as set forth in Section 3 Principal Use Regulations and Table 1 Principal Use Regulations unless otherwise specifically permitted in this Bylaw. It is the intent of this Bylaw to prohibit in any district any use which is not specifically permitted herein, including but not limited to those uses specifically prohibited in Subsection 3.7 Classification of Prohibited Uses and those uses denoted in Table 1 by the word "No."

A use listed in Table 1 is permitted as of right in any district under which it is denoted by the word "Yes." If denoted by the letters "SP" the use may be permitted by special permit from the Board of Appeals, and the Board of Appeals shall be deemed the special permit granting authority for such uses. If denoted by the letters "PB" the use may be permitted by special permit from the Planning Board, and the Planning Board shall be deemed the special permit granting authority for such uses. Where any uses permitted as of right or by special permit are followed by the letter "R" site plan review is required in accordance with Subsection 6.5 and where the letters "NR" appear site plan review is not required.

### 3.2 **Classification of Extensive Uses**

- 3.2.1 **Agriculture** - Cultivating and harvesting general crops and market gardens including the storage of necessary farm equipment, and, if upon more than five acres, a farm for the raising of cattle horses, sheep, goats and poultry and a farmstand for the sale of farm products grown in the Town of, or towns contiguous to, Wilmington.
- 3.2.2 **Greenhouse** - A commercial greenhouse, salesroom or stand for the cultivation and sale of nursery or garden products.
- 3.2.3 **Conservation** - Land and water resource management and passive recreation.
- 3.2.4 **Recreation** - Golf course, riding stable, playground and play fields, swimming, tennis and similar non-municipal recreational facility.
- 3.2.5 **Earth Removal** - Removal in accordance with the provisions of the Town of Wilmington's Earth Removal Bylaw.

### 3.3 **Classification of Residential Uses**

- 3.3.1 **Single Family Dwelling** - A detached dwelling unit designed and used exclusively as a single housekeeping unit with common cooking and living facilities. No more than one building for dwelling purposes shall be located upon a lot except as provided pursuant to Subsection 3.3.3, 3.3.4 and 3.3.5.
- 3.3.2 **Accessory Apartments** - A single family dwelling may be altered and used for not more than two dwelling units, the Principal Unit plus one Accessory Apartment, in accordance with the requirements of Section 4.2.
- 3.3.3 **Community Housing Facilities** - The use of land, buildings and structures by the Wilmington Housing Authority for single family detached (other than one single family dwelling per lot which may be used in accordance with Subsection 3.3.1) and attached dwelling and multi-family structures of all types for the purpose of providing affordable housing for the elderly, handicapped, low and moderate income persons or families; or do anything in relation thereto.
- 3.3.4 **Municipal Building Reuse** - A public school building or other municipal building may be converted and used for multiple dwelling units provided (1) the maximum number of dwelling units permitted within any such conversion shall not exceed six units per acre and (2) the Board of Appeals finds that the site, architectural and landscape plans and

conditions of approval are sufficiently advantageous to the Town to grant a special permit.

3.3.5 **Multi-family Housing** - A building or group of buildings containing more than one dwelling unit. Each unit may be owned by a separate owner. The term "multi-family housing" shall not include accessory apartments, rented rooms, boarding houses, hotels, motels, lodging houses, hospital or municipal use.

3.3.6 **Over 55 Housing** – An Over 55 Housing development shall constitute housing intended for persons of age 55 or over within the meaning of Massachusetts General Law Chapter 151B, Sections 4, 16 and 42 USC S3607(b)(2)(c), and in accordance with the same, 100% of the dwelling units in an Over 55 Housing development shall each be owned and occupied by at least one person 55 years of age or older per dwelling unit, and such development shall be operated and maintained in all other respects in compliance with the requirements of said statutes and regulations promulgated pursuant thereto.

### 3.4 **Classification of Governmental, Institutional and Public Service Uses**

3.4.1 **Municipal Use** - Use of land, buildings and structures by the Town of Wilmington.

3.4.2 **Educational** - Use of land, buildings and structures for providing learning in a general range of subjects on land owned or leased by the Commonwealth or any of its agencies, subdivisions of bodies politic or by a recognized religious sect or denomination, or by a nonprofit educational entity. Such use may include athletic facilities, dormitories, administrative offices and similar facilities and activities whose purpose is substantially related to furthering learning.

3.4.3 **Religious** - Use of land, buildings and structures for religious purposes by a recognized religious sect or denomination which may include religious instruction, maintenance of a convent, parish house and similar facilities and activities whose purpose is substantially related to furthering the belief of such sect or denomination.

3.4.4 **Philanthropic** - Charitable or nonprofit library, museum, art gallery, theatrical entertainment center or other similar use.

3.4.5 **Nursery School** - Use of land, buildings and structures for a nursery school or similar facility for the day care of children.

3.4.6 **Hospital and Nursing Home** - Hospital, community health center, sanitarium, nursing, rest or convalescent home including any Detox Facility as defined as the use of any land, Building or Structures for the purpose of providing detoxification and treatment of alcoholism, drug addiction or substance abuse services.

3.4.7 **Public Service Utility** - The use of land, buildings and structures by a public service corporation exclusive of wireless communications facilities which are defined in Section 3.4.8 and addressed in Section 6.8 of this Bylaw provided that in the residence districts the use is essential to the service of the residential area in which it is located.

3.4.8 **Wireless Communications Facility** - Consists exclusively of fixtures and equipment used by a public utility or FCC-licensed commercial entity for the wireless transmission and reception of radio signals including (1) reception and transmission equipment and fixtures such as antennae, communication dishes and similar devices, (2) structures that are erected and used primarily to support such reception and transmission equipment and (3) any accessory mechanical, electronic, or telephonic equipment, fixtures, wiring and protective covering customary and necessary to operate such wireless communications equipment. A wireless communications facility is a transmission and reception substation, not a principal facility for conducting a communications business.

### 3.5 **Classification of Business Uses**

- 3.5.1.1 **Retail Store(s)** under 30,000sq.ft. – Store(s) for the display and sale of merchandise within a building having single or multi-tenants, no one tenant having more than 30,000sq.ft. defined as including but not limited to: grocery, deli, sandwich shop, ice cream parlor, bakery and package stores; drugstore; book, stationery and gift shop; antique shop; florist; pet shop; television and radio sales; hardware store; department and furniture stores; garden center with open air sales; and all other retail stores.

A sandwich shop shall be defined as a food establishment serving sandwiches, soups, salads, pizza and other individually portioned items over the counter, with no table service and seating limited to a maximum of twelve (12) chairs.

- 3.5.1.2 **Retail Store(s)** over 30,000 sq.ft. – Store(s) for the display and sale of merchandise primarily within a building primarily for a single tenant. Defined as including but not limited to: home improvement, department or furniture stores; garden centers with open air sales.

- 3.5.2 **Business and Professional Office** - Office of a business, profession, medical office, and out-patient clinic including laboratory incidental thereto and all other office uses.

- 3.5.3 **Bank** - Bank, loan agency or similar financial facility.

- 3.5.4 **Limited Service Restaurant** - Food service establishment as defined by the State Sanitary Code where food and nonalcoholic beverages are sold to customers at a table or counter and where food and nonalcoholic beverages may also be sold to customers for consumption on an outdoor patio or off premises as carry-out orders.

- 3.5.5 **General Service Restaurant** - Food service establishment as defined by the State Sanitary Code, with an indoor seating capacity of at least 100 people, where food, alcoholic beverages and nonalcoholic beverages are sold to customers at a table or counter and where food, alcoholic beverages and nonalcoholic beverages may also be sold to customers for consumption on an outdoor patio or off premises as carry-out orders.

- 3.5.6 **Hotel or Motel** - Establishment, located on a lot with an area of at least 60,000 sq.ft., where lodging and meals are provided for the public in a single building with at least 50 guest rooms and a General Service Restaurant.

- 3.5.7 **Lodge and Club** - Private lodge or club operated for members or employees.

- 3.5.8 **Funeral Home** - Undertaking or funeral establishment.

- 3.5.9 **Veterinary Care** - A fully enclosed facility for the boarding, treatment and care of domestic animals which is staffed by at least one (1) full time veterinarian.

- 3.5.10 **Personal Service Shop** – Barber, beauty shop, nail salon, cosmetic tattooing, tailor or dressmaking, laundry or dry-cleaning shop, self-service laundry or dry cleaning shop, catering, copy/blueprint store, rental service store and all other personal service shops.

- 3.5.11 **Craft Shop and Building Trade** - Shop or studio of an artist, sculptor or craftsman, repair shop for appliances, office equipment, bicycles, lawnmowers or similar equipment, carpenter and shop of a builder, electrician, mason, plumber or similar occupation.

- 3.5.12 **Commercial and Trade School** - Private educational facility for profit including training centers, business schools, centers for dancing, martial arts and music or other similar educational facilities for profit.
- 3.5.13 **Amusement Facility** - Indoor facilities including theater, cinema, bowling alley, skating rink, and arcade.
- 3.5.14 **Auto Service Station and Car Wash** - Open air sale of motor vehicle fuel, related products and services provided that all maintenance and services, other than minor service and repair, shall be conducted entirely within a building; and a car wash.
- 3.5.15 **Auto Rental/Repair and Body Shop** – Auto rental and livery establishment for automobiles or similar light motor vehicles having a maximum 6,000 gross vehicle weight or 135 inch wheel base; Establishment where the principal service is the repair of automobiles and painting of automobiles or similar light motor vehicles having a maximum 6,000 gross vehicle weight or 135 inch wheel base.
- 3.5.16 **Vehicle Dealership** - Salesroom and related dealership facilities for new automobiles, truck, boats, motorcycles, farm implements, light industrial equipment and similar light vehicles having a maximum 6,000 pound gross vehicle weight or 135 inch wheel base and, if located on the same site as the dealership, open air display(s) for new and used vehicles is permitted if located on the same site as the salesroom and related facilities.
- 3.5.17 **Parking Facility** - Commercial parking lot or parking garage.
- 3.5.18 **Adult Uses** - The uses defined in Section 6.7 of these Bylaws.
- 3.5.19 **Pet Care Facility** - A facility for the care of domestic pets (a) which provides either boarding or day care services, or (b) which provides three or more of the following services: grooming services, retail sales related to pet products, veterinary care services, pet training classes, and any other use related to domestic pet care not specifically set forth in this Section which, in the opinion of the Planning Board, constitutes domestic pet care services and complies with the intent and purpose of this By-law and Section 3.8.14.
- 3.5.20 **Registered Marijuana Dispensary** - The uses defined in section 6.10.1.1 of the Bylaws.
- 3.5.21 **Brew Pub** - Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer and/or ale at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Malt beverages including beers, ales and hard ciders produced on the premises may be sold to consumers for take-away or to other establishments but such sales shall not exceed 25 percent of the brew pub's production capacity.

### 3.6 **Classification of Industrial Uses**

- 3.6.1 **Warehouse** - Warehouse or other building for the storage or wholesale marketing of materials, merchandise, products or equipment including a rail or freight transfer depot, where the principal use of the warehouse facility is sorting materials, merchandise, products or equipment for reshipment.
- 3.6.2 **Bulk Material Storage and Sales** - Contractor's yard, fuel oil/heating service facility, lumber yard, recreational vehicle center or similar establishment for open and enclosed storage, distribution or sale at wholesale and retail of materials, merchandise, products or equipment, provided that all smoke, odor particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration shall be effectively confined to the premises or disposed of in a manner so as not to pose a present or potential hazard to human health, safety, welfare or the environment.



- 3.6.3 **Heavy Vehicular Rental/Dealership and Repair Garage** – Heavy Vehicular rental and livery establishment for trucks, buses or similar heavy motor vehicles having a gross vehicle weight in excess of 6,000 pounds or wheel base in excess of 135 inches; salesroom and related dealership facilities for trucks, buses or similar heavy motor vehicles having a gross vehicle weight in excess of 6,000 pounds or wheel base in excess of 135 inches, and establishments for the storage or repair of automobiles, truck, construction equipment or similar heavy motor vehicles and equipment provided that all but open air display and the making of all but minor repairs shall be conducted wholly within a building and provided further that all smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration shall be effectively confined to the premises or disposed of in a manner so as not to pose a present or potential hazard to human health, safety, welfare or the environment.
- 3.6.4 **Light Industrial** – Warehouse and distribution; assembly of finished products, including building systems and components, electronic components, precision instruments, or other high technology products; printing or publishing plant; and other like uses; provided that all smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise, and vibration are effectively confined to the premises or disposed in a manner so as not to pose a present or potential hazard to human health, safety, welfare or the environment. Facilities that release large amounts of process water or facilities that generate, treat, store or dispose of hazardous materials or hazardous waste, except in quantities associated with normal household use, are excluded from this classification.
- 3.6.5 **Limited Manufacturing** – Fabrication or processing employing only electric or other substantially noiseless and inoffensive motor power, hand labor, or quiet machinery; and packaging of food and dairy products; provided that all smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise, and vibration are effectively confined to the premises or disposed in a manner so as not to pose a present or potential hazard to human health, safety, welfare or the environment. Facilities that generate, treat, store or dispose of hazardous materials or hazardous waste are excluded from this classification, except for very small quantity generators as defined under 310 C.M.R.30.000 that meet the requirements of Section 3.8.12 of this Bylaw.
- 3.6.6 **General Manufacturing** - Manufacturing operations, including but not limited to, bottling works; laundry or dry cleaning plant; indoor breeding laboratory for medical or scientific research; monument works; concrete mixing and block plants; manufacturing of textile products; welding shops; manufacture of paper products, light metal products, hardware and office supplies; fabrication of electronic components, precision instruments, or other high technology products; trucking terminal; or other similar general manufacturing plants and facilities; provided that all smoke, odor particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration are effectively confined to the premises or disposed in a manner so as not to pose a present or potential hazard to human health, safety, welfare or the environment.
- 3.6.7 **Research and Development (R&D)** – Establishments devoted to investigation, experimentation, and testing activities related to the fields of electronics, engineering, geology, physics, or other scientific area.

### 3.7 **Classification of Prohibited Uses**

- 3.7.1 **Prohibited Uses** - The following uses are expressly prohibited in all zoning districts of the Town: trailer camp, mobile home, except recreational vehicles (in dead and maintained storage), mobile home park, mobile home sales; outdoor movie theater; billboard; dump, salvage or junk yard and all open storage of junk waste products and salvage materials; airport; kennels, except as otherwise may be allowed in a Pet Care Facility as contemplated by Section 3.5.19, of this By-Law and which use shall be subject to the Special Permit and Site Plan Review requirements of the Planning Board as authorized by Section 3.8.14, and tractor trailer cleaning establishment; slaughter house, rendering plant, and fertilizer plant, refinery, smelting, paper/pulp mill, and asphalt plants; and all other uses that pose a present

or potential hazard to human health, safety, welfare or the environment by reason of resulting smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration are expressly prohibited in all zoning districts in the Town as are all uses not specifically permitted in the Bylaw.

**3.7.2 Marijuana Establishments Prohibited** – Pursuant to Section 3 of Chapter 94G of Massachusetts General Laws, all types of marijuana establishments, as defined by Section 1 of Chapter 94G of Massachusetts General Laws and as may otherwise be defined by Massachusetts law or regulation, including without limitation all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers, on-site consumption at a business location, all other types of licensed marijuana-related businesses, and the conducting of any such activity for commercial purposes by whichever name used, shall be prohibited within the Town of Wilmington. This prohibition shall not be construed to affect the medical use of marijuana as expressly authorized by the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.000.

### **3.8 Minimum Special Permit Criteria**

Notwithstanding any other special permit criteria that may be required by the special permit granting authority, the following minimum criteria shall apply to the following special permits.

- 3.8.1 Hotels or Motels shall be subject to the following minimum special permit criteria.
- minimum lot size of 60,000 sq.ft.
  - minimum lot frontage of 200 linear feet.
  - The 20 foot front yard setback as defined by this bylaw, shall be landscaped with plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point 6 inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required 20 foot front yard setback shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least 10 feet from the street line but not necessarily in a straight row. Further, they shall be placed and maintained so as not to impede safe access to or egress from the site. At the discretion of the developer, the plan for landscaping in the required 20 foot front yard setback may include fencing, earth berms, and walls. These materials and landscaping devices may substitute for all or some of the arrangement of plantings noted above; not including trees. In all instance, however, the height of any fences, berms and walls shall not exceed a height of 36 inches above finished grade, and shall be designed and located as not to impede safe access to or egress from the site, and shall be at least ten feet from the street line, but not necessarily in a straight row. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass, or mulching, where appropriate.
- 3.8.2 Commercial and trade schools located in the Central Business District shall be subject to the following minimum special permit criteria.
- No automotive related training schools except drivers education shall be permitted.
  - All signs shall be affixed to the primary building, i.e., wall signs; no other signs shall be permitted.
- 3.8.3 Amusement facilities in the Central Business District shall be subject to the following minimum special permit criteria.
- All facilities shall be housed within a structure, and may not exceed 1,000 sq. ft. total area.

3.8.4 Deleted

3.8.5 All limited service restaurants in the General Business district shall be subject to the following minimum special permit criteria.

- All signs shall be affixed to the primary structure, i.e., wall signs; no other signs shall be permitted.
- All lighting for parking or building illumination shall be directed onto the lot at all times; a lighting plan to this effect shall be prepared for the special permit granting authority.
- The 20 foot front yard setback as defined by this bylaw, shall be landscaped with plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point six inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required 20 foot front yard setback shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least ten feet from the street line but not necessarily in a straight row. Further, they shall be placed and maintained so as not to impede safe access to or egress from the site. At the discretion of the developer, the plan for landscaping in the required 20 foot front yard setback may include fencing, earth berms, and walls. These materials and landscaping devices may substitute for all or some of the arrangement of plantings noted above; not including trees. In all instances, however, the height of any fences, berms and walls shall not exceed a height of 36 inches above finished grade, and shall be designed and located as not to impede safe access to or egress from the site, and shall be at least ten feet from the street line, but not necessarily in a straight row. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass, or mulching, where appropriate.
- Drive-through facilities shall be permitted if the submitted site plan can accommodate an on-site waiting line of at least eight vehicles.

3.8.6 Car washes in the General Business District shall be subject to the following minimum special permit criteria.

- Minimum lot size of 60,000 sq. ft.
- At the boundary of the parcel the noise level emanating from the car wash operations shall not exceed 55 decibels.
- The 20 foot front yard setback as defined by this bylaw, shall be landscaped with plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point six inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required 20 foot front yard setback shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least ten feet from the street line but not necessarily in a straight row. Further, they shall be placed and maintained so as not to impede safe access to or egress from the site. At the discretion of the developer, the plan for landscaping in the required 20 foot front yard setback may include fencing, earth berms, and walls. These materials and landscaping devices may substitute for all or some of the arrangement of plantings noted above; not including trees. In all instance, however, the height of any fences, berms and walls

shall not exceed a height of 36 inches above finished grade, and shall be designed and located as not to impede safe access to or egress from the site, and shall be at least ten feet from the street line, but not necessarily in a straight row. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass, or mulching, where appropriate.

- All signs shall be affixed to the primary building, i.e., wall signs; no other signs shall be permitted.
- The site plan shall indicate that at least 12 vehicles can be queued waiting for service on the lot.

3.8.7 An auto repair and body shop in the General Business District shall be subject to the following minimum special permit criteria.

- All vehicles shall be repaired inside a structure, and no more than three repaired or to be repaired vehicles at any one time shall be stored outside the structures associated with the auto repair and body shop use.
- All signs shall be affixed to the primary building, i.e., wall signs; no other signs shall be permitted.
- The 20 foot front yard setback as defined by this bylaw, shall be landscaped with plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point six inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required 20 foot front yard setback shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least ten feet from the street line but not necessarily in a straight row. Further, they shall be placed and maintained so as not to impede safe access to or egress from the site. At the discretion of the developer, the plan for landscaping in the required 20 foot front yard setback may include fencing, earth berms, and walls. These materials and landscaping devices may substitute for all or some of the arrangement of plantings noted above; not including trees. In all instance, however, the height of any fences, berms and walls shall not exceed a height of 36 inches above finished grade, and shall be designed and located as not to impede safe access to or egress from the site, and shall be at least ten feet from the street line, but not necessarily in a straight row. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass, or mulching, where appropriate.

3.8.8 A vehicular dealership in the General Business District shall be subject to the following minimum special permit criteria.

- Minimum lot size 100,000 sq. ft.
- All signs shall be affixed to the primary building, i.e., wall signs; no other signs shall be permitted.
- The 20 foot front yard setback as defined by this bylaw, shall be landscaped with plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point six inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required 20 foot front yard setback shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least ten feet from the street line but not

necessarily in a straight row. Further, they shall be placed and maintained so as not to impede safe access to or egress from the site. At the discretion of the developer, the plan for landscaping in the required 20 foot front yard setback may include fencing, earth berms, and walls. These materials and landscaping devices may substitute for all or some of the arrangement of plantings noted above; not including trees. In all instance, however, the height of any fences, berms and walls shall not exceed a height of 36 inches above finished grade, and shall be designed and located as not to impede safe access to or egress from the site, and shall be at least ten feet from the street line, but not necessarily in a straight row. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass, or mulching, where appropriate.

3.8.9 Retail uses under 30,000sq.ft. in the GI district shall be subject to the following minimum special permit criteria.

- The maximum gross floor area used for retail or personal service uses shall not exceed 8,000 sq. ft. on any one lot.
- In any one contiguous district zoned GI the total maximum gross floor area used for retail or personal service uses shall not exceed 24,000 sq. ft. as a total for all lots in the district.
- Notwithstanding any limitation on square footage for retail or personal service used on a lot, or within the GI District, to the contrary in this Section 3.8.9, the maximum gross floor area used for retail or personal service uses shall be no greater than 24,000 sq. ft. on any one lot which abuts the northerly side of state highway Route 125.

3.8.10 Retail uses over 30,000 sq.ft. in the Highway Industrial district shall be subject to the following minimum special permit criteria.

- Minimum lot size 80,000 sq.ft.
- At least 40% of the 50 foot front yard setback as defined by this bylaw, shall be landscaped with native species and drought resistant plant materials and shall be required to have one tree for every 25 feet of frontage. At the time of planting each tree shall have a trunk width of at least three inches measured at a point six inches above grade. The spacing of the trees shall be at the discretion of the developer but shall not be of a manner that reduces visibility at points of access or egress from the site. Further, the required landscaped area shall contain an arrangement of plantings, shrubbery or evergreen material that within two years of planting shall attain a height of at least 36 inches. The line of plant materials shall be located at least ten feet from the street line but not necessarily in a straight row. Further, they shall not be placed and maintained so as to impede safe access to or egress from the site. All other surface areas of the landscaped portion of the front yard setback shall be planted with a ground cover, grass or mulching, where appropriate.
- Interior landscaping within parking areas shall represent 15% of the total area to attempt to eliminate excessive heat from the parking lot and to provide shaded parking spaces.
- All lighting for parking or building illumination shall be directed onto the lot at all times; a lighting plan to this effect shall be prepared for review by the special permit granting authority.

3.8.11 Multi-family use in the Central Business District shall be allowed by special permit from the Planning Board subject to the following minimum special permit criteria.

