

# Berlin Zoning By-law



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# CONTENTS

<b>Article 1: General Provisions.....</b>	<b>1</b>
110 Authority.....	1
120 Purpose .....	1
130 Applicability.....	1
140 Severability .....	1
<b>Article 2: Zoning Districts .....</b>	<b>2</b>
210 Establishment of Districts .....	2
220 Location of Districts .....	2
230 Boundaries of Districts .....	2
<b>Article 3: Use Regulations .....</b>	<b>3</b>
310 Use Regulations .....	3
320 Table of Principal Use Regulations .....	3
330 Accessory Use Regulations.....	6
340 Table of Accessory Use Regulations .....	6
350 Multiple Principal Uses and Structures.....	7
360 Conditions Applicable to Special Permit Uses in the LI District.....	7
370 Uses Prohibited In All Districts .....	7
<b>Article 4: Overlay Districts .....</b>	<b>9</b>
410 Flood Plain District.....	9
420 Regional Shopping Center Overlay District .....	10
430 Senior Residential Development Overlay District.....	18
440 HIGHWAY SHOPPING CENTER OVERLAY DISTRICT .....	18
450 VILLAGE OVERLAY DISTRICT .....	28
<b>Article 5: Supplemental Regulations.....</b>	<b>40</b>
510 In-Law Apartment .....	40
520 Accessory Apartment .....	41
530 Home Occupation.....	42
540 Home-Based Contracting Business .....	43
541 Table of Home-Based Contracting Business .....	44
550 Multifamily Dwellings .....	44
560 Trailers.....	44
570 Telecommunications Facilities .....	44
For Purposes of applying the offset to property line contained in section 572.22, the calculation of the property line may be made to any line established by written and recorded easement granted by abutters expressly for such purpose. ....	45
580 Adult Use Establishments .....	49
585 Medical Marijuana and Adult Use Marijuana Establishments .....	49
590 Large-Scale Ground-Mounted Solar Photovoltaic .....	52
<b>Article 6: Density And Dimensional Regulations .....</b>	<b>56</b>
610 General Requirement .....	56
620 Table of Dimensional Regulations.....	56
630 Lot Area Regulations .....	58
640 Lot Frontage and Width Regulations.....	58
650 Setback Regulations.....	58
660 Open Space Regulations.....	59

670 Building Height and Bulk Regulations .....	59
680 Additional Regulations for Multifamily Dwellings .....	59
<b>Article 7: Alternative Residential Site Development .....</b>	<b>61</b>
710 Common Driveways .....	61
720 Senior Residential Development.....	66
730 INCLUSION OF AFFORDABLE HOUSING.....	73
<b>Article 8: Off-Street Parking and Loading .....</b>	<b>78</b>
810 Number of Parking Spaces Required .....	78
820 Design of Off-Street Parking and Loading Areas.....	79
830 Landscaping and Screening.....	80
840 Access and Driveway Standards .....	81
<b>Article 9: Signs .....</b>	<b>83</b>
910 General .....	83
920 Administration .....	85
930 General Standards for Temporary and Public Service Signs .....	87
940 General Standards for Specific Types of Signs .....	88
950 Special Sign Provisions.....	90
960 Special Sign Provisions in the Regional Shopping Center Overlay District .....	92
<b>Article 10: Performance Standards .....</b>	<b>94</b>
1010 Building construction .....	94
1020 Noise .....	94
1030 Exterior lighting .....	94
1040 Heat, glare, vibration and radiation .....	95
1050 Dust.....	95
1060 Storage.....	95
1070 Waste disposal and water supply .....	96
<b>Article 11: Nonconforming Uses and Structures .....</b>	<b>97</b>
1110 Applicability .....	97
1120 Nonconforming Uses .....	97
1130 Nonconforming Structures .....	97
1140 Nonconforming Single and Two-Family Residential Structures.....	97
1150 Abandonment or Non-Use .....	98
1160 Reversion to Nonconformity.....	98
<b>Article 12: Administration .....</b>	<b>99</b>
1210 Board of Appeals.....	99
1220 Special Permits .....	99
1230 Site Plan Approval.....	101
1240 Amendment.....	105
<b>ARTICLE 13: ENFORCEMENT .....</b>	<b>106</b>
1310 Zoning Enforcement Officer .....	106
1320 Violations.....	106
<b>Article 14: Definitions .....</b>	<b>107</b>
<b>ARTICLE 15: GROWTH MANAGEMENT .....</b>	<b>118</b>
1510 Intent And Purpose .....	118

1520	Applicability .....	118
1530	Implementation .....	118
1540	Development Schedule .....	118
1550	Zoning Change Protection .....	119
1560	Exemptions .....	119
<b>Article 16: Temporary Moratorium on Recreational Marijuana Establishments .....</b>		<b>120</b>
1610	Purpose .....	120
1620	Definition .....	120
1630	Temporary Moratorium .....	120
<b>Zoning District Location Notes.....</b>		<b>121</b>
<b>Amendment / Approval Notes .....</b>		<b>124</b>
<b>Electronic Submission Requirements for Subdivision, ANR Site and as-built plans.....</b>		<b>125</b>
<b>Zoning Map.....</b>		<b>126</b>

## **ARTICLE 1: GENERAL PROVISIONS**

### **110 AUTHORITY**

This By-Law is adopted in accordance with the provisions of Massachusetts General Laws, Chapter 40A.

### **120 PURPOSE**

The purpose of this by-law is to provide for the Town of Berlin all the protection authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40A and any amendments thereof.

### **130 APPLICABILITY**

#### **131 Other Laws**

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

#### **132 Conformance**

Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six (6) months after the issuance of the permit, and in any cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **140 SEVERABILITY**

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision hereof.

## ARTICLE 2: ZONING DISTRICTS

### 210 ESTABLISHMENT OF DISTRICTS

The Town of Berlin is hereby divided into the following zoning districts, to be designated as follows:

<u>Full Title</u>	<u>Abbreviation</u>
Residential and Agricultural	RA
Multiple Dwelling	MD
Commercial – Village	CV
Commercial	C
Limited Business	LB
Limited Industrial	LI
Agricultural-Recreation-Conservation	ARC

### 220 LOCATION OF DISTRICTS

The location of the zoning districts shall be in accordance with the vote of the Town Meeting and applicable State laws. The Planning Board shall create a Zoning Map showing said districts as hereby established and shall amend the same as such zoning districts are amended. Such map shall be entitled “Zoning District Map of the Town of Berlin”. Such map as most recently dated and signed by the Planning Board shall be filed with the office of the Town Clerk: which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this by-law; as modified by any Town Meeting votes to rezone land approved by the Attorney General after the date on the said Zoning District Map.

### 230 BOUNDARIES OF DISTRICTS

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply.

1. Where the boundary lines are shown upon said map within the street lines of public and private ways, or utility transmission lines, the center lines of such ways or lines shall be the boundary lines, unless otherwise indicated.
2. Boundary lines located outside of such street lines or transmission lines, and shown approximately parallel thereto, shall be regarded as parallel to such lines, and dimensions shown in figures placed upon said map between such boundary lines and such transmission lines are the distance in feet of such boundary lines from the center line of such lines, such distances being measured at right angles to such lines unless otherwise indicated.
3. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot, or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.
4. Where the boundary lines have been established by reference to map and lot numbers in the Town of Berlin Assessors maps, the Assessors maps in effect on the date of the Town Meeting vote designating the district shall apply; and the boundary shall be deemed to extend to the centerline of any street on which the lot has frontage.
5. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of said map.
6. Whenever any dispute arises on district boundaries as to the exact location of a district boundary line, the location of such line shall be determined by the Planning Board.

## ARTICLE 3: USE REGULATIONS

### 310 USE REGULATIONS

#### 311 Permitted Uses

A use listed as allowed use in Section 320 may be permitted by right in the district for which it is specified, subject to such requirements as may be set forth in said Section and other Sections of these By-Laws.

#### 312 Special Permit Uses

A use listed as a special permit use in Section 320 may be permitted if the Special Permit Granting Authority designated herein so determines and issues a special permit therefor. Said permit shall be subject to such standards and conditions as may be specified in Section 320, and such further restrictions as said Special Permit Granting Authority may establish.

#### 313 Prohibited Uses

A use which is not specifically authorized in a district and which is inconsistent with the intent of that district shall be prohibited.

#### 314 Classification by Implication

A use not specifically authorized or prohibited in a district, but which is consistent with the intent of that district and is similar to uses authorized in that district, shall be classified as a special permit use by the Zoning Enforcement Officer. Such classification and the reasons therefor shall be recorded in writing by the Zoning Enforcement Officer and kept on file for public inspection.

#### 315 Applicability of Other Regulations

In addition to use regulations, uses permitted by right or by special permit shall be subject to such supplemental regulations as are set forth in Article 5, to such density and dimensional regulations applicable to the district within which the use is proposed as set forth in Article 6 or elsewhere, and to such other provisions as are specified in other sections of this By-Law, in the Massachusetts General Laws, or in other governmental laws, codes and regulations.

### 320 TABLE OF PRINCIPAL USE REGULATIONS

In the following table, the use regulations for each use and district are designated by the following abbreviations:

- Y..... The use is allowed by right in the district.
- S..... The use is allowed by special permit in the district, by the Special Permit Granting Authority designated herein.
- N..... The use is prohibited in the district.
- R..... The use is subject to Site Plan Review.

PRINCIPAL USE	RA	MD	CV	C	LB	LI	ARC
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#### AGRICULTURAL AND RURAL USES

Agricultural uses except fur farms	Y	Y	YR	YR	YR	YR	Y
Structure principally used for the raising, feeding and care of poultry for sale	S	S	SR	SR	N	N	S
Structure used for sale of natural products, the majority of which are raised on farms of the town	Y	Y	YR	YR	SR	SR	N
Greenhouse when not associated with a farm	S	S	SR	SR	SR	SR	S
Cidermill	S	S	SR	SR	SR	SR	N
Sawmill	S	S	SR	SR	N	N	N
Ice house	S	S	SR	SR	N	N	N
Riding stable	R	N	R	R	R	R	N
Dog kennel	SR	S	SR	SR	N	N	N
Veterinary hospital	SR	S	SR	SR	N	N	N

#### RECREATIONAL USES

Non-profit recreation	Y	Y	YR	YR	YR	YR	Y
Active recreation not involving motorized equipment (except battery-powered)	N	N	SR	SR	YR	YR	Y
Golf course	SR	SR	SR	SR	SR	SR	S
Private club (non-profit)	SR	SR	SR	SR	SR	SR	N

#### RESIDENTIAL USES

Detached single family dwelling	Y	Y	Y	Y	N	N	N
Multiple Dwellings	N	YR	N	N	N	N	N

#### EDUCATIONAL AND INSTITUTIONAL USES

Municipal uses	Y	Y	YR	YR	YR	YR	Y
Religious uses	Y	Y	YR	YR	YR	YR	N
Public and private non-profit educational institutions	Y	Y	YR	YR	YR	YR	N
Residential Care Facility for not more than six patients	S	S	SR	SR	N	N	N
Residential Care Facility for not more than 100 patients	N	N	N	N	SR	N	N

#### COMMERCIAL USES

Retail stores	N	N	YR	YR	N	N	N
Service establishments	N	N	SR	SR	N	N	N
Business or professional offices	N	N	YR	YR	YR	N	N
Banks	N	N	YR	YR	YR	N	N
Restaurants (other than fast food)	N	N	SR	SR	N	N	N
Fast food restaurants	N	N	N	N	N	N	N



PRINCIPAL USE	RA	MD	CV	C	LB	LI	ARC
<b>COMMERCIAL USES (CONTINUED)</b>							
Shopping centers	N	N	N	SR	N	N	N
Funeral homes	N	N	SR	SR	N	N	N
Production of arts and craft items for sale on the premises	N	N	SR	SR	N	N	N
Adult Use Establishment	N	N	N	SR	N	N	
Gasoline service stations	N	N	N	SR	N	N	N
Garages and automotive repair shops	N	N	N	SR	N	N	N
New & used automobile dealerships with up to 10 cars on premises	N	N	SR	SR	N	N	N
New & used automobile dealerships with more than 10 cars on premises	N	N	N	N	N	N	N
Junkyards	N	N	N	N	N	N	N
Laundromats	N	N	N	N	N	N	N
Enterprises requiring high water usage	N	N	N	N	N	N	N
Research & development offices or establishments	N	N	N	N	YR	YR	N
Residential conference and training center	N	N	N	N	YR	YR	N
Commercial photographers	N	N	N	N	N	SR	N
Building materials	N	N	N	N	N	SR	N
Salesrooms	N	N	N	N	N	SR	N
Large-Scale Ground Based Solar Photovoltaic installations	SR	N	N	N	R	R	N
Contractors' yards	N	N	N	N	N	SR	N
Telecommunications Tower and facilities	SR <sup>1</sup>	SR <sup>1</sup>	N	SR <sup>1</sup>	SR <sup>1</sup>	SR <sup>1</sup>	SR <sup>1</sup>
Building mounted Telecommunications Facility Under Section 573	SR <sup>2</sup>	SR <sup>2</sup>	N	SR <sup>2</sup>	SR <sup>2</sup>	SR <sup>2</sup>	SR <sup>2</sup>
<b>Marijuana Establishments and other licensed marijuana-related business</b>							
Marijuana Cultivator	N	N	N	N	SR	SR	N
Marijuana Product Manufacturer	N	N	N	N	SR	SR	N
Marijuana Retailer	N	N	N	N	SR	SR	N
Marijuana Research Facility	N	N	N	N	SR	SR	N
Independent Testing Facility	N	N	N	N	SR	SR	N
Registered Marijuana Dispensary	N	N	N	N	SR	SR	N
Marijuana Transporter	N	N	N	N	SR	SR	N
Any other type of licensed marijuana-related businesses	N	N	N	N	SR	SR	N
<sup>1</sup> Special permit and Site plan Review under Section 570 of the Zoning By-law. Subject to such special the terms established by such special permit and site plan review, a telecommunications facility may be located on a lot that fails to meet the dimensional requirements of Section 620 of the Zoning By-law for a building lot provided that adequate access to a public way is provided and incorporated as a term of the special permit.							
<sup>2</sup> Special permit and Site plan Review under Section 570 of the Zoning By-law.							
<b>UTILITY</b>							
Utility structures	N	N	N	N	N	SR	N
Private utility structures without service yards	N	N	N	N	SR	SR	N
Public utility use not including service yard or outside storage	S	S	SR	SR	N	N	S
<b>INDUSTRIAL USES</b>							

Medical or dental laboratories	N	N	N	N	N	SR	N
Research laboratories and manufacturing enterprises	N	N	N	N	N	SR	N
Storage warehouses and buildings	N	N	N	N	N	SR	N
Wholesale distribution plants	N	N	N	N	N	SR	N
Printing or publishing establishments	N	N	N	N	N	SR	N
Hazardous waste facilities	N	N	N	N	N	N	N
Heavy industrial use	N	N	N	N	N	N	N
Rock crushing or processing	N	N	N	N	N	N	N
Concrete production	N	N	N	N	N	N	N
Fertilizer plants	N	N	N	N	N	N	N
Rendering plants	N	N	N	N	N	N	N

### 330 ACCESSORY USE REGULATIONS

#### 331 General Requirement

Any structure or use which is customarily associated with and incidental to a permitted principal use shall be allowed on the same lot or premises as the principal use, except as prohibited or regulated by Section 340, Table of Accessory Use Regulations, provided that such structure or use contributed to the comfort, convenience or necessity of occupants of the principal building served, and provided that it shall not be detrimental to the neighborhood. Any accessory structure or use shall be subordinate in area, extent, and purpose to the principal building or use served.

#### 332 Floor Area Limitation

Except for farms and accessory apartments, no accessory use shall occupy more than a combined total of 25% of the gross floor area of the principal building.

#### 333 Setback Limitations

No accessory use shall occupy any part of a required front setback. An accessory use may occupy a required side setback, but only to the extent specified in Section 650 herein.

### 340 TABLE OF ACCESSORY USE REGULATIONS

ACCESSORY USE	RA	MD	CV	C	LB	LI
<b>RESIDENTIAL USES</b>						
In-Law Apartment	S	S	S	S	N	N
Accessory Apartment, Attached	S	S	S	S	N	N
Accessory Apartment, Detached	S	S	S	S	N	N
Home occupation	Y	Y	YR	YR	N	N
Home-Based Contracting Business	SR	N	SR	SR	N	N
531.1 Bed and Breakfast	Y	N	Y	Y	N	N
531.2 Bed and Breakfast	YS	N	YS	YS	N	N
<b>COMMERCIAL USES</b>						
Drugstore	N	N	N	N	SR	SR
Restaurant or cafeteria	N	N	N	N	SR	SR
Newsstand	N	N	N	N	SR	SR

## **350 MULTIPLE PRINCIPAL USES AND STRUCTURES**

### **351 Multiple Principal Uses**

Except in the Residential–Agricultural District, more than one principal use may be established on a lot, pursuant to a special permit issued by the Board of Appeals.

### **352 Multiple Principal Structures**

Except in the Residential–Agricultural District, more than one principal structure may be erected on a lot, pursuant to a special permit issued by the Board of Appeals and the following conditions:

- (a) No principal structure shall be located in relation to another principal structure on the same lot, or on an adjacent lot, so as to cause danger from fire;
- (b) All principal structures on the lot shall be served by access ways suitable for fire, police and emergency vehicles;
- (c) All principal structures on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

**353** Notwithstanding the provisions of Sections 351 and 352, a telecommunications facility may be allowed in the residential agricultural district by special permit pursuant to Section 570 as a second primary use on a lot.

## **360 CONDITIONS APPLICABLE TO SPECIAL PERMIT USES IN THE LI DISTRICT**

Uses permitted by a special permit in the Limited Industrial district shall be subject to such conditions and restrictions as the Special Permit Granting Authority may prescribe, and shall in addition meet the following requirements:

- 1. Research laboratories and manufacturing enterprises shall not be offensive, injurious, or noxious because of sewage and refuse, vibration, smoke or gas, fumes, dust or dirt, odors, danger of combustion or unsightliness.
- 2. Building materials, salesrooms, utility structures, contractors' yards, storage warehouses and buildings and wholesale distribution plants shall ensure that all loading and unloading is done at the rear or the side of the building in covered berths with walls on three (3) sides.
- 3. Printing or publishing establishments, commercial photographers, and medical or dental laboratories shall be subject to the restrictions in paragraph 1 and 2 above.
- 4. Cafeterias for employees and other normal accessory uses shall be contained in the same structure as a permitted use.

## **370 USES PROHIBITED IN ALL DISTRICTS**

The following uses are prohibited in all zoning districts within the Town:

1. Hazardous waste facilities as defined in Massachusetts General Laws, Chapter 21D - Massachusetts Hazardous Waste Facility Siting Act.
2. Any Commercial or Limited Industrial use, not specifically listed as a permitted use in a district, which would tend to lower property values because of noxious or offensive off-site effects.
3. Discharges from commercial or industrial uses other than those needed exclusively for the heating, cooling, and ventilation of work spaces.
4. Facility discharging liquid wastes other than clean water and sanitary wastes, unless said facility is connected to an existing municipal sewage treatment plant capable of treating the particular waste.

## **ARTICLE 4: OVERLAY DISTRICTS**

### **410 FLOOD PLAIN DISTRICT**

#### **411 Purpose**

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

#### **412 District Delineation**

The general boundaries of the flood Plain District include all special flood hazard areas within the Town of Berlin designated as Zones A, AE on the Worcester County Flood Insurance rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Worcester County FIRM that are wholly or partially within the Town of Berlin are panel numbers 25027C0466F, 25027C0467F, 25027C0468F, 25027C0469F, 25027C0486F, 25027C0488F, 25027C0489F, 25027C0631F, 25027C0632F, 25027C0651F dated July 16, 2014. The exact boundaries the District are defined by the 100 year flood elevations shown on the FIRM and further defined by the Worcester County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector, and Conservation Commission.

#### **413 Use Regulations**

The Flood Plain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 13I, Section 40 of the Massachusetts State Building Code pertaining to construction in flood plains.

-section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard area.

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

-Inland Wetlands Restrictions, Department of Environmental Protection (DEP) (currently 310 CMR13.00)

-Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)

#### **414 Permitted Uses**

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

- (a) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- (b) Forestry and nursery uses.
- (c) Outdoor recreational uses, including fishing, boating, play areas, etc.
- (d) Conservation of water, plants, wildlife.
- (e) Wildlife management areas, foot, bicycle, and or horse paths.

- (f) Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- (g) Buildings lawfully existing prior to the adoption of these provisions.
- (h) Uses similar to the above and not more detrimental to the purpose of this Section.

## **415 Special Permits**

No structure or building shall be erected, constructed, substantially improved, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred unless a special permit is granted by the Board of Appeals. Said Board may issue a special permit hereunder (subject to the procedural requirements of Chapter 40A of the Massachusetts General Laws and the rules and regulations of the Board of Appeals) if the application is compliant with the following provisions:

- 415.1 The proposed use shall comply in all respects with the provisions of the underlying District.
- 415.2 Within ten days of receipt of the application, the Board shall transmit one copy of the development plan to the conservation Commission, Planning Board, Board of Health, Earth Removal Board, and the Building Inspector. Final action shall not be taken until reports have been received from the above boards or until thirty-five (35) days have elapsed.
- 415.3 All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood, and that the protection of the quality and quantity of ground and surface waters, the safety of all utilities, the security of stored materials, the stability of fill and the prevention of other dangers due to flooding shall be adequately provided for.
- 415.4 The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

## **420 REGIONAL SHOPPING CENTER OVERLAY DISTRICT**

### **421 Purpose and General Requirements**

This Section 420 establishes a Regional Shopping Center Overlay District (the "RSCO District") in addition to the districts listed in Section 210. The RSCO District is created for the purpose of permitting a large-scale, integrated regional shopping center on a large site with convenient highway access, in accordance with the Development Plan. The RSCO District is established as a special district which overlays another nonresidential zoning district or districts.

The RSCO District permits the development of a Regional Shopping Center subject to specific regulations in this section and regulations in other sections that are not modified by the provisions of this section. The regulations of this section relating to use, building and lot dimensions, development intensity, parking, signage, and Site Plan Approval shall apply only to a Regional Shopping Center, and not to any other use that is allowed or permitted in the underlying zoning district.

### **422 Location**

The boundary of the RSCO District is shown on a map of land entitled "Regional Shopping Center Overlay District," filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this by-law.

## **423 Relationship to Underlying Districts and Regulations**

- 423.1 The RSCO District shall overlay all underlying districts, so that any parcel of land lying in a RSCO District shall also lie in the district or districts in which it is otherwise classified by this by-law.
- 423.2 With the exception of Article 6, Article 8, Article 11, Section 1120 and Section 1360, all regulations of the underlying zoning district(s) shall apply within the RSCO District except to the extent that they are specifically modified or supplemented by other provisions of this Section 420. To the extent the provisions of this Section 420 or matters shown on the Development Plan are in conflict with or are inconsistent with other provisions of the Zoning By-law, the provisions of this Section 420 and the Development Plan shall govern and prevail. Without limiting the foregoing, to the extent other provisions of this by-law would, in their application, prohibit or require a special permit for the Regional Shopping Center uses permitted by this Section 420 in the RSCO District, the provisions of this Section 420 shall govern and the use shall be treated as permitted under this by-law.
- 423.3 The provisions of the RSCO District apply only to a Regional Shopping Center as defined herein. Any other building, structure or use of land included in the RSCO District shall conform to the regulations and requirements applicable to the underlying district(s) without modification by this Section 420.

## **424 Permitted Uses; Application of Requirements**

- 424.1 Land within the RSCO District may be used for a Regional Shopping Center that is (a) in conformance with the Development Plan approved by the Town, as the same may be modified by the Planning Board through the Site Plan Approval process; and (b) in compliance with the requirements of this Section 420.
- 424.2 In case of a Regional Shopping Center that is partly within the Town of Berlin and partly in an adjacent municipality or municipalities, the entire Regional Shopping Center shall comply with the requirements of the Development and Dimensional Controls in Section 420.6, the Parking and Loading provisions of Section 420.7, and the Signage standards in Section 950. The portion of the Regional Shopping Center in the adjoining municipality or municipalities shall be included for purposes of determining such compliance.
- 424.3 Utility buildings and structures serving the Regional Shopping Center need not be connected to the main structure.
- 424.4 A tire, batteries and auto accessories store which is operated incident to a retail store having not less than 40,000 square feet of gross leasable area in the Regional Shopping Center and which does not provide for the changing of oil or lubrication of motor vehicles shall be permitted to be operated as of right, and shall not require the issuance of the special permit otherwise required under this by-law for a public garage or station garage as defined in Article 14 of this by-law and may be located in a building not connected to the main structure.
- 424.5 Floor area used for offices or other non-retail services shall not comprise more than five percent of the gross leasable area of any building in the Regional Shopping Center. This limitation shall not apply to customer service and management offices ancillary to retail establishments, or to services intended for the convenience of retail customers or employees.
- 424.6 No portion of a Regional Shopping Center shall be used for manufacturing or research and development, except pursuant to a special permit issued pursuant to paragraph 424.7.
- 424.7 A building or structure originally constructed and used as a Regional Shopping Center shall continue to be used as a Regional Shopping Center in conformance with the approved Development Plan, as the same may be modified by the Planning Board through the Site Plan Approval process, except as follows:

- (a) A building or structure may be converted to a use or uses permitted in the underlying zoning district, subject to a special permit and Site Plan Approval under this Zoning By-Law and submission of a report documenting the community and environmental impacts of such conversion, including a traffic impact analysis conforming to generally accepted standards for such studies.
  - (b) If the conversion would increase the projected traffic generation by more than five percent (5%) in the weekday afternoon or Saturday peak hour, as compared with the then-permitted use or uses of the building or structure, appropriate mitigation of the increase in off-site traffic shall be included in the conditions for any special permit granted under this procedure.
  - (c) This paragraph (7) shall not be construed as permitting any expansion of a building or structure for any use that is not permitted in the RSCO District.
  - (d) A building or structure may be converted pursuant to this paragraph (7) notwithstanding that the building or structure or the lot on which the building or structure is located, or the signage or parking, do not conform to the requirements of Section VI of this By-Law, to the extent permitted by the special permit for the conversion.
- 424.8 The Regional Shopping Center may be developed in phases and may be developed under one or more building permits and occupancy permits. Amendments to the Site Plan Approval will be permitted in order to accommodate a phased development. A violation of the terms of a building permit, occupancy permit or Site Plan Approval for a building or buildings which is a part of the Regional Shopping Center, shall not affect or impact the validity of any other permit or approval for any other portions of the Regional Shopping Center that were constructed under a different building permit, in conformity with a Site Plan Approval, or operated under another occupancy permit, provided that the violation does not materially affect the structural integrity of the portion of the Regional Shopping Center that is otherwise in compliance, and provided that such other portion continues to meet fire and health safety codes.

## **425 Development and Dimensional Controls**

- 425.1 The Regional Shopping Center shall be developed in conformance with the Development Plan approved by Town Meeting, as the same may be modified by the Planning Board through the Site Plan Approval process. The final location of buildings and improvements shall be fixed upon the issuance of Site Plan Approval for the Regional Shopping Center, as such Site Plan Approval may be amended or modified, and shall be located within the areas identified as follows.
- (a) All buildings, other than parking structures as permitted in (b) below, in the Regional Shopping Center shall be located in the “permissible building area” delineated on the Development Plan.
  - (b) All parking structures in the Regional Shopping Center shall be located within the “permissible parking structure area” delineated on the Development Plan and may be located within the areas of overlap of the “permissible parking structure area” and the “permissible building area” delineated on the Development Plan.
  - (c) All surface parking areas, access roads, driveways, loading areas and other paved areas, except for an emergency helicopter landing pad and necessary access to the pad as approved by the Planning Board through the Site Plan Approval process, shall be located within the “permissible impervious surface area” and may be located within the “permissible building area” or the “permissible parking structure area” delineated on the Development Plan.
- 425.2 The areas that are not used for the purposes set forth in paragraphs (a), (b) or (c) above shall be managed for stormwater management, landscaping, visual screening,



underground utilities or drains, or other purposes as set forth in a management plan approved by the Planning Board through the Site Plan Approval process. In addition, the areas referred to in (a), (b), or (c) above, or this subsection 425.2, may be used for such other purposes.

- 425.3 A Regional Shopping Center shall be subject to the dimensional controls as set forth below:

#### LOTS

Minimum area of each lot comprising the Regional Shopping Center .....	2 acres
Minimum combined area of all lots comprising the Regional Shopping Center .....	20 acres
Minimum frontage on a public way open to public use:	
Regional Shopping Center (all lots combined) .....	1,000 feet
Individual lot .....	20 feet
Minimum lot width for individual lots: .....	20 feet
Minimum side, front and rear yards (other than at the perimeter of the Regional Shopping Center).....	None required
Minimum combined green area of all lots (green area not to include buildings, structures, the non-landscaped portions of parking areas whether hard top paved or other surface, paved sidewalks, road pavement, driveways, wetlands, or more than 25% of lands included in the Flood Plain District) .....	25 percent

#### BUILDINGS

Combined Gross Leasable Area of all buildings in the Regional Shopping Center:	
Minimum .....	250,000 square feet
Maximum .....	1,200,000 square feet
Maximum height (measured from the lowest finished floor of the building or structure to the highest point of the ceiling of the top story of such building or structure):	
Areas designed for human occupancy and parking structures.....	42 feet
(a) Maximum elevation not to exceed 280 feet above mean sea level.	
Skylights, parapets (including architectural and decorative features and details incorporated into such parapets) and mechanical penthouses .....	54 feet
(a) Horizontal area not to exceed 35 percent of total building footprint.	
(b) Mechanical penthouses exceeding 42 feet in height shall be no closer than 30 feet to the exterior wall of any building.	
(c) Maximum elevation not to exceed 295 feet above mean sea level.	

- All other architectural and decorative features and details ..... 80 feet
- (a) Horizontal area not to exceed 10 percent of total building footprint
  - (b) Maximum elevation not to exceed 320 feet above mean sea level.

Notwithstanding the foregoing, the height of a building or structure located within the permissible basement area shall be measured from the lowest finished floor of the level located directly above the basement level provided however, the gross leaseable area of the permissible basement area shall not exceed 35,000 square feet.

No signage or lighting fixtures shall be affixed to parapets in the Town of Berlin or the City of Marlborough facing residentially zoned districts in the Town of Berlin, provided, however, parapets at entranceways (excluding customer pick-up entrances) shall not be subject to this limitation. Notwithstanding the above, if such signage is located above the roof line of a building on a parapet at such entranceways and such signage identifies an occupant of the building, then signage on walls adjacent to such entranceways which identifies such occupant, shall not be permitted, except, however, signage utilized for safe and efficient access and use of buildings such as directional, customer pick-up and loading area signage shall be permitted.

## **426 Parking and Loading**

A Regional Shopping Center shall be subject to the off-street parking and loading requirements set forth below:

- 426.1 Off-street parking shall be provided at the rate of one (1) parking space for each 225 square feet of Gross Leasable Area.
- 426.2 Loading spaces shall be provided at the rate of one (1) loading space for each 110,000 square feet of Gross Leasable Area.
- 426.3 Parking areas shall be landscaped and paved as required by the Planning Board through the Site Plan Approval process.
- 426.4 The amount of parking and loading area that shall be constructed shall be as shown on the Development Plan, as the same may be modified by the Planning Board through the Site Plan Approval process.
- 426.5 Section 710 of this By-Law shall not be construed to apply to any common driveway shown on the Development Plan.

## **427 Site Plan Approval**

- 427.1 Purpose: The intent of Site Plan Approval is to further the purposes of this by-law and to ensure that the Regional Shopping Center is developed in conformance with the Development Plan.
- 427.2 Applicability:
  - (a) The proposed use of land in the RSCO District for a Regional Shopping Center shall be subject to the Site Plan Approval procedures and standards set in this section.
  - (b) No building permit shall be issued for any building in a Regional Shopping Center unless a site plan has been endorsed by the Planning Board, after further consultation with other boards, including but not limited to the following: Building Inspector, Board

of Health, Board of Appeals, Board of Selectmen, Conservation Commission, Highway Department, Town Clerk, Fire Department, and Police Department.

427.3 Application:

- (a) The application for Site Plan Approval shall be submitted to the Planning Board by the owner of record, accompanied by ten (10) copies of the site plan.
- (b) The Planning Board shall obtain with each submission a Site Plan Approval Fee, to be determined by the Planning Board. Such fee will be used to cover any expenses connected with public hearing costs and the review of plans, including the costs of any legal, engineering, planning or other consultant services necessary for review procedures. Any unused portion of the review fee will be returned to the applicant. Any such expenses that the Planning Board comes to anticipate during the Site Plan Approval Process shall be paid into such fund by the applicant upon request by the Planning Board. Furthermore, any such expenses incurred by the Town in excess of such fee as so supplemented shall be reimbursed by the applicant.

427.4 Required Site Plan Contents: All site plans shall be prepared by a registered architect, landscape architect, and/or professional engineer. All site plans shall be on standard 24" by 36" sheets, unless otherwise permitted and shall be prepared at a sufficient scale to show:

- (a) The location and boundaries of the Development Lot, adjacent streets or ways and the location and owner's names (from Town Assessors' records) of all adjacent properties.
- (b) Existing and proposed topography of the Development Lot including contours, the location of wetlands, streams, water bodies, drainage swales, areas within the Flood Plain District, and unique natural land features.
- (c) Existing and proposed structures within the Development Lot and existing structures within one hundred (100) feet of the boundaries of the Development Lot, including dimensions and elevations.
- (d) The location of parking and loading areas, driveways, walkways, access and egress points.
- (e) The location and description of all existing and proposed septic systems, water supply, stormwater management systems, utilities, and refuse and other waste disposal methods.
- (f) Proposed landscape features including the location and a description of screen, fencing, and plantings.
- (g) The location, dimensions, height, and characteristics of proposed signs.
- (h) The location and description of proposed green areas.
- (i) The location and description of proposed exterior lighting and the hours it will be in use.

427.5 Additional Application Materials: The following materials shall be submitted with the application for Site Plan Approval:

- (a) Building elevation plans for all exterior facades of buildings and structures, at a scale of one-sixteenth inch equals one foot ( $1/16" = 1'0"$ ), or such scale as may be required by the Planning Board for detail drawings, indicating surface materials and colors.
- (b) Perspective drawing at an appropriate size to show the Development Lot and all buildings and structures, parking and circulation facilities, and other improvements.

- (c) A tabulation of the areas of the proposed site elements, including buildings (footprints, gross floor area and gross leasable area), parking decks and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings). Such tabulation shall be provided for the Regional Shopping Center as a whole and separately for the portions within the Town of Berlin and the City of Marlborough.

427.6 Procedures for Site Plan Review:

- (a) The Planning Board shall refer copies of the application within five (5) days to the Conservation Commission, Board of Appeals, Board of Health, Building Inspector, Board of Selectmen, Fire Department, Police Department and Highway Department, who shall review the application and submit their recommendations and comments to the Planning Board. Failure of boards or officials to make recommendations within thirty (30) days of the referral of the application shall be deemed to be neither opposition nor support.
- (b) The Planning Board shall hold a public hearing within forty-five (45) days of the receipt of an application and after due consideration of the recommendations of other boards and officials, shall take final action within sixty (60) days from the time of hearing.

427.7 Final Action: The Planning Board's final action shall consist of either:

- (a) A determination that the site plan for the Regional Shopping Center is consistent with the Development Plan and is in compliance with the criteria and requirements set forth in this Section 402:
- (b) If the Planning Board finds that the Site Plan is not consistent with the Development Plan or with the criteria and requirements set forth in this Section 402, the Planning Board shall have the authority to impose, as part of its consistency determination, conditions to assure consistency with the Development Plan and the criteria and requirements of this Section 402. Failure of the Planning Board to make any determination within sixty days of its hearing, as such hearing may be extended by consent of the applicant, shall constitute a determination of consistency.

427.8 The conditions of any site plan approval under this Section 420 shall include all conditions included in any development agreement which the Town shall have accepted in relation to the development of the Regional Shopping Center. In issuing a site plan approval under this by-law, the Planning Board shall not have the authority to relieve the developer of any obligations imposed under any such development agreement.

427.9 Amendment or Modification: The Planning Board may amend or modify its Site Plan Approval following the requirements and procedures set forth in this Section 420, provided that if a modification is, in the determination of the Planning Board, minor in nature, such modification may be approved without a hearing upon the submission of plans and information that may, the discretion of the Planning Board, be less extensive than the plans and information required in this Section 420.

427.10 Building Design Standards: The following design standards shall apply:

(a) Exterior Materials

- (1) Exterior walls for the Regional Shopping Center shall use a combination of architectural masonry materials, including but not limited to brick, glass,

stone, stucco, EIFS, precast concrete architectural panels, stainless steel, split face block. No standard scored or flat face block will be allowed.

- (2) Colors shall be medium values of natural building materials such as earth, stone, etc. Extremes of colors shall not be used except as accents at entrances, etc.

(b) Facade treatments

- (1) To avoid long unbroken expanses of wall, the architecture shall incorporate, as appropriate, design features providing horizontal and vertical relief including projections, building jogs, architectural detailing, and changes in surface materials.
- (2) The design of public entrance ways shall incorporate architectural features and elements to emphasize the entrance locations and interrupt long stretches of building facade.

(c) Relationships among structures and components

- (1) Buildings and parking structures shall be designed with common elements that both create a sense of unity and express a relationship to the interior (for example, using ornamentation to reflect floor levels). These elements may include the horizontal spacing of bays, columns and windows; and the vertical alignment and spacing of floors.
  - (2) Architectural detailing and surface textures and colors of adjoining components of the Regional Shopping Center (for example, anchor stores, mall structure, parking structures, footbridges) should be related and contribute to an overall sense of cohesion within the Center. While a variety of design treatments is encouraged to avoid monotony, individual components shall be designed to avoid overly strong contrasts.
  - (3) The facades of parking structures shall be designed to a standard of architectural finish consistent with other buildings within the Regional Shopping Center. All exterior walls shall be designed and finished with a material allowable under Section 4.(a) (1) so as to maintain a consistent architectural character with adjoining buildings.
- (d) Rooftop mechanical features (heating and air conditioning units, vents, stacks, mechanical penthouses) shall be screened by use of parapet walls or similar elements.
- (e) Service areas such as loading areas, dumpsters, etc. Shall be shielded consistent with vehicular access, to provide visual screening.
- (f) The initial site plan submitted for review under the Site Plan Approval process shall include specific reference to these design standards and shall include a memorandum describing compliance with the design review standards.