- a. In existing structures multi-family uses shall be restricted to floors above the ground floor; access to the residential unit shall be secure, separate and clearly distinguishable from any access to any commercial activity; parking shall be

provided on-site at a rate of one space per unit; residential units shall not be located on any floor containing any commercial use, i.e., all floors used for residential purposes shall be exclusively residential; all commercial signs on any building where residential uses are located above a commercial use shall not be illuminated between the hours of 10 p.m. and 7 a.m.

- b. For new construction, new buildings that are designed for residential and commercial use shall be subject to the dimensional requirements set forth for the CB district; the minimum special permit criteria as continued herein; and any other criteria approved by the Planning Board.
- c. For new residential construction in the CB district that includes more than one building on the lot and which is designed entirely for multi-family residential use, the following criteria shall apply:

<b>Minimum lot area</b>	25,000 sq. ft.
<b>Density</b>	one unit per 4000 sq. ft. of lot area; and not more than 12 units per structure
<b>Height</b>	40 ft. but not to exceed three stories
<b>Open space</b>	40% of total lot area
<b>Parking</b>	1.5 spaces per dwelling
<b>Maximum building coverage</b>	30%
<b>Minimum front yard</b>	30 ft.
<b>Minimum side and rear yards</b>	50 ft., and subject to the landscaping requirements of Section 5.2.6.1

- d. For new residential construction in the CB district that consists of only one building on the lot and which is designed entirely for multi-family residential use, the following criteria shall apply:

<b>Minimum lot area</b>	25,000 sq. ft.
<b>Density</b>	one unit per 2,500 sq. ft. of lot area; and not more than 12 units
<b>Height</b>	40 feet, but not to exceed three stories
<b>Open space</b>	None, however where such use abuts a residential district or use a landscape buffer consistent with §5.2.6.1 shall be provided
<b>Parking</b>	1.5 spaces per dwelling
<b>Maximum building coverage</b>	30%
<b>Minimum front yard</b>	5 feet

**Minimum side  
and rear yards**

20 feet where such use abuts a residential district; 20 feet rear yard in all cases; 0 feet for a side yard where such a use abuts a commercial uses of central business district

- 3.8.12 Limited service restaurant use in the General Industrial District shall be allowed by special permit subject to the following minimum special permit criteria:

- a. The maximum gross floor area used for Limited Service Restaurant use shall not exceed 2,500 sq. ft. on any one lot.
- b. In any one continuous district zoned General Industrial, the total maximum gross floor area used for Limited Service Restaurant use shall not exceed 7,500 sq. ft. as a total for all lots in such district.

- 3.8.13 Very small quantity generators as defined under 310 C.M.R.30.000 in the Light Industrial/Office (LI/O) District are subject to the following minimum special permit criteria:

Approval of the Fire Chief  
Approval of the Health Director

- 3.8.14 Pet Care Facilities in a General Business District, Highway Industrial District, Neighborhood Mixed Use District, or a General Industrial District shall be allowed only by Special Permit from the Planning Board, and further only upon Site Plan Approval by the Town of Wilmington Planning Board. Pet Care Facilities shall also be subject to the following minimum Special Permit criteria:

Use to be allowed in the General Business District, Highway Industrial District, Neighborhood Mixed Use District, or a General Industrial District only.

Pet Care Facilities shall have a minimum of 3,000 square feet of area, inclusive of all floors dedicated to any use allowed by this Section, and exclusive of any exterior area.

Such use shall be subject to any and all Rules and Regulations as may from time to time be promulgated by the Board of Health and further subject to the Approval of the Health Director.

- 3.8.15 Multi-family use in the Neighborhood Mixed Use District shall be allowed by special permit from the Planning Board subject to the following minimum special permit criteria:

<b>Minimum lot area</b>	25,000 sq. ft.
<b>Density</b>	one unit per 4000 sq. ft. of lot area
<b>Height</b>	40 ft. but not to exceed three stories
<b>Open space</b>	40% of total lot area
<b>Parking</b>	2 spaces per dwelling
<b>Maximum building coverage</b>	30%
<b>Minimum front yard</b>	20 ft.
<b>Minimum side and rear yards</b>	20 ft.

## SECTION 4

## ACCESSORY USE REGULATIONS

- 4.1 **Provisions for Accessory Uses** - Accessory uses shall be permitted in all districts on the same lot with the principal use, and on any lot(s) abutting thereto or directly across the street there from in the same ownership and the same zoning district, provided such uses do not include any prohibited uses in Subsection 3.7 unless otherwise specifically authorized herein and provided further than such uses would not pose a present or potential hazard to human health, safety, welfare or the environment by reason of resulting smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration and subject in the following cases to the following provisions:

- 4.1.1 **Residential Uses** - In the residential districts or for dwellings in the nonresidential districts, uses customarily incidental to principal uses shall be permitted as accessory uses, including, but not limited to, such uses as a private garage or carport for not more than three motor vehicles, passive and active solar systems, noncommercial greenhouse, tool shed or barn and sale of flowers, vegetables, fruits, shrubs or trees that are grown on the premises.

- 4.1.2 **Swimming Pools and Tennis Courts** - In the residential districts or for dwellings in nonresidential districts, a swimming pool, tennis court or similar home recreation facility shall be permitted, provided that such facility is used only by the residents of the premises and their guests and that such recreational facilities conform to all dimensional regulations established herein for buildings.

Swimming pools, whether aboveground or in-ground, having a depth of 18 inches or more or a surface of 150 sq. ft. or more shall be enclosed by a non-climbable safety fence not less than five feet in height with a self-latching gate. In the case of aboveground pools such safety fence may consist of the pool wall and fence around the top rail or deck thereof provided the stairs to such pool are removable, swing out of use or are fenced. In all cases the setback shall be measured from the nearest point of the coping of an in-ground pool or the nearest point of the top rail or deck of an aboveground pool to each lot line.

- 4.1.3 **Home Occupation** - In the residential districts, the practice or conduct of a profession or occupation in an office or arts and crafts in a studio shall be permitted in a dwelling or in an accessory building thereto provided that: (1) the same is conducted, owned and managed by a resident(s) of the premises, (2) no more than one person other than the residents of the dwelling are employed on the premises in connection with the home occupation, (3) the use is clearly accessory to the residential use of the premises, (4) the use is located entirely within the dwelling or accessory building and occupies no more than 25% of the gross floor area of any one floor, (5) no more than ten vehicular trips per day shall be generated by the home occupation, (6) nor more than four persons (exclusive of the residents of the premises or the employee) shall be at the premises at any one time and (7) in the case of a home occupation requiring three or more parking spaces, a site plan is submitted in accordance with Subsection 6.5 Site Plan Review.

Sale to the public of antiques or similar goods such as furniture, household utensils and clothing shall not be permitted except for the sale of such goods as a garage, yard, tag or similar sale and provided that there shall be no more than two such sales, each extending for less than 36 hours, at any premises during a calendar year.

- 4.1.4 **Renting Rooms and Boarding** - In the residential districts or for dwellings in the nonresidential districts, the renting of rooms and furnishing of meals for not more than four persons shall be permitted, provided that the same is conducted and managed by a



resident owner of the premises. Renting rooms and boarding for more than four persons may be authorized by special permit from the Board of Appeals.

- 4.1.5 **Wind Machines** - In all districts wind machines may be authorized by special permit from the Board of Appeals provided that such wind machines are set back from all lot lines at least a distance equal to the minimum required setback or a distance equal to the overall height of the tower from its base on the ground to the highest extension of any part of the wind machine whichever is greater.
- 4.1.6 **Garaging or Parking of Commercial Motor Vehicles** - In the residence districts, garaging or parking for one commercial automobile or for one light commercial vehicle (maximum 6,000 pound gross vehicle weight or 135 inch wheel base) shall be permitted. Garaging and parking of more than one such commercial automobile or light commercial vehicle may be authorized by special permit from the Board of Appeals. For the purposes of the Bylaw privately owned/operated automobiles and light commercial vehicles, used primarily as personal vehicles, shall not be considered as garaging or parking of commercial motor vehicles.
- 4.1.7 **Temporary Residences and Offices/Storage**
- 4.1.7.1 **Temporary Residence** - In all districts a mobile home or trailer may be placed on the side of a residence which has been destroyed by fire or other natural holocaust and resided in by the owner(s) or resident(s) of the residence which has been destroyed for a period not to exceed 12 months while the residence is being rebuilt.
- 4.1.7.2 **Temporary Office/Storage** - In all districts the temporary use of mobile home or trailer for office/storage facilities during construction of a building, may be authorized by permit from the Inspector of Buildings provided that no such permit or successive permit shall be granted for a period of more than 12 months.
- 4.1.7.3 **Use of Trailers for Non-construction Storage** - In all districts, other than General Industrial District, the use of trailers and semi-trailers for non-construction storage shall be prohibited. In the General Industrial District the use of trailers and semi-trailers as temporary storage facilities shall be permitted for a period not to exceed three months provided that such storage facilities conform to all dimensional regulations established herein for buildings and are screened from public view on any streets. In the General Industrial District the use of such trailers for more than three months may be authorized by special permit from the Board of Appeals.
- 4.1.8 **Farm Product Sales** - In the residential districts, farm products raised outside the Town of, and towns contiguous to Wilmington may be sold, provided that such sales are clearly incidental and secondary to the operation of a farmstand as permitted under Subsection 3.2.1 Agriculture.
- 4.1.9 **Fairs, Bazaars, Antique Shows and Carnivals** - In all districts, any building or premises owned or operated by a municipal or religious organization or private lodge or club may be used with the owner's permission for fairs, bazaars, antique shows, or similar events. In all districts, open-air carnivals on premises owned by a municipal or religious organization or private lodge or club may be authorized by the Select Board, provided such use is limited to appropriate restrictions on the number of days and hours of operations.
- 4.1.10 **Scientific Development** - In all districts where not otherwise permitted by right in accordance with Subsection 4.1, uses may be authorized by special permit from the Board of Appeals, whether or not on the same parcel as activities permitted as a principal use, provided that the Board of Appeals finds that such uses are necessary in connection with scientific development or related production and such uses are clearly accessory to the principal use of the premises.

- 4.1.11 **Watchman Accommodations** - In the industrial districts a dwelling unit for a watchman or other employee essential to the principal nonresidential use shall be permitted.
- 4.1.12 **Company Stores and Employee Facilities** - In the industrial districts company stores for the retail sale of products manufactured on the premises to the general public and company facilities for the sale of goods and services to employees shall be permitted. The total amount of area used for retail sales of products manufactured on the premises shall not exceed 50% of any one building and not more than 5,000 sq. ft. of gross floor area.
- 4.1.13 **Used Vehicle Sales** – In the General Business (GB) and General Industrial (GI) Districts, auto repair and body shops may use the paved portion of their lot for the sale and display of up to a total of two (2) used vehicles. No used vehicle shall be parked within 20 feet of the sideline of the street. “For Sale” signs covering not greater than 20% of the vehicle windshield are permitted, and must be attached to the vehicle. All other signs advertising used vehicle sales are prohibited.

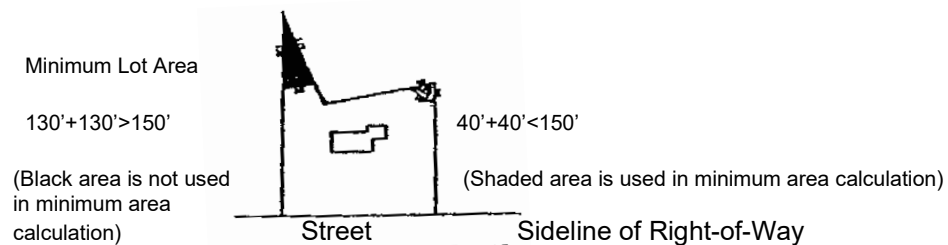
The sale of used vehicles is allowed at new vehicle dealerships, provided the vehicles are displayed on the same site as the salesroom and related dealership facilities.

- 4.2 **Accessory Apartments** - An accessory apartment is authorized as an accessory use in a single family dwelling subject to the following conditions:
- 4.2.1 Either the Principal Unit or the Accessory Apartment shall be occupied by the owner of the property and restricted as such on the deed for the property. For the purpose of this section, the "owner" shall be one or more individuals who constitute a family who hold legal or beneficial title to the dwelling and for whom the dwelling is the primary residence for voting and tax purposes.
- 4.2.2 The Accessory Apartment and the Principal Dwelling shall be constructed so as to comply with the State Building Code as administered by the Inspector of Buildings of the Town of Wilmington.
- 4.2.3 The floor area of the Accessory Apartment shall not exceed 1,250 sq. ft.
- 4.2.4 There shall not be more than two bedrooms in an Accessory Apartment.
- 4.2.5 The Accessory Apartment shall be designed so that the appearance of the structure remains that of a single family dwelling, subject further to the following conditions and requirements:
- a. All stairways to an Accessory Apartment located above the ground floor shall be enclosed within the exterior walls of the dwelling, or not visible from the street.
  - b. There shall not be more than one driveway or curb cut providing access to the dwelling units except for half circular or horseshoe driveways located in the front of the building.
- 4.2.6 A minimum of one additional parking space shall be provided for the Accessory Apartment.
- 4.2.7 No Accessory Apartment permitted under this Section 4.2 shall be constructed and occupied without building and occupancy permits issued by the Inspector of Buildings.

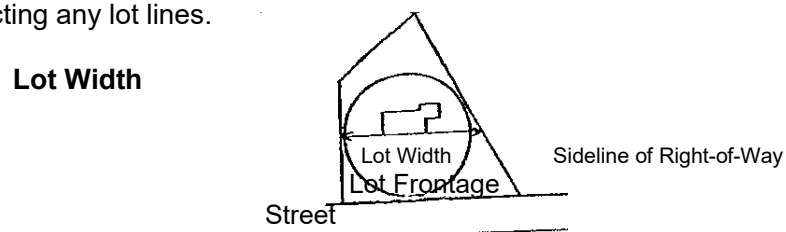
## SECTION 5. DIMENSIONAL REGULATIONS

- 5.1 **Standard Dimensional Provisions** - Except as provided by the Zoning Act, in each district no land, structure or building shall be used or begun except in accordance with Section 5 Dimensional Regulations and Table II Standard Dimensional Regulations unless otherwise specifically permitted in this Bylaw. The symbol "--" on Table II indicates no specific minimum or maximum regulation.
- 5.2 **Provisions for Dimensional Regulations** - The following dimensional regulation provisions shall apply:

- 5.2.1 **Lot Area** - Lot area shall be determined by an area within a lot including any area within said lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area. When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall not be considered in computing the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet.



- 5.2.2 **Frontage** - Frontage shall be measured in a continuous line along the sideline of the street right of way between the points of intersection of the side lot lines with said street. If a lot has frontage on more than one street, the frontage on one street only may be used to satisfy the minimum lot frontage. Frontage for a corner lot shall be measured to the point of intersection of the extension of the sideline of the street right of way.
- 5.2.3 **Lot Width** - The lot width shall permit a circle with a diameter not less than the minimum lot width in feet to be located at the sideline of the street right of way along which the frontage of the lot is measured without the circumference of such circle intersecting any lot lines.



- 5.2.4 **Front Yards** - Front yards shall be measured between the sideline of the street right of way or from a line 25 feet from and parallel to the mean center line of the street to the nearest point of any building or structure or whichever distance is the greater. In all cases, corner lots shall be considered to have two front yards and two side yards. A lot having frontage on two or more streets shall have two or more front yards, each of which shall comply with the requirements of the front yard provisions.

- 5.2.4.1 Front yards in the General Business District shall be planted with natural materials; at a minimum, trees. Each tree (at planting) shall have a minimum trunk width (diameter) of three inches measured at a point six inches above grade. One tree shall be required for each 25 feet of lot frontage; the location and spacing of the

trees shall be at the discretion of the owner but subject to final approval by the town engineer.

5.2.5 **Side and Rear Yards** - Side and rear yards shall be measured from the nearest point of any building or structure to each side or rear lot line.

5.2.6 **Open Space** - The percent of open space shall be determined by dividing the total area landscaped on a lot by the total lot area. Such landscaping shall be designed to enhance the visual impact of the principal use upon adjacent property and within the lot. In all developments, to the extent practicable, existing trees shall be retained and used to satisfy the provisions of the minimum open space. In the business districts where a business or industrial use abuts a residential district or a residential use and in the industrial districts where a business or industrial use abuts a residential district, a landscaped buffer shall be provided in accordance with Section 5.2.6.1.

5.2.6.1 **Residential landscape buffer.** In the business and industrial districts where a business or industrial use abuts a residential district or use, the commercial or industrial use shall be set back from the residential district or use consistent with the requirements of this bylaw. Further, the first 20 feet of any setback measured from the commercial or industrial lot line or commercial or industrial zoning line shall be landscaped in the following manner. On the parcel boundary line, or in such location as may be required by site plan review, the commercial or industrial use shall be required to erect a solid panel wooden fence of at least five feet but no more than eight feet in height. Further, not closer than ten feet from the boundary line, the commercial or industrial use shall plant one tree for every 20 feet of common boundary length. The exact spacing to be determined under site plan review to ensure maximum screening. At the time of planting each tree shall have trunk width (diameter) of a least three inches measured at a point six inches above grade after planting.

5.2.7 **Building Coverage** - The percent of building coverage shall be determined by dividing the total ground area of all buildings on a lot by the total lot area.

5.2.8 **Height**

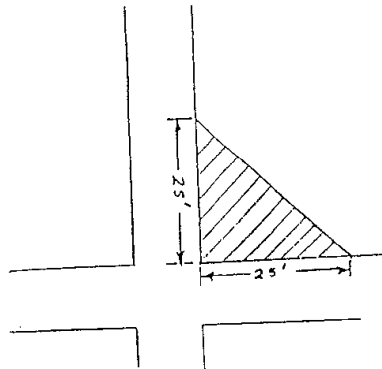
5.2.8.1 **Height in Feet** - Height in feet shall be the vertical distance from the average of the finished ground level adjoining a building or structure at all exterior walls to the top of the highest roof beams of a flat roof or to the mean level of the highest gable or slope of a hip roof. In all districts chimneys, towers, agricultural silos, antennae, elevator shafts and other similar structures not used for human occupancy or storage may extend above the height limits herein fixed provided that (1) if located upon a roof of a building such structure(s) do not occupy more than 20% of the roof surface and (2) in all cases such extensions shall not exceed a height of 48 feet from the ground to the highest point of the structure unless authorized by special permit from the Board of Appeals.

5.2.8.2 **Height in Stories** - Height in stories shall be the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. One-half story shall be a story under a gable or slope of hip roof.

5.2.8.3 **Landfill Height Limit** - The vertical distance above the mean level of the ground within ten feet of the horizontal limit of a landfill to the top surface of the landfill, including any final landfill cap or covering material, shall not exceed 40 feet.

### 5.3 **Special Exceptions**

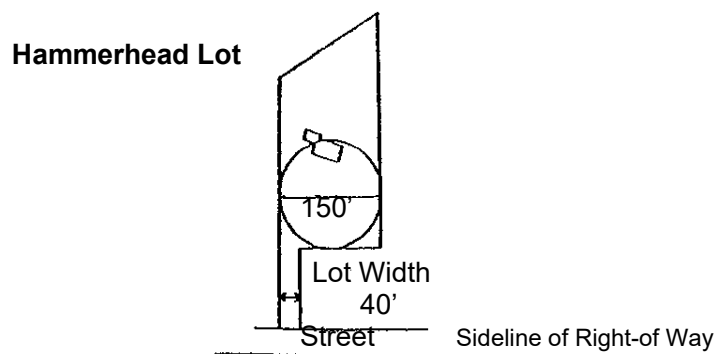
- 5.3.1 **Setback of Structures** - Unless otherwise specified in this Bylaw no structure shall be located within any setback area except: Storage sheds no larger than 120 sq. ft. and one story high, when located at a point along the rear lot line, may be placed not closer than ten feet of side and rear lot lines; walls and fences no more than eight feet high; uncovered steps, ramps and terraces; cornices and eaves not extending more than 18 inches; signs and lighting facilities; mail boxes and flagpoles; underground storage tanks/septic systems; accessory facilities associated with the provision of utilities such as drains and wells; and similar structures. In the case of corner lots no building or structure including fences and walls shall be erected and no vegetation may be maintained between a plane one foot above curb level and a plane seven feet above curb level in the triangular area bounded by the sideline of the intersecting street rights of way and a straight line connecting points on sidelines 25 feet from the point of intersection of side street rights of way.



In any district, no building need provide a greater front yard than the average front yard on the adjoining side lots. In determining such average, a vacant lot shall be considered as conforming to the required front yard. In determining such average where an adjoining side lot is a corner lot having two frontages, only the frontage sharing the same street as the subject lot shall be used to calculate the average front yard.

- 5.3.2 **Pre-Existing Lots** - In the residence districts a dwelling may be erected on a lot shown on a plan recorded prior to November 28, 1955 having less than the required lot area, frontage or width provided said lot conformed with the lot size provisions applicable to the construction of a dwelling on said lot as set forth in the Zoning Bylaws on September 14, 1934. In addition in all districts, any property which does not conform to one or more of the dimensional provisions of this Bylaw because of an acquisition or taking for a public purpose, shall be deemed to conform to such dimensional provision to the degree that such property conformed prior to the public acquisition or taking.
- 5.3.3 **Frontage Exception Lots** - In the residential districts the minimum frontage and minimum lot width for a standard lot may be reduced to not less than 80 percent of the required frontage and lot width (frontage and lot width reduced in the Residence 10 to 80 feet, Residence 20 to 100 feet and Residence 60 to 160 feet) provided that the standard minimum lot area required for each lot is increased by a minimum of 5,000 sq. ft. (lot area increased in the Residence 10 to 15,000 sq. ft., Residence 20 to 25,000 sq. ft. and Residence 60 to 65,000 sq. ft.).
- 5.3.4 **Hammerhead Lots** - In the residential districts hammerhead lots are subject to the following criteria:

- 5.3.4.1 Minimum lot area shall be 40,000 sq. ft. in the Residence 10 and Residence 20 Districts, and 80,000 sq. ft. in the Residence 60 District.
- 5.3.4.2 Minimum lot frontage shall be 40 feet.
- 5.3.4.3 The lot shall contain a minimum 150 foot circle within which circle the dwelling shall be located.
- 5.3.4.4 Minimum width shall be 40 feet at all points between the sideline of the street along which the frontage of the lot is measured and the nearest point of the 150 foot dwelling location circle. Such width shall be measured along lines which are parallel to the street sideline.
- 5.3.4.5 In all cases the nearest point of any dwelling or structure shall be set back 40 feet from all lot lines.
- 5.3.4.6 No more than two hammerhead lots shall have contiguous frontage.



- 5.3.5 **Height of Buildings in Industrial Districts** - In the industrial districts the height of buildings may be increased above 40 feet and three stories provided that (1) the minimum open space is 40% or more, (2) the maximum building coverage is 25% or less and (3) the maximum height of the building is 48 feet or less and four stories or less.

## SECTION 6. SPECIAL PROVISIONS

### 6.1 NONCONFORMING USES AND STRUCTURES

**\*\*SPECIAL NOTE--** Chapter 139 of the Acts of 1998 provides that no dwelling shall be constructed on any lot in the Town of Wilmington containing less than 10,000 sq. ft. of land or having less than 100 feet of frontage; provided that the Planning Board may authorize by Special Permit the construction of one (1) single family dwelling on such a lot which does not conform with these area or frontage requirements.