427.11 Performance Standards:

- (a) The Regional Shopping Center shall be served with adequate water supply and waste disposal and other utility systems.
- (b) The plan shall maximize the convenience and safety of vehicular traffic and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak hour vehicle trips to be

generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site.

- (c) The site plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased run-off and potential for flooding. Drainage shall be designed so that run-off shall not be increased, groundwater recharge is maximized, and neighboring properties will not be adversely affected.
- (d) Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers and gas meters which may be above ground.

#### **428 Flood Plain District**

Within the Flood Plain District set forth in Section 410 of the By-law, improvements shown on the Development Plan, as the same may be modified by the Planning Board through the Site Plan Approval process, shall be permitted uses within the Flood Plain District.

### **430 SENIOR RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT**

#### **431 Establishment of District**

This section establishes a Senior Residential Development Overlay District in addition to the zoning districts described in Article 2 and the other overlay districts described in Article 4. The District is established as a special district which may overlay any other zoning district.

#### **432 Purpose**

The Senior Residential Development Overlay District is created for the purpose of permitting Senior Residential Developments in specific areas approved by Town Meeting.

#### **433 Use Regulations**

Land within the Senior Residential Development Overlay District may be used for the following purposes:

- (a) all the purposes permitted and as regulated in the underlying district;
- (b) Senior Residential Developments subject to the provisions of Section 720. Such developments shall be subject to the regulations of the underlying district that are not modified by the provisions of Section 720

### **440 HIGHWAY SHOPPING CENTER OVERLAY DISTRICT**

#### **441 Purpose and General Requirements**

This Section 440 establishes a Highway Shopping Center Overlay District (the "HSCO District") in addition to the districts listed in Section 210. The HSCO District is created for the purpose of permitting a large-scale, integrated shopping center and office uses on a site within 800 feet of an interstate highway interchange, in accordance with the HSCO Development Plan. The HSCO District is established as a special district which can overlay any other zoning district or districts.

The HSCO District permits the development of a Highway Shopping Center (which may be located in whole or in part in the Town of Berlin) subject to specific regulations in this section and regulations in other sections that are not modified by the provisions of this section. The regulations of this section relating to use, building and lot dimensions, development intensity, parking, signage, lighting and Site Plan Approval shall apply only to a Highway Shopping Center, and not to any other use that is allowed or permitted in the underlying zoning district.

## **442 Location**

The boundary of the HSCO District is shown on a map of land entitled "Highway Shopping Center Overlay District Plan," filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this By-Law.

## **443 Relationship to Underlying Districts and Regulations**

- 443.1 The HSCO District shall overlay all underlying districts, so that any parcel of land lying in a HSCO District shall also lie in the district or districts in which it is otherwise classified by this By-Law.
- 443.2 With the exception of Article 6 (Density and Dimensional Regulations) and Article 8 (Off-Street Parking and Loading), all regulations of the underlying zoning district(s) shall apply within the HSCO District except to the extent that they are specifically modified or supplemented by other provisions of this Section 440. To the extent the provisions of this Section 440 or matters shown on the HSCO Development Plan are in conflict with or are inconsistent with other provisions of this Zoning By-Law, the provisions of this Section 440 and the HSCO Development Plan shall govern and prevail. Without limiting the foregoing, to the extent other provisions of this By-Law would, in their application, prohibit or require a special permit for the Highway Shopping Center uses permitted by this Section 440 in the HSCO District, the provisions of this Section 440 shall govern and the use shall be treated as permitted under this By-Law.
- 443.3 The provisions of the HSCO District apply only to a Highway Shopping Center as defined herein with an interstate highway interchange within 800 feet of the HSCO Development Lot. Any other building, structure or use of land included in the HSCO District shall conform to the regulations and requirements applicable to the underlying district(s) without modification by this Section 440.

## **444 Permitted Uses; Application of Requirements**

- 444.1 Land within the HSCO District may be used for a Highway Shopping Center that is (a) in conformance with the HSCO Development Plan approved by the Town and subject to review by the Planning Board through the Site Plan Approval process; and (b) in compliance with the requirements of this Section 440.
- 444.2 A Highway Shopping Center may include any of the following uses: retail and service establishments, offices, restaurants and other establishments serving food, banks, and other principal uses and accessory uses customarily found in a shopping center.
- 444.3 A Highway Shopping Center may include drive-up facilities for banks, pharmacies and other retail and service uses, but shall not include Fast Food Restaurants.
- 444.4 A Highway Shopping Center shall not include the following principal uses: cinema, theater, bowling alley, discotheque, dance hall or off-track betting facility.
- 444.5 Within the Flood Plain District set forth in Section 410 of this By-Law, improvements or areas designated for buildings shown on the HSCO Development Plan, as the same may be modified by the Planning Board through the Site Plan Approval process, shall be permitted uses within the Flood Plain District.
- 444.6 Buildings and structures serving the Highway Shopping Center may be independent buildings or structures and need not be connected to any other building or structure.
- 444.7 A building or structure originally constructed and used as a Highway Shopping Center shall continue to be used as a Highway Shopping Center in conformance with the approved HSCO Development Plan, as the same may be modified by the Planning Board through the Site Plan Approval process, except as follows:

- (a) A building or structure may be converted to a use or uses permitted in the underlying zoning district, subject to a special permit and Site Plan Approval under this Zoning By-Law and submission of a report documenting the community and environmental impacts of such conversion, including a traffic impact analysis conforming to generally accepted standards for such studies.
- (b) If the conversion would increase the projected traffic generation by more than five percent (5%) in the weekday afternoon or Saturday peak hour, as compared with the then-permitted use or uses of the building or structure, appropriate mitigation of the increase in off site traffic shall be included in the conditions for any special permit granted under this procedure.
- (c) This Section 444.7 shall not be construed as permitting any expansion of a building or structure for any use that is not permitted in the HSCO District.
- (d) A building or structure may be converted pursuant to this Section 444.5 notwithstanding that the building or structure or the lot on which the building or structure is located, or the signage or parking, do not conform to the requirements of Articles 6 (Density and Dimensional Regulations), 8 (Off-Street Parking and Loading) and 9 (Signs) of this By-Law, to the extent permitted by the special permit for the conversion.

## **445 Development and Dimensional Controls**

- 445.1 The Highway Shopping Center shall be developed in conformance with the HSCO Development Plan approved by Town Meeting, with the locations and dimensions of buildings and certain other improvements to be reviewed and approved, for compliance with the requirements of Section 440, by the Planning Board through the Site Plan Approval process described in Section 448. Plans submitted for Site Plan Approval shall comply with the following requirements:
  - (a) All buildings in the Highway Shopping Center, except those expressly listed in Section 445.2, shall be located in the “permissible building area” delineated on the HSCO Development Plan.
  - (b) All parking areas, access roads, driveways, loading areas and other paved areas, as approved by the Planning Board through the Site Plan Approval process, shall be located within the “permissible impervious surface area” and may be located within the “permissible building area” delineated on the HSCO Development Plan.
- 445.2 The areas of the HSCO Development Lot that are not located within the “permissible impervious surface area” may only be used or managed for stormwater management facilities, landscaping, visual screening, underground utilities (including, without limiting the generality of the foregoing, transformers, wastewater treatment facilities, temporary maintenance and construction/landscaping activities and related pumps and appurtenances, all of which may be above-ground) drains, emergency vehicle access or other such purposes approved by the Planning Board through the Site Plan Approval process. All uses referred to in this Section 445.2 are allowed within the “permissible building area” and the “permissible impervious surface area” delineated on the HSCO Development Plan.
- 445.3 That portion of a Highway Shopping Center in Berlin shall be subject to the dimensional controls as set forth below:



## LOTS

Minimum area of each lot comprising the Highway Shopping Center .....	2 acres
Minimum combined area of all lots comprising the Highway Shopping Center .....	75 acres
Minimum frontage on a public way in Berlin (access to which shall not be required):	
Highway Shopping Center (all lots combined) .....	150 feet
Individual lot .....	20 feet
Minimum lot width for individual lot.....	20 feet
Minimum side, front and rear yards .....	None required
Minimum combined green area of all lots in Berlin (green area not to include buildings, structures, the non-landscaped portions of parking areas whether hard top paved or other surface, paved sidewalks, road pavement, driveways, wetlands, or more than 25% of lands included in the Flood Plain District) .....	35 percent

## BUILDINGS

Maximum combined Gross Leasable Area of all buildings in the Highway Shopping Center in Berlin: .....	515,000 square feet
Maximum height, measured from the lowest finished floor of the building or structure to the highest point of the ceiling (or, if there is no ceiling, to the underside of the ceiling joist) of the top story of such building or structure:	
Areas designed for human occupancy in buildings:	
Buildings in which office uses that are not accessory to non-office use in the same building comprise at least 75 percent of the Gross Leasable Area .....	36 feet
All other buildings .....	29 feet
Skylights, parapets (including architectural and decorative features and details incorporated into such parapets) and mechanical equipment, provided that the locations of such features shall be reviewed during the Site Plan Approval process and must be at least 175 feet from the boundary of an adjoining residential district in Berlin .....	46 feet
(a) Horizontal area not to exceed 35 percent of total building footprint	
(b) Mechanical equipment exceeding 29 feet in height shall be no closer than 30 feet to the exterior wall of any building.	

## 446 Parking and Loading

That portion of a Highway Shopping Center in Berlin shall be subject to the off-street parking and loading requirements set forth below:

- 446.1 Off-street parking shall be provided at the rate of at least one (1) parking space for each 300 square feet of Gross Leasable Area. The maximum number of parking spaces within a Highway Shopping Center in Berlin shall not exceed one (1) parking space for each 215 square feet of Gross Leasable Area.
- 446.2 Loading spaces shall be provided at the rate of at least one (1) loading space for each 110,000 square feet of Gross Leasable Area.
- 446.3 Parking areas shall be landscaped and paved as required by the Planning Board through the Site Plan Approval process. In assessing the landscape requirements within a Highway Shopping Center, the Planning Board shall be guided by the landscaping provided in any Regional Shopping Center approved in the Town of Berlin.
- 446.4 The Planning Board may approve a site plan with fewer parking or loading spaces than required by this Section, provided that the site plan includes an area of open space sufficient to accommodate the difference between the spaces required by this Section and the lesser number actually provided. The site plan shall clearly indicate this area as "Reserve Parking Area" and shall demonstrate that it is sufficient to accommodate the additional parking spaces in accordance with the requirements of this Section 440. The reserve parking area shall be landscaped with grass, ground covers and/or other plant materials; shall not contain any structure or mechanical equipment; and shall not be counted toward the minimum combined green area required by section 445.
- 446.5 Section 710 of this By-Law shall not be construed to apply to any common driveway shown on the HSCO Development Plan.

## 447 Special Provisions in the Highway Shopping Center Overlay District

### 447.1 Special Sign Provisions in the Highway Shopping Center Overlay District

Within the Highway Shopping Center Overlay District, all provisions of Sections 910 through 950 shall apply, except as modified below. No special permit or sign permit shall be required for signs that are in conformance with the requirements set forth in this Section 447.1, but such signs shall be reviewed by the Planning Board for consistency with these requirements.

The requirements of this Section 447.1 shall be substituted for Sections 914.6 and 914.7 (Placement Standards) and Section 913 (Illumination Standards).

(a) The following signs shall be permitted:

(1) Free-standing identification signs:

Maximum number (excluding off-premises signs)	3 signs
Minimum distance between signs .....	175 feet
Maximum height .....	20 feet
Minimum ground clearance .....	None
Maximum area .....	400 square feet per side
Maximum area of changeable copy .....	20 percent of total sign area
(shall not apply to any reference to tenants)	

(2) Wall signs identifying the Highway Shopping Center itself and any use or establishment permitted in the Highway Shopping Center, provided that no wall sign shall extend higher than the top of the parapet or wall:

Maximum number of signs: .....2 times the total number of exterior public entrances

Maximum aggregate area of all signs on an establishment's exterior walls: .....5 percent of the aggregate area of all exterior walls, but no sign shall exceed 10 percent of the area of the wall to which it is attached

Maximum projection from wall surface: .....15 inches

- (3) Wall signs designating service and loading areas, service courts, employee entrances and similar areas:

Maximum number:.....No limit  
Maximum height: .....8 feet  
Maximum area:.....4 square feet

- (4) Freestanding internal directional signs identifying permitted uses or establishments and indicating access and egress to the site, as well as direction to any permitted uses, services or other areas within the site:

Maximum number:.....No limit  
Maximum height: .....8 feet  
Maximum area:.....100 square feet

- (b) Notwithstanding any requirements of Section 954, two off-premises signs are permitted: one to identify the Highway Shopping Center and another for a neighborhood monument sign, provided that such signs are located along a street that provides direct access between an interstate highway interchange and a primary entrance to the Highway Shopping Center. Such signs must comply with the requirements of paragraph (a) of this Section 447.1.
- (c) Signs may be illuminated either by back-lighting, internally or with shielded external light sources directed solely onto the sign without causing glare. All illumination shall be with steady, stationary light sources. Neon lighting is permitted, subject to any reasonable limitations imposed by the Planning Board during the Site Plan Approval process. Signs for establishments shall not be illuminated during the period commencing one-half hour after closing of the establishment and continuing to one-half hour before opening of the establishment.
- (d) Banners shall be permitted, notwithstanding the requirements of Section 912.1.
- (e) Signs with changeable text shall be permitted, notwithstanding the requirements of Section 912.2, subject to any reasonable limitations imposed by the Planning Board during the Site Plan Approval process.
- (f) Animated, flashing or holographic signs shall be permitted but shall not be intended to be visible from a public way. For the purpose of this provision, the following definitions shall apply:
- (1) Animated sign: A sign that uses movement or the appearance of movement through the use of patterns of lights, changes in color or intensity, computerized special effects, video displays, or any other method, except for the changing of a static message not more than once per minute.

- (2) Flashing sign: A sign of which any portion changes light intensity, switches on and off in a constant pattern, or contains moving parts or the optical illusion of motion caused by use of electrical energy or illumination, with a display that appears for less than one and one-half consecutive seconds.
- (3) Holographic sign: A sign that creates a three-dimensional image through projection.
- (g) Any sign that is located within 200 feet of any part of the boundary of the HSCO District that adjoins a residential district in Berlin shall be oriented, screened or buffered to minimize visibility from said residential district. All such signs shall be reviewed for consistency with these objectives during the Site Plan Approval process.
- (h) Notwithstanding the requirements of Section 912.6, signs may have more than three colors.

#### 447.2 Special Noise Requirements in the Highway Shopping Center Overlay District

- (a) The maximum sound levels in Section 1021.1 shall apply to residential land at the perimeter of the Highway Shopping Center in the Town of Berlin, to be enforced in accordance with the Massachusetts Department of Environmental Protection Noise Policy.
- (b) Because the likely noise-generating activities will take place at a significant elevation above the property lines that abut residential property, the maximum sound levels for the Highway Shopping Center established in Section 1021.1 shall be determined by measurements taken at the edge of the HSCO Development Lot property line at the same elevation as, or at a lesser elevation than, the closest paved area of the Highway Shopping Center to the point of measurement.

#### 447.3 Special Exterior Lighting Requirements in the Highway Shopping Center Overlay District

- (a) For a Highway Shopping Center in the HSCO District the terms “adjacent properties” in Section 1031.1, “lot line” in Section 1031.2, and “lot” in Section 1031.4, shall be construed to mean “adjacent properties within Berlin” respectively.
- (b) Lighting fixtures for the illumination of surface parking areas shall be as low in height as possible while providing necessary light intensity levels for safety and security. Such lighting fixtures may be up to forty (40) feet above finished grade, except that lighting fixtures located within fifty (50) feet of the boundary of the permissible impervious surface area identified on the HSCO Development Plan may not be more than thirty (30) feet above finished grade.
- (c) Floodlighting of building facades or similar lighting used to identify the Highway Shopping Center (or individual establishments within the Highway Shopping Center) shall be prohibited from one-half hour after closing until one-half hour before opening, except that if an individual establishment having a separate entrance remains open when the Highway Shopping Center is closed, that establishment’s identification lighting shall be permitted to be on from one half-hour before opening until one-half hour after closing of that establishment.

#### 447.4 Building Design Standards

The Building Design Standards in Section 1236.3 of this By-Law shall apply to a Highway Shopping Center, except that standard, scored or flat face block may be used on any walls that do not include primary public entrances, but must, in such cases, be adequately screened from areas designated for public access.

### 448 Site Plan Approval

448.1 Purpose: The intent of Site Plan Approval is to further the purposes of this By-Law and to ensure that the Highway Shopping Center, as shown on a HSCO Development Plan, is developed in conformance with the HSCO Development Plan.

448.2 Applicability:

- (a) The proposed use of land in the HSCO District for a Highway Shopping Center shall be subject to the Site Plan Approval procedures and standards set forth in this section.
- (b) No building permit shall be issued for any building in a Highway Shopping Center unless a site plan has been endorsed by the Planning Board, after further consultation, subject to the provisions of Section 448.8(a), with other boards and officials including, but not limited to, the Building Inspector, Board of Health, Board of Appeals, Board of Selectmen, Conservation Commission, Highway Department, Town Clerk, Fire Department, and Police Department.

448.3 Application:

- (a) The application for Site Plan Approval shall be submitted to the Planning Board by the owner of record (or with consent of such owner), accompanied by ten (10) copies of the site plan.
- (b) The Planning Board shall obtain with each submission a Site Plan Approval fee, to be determined by the Planning Board. Such fee will be used to cover any expenses connected with public hearing costs and the review of plans, including the costs of any legal, engineering, planning or other consultant services necessary for review procedures, including for periodic site inspections. Any unused portion of the review fee will be returned to the applicant. Any such expenses that the Planning Board comes to anticipate during the Site Plan Approval process shall be paid into such fund by the applicant upon request by the Planning Board. Furthermore, any such expenses incurred by the Town in excess of such fee as so supplemented shall be reimbursed by the applicant.

448.4 Required Site Plan Format:

- (a) All site plans shall be prepared by a registered architect, landscape architect, and/or professional engineer.
- (b) All site plans shall be on standard 30" by 42" sheets, unless otherwise permitted, and may consist of multiple drawings.
- (c) All site plans shall be prepared at a sufficient scale to show the information specified in Section 448.5.
- (d) All site plans shall also be submitted on CD-ROM, DVD or other media acceptable to the Planning Board as a standard digital file in accordance with Level III of the Office of Geographic and Environmental Information (MassGIS) Standard for Digital Plan Submittals to Municipalities (current version), or as otherwise acceptable to the Planning Board.

448.5 Required Site Plan Contents: All site plans shall include the following information:

- (a) The location and boundaries of the HSCO Development Lot, adjacent streets or ways and the location and owners' names (from Town Assessor's records) of all adjacent properties.