- 6.1.2 **Applicability** - This Zoning By-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by M.G.L. c. 40A, s. 5 subsequent to which this Zoning Bylaw, or any relevant part thereof, was adopted. However, in the case of the issuance of a building or special permit, construction or operation there under shall conform to the provisions of this Bylaw unless the construction or use has commenced within a period of not more than twelve months after the issuance of the permit and, in cases involving construction, such construction is continued through to completion expeditiously. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
- 6.1.3 **Nonconforming Uses** - The Board of Appeals may issue a special permit to change or extend a nonconforming use only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The Board of Appeals shall not allow an existing nonconforming use to be changed to another nonconforming use.
- 6.1.4 **Nonconforming Structures** - The Board of Appeals may issue a special permit to allow the reconstruction, extension, alteration, or change of a nonconforming structure, other than a nonconforming single or two family residential structure, only after it determines that such reconstruction, extension, alteration, or change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
- 6.1.5 **Variance Required** - The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals; provided, however, that this provision shall not apply to nonconforming single and two family residential structures, which shall be governed by Section 6.1.6 below.
- 6.1.6 **Pre-Existing Nonconforming Single and Two Family Residential Structures** Pre-Existing Nonconforming single and two family residential structures may be reconstructed after voluntary demolition, extended, altered, or structurally changed upon the issuance of a building permit after a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following three situations shall be deemed to not increase the nonconforming nature of the structure and shall be used in the determination by the Inspector of Buildings. All other situations including, without limitation, the extension of an exterior wall, vertically or horizontally, at or along the

same nonconforming distance within a required yard, shall be deemed to increase the nonconforming nature of the structure and shall require the issuance of a special permit pursuant to Section 6.1.6.4.

- 6.1.6.1 Any reconstruction, extension, alteration or change to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient area or insufficient width, where the reconstruction, extension or alteration or change will also comply with all of said current requirements.
- 6.1.6.2 Any reconstruction, extension, alteration or change to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the reconstruction, extension, alteration or change will also comply with all of said current requirements.
- 6.1.6.3 Any reconstruction, extension, alteration or change to a structure which encroaches upon one or more required yard or setback areas, where the reconstruction, extension, alteration or change will comply with all current setback, yard, building coverage and building height requirements.
- 6.1.6.4 In the event that the Inspector of Buildings determines that the nonconforming nature of a single or two family residential structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
- 6.1.7 **Abandonment** - A nonconforming use or structure which has been abandoned, discontinued or not used shall thereafter conform to the requirements of this Bylaw and the nonconforming use or structure may not be resumed.
  - 6.1.7.1 A nonconforming use or structure shall be considered abandoned, without limitation, when a nonconforming use or structure has been replaced by a conforming use or structure.
  - 6.1.7.2 A nonconforming use or structure, other than a single or two family residential structure, shall be considered discontinued or not used when not used for a period of two years or more.
- 6.1.8 **Reconstruction after Catastrophe** - A nonconforming structure which has been damaged by fire, flood or similar disaster may be restored provided that the owner shall apply for a building permit and start operations for reconstruction of said premises within two years after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume and footprint as the original nonconforming structure. In any other circumstance, a special permit shall be required from the Board of Appeals.
- 6.1.9 **Reversion to Nonconformity** - No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.



## 6.2 **Flood Plain District**

### 6.2.1 **Purpose** - The purposes of the Flood Plain District are to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters;
7. Provide long term control over the extent of land subject to inundation by the base flood.

### 6.2.2 **Flood Plain District Boundaries and Base Flood Elevation and Floodway Data**

6.2.2.1 **Flood Plain District Boundaries** – The Flood Plain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town designated as Zone A, AE, AH, AO, A99, V and VE on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that show flood zones located wholly or partially within the Town include map panel numbers 25017C0279F, 25017C0281F, 25017C0283F, 25017C0287F dated July 6, 2016; and map panel numbers 25017C0284E, 25017C0282E, 25017C0289E, 25017C0291E, 25017C0292E, 25017C0293E, and 25017C0294E dated June 4, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated July 6, 2016. The FIRM and FIS report are incorporated herein by reference and are on file with the Planning & Conservation Department, Town Engineer and Inspector of Buildings.

#### 6.2.2.2 **Base Flood Elevation and Floodway Data**

- a. Floodway Data - In Zone A, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways.
- b. Base Flood Elevation Data- Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within Zone A.

### 6.2.3 **Notification of Watercourse Alteration** – In a riverine situation, the Inspector of Buildings shall notify the following of any alteration or relocation of a watercourse:

- a. Adjacent Communities
- b. NFIP State Coordinator, MA Department of Conservation and Recreation

c. NFIP Program Specialist, FEMA, Region I.

6.2.4 **Prohibited Uses** - Except as may be necessary for the maintenance and repair of existing structures, any new construction including filling or excavation is prohibited within the limits of the floodway as designated on the FIRM map.

6.2.5 **Permitted Uses** - The following uses are permitted by right in accordance with the provisions of the underlying district:

6.2.5.1 Any use permitted in the underlying district in which the land is located provided that such use does not involve any alteration or development of the land that would alter the natural flood storage volume of the site.

6.2.5.2 Cultivating and harvesting general crops, market gardens, grazing, and conservation use;

6.2.5.3 Construction and maintenance of public and private water supplies, including above ground water supply structures not in excess of 100 gross sq. ft..

6.2.5.4 Maintenance and repair of existing structures and improvement of existing structures provided that any such improvement is in accordance with Sections of the Massachusetts Building Code (780 CMR) which address floodplain areas;

6.2.5.5 Maintenance, repair of existing structures and improvement of existing structures in any street or associated easement which is maintained and operated by the Town of Wilmington.

6.2.6 **Uses Permitted by Special Permit from the Board of Appeals**

The Board of Appeals may authorize by Special Permit any use permitted in the underlying district in which the land is located, including grading, filling and excavating, subject to the same use and development regulations as may otherwise apply thereto provided that the Board of Appeals finds that the proposed use will not significantly conflict with the purposes set forth herein and provided further that:

- a. At least 100% of the flood storage volume of the site (the volume of water which could be stored between the elevation(s) of the property as it existed on 15 June 1982 and the elevation(s) of the base flood) shall be maintained;
- b. In the case of residential structures the elevation of the lowest floor level including basement of any new or substantially improved dwelling shall be at or above the base flood and in the case of non-residential buildings the elevation of the lowest floor including basement of any new or substantially improved building shall be at or above the base flood or flood-proofed to above the base flood, in accordance with Sections of the Massachusetts Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- c. In the case of vehicular access the elevation of the lowest point of any new driveway from the street to the building shall be at or above the base flood and all new construction, including utilities, is anchored to prevent flotation and designed to avoid impairment during the base flood, in accordance with Sections of the Massachusetts Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- d. Reference to Existing Regulations – All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, 44 C.F.R. 60.3(d) and with the following regulations:

Sections of the Massachusetts Building Code (780 CMR) which address floodplain and coastal high hazard areas;;

Wetland Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

Inland Wetlands Restrictions, DEP (currently 310 CMR 13.00); and

Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.000, Title 5).

Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with required variance procedures set forth in such regulations.

- e. All subdivision proposals must be designed to assure that: such proposals minimize flood damage; all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

### **Procedures for Review by the Board of Appeals**

6.2.7.1 Any person who desires to use land within the Flood Plain District in accordance with Subsection 6.2.6 shall submit a written application to the Board of Appeals. Each application shall be accompanied by the following information:

- a. A written statement detailing the proposed work and the history of any previous flood plain permits granted under this Subsection of the Bylaw for the subject property;
- b. Proposed site plan for the entire development showing existing and proposed buildings, structures, signs, parking spaces, driveway openings and driveways; the Flood Plain District boundary; existing and proposed topography at one foot intervals outside the District; the floodway boundary; all facilities for surface water draining, sewage disposal and other utilities and all landscape features;
- c. Detailed calculations and supporting materials prepared by a Registered Professional Engineer showing the existing and proposed flood storage volume of the site between the elevation(s) of the property as it existed on 15 June 1982 and the elevation(s) of the base flood. In Zone A the supporting materials shall include the methods and all data used in determining the elevation of the base flood; and
- d. Certification by a Registered Professional Engineer that the proposed flood-proofing methods will ensure that any new or substantially improved buildings, having the elevation of the lowest floor including basement below the base flood depths, pressures, velocities, impact and uplift forces associated with the base flood.
- e. In Zones AE, along watercourses in the Town that have a regulatory floodway designated on the Middlesex County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

6.2.7.2 The Board of Appeals shall, within ten days of its receipt of an application under Subsection 6.2.6, refer the application to the Board of Health, Planning Board, Conservation Commission and the Town Engineer for written reports and

recommendations and no decisions shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such reports.

- 6.2.7.3 If a special permit is granted, the Board of Appeals shall impose such conditions and safeguards as public safety, welfare and convenience may require including that upon completion of any authorized work an "as-built" plan, prepared by a Registered Professional Engineer, of all improvement in the Flood Plain District shall be submitted to the Inspector of Buildings and shall specify the elevation of the lowest floor including basement, the elevation to and the method by which any building has been flood-proofed and the finished grades.

## 6.2.8 Definitions

- 6.2.8.1 **Area of Special Flood Hazard** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AE, VE or V.
- 6.2.8.2 **Base Flood** means the flood having a 1% chance of being equaled or exceeded in any given year.
- 6.2.8.3 **Development** means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
- 6.2.8.4 **Federal Emergency Management Agency (FEMA)** administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.
- 6.2.8.5 **Flood Boundary and Floodway Map** means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1999 and later, information previously found on the Flood Boundary and Floodway Map is incorporated in the FIRM Map and the Flood Boundary and Floodway Map has been eliminated.
- 6.2.8.6 **Flood Insurance Rate Map (FIRM)** means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
- 6.2.8.7 **Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.
- 6.2.8.8 **Lowest Floor** means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.
- 6.2.8.9 **New Construction** means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, **new construction** means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.
- 6.2.8.10 **One-Hundred-Year Flood** - see BASE FLOOD

- 6.2.8.11 **Special Flood Hazard Area** means an area having special flood and/or flood-related erosion hazards, and shown on a FIRM as Zone A, AO, AE, A99, AH, V or VE.
- 6.2.8.12 **Start of Construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- 6.2.8.13 **Structure** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **Structure**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.
- 6.2.8.14 **Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.
- 6.2.8.15 **Substantial Improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.
- 6.2.8.16 **Zone A** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.
- 6.2.8.17 **Zone AE** (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.
- 6.2.8.18 **Zone AH** and **Zone AO** means the 100-year floodplain with flood depths of 1 to 3 feet.

### 6.3 **Signs and Advertising Devices**

- 6.3.1 **General Regulations** - No exterior sign or advertising device shall be erected except provided by this Bylaw and after a permit for such construction has been issued by the Inspector of Buildings. All applications shall include at least: the name and address of the sign owner and the owner of the premises where the sign is to be located, if other than the sign owner; a plan of the proposed sign location; a scaled drawing showing the design, colors to be used, dimensions and position of the sign, method of support, and illumination; and such other pertinent information as the Inspector of Buildings may require to ensure compliance with the Bylaw and any other applicable law.

For the purpose of these regulations signs and advertising devices shall include any symbol, design or device used to identify or advertise any place of business, product,

activity or person. Erecting shall include any symbol, design or device used to identify or advertise any place of business, product, activity or person. Erecting shall include any construction, extending, altering or changing of a sign other than repainting, repairing and maintaining.

- 6.3.2 **Special Permits** - In particular instances the Planning Board, acting as the Special Permit Granting Authority (SPGA) in conjunction with site plan review, may issue special permits for more or larger signs than are provided herein or for signs of types or for purposes not provided herein and not specifically prohibited herein, if it is determined that the architecture of the building, the location of the building with reference to the street or the nature of the establishment is such that the sign should be permitted in the public interest. In granting such permission, the SPGA shall specify the size and location of the sign or signs and impose such other terms and restrictions as it may be deemed to be in the public interest. Any applicant under this provision shall provide the information required in 6.3.1 above and specific information in the form of perspectives, renderings, photographs or other representations sufficient to show the nature of the proposed sign, its effect on the immediate surrounding and the reasons for allowing it.

6.3.3 **Prohibited Signs in All Districts**

- 6.3.3.1 All signs not located on the same premises as the advertised activity are prohibited as well as signs on utility poles, trees or fences and all billboards; except an off-premises identification or directional sign designating the presence or location of a recognized religious sect or denomination and except an off-premises directional sign designating the route to a specific recognized industrial center not on the street to which the sign is located may be erected and maintained within the public right-of-way at any intersection or on private property by special permit of the Board of Appeals shall be granted only upon the determination that such sign will promote the public interest, will not endanger the public safety, and will be of such size, location and design as will be of such size, location and design as will not be detrimental to the neighborhood. All such directional signs shall be unlighted and each shall be not over five sq. ft. in area.
- 6.3.3.2 All signs consisting of spinners, strings of non-holiday lights, revolving beacons, searchlights, animated signs and signs illuminated to create the illusion of motion are prohibited.
- 6.3.3.3 All roof signs not erected as of July 1, 1983, shall be prohibited, except signs placed at least one foot below the top of a mansard roof.
- 6.3.3.4 Any sign that depicts, describes or relates to nudity or sexual conduct as defined in M.G.L., chapter 272, section 31, and that is visible from the outside of the building.

6.3.4 **Uniform Regulations in All Districts**

- 6.3.4.1 No sign which requires a permit under this Bylaw shall be erected except in the exact location and manner described in the permit and each sign so erected shall indicate the permit number.
- 6.3.4.2 No sign shall swing, flash, rotate, move or make noise except for indicators of time and temperature or barber poles.
- 6.3.4.3 No sign shall be erected that in any way creates a traffic hazard, nor shall it in any way obscure or confuse the traffic control. No sign shall be placed within a public way or project over a public way except signs erected or required by governmental agencies.
- 6.3.4.4 No sign, other than signs indicating time and temperature, shall be illuminated more than 30 minutes after closing or between the hours of 11:00 p.m. and 6:00 a.m. unless indicated an establishment open to the public during those hours.

- 6.3.4.5 No sign shall be illuminated other than by white lights or neon lights. The illumination from any sign shall be so shaded, shielded or directed and maintained at a sufficiently low intensity and brightness that it shall not affect the safe vision of operators of vehicles moving within the premises and on any public road.
- 6.3.4.6 No sign erected before July 1, 1983 shall be required to conform to the dimensional and location requirements herein. However, any sign which (1) has not been used for a period of two years; or (2) advertises or identifies products, persons or activities which are no longer sold, located or carried on at the premises shall be removed or brought into compliance with the provisions herein by the owner of the property.
- 6.3.4.7 The display area of any sign shall include the total surface area of a sign. The display area of an individual letter sign or irregular shaped sign shall be the area of the smallest rectangle into which the letters or shape will fit. Where sign faces are placed back to back and face in opposite directions, the display area shall be defined as the area of one face of the design.

**6.3.5 Signs which do not require a permit under this Bylaw**

- 6.3.5.1 One identification sign upon a lot in the residential districts and a sign for an authorized home occupation or other use which is permitted in the residential districts, none of which shall be in excess of two sq. ft. of display area or lighted other than by indirect white light.
- 6.3.5.2 One identification sign upon a lot in the residential districts for any institutional and public service use located on the premises, none of which shall be in excess of 12 sq. ft. of display area, lighted other than by indirect white light or located within 15 feet of any property line.
- 6.3.5.3 Town of Wilmington signs erected and maintained on any land, building or structure used by the Town of Wilmington.
- 6.3.5.4 Public street banners authorized by the Board of Selectmen identifying a Town of Wilmington activity or advertising a charitable, educational or religious event.
- 6.3.5.5 Political signs erected in accordance with the Revised Bylaws of the inhabitants of Wilmington, none of which shall be illuminated or in excess of six sq. ft. of display area.
- 6.3.5.6 Temporary real estate signs for the sale or lease of property or construction signs for a new building or other construction identifying the development, the owner or intended occupant and the contractor, architect and engineers, none of which shall be illuminated or in excess of six sq. ft. of display area in the residential districts or 32 sq. ft. of display area in the nonresidential districts and provided further that, in the case of real estate signs, such signs are removed upon the sale of property and, in the case of construction signs, such signs are removed within 30 days of the issuance of the occupancy permit.
- 6.3.5.7 Standard fuel signs on service stations fuel pumps identifying in usual size the name or type of fuel and price thereof.
- 6.3.5.8 Standard Posting and Protective Signs including but not limited to such signs as: private property, no trespassing, no hunting and no loitering.
- 6.3.5.9 Interior window signs in the nonresidential districts, none of which are illuminated other than by standard lighting fixtures on the building. All exterior window signs and all illuminated window signs, whether interior or exterior, shall be calculated as part of the total display area permitted for all wall signs.

### 6.3.6 Signs permitted in the business, mixed use and industrial districts

6.3.6.1 Any principal use in a business, mixed use or industrial district may erect a wall sign and projecting sign as follows:

- a. **Wall Sign** – One wall sign provided that the display area shall not exceed one and one half sq. ft. for each lineal foot of the front wall of the business or 120 sq. ft. whichever is less and the length of any first floor sign shall not exceed seven-eighths of the length of the front wall of the business or 40 feet whichever is less. The length of signs on any other floor shall not exceed ten feet. No portion of a sign or awning shall project above the wall of any building except by special permit of the Planning Board. A business may divide the total display area permitted herein into separate wall signs or individual letter signs provided that the sum of the total area and dimensions of the separate signs or letters conforms to all of the above provisions. Awnings may be substituted for a wall sign by special permit of the Planning Board.
- b. **Projecting Sign** - One projecting sign provided that the display area shall not exceed 24 sq. ft. and the thickness between sign faces shall not exceed one and one-half feet. No portion of a projecting sign shall project more than four feet from the face of a wall or above the wall of any building. One projecting sign at each exterior doorway may be erected provided that the display area of each sign shall not exceed six sq. ft. and the projecting sign conforms to all other provisions herein.

6.3.6.2 In addition any principal use in a business, mixed use or industrial district may erect the following signs:

- a. **Secondary Signs** - If a business has a direct entrance for the public into the business in a wall other than the front wall, one secondary wall sign may be erected on such wall and if a business has a wall other than the store front that faces a street or parking area, one secondary wall sign may be erected on such wall. The display area of a secondary wall sign shall not exceed six sq. ft. and no business shall have more than one secondary wall sign on any wall or more than two secondary signs in any event.
- b. **Directory Signs** - One exterior directory sign listing the name and location of the occupants of the premises may be erected on the exterior wall of a building at each entrance including loading docks and employee entrances provided the display area shall not exceed one square foot for each occupant identified on the directory sign.
- c. **Directional Signs** - Directional signs may be erected near a street, driveway or parking area if necessary for the safety and direction of vehicular or pedestrian traffic. The display area of each directional sign shall not exceed two sq. ft. and no directional sign shall be located more than six feet above the ground level if mounted on a wall of a building or more than three and one-half feet above the ground if free standing. Directional signs shall not advertise, identify or promote any product, person, premises or activity but may identify the street name/number and provide traffic directions.

6.3.6.3 Any business/industrial lot or any industrial center development may erect a freestanding sign as follows except in the Central Business District and Neighborhood Business District where freestanding signs are prohibited.

- a. **Freestanding Business or Industrial Sign** - One Freestanding or Industrial Sign per building lot provided (1) the display area shall not exceed one-half square foot for each lineal foot of the front wall of the building or 50 sq. ft. whichever is less, (2) the height from the base on the ground to the highest point



of any part of the sign structure shall not exceed 15 feet and (3) no part of the sign structure shall be within 10 feet of any property line.

In addition a temporary promotional sign banner(s) may be attached to such freestanding business and industrial sign provided (1) the display area of the temporary sign banner(s) shall not exceed one-half the area of the freestanding business or industrial sign to which it is attached and (2) the temporary sign banner(s) is removed within 48 hours of the end of the promotion.

- b. **Freestanding Industrial Center Identification Sign** - One Freestanding Industrial Center Identification Sign per development containing the name only of an industrial center or development consisting of four or more building lots provided (1) the display area shall not exceed 25 sq. ft., (2) the height from the base on the ground to the highest point of any part of the sign structure shall not exceed six feet and (3) no part of the sign structure shall be within ten feet of the overall boundary of such industrial center or development.

#### 6.4 **Parking and Site Design Standards**

- 6.4.1 **Required Spaces** – Permanent, on-site and off-street parking shall be provided for all residential uses.

For all other uses, permanent off-street parking and adequate loading areas shall be provided on-site, or off-site, with a special permit from the Planning Board if granted pursuant to Section 6.4.3 hereunder for all principal and accessory uses in compliance with the following minimum provisions. Where a use is not specifically included in the schedule below, it is intended that the regulations for the most nearly comparable use specified shall apply. The use of any land or structure shall not be begun or changed from a use described in one subsection of the schedule of uses below to a use in another subsection of the schedule of uses unless the number of off-street parking spaces required for the use are provided or relief from the parking regulations is authorized as hereinafter provided.

##### 6.4.1.1 **Schedule of Uses**

- a. **Dwelling:** 2 spaces for each dwelling unit
- b. **Hotel or Motel or Lodging Houses:** 1.25 spaces per bedroom
- c. **Education:** 1 space for each staff position, plus 1 space for each five persons of rated capacity of the largest auditorium, and 1 space for each student vehicle which can be expected at only one time on the premises.
- d. **Hospital and Nursing Home:** 1 space per bed
- e. **Retail under 30,000 sq. ft. and Service Business:** 1 space per 250 sq. ft. of gross floor area
- f. **Retail over 30,000 sq. ft.** 1 space per 400 sq.ft. of gross floor area
- g. **Business and Professional Office:** 1 space per 300 sq. ft of gross floor area
- h. **Industrial Use:** 1 space per 800 sq. ft. of gross floor area
- i. **Permanent Storage Facility:** 1 space per 1,000 sq. ft. of gross floor area

- j     **Restaurant, Place of Worship, other place of assembly:**                      1 space/3 seats or 36" of counter
- k.    **Auto Service Station**    3 spaces per service bay

6.4.1.2     Shared Parking. Notwithstanding any other parking requirements set forth in this bylaw for individual land uses, when any land or building is used for two or more distinguishable purposes (i.e., joint or mixed use development), the minimum total number of parking spaces required to serve the combination of all uses shall be determined in the following manner: Multiply the minimum parking requirement for each individual use (as set forth by the schedule of uses, Section 6.4.1.1 of this bylaw) by the appropriate percentage (as set forth below) for each of the five designated time periods and then add the resulting sums from each vertical column. The column total having the highest total value is the minimum shared parking space requirement for that combination of land uses.