- (b) Existing and proposed topography of the HSCO Development Lot including contours, the location of wetlands, streams, water bodies, drainage swales, areas within the Flood Plain District, and unique natural land features.
  - (c) Existing and proposed structures within the HSCO Development Lot and existing structures within one hundred (100) feet of the boundaries of the HSCO Development Lot, including dimensions and elevations, as may be illustrated by aerial photographs and similar graphical illustrations.
  - (d) The location and dimensions of parking and loading areas, driveways, walkways, access and egress points.
  - (e) The location and description of all existing and proposed septic systems, water supply, stormwater management systems, utilities, and refuse and other waste disposal methods.
  - (f) Proposed landscape features including the location and a description of screen, fencing, and plantings, including those intended to provide buffer between the Highway Shopping Center and adjoining residential abutters in the Town of Berlin.
  - (g) The location, dimensions, height, and characteristics of proposed signs.
  - (h) The location and description of proposed green areas.
  - (i) The location and description of proposed exterior lighting and the hours it will be in use.
  - (j) The location and dimensions of any and all proposed retaining walls.
- 448.6 For a proposed Highway Shopping Center on a site that is partly within the Town of Berlin and partly in an adjacent municipality where initial site development may be underway or may have already occurred as of the effective date of the HSCO District, the site plans shall indicate how the portion of the Highway Shopping Center in Berlin is to be integrated within the remainder of the Highway Shopping Center, and shall be accompanied by a detailed written narrative explaining how the Highway Shopping Center in Berlin complies with applicable zoning requirements of this Section 440 and the Building Design Standards in Section 1236.3, while providing for an integrated overall design to the Highway Shopping Center.
- 448.7 Additional Application Materials: The following materials shall be submitted with the application for Site Plan Approval:
- (a) Building elevation plans for all exterior facades of buildings and structures, at a scale of one-sixteenth inch equals one foot ( $1/16" = 1'0"$ ), or such scale as may be required by the Planning Board for detail drawings, indicating surface materials and colors. The Planning Board may waive these requirements, provided that the materials submitted with the application are sufficient for the Planning Board to reasonably assess compliance with the Building Design Standards in Section 1236.3.
  - (b) Perspective drawing at an appropriate size to show the HSCO Development Lot and all buildings and structures, parking and circulation facilities, and other improvements.
  - (c) A tabulation of the areas of the proposed site elements, including buildings (footprints, gross floor area and gross leasable area), parking areas (square footage and number of parking spaces), reserve parking areas, stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings). Such tabulation shall be provided for the Highway Shopping Center as a whole and separately for the portions within the Town of Berlin and any adjoining town.
- 448.8 Procedures for Site Plan Review:
- (a) The Planning Board shall refer copies of the application within five (5) days to the Conservation Commission, Board of Appeals, Board of Health, Building Inspector, Board of Selectmen, Fire Department, Police Department and Highway Department,

and any applicable peer review consultants engaged by the Planning Board, who shall review the application and submit their recommendations and comments to the Planning Board. Failure of boards, officials or consultants to make recommendations within thirty (30) days of the referral of the application shall be deemed to be neither opposition nor support but such recommendation shall not then be required prior to action by the Planning Board.

- (b) The Planning Board shall hold a public hearing within forty-five (45) days of the receipt of an application and after due consideration of the recommendations of other boards and officials, shall grant Site Plan Approval within sixty (60) days from the time of hearing.
- (c) Prior to granting Site Plan Approval pursuant to Section 448.9, the Planning Board shall either (1) make a determination that the site plan for the Highway Shopping Center is in compliance with the criteria and requirements of this Section 440, or (2) require the applicant to revise the site plan to bring it into compliance, in which instance the hearing shall be automatically continued until the applicant submits a revised site plan and the Board makes a determination that the revised site plan is in compliance.

448.9 Final Action:

- (a) The Planning Board's final action shall be to grant Site Plan Approval based on its determination that the site plan for the Highway Shopping Center is consistent with the HSCO Development Plan and is in compliance with the criteria and requirements set forth in this Section 440.
- (b) The Planning Board shall have the authority to impose, as part of its final action, reasonable conditions to assure consistency with the HSCO Development Plan and compliance with the criteria and requirements of this Section 440.
- (c) Failure of the Planning Board to take its final action within sixty days of its hearing, as such hearing may be extended by consent of the applicant, shall constitute approval of the site plan, including any revisions that have been submitted.

448.10 Incorporation of Development Agreement: The conditions of any Site Plan Approval under this Section 440 shall include all conditions included in any development agreement which the Town shall have accepted in relation to the development of the Highway Shopping Center. In issuing a Site Plan Approval under this By-Law, the Planning Board shall not have the authority to relieve the developer of any obligations imposed under any such development agreement.

448.11 Amendment or Modification: The Planning Board may amend or modify its Site Plan Approval following the requirements and procedures set forth in this Section 440, provided that if a modification is, in the determination of the Planning Board, minor in nature, such modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Planning Board, be less extensive than the plans and information required in this Section 440.

448.12 Performance Standards:

- (a) The Highway Shopping Center shall be served with adequate water supply and waste disposal and other utility systems.
- (b) The site plan shall provide for the convenience and safety of vehicular traffic and pedestrian movement within the site and in relation to adjacent ways. Estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site shall be provided in graphic or descriptive form.

- (c) The site plan and any accompanying descriptive materials shall show adequate measures to prevent pollution of surface and/or groundwater, to minimize erosion and sedimentation, and to prevent material changes in groundwater levels, increased run-off rates and potential for flooding. Drainage shall be designed so that the run-off rate shall not be increased, groundwater recharge is not materially altered and neighboring properties will not be adversely affected. The site plan and any accompanying descriptive materials shall be prepared in accordance with generally accepted standards and any regulatory requirements imposed by Massachusetts Department of Environmental Protection and MassHighway.
- (d) Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, gas meters, wastewater treatment facilities and/or related pumps and any satellite dishes, related communications systems and any low-impact sustainable design features, all of which may be above ground.

#### **449 Phasing; Continuing Validity of Approval**

- 449.1 The Highway Shopping Center may be developed in phases and may be developed under one or more building permits and occupancy permits. Amendments to the Site Plan Approval will be permitted in order to accommodate a phased development.
- 449.2 A violation of the terms of a building permit, occupancy permit or Site Plan Approval for a building or buildings which is/are a part of the Highway Shopping Center shall not affect or impact the validity of any other permit or approval for any other portions of the Highway Shopping Center that were constructed under a different building permit, in conformity with a Site Plan Approval, or operated under another occupancy permit, provided that the violation does not materially affect the structural integrity of the portion of the Highway Shopping Center that is otherwise in compliance, and provided that such other portion continues to meet fire and health safety codes.

### **450 VILLAGE OVERLAY DISTRICT**

#### **451 Purposes and General Requirements**

This Section 450 establishes a Village Overlay District (the "VO District"), including related components, in addition to the districts listed in Section 210. The VO District is created for the purpose of permitting the development of a Mixed-Use Village in the area comprising the VO District that integrates residential, retail/service and public use components, balances conservation and development goals, protects and enhances the character of the natural and cultural resources of Berlin while promoting appropriately planned use of land in accordance with a Village Development Plan. The VO District is established as a special district which can overlay any other zoning district or districts.

The provisions of this Section 450 permit the development of a Mixed Use Village subject to specific regulations in this section and regulations in other sections that are not modified by the provisions of this section. The regulations in this section relating to use, building and lot dimensions, development intensity; parking and loading, signage, lighting and VO Site Plan Approval shall apply only to Village Development Parcels within the VO District, and not to any other use that is allowed or permitted in the underlying zoning district.

The provisions of this Section 450 are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

#### **452 Location**



The boundaries of the VO District are shown on a map of land entitled "Village Overlay District" filed with the Town Clerk, which map, together with all explanatory matter thereon, or attached thereto, is hereby incorporated in and made a part of this By-Law.

#### **453 Relationship to Underlying District and Regulations.**

- 453.1 The VO District shall overlay all underlying districts, so that any parcel of land lying in the VO District shall also lie in the district or districts in which it is otherwise classified by this By-Law.
- 453.2 With the exception of Article 6 (Density and Dimensional Requirements), Article 8 (Off-Street Parking and Loading), Article 15 (Growth Management), Sect. 550 (Multifamily Dwellings) and Sect. 1230 (Site Plan Approval), all regulations of the underlying zoning district(s) including Sect. 730 (Inclusion of Affordable Housing) shall apply within the VO District except to the extent that they are specifically modified or supplemented by other provisions of this Section 450. To the extent that the provisions of this Section 450 or matters shown on the Village Development Plan are in conflict with or are inconsistent with other provisions of this Zoning By-Law, the provisions of this Section 450 and such Village Development Plan shall govern and prevail. Without limiting the foregoing, to the extent that other provisions of this By-Law would, in their application, prohibit or require a special permit for the Mixed Use Village uses permitted by this Section 450 in the VO District, the provisions of this Section 450 shall govern and the use shall be treated as permitted as-of-right under this By-Law.
- 453.3 The provisions of the VO District apply only to a Mixed Use Village, as defined herein, or portions thereof, located within the boundaries of the VO District. Any other building, structure or use of land included in the VO District shall conform to the regulations and requirements applicable to the underlying district(s) without modification by this Section 450.

#### **454 Permitted Uses: Application of Requirements**

- 454.1 Land within the VO District may be used for development of a Mixed Use Village (or portions thereof) that is: (a) in conformance with the Village Development Plan; (b) in conformance with the Site Plan(s) approved by the Planning Board through VO Site Plan Approval; and (c) in compliance with the requirements of this Section 450.
- 454.2 A Mixed Use Village may include: open space; residential dwelling units (including single family and multiple dwellings) and associated facilities; Continuing Care Retirement Community (CCRC); Residential Care Facilities; Assisted Living Units; CCRC Independent Living Units; Live-Work Units; community space; and commercial establishments that may include, without limitation, retail and service establishments, business or professional offices, medical offices, medical and dental clinics, Hotels, restaurants and other establishments serving food (but excluding Fast Food Restaurants), banks, and a Convenience Store; together with accessory uses, ancillary utility facilities, parking areas, driveways, roads, paths, landscaped areas and buffer areas. A Mixed Use Village may include drive-up facilities for banks, pharmacies and other retail and service uses, but not for food establishments.
- 454.3 In addition to those uses prohibited by Sec. 370 of this By-law, no portion of the VO District shall be used for research & development offices or establishments or research laboratories and manufacturing enterprises, enterprises requiring high water usage, Adult Use establishments, Fast Food Restaurants, automotive repair shops or dealerships, car washes, bowling alleys, discotheques, or dance halls.
- 454.4 A Mixed Use Village may consist of one or more lots that need not be contiguous, and one or more buildings that need not be connected, provided that each lot or set of contiguous lots is developed with a unified approach to design, access and circulation, parking, truck loading, vehicular entrances and exits, drainage, utilities and management of landscaped and buffer areas in a manner consistent with the Village Development Plan. The Planning

Board, during VO Site Plan Approval, will seek to ensure maximum integration of site plan elements and operations.

- 454.5 A Mixed Use Village and/or components thereof may be reviewed in phases and developed in phases by separate ownership entities, and may be developed under one or more VO Site Plan Approvals, building permits and occupancy permits. Amendments to a prior VO Site Plan Approval will be permitted in accordance with Section 459.10 in order to accommodate a phased development. A violation of the terms of a building permit, occupancy permit or VO Site Plan Approval for a building or buildings which is a part of the Mixed Use Village shall not affect or impact the validity of any other permit or approval for any other portions of the Mixed Use Village that were constructed under a different building permit, in conformity with a VO Site Plan Approval, or operated under another occupancy permit, provided that the violation does not materially affect the structural integrity of the portion of the Mixed Use Village that is otherwise in compliance, and provided that such other portion continues to meet fire and health safety codes. Strict compliance with the ratios set forth in Sections 455.2, 455.3, and other comparable provisions herein shall not be required for each intermediate phase of a Mixed Use Village, provided that the applicant provides satisfactory assurance that the Mixed Use Village when completed shall be in full compliance therewith.
- 454.6 Flood Plain District: Within the Flood Plain District set forth in Section 410 of this By-Law, improvements shown on a Village Development Plan, as the same may be modified by the Planning Board through VO Site Plan Approval, shall be permitted uses and structures within the Flood Plain District. All encroachments, including fill, new construction, substantial improvements to the existing structures, and other development are prohibited unless certification by a registered engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of a 100-year storm, and that the protection of the quality and quantity of ground and surface waters, the safety of all utilities, the security of stored materials, the stability of fill and the prevention of other dangers sure to flooding shall be adequately provided for.

## **455 Required Mix of Uses**

- 455.1 The Mixed Use Village shall contain a mix of residential and nonresidential uses on one or more lots, and in one or more buildings, as may be approved by the Planning Board pursuant to VO Site Plan Approval.
- 455.2 Residential uses shall comprise at least 25% and not more than 65% of the combined residential Floor Area, Gross Leasable Area of Commercial space and Institutional Uses (all as established below) in a Mixed Use Village. For the purpose of this limitation, residential uses shall include Dwellings (including single family and multiple dwellings); CCRC Independent Living Units; Assisted Living Units and Live-Work Units. For the purpose of this limitation, "Floor Area" shall not include any area used for vehicular parking or circulation. Any part of a CCRC not contained within CCRC Independent Living Units or Assisted Living Units, other than area used for vehicular parking or circulation, shall be included in the calculation of Gross Leasable Area of Institutional Uses.
- 455.3 Within the Village Center, at least sixty-five percent (65%) of the total ground floor of all commercial and mixed use buildings, excluding CCRC facilities, shall consist entirely of the following uses:
- (a) Nonresidential principal uses as permitted in section 454.2, herein.
  - (b) Entries, lobbies, stairs and elevators providing access to permitted upper floor residential uses, not exceeding twenty percent (20%) of the ground floor area.

## 456 Development and Dimensional Controls

- 456.1 The Mixed Use Village and/or components thereof shall be developed in conformance with the Village Development Plan, as the same may be modified by the Planning Board through VO Site Plan Approval. The location and dimensions of all buildings, parking areas, access roads, driveways, loading areas and other paved areas, in a Mixed Use Village, except those expressly listed in Section 456.2 shall be located within the "Permissible Building Area" as delineated on the Village Development Plan and shall be fixed upon the issuance of VO Site Plan Approval(s) for the Mixed Use Village, or components thereof, as such VO Site Plan Approval(s) may be amended or modified.
- 456.2 The areas of a Village Development Parcel that are not located within the "Permissible Building Area" as delineated on the Village Development Plan may only be used or managed for stormwater management facilities, landscaping, visual screening, utilities (including, without limiting the generality of the foregoing, transformers, wastewater treatment and disposal facilities, water supply, temporary maintenance and construction/landscaping activities and related pumps and appurtenances, all of which may be located aboveground or underground) drains, emergency vehicle access, non-impervious paths and trails for use by pedestrians, nonmotorized vehicles and/or Neighborhood Electric Vehicles (or similar vehicles), or other such purposes (including parking for users of facilities within the Village Green Area) approved by the Planning Board through VO Site Plan Approval. All uses referred to in this Section 456.2 are allowed within the "Permissible Building Area" delineated on the Village Development Plan.
- 456.3 Development pursuant to the provisions of this Section 450 shall be subject to the controls set forth below and shall be consistent with the "Village Development Plan" adopted by Town Meeting which together with all explanatory matter thereon, or attached thereto, is hereby incorporated in and made a part of this By-Law.

<b>TABLE- DEVELOPMENT AND DIMENSIONAL CONTROLS for Village Development Plan Area</b>		
<b><u>BUILDINGS/USES</u></b>		
<b><u>Commercial</u></b>		
	Maximum Gross Leasable Area of Commercial space	130,000 SF (See Notes 1,2 & 3)
<b><u>Institutional</u></b> (i.e., Residential Care Facility and Continuing Care Retirement Community (CCRC) uses) *		
	Maximum Gross Leasable Area of Institutional Uses (if any)**	75,000 SF (See Note 2)
<b><u>Residential</u></b>		
	Maximum number of Dwellings (not including CCRC Independent Living Units and/or Assisted Living Units, if any)	115 (See Note 3 & 4)
	Maximum number of CCRC Independent Living Units and/or Assisted Living Units, if any (See Note 4)	90 (See Note 4)
	Maximum Combined Floor Area of Dwellings (not including CCRC Independent Living Units and/or Assisted Living Units, if any)	167,000 SF (See Note 3 & 4)

	Maximum Combined Floor Area of CCRC Independent Living Units and/or Assisted Living Units, if any (See Note 4)	100,000 SF (See Note 4)
<b>Open Space</b>		
	Minimum Village Green Area	65% of entire Village Development Plan Area
<p><u>Footnotes:</u></p> <p>* “Institutional Uses” allowed within the VO District are limited to Residential Care Facility uses, Assisted Living Residence uses and Continuing Care Retirement Community (CCRC) uses exclusive of CCRC Independent Living Units and Assisted Living Units which shall be considered Dwellings.</p> <p>** includes units, rooms or other areas within a CCRC and/or Assisted Living Residences that are used as Residential Care Facilities (such as memory support, nursing and similar units); areas occupied by retail sales and services within a CCRC and/or Assisted Living Residences maintained for the convenience of residents and their guests; and areas used for administration, maintenance, services, circulation and support . Does not include CCRC Independent Living Units, Assisted Living Units or structured parking.</p> <p><u>Notes:</u></p> <p>(1) One Commercial building may have a footprint area up to 50,000 sf; no other Commercial building shall have a footprint area in excess of 25,000 sf. Any bridge or similar circulation structure that connects two or more buildings shall not be included in the calculation of any building’s footprint area.</p> <p>(2) As noted on the Village Development Plan, up to 18,000 SF of the “Maximum Gross Leasable Area of Institutional Uses” (see above) may be used for commercial space. If such further commercial space is so developed: (a) the Maximum Gross Leasable Area of Institutional Uses (see above) shall be reduced on a “square foot for square foot” basis, and (b) the Maximum Gross Leasable Area of Commercial Space (see above) shall be correspondingly increased on such a basis.</p> <p>(3) Up to a total of 15,000 SF of the “Maximum Combined Floor Area of Dwellings (not including CCRC Independent Living Units and/or Assisted Living Units, if any)”, as established above, may be used as Commercial space. If such additional Commercial space is so developed:</p> <p style="padding-left: 40px;">a) the “Maximum Combined Floor Area of Dwellings (not including CCRC Independent Living Units and/or Assisted Living Units, if any)”, shall be reduced and the Maximum Gross Leasable Area of Commercial Space, as established above, shall be correspondingly increased on a “square foot for square foot” basis;</p> <p style="padding-left: 40px;">b) the “Maximum Number of Dwellings (not including CCRC Independent Living Units and/or Assisted Living Units, if any)”, as established above, shall be reduced on the basis of one such Dwelling for each one thousand (1,000) square feet of such Commercial space so developed.</p> <p>(4) If approved by the Planning Board during VO Site Plan Approval, the 90 CCRC Independent Living Units or Assisted Living Units may be converted to 90 Dwelling Units. If so converted, the Maximum Combined Floor Area of the Independent Living Units or Assisted Living Units of 100,000 square feet may be added to the Maximum Combined Floor Area of Dwellings. Also, if so converted, the total number of Dwellings shall be 205.</p>		
<b>LOTS</b>		
	Minimum combined area of all lots comprising the Mixed Use Village	70 acres

Minimum area of each Village Development Parcel	.25 (1/4) acre	
Minimum frontage	20 ft.	
Minimum Lot Width for Individual Lots	20 ft.	
Minimum front yards*	None Required	
Minimum side and rear yards at the perimeter of the VO District*	15 ft.*	
<u>Footnotes:</u>		
* Yard requirements within the VO District shall apply only to the perimeter of the VO District. No minimum setbacks are required for individual lots or Village Development Parcels contained internally within the VO District.		
<b><u>BUILDING HEIGHT</u></b>		
	<b>Residential **</b>	<b>Commercial, CCRC, ALR and/or Mixed Use</b>
Maximum Building Height*	35 ft **	45 ft.
Maximum Building Height* if fully sprinklered	40 ft. **	50 ft.
<u>Footnotes:</u>		
* "Building Height" for the purpose of this Section 450 shall be defined as in Article 14 of the Bylaw, but spires, cupolas, chimneys, or other parts of structures which don't enclose habitable space and which are above the roof ceiling, deck or ridge, shall be limited to no more than thirty percent (30%) of the building footprint.		
** One (1) residential building may have a height of up to 45 ft., 50 ft. if fully sprinklered. The footprint of such residential building shall not exceed 12,000 SF.		