#### **PARKING CREDIT SCHEDULE CHART**

<b>USES</b>	<b>WEEKDAY</b>			<b>WEEKEND</b>	
	Night Midnight- 7 a.m.	Day 7 a.m. 5 p.m.	Evening 5 p.m. Midnight	Day 6 a.m. 6 p.m.	Evening 6 p.m. - Midnight
Dwelling	100%	50%	90%	80%	80%
Business and Professional					
Office and Industrial	5%	100%	10%	10%	5%
Retail and Service					
Business	5%	50%	90%	100%	5%
Hotel/Motel or Lodging					
House	70%	70%	100%	70%	100%
Restaurant	5%	50%	100%	50%	100%
Day Care Facilities	5%	100%	5%	20%	5%
Education	5%	100%	20%	20%	5%
Hospital and Nursing					
Home	100%	100%	100%	100%	100%
Auto Service Station	5%	100%	70%	100%	70%
All Other	100%	100%	100%	100%	100%

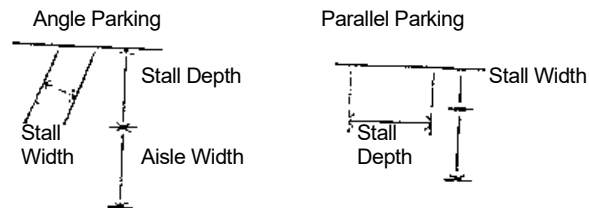
6.4.1.3     One or more off-street loading areas shall be provided for any business that may be regularly serviced by tractor-trailer trucks, to the end that, in the opinion of the Inspector of Buildings, adequate areas shall be provided to accommodate all service vehicles at the premises at any one time. Loading Areas shall be 12 feet wide, 50 feet long. The Inspector of Buildings may authorize loading areas with reduced dimensions provided the service vehicles normally associated with the business do not require the dimensions herein.

6.4.1.4     Parking Requirements for Central Business District. In the Central Business District off-street parking shall be consistent with the requirements of this bylaw except that retail and service business shall be required to provide one off-street space per 400 sq. ft. of gross floor area, and office space at the rate of one space per 500 sq. ft. of gross floor area. Further, in the instance where the property line boundary of a retail store, business or professional office, bank, personal service or craft shop and building trade shop is within 600 feet of a public parking lot of at least 60 spaces and that at least two-thirds of the parking spaces are designated for use of less than two hours, the off-street parking requirement for the uses noted above shall be one space per 600 sq. ft. of gross floor area for all uses noted above except that off-street

parking for business or professional office use shall be required at a rate of one space per 750 sq. ft. of gross floor area.

**6.4.2 Parking Dimensional Regulations** - Off-street parking facilities shall be laid out and striped in compliance with the following minimum provisions:

Angle of Parking	Width of Parking Stall	Depth of Parking Stall	Width of Maneuvering Aisle
61° - 90°	9' 0"	18'	22'
46° - 60°	9' 0"	18'	18'
45°	9' 0"	18'	14'
Parallel	8' 0"	22'	14' one-way 20' two-way



**6.4.2.1 Small Car Stalls** - In parking facilities containing more than 40 parking stalls, 40% of the spaces required under the schedule of uses for Business and Professional Office and for Industrial Use and Permanent Storage Facility may be small car spaces. Such small car stalls, if provided, shall have a stall depth of at least 16 feet and a width of at least 7.5 feet. The width of the maneuvering aisle shall not vary from that set forth in Section 6.4.2. Such small car stalls shall be located in one continuous area and shall be identified by a directional sign(s).

**6.4.2.2 Handicapped Stalls and Access** - In addition to the parking requirements in this Bylaw, all parking facilities must comply with the currently applicable Rules and Regulations of the Architectural Barriers Board of the Commonwealth of Massachusetts.

**6.4.2.3 Layout and Setback of Residential Parking** - For a single family detached or attached dwelling, or a dwelling conversion, one parking space may be provided directly behind another for each dwelling unit, provided that each stall shall meet the width and depth requirement and in no case shall such stalls which are more than two deep be considered in computing the required parking.

**6.4.2.4 Layout and Setback of Non-Residential Parking** - In the non-residential districts required parking spaces, loading areas and driveways shall be provided and maintained with suitable grading, paved surfaces and adequate drainage. Curbs or stall bumpers shall be located around the perimeter of all paved areas (other than entrances and exits) to prevent motor vehicles from damaging buildings, fences and other structures and to prevent vehicles from overhanging planted areas and walks. Parking lots shall be clearly marked indicating the direction of traffic flow as well as the space to be occupied by each motor vehicle.

No parking space or other paved surface, other than driveway entrances or walkways, shall be located within 20 feet of the sideline of the street or within ten feet of any other lot line. Each lot may have one driveway entrance from a street which shall be at least 22 feet wide but not more than 30 feet at the side line of the right of way and may have one additional driveway entrance for each 200 feet of frontage provided such additional driveway(s) shall be at least 200 feet apart. Interior driveways, other than parking aisles, may be reduced to no less than 20 feet for two-way traffic and 14 feet for one-way traffic.

- 6.4.2.5 **Parking Lot Landscaping** - All parking and loading facilities shall be suitably landscaped. Such landscaping shall be designed to minimize the impact of the parking area upon adjacent property and within the lot by the use of existing vegetation to the extent practicable and new trees, shrubs, walls, fences or other landscape elements. In the case of parking facilities for more than 40 spaces at least five percent of the area within the limits of the parking facilities shall be set aside for landscaped areas and such areas shall be provided with a minimum width of ten feet, curbing and shade trees or such other type of landscaped areas as may be required under site plan review.

6.4.3 **Relief from Parking Regulations by Special Permit from the Board of Appeals/Planning Board**

- 6.4.3.1 For all residential uses under Section 6.4.1.1.a, relief from the parking regulations may be granted by the Board of Appeals under this section, provided that the Board of Appeals finds that the desired relief may be granted without substantial detriment to the neighborhood and without derogating from the intent and purpose of this By-Law.
- 6.4.3.2 For all other uses under Section 6.4.1.1, relief from the parking regulations may be authorized by a special permit from the Planning Board under this section, provided that the Planning Board finds (1) that in the case of a change in use of an existing facility the use to which the premises subject to such regulations are to be put is not different in kind in its effect on the neighborhood from an existing use so that a literal application of such parking regulations would be unreasonable or (2) in all other cases including new construction that the desired relief may be granted without substantial detriment to the neighborhood from the intent and purpose of this By-Law. In either case the petitioner shall submit a site plan of the off street parking facilities and the Planning Board shall make its determination based upon all matters arising under this By-Law.

In considering special permit requests for relief from parking regulations under this Section 6.4.3.2, the Planning Board shall have the authority to consider off-site parking for any particular application before the Board, provided, however, that said off-site parking meets the following minimum criteria:

- a. All off-site parking as proposed by any application shall be on a parcel directly abutting the parcel or use seeking relief under the provisions of this Section. The word "abutting" pursuant to this paragraph shall include only parcels abutting the property for which relief is sought.
- b. The party seeking relief from the Planning Board under this Section 6.4.3.2 has provided to the Planning Board sufficient information to evidence a written and recordable document showing that the applicant has a permanent parking easement on the abutting, off-site parcel allowing for sufficient parking for the applicant's proposed use. The determination under this paragraph as to the sufficiency of any written easement documents provided to the Board shall be in the sole discretion of the Planning Board.
- c. Any special permits granted by the Planning Board under this section related to relief relative to off-site parking for non-residential uses shall be for the uses as enumerated in the special permit application only, and shall not be valid for any subsequent change of use. The Planning Board shall include language to this effect in issuing any special permit under this section for relief from parking regulations based on available off-site parking. Any change in use after the

issuance of a special permit under this section, which special permit would have been granted based on available off-site parking, shall require a new application to the Planning Board for relief from this section.

#### 6.4.4 **Site Design Standards**

6.4.4.1 **General Regulations** - Site design and construction standards are intended to ensure that further consideration in all districts will be given to the natural resources and characteristics of a site, to its topographic and geologic conditions, to public convenience and safety and to the attractiveness of a proposed use on a site.

- a. Design and construction shall minimize, to the extent possible, the following features:
  - Encroachment within any wetland or flood plain;
  - Area over which existing vegetation is to be removed;
  - Earth removal and volume of cut and fill;
  - Points of traffic conflict (both pedestrian and vehicular); and
  - Amount of impervious cover especially in aquifer areas.
- b. Design and construction shall maximize, to the maximum extent possible, the following features:
  - Siting multi-family, commercial, and mixed-use structures so they relate to the street in a pedestrian fashion, creating a walkable, inviting, active streetscape with parking in the rear. Streetscapes should include bicycle amenities, shade trees, and wider sidewalks for pedestrian activity and outdoor seating;
  - Low impact development techniques employed to manage stormwater runoff;
  - Shade trees in parking areas to combat heat island effect;
  - Landscaping buffers abutting single-family residential areas;
  - Use of native plantings that are drought tolerant;
  - Connections to any existing trails or sidewalks to create a walkable network;
  - Screening HVAC equipment from view;
  - Maintenance of existing rates of runoff from the site;
  - Preservation of the existing flood storage capacity of the site;
  - Phased construction with detailed erosion control measures;
  - Preservation and maintenance of existing site features particularly existing vegetative cover; and
  - On-going maintenance of the site's land and water resources.

#### 6.4.4.2 Site Design and Construction Standards

a. **Building and Site Design in the Central Business District and Neighborhood Mixed Use District**

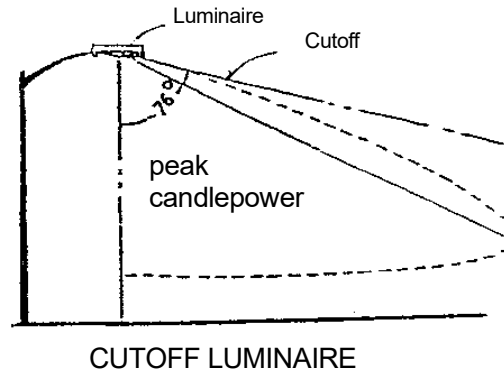
Development in the Central Business District and Neighborhood Mixed Use District should provide a mix of uses similar to a downtown or village center where storefronts are located on the ground floor to create an active pedestrian streetscape. The following design standards shall be met unless otherwise approved by the Planning Board through Site Plan Review:

- Site design shall focus on pedestrian experience and provide pedestrian connections and amenities within the front setback, including walkways, seating areas, benches, lighting, and landscaping.
- Parking and loading areas shall be hidden from view, located in the rear of the building. Parking areas shall include delineated pedestrian routes to the buildings.
- Streetscapes shall provide bicycle amenities, shade trees, and wider sidewalks for pedestrian activity and outdoor seating.
- Buildings shall be designed with architectural details and shall relate to the street in a pedestrian fashion, creating a walkable, inviting streetscape with active storefronts.

b. **Grading, Pavement and Stormwater Runoff** - All non-residential parking spaces, loading and driveways shall be graded, paved and drained in accordance with construction specifications reviewed and approved by the Town Engineer. In addition, no stormwater runoff in excess of rates existing prior to new construction shall be discharged onto a public way or into a public drainage system unless there is, in the determination of the Town Engineer, sufficient capacity to handle the additional runoff.

c.. **Landscaping Requirements** - Land which is required by Subsection 5.2.6 Open Space, Subsection 6.4.2.4 Layout and Setback of Non-Residential Parking and Subsection 6.4.2.5 Parking Lot Landscaping shall be maintained as open planted areas and used to (1) ensure buffers between properties; (2) provide landscaped areas between buildings and (3) minimize: the bulk and height of buildings, structures and parking areas; the effect of lights and signs on abutting properties and the impact of the use of the property on land and water resources. Landscaped areas shall be kept free of encroachment by all buildings, structures, storage areas and parking unless otherwise specifically authorized by this Bylaw.

d.. **Outdoor Lighting** - Outdoor lighting including lighting on the exterior of a building, in parking areas and on signs shall be arranged to eliminate glare and minimize light spillover to neighboring properties. Except for single family residential lights, public street lights and low-level pedestrian lighting with a height of less than ten feet, all outdoor lighting shall be designed and located so that (1) the luminaire has an angle of cutoff less than 76 degrees, (2) a line drawn from the height of the luminaire along the angle of cutoff intersects the ground at a point within the development site and (3) the bare light bulb, lamp or light source is completely shielded from direct view at any point five feet above the ground on a neighboring property including streets.



e. **Within the Ground Water Protection District:** Safeguards. The following are required for any use within a GWPD to protect against hazardous material discharge or loss resulting from corrosion, accidental damage, pillage or vandalism:

1. Storage of liquid petroleum and gasoline products of any kind in a manner shall be consistent with Section 37 of the Bylaws of the Inhabitants of the Town of Wilmington Revised and other applicable regulations;
2. Spill control provisions in the vicinity of chemical or fuel delivery points;
3. Secured storage areas for hazardous materials;
4. Indoor storage provisions for corrodible or dissolvable materials;
5. A closed vapor recovery system for each structure which allows the evaporation of hazardous materials into its interior to prevent discharge of contaminated condensate into the ground water; and
6. Proper manure containment.

**Disposal.** For any hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with MGL, Chapter 21C, as amended.

**Drainage.** All runoff from impervious surfaces shall be drained in a manner designed to prevent the contamination of ground water and to recharge on site, to the extent possible. All runoff prior to discharge shall be preceded by oil, grease and sedimentation traps to facilitate removal of contaminants. Roof runoff from buildings may be drained into dry wells without traps unless the roof contains exposed mechanical equipment or is coated with asphalt.

## 6.5 **Site Plan Review**

### 6.5.1 **General Regulations**

In all instances specified in Section 3, Table 1 Principal Use Regulations as requiring site plan review and for all accessory uses thereto, no building permit shall be issued in any case where a building is to be constructed or to be externally modified, altered or enlarged, except upon site plan review and approval by the Planning Board. No use, including parking shall be changed or expanded in ground coverage, except in

conformity with site plan review. Prior to the issuance of a Certificate of Occupancy, all conditions of said Site Plan approval must be met.

## **6.5.2 Procedure for Site Plan Review**

6.5.2.1 Sufficient copies of applications for site plan review shall be filed with the Planning Board or designated agent. Each application for site plan approval shall be accompanied by the following plan(s) and specifications.

- a. A written statement detailing the proposed use, an evaluation of the proposed use based upon Subsection 6.4.4 Site Design Standards, the extent of the building coverage and open space, drainage calculations and calculations of the volume of earth to be removed if any;
- b. Site Plan(s) showing all lot lines and setback, zoning district boundaries including Flood Plain, all wetlands, all existing and proposed topography, buildings, structures, signs, parking and loading spaces, the limits of all paving and storage areas, all required landscaping, and all facilities for sewage, waste disposal and drainage; and
- c. Floor Plan(s) of the building showing the layout of each floor with a tabular summary of the floor area and required parking together with sufficient information to determine the building's height.
- d. Certified list of abutters.

6.5.2.2 The Planning Board or designated agent shall within ten days of receipt of an application under Subsection 6.5.2, refer the application to the Town Engineer, Fire and Police Departments, Building Inspector, Board of Water & Sewer Commissioners, Department of Public Works, Board of Health, and the Conservation Commission for their written recommendations and no decision shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such report.

6.5.2.3 The Town Engineer, Fire and Police Departments, Building Inspector, Board of Water & Sewer Commissioners, Department of Public Works, Board of Health, and the Conservation Commission shall review the application and submit to the Planning Board or designated agent a report on the site plan with respect to the following matters:

- a. Protection of adjoining premises against detrimental uses by provision for surface water drainage, landscape buffers and area lighting;
- b. Convenience and safety of vehicular and pedestrian movement and the location of driveway openings in relation to traffic or to adjacent streets;
- c. Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- d. Adequacy of the methods of open storage disposal of refuse and other wastes resulting from the uses permitted on the site;
- e. The adequacy of measures used to ensure the protection of the Town's surface and ground water resources.
- f. Compliance with all requirements of this Bylaw.

6.5.2.4 The Planning Board shall hold a public hearing on any complete site plan review application within 30 days of its submission. Public notice of said hearing shall be



given in accordance with the requirements of Massachusetts General Laws Chapter 40A Section 11.

- 6.5.3 **Determination by the Planning Board** - In considering a site plan the Planning Board shall give due consideration to the public hearing comments and the reports of the Town Engineer, Police and Fire Departments, Building Inspector, Board of Water & Sewer Commissioners, Department of Public Works, Board of Health, and the Conservation Commission and to the provisions of Subsection 6.5.2.3(a) through (f). The Planning Board shall take action on an application for approval within 66 days of the submittal to the Planning Board.

Final action shall consist of (a) approval of the site plan as submitted; or (b) approval of the site plan subject to conditions, modifications, limitations and safeguards as the Planning Board deems appropriate to ensure compliance with the terms of site plan review and the provisions of this Bylaw including, if required, sufficient security by bond, money deposit or covenant to secure performance in accordance with the site plan; or (c) denial of the application if in the opinion of the Planning Board the site plan and specifications are not adequate to ensure use of the property consistent with all the provisions of the Bylaw. The decision shall specifically state the reasons for denial.

The Planning Board shall notify in writing the Town Engineer, Police and Fire Departments, Building Inspector, Water & Sewer Commission, Department of Public Works, Board of Health, and Conservation Commission of its decision.

- 6.5.4 The Planning Board shall adopt Site Plan Review Regulations pursuant to this chapter which shall:

1. Further clarify procedures to guide the implementation of this bylaw;
2. Include provisions for waivers of any portion of the regulations, including filing fees, in such cases where, in the opinion of the Planning Board, strict conformity would pose an unnecessary hardship to the applicant and provided such waiver would not be contrary to the intent of the regulations;
3. Provide for the assessment of reasonable filing fees to cover administrative expenses;
4. Clarify monitoring responsibilities during construction to ensure that conditions of site plan approval are enforced.

- 6.5.5 An applicant subject to site plan review may appeal any and all conditions of the site plan review to the Board of Appeals consistent with the filing and notification procedures of the Board of Appeals.

## 6.6 **Ground Water Protection District**

- 6.6.1 **Purpose** - The groundwater underlying the Town is an important resource supplying drinking water to inhabitants of Wilmington. Surrounding communities rely upon Wilmington to protect their groundwater resources as well.

Accidental spills and discharges of petroleum products, other hazardous materials and sewage discharge have repeatedly threatened the quality of groundwater supplies throughout Massachusetts, posing potential public health and safety hazards as well as threatening economic losses to affected communities.

The purpose of this Groundwater Protection District is to:

- a. Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Wilmington.
  - b. Preserve and protect existing sources of drinking water supplies;
  - c. Conserve the natural resources of the Town; and
  - d. Prevent temporary and/or permanent contamination of the environment.
- 6.6.2 **Ground Water Protection District** - The Ground Water Protection District (GWPD) shall be delineated on the Zoning Map of the Town of Wilmington and shall be superimposed over any other district established by the Bylaw. The GWPD is the Zone II approved by the Department of Environmental Protection for Wilmington and surrounding communities. It is based upon a detailed compilation of subsurface data, a limited field program and development of a Town-wide groundwater flow model. Where the lots are split by the Groundwater Protection District boundary, this Bylaw shall apply only to that portion of the lot that is within the district.
- 6.6.3 **Applicability** – The Ground Water Protection District shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities/uses in a portion of one of the underlying zoning districts which fall within the Ground Water Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.
- 6.6.4 **District Boundary Disputes** - If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application of the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.
- 6.6.5 **Prohibited Uses** - Within a Ground Water Protection District, the following uses are specifically prohibited:
  - 6.6.5.1 Sanitary landfills and open dumps. Nothing in these regulations shall prevent the operation of a municipal recycling facility.
  - 6.6.5.2 Land application, land filling and above ground storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
  - 6.6.5.3 Automobile graveyards and junkyards.
  - 6.6.5.4 Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the Groundwater Protection District.
  - 6.6.5.5 Dry cleaning establishments where the dry cleaning is done on the premises.
  - 6.6.5.6 Facilities that generate, treat, store or dispose of hazardous waste subject to M.G.L. 21C and 310 CMR 30.000, except for the following:
    - a. Very small quantity generators as defined under 310 C.M.R. 30.000;
    - b. Household hazardous waste centers and events under 310 CMR 30.390;
    - c. Waste oil retention facilities required by M.G.L. Chapter 21, Section 52A;
    - d. Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
  - 6.6.5.7 Non-sanitary wastewater treatment or disposal works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
    - a. The replacement or repair of an existing system that will not result in a design capacity greater than the design capacity of the existing system;

- b. Treatment works approved by the Massachusetts Department of Environmental protection designed for the treatment of contaminated groundwater;
- 6.6.5.8 Siting of petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual and any subsequent amendments thereto.
- 6.6.5.9 Land application, deposition, dumping, landfilling, storage, processing, or use as material for the shaping, grading or closure of a landfill or former landfill of construction and demolition debris and residue or fines from processing of construction and demolition debris.
- 6.6.5.10 Transfer station for construction and demolition debris or municipal solid waste.
- 6.6.6 **Conditional Prohibited Uses and Activities** – The following land uses and activities are prohibited unless designed in accordance with the specified performance standards. [For Parking Regulations in the Ground Water Protection District see 6.4.4.2]
  - 6.6.6.1 Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation of contaminated run-off or leachate.
  - 6.6.6.2 Storage of pesticides unless such storage is within a building or structure that will prevent an accidental release onto or below the land surface.
  - 6.6.6.3 Storage of commercial fertilizers and soil conditioners, in amounts greater than for normal household use, unless such storage is within a structure with an impermeable cover and liner designed to prevent the generation of contaminated run-off or leachate.
  - 6.6.6.4 Commercial stockpiling of animal manure unless within a structure with an impermeable cover and liner designed to prevent the generation of contaminated run-off or leachate.
  - 6.6.6.5 Earth removal, unless the final grading is greater than four feet above the historical high groundwater mark as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey within 45 days of removal. This does not include excavations for the construction of building foundations or the installation of utility works. All earth removal shall comply with Chapter 5, Section 32 of the Bylaws of the Inhabitants of the Town of Wilmington Revised and other applicable regulations.
  - 6.6.6.6 Spill control provisions must be installed in the vicinity of chemical or fuel delivery points.
  - 6.6.6.7 Storage of liquid hazardous materials, as defined in M.G.L. c.21E, and liquid petroleum products, unless such storage is:
    - a. above ground level; and
    - b. on an impervious surface; and
    - c. either
      - (i) in container(s) or above ground container(s) within a building; or;
      - (ii) outdoors in a covered container(s) or above ground tank(s) in an area that has a containment system designed to hold either 10% of the total possible

storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater.

However, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.

- 6.6.6.8 Storage of corrodible or dissolvable materials, unless in a structure with an impermeable cover and liner designed to prevent the generation of contaminated run-off or leachate.
- 6.6.6.9 A closed vapor recovery system is required for each structure which allows the evaporation of hazardous materials into its interior to prevent discharge of contaminated condensate into the groundwater.
- 6.6.6.10 Disposal of hazardous wastes to be generated in quantities greater than those associated with normal household use (except as prohibited in Section 6.6.5.6), unless the applicant for a building permit can demonstrate the availability and feasibility of disposal methods which are in conformance with M.G.L., Chapter 21C, amended.
- 6.6.6.11 **Drainage** - All runoff from impervious surfaces shall be drained in a manner designed to prevent the contamination of groundwater and to recharge on site, to the extent possible. All runoff prior to discharge shall be preceded by oil, grease and sedimentation traps in accordance with the standard design of the Department of Public Works, to facilitate the removal of contaminants, where, in the opinion of the Town Engineer, such traps are warranted by reason of site conditions and design considerations. Dry wells shall be used only where other methods are not possible and shall also be preceded by oil, grease and sedimentation traps to facilitate removal of contaminants. Roof runoff from buildings may be drained into dry wells without traps unless the roof contains exposed mechanical equipment or is coated with asphalt.
- 6.6.6.12 Car and truck washes, unless connected to municipal sewers.
- 6.6.6.13 Self-service laundries, unless connected to municipal sewers.
- 6.6.7 **Special Permit Uses** - With the Ground Water Protection District the following uses shall be allowed only upon receipt of a special permit (unless prohibited in the underlying zoning district):
  - 6.6.7.1 Golf courses, either private or public.
  - 6.6.7.2 Uses whose principal activity is medical, testing and research laboratories that dispose of biological, radioactive, or chemical wastes.
  - 6.6.7.3 Metal plating, finishing or polishing establishments, electronic circuit boards manufacturing, and furniture refinishing establishments
  - 6.6.7.4 Commercial photographic processing and commercial printing involving the use of volatile chemicals (other than xerographic reproduction).
  - 6.6.7.5 Enlargement or alteration of existing uses that do not conform to the Groundwater Protection District.
  - 6.6.7.6 Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section 6.6.5.6). Such activities shall require a special permit to prevent contamination of groundwater.