## 457 Parking and Loading

Development in the VO District shall be subject to the parking and loading requirements set forth below.

457.1 Parking in the Mixed Use Village shall be provided at the minimum rates of:

- (a) Two and a half (2.5) parking spaces for each 1,000 square feet of Gross Leasable Area of Commercial buildings;
- (b) One (1.0) parking space for each Dwelling located within the Village Center (including CCRC Independent Living Units but not Assisted Living Units).
- (c) One (1.0) parking space for every four (4) Assisted Living Units.

- (d) One (1.0) parking space for each 1,000 square feet of Gross Leasable Area of Institutional Uses.
- 457.2 Parking requirements within the Mixed Use Village may be met by a combination of on-road parking and off-road parking within the Mixed Use Village as may be determined appropriate by the Planning Board through VO Site Plan Approval.
- 457.3 Loading spaces adequate to serve commercial and institutional uses within the Mixed Use Village shall be provided as reasonably required by the Planning Board through VO Site Plan Approval.
- 457.4 Parking areas shall be landscaped and paved as required by the Planning Board through VO Site Plan Approval.
- 457.5 The amount of parking and loading area that shall be constructed shall be as shown on the Village Development Plan as the same may be modified by the Planning Board through VO Site Plan Approval.
- 457.6 Section 710 of this By-Law shall not be construed to apply to any common driveway shown on the Village Development Plan.
- 457.7 As part of VO Site Plan Approval, the Planning Board may alter the requirements of Parking Space Dimension requirements contained in section 822 of the Zoning By-law as follows:
  - (a) The required rectangular area of parking spaces in the VO District may, for non-parallel parking spaces, be 18 feet long and 9 feet wide instead of 19 feet long and 9 feet wide.
  - (b) Up to 15% (fifteen percent) of non-parallel parking spaces shown on any VO Site Plan Application may be designated "Compact Vehicle" spaces, which may be dimensioned 8 feet wide and 16 feet long. Any such Compact Vehicle spaces shall be appropriately marked as such.

#### **458 Special Provisions for the Village Overlay District**

##### **458.1 Special Sign Provisions in the Village Overlay District**

For the Mixed Use Village all provisions of Sections 910 through 950 shall apply, except as modified by the Planning Board pursuant to VO Site Plan Approval. Sign regulations for the Commercial-Village (CV) District shall apply to the Village Center.

##### **458.2 Special Noise Requirements in the Village Overlay District**

The maximum sound levels in Section 1021.1 shall apply to residential land at the perimeter of the Village Center, to be enforced in accordance with the Massachusetts Department of Environmental Protection Noise Policy.

##### **458.3 Special Exterior Lighting Requirements in the Village Overlay District**

For a Mixed Use Village in the VO District the terms "adjacent properties" in paragraph 1031.1, "lot line" in Section 1031.2, and "lot" in Section 1031.4, shall be construed to mean "adjacent Village Development Parcels," "Village Development Parcel boundary line," and "Village Development Parcel," respectively.

- (a) Lighting fixtures for the illumination of surface parking areas shall be as low as possible while providing necessary light intensity levels for safety and security.
- (b) Floodlighting of building facades or similar lighting used to identify the Village Center (or individual establishments within it) shall be prohibited from one-half hour after closing until one-half hour before opening, except that if an individual establishment having a separate entrance remains open when the retail/service portions of the Village Center are closed, that establishment's identification lighting shall be permitted

to be on from one-half hour before opening until one-half hour after closing of that establishment.

#### 458.4 Special Affordable Housing Provision in the Village Overlay District

Recognizing that a Mixed Use Village as allowed in the VO District under this Section 450 lends itself to the provision of rental Dwelling units, so long as:

- (a) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development (DHCD) (or a successor agency) provide that all rental Dwelling units in rental developments that contain at least 25% affordable units are eligible for inclusion in the DHCD's Subsidized Housing Inventory (SHI), and
- (b) that at least 30% of the total Dwelling units within the VO District are eligible for inclusion in the SHI,

the requirements of Section 730 of the Berlin Zoning By-laws are hereby modified as follows:

Within the Village Overlay District, subject to approval of the Berlin Housing Partnership and pursuant to VO Site Plan Approval by the Planning Board of a rental development that meets the Massachusetts Department of Housing and Community Development (DHCD)(or a successor agency)'s applicable requirements so that all of the rental units within said rental development are eligible for inclusion in DHCD's Subsidized Housing Inventory (SHI), the requirements under Section 730 of this By-Law that 15% of all Dwelling units within a project resulting in a net increase of six or more Dwelling units be set aside as affordable may be modified to require, in the alternative, that 10% of the combined total of Dwellings and CCRC Independent Living Units allowed under this Sect. 450 be so set aside as affordable.

Notwithstanding the foregoing, if, prior to the issuance of a building permit for such rental development, either (i) M.G.L. c. 40B, §§ 20-23 is no longer in effect, or (ii) the rules, regulations or guidelines of the DHCD (or a successor agency) no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the SHI, then not fewer than 15% of the combined total of Dwellings and CCRC Independent Living Units allowed under this Sect. 450 shall be set aside and developed as affordable Dwelling units, provided that all such affordable Dwelling units may be provided outside the CCRC.

### **459 Village Overlay Site Plan Approval**

459.1 Purpose: The intent of VO Site Plan Approval is to further the purposes of this By- Law and to ensure that the Mixed Use Village and/or components thereof are developed in a manner consistent with the Village Development Plan. It is expressly understood that the Village Development Plan is illustrative in nature. Therefore, the Planning Board may, in accordance with this Section 459, approve a Site Plan that modifies the size, shape, or location of buildings, paved areas, and other project elements shown on the Village Development Plan, and the precise nature of specific uses within those buildings, provided (a) that the approved Site Plan must be consistent with the purposes of the Village Overlay District and comply with all provisions of this Section 450; and (b) that no increase shall be permitted through VO Site Plan Approval of:

- (i) the Permissible Building Area shown on the Village Development Plan, or
- (ii) as provided by Sec. 456.3 of this By-law, the Maximum number and/or Maximum Combined Floor Area of Dwellings and/or CCRC Independent Living Units, Assisted Living Units or the Maximum Gross Leasable Area of Commercial space and or Institutional Uses.

#### 459.2 Applicability

- (a) The proposed use of a Village Development Parcel under the provisions of Section 450 shall be subject to the Site Plan Approval procedures and standards set forth in this Section 459.
- (b) No building permit shall be issued for any construction under the provisions of Section 450 unless a site plan for such construction ("Site Plan") has been approved by the Planning Board, after consultation, subject to the provisions of Section 459.7(a), with other Town boards and officials, including but not limited to the following: Building Inspector, Board of Health, Board of Appeals, Board of Selectmen, Conservation Commission, Highway Department Director, Town Clerk, Fire Chief, and Police Chief.

#### 459.3 Application

- (a) An application for VO Site Plan Approval for a Village Development Parcel shall be submitted to the Planning Board at a Planning Board meeting by the owner of record, accompanied by ten (10) copies of the Site Plan.
- (b) The Planning Board shall obtain with each submission, a VO Site Plan Approval fee, to be determined by the Planning Board, in an amount deemed sufficient by the Planning Board to cover any reasonable expenses connected with public hearing costs and the review of the submitted Site Plan(s), including the costs of any legal, engineering, planning or other consultant services necessary for review procedures. Any such reasonable expenses that the Planning Board comes to anticipate during the VO Site Plan Approval process shall be paid by the applicant upon request by the Planning Board. Furthermore, any such reasonable expenses incurred by the Town in excess of such fee as so supplemented shall be reimbursed by the applicant.

#### 459.4 Required Site Plan Format: All Site Plans shall be:

- (a) prepared by a registered architect, landscape architect, and/or professional engineer;
- (b) on standard 30" by 42" sheets, unless otherwise permitted, and may consist of multiple drawings;
- (c) prepared at a sufficient scale to show the information specified in Section 459.5;
- (d) also submitted on CD-ROM, DVD or other media acceptable to the Planning Board as a standard digital file in accordance with Level III of the Office of Geographic and Environmental Information (MassGIS) Standard for Digital Plan Submittals to Municipalities (current version), or as otherwise acceptable to the Planning Board.

#### 459.5 Required Site Plan Contents:

All Site Plans submitted for VO Site Plan Approval under the provisions of this Section 450 shall show the following information regarding the relevant Village Development Parcel(s):

- (a) the location and boundaries of the Village Development Parcel(s), as well as adjacent streets or ways and the location and owners' names (from Town Assessor's records) of all adjacent properties;
- (b) existing and proposed topography of the Village Development Parcel(s), including contours, the location of wetlands, streams, water bodies, drainage swales, areas within the Flood Plain District, and unique natural land features;
- (c) the extent of the Permissible Building Area and any Village Center components within the Village Development Parcel(s), as shown on the Village Development Plan;
- (d) existing and proposed structures within the Village Development Parcel(s) and existing structures within one hundred (100) feet of the boundaries of the Village Development Parcel(s), including dimensions and elevations;



- (e) the location of parking and loading areas, driveways, circulation paths, walkways, access and egress points within the Village Development Parcel(s);
- (f) the location and description of all existing and proposed septic systems, water supply, stormwater management systems, utilities, and refuse or other wastewater disposal methods;
- (g) proposed landscaping features including the location and a description of screening, fencing, and plantings;
- (h) the location, dimensions, height and characteristics of proposed signs;
- (i) the location and description of proposed green areas;
- (j) the location and description of proposed exterior lighting and the hours it will be in use.

459.6 Additional Application Materials: The following materials shall be submitted with an application for VO Site Plan Approval:

- (a) building elevation plans for all exterior facades of buildings and structures, at a scale of one-sixteenth inch equals one foot (1/16"=1') or such scale as may be required by the Planning Board for detail drawings, indicating surface materials and colors;
- (b) perspective drawing at an appropriate size to show the Village Development Parcel and all buildings and structures, parking and circulation facilities, and other improvements;
- (c) a tabulation of the areas of the proposed site elements, including buildings (footprints, gross floor area and gross leasable area), surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).

459.7 Procedure for VO Site Plan Review:

- (a) The Planning Board shall refer copies of the application within five (5) days of the Board's receipt of the application at a scheduled Planning Board meeting to the Conservation Commission, Board of Appeals, Board of Health, Building Inspector, Board of Selectmen, Fire Chief, Police Chief and Highway Department Director, as well as any peer review consultant(s) that may have been engaged by the Planning Board for such Site Plan review, all of whom shall review the application and submit their recommendations and comments to the Planning Board. Failure of any board, official or consultant to make recommendations within thirty (30) days of the referral of the application shall be deemed to be neither opposition nor support but such recommendation shall not then be required prior to action by the Planning Board.
- (b) The Planning Board shall hold a public hearing within forty-five (45) days of the receipt of an application at a Planning Board meeting and, after due consideration of the recommendations of other boards and officials, shall take final action within sixty (60) days from the time of hearing.
- (c) Prior to granting VO Site Plan Approval pursuant to Section 459.8, the Planning Board shall either: (1) make a determination that the Site Plan is in compliance with the criteria and requirements of this Section 450, or (2) require the applicant to revise the Site Plan to bring it into compliance, in which instance the hearing shall be automatically continued until the applicant submits a revised Site Plan and the Board makes a determination that the revised Site Plan is in compliance.

459.8 Final Action:

- (a) The Planning Board's final action shall be to grant VO Site Plan Approval based on its determination that the submitted Site Plan for a Village Development Parcel is consistent with the Village Development Plan and is in compliance with the criteria and requirements set forth in this Section 450. Site Plan Approval shall require a majority vote of the Planning Board.
- (b) The Planning Board shall have the authority to impose, as part of its final action, reasonable conditions to assure consistency with the Village Development Plan and compliance with the criteria and requirements of this Section 450.
- (c) Failure of the Planning Board to take its final action within sixty (60) days of its hearing, as such hearing may be extended by consent of the applicant, shall constitute approval of the Site Plan, including any revisions that have been submitted.

459.9 Incorporation of Development Agreement: The conditions of any VO Site Plan Approval under this Section 450 shall include all conditions included in any development agreement which the Town has accepted in relation to the development of the Mixed Use Village. In issuing a VO Site Plan Approval under this By-Law, the Planning Board shall not have the authority to relieve the developer of any obligations imposed under any such development agreement.

459.10 Amendment or Modification: The Planning Board may amend or modify its Site Plan Approval following the requirements and procedures set forth in this Section 450, provided that if a modification is, in the determination of the Planning Board, minor in nature, such modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Planning Board, be less extensive than the plans and information required in this Section 450.

459.11 Building Design Standards: The Building Design Standards in Section 1236.3 of this Bylaw shall apply to the VO District, except that standard scored or flat face block may be used on non-facade walls, but must, in such cases, be adequately screened from public areas.

459.12 Performance Standards: All development pursuant to this Section shall:

- (a) be served with adequate water supply and waste disposal and other utility systems;
- (b) maximize the convenience and safety of vehicular traffic and pedestrian movement within the site and in relation to adjacent ways. Towards that end, parking areas shall include sidewalks at the perimeter to promote safe pedestrian passage; larger areas shall incorporate pedestrian corridors delineated by paving materials, plantings and/or bollards. All parking areas shall be landscaped within their interiors to provide shade, reduce stormwater runoff, and provide visual relief from expanses of paving. A minimum of one (1) shade tree shall be provided within the parking area for every 6 parking spaces or fraction thereof.
- (c) include adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased run-off and potential for flooding. Drainage shall be designed so that run-off rate shall not be increased, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

- (d) place new electric, telephone, cable TV and other such utilities underground where physically and environmentally feasible.
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## **ARTICLE 5: SUPPLEMENTAL REGULATIONS**

### **510 IN-LAW APARTMENT**

#### **511 Intent**

It is the intent to provide for the use of a group of rooms in an existing single family residence, or in the plans of a new single family residence, as a so-called "In-Law Apartment" with its own kitchen and bathroom facilities, for the use of a limited number of persons such as in-laws, elderly persons, or grown children, subject to special precautions with respect to privacy, safety, number of occupants, and adequacy of water supply and sewage disposal; where the owner is a resident of the premises; and where the use of such a group of rooms as an apartment is clearly accessory to the principal use of the premises as a single family residence. It is the further intent that the structural changes, if any, necessary to effect the in-law apartment use be sufficiently modest that such use could be terminated, and a single family re-occupy the entire premises, without substantial hardship in reconstruction.

#### **512 Maximum Size**

An "In-Law Apartment" shall comprise no more than thirty-five percent (35%) of the dwelling's total floor area.

#### **513 Approval by the Board of Health**

Prior approval of the Board of Health shall be required for establishment of an In-Law Apartment.

#### **514 Criteria for Approval**

In order to qualify for in-law apartment use under this section the following must be adhered to:

1. The premises must be owner occupied.
2. Occupancy of the in-law apartment is limited to no more than three (3) persons, at least one of which is related by blood or marriage to the resident owner of the premises.
3. The outside appearance of the premises shall remain that of a single family residence.
4. All applicable Federal, State, and Local Building and Health Codes must be satisfied.
5. There must be no other in-law apartment or accessory apartment on the same lot.

#### **515 Special Permit**

The Board of Appeals may grant a special permit for use of a group of room in a single-family residence as an in-law apartment, subject to the criteria and conditions above. An in-law apartment which was in existence on May 1, 2017 and which meets the criteria outlined above, will have a period of five (5) years from the adoption of this section in which to receive a Special Permit.

#### **516 Duration of Special Permit**

Unless an earlier expiration date is specified by the Zoning Board of Appeals in a special permit, all special permits issued under this section shall expire automatically upon the expiration of five years from the date of issuance. Prior to expiration, the applicant may apply for renewal of the special permit for another five year period, said application to comply with all the provisions of Section 510 of this bylaw.

## **517 Termination of Use**

Should the in-law apartment which was created under the terms of this by-law fail at any time to meet the conditions above either occupancy shall cease and the premises revert to those of a single family residence or a Special Permit must be obtained under Section 520, Accessory Apartment Use.

## **520 ACCESSORY APARTMENT**

### **521 Special Permit**

The Board of Appeals may grant a special permit for use of a group of rooms in a single-family residence as an accessory apartment, subject to the criteria and conditions herein.

### **522 Criteria for Issuance of a Special Permit**

The Board of Appeals may grant a special permit only if it finds that all of the following conditions apply:

- 522.1 The premises are being used by the owner as a principal residence and have been used as a lawful residence for a period of at least five years prior to the date of application for the special permit.
- 522.2 Evidence verified in writing, by the Board of Health or its qualified agent submitted with, and as part of, the application for special permit, that there is available on the lot adequate supply of drinking water and adequate provision for sewage disposal.
- 522.3 There is no other in-law apartment or accessory apartment on the same lot.

### **523 Special Permit Conditions**

The special permit shall contain the following limitations and precautions:

- 523.1 The apartment shall not comprise more than 35% of the existing dwelling's total floor area.
- 523.2 The apartment shall have its own separate entrance from the outside.
- 523.3 The apartment shall have its own kitchen facilities and its own interior toilet facilities.
- 523.4 The outside appearance of the premises shall remain that of a single family residence.
- 523.5 The rooms shall have heat that is adequately supplied and controlled.
- 523.6 The number of residents of the apartment shall not exceed 4.
- 523.7 The premises shall continue to be used as principal residence by an owner.

### **524 Detached Accessory Apartment**

By Special Permit from the Board of Appeals and subject to the requirements of Section 522 and 523 of the Zoning By-law, an Accessory Apartment may be created in a structure that is detached from the primary residence provided:

- 524.1 That such structure was in existence on January 1, 1990 or any other structure provided that its use shall be subject to the limitations of Section 524.3.
- 524.2 That the Building Inspector certifies that any pre-existing accessory structure can be modified for human habitation. An accessory apartment may not entail expansion or other than minor modifications to external elements of a structure that existed on January 1, 1990 unless the use shall be subject to the provisions of Section 524.3.

- 524.3 The use of any detached accessory apartment other than one in existence on January 1, 1990 and whose creation is consistent with Section 524.2 shall be limited to: (a) housing for a group of not more than four residents, at least one of whom is related by blood or marriage to at least one resident of the principal dwelling; (b) housing for caregivers to at least one resident of the principal dwelling; or, (c) as rental housing rented subject to such conditions as may be required from time to time to qualify the detached accessory apartment as a unit of affordable housing within the meaning of applicable statutes, regulations and/or administrative guidelines of the Commonwealth of Massachusetts. The appearance of any new building permitted under this section shall be consistent with the principal residence, such as a barn, garage or similar customary outbuilding.
- 524.4 The Planning Board may adopt such regulations as it seems appropriate to assure compliance with Section 524.3 of the By-law.