- 6.6.7.7 Any use that will render impervious more than 15% or 2,500 sq. ft. of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.
- 6.6.7.8 The construction of dams or other water bodies or courses, created for swimming, fishing, or other recreational or agricultural uses. Such activities shall not adversely affect water quality or quantity.

#### 6.6.8 **Special Permits**

- 6.6.8.1 **Special Permit Granting Authority** - The special permit granting authority (SPGA) under this By-law shall be the Zoning Board of Appeals, except that the Planning Board shall be the SPGA for Section 6.6.7.7 non-residential uses. Special permits shall be granted in accordance with M.G.L. Chapter 40A, Section 9 and Section 10.5 of the Zoning By-law. Such special permits shall be granted if the SPGA determines, in conjunction with the other Town agencies indicated in Section 10.5.9, that the intent of this By-law, as well as its criteria, are met. In making such a determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree and threat to water quality which would result if the control measures fail.
- 6.6.8.2 **Special Permit Criteria** - Special permits under Section 6.6.6.1 shall be granted only if the SPGA determines that groundwater quality at the down gradient boundaries of the site will not be lowered in quality.

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

**Enforcement** - This Bylaw shall be enforced by the Building Inspector or designated agent.

#### 6.6.10 **Definitions**

- 6.6.10.1 **Aquifer**: A geologic formation, group of formations or part of a formation which contains sufficient saturated permeable material to yield potable groundwater to public or private wells.
- 6.6.10.2 **Automobile Graveyard**: Any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- 6.6.10.3 **Commercial Fertilizer**: Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, limestone, wood ashes, and gypsum, and other products exempted by regulation of the commissioner.
- 6.6.10.4 **Cooling Water**: The water discharged from any system of condensation, air conditioning, cooling, refrigeration, or other system of heat transfer. Non-Contact Cooling Water shall mean water used for cooling that does not come into direct contact with any raw material, intermediate product, and waste product or finished

product. Contact Cooling Water shall mean waste used in a process for cooling purposes which has come in direct contact with the process reactants or products.

- 6.6.10.5 **Deicing Chemicals:** Sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of snow or ice on roads.
- 6.6.10.6 **Groundwater:** All water beneath the surface of the ground in a saturated zone, including perched groundwater.
- 6.6.10.7 **GroundWater Protection District:** The zoning district defined to overlay other zoning districts in the Town of Wilmington. The groundwater protection district may include specifically designated recharge areas.
- 6.6.10.8 **Hazardous / Toxic Material:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of Wilmington. Toxic or hazardous materials include, without limitation; synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined a toxic or Hazardous under Massachusetts General Laws (M.G.L.) Chapter (c.) 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.
- 6.6.10.9 **Household Hazardous Waste Collection Centers:** Events operated pursuant to 310 CMR 30.390.
- 6.6.10.10 **Impervious Surface:** Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate.
- 6.6.10.11 **Industrial Waste:** Any solid, liquid or gaseous wastes and wastewater exclusive of sanitary sewage, resulting from an industrial or manufacturing process or discharged from a commercial, governmental or institutional facility or from the development, recovery or processing of natural resources.
- 6.6.10.12 **Junkyard:** Any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling junk, or for the maintenance or operation of an auto-mobile graveyard dumps.
- 6.6.10.13 **Land Application:** (1) applying to the surface of soil by spreading, spraying, or other similar means, and/or (2) mixing or working into the soil or beneath the surface of the soil within the root zone of the crop by harrowing, plowing, rototilling, injecting, or other similar means.
- 6.6.10.14 **Leachable Wastes:** Waste materials, including solid wastes, sewage, sludge and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.
- 6.6.10.15 **Normal household use:** Quantities of hazardous materials, as determined by the Building Inspector, which will require special handling and storage considerations.
- 6.6.10.16 **Open Dump:** The consolidation of waste from one or more sources at a common disposal site.
- 6.6.10.17 **Pesticide:** A substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- 6.6.10.18 **Principal Activity:** Any activity carried on as part of a principal use.

- 6.6.10.19 **Publicly Owned Wastewater Treatment Plants:** Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a public entity.
- 6.6.10.20 **Recharge Area:** Any porous, permeable geologic deposits, especially, but not exclusively, deposits of stratified sand and gravel, through which water from any source drains into and replenishes an aquifer, and includes any wetland or body of surface water surrounded by or adjacent to such area, together with the watershed of any wetland or body of surface water adjacent to such area.
- 6.6.10.21 **Sanitary Landfill:** A method of disposing of solid wastes on land.
- 6.6.10.22 **Septage:** The liquid, solid, and semi-solid content removed from privies, portable toilets, cesspools, holding tanks, or other sewage waste receptacles.
- 6.6.10.23 **Sludge:** The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or industrial process by-product. This residue does not include grit, screening, or grease and oil which are removed to the headworks of a facility.
- 6.6.10.24 **Soil Conditioner:** Any manipulated substance or mixture of substances whose primary function is to modify the physical structure of soils so as to favorably influence plant growth. This does not include unmanipulated natural substance.
- 6.6.10.25 **Solid Wastes:** Useless, unwanted or discarded solid materials with insufficient liquid content to be free flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.
- 6.6.10.26 **Very Small Quantity Generators:** An operation that does limited generation of hazardous materials. The threshold quantities for a very small quantity generator are set forth in 310 CMR 30.353.
- 6.6.10.27 **Waste Oil Retention Facilities:** These are facilities for collecting waste oil that are required for businesses that sell motor oils. They are required by M.G.L., Chapter 21, Section 52A, with standards set forth in 310 CMR 22.22(2)(a)(4).
- 6.6.10.28 **Zone of Contribution:** The area surrounding a pumping well that encompasses all areas or features that supply groundwater recharge to the well.

## 6.7 **Adult Use District:**

- 6.7.1 **Purpose and Intent:** It is the purpose and intent of this Section 6.7 to address and mitigate the secondary effects of the Adult Uses referenced herein, since such secondary effects have been found by the Wilmington Planning Board, as a result of the studies relied upon by the Wilmington Planning Board and after other public input, to include increased crime, adverse impacts on public health, negative impact on retail business climate, and declining residential and commercial property values. The provisions of this Section have neither the purpose nor intent of imposing a limitation or restriction on freedom of expression as protected by the First Amendment of the United States Constitution. Neither is it the purpose or intent of this Section to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.
- 6.7.2 The Adult Use district is herein established as an overlay district and shall be superimposed on the other districts established by this Bylaw. Adult uses shall be prohibited at any other location in Town.
- 6.7.2.1 **Boundaries:** Boundaries of the Adult Use District are shown on the Zoning Map and include the following parcels as identified on the 1996 Assessor's Map R-3: Parcels 25, 25A, 29, 29A, 29B, 29C, 39, 44, 44A, 49, 50A, 50B, 401 and 402.

### 6.7.3 Definitions:

Adult Uses: An establishment having a substantial or significant portion of its business activity, stock in trade, or other materials for sale, rental, or display, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual conduct as defined in M.G.L. Chapter 272, section 31, including but not limited to the following:

- 6.7.3.1 **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 M.G.L. Chapter 272, section 31.
  - 6.7.3.2 **Adult Entertainment Club:** An establishment which provides live entertainment for its patrons which includes the display of nudity as defined in M.G.L. Chapter 272, section 31.
  - 6.7.3.3 **Adult Motion Picture Theater:** An establishment 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.
  - 6.7.3.4 **Adult Paraphernalia Store:** An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, section 31.
  - 6.7.3.5 **Adult Video Store:** An establishment having as a substantial or significant portion of its stock in trade videos, movies or other film materials 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.
- 6.7.4 Substantial or Significant Portion: The term "substantial or significant portion" as used in Section 6.7.3 shall mean any of the following:
- a. 20% or more of the business inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time; or
  - b. 20% or more of the annual number of gross sales, rentals, or other business transactions; or
  - c. 20% or more of the annual gross business revenue; or

### 6.7.5 Special Permit:

No Adult Use shall be allowed except by a Special Permit granted by the Board of Appeals. The Board of Appeals shall grant a Special Permit only upon the determination that the location and design are in harmony with its surroundings, that adequate safeguards exist through licensing or other means to assure on a continuing basis that activities therein will not be patently contrary to prevailing standards of adults in the community and will not involve minors in any way, and only if the use is found by the Board of Appeals to comply with the following minimum special permit criteria.

- 6.7.5.1 **Location:** Lots containing an Adult Use may not be located:
  - a. Within 500 feet of a boundary line of a residential zoning district;
  - b. Within 1,000 feet of a lot line of any lot containing a church, school, or library.



- c. Within 500 feet of a lot line of any lot containing an establishment licensed under the provisions of Section 12 of Chapter 138 of the General Laws.
  - d. Within 500 feet of a lot line of any lot containing any other Adult Use as defined herein.
- 6.7.5.2 No Special Permit for an Adult Use shall be issued to any person convicted of violating the provisions of M.G.L., Chapter 119, section 63 or Chapter 272, section 28.
- 6.7.5.3 The hours in which Adult Uses are open to the public shall be limited as follows: adult bookstore, adult paraphernalia store, adult video store or similar adult use between the hours of 9:00 a.m. and 9:00 p.m., adult motion picture theater, adult entertainment club or similar adult use between the hours of 4:00 p.m. and 12:00 midnight.
- 6.7.5.4 **Site Development Standards:**
  - a. Site Plan Review: No Special Permit for any Adult use shall be issued without prior Site Plan Approval from the Planning Board.
  - b. Dimensional Requirements: Any building or structure containing an Adult Use shall meet the setback requirements and other dimensional controls of the underlying district as specified in these Bylaws.
  - c. Parking and Loading: On-site parking and loading shall be provided in accordance with the requirements set forth in Section 6.4.1.1 of these Bylaws as pertains to retail and service business. All parking areas shall be illuminated and all lighting shall be contained on the property.
  - d. Landscaping: As required under Site Plan Review.
  - e. Signage: Any sign that depicts, describes or relates to nudity or sexual conduct as defined in M.G.L., Chapter 272, Section 31, and that is visible from the outside of the building is prohibited.
- 6.7.6 Any Adult Use in existence prior to the adoption of this Section 6.7 shall apply for a Special Permit as specified in this Section 6.7 within 90 days following the adoption of Section 6.7.
- 6.7.7 The application for a Special Permit for an Adult Use must include the following information:
  - a. Name and address of the legal owner of the proposed establishment;
  - b. Name and address of the legal owner of the property;
  - c. Name and address of all persons having a lawful, equity or security interest in the establishment;
  - d. Name and address of the manager of the establishment;
  - e. The number of employees; and
  - f. Proposed provisions for security within and without the establishment;
  - g. The physical layout of the interior of the establishment.
- 6.7.8 Any Adult Use Special Permit issued under this Bylaw shall lapse within one (1) year if substantial use thereof has not sooner commenced except for good cause or in the

case of a permit for construction, if construction has not begun by such date except for good cause; excepting only any time required to pursue or await the determination of an appeal from the grant thereof.

6.7.9 The provisions of this Section 6.7 shall only apply to adult uses as defined in this section which are also defined in Section 9A of Chapter 40A of the General Laws.

6.7.10 Invalidity: Any section of this Bylaw, or portion thereof, declared invalid shall not affect the validity or application of the remainder of the Bylaw.

## 6.8 **Wireless Communications Facilities**

6.8.1 **Purpose** -The purpose of these regulations is to minimize adverse impacts of wireless communications facilities, satellite dishes and antennas on adjacent properties and residential neighborhoods; minimize the overall number and height of such facilities to only what is essential; and promote shared use of existing facilities to minimize the need for new facilities.

### 6.8.2. **Compliance with Federal and State Regulations:**

All wireless communications facilities shall be erected, installed, maintained and used in compliance with all applicable federal and state laws, rules and regulations, including radio frequency emission regulations as set forth in Section 704 of the 1996 Federal Telecommunications Act, as the same may be amended from time to time.

### 6.8.3 **Location**

The Wireless Communications Services District is herein established as an overlay district and shall be superimposed on the other districts established by this Bylaw. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein. Wireless communications facilities shall be prohibited at any other location in Town. Description of areas in the district is as follows:

- a. All land owned by the Town of Wilmington from time to time which is held in the care, custody, management and control of the Board of Selectmen or the Water & Sewer Commission.
- b. All land located in the General Business (GB), General Industrial (GI) and Highway Industrial (HI) districts.
- c. Applicants for a Special Permit to construct wireless communications facilities are encouraged to explore alternative types of systems other than mounted systems on newly constructed towers. Wireless communications antennas (including panels) may be mounted on or attached to existing structures (including, without limitation, water towers and church steeples) in any zoning district by Special Permit provided that they be properly screened and conform to applicable design requirements as set forth in Section 6.8.

### 6.8.4 **General Requirements**

6.8.4.1 No wireless communications facility may be erected except upon the issuance of a Special Permit by the Board of Appeals and Site Plan approval as set forth in Section 6.5 of the Zoning Bylaw and subject to all of the provisions of this section.

6.8.4.2 The only wireless communications facilities allowed are free-standing monopoles, with associated antenna and/or panels; facilities, with associated antennas and/or panels mounted on, or supported in whole or in part by, any existing building or structure; and any Wireless Communications facility, with associated antennae

and/or panels located wholly within any existing building or structure. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are not allowed.

- 6.8.4.3 All owners and operators of land used in whole or in part for a wireless communications facility and all owners and operators of such wireless communications facility shall, as a continuing condition of installing, constructing, erecting and using a wireless communications facility, permit other public utilities or FCC-licensed commercial entities seeking to operate a wireless communications facility to install, erect, mount and use compatible wireless communications equipment and fixtures on the equipment mounting structure on reasonable commercial terms provided that such co-location does not materially interfere with the transmission and / or reception of communication signals to or from the existing wireless communications facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless communications equipment or fixtures. Since it is the intent of these regulations to minimize the number of Wireless Communication facilities which will be required to be located within the Town, the Board of Appeals may, as a condition of any Special Permit, require that such specially permitted Wireless Communications facility be designed to accommodate the co-location of the maximum number of wireless communications installations technically practicable in light of the anticipated suitability of the site for other wireless carriers.
- 6.8.4.4 Any proposed extension in the height, construction of a new facility, and/or replacement of a facility, shall require an amendment to the Special Permit. Addition/replacement of antennas or panels and/or co-location on existing structures may be permitted by the Planning Board during site plan review, if such work fully complies with Section 6.8.6.6 below.
- 6.8.4.5 New facilities shall be considered by the Board of Appeals only upon a finding by the Board of Appeals that (a) the applicant has used reasonable efforts to co-locate its proposed wireless communications facilities on existing or approved facilities, and (b) either the applicant was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e. the height, structural integrity, weight bearing and wind-resistant capacity of the existing or approved facility) and radio frequency engineering (i.e. height, coverage area, etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequency engineering perspectives.
- 6.8.4.6 The Town acting through its Planning Board or Board of Appeals may require the applicant to pay reasonable fees for review of the applicant's proposal by a professional or radio frequency engineer or other qualified professional.
- 6.8.4.7 Co-existence with other uses - A wireless communications facility may be located on the same lot with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this Bylaw.

#### **6.8.5 Design requirements and performance standards**

All Wireless Communications facilities erected, installed and/or used shall comply with the following design requirements and performance standards.

- 6.8.5.1 All Wireless Communications facilities shall be designed to be constructed at the minimum height necessary to accommodate the proper functioning of the anticipated and future wireless communications services to be provided by the applicant at such facility. Notwithstanding the provisions of Subsection 5.2.8.1 of this Bylaw, a free-standing wireless communications facility monopole may be

installed at a maximum height of up to 120 feet, unless the Board of Appeals finds that a greater height is essential to the proper functioning of the wireless communications services to be provided by the applicant at such location.

- 6.8.5.2 Facilities shall be located a minimum of 500 feet from an existing residential dwelling or proposed dwelling in a permitted subdivision, provided that such a residential structure is located within a residential district.
- 6.8.5.3 A monopole shall be set back from the property lines of the lot on which it is located by a distance equal to the overall vertical height of the monopole and any attachments plus five feet, unless the applicant demonstrates that due to topography and/or other characteristics of the site lesser setbacks shall not pose any public safety danger to any adjacent properties.
- 6.8.5.4 Antenna or dishes located on a structure shall not exceed ten feet in height above the roof-line of the structure, unless the Board of Appeals finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roofline, such as water tanks, the height of the antennae or dishes shall not exceed ten feet above the highest point of the structure.
- 6.8.5.5 Screening Requirements - All exterior wireless communications facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless communications facilities equipment and fixtures visible against a building or structure shall be colored to blend with such building or structure. Wireless communications facilities equipment and fixtures visible against the sky or other background shall be colored to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.
- 6.8.5.6 Satellite dishes and/or antenna shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets. Free standing dishes or antenna shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and/or installed to blend into the structure and/or the landscape.
- 6.8.5.7 Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire.
- 6.8.5.8 Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA.
- 6.8.5.9 There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of vehicles or other equipment.
- 6.8.5.10 Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Inspector of Buildings by the Special Permit holder.
- 6.8.5.11 All unused facilities or parts thereof or accessory facilities and structures which have not been used for one year shall be dismantled and removed at the owner's expense. The Town acting through its Planning Board or Board of Appeals may

require a performance bond prior to the issuance of a building permit to ensure compliance with this provision.

#### **6.8.6 Procedure for a Special Permit and Site Plan Review**

All applications to construct new wireless communications facilities, antennas or satellite dishes shall be made and filed on the appropriate application forms for site plan and special permit in compliance with Section 6.5 and Section 10.5 of this Zoning Bylaw and also must comply with the following additional requirements. Co-location on existing structures or replacement of equipment on existing structures shall be permitted through site plan review only and must comply with all requirements of Section 6.8.6.6.

- 6.8.6.1 A locus plan at a scale of 1" = 200' which shall show all property lines, zoning, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within five-hundred (500) feet of the facility.
- 6.8.6.2 A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed location is required.
- 6.8.6.3 A view test to be conducted utilizing balloons or other means to document the extent of visual impact. The Board of Appeals and Planning Board to be notified of the testing date. Photographs of the view test showing the impact of the proposed facility on abutting streets, adjacent property owners and residential neighborhoods to be submitted.
- 6.8.6.4 The following information prepared by one or more professional or radio frequency engineers or other qualified professional:
  - A description of the monopole and the technical, economic and other reasons for the proposed location, height and design.
  - Documentation of an exhaustive search for the site.
  - Confirmation that the monopole complied with all applicable Federal and State standards.
  - A description of the capacity of the monopole including the number and type of panels, antenna and/or transmitter receivers that it can accommodate.
- 6.8.6.5 If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
- 6.8.6.6 The following information, prepared by a professional engineer or other qualified professional must be submitted for site plan review by the Planning Board for co-location on an existing structure or replacement of equipment located on an existing structure. A new or amended special permit from the Board of Appeals is not required.
  - 6.8.6.6.1 A site plan showing existing conditions.
  - 6.8.6.6.2 A site plan showing proposed work as long as it is on an existing structure and within the existing layout footprint. Expansion of the cabinet enclosure or extension of the pole requires a special permit from the Board of Appeals.

- 6.8.6.6.3 Certification that the existing structure can accommodate the replacement or additional equipment.
- 6.8.6.6.4 A written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.

**6.8.7 Criteria for Granting Special Permit:**

- 6.8.7.1 Applications for Special Permits shall be approved or approved with conditions if the petitioner can fulfill the requirements of these regulations to the satisfaction of the Board of Appeals.
- 6.8.7.2 Applications for Special Permits may be denied if the petitioner cannot fulfill or address the requirements of these regulations or Section 10.5 to the satisfaction of the Board of Appeals.
- 6.8.7.3 When considering an application for a wireless communication facility, the Board of Appeals shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New facilities shall only be considered after a finding that existing (or previously approved) wireless communication facilities suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed uses(s), taking into consideration radio frequency engineering issues and technological constraints.
- 6.8.7.4 When considering an application for an antenna or dish proposed to be placed on a structure, the Board of Appeals shall take into consideration the visual impact of the unit from the abutting neighborhoods and street(s).

**6.9 Body Art District:**

- 6.9.1 Purpose and Intent: It is the purpose and intent of this Section to address and mitigate the secondary effects of the Body Art activities referenced herein, such as adverse impacts on public health, negative impact on retail business climate, and negative impact on residential and commercial property values. The provisions of this Section have neither the purpose nor intent of imposing a limitation or restriction on freedom of expression as protected by the First Amendment of the United States Constitution.
- 6.9.2 The Body Art district is herein established as an overlay district and shall be superimposed on the other districts established by this bylaw. Body Art shall be prohibited at any other location in Town.

Boundaries: Boundaries of the Body Art District are shown on the Zoning Map and included the following parcels as identified on the 1999 Assessor's Map R3: Parcels 25, 25A, 29, 29A, 29B, 29C, 39, 44, 44A, 49, 50A, 50B, 401 and 402.

**6.9.3 Definitions:**

Body Art means the practice of physical body adornment using, but not limited to, the following techniques: body piercing, tattooing, branding, and scarification. This definition includes piercing of the outer perimeter of the ear, but does not include piercing of the earlobe with pre-sterilized single-use stud-and-clasp ear-piercing systems. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin.

**6.9.4 Special Permit:**

No Body Art shall be allowed except by a Special Permit granted by the Board of Appeals. The Board of Appeals shall grant a Special Permit only upon the determination

that the location and design are in harmony with its surroundings and that adequate safeguards exist through licensing or other means to assure on a continuing basis that do not have primary or secondary negative impacts on the community and will not involve minors in any way.

6.9.5 The application for a Special Permit for an Body Art must include the following information:

- 6.9.5.1 Name and address of the legal owner of the proposed establishment;
- 6.9.5.2 Name and address of the legal owner of the property;
- 6.9.5.3 Name and address of all persons having a lawful, equity or security interest in the establishment
- 6.9.5.4 Name and address of the manager of the establishment;
- 6.9.5.5 The number of employees; and
- 6.9.5.6 Proposed provisions for security within and without the establishment;
- 6.9.5.7 The physical layout of the interior of the establishment.

6.9.6 Any Body Art Special Permit issued under this Bylaw shall lapse within one (1) year if substantial use thereof has not sooner commenced except for good cause or in the case of a permit for construction, if construction has not begun by such date except for good cause, excepting only any time required to pursue or await the determination of an appeal from the grant hereof.

6.9.7 Invalidity: Any section of this bylaws, or portion thereof, declared invalid shall not affect the validity or application of the remainder of the bylaw;

#### 6.10 **Registered Marijuana Dispensary**

6.10.1 **Definitions** – The following definitions shall apply to this Section 6.10. Other terms which are not expressly defined herein shall have the definition and meaning given to them in the Humanitarian Medical Use of Marijuana Act, St. 2012, c. 369, G.L. c. 94C, App, Sections 1-1, et seq. and in the Massachusetts Department of Public Health Regulations promulgated thereunder, 105 CMR 725.001, et seq. All other terms shall be given their ordinary, plain meaning.