### **525 Duration of Special Permit**

Unless an earlier expiration date is specified by the Zoning Board of Appeals in a special permit, all special permits under this section shall expire automatically upon the expiration of five years from the date of issuance. Prior to expiration, an applicant may apply for renewal of the special permit for another five year period, said application to comply with all the provisions of Section 520 of this bylaw.

## **530 HOME OCCUPATION**

A home occupation as defined in Article 14 may be established in an Agricultural-Residential district subject to the following requirements:

- (d) Such use shall be clearly incidental and secondary to the use of the premises for residential purposes;
- (e) Not more than one person other than residents of the premises shall be engaged in the conduct of the home occupation, whether as an employee or otherwise;
- (f) No offensive noise, vibration, smoke, dust, odors, heat, glare or unsightliness shall be produced;
- (g) There shall be no public display of goods or wares;
- (h) There shall be no signs except as permitted in Article 9;
- (i) There shall be no exterior storage of material or equipment and no other exterior indication of such use or variation from the residential character of the premises;
- (j) There shall be adequate off-street parking spaces for visitors in connection with the home occupation which do not substantially alter the appearance of the premises as a single family residence;
- (k) Such use does not require the parking of more than three vehicles used by clients, customers or visitors on a regular basis;
- (l) Traffic generated by such use is not inconsistent with traffic usually associated with a single family residence.

### **531.1 Bed and Breakfast (Maximum 2 rooms)**

A bed and breakfast as defined in Article 14 may be established in the Agricultural-Residential Zone or the Commercial-Village and Commercial Zones subject to the following requirements:

- a. Such use shall be owner occupied
- b. There will be no separate or shared cooking facilities for use by the guests
- c. There will be no substantial change to the exterior of the building

- d. One parking space for each room to be occupied by lodgers in addition to the parking required under Section 810.
- e. No more than 2 rooms.
- f. Lodgers shall not be lodged for more than 30 days in succession.
- g. All foods prepared for guests in a residential kitchen must be approved in advance by the Board of Health.

#### 531.2 Bed and Breakfast (3 to 4 rooms)

The Zoning Board of Appeals may grant a Special Permit for a Bed and Breakfast for 3 to 4 rooms as an accessory use of a dwelling unit provided that the requirements of Section 531.1 are met and in addition:

- a. A management plan, as defined in terms of form and content by the Board of Appeals, shall be part of the application
- b. A register of all bed and breakfast lodgers shall be kept in accordance with the Rules and Regulations covering hotels and motels within the Commonwealth.
- c. No more than 4 rooms

## 540 HOME-BASED CONTRACTING BUSINESS

A home based business, as defined in Article 14, shall meet all the following criteria:

- 540.1 The business is carried on pursuant to a valid business certificate issued by the Town Clerk, or through other registration with a State agency; or is assessed for personal property valuation by the Board of Assessors.
- 540.2 Employees coming to the premises who are not residents thereon shall not exceed the number specified by Section 541, Table of Home-Based Contracting Business
- 540.3 The external appearance and general aspect of the building so used shall be in conformity with the residential character of the neighborhood.
- 540.4 The business shall be compatible with any potentially affected residential premises.
- 540.5 Machinery and materials used in the conduct of the business, if stored outside, shall be completely screened from public view. Such screening shall, at a minimum, comply with the standards for screening of parking and loading areas in Section 832, and shall ensure that there is no outward evidence that the premises are being utilized for any purpose other than residential.
- 540.6 The number and size of vehicles stored or used on the property, that are in addition to resident and employee private vehicles, shall not exceed the number and size specified in Section 541, Table of Home-Based Contracting Business.
- 540.7 Hours of activity shall be restricted to 7:00 am until 7:00 pm unless otherwise stipulated as part of the Special Permit.
- 540.8 There shall be no signs except for an address sign in accordance with Section 941.
- 540.9 **Duration of Special Permit** Unless an earlier expiration date is specified by the Zoning Board of Appeals in a special permit, all special permits issued under this bylaw shall expire automatically upon the expiration of five years from the date of issuance. Prior to expiration, the applicant may apply for renewal of the special permit for another five year period, said application to comply with all the provisions of Section 540 of this bylaw. If the applicant files a complete application for renewal of the special permit, prior to its expiration, the special permit shall be extended up to the time the Zoning Board of Appeals files its decision on the renewal application with the Town. Upon expiration of a special

permit, which has not been renewed, the applicant shall disassemble and remove any materials or equipment related to the Home-Based Contracting Business in its entirety within thirty days of the expiration of the special permit.

#### **541 TABLE OF HOME-BASED CONTRACTING BUSINESS**

Lot Size	Vehicles	Employees
Less than 80,000 square feet or less than 200 feet frontage	One registered vehicle no more than 12,000 lbs. GVW plus one trailer less than 10,000 lbs. GVW.	One
80,000 or over 160,000 sq. ft. and 200 feet or greater frontage	One registered vehicle less than 26,000 lbs. GVW plus one trailer less than 12,000 lbs. GVW	Two
Greater than 160,000 sq. ft. and Greater than 300 feet frontage	Two registered vehicles less than 26,000 lbs. GVW plus two trailers less than 12,000 lbs. GVW	Three

#### **550 MULTIFAMILY DWELLINGS**

##### **551 Building Design**

- 551.1 No multifamily dwelling structure shall contain more than twelve dwelling units.
- 551.2 Each building entrance shall give access to no more than two dwelling units.
- 551.3 Not more than five percent (5%) of the dwelling units in a multifamily development shall have more than two (2) bedrooms.
- 551.4 No floor except an unoccupied basement shall be below grade at its entire perimeter.

#### **560 TRAILERS**

- 561** No automotive type of trailer, whether mobile or immobile, shall be occupied for living purposes or business purposes except as provided in the following paragraph.
- 562** The Board of Selectmen may license the temporary use of a mobile trailer for such purposes for a period not to exceed thirty days in any one year, provided application for said license is made within three days after the unit is located in the town.
- 563** Temporary on-site trailers used for construction purposes shall be exempt from the provisions of this Section, but shall be subject to applicable requirements of the State Building Code.

#### **570 TELECOMMUNICATIONS FACILITIES**

##### **571 General Provision for wireless Communication Facilities**



- 571.1 Special Permit Requirement. Wireless communications towers and facilities (including antennae and accessory structures, if any) may be erected only upon issuance of a special permit with site plan approval by the Board of Appeals, subject to the conditions of this Section 570.
- 571.2 No special permit shall be issued under this Section 570 unless the applicant demonstrates to the reasonable satisfaction of the Board of Appeals that:
- (a) no existing nonresidential structure or tower can accommodate the proposed wireless communications device; and,
  - (b) the geographical coverage area proposed for service is not served as required by applicable law by existing, approved or currently in permitting process, telecommunications facilities.
- 571.3 The Board of Appeals shall be required to find that the requirements of Section 571.2 (a) and (b) have been met.
- 571.4 Applicability: The provisions of this Section 570 (except Section 577) shall apply to any wireless communication tower or facility except the following:
- (a) An antenna structure used by a federally licensed amateur radio operator, provided that (1) the tower shall not be used or licensed for any commercial purpose, (2) the tower shall be set back from property lines a distance at least equal to its height.

## 572 Design Standards.

Construction of wireless communications towers shall be subject to all of the following conditions:

- 572.1 Tower Design. Only stealth monopole towers will be permitted. Stealth monopole towers must further be designed in such a way as to camouflage the tower to the extent practicable. Camouflage measures shall be as appropriate to surrounding area and may include design as a structure, such as a flagpole, a silo or other building or as a tree. Camouflage measures should be consistent with best and most effective industry practices prevailing at the time that application is made for permit. In no event shall the camouflage requirement be waived in the special permit process. Lattice and guyed towers are expressly forbidden.

- 572.1 Dimensional requirements. All telecommunications towers shall meet the following dimensional requirements:

Aspect	Dimensional Requirement
572.21 Tower Height	Greater of: (a) 80 feet above the mean finished grade at base of tower or (b) 60 feet above the mean height of prevailing and/or screening vegetation within Section 572.3 Buffer Zone.
572.22 Offset to Property Line	Height of Tower x 1.2
572.23 Offset to Public Way	Height of Tower x 2
572.24 Offset to existing dwelling or commercial structure which use involves regular human occupancy.	<p>Dwelling or commercial structure not owned by proponent of tower or owner of proposed tower site: 1000 Feet or 750 feet if the applicant submits a study of resultant radiation patterns showing that radiation originating from the tower will not exceed 0.1 percent of the federally mandated minimum exposure at the site of the dwelling.</p> <p>Dwelling or commercial structure owned by proponent of tower or owner of proposed tower site Height x 1.2</p>

**FOR PURPOSES OF APPLYING THE OFFSET TO PROPERTY LINE CONTAINED IN SECTION 572.22, THE CALCULATION OF THE PROPERTY LINE MAY BE MADE TO ANY**

**LINE ESTABLISHED BY WRITTEN AND RECORDED EASEMENT GRANTED BY ABUTTERS EXPRESSLY FOR SUCH PURPOSE.**

For purposes of applying the offset contained in Section 572.24, dwelling or commercial structure shall include a dwelling or commercial structure as to which a building permit has been applied for or received but which has not yet been constructed.

572.3 Buffer Zone. Each tower shall incorporate a buffer zone intended to provide for a fall zone in the event of destruction or damage to the tower or its fixtures and to provide a visual buffer to the public and abutters.

572.31 The buffer zone shall be determined in the discretion of the Board of Appeals, but shall in no event be less than the height of the tower x 1.2.

572.32 The Board of Appeals may require that screening vegetation be planted within the buffer zone for the purpose of providing a visual buffer to the public and abutters. Prevailing vegetation in the buffer zone that acts as a visual screen under the special permit or screening vegetation planted as a condition of the special permit shall be maintained (or replaced in the event it is destroyed) to the maximum amount practicable during construction and installation and for the time that the tower is present.

572.33 No structure is allowed within the buffer zone except an accessory building described in Section 572.4 or such pre-existing structures as are not used for regular human habitation or commercial occupancy.

572.4 Accessory Buildings. Each Tower may be served by a single telecommunications accessory building for each carrier not to exceed 300 square feet gross floor area. Such building shall be of a design consistent with the particular site and shall be screened from view of public or abutters as may be required by the Board of Appeals. Any electrical generators required in connection with the telecommunications towers shall be installed within such building.

572.5 Tower Lighting. Tower lighting shall not be permitted. If the FAA would require lighting of the proposed tower because of its height, the height should be reduced to the extent required to eliminate the need for lighting.

### **573 Design Requirements for Building Mounted Facilities**

Wireless communication facilities may be mounted on the roof or wall of an existing building or structure, or inside a structure (such as a steeple), subject to the following requirements.

573.1 The facility may include up to a maximum of 4 whip antennas, a maximum of 3 inches in diameter and 12 feet in length, which may extend a maximum of 15 feet above the highest portion of the structure to which they are attached.

573.2 The facility may include up to a maximum of 32 square feet, per building face, of sectioned panel area, which may extend a maximum of 6 feet above the highest portion of the building to which they are attached, and if they extend above the rooftop or top of the structure, they must be concealed.

- 573.3 Antennas on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached.
- 573.4 Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.
- 573.5 A single telecommunications facility accessory building, not to exceed 300 square feet gross floor area, may be constructed on the lot, provided that the building is similar in architectural style and materials to other structures on the site.

#### **574 Requirements Applicable to All Telecommunications Facilities.**

The following requirements shall apply to all wireless communications structure, whether involving a tower or building-mounted.

- 574.1 Microwave transmission. Facilities for microwave transmission are not allowed as either tower or building mounted facilities.
- 574.2 Network Connections. All network connections from the communications site shall be via land lines.
- 574.3 Co-Location. Towers shall be designed to accommodate facilities for at least four carriers. Building mounted facilities shall be configured, to the extent possible to allow for the placement of at least three carriers. The owner of the tower or building must agree to co-location by such carriers at current market rate.
- 574.4 Performance guarantees: In order to ensure that towers and associated sites and facilities are maintained in a safe condition and in compliance with the purposes and standards of this section, the following requirements shall apply to all wireless communication towers:
- (a) A bond shall be posted to cover the cost of removal of the tower and accessory structure when discontinued or obsolete. The bond shall be for the full estimated cost of removal, as determined and approved by the Board of Appeals. The term of the bond shall be for the full term of the special permit plus 36 months after abandonment of use unless earlier released by Zoning Board of Appeals upon removal of tower.
  - (b) A bond shall be posted for the maintenance of the site, access road, tower and accessory structure. The bond shall be in a reasonable amount, determined and approved by the Board of Appeals, and the term of the bond shall be for the full term of the special permit.

#### **575 Non Use.**

Any wireless communications tower, facility or accessory structure that has not been used for two years shall be dismantled and removed by the owner or by the Town at the owner's expense.

#### **576 Direct Broadcast or MMDS Antennas**

- 576.1 Direct broadcast and MMDS antennas shall be subject to the height regulations for the zoning district in which they are located; and shall not be located in any required setback or yard.
- 576.2 A special permit with site plan review shall be required for the installation or use of a direct broadcast or MMDS antenna that is greater than two meters in diameter or diagonal measurement if located in a Commercial, Commercial –Village, Limited Business or Limited Industrial district; or greater than one meter in diameter or diagonal measurement if located in any other zoning district.

## **577 Special Permit Procedures**

### **577.1 Submittal Requirements.**

- (a) An application for a permit for a wireless communications tower or other exterior wireless communications facility shall include information reasonably required to determine that such facility will meet the requirements for special permit as set forth in this Section 570. Such information shall include, but not be limited to: (i) information required to support the findings required by Section 577.2; (ii) a plan showing the coverage area of the proposed telecommunications facility; (iii) information and plans showing compliance with dimensional criteria of Section 572; (iv) detailed plans and narrative description of camouflage design; (v) detailed plans showing the location and configuration of co-location facilities.
- (b) An applicant for a permit for an enclosed wireless communications facility (as defined in Article 15) shall include a site plan showing the location and boundaries of the lot, adjacent streets or ways, the structure in which the facility is proposed to be located and any other existing or proposed structures on the lot, and the location and owner's names of all adjacent properties.
- (c) The applicant shall also establish the existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower and that such equipment is necessary to provide federally mandated coverage over a specific geographical area.
- (d) Application Fee: The applicant shall submit a non-refundable application fee in the amount of \$1,000.00 at the time of application submission.
- (e) Expenses of the Board of Appeals: The applicant shall submit an additional amount not to exceed \$5,000.00. Such fee may be used by the Board of Appeals to cover expenses of, but not limited to, engineers, architects, attorneys and other services, deemed by the Board of Appeals to be reasonable and necessary for the appropriate review of the special permit application. Any amount of the application fee unspent at the time that the Special Permit is granted or withdrawn shall be returned to the applicant upon the applicant's written request. In the event that the reasonable expenses of the Board of Appeals exceeds the initial amount submitted hereunder, the Board of Appeals may require a further deposit in anticipation of such expenses as a condition to continued review of the application.
- (f) All plans required by this section shall be of standard 24" x 36" sheets and of sufficient scale to show clearly the aspect of the proposal presented.

### **577.2 Required Findings: The Board of Appeals may grant a special permit for a tower only if it makes all of the findings:**

- (a) That existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower and that the geographical coverage area of the proposed telecommunications facility is not served by existing or approved telecommunications facilities to the extent required by applicable law.

- (b) That the design and location of the tower and supporting facilities shall not have adverse visual effects on the environment to the extent feasible and that the design of the tower meets all the design criteria of the by-law.
- (c) That the supporting facilities meet the dimensional and design requirements of Section 572, the conditions required of all telecommunications towers and facilities required by Section 574 and other requirements of this Section 570.

At the discretion of the Board of Appeals, it may elect to conduct its review of the Application in two hearings: (a) a hearing to determine whether the findings required by Section 577.2(a) may be found; and, (b) a hearing as to whether the findings required by Section 577.2(b) and (c) may be found.

577.3 The Board of Appeals shall also establish the following Special Permit standard conditions:

- (a) that the telecommunications tower and facility be adequately maintained, including camouflage elements;
- (b) that any subsequently installed telecommunications facilities not substantially described in the initial application pursuant to Section 577.1(a) must be reviewed by the Board of Appeals at least 30 days before installation, such review to be a minor modification of the Site Plan, not requiring further notice or hearings;
- (c) That if construction of the telecommunications tower has not substantially begun, the Special permit shall expire two years from the later of: (i) the date of issuance of the special permit by the Board of Appeals; or (ii) the conclusion of all available and actively pursued appeals arising from the special permit application or issuance of the special permit.

## **580 ADULT USE ESTABLISHMENTS**

No Adult Use Establishment shall be located less than 500 feet from the boundary of a Residential–Agricultural District.

## **585 MEDICAL MARIJUANA AND ADULT USE MARIJUANA ESTABLISHMENTS**

### **585.1 Purpose**

- (a) (a). To provide for the placement of Marijuana Establishments and RMDs in appropriate places and under conditions in accordance with the provisions of Massachusetts General Law Chapters 94G and 94I.
- (b) To minimize the adverse impacts of Marijuana Establishments and RMDs on adjacent properties, residential neighborhoods, schools and other sensitive land uses.
- (c) To regulate the siting, design, placement, security, safety, monitoring, modification, and discontinuance of Marijuana Establishments and RMDs.

### **585. 2 Applicability**

- (a) No Marijuana Establishment or RMD shall be established except in compliance with the provisions of this Bylaw.
- (b) If any provision of this Section or the application of any provision of this Bylaw is held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

### 585.3 General requirements and conditions for all Marijuana Establishments and RMDs

- (a) The hours of operation of Marijuana Establishments shall be set by the Berlin Zoning Board of Appeals, acting as the special permit granting authority.
- (b) No Marijuana Establishment or RMD shall be located within 500 feet of the property boundary line of any lot in use as a public or private pre-school, primary or secondary school, junior college, college, licensed day-care center, church, library, park, playground, or other Marijuana Establishment or RMD. Distance shall be measured in a straight line from the nearest point of the property boundary line in question to the nearest point of the property boundary line where the Marijuana Establishment or RMD will be located.
- (c) On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments and RMDs unless permitted by a local ballot initiative process, as allowed by M.G.L. c.94G §3(b). The prohibition of on-site social consumption shall include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.
- (d) No Marijuana Establishment or RMD shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck, with the exception of vehicles used in the licensed transportation of marijuana and marijuana products
- (e) Marijuana Establishment or RMD shall be located within a permanent building and may not be located in a trailer, cargo container, or other similar nonpermanent, movable enclosure.
- (f) Marijuana Retailers and RMDs engaged in retail dispensing of medical marijuana shall not be permitted to have drive-through service.
- (g) No outside storage of marijuana, related supplies or promotional materials is permitted.
- (h) All Marijuana Establishments and RMDs shall be ventilated in such a manner that no:
  - a. Pesticides, insecticides, or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere.
  - b. Odor from marijuana can be detected by a person with a normal sense of smell at the exterior of the Marijuana Establishment or RMD or at any adjoining use or property.

### 585.4 Special Permit and Site Plan Approval Requirements

A Marijuana Establishment or RMD shall only be allowed by special permit from the special permit granting authority in accordance with Section 1220 of the Zoning By-law and site plan approval in accordance with Section 1230 of the Zoning By-law, subject to the following statements, regulation, requirements, conditions and limitations.