6.10.1.1 Registered Marijuana Dispensary means a not-for-profit entity registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including Development of related produces such as edible marijuana-infused products, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributed dispenses, or administers marijuana, products containing marijuana, related supplies or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, Registered Marijuana Dispensary refers to the site(s) or dispensing, cultivation, and preparation of marijuana.

6.10.1.2 Marijuana for Medical Use is marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions as subject to 105 CMR 725.010(J).

6.10.1.3 Marijuana – the substance defined as “marihuana” under G.L. c. 94C, Sections 1, et seq.

6.10.1.4 Personal Caregiver: A person, registered by the Massachusetts Department of Public Health who is at least 21 years old, who has agreed to assist with a Qualifying Patient's medical use of marijuana, and who is not the registered

Qualifying Patient's certifying physician. An employee of a hospice provider, nursing, or medical facility or a visiting nurse, personal care attendant, or home health aide providing care to a Qualified Patient may serve as a Personal Caregiver, including to patients under 18 years of age as a second caregiver.

- 6.10.1.5 Qualifying Patient: A Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed certifying physician as having a debilitating medical condition, or a Massachusetts resident under 18 years who has been diagnosed by two Massachusetts licensed certifying physicians, at least one of whom is a board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 105 CMR 725.010(J).
- 6.10.1.6 Special Permit Granting Authority: The Wilmington Planning Board.
- 6.10.2 A Registered Marijuana Dispensary is considered a non-profit facility or location that has been registered by the Massachusetts Department of Public Health, where medical marijuana is grown, processed and/or made available to a qualifying patient or a personal caregiver as determined by 105 CMR 725.000.
- 6.10.3 **Purpose and Intent** - It is the purpose and intent of this Section a) to provide for the placement of Registered Marijuana Dispensaries in accordance with the Humanitarian Medical use of Marijuana Act, G.L. c.94C, App. Sections 1-1, et seq., in locations suitable for lawful medical marijuana facilities; b) to minimize adverse impacts of Registered Marijuana Dispensaries on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds, and other land uses potentially incompatible with such facilities; and c) to regulate the siting, design, placement, security, monitoring, modification and removal of Registered Marijuana Dispensaries.
- 6.10.4 **Applicability** – The cultivation (unless meeting the requirements for an agricultural exemption under G.L. c. 40A, Section 3), production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use is prohibited unless permitted as a Registered Marijuana Dispensary by special permit under this Section 6.10.
  - 6.10.4.1 No Registered Marijuana Dispensary shall be established except in compliance with the provisions of this Section 6.10
  - 6.10.4.2 Nothing in this Bylaw shall be construed to supersede or to conflict with applicable federal and state laws governing the sale, distribution or use of controlled substances.
- 6.10.5 **Eligible Locations** - Registered Marijuana Dispensaries, other than agricultural operations meeting exemption standards under G.L. c. 40A Section 3, may be allowed by Special Permit issued by the Special Permit Granting Authority in General Industrial Districts and in Highway Industrial Districts provided that the facility meets the requirements of this Section 6.10 and is:
  - 6.10.5.1 In a stand-alone, single use facility;
  - 6.10.5.2 At least 1000 feet from the following: Any school, including a public or private elementary, vocational or secondary school or a public or private institution of higher education; child care facility; library; playground; public park or any similar facility where minors commonly congregate;
  - 6.10.5.3 At least 1,000 feet from any residential zoning district; and
  - 6.10.5.4 The distances referred to in this sub-section are measured in a straight line from the nearest point of the property line of the protected uses identified in sub-sections 6.10.5.2 and 6.10.5.3 to the nearest point of the property line of the proposed Registered Marijuana Dispensary.



#### 6.10.6 **Special Permit**

No Registered Medical Marijuana Dispensary shall be allowed except by a Special Permit granted by the Special Permit Granting Authority and a license granted by the Wilmington Board of Health. Any such facility shall be limited to one or more of the following uses: a) cultivation of Marijuana for Medical Use (horticulture) [special permit not required for sites meeting agricultural exemption standards found in G.L. c. 40A Section 3]; b) processing and packaging of Marijuana for Medical Use, including marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other produces; c) retail sales or distribution of marijuana to other Qualifying Patients; and d) wholesale sale of marijuana to other Registered Marijuana Dispensaries located in Wilmington or in another community.

6.10.6.1 In addition to the development standards and conditions set forth in sub-section 6.10.7 of this Bylaw, a special permit application for a Registered Marijuana Dispensary shall include the following:

- a) name and address of each owner of the facility;
- b) copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Facility;
- c) evidence of the Applicant's right to use the site of the Facility for the Facility, such as a deed or lease;
- d) if the Applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers or other similarly situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
- e) a certified list of all parties in interest entitled to notice of the hearing for the special permit application, taken from the most recent tax list of the Town and certified by the Town Assessor;
- f) a detailed floor plan of the premises of the proposed Registered Marijuana Dispensary identifying the square footage available and describing the functional areas of the Registered Marijuana Dispensary, including areas for any preparation of marijuana infused products;
- g) proposed security measures for the Registered Marijuana Dispensary, including lighting, fencing, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft; and
- h) copies of emergency procedures; policies and procedures for patient or personal caregiver home delivery; policies and procedures for the transfer, acquisition, or sale of marijuana; proposed waste disposal procedures and any waivers from the Department of Public Health regulations approved by the Department of Public Health for the Registered Marijuana Dispensary.

6.10.6.2 The Special Permit Granting Authority shall grant a Special Permit only upon the determination that the location and design are in harmony with its surroundings and that adequate safeguards exist through licensing or other means to assure on a continuing basis that activities therein will not be contrary to Massachusetts Department of Public Health Regulations and will not involve minors in any way, and only if the use is found by the Special Permit Granting Authority to comply with the minimum special permit criteria set forth in sub-sections 6.10.7 and 6.10.8.

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

- 6.10.6.4 A Special Permit issued under this Section shall have a term limited to the duration of the applicant's ownership of the premises as a Registered Marijuana Dispensary. A Special Permit may be transferred only with the approval of the Special Permit Granting Authority in the form of an amendment to the special permit with all information required in this Section 6.10.6
- 6.10.6.5 Any violation of this Section 6.10 shall be grounds for revocation of a Special Permit issued under this Section.

**6.10.7 Development Standards and Conditions**

In addition to any requirements imposed by 105 CMR 725.000, as such may be amended from time to time, the following standards and conditions are required for issuance of a special permit under this Section 6.10:

- 6.10.7.1 Dimensional Requirements: Any building or structure containing a Registered Marijuana Dispensary shall meet the setback requirements and other dimensional controls of the underlying district as specified in these Bylaws.
- 6.10.7.2 All Registered Marijuana Dispensaries shall be contained within a building or structure.
- 6.10.7.3 No Registered Marijuana Dispensary shall have a gross floor area of less than 2,500 s.f. or in excess of 20,000 s.f.
- 6.10.7.4 A Registered Marijuana Dispensary may not be located in buildings that contain any medical doctor's or physician's offices or the offices of any other professional practitioners authorized by law to prescribe the use of medical marijuana.
- 6.10.7.5 The hours of operation of a Registered Marijuana Dispensary shall be set by the Special Permit Granting Authority, but in no event shall said facilities be open and/or operating between the hours of 8:00 p.m. and 8:00 a.m.
- 6.10.7.6 No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a Registered Marijuana Dispensary.
- 6.10.7.7 No Registered Marijuana Dispensary shall be located inside a building which contains residential units, including but not limited to transient housing such as hotels, or inside a movable or mobile structure or vehicle, such as a van, truck, or mobile home/office.
- 6.10.7.8 Signage – All signage shall conform to the requirements of the Wilmington Zoning Bylaws for the zoning district in which the facility is located. The Special Permit Granting Authority may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts. Signage shall include the following language: "Registration card issued by the Massachusetts Department of Public Health required." The required text shall be a minimum of two inches in height.
- 6.10.7.9 Registered Marijuana Dispensaries shall provide the Wilmington Police Department, Building Inspector and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and key-holders to whom notices of operating problems associated with the establishment can be provided. Such contact information shall be kept current and updated by the permit holder.
- 6.10.7.10 Drive-through windows and/or any transactions with customers who are in vehicles at the time of the transaction are prohibited.

- 6.10.7.11 No person who is under the age of eighteen (18) shall be permitted on the premises of the Registered Marijuana Dispensary unless he or she is a Qualifying Patient or Primary Caregiver or is accompanied by his or her parent or legal guardian.

**6.10.8 Further Criteria**

In addition to any criteria imposed by 105 CMR 725.000, as such may be amended from time to time, the following criteria shall be required for issuance of a special permit under this Section 6.10:

- 6.10.8.1 No permit shall be granted hereunder to any applicant, principal officer, agent, owner or manager of the Registered Marijuana Dispensary who has been convicted of a felony in the Commonwealth of Massachusetts. The application shall include proof of the foregoing, by sworn statement and including submission to a CORI check from the Chief of Police for each of the aforementioned individuals. The Chief of Police shall report to the Special Permit Granting Authority prior to the close of the public hearing whether or not the applicant complies with this criterion.
- 6.10.9 **Mandatory Findings** - The Special Permit Granting Authority shall not issue a special permit for a Registered Marijuana Dispensary unless it finds that:
- 6.10.9.1 the Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c.40A, Section 11;
- 6.10.9.2 the Facility is fully permitted by all agencies having jurisdiction within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations;
- 6.10.9.3 the applicant has satisfied all of the conditions and requirements of Sections 6.10.5, 6.10.6, 6.10.7 and 6.10.8 herein;
- 6.10.9.4 the Facility will have in place adequate security measures regarding the storage of product and the location of cultivation, including but not limited to the security of trash dumpsters.
- 6.10.10 **Abandonment or Discontinuance of Use** - A Registered Marijuana Dispensary shall be required to remove all material, plants, equipment and other paraphernalia:
- a) prior to surrendering its state issued licenses or permits; or
  - b) within three months of ceasing operations; whichever comes first.

**6.11 Inclusionary Housing**

**6.11.1 Purpose and Intent**

The purpose of this Inclusionary Housing Bylaw is to:

- a. Expand and diversify the Town of Wilmington's housing stock to provide more varied housing options;
- b. Increase the supply of housing that is affordable to low-income and very low-income households;
- c. Develop and maintain housing that is eligible for inclusion in the Chapter 40B Subsidized Housing Inventory.

It is the intent of this Section that affordable housing units created pursuant to this Bylaw shall qualify for inclusion in the Chapter 40B Subsidized Housing Inventory (SHI) under the regulations and guidelines of the Massachusetts Department of Housing and Community

Development (DHCD). It is the intent that all housing will comply with federal and state fair housing laws.

#### 6.11.2 Definitions

In this Section the following terms shall have the following meanings:

- 6.11.2.1 **Affordable Housing Units** – Housing units that are restricted for sale or rent to individuals and families within specific income ranges and sales prices which meet the DHCD and M.G.L. Chapter 40B requirements for inclusion in the Town's SHI.
- 6.11.2.2 **Applicant** – A person or entity who applies for a special permit under this Section. "Applicant" shall include an owner, or his/her agent or representative, or his/her assigns.
- 6.11.2.3 **Area Median Income** – The median income for households within the designated metropolitan statistical area that includes the Town of Wilmington, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development for the Boston Metropolitan Statistical Area.
- 6.11.2.4 **Board** – Town of Wilmington Planning Board, who shall serve as the Special Permit Granting Authority for projects subject to this Section.
- 6.11.2.5 **DHCD** – Massachusetts Department of Housing and Community Development.
- 6.11.2.6 **Eligible Household** – Any household whose total income is at or below eighty percent (80) percent of the area median income adjusted for household size.
- 6.11.2.7 **Local Initiative Program (LIP)** – A program administered by the DHCD pursuant to 760 CMR 45.00 to develop and implement local housing initiatives that produce low- and moderate-income housing, with or without a comprehensive permit as defined in M.G.L. Chapter 40B, Sections 20-23.
- 6.11.2.8 **Low-Income Household** – Household with income that does not exceed eighty (80) percent of the area median income adjusted for household size as determined by the United States Department of Housing and Urban Development, then in effect.
- 6.11.2.9 **Market-Rate Housing Units** – Housing units that are not restricted to certain rent or sale prices.
- 6.11.2.10 **M.G.L.** – The General Laws of Massachusetts. In case of a rearrangement of the General Laws, any citation or particular sections of the General Laws shall be applicable to the corresponding sections in the new codification.
- 6.11.2.11 **Off-Site Unit** – An affordable housing unit produced by the applicant on a site other than the primary residential development.
- 6.11.2.12 **Subdivision** – Any subdivision as defined in the Subdivision Control Law (M.G.L. Chapter 41, Sections 91K-GG), or any division of land under M.G.L. Chapter 41, Section 81P, into lots for residential use, and as defined in the Town of Wilmington Subdivision Rules and Regulations.
- 6.11.2.13 **Subsidized Housing Inventory (SHI)** – The DHCD Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.
- 6.11.2.14 **This Section** – Section 6.11 of the Town of Wilmington Zoning Bylaws in its entirety.
- 6.11.2.15 **Town** – The Town of Wilmington.
- 6.11.2.16 **Very Low-Income Household** – Household with income that does not exceed fifty (50) percent of the area median income adjusted for household size as determined by the United States Department of Housing and Urban Development, then in effect.

### 6.11.3 **Applicability**

This Section applies to construction of at least six (6) new dwelling units in the Neighborhood Mixed Use District or Central Business District.

New residential development in a Conservation Subdivision Design can provide affordable housing units should the applicant volunteer, and therefore be subject to this Section.

Developments may not be segmented or phased to avoid compliance with this Section. Unless otherwise directed by the Board as a condition of approval, all affordable housing units shall be developed/provided concurrently and proportionately with the development of market-rate housing units. Segmenting land or properties over any ten-year period with the effect of avoiding inclusionary housing requirements by either subdividing one parcel of land into two parcels of land or dividing a project that would otherwise be subject to this Section into phases in such a way that would not result in the creation of affordable housing units shall be prohibited. Said ten-year period shall be measured from and to the dates of Building Permit applications.

A Special Permit and Building Permit will not be issued for a development subject to this Section unless the applicant provides the percentage of the total dwelling units in the development as affordable housing units as described herein.

### 6.11.4 **Special Permit**

The development of any project under this Section shall require the grant of a Special Permit and Site Plan Review from the Planning Board. A Special Permit under this Section shall be granted if the proposal meets the requirements of this Section, provided that nothing herein shall be intended to limit the discretion of any Special Permit Granting Authority under any other section of this Bylaw.

### 6.11.5 **Provision of Affordable Housing Units**

Affordable housing units shall be provided at a minimum for low-income households, and providing housing units for very low-income households is strongly encouraged when possible. Nothing in this Section shall preclude an applicant from providing additional affordable housing units, or greater affordability, or both, than the minimum requirements.

#### 6.11.5.1 **Percentage Requirement**

In any development subject to this Section at least fifteen (15) percent of the dwelling units shall be affordable to eligible households. The affordability requirements of this Section do not apply to density bonus unit(s) (Section 6.11.5.2).

In the event that a development providing on- or off-site units has a fractional affordable housing unit of 0.5 or greater, it shall be rounded up to the next whole number. In the event that the fractional affordable housing unit is less than 0.5, the applicant may choose whether or not to round up to the next whole number.

#### 6.11.5.2 **Density Bonus**

The Board may allow an increase in the total number of market-rate housing units by a number equal to the required affordable housing unit(s), not to exceed ten (10) bonus market-rate housing units. The allowed units per acre or lot coverage may be increased, parking requirements may be decreased, and/or open space may be reduced by the amount necessary to permit the bonus market-rate housing units. The affordability requirements of this Section do not apply to density bonus unit(s). Provided, however, the open space should not be reduced to an amount less than twenty (20) percent of the lot.

The chart below illustrates the calculation of new market-rate, affordable and bonus housing units.

Total Number of Housing Units Proposed	Number of Affordable Housing Units Required	Number of Market-Rate Housing Units	Bonus Market-Rate Housing Units	New Total Market-Rate Housing Units (with Bonus)	New Total Units (Market-Rate & Affordable)	Effective Affordable Housing Unit Percentage
6	1	5	1	6	7	14.3%
10	2	8	2	10	12	16.7%
12	2	10	2	12	14	14.3%
15	2	13	2	15	17	11.8%
20	3	17	3	20	23	13%
25	4	21	4	25	29	13.8%
30	5	25	5	30	35	14.3%

#### 6.11.5.3 Methods of Providing Affordable Housing Units

On-site units are the preferred method of providing affordable housing units under this Section.

As an alternative to on-site provision of affordable housing units, an applicant subject to this Section may also be allowed by the Board as part of the Special Permit to develop, construct, rehabilitate or dedicate affordable housing units off-site, only in unique and extraordinary circumstances, for which the applicant must provide a narrative to meet this criterion.

All requirements of this Section that apply to on-site provision of affordable housing units shall apply to provision of off-site affordable housing units, except as provided for in Section 6.11.6.2.b.

#### 6.11.6 Siting and Design

##### 6.11.6.1 Siting and Type of Affordable Housing Units

On-site affordable housing units constructed or otherwise provided under this Section shall be proportionately distributed throughout the project in terms of both location and unit size/type. For example, a development consisting of a mix of single-family homes, townhouses, and a small apartment building shall include affordable housing units of each housing type. On-site affordable housing units shall also, on average, be as accessible to common amenities, such as open space or services, as the market-rate housing units in the same development.

Applications to the Planning Board shall include a plan showing the proposed locations of the affordable housing units.

##### 6.11.6.2 Minimum Design and Construction Standards

On- and off-site affordable housing units shall comply with the DHCD LIP's minimum design and construction standards for SHI as they may be amended. Requirements for the following conditions shall be complied with as specified, in addition to compliance with the above.

- a. New construction of market-rate and affordable housing units. Affordable housing units shall be comparable in size, number of bedrooms, design, appearance, construction and quality of materials with market-rate housing units, though designer and high-end finishes, fixtures and appliances are not required. Mechanical systems and energy efficiency shall conform to the same specifications as apply to the market-rate housing units. Affordable housing units shall have the same floor area as the median market-rate housing units of the same number of bedrooms. The number of bedrooms in affordable housing units

shall be comparable to the bedroom mix in market-rate housing units in the development, unless otherwise required to count on the SHI.

- b. Affordable housing units provided on- or off-site by restricting existing homes as affordable housing units, rather than creating new construction. Units do not have to appear similar in terms of design and appearance to market-rate housing units. Home inspections by a licensed inspector are required, and all systems and major items must have more than ten (10) years of useful life remaining.

#### **6.11.7 Marketing and Affordability of Affordable Housing Units**

##### **6.11.7.1 Marketing Plan**

Applicants under this bylaw shall submit a marketing plan which describes how the affordable housing units will be marketed to potential homebuyers. The plan shall meet all requirements of DHCD and applicable state and federal laws and regulations so that the affordable housing units are eligible to be placed on the Town's SHI. No Building Permit for any units in the development subject to this Section shall be issued until the marketing plan is approved by DHCD.

##### **6.11.7.2 Local Preference**

The maximum local preference units under DHCD guidelines shall be provided.

##### **6.11.7.3 Income Requirements and Selling/Renting Prices**

The maximum housing purchase price or rent for affordable housing units created under this Section shall be consistent with affordability guidelines established by DHCD or a successor agency for eligible households, and shall not exceed the maximum purchase price or rent guidelines of the program used to qualify affordable housing units for inclusion on the SHI.

##### **6.11.7.4 Preservation of Affordability**

As a condition of development, all affordable housing units provided under this Section shall be subject to an affordable housing restriction in a form consistent with LIP or any other applicable guidelines issued by DHCD, acceptable to the Planning Board, and that ensures affordable housing units can be counted toward Wilmington's SHI. The affordable housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of M.G.L. Chapter 184, Section 26 or Sections 31 and 32.

The affordable housing restriction shall contain limitations on use, occupancy, resale price and rents, and provide for periodic monitoring, by the Town or its designee as named in the deed rider as the monitoring agent, to verify compliance with and enforce said restriction. The purchaser of an affordable housing unit developed under this Section shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the Town, or its designee, a right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

The affordable housing restriction shall provide that in the event that any affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity to ensure that it remains affordable to households in the same income range as prior to the condominium conversion.

The occupancy permit for any units in the development shall not be issued until the Regulatory Agreement in a form and format acceptable to the Town and DHCD is recorded at the Registry of Deeds or Registry District of the Land Court, and a copy provided to the Planning Board.

The affordable housing restriction shall provide that initial sales and rentals of affordable housing units and subsequent re-sales and re-rentals shall comply with federal, state and local fair housing laws, regulations, and DHCD LIP guidelines.

The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify affordable units for listing on the Chapter 40B SHI as LIP units.

**6.11.8 Fees**

The applicant shall be responsible for all consultant fees, including engineering, architectural, legal, housing consultant and planning fees, incurred by the Planning Board in connection with the application, review of relevant plans and documents, and ensuring that the affordable housing units are included on the Town's SHI.

**6.11.9 Conflict with Other Bylaws or Sections**

The provisions of this Section shall be considered supplemental of existing sections of the Wilmington Zoning Bylaw. To the extent that a conflict exists between this Section and others, the more restrictive section, or provisions therein, shall apply.

**6.11.10 Severability**

In the event that one or more of the provisions of this Section are found or determined to be illegal or unenforceable, or held invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other provisions of this Section, which provisions will remain in full force and effect.

**SECTION 7. PLANNED RESIDENTIAL DEVELOPMENT DISTRICT**

**7.1 Purpose** - The Planned Residential Development (PRD) District allows by special permit From the Planning Board a pattern of land development intended: to encourage the preservation of significant land and water resources; to encourage more environmentally sensitive and cost effective/energy-efficient residential land uses; and to enable the community to require adherence to a comprehensive set of development plans in the rezoning of land and in the granting of a special permit.

**7.2 Planned Residential Development Standards**

**7.2.1 Permitted Uses** - Single family detached and attached dwelling units and accessory uses related thereto.

**7.2.2 Minimum Tract Size** - Planned Residential Developments shall be located upon a tract of land which has an area of not less than eight acres.

**7.2.3 Number of Units** - The maximum number of dwelling units permitted within any Planned Residential Development shall not exceed three units per acre exclusive of land situated in the Flood Plain District and exclusive of wetlands as defined in G.L. Ch. 131, Section 40, "The Wetlands Protection Act".

**7.2.4 Dimensional Regulations**

**7.2.4.1 Lot Area, Frontage, Width and Yard Requirements** - There shall be no minimum lot area, frontage, lot width or yard requirements within a Planned Residential Development. However, no building or parking or other paved area shall be located within 50 feet of a public way or boundary line of the Planned Residential Development. Such area except for road, walkway or utility crossings shall provide a continuous landscaped buffer.