- 1. No special permit for any Marijuana Establishment or RMD shall be issued without site plan approval first having been obtained from the special permit granting authority, as provided for in Section 1230 Site Plan Review. In addition to the standards set forth herein, the site plan must meet all dimensional, parking, landscaping, and signage requirements within this Bylaw.
- 2. A special permit for a Marijuana Establishment or RMD shall be limited to one or more of the following uses that shall be prescribed by the special permit granting authority:
  - a. Marijuana Cultivator
  - b. Marijuana Product Manufacturer
  - c. Marijuana Retailer
  - d. Independent Testing Laboratory
  - e. Marijuana Research Facility
  - f. Marijuana Transporter
  - g. Registered Marijuana Dispensary
  - h. Any other type of licensed marijuana-related business

3. In addition to the application requirements set forth above, a special permit application for a Marijuana Establishment or RMD shall include the following:
  - a. The name and address of owner(s) of the Marijuana Establishment or RMD
  - b. Copies of all required provisional licenses or certificates of registration issued to the applicant by the Cannabis Control Commission and any other applicable regulatory agencies
  - c. Evidence of the applicant's right to use the site of the Marijuana Establishment or RMD for the proposed use, such as a purchase and sale agreement, deed, owner's authorization, or lease
  - d. A letter from the Town of Berlin Police Chief, or designee, acknowledging receipt and approval of the Marijuana Establishment or RMD security plan, including lighting, fencing, gate and alarms. The special permit granting authority shall only require submission of those portions of the security plan into the public record which are not otherwise confidential
  - e. All Marijuana Cultivators and RMDs engaged in cultivation operations shall submit a resource use plan to the Zoning Board of Appeals outlining planned practices for use of energy, water, waste disposal and other common resources and to ensure there will be no undue damage to the natural environment. The Resource Plan, if applicable, shall include an electrical system overview, proposed energy demand and proposed electrical demand off-sets, ventilation system and air quality, proposed water system and utility demand.
  - f. The applicant shall submit a traffic circulation plan for the site to ensure the safe movement of pedestrian and/or vehicular traffic on site. A traffic impact and access study shall be required for all Marijuana Retailers and RMD retail operations. The study shall be based on standard traffic engineering guidelines developed by the Massachusetts Environmental Protection Act (MEPA). The Zoning Board of Appeals may waive the requirement of a traffic impact study if, in the opinion of the Planning Board, a traffic impact study is not necessary to ensure safe movement of pedestrian or vehicular traffic on site.
  - g. All application requirements for Site Plan Review as specified in Section 1230 of this By-Law shall apply unless certain requirements are waived by the special permit granting authority as non-applicable to the particular applicant.
4. Mandatory findings. All site plan review and special permit determinations shall be conducted on a case-by-case basis, taking into consideration (i) the particular form of Marijuana activity proposed; (ii) the site location (including proximity of abutters, schools, sensitive natural habitat or historic resources; (iii) traditional uses of the site and their similarity to or difference from the proposed activities; and (iv) the intensity of the proposed activities, including impacts on neighbors and the environment. The special permit granting authority shall not issue a special permit for a Marijuana Establishments unless it finds that:
  - a. The Marijuana Establishment or RMD is designed to minimize any adverse impacts on abutters and other parties in interest, as defined in MGL c. 40A, Section 11.
  - b. The applicant has satisfied all the conditions and requirements as set forth herein and has received a provisional certificate of registration or license from the Cannabis Control Commission.
5. A special permit granted under this section shall have a term limited to the duration of the applicant's ownership of the premises as a Marijuana Establishments. Special permits may be transferred only with the approval of the special permit granting authority in the form of an amendment to the special permit after submission of all information required.

#### 585.5 Abandonment or discontinuance of use.

- 1) A special permit shall lapse if not exercised within one year of issuance

- 2) A Marijuana Establishment or RMD shall be required to remove all material, plants, equipment and other paraphernalia within six months of ceasing operations.

## **590 LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC**

### **591 Purpose**

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

#### **591.1 Applicability**

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

### **592 General Requirements**

The following requirements are common to all solar photovoltaic installations.

#### **592.1 Compliance with Laws and Regulations**

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

#### **592.2 Building Permit and Building Inspection**

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

#### **592.3 Fees**

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

#### **592.4 Site Plan Review**

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

##### **592.4.1 General**

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

##### **592.4.2 Required Documents**

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

**(a) A site plan showing:**

- i. Property lines and physical features, including roads, for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;



- iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
- iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- vi. Name, address, and contact information for proposed system installer;
- vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- viii. The name, contact information and signature of any agents representing the project proponent; and
- (b) Documentation of actual or prospective access and control of the project site (see also 592.5);
- (c) An operation and maintenance plan (see also 592.6);
- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance; and
- (f) Description of financial surety that satisfies 592.12.3

#### 592.5 Site Control

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

#### 592.6 Operation and Maintenance Plan

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

#### 592.7 Utility Notification

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

#### 592.8 Signage

Signs shall be in accordance with Article 9 and shall identify the owner or operator and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

#### 592.9 Lighting

Lighting fixtures for the illumination of outside areas shall be as low as possible while providing necessary light intensity levels for safety and security.

#### 592.10 Utility Connections

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

#### 592.11 Emergency Services

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

#### 592.12 Maintenance and Modification

##### 592.12.1 Maintenance

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

##### 592.12.2 Modifications

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

#### 592.13 Abandonment or Decommissioning

##### 592.13.1 Removal Requirements

Any large- scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 592.12.2 of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

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

##### 592.13.2 Abandonment

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

##### 592.13.3 Financial Surety

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Site Plan Review Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such

surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

593. Large-scale ground-mounted solar photovoltaic installations may be sited in the Residential-Agricultural Zone if the following conditions are met:

- a. Installations may be erected only upon issuance of a special permit with site plan approval by the Board of Appeals, subject to the conditions of this Section 593
- b. The parcel to be used for the installation must have a minimum of 50 acres
- c. An amount of land equivalent to the acreage utilized for the photovoltaic installation must have a protective covenant prohibiting its development that is acceptable to the requirements of the Berlin Conservation Commission and the Berlin Board of Selectmen. The protective covenant shall run concurrently with the lease for the photovoltaic installation.
- d. Adequate screening from abutters and the public way must be installed
- e. All provisions in Section 590 must be complied with

## ARTICLE 6: DENSITY AND DIMENSIONAL REGULATIONS

### 610 GENERAL REQUIREMENT

No division of land shall be made which results in the creation of any lot having dimensions smaller than the minimum required by this Section for the building or use located thereon within the district within which the lot is located.

### 620 TABLE OF DIMENSIONAL REGULATIONS

Minimum and maximum lot and building dimensions shall be as specified in the following table of dimensional regulations, subject to the further provisions of this Article.

District	Minimum Lot Area (Square Feet)	Minimum Frontage (Feet)	Minimum Lot Width (Feet)	Minimum Front Yard (Feet)	Minimum Side Yard (Feet)	Minimum Rear Yard (Feet)	Minimum Green Area	Maximum Building Height (Feet)
Residential & Agricultural	80,000	200	100	50	20	40	70%	35
Commercial-Village	80,000	200	100	25	30	40	50%	35
Commercial	80,000	200	100	25	30	40	50%	35
Limited Business	140,000	300	100	50	100	75	50%	35 <sup>*1</sup>
Limited Industrial	140,000	300	100	100	100	75	50%	35
Multiple Dwelling Apts.	80,000 s.f. for the first 3 units, plus 10,000 s.f. for each additional unit	200	100	100	50	50	70%	35
Agricultural-Recreation-Conservation	80,000	50	50	—	—	—	90%	35

<sup>1</sup> Residential Care Facilities for not more than 100 patients in the Limited Business district may, upon approval of the Special Permit Granting Authority have a maximum height of 42 feet and may be up to 3 stories if the structure is sprinklered."

## 621 Other Dimensional Requirements

In addition to the Dimensional Regulations of Section 620, the dimensional requirements of this section shall apply. The provisions of this Section shall not apply to uses within the Regional Shopping Center Overlay District.

- 621.1 Maximum Floor Area - Pre-existing Non-Conforming Lots (all Districts). The Maximum Floor Area allowed for a commercial, business or industrial use on a lot with an area of less than 80,000 square feet shall be as follows:

Lot area less than 20,000 square feet: Gross Floor Area not to exceed 1000 square feet.

Lot area less than 40,000 square feet; Gross Floor Area not to exceed 2000 square feet.

Lot area less than 80,000 square feet; Gross Floor Area not to exceed 3000 square feet.

- 621.2 Maximum Gross Floor Area – Conforming Lots. The maximum gross floor area allowed for lots in excess of 80,000 square feet shall be as follows:

District	Maximum Gross Floor Area
Commercial Village	2500 sq. ft. plus .05 x (Square footage of Lot minus 80,000 sq. feet), but not more than 4000 square feet.
Commercial	2500 sq. ft. plus .05 x (Square footage of Lot minus 80,000 sq. feet), but not more than 4000 square feet.
Limited Business (Single Story)	2500 sq. ft. plus .05 x (Square footage of Lot minus 80,000 sq. feet.)
Limited Business (2-3 Story)	3500 sq. ft. plus .10 x (Square footage of Lot minus 80,000 sq. feet.)
Limited Industrial	2500 sq. ft. plus .05 x (Square footage of Lot minus 80,000 sq. feet.)
Limited Industrial (2-3 Story)	3500 sq. ft. plus .10 x (Square footage of Lot minus 80,000 sq. feet.)

- 621.3 Increased Floor area with Open Space Preservation in CV and C Districts. In the CV and C districts, the maximum floor area may exceed the limit set forth in 621.2 as follows:

- The building lot area shall be at least 130,000 square feet.
- In addition to the required building lot area, the development must include the permanent restriction of development on additional land. Such land may be in the same parcel as the development or in a separate parcel or parcels, must be located in a residential zoning district, and must be adjacent to land in the CV or C district. The land shall be restricted by a perpetual restriction, approved by the Planning Board and enforceable by the Town of Berlin, which shall permit only the following uses: conservation, recreation, park purposes, agriculture, horticulture, forestry and wastewater treatment and water supply for the associated use.
- The maximum allowed gross floor area shall be 4,000 square feet plus the area of land preserved (excluding any wetlands, floodplain, land under the river protection bill and land with a slope greater than 15 %) multiplied by 0.04, but shall not exceed 25,000 square feet in any one building.
- The building shall exceed one story in height, and at least 40 percent of the gross floor area shall be provided above the first floor;

## **630 LOT AREA REGULATIONS**

[Reserved]

## **640 LOT FRONTAGE AND WIDTH REGULATIONS**

### **641 Reduction for Lots on Curves**

The minimum lot frontage may be reduced to one hundred seventy-five (175) feet when such frontage is located on the curve of a street whose centerline radius is four hundred (400) feet or less or on the turnaround of a cul-de-sac, provided that such lot conforms to all other district requirements and further provided that the shortest distance from side lot line to side lot line, measured through the center of the building to be placed thereon, shall be at least equal to the required frontage for the district.

### **642 Shopping Center or Limited Industrial Park**

In the case of a shopping center or limited industrial park, each building or establishment need not have the frontage specified in Section 620, provided that the total frontage is not less than that required.

### **643 Frontage Reduction for Rear Lots**

In the Residential and Agricultural District, the frontage of a lot may be reduced to one hundred (100) feet provided that the area of the lot is not less than 200,000 square feet and all other requirements of Section 620 are met. No more than one such lot may be created for any continuous four hundred (400) feet of frontage.

### **644 Lot Width**

Each building lot shall be configured such that the center of a circle having a diameter equal to the minimum lot width for the zoning district can be passed along a continuous (but not necessarily straight) line from the sideline of the street along which the frontage of the lot is measured to any point of the proposed or existing principal structure on the lot without the circumference of the circle intersecting any side lot line.

## **650 SETBACK REGULATIONS**

### **651 Corner Lots**

In the case of a lot having frontage on two (2) streets, the front yard requirements shall apply to both sides of lot having such street frontage.

## **652 Exception for Existing Alignment**

If the alignment of existing principal buildings on adjacent lots on each side of a residential lot, fronting the same street and in the same zoning district, is nearer to the street line than the required front yard specified for the district, the required front yard shall be the average depths of such adjacent front yards, considering the front yards of abutting vacant lots as having the minimum permitted.

## **653 Accessory Buildings and Structures**

- 653.1 A detached accessory building or swimming pool may be erected in the rear or side yard area in conformance with the yard requirements of the district in which it is located. If the detached accessory building is a one story building to be used as a tool and storage shed, playhouse or similar use, and the floor area does not exceed 200 square feet, the rear yard minimum requirements may be reduced to twenty (20) feet.
- 653.2 An accessory building attached to its principal building shall be considered an integral part thereof, and as such shall be subject to the front, side, and rear yard requirements applicable to the principal building.

## **660 OPEN SPACE REGULATIONS**

For purposes of determining compliance with the minimum green area requirement, the following areas shall not be counted as green area:

- (1) Buildings and structures;
- (2) Paved surfaces such as sidewalks and roads;
- (3) Parking areas and driveways, whether hard top paved or other surface;
- (4) Wetlands;
- (5) More than 25% of lands included in the Flood Plain District.

## **670 BUILDING HEIGHT AND BULK REGULATIONS**

### **671 Height Increase in the LB and LI Districts**

Structures in the Limited Business and Limited Industrial Districts may exceed the thirty-five (35) foot height limit by no more than five (5) feet provided the written opinion of the fire chief is submitted with the application for a special permit from the Board of Appeals and provided the facility will be supplied with a fire prevention sprinkling system. In no instance shall a building have more than three (3) levels above the finished lot grade.

## **680 ADDITIONAL REGULATIONS FOR MULTIFAMILY DWELLINGS**

### **681 Setback Relation to Building Height**

No portion of any enclosing wall of any building and no portion of any permissible structure shall be nearer to the lot line than the distance equal to one and one-half times the height of the building.

## **682 Separation Between Principal Structures**

Principal buildings on a lot in single ownership shall be no less than one hundred (100) feet apart from each other.



## ARTICLE 7: ALTERNATIVE RESIDENTIAL SITE DEVELOPMENT

### 710 COMMON DRIVEWAYS

#### 711 General

711.1 Rebuttable Presumption: It shall be presumed that a single driveway serving a single dwelling and conforming to the standards of the By-Laws of the Town of Berlin shall be the preferable means of providing vehicular access to any dwelling. This presumption may be overcome by a positive showing by an applicant wishing to install a common driveway that one or more of the interests set forth in this section shall be substantially served by such installation.

- a. Public Safety. The applicant may show that traffic safety or other public safety concerns will be served by the construction of a common driveway as opposed to individual access to subject lots. The Planning Board may consider such things as relative distances to intersections, sight lines at access to the public way, traffic flow and density at the proposed access to the public way and the possible alternative sites and numbers of curb cuts in the proximity of the proposed driveway in their assessment of the applicant's showing. The Planning Board shall consider any statement issued by the Fire Chief, the Highway Superintendent or the Chief of Police in reaching its determination that the interest of public safety would be served by a proposed common driveway.
- b. Retention of Physical Characteristics of Land and Mitigation of Environmental Impact. The applicant may show that a common driveway would avoid significant alteration of the physical appearance of the land to be developed or that the construction of a common driveway would significantly reduce the impact of proposed development on the subject land. The Planning Board may consider such things as minimizing the alteration of topographical characteristics of land, including removal of rock outcrops and significant fill or grading, removal of trees and other vegetation or the removal or alteration of buildings of historical or architectural merit.
- c. Mitigation of Wetlands Impact. The applicant may show that alteration of Wetlands Resource Areas, as that term is defined in Massachusetts General Laws Chapter 131, Section 40 and regulations thereunder, will be reduced by the construction of a common driveway. The Planning Board may consider any information that is required to be supplied with respect to wetlands alteration under the terms of said section of Massachusetts General Laws and the regulations thereunder. A statement by the Conservation Commission as to whether such interests would be served by the construction of a common driveway shall be given consideration in the determination of the Planning Board.
- d. Other Factors. The Planning Board may from time to time adopt other factors that may serve to overcome the presumption that single driveways are preferable to common driveways by regulation promulgated in accordance with Section 1226 of this By-Law.
- e. Common Driveways must serve at least three lots.

711.2 No Common Driveway Unless Presumption Overcome: A common driveway may be installed under special permit issued by the Planning Board in accordance with the terms of this By-law. No special permit for a common driveway shall be issued unless the presumption that single driveways are preferable shall be overcome. A determination that such presumption has been overcome shall be made by the Planning Board in its reasonable discretion and upon the facts presented by the applicant in accordance with Section 712 of this by-law.

## 712 Application Requirements

712.1 Application Form: Each applicant shall complete an application in the form as the Planning Board may from time to time determine.

712.2 List of Abutters: The applicant shall supply a list of the names and mail addresses of all abutters to any land to be served by the proposed common driveway as well as any landowners who own any land within three hundred feet of the proposed entrance of the common driveway on a public way, such abutters and landowners to include those owning land on either side of the public way to be accessed by the common driveway.

712.3 Plans: The applicant shall provide plans of the common driveway in accordance with the requirements of this subsection.

- a. Preparation and Form of Plans. Plans shall be prepared and certified by a registered land surveyor on each page in conformity with rules and standards established by the Worcester County Registry of Deeds. Plans shall carry a legend on each page as follows: "Common Driveway Special Permit Issued by Berlin Planning Board dated \_\_\_\_\_". Plans shall be drawn to the scale indicated in the following paragraphs.
- b. Content of and Number of Plans. Plans shall show three views of the proposed common driveway in accordance with this Subsection 712.3b. The Applicant shall present four copies of each of the plans required by this section.

1. Overall Plan. This plan shall be drawn to a scale of 200 feet to the inch and shall show the location and dimensions of the proposed common driveway, including all lots (in their entirety) that are proposed to be served. In addition, the public way on which the proposed common driveway is to enter is to be shown for a minimum of 300 feet on either side of the proposed access. The property lines of abutters and landowners whose names and addresses are required to be supplied in accordance with Section 712.2 are to be shown and the properties to be labeled with the name of the owners. This plan shall designate Flood Plain District Lines and Wetlands Resource Areas and shall show any public shade trees and any stone walls to be affected by the installation of the driveway.

The overall plan shall also show existing and proposed contours at a minimum of five foot intervals in the vicinity of the common driveway so that proposed drainage patterns and arrangements may be evaluated. The overall plan shall also indicate the location of emergency access direction signs as required by Section 713.3.

2. Cross-section Plan. The cross section plan shall be drawn to a scale of 10 feet to the inch and shall show a typical cross section of the proposed common driveway, a cross section of each wetlands crossing or drainage culvert and any additional cross sections deemed appropriate by the Planning Board.
3. Profile Plan. The profile plan of the proposed common driveway shall be shown in its entirety and shall show the grade prior to construction and after construction. The profile plan shall be drawn at a scale of 200 feet to the inch.
4. Signage Plan. The signage plan shall include a sketch of the proposed emergency access direction signs that shall be in accordance with Section 713.3.

- 712.4 Legal Documentation: Each application shall include the following items with respect to the legal documentation required to establish and maintain the proposed common driveway.
- a. The exact written terms of any easement, deed restriction or the like establishing the right of each lot to access over the proposed common driveway.
  - b. A copy of the maintenance agreement or similar arrangement that will provide for the upkeep and repair of the proposed common driveway in conformity with Section 714.2 of this by-law.
  - c. An opinion of counsel from the attorney for the applicant addressed to the Town of Berlin stating that the items required by Subsections 712.4a & 712.4b of this by-law are enforceable according to their terms if properly executed by the requisite parties and that the agreement or similar arrangement required by Subsection 712.4b of this by-law has been drafted in conformity with the requirements of Section 714.
  - d. Proof of the recording or registration of any document or plan required hereunder normally requiring such recording or registration.