- 7.2.4.2 **Other Regulations** - To minimize departure from existing patterns of residential development, there shall be (1) no more than six attached dwelling units and no more than six parking spaces in any single structure; (2) the overall length of any residential structure including attached garages shall not exceed 150 feet; (3) no more than one unit shall be served by each building entrance; and (4) the maximum height of any structure shall not exceed two and one-half stories or 35 feet.
- 7.2.5 **Streets and Utilities** - All streets, sewers, drainage facilities and utilities shall be designed and constructed in compliance with the Town of Wilmington Subdivision Rules and Regulations. Special exceptions to the subdivision standards may be authorized by the Planning Board in granting a special permit hereunder provided the Board determines such exceptions are in the public interest and are not inconsistent with the purposes of Subsection 7.1.
- 7.2.6 **Common Open Space**
- 7.2.6.1 **Minimum Common Open Space** - The minimum common open space shall be 50% of the total area of the Residential Development. No more than half the required common open space may be situated in the Flood Plain District or classified or classified as wetlands as defined in M.G.L. Ch. 131, Sec. 40, "The Wetlands Protection Act".
- 7.2.6.2 **Use and Shape of Common Open Space** - The Common Open Space shall be used for open space, conservation, agriculture, recreation or park purposes. The Common Open Space shall be one or more parcels of a size, shape and location appropriate for its intended use. Each parcel of Common Open Space shall have adequate access, as determined by the Planning Board, for all residents of the Planned Residential Development and no structure shall be constructed thereon in excess of 20 feet in height nor shall the maximum lot coverage including paved areas exceed 10% without a special permit for such coverage from the Planning Board.
- 7.2.6.3 **Ownership of Common Open Space**
- a. Provisions shall be made so that the Common Open Space and other common property shall be owned in common by the owners of all units in the Planned Residential Development or by a corporation, non-profit organization or trust whose members are all the owners of the units. In all cases, a perpetual restriction of the type described in M.G.L. Ch. 184, Sec. 31 running to and enforceable by the Town of Wilmington shall be recorded in respect to the Common Open Space. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, open space, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board may prescribe and deem appropriate.
  - b. In order to ensure that the corporation, non-profit organization or trust will properly maintain the Common Open Space and other common property an instrument(s) shall be recorded at the Middlesex North Registry of Deeds which shall as a minimum provide:
    - A legal description of the Common Open Space.
    - A statement of the purpose for which the Common Open Space is intended to be used and the restrictions on its use and alienation.
    - The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the Common Open Space.

- The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the Planned Residential Development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately there from.
- Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust.
- Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provisions for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust.
- Provision for the management, maintenance, operation, improvement and repair of the Common Open Space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Open Space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the Planned Residential Development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record, and
- The method by which such instrument or instruments may be amended.

7.2.7 **Limitation of Subdivision** - No lot shown on a plan for which a Planned Residential Development permit is granted may be further subdivided, and a notation to this effect shall be placed on the plan of record which shall be recorded with the special permit.

### 7.3 **Town Meeting Presentation and Rezoning**

7.3.1 **Proposal for Rezoning** - Any person who desires to have a tract of land rezoned to Planned Residential Development District shall submit a written proposal to the Planning Board accompanied by the following plans:

7.3.1.1 Overall Concept Plan (at a scale of not less than 1" = 100') for the entire Planned Residential Development tract and showing all surrounding land within 150 ft. of the boundaries of the tract, all man-made features, lot lines, zoning boundaries, vegetative cover, wetlands, soil characteristics and existing topography together with the layout of the proposed development concept (buildings, parking, drives, landscaped areas, common open space and improvements thereto and in tabular form the total area of the tract, the extent of Common Open Space, the extent of wetlands as defined by the Wetland Protection Act, Chapter 131, Section 40 of the General Laws, the extent of any land zoned Flood Plain, the proposed number of dwelling units and the number of bedrooms/dens in each unit and anticipated development phases).

7.3.1.2 Architectural Plan(s) - Typical floor plans and architectural elevations (at a scale not less than 1/8" = 1'-0") of the proposed dwelling units.

- 7.3.1.3 **Landscaping Plan(s)** - Typical landscape plan for all disturbed areas and a detailed planting plan for at least one group of three or more residential buildings.
- 7.3.2 **Submission to Other Town Boards** - The Planning Board shall, within ten days of receipt of a submission hereunder, refer the application to the Board of Health, Conservation Commission, Water and Sewer Commission, Town Engineer and Inspector of Buildings for written reports and preliminary recommendations which shall be returned within 35 days.
- 7.3.3 **Planning Board Town Meeting Report** - The Planning Board shall report to Town Meeting if it finds: (1) that the Planned Residential Development is consistent with the purposes of Subsection 7.1; (2) that the Planned Residential Development contains a mix of residential, open spaces, and other uses sufficiently advantageous to the Town to render it appropriate to depart from the requirement of this Bylaw otherwise applicable to the land and (3) that sufficient data is included in the applicant's presentation to the Town Meeting to give reasonable assurance that the development will conform to all the Planned Residential Development standards.
- 7.3.4 **Town Meeting Motion** - Any motion presented to Town Meeting for rezoning a tract of land to Planned Residential Development District shall incorporate by reference the written proposal and plans required under Subsection 7.3.1. In addition, the maximum number of bedrooms/dens as shown on said plans shall be incorporated into the motion presented to Town meeting and shall not be increased after the Town Meeting has acted favorably on the motion to rezone.
- 7.4 **Procedure for Special Permit from the Planning Board**
- 7.4.1 **Application** - After approval by Town Meeting of a Planned Residential Development District, any person who desires a special permit for a Planned Residential Development shall submit a written application to the Planning Board. Each such application shall be accompanied by the following information:
- 7.4.1.1 The written proposal and the Overall Concept Plan, Architectural Plan(s) and Landscaping Plan(s) presented to Town Meeting.
- 7.4.1.2 Planned Residential Development Plan(s) meeting the requirements set forth for a Definitive Plan in the Town of Wilmington Subdivision Rules and Regulations and including the following information: The existing and proposed topography; the soil associations as delineated by the U.S. Soil Conservation Service; the extent of any wetlands as defined by the Wetlands Protection Act, Chapter 131, Section 40 of the General Laws; the extent of any land zoned Flood Plain District; all existing and proposed location of residential buildings and any other structures; all streets, private ways, common drives, parking spaces, sewers, drainage facilities and utilities; the limit of each construction phase and a tabular summary of the total area of the tract, the percent of Common Open Space, the number, type and gross floor area of the residential buildings and including the number of bedrooms/dens, the building coverage and coverage of all impervious surfaces.
- 7.4.1.3 Definitive Subdivision Plan(s) and Application of Approval under the Town Wilmington Subdivision Rules and Regulations (if the Planned Residential Community Development requires approval under the Subdivision Control Law) which to the extent permitted by law shall be reviewed and considered by the Planning Board at the same time as the application for a special permit.
- 7.4.1.4 Architectural Plan(s) and Elevation(s) (at a scale of not less than 1/8" = 1'0") showing the elevation of the proposed buildings, their height and the layout of each floor.

- 7.4.1.5 Landscape Plan(s) (at a scale of not less than 1" = 40') showing the existing and proposed tree line, the landscaping and proposed improvements for the Common Open Space and planting plans for disturbed areas and buffer areas.
- 7.4.1.6 Order of Conditions issued pursuant to G.L. Ch. 131, Sec. 40, "The Wetlands Protection Act" for the proposed Planned Residential Development or written determination by the Conservation Commission that a notice of intent is not required for the proposed development.
- 7.4.1.7 Copies of all instruments to be recorded with the Planned Residential Development special permit in including the proposed deed(s) for the Common Open Space, the articles of organization and bylaws of any corporation or trust to be established for the ownership of the Common Open Space and the perpetual restriction to be imposed on the Common Open Space.
- 7.4.2 **Submission to Other Town Boards** - The Planning Board shall, within ten days of its receipt of an application for a special permit for a Planned Residential Development, refer the application to the Board of Health, Conservation Commission, Water and Sewer Commission, Town Engineer and Inspector of Buildings for written reports and recommendations and no decision shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such reports.
- 7.4.3 **Decision of the Planning Board**
- 7.4.3.1 The Planning Board may grant a special permit hereunder only if it finds that:
- The application and all accompanying plans for the Planned Residential Development are consistent with plans submitted to the Town Meeting under Subsection 7.3.4. Town Meeting Motion;
  - The Planned Residential Development plans comply with the requirements of Subsection 7.2 Planned Residential Development Standards; and
  - The Planned Residential Development is consistent with the purposes of Subsection 7.1.
- 7.4.3.2 As a condition of approval hereunder, the Planning Board may require such changes in the proposed development plans and may impose such additional conditions, limitations and safeguards as it may deem appropriate to ensure compliance with the terms of this Bylaw. In addition the Planning Board may impose as a condition that the installation of municipal services and construction of ways shall comply with the requirements of the Town of Wilmington Subdivision Rules and Regulations and may further require sufficient security to ensure such compliance and the completion of planned recreational facilities and site amenities.

## **SECTION 8. CONSERVATION SUBDIVISION DESIGN**

### **8.1 Purpose and Intent**

#### **8.1.1. Primary purposes:**

- To allow for greater flexibility and creativity in the design of residential developments;
- To encourage the permanent preservation of open space, forest, wildlife habitat, and historical resources;

- c. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
- d. To protect wetlands, aquifers, the Ipswich River, and other waterbodies through water conserving landscapes, reduction of impervious surfaces, and promotion of on-site wastewater treatment;
- e. To minimize overall environmental disturbance on a site;
- f. To facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner;

#### 8.1.2 **Secondary Purposes:**

- a. To preserve and enhance community character;
- b. To promote the preservation of remaining agricultural land and pastures;
- c. To protect the value of real property;
- d. To reduce the impact of new development on existing residential neighborhoods.

### 8.2 **Eligibility**

- 8.2.1 There is no minimum tract size for Conservation Subdivision Design. This Conservation Subdivision Design bylaw is an option for any proposed subdivision.
- 8.2.2 Any proposed residential development on a parcel or contiguous parcels under common ownership of more than 20 acres shall submit a Conservation Subdivision Design application to the Planning Board. After submittal, the developer maintains the option of proceeding with either a conservation subdivision or a conventional subdivision.
- 8.2.3 **Zoning Classification:** Only those tracts wholly (or partially) in residential districts shall be eligible for consideration as a CSD. If any portion of a tract is outside of a residential district, that portion of the site shall not be considered in the determination of the Basic Maximum Number of Housing Units, but shall be eligible to count as open space.
- 8.2.4 **Contiguous Parcels:** To be eligible for consideration as a CSD, the tract shall consist of a single parcel or multiple parcels held under common ownership or site control.
- 8.2.5 **Land Division:** To be eligible for consideration as a CSD, the tract or tracts may be a subdivision or a division of land pursuant to M.G.L. c. 41, s. 81; provided, however, that CSD may also be permitted where intended as a condominium on land not divided or subdivided.
- 8.2.6 **Permissible Uses:** Land uses within a CSD development may include the following: single-family homes, both attached and detached; two-family structures; and multifamily structures (townhouses, apartments, condominiums). The mix of housing types shall be in accordance with the Site Specific Design Standards outlined in Section 8.10.2.1 below. Within CSD developments of more than 50 housing units, the CSD application may also include no more than 1000 sq. ft. for a convenience retail business catering primarily to residents of the development and the surrounding neighborhood.

- 8.3 **Special Permit Required** - The Wilmington Planning Board may authorize a Conservation Subdivision Design project pursuant to the granting of a Special Permit. Special Permits shall be acted upon in accordance with all provisions below.

#### 8.4 **Pre-Application**

8.4.1 Conference: The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Wilmington Planning Board. If such a review is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and other bodies as appropriate. The purpose of a pre-application meeting is to minimize the applicant's cost of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed CSD, seek preliminary feedback from the Planning Board, other Boards and Commissions, or other experts. The applicant may also set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a CSD permit.

8.4.2 Submittals: In order to facilitate review of the proposed CSD at the pre-application stage, applicants are encouraged to submit the following information.

8.4.2.1 Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

8.4.2.2 Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. Resources depicted on the existing conditions maps should include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

8.4.2.3 Other Information. In addition, applicants are invited to submit the information set forth in Section 8.6.1 in a form acceptable to the Planning Board.

8.4.3 Site Visit. Applicants are very strongly encouraged to request a site visit by the Planning Board and/or the Planning and Conservation Director in order to facilitate pre-application review of the CSD. If such a site visit is requested, the Planning Board shall invite the Conservation Commission, Board of Health, the Historical Commission, and other bodies as appropriate.

8.4.4 Design Criteria. The parties should discuss the design process and criteria set forth below in Section 8.5 at the pre-application conference and site visit.

8.5 **Design Process** - At the time of the application for a special permit for a CSD project in conformance with Section 8.6 the applicant shall demonstrate to the Planning Board that the following Design Process was performed by a registered Landscape Architect, and that this process was considered in determining the layout of proposed open space, house sites, streets, and trails.

8.5.1 Step One: Identify Conservation Areas. Identify preservation land in two steps. First, identify and delineate Primary Conservation Areas, such as wetlands, riverfront areas, and floodplains regulated by state or federal law or local bylaw, as well as vernal pools and direct recharge areas for public water supply wells. Also identify Secondary Conservation areas, including steep slopes, mature woodlands, agricultural land, meadows, significant wildlife habitat, historical and archaeological features, and scenic

views on to or off of the site. Second, identify and delineate Potentially Developable Areas. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside of the Primary and Secondary Conservation Areas.

8.5.2 Step Two: Locate House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community. The number of homes enjoying the amenities of the development (views, abutting common open space, etc.) should be maximized.

8.5.3 Step Three: Align the Streets and Trails. Align streets in order to efficiently access the house lots and minimize impacts to Primary and Secondary Conservation Areas. Also lay out new pedestrian trails to create connections among houses, conservation areas, and existing and future streets, sidewalks and trails.

8.5.4 Step Four: Lot Lines. Draw in the lot lines and delineate the common open space.

## 8.6 **Procedures**

8.6.1 Application. An Application for a special Permit for a Conservation Subdivision Design project shall be submitted on the form(s) provided by the Planning Board in accordance with the subdivision rules and regulations of the Board. Applicants for a CSD special permit shall also submit to the Planning Board 16 copies of a Concept Plan.

8.6.2 The Concept Plan shall include a Sketch Plan and a Yield Plan (see section 8.7). The applicant shall submit both the Site Context Map and Existing Conditions / Site Analysis Map prepared according to Section 8.4.2 above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing soil maps.

8.6.2.1 Sketch Plan: The Sketch Plan shall be prepared by a registered Landscape Architect, or by a multidisciplinary team of which one member must be a registered Landscape Architect. The Sketch Plan shall identify Primary and Secondary Conservation Areas, and shall address the general features of the land, and give approximate configurations of the lots, open space, roadways, and trails. The Sketch Plan shall demonstrate the four-step design process described in Section 8.5 above, and the Design Standards outlined in Section 8.10 below. The Sketch Plan shall include the following:

- a. The Subdivision Name, boundaries, north point, date, legend, title "Concept Plan," and scale.
- b. The names of the record owner, the applicant, and the name of the registered landscape architect who prepared the plan.
- c. The names, approximate location, and widths of adjacent streets.
- d. The proposed topography of the land shown at a contour interval no greater than 2 feet in areas proposed for development, and no greater than ten feet in areas that will not be developed or altered. Elevations shall be referred to mean sea level.
- e. The location of existing landscape features, including wetlands; forests; fields; meadows; riverfront areas; waterbodies; archaeological and historic structures or features; rock outcrops; stone walls; high points; views; major tree groupings; noteworthy tree specimens; rare habitats; and habitats of rare, endangered, or threatened wildlife. Proposals for all features to be preserved, demolished, removed, or relocated shall be noted on the Sketch Plan.

- f. All on-site local, state, and federal regulatory resource areas and buffer zones. All wetland flag locations shall be numbered and placed on the Sketch Plan.
- g. Lines showing proposed private residential lots, as delineated during Step Four of the Design Process (Section 8.5.4), with approximate areas and dimensions.
- h. The location of all existing and proposed features and amenities, including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off street parking areas. A brief narrative shall be provided, as necessary, to explain features on the Plan.
- i. The existing and proposed lines of streets, ways, common driveways, easements, and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or parcels of land or lots to be used for any purpose other than private residential uses, shall be so designated within the subdivision in a general manner.
- j. Proposed roadway grades.
- k. In general, official soil percolation tests for the purpose of siting wastewater treatment options are not required for the concept plan. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site systems (conventional or alternative Title 5 systems), shared on-site systems, or any combination of these or other methods will be used.
- l. A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will identify the structural and non-structural engineering methods that will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan. Specific stormwater management design information is not required for the Concept Plan. However, the development must meet the stormwater management standards outlined in the Massachusetts Wetlands Protection Act (regardless of whether the project falls under Wetlands Protection Act jurisdiction). Approval of the Planning Board will be contingent on the development meeting these standards.
- m. A narrative explanation prepared by a certified Professional Engineer detailing the proposed drinking water supply system.
- n. A narrative explanation of the proposed quality, quantity, use, and ownership of the open space. Open Space parcels shall be clearly shown on the plan.
- o. All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.
- p. A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds, with an accompanying narrative explaining their general purpose.



- q. A narrative indicating all requested waivers, reduction, and modifications as permitted within the requirements of this bylaw.
- 8.6.2.2 Yield Plan: Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to Section 8.7, Basic Maximum Number, below.
- 8.6.3 Relation between Concept Plan and Definitive Subdivision Plan: The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan, as determined by the Planning Board. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:
  - 8.6.3.1 Any increase in the number of building lots or the number of housing units;
  - 8.6.3.2 A significant >10% decrease in the open space acreage;
  - 8.6.3.3 A significant change in the lot layout;
  - 8.6.3.4 A significant change in the general development pattern which adversely affects natural landscape features and open space preservation, including a significant increase in the amount of land proposed to be cleared of trees (either temporarily or permanently);
  - 8.6.3.5 Significant changes to the stormwater management facilities;
  - 8.6.3.6 Significant changes in the wastewater management systems; or
- 8.7 **Basic Maximum Number of Housing Units**
  - 8.7.1 The Basic Maximum Number of Housing Units shall be no greater than the number of single-family units permissible under conventional subdivision development. The Basic Maximum Number of Units shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of single family house lots that could be created upon the site through a conventional subdivision of land. The Yield Plan shall contain a level of detail sufficient to determine the maximum yield of a tract. Yield plans shall demonstrate conformity to all Zoning, Health, and Environmental regulations, including dimensional requirements, maximum impervious surface, property line setbacks, wetland setbacks, riverfront restrictions, Title 5 requirements, local or state stormwater management requirements, and design and construction requirements outlined in the Wilmington Subdivision Rules and Regulations.
  - 8.7.2 The proponent shall have the burden of proof with regard to the Basic Maximum number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan.
- 8.8 **Reduction of Dimensional Requirements** - The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within a CSD, subject to the following limitations:
  - 8.8.1 Lots having reduced area or frontage shall not have frontage on a street other than a street created by the CSD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw.
  - 8.8.2 At least 50% of the required setbacks for the district shall be maintained in the CSD unless a reduction is otherwise authorized by the Planning Board.

- 8.8.3 Lot frontage shall not be less than 50 feet. The Planning Board may waive this requirement where it is determined that such reduced frontage will further the goals of the bylaw.

8.9 **Open Space Requirements**

- 8.9.1 Open Space. A minimum of 35% of the tract shown on the development plan shall be open space. Any proposed open space--unless conveyed to the Town of Wilmington, the Wilmington Conservation Commission, or a local or regional open space land trust--shall be subject to a permanent recorded deed restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

- 8.9.1.1 The percentage of the open space that is wetland shall not significantly exceed the percentage of the entire tract which is wetland; 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 of this bylaw.

- 8.9.1.2 The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway, driveway, pathway, or accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.

- 8.9.1.3 The bulk of the open space shall not be in buffer strips, undeveloped 'fingers' between house lots, or other narrow linear forms.

- 8.9.1.4 The open space shall be used primarily for wildlife habitat, conservation, and passive recreation. The Planning Board shall also permit where appropriate the following uses: historic preservation, outdoor education, active recreation, parks, agriculture, horticulture, or a combination of these uses. The open space shall be served by suitable access for all stated purposes. If the open space is conveyed to the Town, Conservation Commission, or a local or regional land trust, provisions for public access shall be made, including signage. The Planning Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks, bike paths, and parking for public visitors to the open space).

- 8.9.1.5 Wastewater disposal facilities and stormwater management systems serving the CSD may be located within the open space. However, these systems shall not qualify towards the minimum open space required. Land upon which wastewater disposal facilities (including leach fields) are located shall remain under the possession of a homeowners association or similar entity dedicated to the maintenance of such facilities even if the balance of the open space is conveyed to another entity.

- 8.9.2. Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:

- 8.9.2.1 The Town or its Conservation Commission;

- 8.9.2.2 A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

- 8.9.2.3 A corporation or trust owned jointly or in common by the owners of lots within the CSD. If such a trust or corporation is utilized, ownership thereof shall pass with conveyance of the house lots (or condominiums) in perpetuity. Maintenance of

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

8.10 **Design Standards** -The following Generic and Site Specific Design Standards shall apply to all CSD developments and shall govern the development and design process:

8.10.1 **Generic Design Standards**

- 8.10.1.1 The landscape, including topography, tree cover, and natural drainage ways, shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover.
- 8.10.1.2 Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel, insofar as practicable.
- 8.10.1.3 Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings.
- 8.10.1.4 All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- 8.10.1.5 The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

8.10.2 **Site Specific Design Standards**

- 8.10.2.1 Mix of Housing Types. The CSD may consist of single-family (attached or detached), two-family and multifamily residential structures, or a combination of these housing types. A multifamily structure shall not contain more than 6 dwelling units.
- 8.10.2.2 Where the CSD development will include a mix of housing types, the developer shall seek to place single family houses towards the perimeter of the site, especially where it abuts residentially zoned and occupied properties. Within the site, residential structures shall be oriented toward the street serving the premises and not the required parking area.
- 8.10.2.3 Multifamily structures shall be sited and screened to minimize any potential negative visual impact on abutting single-family structures, both on and off site.
- 8.10.2.4 Parking. Each dwelling unit shall be served by two off-street parking spaces, except where the development is located within 1/2 mile of an MBTA commuter rail

station, in which case each dwelling unit shall be served by no less than 1.5 off-street parking spaces. Parking spaces in front of garages may count in this computation. Resident parking for multifamily structures shall be placed to the side or rear of the building, and the primary pedestrian / visitor entrance shall face the street. All parking areas with greater than six spaces shall be screened from view.

- 8.10.2.5 Developers are encouraged to provide outdoor living spaces, such as porches, on the front of residential structures, facing the street.
- 8.10.2.6 Buffer Areas. A vegetated buffer area of 30 feet shall be provided at the following locations: (a) the perimeter of the property where it abuts residentially zoned and occupied properties; (b) Conservation Areas, including ponds, wetlands, streams and riverfront areas, agricultural or recreational fields, and land held for conservation purposes; and (c) existing public ways. Driveways necessary for access and egress to and from the tract may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The Planning Board may modify or waive the buffer requirement in these locations when it determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein.
- 8.10.2.7 Drainage and Stormwater Management. All CSD developments shall conform to the Massachusetts Wetlands Protection Act Stormwater Management Standards (regardless of whether the project falls under Wetlands Protection Act jurisdiction). Developers shall seek to reduce the amount of impervious surface through the use of shared driveways, parking lots of gravel or pervious pavement, and reduction in the width of streets. Development shall not increase the peak rate of discharge for the two-, ten-, and 100-year storms. Stormwater management systems shall recharge to groundwater as much water as possible. Appropriate water quality treatment best management practices shall be used for runoff from roads and driveways. All rooftop runoff shall be infiltrated on site. A landscape architect should be employed to develop screening and landscaping for structural stormwater management facilities (swales, detention ponds, etc.)
- 8.10.2.8 Roadways. Developers shall balance the need to minimize the amount of paved surface on the site with the need to route roadways carefully in order to minimize environmental impact. Developers shall establish a right-of-way no greater than 50 feet. The Planning Board will consider permitting reduction of roadway width or other Roadway and Driveway Design Requirements (outlined in the Rules and Regulations Governing the Subdivision of Land) in order to reduce environmental impacts of the development, so long as the proponent demonstrates that such reduction will not decrease pedestrian and vehicular safety and or impeded access for emergency vehicles.
- 8.10.2.9 Common/Shared Driveways. Common or shared driveways are permitted in CSD developments. Driveways serving single residences shall be 10-12 ft. in width, and those serving multiple residences 16-20 feet in width, unless the proponent demonstrates that increased widths are necessary to ensure vehicular and pedestrian safety or to provide access for emergency vehicle.
- 8.10.2.10 Pedestrian and Bicycle Connections. Walkways and bicycle paths shall be provided to link residences with parking areas, open spaces, and recreation facilities. Developers shall also create pedestrian and bicycle links to off site land uses, including nearby key destinations (schools, neighborhood activity centers, recreational facilities) and existing or proposed segments of the town's trail network.
- 8.10.2.11 Disturbed Areas. Not more than 65% of the site shall be disturbed areas. A disturbed area is any land not left in its natural state. Undisturbed areas may be within the common open space or within individual house lots.

- 8.10.2.12 Landscaping. Developers shall employ a landscape architect to design landscape features harmonious with the site's natural state and will make water conservation a priority for the landscape design. Drought-resistant plantings are strongly encouraged. The size of individual and common lawns should be minimized. Developers are encouraged to use natural, low-maintenance grasses and meadow plantings for open areas.
- 8.11 **Decision of the Planning Board** - The Planning Board may grant a special permit for a proposed CSD development if it determines that the proposed project has less detrimental impact on the property and surrounding areas than a conventional development proposed for the tract, after considering the following factors:
- 8.11.1 Whether the CSD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
  - 8.11.2 Whether the CSD promotes permanent preservation of open space, agricultural land forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources;
  - 8.11.3 Whether the use of CSD reduces the impacts of development on the Ipswich River and other waterbodies, through the reduction of water consumption, by minimizing impervious surfaces, and through the use of on-site or decentralized wastewater management systems.
  - 8.11.4 Whether the CSD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
  - 8.11.5 Whether the CSD reduces the total amount of disturbance on the site;
  - 8.11.6 Whether the CSD furthers the goals and policies of the open space plan and Wilmington Master Plan;
  - 8.11.7 Whether the CSD facilitates the construction and maintenance of streets, utilities, and public service in a more economical and efficient manner;
  - 8.11.8 Whether the CSD contributes to increasing the diversity of available housing in Wilmington;
  - 8.11.9 Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw; or do anything in relation thereto.

## **SECTION 9. OVER 55 HOUSING DISTRICT**

- 9.1 **Purpose** - The purpose of Over 55 housing is to enhance the public welfare by encouraging the development of choices of independent living accommodations for persons over the age of 55; and encouraging the development of housing that is suitable for persons over the age of 55 with low and moderate-income. It is further intended to promote the goals of the Master Plan; preserve land for conservation, open space, and recreation; preserve significant land and water resources, natural areas, scenic views, and historic sites; protect and enhance Wilmington's New England character; and reduce the typical costs of providing municipal services to residential developments.
- 9.2 **Age Qualification** - An Over 55 Housing development shall constitute housing intended for persons of age fifty-five or over within the meaning of Massachusetts General Law Chapter 151B, Sections 4, 16 and 42 USC S3607(b)(2)(c), and in accordance with the same, 100% of the dwelling units in an Over 55 housing development shall each be owned and occupied by at least one person 55 years of age or older per dwelling unit, and such development shall

be operated and maintained in all other respects in compliance with the requirements of said statutes and regulations promulgated pursuant thereto.

- 9.3 **Boundaries** - The Over 55 Housing District is herein established as an overlay district and shall be superimposed on the other districts established by this Bylaw. Over 55 Housing is prohibited at any other location in Town. Boundaries are shown on the Zoning Map and include the following parcels:

Parcel One:

A certain tract of land situated in Wilmington, Middlesex County, Massachusetts, shown as Lot 5 on the Town Assessor's Map No. 39, bounded as follows:

Beginning at the Northeasterly corner thereof, at a point along the Southerly location line of Cross Street,

Thence running Northeasterly along said location line about 463.83 feet, more or less to a point,

Thence turning and running Southeasterly along land of Garrant, Yentile and Deharo approximately 340 feet, more or less, to a point,

Thence turning and running Southwesterly, Southerly and Southeasterly along land of Armoian, Gottchalk and AVCO Manufacturing Corp., seven courses about 738.17 feet, more or less, to a point,

Thence turning and running Southeasterly along land of AVCO Manufacturing Corp., seven courses approximately 671.01 feet, more or less, to Maple Meadow Brook,

Thence turning and running Southwesterly by said Maple Meadow Brook approximately 1,060 feet, more or less, to a point on the Easterly location line of Main Street,

Thence turning and running Northwesterly along said location line of Main Street, eight courses approximately 850 feet, more or less, to a point,

Thence turning and running Southeasterly along land of PAC Properties, Inc. approximately (281 feet, more or less, to a point

Thence turning and running Northwesterly along land of said PAC Properties, Inc. two courses, approximately 403 feet, more or less, to the point of beginning.

Said tract of land containing 20 and 47/100 (20.47) acres, more or less.

Parcel Two:

The land situated in Wilmington, Middlesex County, Massachusetts, shown as Lot 10 on Assessor's Map R3, being described as follows:

A certain parcel of land situated in Wilmington, Middlesex County, Massachusetts and shown as lot "A" on a plan entitled "Plan of Land in Andover & Wilmington, Mass., as surveyed for Foster's Pond Improvement Assoc. Inc." dated June 1950, duly recorded with Middlesex County North Registry of Deeds in Plan Book 114, Page 145, as follows:

SOUTHWESTERLY: by a stone wall by four lines together measuring seven hundred eighty and 1/10 feet more or less; thence turning and running;

SOUTHEASTERLY: by a stone wall, five hundred sixty-seven and 5/10 feet more or less; thence turning and running;

NORTHEASTERLY: by Lot "B" as shown on said Plan, five hundred thirty-five (535) feet more or less to the center of the roadway as shown on said Plan, thence running;

NORTHWESTERLY: by the center for the roadway, four hundred (400) feet more or less to the pint of beginning.

Containing 5.48 acres of land according to said Plan.

Parcel Three:

The land situated in Wilmington, Middlesex County, Massachusetts, shown as Lot 8 on Assessor's Map R3, being described as follows:

A certain parcel of land being shown as Lot 1 on a plan of land entitled "Plan of Land in Wilmington, Mass.", dated June 29, 1964, recorded in Middlesex North District Registry of Deeds on August 14, 1964, in Book of Plans 100, Plan 99, and bounded and described as follows:

WESTERLY	by Andover Street, as shown on said Plan, 255.0 feet;
NORTHERLY	by Lot 2, as shown on said Plan, 411.05 feet;
SOUTHEASTERLY	by land now or formerly of Foster, as shown on said Plan, by two courses, 114.71 and 55.50 feet, respectively; and,
SOUTHWESTERLY	by land now or formerly of Niles, as shown on said Plan, by three courses, 92.09, 127.98 and 175.28, respectively.

Containing 85,525 square feet of land according to said Plan.

9.4 **Special Permit**

- 9.4.1 The Planning Board may authorize an Over 55 Housing development pursuant to the granting of a Special Permit if the development is in accordance with all provisions below and in harmony with the purpose and intent of this bylaw.
- 9.4.2 The Planning Board may require changes to the Over 55 housing site plan and impose additional conditions, safeguards, and limitation as it deems necessary to achieve the objectives of this bylaw.
- 9.4.3 The Planning Board may adopt, and from time to time, amend, rules and regulations consistent with the provisions of this bylaw. Such rules and regulations shall prescribe the size, form, content, and number of copies of plans and specifications; the procedure for submission and approval of an Over 55 Housing special permit; and other specifications as deemed necessary by the Planning Board.

9.5 **Permitted Uses**

- a. Single family dwellings
- b. Duplex structures
- c. Multi-family structures

9.6 **Dimensional Regulations**

- 9.6.1 Minimum tract of land is seven acres on one parcel or contiguous parcels of land.
- 9.6.2 Maximum density: Eight units per acre, excluding all but 25% of wetland resource areas as defined in Massachusetts General Law Chapter 131 Section 40.
- 9.6.3 Minimum setbacks:
  - 9.6.3.1 Perimeter buffer: All buildings must be located a minimum of 40 feet from side and rear lot lines. The perimeter buffer shall remain in a natural state to preserve the visual character of the parcel being developed. If the Planning Board deems such existing buffering insufficient, it shall be supplemented with additional planting.
  - 9.6.3.2 All buildings must be located 20 feet from a street or driveway within the site.

- 9.6.3.3 All buildings must be located 50 feet from any existing street.
- 9.6.3.4 Upon a finding by the Planning Board that a setback of lesser width would be sufficient to visually screen and/or separate the development from adjacent property, the setback may be reduced. The Board may require "no disturb" easements, conservation restrictions or the like where the setback has been reduced.
- 9.6.4 Minimum separation of buildings: 20 feet.
- 9.6.5 Maximum height of buildings and structures: 36 feet, and 2 ½ stories.
- 9.6.6 Frontage – Minimum lot frontage to be 50 feet.
- 9.6.7 The Planning Board may impose other dimensional requirements, as it deems appropriate to enhance the purpose and intent of this bylaw.
- 9.7 **Parking Requirements** - 2.00 off-street parking spaces per dwelling unit.
- 9.8 **Affordable Housing**
  - 9.8.1 All Over 55 Housing Developments shall include at least 15% affordable housing units.
  - 9.8.2 For all Over 55 Housing Developments, the total number of allowable dwelling units may be increased by 25% if the applicant designates at least 25% of the total number of units for use as affordable housing.
  - 9.8.3 Subject to Planning Board approval, an applicant for an Over 55 Housing special permit may utilize an available state or federal assistance program, or may choose to meet the affordable housing requirements by utilizing income and asset standards, and by establishing sales prices, entry fees, condominium fees and other costs that are consistent with available affordable housing assistance programs.
  - 9.8.4 Over 55 Affordable Housing Units shall be maintained as affordable housing units for the life of the Over 55 Housing Development. Each Affordable Housing Unit shall be sold to its initial and all subsequent buyers subject to deed riders, restrictive covenants, contractual agreements or other mechanisms restricting the use and occupancy, sales prices, resale prices and other cost factors to ensure their long term affordability. These restrictions shall be in place for such maximum time as may be permitted under applicable state laws governing such restrictions. They shall be enforceable and renewable by the Town of Wilmington through standard procedures provided by applicable law.
    - 9.8.4.1 The restrictions shall contain a right of first refusal to the Town of Wilmington or its designees at the restricted resale value, and a requirement that the owner provides notice of such right of refusal to the Town of Wilmington or its designee prior to selling the affordable unit. The town or its designee shall have 90 days to exercise the right of first refusal.
    - 9.8.4.2 Nothing in this section shall be construed to cause eviction of an owner due to loss of his/her income status during the time of ownership. Rather the restrictions governing an affordable unit shall be enforced upon resale of the affordable unit. The mechanisms and remedies to enforce the restrictions governing an affordable unit shall be set forth in its deed restrictions.
    - 9.8.4.3 All contractual agreements with the Town of Wilmington and other documents necessary to ensure the long term affordability of an affordable housing unit shall be executed prior to the issuance of any building permit for it.



9.8.5      **Location**

Affordable units shall be dispersed throughout the development to ensure a true mix of market-rate and affordable units. The exterior of affordable units shall be generally indistinguishable from market-rate units.

9.8.6      **Local preference**

The maximum number of local preference units permitted by the Department of Housing and Community Development (DHCD) shall be provided. Applicants shall submit a marketing plan which describes how the affordable housing units will be marketed to potential homebuyers. The plan shall meet all requirements of DHCD and applicable state and federal laws and regulations so that the affordable units are eligible to be placed on the Town's Subsidized Housing Inventory.

9.9        **Stormwater Management** - The development shall meet the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policies regardless of whether it is subject to the Wetlands Protection Act.

9.10      **Private Roads** - Road and driveways within an Over 55 development shall meet the grades, width, curvature, and construction standards as the Planning Board shall determine, based upon the standards provided in the regulations governing subdivisions, as the same may be waived or modified by the Planning Board to meet site conditions and design requirements.

9.11      **Environmental Protection** - The Planning Board, in granting a Special Permit for Over 55 Housing, may impose reasonable conditions to protect the environment and health, safety and welfare of the neighborhood, of the residents in the proposed development, and the general public.

9.12      **Open Space Standards**

9.12.1    A minimum of 35% the tract shown on the development plan shall be open space.

9.12.2    Any proposed open space, unless conveyed to the Wilmington Conservation Commission, or a local or regional conservation land trust, shall be subject to a permanent recorded deed restriction enforceable by the town, providing that such be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

9.12.3    The percentage of the open space that is wetland shall be proportionate to, and shall not exceed, the percentage of the entire tract which is wetland. However, the Planning Board may waive this requirement if it determines that such waiver would promote the purposes of this bylaw.

9.12.4    The open space shall be contiguous. For the purposes of this subsection, open space shall be considered "contiguous" if it is separated by a roadway, driveway, pathway, or accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this bylaw and/or protect identified conservation areas.

9.12.5    The bulk of the open space shall not be in buffer strips, undeveloped "fingers" between structures, or other narrow linear forms.

9.12.6    The open space shall be used primarily for wildlife habitat, conservation, and passive recreation. The Planning Board shall also permit where it deems appropriate the following uses: historic preservation, outdoor education, active recreation, parks, agriculture, horticulture, or a combination of these uses. The open space shall be served by suitable access for all stated purposes. If the open space is conveyed to the

Conservation Commission or a local regional land trust, provisions for public access shall be made, including signage. The Planning Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks, bike paths, and parking for public visitors to the open space).

#### 9.13 **Design Criteria**

- 9.13.1 All buildings in an Over 55 development to be compatible in style, building materials, and colors with those in Wilmington, and to provide variations of façade and roof lines to enhance the architectural character.
  - 9.13.2 Site design to provide an inter-relationship between the buildings so as to provide a sense of community, adequate light, circulation, privacy, and separation between buildings.
  - 9.13.3 The Planning Board may impose appropriate standards for all outdoor lighting within an Over 55 development.
  - 9.13.4 Maintenance responsibilities – Maintenance of the premises, including, but not limited to, roadway maintenance and repair, snowplowing, trash removal/recycling pick-up and any other amenities of the Project is the responsibility of the owner/condominium association.
- 9.14 **Performance Guarantee** - Before the issuance of any building permits for Over 55 Housing, the applicant shall secure the required improvements for streets, ways, drainage, and other items specified by the Planning Board with a performance guarantee.
- 9.15 **Revisions and Amendments** - Following the approval of an Over 55 housing development, any change in the layout of streets and ways; in the configuration or ownership of the open space; or any change which would alter the character of the development, shall require the written approval of the Planning Board. The Planning Board may, upon its own determination, require a public hearing pursuant to special permit requirements if it finds that the proposed changes are substantial in nature and of public concern.

### **SECTION 10. ADMINISTRATION AND ENFORCEMENT**

#### 10.1 **Enforcement**

The Inspector of Buildings of Town of Wilmington is hereby designated as the Officer charged with the enforcement of this Bylaw.

- 10.1.1 The Inspector of Buildings shall, upon a written complaint of any citizen or owner of property within the Town or upon the Inspector's own initiative, institute appropriate action or proceedings in the name of the Town of Wilmington to prevent, correct, restrain or abate violation of this Bylaw.
  - 10.1.2 Violation of this Bylaw shall be punishable by a fine of \$100.00 for each offense. Each day that such violation continues shall constitute a separate offense.
- 10.2 **Building Permit** - No structure or part thereof shall be constructed, altered or moved without a permit from the Inspector of Buildings. The Inspector of Buildings shall not grant such permit if such construction, alteration or movement would be in violation of any of the provisions of this Bylaw, nor shall any officer of the Town of Wilmington grant any permit or license for the use of any land or structure if such new use would be in violation of this Bylaw. Any application for a building permit shall be accompanied by (1) a description of the existing and the proposed use of land and structures on the development site, (2) a plan drawn to scale and prepared by a Registered Professional Engineer or Registered Land Surveyor showing the dimensions of all existing and proposed structures and the dimensions of all setbacks, and (3) such further information as the Inspector of Buildings may require to

ensure enforcement of this Bylaw. The Inspector of Buildings may waive the requirement of the preceding sentence, if the Inspector determines that such information is not essential for the proposed work.

- 10.3 **Board of Appeals** - The Town of Wilmington Board of Appeals is hereby designated as the Board of Appeals required by Chapter 40A of the Massachusetts General Laws as constituted on the date of the acceptance of this recodification. This recodification shall replace any and all prior actions of the Town regarding the Board of Appeals.

10.3.1 The Board of Appeals shall also act as the Board of Appeals required under the provisions of Section 81Z of Chapter 41 of the Massachusetts General Laws, as amended, relating to subdivision control.

10.3.2 Appointment of members: The Board of Appeals shall consist of five (5) members nominated and appointed by the Board of Selectmen. There shall be no associate members on the Board of Appeals.

10.3.3 Terms: Appointment shall be for three-year terms, so arranged that the term of no more than two members shall expire each year.

10.3.4 Residency and removal of members: Members of the Board of Appeals shall be residents of the Town of Wilmington, and shall hold office during such residence until their successors are duly qualified and may be removed for just cause after hearing by the Board of Selectmen.

10.3.5 Vacancies: To be filled by the Board of Selectmen.

10.3.6 The Board of Appeals shall act on all matters over which it has jurisdiction and in the manner prescribed by the following provisions.

10.3.6.1 To hear and decide appeals from any decisions of the Inspector of Buildings.

10.3.6.2 To hear and decide applications for special permits except as otherwise provided in this By-law.

10.3.6.3 To hear and decide petitions for variances from this By-law.

10.3.6.4 To hear and decide applications under Section 81E of Chapter 41 of the Massachusetts General Laws, for the issuance of a permit for the erection of a building on a lot in a subdivision approval under the subdivision control law and on a lot not on a way placed on or made part of the Official Map when the Board finds that enforcement of the foregoing provision would entail practical difficulty or unnecessary hardship and that the circumstances do not require that the building be related to a way shown on a subdivision plan or the Official Map.

10.3.6.5 To take action on any other matter as may be assigned to the Board by the General Laws or the By-laws of the Town.

#### 10.4 **Rules and Regulations**

The Board of Appeals and the Planning Board shall adopt rules, not inconsistent with the provisions of this Bylaw and Chapter 40A of the General Laws or other applicable provisions of the General Laws, and shall file a copy of said rules with the Town Clerk.

- 10.5 **Special Permit** - Certain uses are designated by this Bylaw as requiring a special permit. The Board of Appeals or where this Bylaw specifically authorizes the Planning Board may, in accordance with Chapter 40A of the General Laws, grant such special permits for such designated uses without any finding of hardship. A special permit is a permit to use property for the purpose specified and shall not reverse, alter or vary any provision of this Bylaw applicable thereto. Special permits shall not be changed by way of variances as provided for in Section 10.6 of this Bylaw. Application for a special permit must be made by the owner of the property noted in the permit or with the owner's written permission. Special permits may

be authorized only where, after notice and a public hearing, the Board of Appeals or the Planning Board specifically finds:

- o That the proposed use is in harmony with the general purpose and intent of this Bylaw; and
- o That the use complies with all the requirements of this Bylaw.
- o That the project has been designed to eliminate any significant threat of contamination to the ground water. In making such a determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree and threat to water quality which would result if the control measures fail.

The Board of Appeals or the Planning Board shall also make such further findings as it deems appropriate and may impose such additional conditions, safeguards and limitations as it deems appropriate to protect the surrounding neighborhood including, but not limited to the following:

- 10.5.1 Dimensional requirements greater than the minimum required by this Bylaw;
- 10.5.2 Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, plantings or other devices;
- 10.5.3 Modification of the exterior features or appearances of the structure(s);
- 10.5.4 Limitation of size, number of occupants, method and time of operation, and extent of facilities;
- 10.5.5 Regulation of number, design and location of access drives and other traffic features;
- 10.5.6 Requirement of off-street parking and other special features;
- 10.5.7 Installation and certification of mechanical or other devices to limit present or potential hazard to human health, safety, welfare or the environment by reason of resulting smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise and vibration; and
- 10.5.8 Requirement for sufficient security by bond, money deposit or covenant to secure performance in accordance with the special permit.

A special permit shall lapse if a substantial use thereof has not commenced except for good cause or, in the case of a permit for construction has not commenced except for good cause within two years from the date of grant thereof.

- 10.5.9 Review by other Town agencies. Upon receipt of the special permit application, the SPGA shall transmit one (1) copy each to the following Town departments: Board of Water & Sewer Commissioners, Town Engineer, Department of Public Works, Board of Health, Planning Board, Zoning Board of Appeals, and the Conservation Commission for their written recommendations. Failure to respond in writing within forty-five (45) days shall indicate no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant. The SPGA must indicate in their decision why they varied from any recommendation of the agencies to which the proposal was referred.
- 10.5.10 Each application for a special permit shall be filed in writing and shall contain a complete description of the proposed use, a site plan prepared by a Registered Professional Engineer showing all existing and planned structures, septic systems, and water wells, together with any supporting information and plans, including engineering data proving protection of ground water resources, which the SPGA may require.

- 10.5.11 For any special permit application within a GWP, the applicant shall provide the following information:
- a. A complete list of all chemicals, pesticides, fuels and other potentially hazardous materials to be manufactured, used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion and leakage and to provide for the control of spills.
  - b. A description of potentially hazardous wastes to be generated, indicating storage and disposal methods.
  - c. Sufficient information to determine compliance with Section 6.6.3 of this Bylaw. This information shall include a water quality analysis performed by a qualified professional at the site of the proposed activity.
- 10.6 **Variance** - A variance from the specific requirements of the Bylaw, except a variance authorizing a use or activity not otherwise permitted in a particular zoning district, may be authorized by the Board of Appeals only where, after notice and a public hearing, the Board of Appeals specifically finds:
- o That there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located;
  - o That due to those circumstances especially affecting the land or structure, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise to the petitioner or appellant;
  - o That desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this Bylaw; and
  - o That desirable relief may be granted without substantial detriment to the public good.
- The Board of Appeals may impose such conditions, safeguards and limitations, both of time and use, as it deems appropriate upon the grant of any variance. Any rights authorized by a variance which are not exercised within one year from the date of grant of such variance shall lapse and may be re-established only after notice and a new hearing pursuant to this Subsection.
- 10.7 **Bylaw Construction** - This Bylaw shall not interfere with or annul any other Town Bylaw, rule or regulation which is more restrictive, except that where this Bylaw is more restrictive, it shall control.
- 10.8 **Validity and Separability** - The invalidity of one or more sections, subsections, sentences, clauses or provisions of this Bylaw shall not invalidate or impair the Bylaw as a whole or any other part hereof.