### **713 Design Specifications**

No special permit shall be issued by the Planning Board for a common driveway unless such driveway conforms to the design specifications contained in this Section.

- 713.1 Offset to Property Not Served by the Proposed Common Driveway: At no point may a common driveway be less than fifty feet from the lot line of any lot not served by the common driveway. Access to any public way must be made through frontage of a lot served by the common driveway.
- 713.2 Design Specifications of Common Driveway: The following design specifications shall apply to the construction and design of a common driveway.
- a. **Minimum Width.** A common driveway must at all times have a minimum travel surface width of twelve feet.
  - b. **Surfacing and Driveway Bed.** The surface shall at all times be properly maintained but may be of any material deemed appropriate by the Planning Board in consultation with the Fire Chief, the Highway Superintendent and the Chief of Police. The driveway bed must be a minimum of twelve inches of gravel suitable to adequate drainage.
  - c. **Maximum Slope.** The maximum slope of any common driveway at any point shall be fifteen percent except for the first 40 feet after the intersection with the public way the maximum slope shall be seven percent.
  - d. **Intersection with Public Way.** The centerline intersection of the common driveway with the public way that is accessed must be greater than seventy (70) degrees. The intercept width of the common driveway at the edge of the pavement of the public way shall be a minimum of at least fifty (50) feet wide, tapering to the minimum width of twelve (12) feet over a minimum length of forty (40) feet measured from the centerline of the common driveway and the intercept of the pavement of the public way."
  - e. **Turnouts.** Passing turnouts must be constructed that provide a total width of at least eighteen feet of total driveway width over a course at least thirty feet in length and must be spaced not more than two hundred and fifty feet apart.
  - f. **Turnarounds.** A turnaround must be provided at each terminus of the common driveway that is at least forty-five feet wide and 35 feet in depth. The Planning Board, in consultation with the Fire Chief, the Highway Superintendent and the Chief of Police

may require alternate arrangements where they determine interests of public safety and emergency and commercial access and egress are adequately served by such alternate arrangement.

- g. Sight Lines and Distance to Intersections. In consultation with the Highway Superintendent and the Chief of Police, the Planning Board may require, either by regulation promulgated under Section 1226 of this By-law or with respect to any particular case, sufficient sight lines and distances to intersection to apply to a common driveway.
- h. Curves. The radius of all curves shall be great enough to allow passage of emergency vehicles.
- i. The Planning board may require professional services, i.e. geologist, engineer, counsel, etc. in an effort to render an appropriate and proper decision concerning the application, design specifications, etc. at the applicant's expense.

713.3 Signage: Two signs shall be installed at the entrance of the common driveway to the public way facing in each direction along such way. Such signs shall be clearly visible for a distance of at least one hundred feet along the public way in each direction. The sign shall give the number and, if different from the street name of the public way on which the common driveway intersects with a public way, the street name of the address of each residence served by the common driveway. At each intersection of the common driveway a similar sign shall indicate the direction of each dwelling served by the respective branches of the common driveway. All numbers and letters shall use black lettering on a non reflective white background and shall be of a size to be determined by the Planning Board in consultation with the Highway Superintendent, Fire Chief and Chief of Police. The signpost or other support of such sign shall bear two red or amber reflective disks of not less than two inches in diameter or width. The provisions of this subsection shall control over any signage requirements imposed by a zoning or other town by-law with respect to this subject matter.

## **714 Easements And Maintenance Requirements**

714.1 Deed Requirements: All deeds of ownership of lots served by a common driveway shall require that the owners of said lots must be members of a maintenance association, whose purpose is to provide for the maintenance of the common driveway. Each lot served by the common driveway must have permanent access to the common driveway by easements recorded in the Worcester County of Deeds. Such easement shall include the right to use the common driveway for all purposes to which private driveways are customarily used, including the right to install, maintain and repair drains, culverts and utilities located under, across or along the common driveway.

714.2 Association Agreement: The Association Agreement must impose upon the members the obligation of repair, maintenance and snow removal so as to cause the driveway, including the drainage serving the driveway, utilities located under, across or along the common driveway and the sightlines to the intersecting public way, to be repaired or maintained and snow to be removed in such a manner as to insure the continuous year-round access to each lot by fire, police, ambulance and other vehicles, the adequate delivery of public utilities to the lots served by the driveway, and so that the initial specifications of the common driveway are maintained.

714.3 Requirement of Enforceability: Each and every owner of a lot served by the common driveway should have the right to enforce the obligation of other owners of the lots so

served to repair and maintain the driveway in accordance with the Association Agreement and the applicable easements.

## **715 Completion And Bonding**

- 715.1 Requirement of Completion: No building permit may be issued with respect to a lot served by a common driveway until such driveway is complete to the specifications of the Special Permit unless completion bond is posted in accordance with the following section.
- 715.2 Performance Bond: In accordance with regulations to be established by the Planning Board, the Board may allow a building permit to be issued with respect to any lot served by an incomplete common driveway provided that sufficient bond has been placed with the Town by the Applicant to assure completion and provided that such lot shall be adequately served for emergency and commercial access by the portion of the driveway that has been completed.

## **716 Review, Fees, Filing And Public Hearing**

- 716.1 Planning Board to Review: The Planning Board shall be the authority for granting of special permits under this by-law.
- 716.2 Filing: Ten copies of such application as the Planning Board may from time to time require shall be submitted to the Planning Board by hand delivery during a regular meeting of the Planning Board for distribution along with a Common Driveway Checklist Form to Town Boards and Departments (to include the Town Clerk, Assessors, Building Inspector, Fire Chief, Police Chief, Highway Superintendent, Conservation Commission and the Board of Health.
- 716.3 Filing Date: The date of receipt of the application, together with all materials required by Section 712 of this By-law, shall be considered the filing date.
- 716.4 Public Hearing: A public hearing will normally be held within 30 days of the filing date unless the Planning Board notifies the Applicant that this period has been extended. Such extension, if made may not result in a hearing more than ninety days from the filing date.
- 716.5 Notices: A notice of the public hearing, in such form as may be determined by the Planning Board shall be mailed by the Applicant by registered mail to each abutter or other person required to be listed by Section 712.2 of this By-law at least 14 days before the date of the hearing. Such notice should further be published in a newspaper of general circulation in the Town for at least five business days that are not more than 30 and not less than 10 days prior to the public hearing. The Planning Board shall require proof of compliance with the requirements of this Section before convening the public hearing.
- 716.6 Decision by the Planning Board: The Planning Board shall render its decision within 30 days of the closing of the public hearing. A majority of those members of the Board present and voting at the time that the vote is taken shall be required to issue a special permit, but in all events, the positive votes of at least three members shall be required.
- 716.7 Appeal Period: An Applicant shall have 20 days from its receipt of notice of a negative decision to appeal such decision. Notices of appeals made to land court or superior court must be received by the Town Clerk within such 20 day period.

## **720 SENIOR RESIDENTIAL DEVELOPMENT**

### **721 Purpose**

The purposes of this section are:

- 721.1 to provide for housing options for a maturing population that reduce maintenance costs and are more affordable than traditional single-family dwellings;
- 721.2 to provide for a type of housing development that reduces demands on municipal and educational services;
- 721.3 to promote development that is in harmony with the town's natural features and resources, its historic and traditional landscapes, the existing and probable future use of adjacent land, and the general intent of the Zoning Bylaw; and
- 721.4 to establish flexible residential development standards and procedures that will support these objectives.

### **722 Special Permit**

- 722.1 General Provision: In the Senior Residential Overlay District, the Planning Board may grant a special permit for a Senior Residential Development (SRD) as an alternative to conventional subdivision.

### **723 Senior Residential Development Standards**

- 723.1 Permitted Uses: Land in an SRD may be used for residences and related open space uses as set forth in this Section 720.
- 723.2 Occupancy Restriction: The following provisions are intended to ensure that the dwelling units in an SRD are used as residences for persons of age 55 and older.
  - (a) Each unit in an SRD shall be occupied by at least one person 55 years of age or older.
  - (b) Children under age 18 may not reside in a dwelling unit in an SRD for more than six (6) months in any nine (9) month period.
  - (c) In the event of the death of the qualifying owner/occupant(s) of a unit, or foreclosure or other involuntary transfer of a unit in an SRD, a two-year exemption shall be allowed for the transfer of the unit to another eligible household.
- 723.3 Minimum Tract Size:
  - (a) The tract of land for an SRD must contain at least twenty (20) acres, and have at least two hundred (200) feet of continuous frontage on an existing Town way.

- (b) The Planning Board may permit lots on directly opposite sides of a street to qualify as a single tract of land. To permit such division of a tract of land by a street, the Planning Board must find that this would comply with the purposes of this section and not result in any more dwelling units than would be possible in accordance with the provisions of this Bylaw if the lots on either side of the street were developed separately. If the Board approves a tract of land divided by a street, it may permit the total number of permitted dwelling units to be constructed on either side of the street.

#### 723.4 Building and Dwelling Unit Requirements

(a) Building Types

- (1) Dwelling units in an SRD may be attached or detached, or a combination of these types.
- (2) No building shall contain more than four (4) dwelling units.
- (3) Not more than thirty percent (30%) of the dwelling units in an SRD shall contain three (3) bedrooms; and no dwelling unit shall contain more than three (3) bedrooms.

(b) Building Location Requirements

- (1) Residential buildings shall be set back from structures, ways, and boundaries as follows:
  - 20 feet from other structures within the SRD;
  - 20 feet from a private way or common drive within the SRD;
  - 75 feet from a public way or the boundary of the SRD.
- (2) Where the tract contains a pre-existing residential structure, the lot area for such structure after development of the SRD shall not be reduced below 80,000 square feet, and the frontage for such structure shall not be reduced below 200 feet.

(c) Maximum Residential Density

The residential density in an SRD shall not exceed three (3) dwelling units per acre of developable area, or six (6) bedrooms per acre of developable area. For the purpose of this computation, the "developable" area shall be the total area of the tract, including the Common Land, but excluding all wetlands, 100-year floodplains and areas subject to existing valid open space restrictions.

(d) Accessory Buildings and Structures

- (1) Accessory buildings and structures for the use of residents of the SRD and their guests may be permitted, including garages, clubhouses, swimming pools, tennis courts, cabanas, and storage and maintenance structures.
- (2) Accessory buildings and structures may be constructed on individual parcels within the SRD, or on land owned in common by the owners of the dwelling units in the development, or by an organization or entity owned and controlled by such dwelling unit owners.
- (3) Accessory buildings and structures shall be shown on the development plan and may not be constructed within the Common Land except as provided in Section 723.5 below.

(e) Streets and Utilities

All streets whether public or private, and all sewerage, drainage facilities and utilities, shall be designed and constructed in compliance with the Town of

Berlin Subdivision Rules and Regulations, except as specifically modified by the following design standards:

- (1) The minimum widths of public rights-of-way shall be forty feet (40').
- (2) The minimum widths of roadways (paved travel area) shall be sixteen feet (16') for streets providing access to fewer than 20 dwellings, eighteen feet (18') for streets providing access to 20 to 40 dwellings, and twenty feet (20') for streets providing access to more than 40 dwellings.
- (3) The maximum length of a private dead-end street may exceed 500 feet, provided that the minimum paved width of the street shall be eighteen feet (18'), and turnaround areas shall be spaced not more than seven hundred fifty (750') apart, and further provided that the presumptions for approval of common driveways, as set forth in Section 711.1, are met.

(f) Signs

An SRD may have one (1) free-standing sign at each principal access to the development from a public way, indicating the name and/or street address of the SRD. Such sign shall not exceed twelve (12) square feet in area per side nor four (4) feet in height. The provisions of Sections 912 through 934 shall also apply to signage within an SRD.

## 723.5 Common Land

(a) Dimensional Requirements

In an SRD, at least thirty percent (30%) of the total tract area shall be set aside as Common Land for the use of the SRD residents or the general public. The following additional requirements shall apply:

- (1) The minimum required area of Common Land shall not contain a greater percentage of wetlands, as defined in M.G.L. Chapter 131, Section 40, or 100-year floodplains than the percentage of wetlands or floodplains found in the overall tract of land on which the SRD is located.
- (2) Common Land shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of Common Land shall be permitted only when necessary for access, or if the Planning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose of SRD development.
- (3) Common Land may be set aside in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.
- (4) The Common Land shall include adequate upland access from a way or street, at least 40 feet wide.

(b) Use of the Common Land

- (1) The Common Land shall be dedicated and used for conservation, recreation, park purposes, outdoor education, agriculture, horticulture or forestry, or for any combination of such uses. No other uses shall be allowed in the Common Land, except as follows:
  - (i) A portion of the Common Land may be used for the construction of leaching areas associated with septic disposal systems serving the SRD or for water supply wells serving the SRD, if the Planning Board determines that such use will enhance the specific purpose of Senior Residential Development and promote better overall site



planning, and if such leaching areas or wells are approved by the Board of Health. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Land is used for the purpose of such leaching areas or wells, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the dwelling unit owners within the SRD.

- (ii) A portion of the Common Land may be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the SRD or adjacent land, if the Planning Board determines that such a use will enhance the specific purpose of Senior Residential Development and promote better overall site planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the Common Land.
  - (iii) A portion of the Common Land may be used for utility and drainage facilities serving the Senior Residential Development or adjacent parcels, and may be subject to easements for the construction, maintenance, and repair of such facilities.
- (2) The minimum required area of Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land.
  - (3) Unless otherwise designated in the Special Permit, the residual open land left unbuilt after development, if not in agriculture or forestry, shall be mowed at least once annually.
  - (4) The proposed use of the Common Land shall be specified on a Land Use Plan, and appropriate dedications and restrictions shall be part of the deed to the Common Land.
  - (5) The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purposes of Senior Residential Development.

(c) Ownership of Common Land

- (1) The Common Land may be conveyed in whole or in part to the Town of Berlin if approved by a majority vote of Town Meeting; or to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Land is to be dedicated; or to a corporation or trust owned or to be owned by the owners of the dwelling units within the Senior Residential Development. The Planning Board shall approve the form of ownership of the Common Land.
- (2) If any portion of the Common Land is not conveyed to the Town of Berlin, a perpetual restriction, approved by the Planning Board and enforceable by the Town of Berlin, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with provisions of an SRD as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual SRD.
- (3) The proposed ownership of all Common Land shall be shown on the Land Use Plan for the SRD.

- (4) At the time of its conveyance, the Common Land shall be free of all encumbrances, mortgages or other claims (including pre-existing conservation easements or restrictions), except as to easements, restrictions and encumbrances required or permitted by this bylaw.

#### 723.6 Maintenance

The owners of the dwelling units within the SRD shall be responsible for the maintenance of all common elements and facilities owned by and serving the residents of the SRD; and an organization of the owners shall be established to carry out these maintenance responsibilities.

#### 723.7 Additional Design Criteria

In addition to the standards set forth above, the SRD shall be designed in accordance with the following objectives, in order of priority:

- (a) Buildings and streets shall be placed on the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural use.
- (b) Buildings shall be sited within any woodland contained in the parcel or along the edges of the open fields adjacent to any woodland, so as to reduce any impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by the natural landscape features.
- (c) Buildings shall be sited in locations least likely to interrupt scenic vistas, as seen from the public roadways.
- (d) Buildings shall be sited in locations where the greatest number of units can be designed to take maximum advantage of solar heating opportunities.
- (e) Buildings shall be sited to avoid sensitive environmental features, including wildlife habitat, wetlands, water bodies, steep slopes or other important site features.
- (f) In the vicinity of existing historic structures on public roads, new buildings may be sited in clusters close to the road to reflect the traditional locations, patterns and setbacks of nearby existing historic buildings. Such roadside clusters shall be compatible with the scale of the surrounding neighborhood and shall maintain at least 75% of the existing undeveloped road frontage in conservation. Architectural design of new buildings (proportions, roof pitches, exterior materials and fenestration) shall reflect the character of nearby existing structures.
- (g) The Planning Board may require that not less than five percent nor more than ten percent of the units of the SRD, and the common facilities of the SRD, be handicapped accessible. In determining that the design of any unit is handicapped accessible, the Planning Board shall generally be guided by the standards of the Americans with Disabilities Act and regulations thereunder, provided that such standards shall be applied with the goal of achieving practical accessibility with due consideration that the dwelling units and common facilities are neither public facilities nor subject to the Americans with Disabilities Act as a matter of law.

### **724 Special Permit Application and Procedures**

- 724.1 General: An application for a Senior Residential Development special permit shall cover the entire Senior Residential Development.

724.2 Submission of Site Plan: The application for a Senior Residential Development Special Permit shall be accompanied by ten (10) copies of an SRD Site Plan and additional documentation as set forth below.

724.3 Site Plan Contents: All site plans shall be on standard 24" by 36" sheets, unless otherwise permitted; shall be prepared by a registered architect, landscape architect, and/or professional engineer; and shall include all of the plans and information listed below:

- (a) An "Existing Conditions Plan" (at a scale of not less than 1" = 200') showing topography, soil types, watercourses, wetlands and 100-year floodplains; existing streets; and structures within and contiguous to the tract.
- (b) An "Overall Land Use Plan" (at a scale of not less than 1" = 200') showing the location, ownership, and uses of the proposed Common Land; the areas of residential use, the maximum number of residential units proposed, and the maximum number of bedrooms; any amenity or recreation areas serving the residential uses; and the general layout of all roads and access ways.
- (c) "Concept Plans" for the proposed SRD (at a scale of not less than 1" = 100') showing the proposed location of each residential building, accessory structure and facility; the proposed location of all roads and access ways, and approximate finished grades; the proposed location of all recreational areas, proposed improvements and structures on the Common Land; and methods for providing water and sewerage facilities.
- (d) A plan or plans showing the proposed grading of the tract and the proposed locations, dimensions, materials and types of construction of streets, common drives, parking areas, walks, paved areas, utilities, emergency access ways, and the locations and outlines of all proposed buildings and structures including, but not limited to dwellings, garages, and any accessory structures thereto. If the proposed SRD is to be constructed in separate phases, this plan or plans shall clearly indicate the construction phases proposed.
- (e) A plan or plans showing the proposed use of the Common Land (whether public or private), including all improvements proposed to be constructed thereon.
- (f) A plan or plans showing in a general way existing vegetation (at a scale of 1" = 40') and detailed landscaping and planting plans (at a scale of 1" = 40') for all areas to be disturbed and buffer areas.

724.4 Additional Application Materials: The following additional materials shall be submitted with the SRD site plan:

- (a) A tabulation indicating the total area, wetlands area and percentage of wetlands for the entire tract, the Common Land, and all lots to be created in the SRD.
- (b) A tabulation of proposed buildings by type (i.e., number of units per building, and number of bedrooms per unit).
- (c) Copies of all instruments to be recorded with the Senior Residential Development special permit, including the proposed deed(s) for the Common Land, the articles of organization and bylaws of any corporation or trust to be organized to own the land and the language of all restrictions to be imposed on the land.
- (d) A Management Plan for the Common Land to be incorporated in deed covenants to be executed with purchasers of land or other interests in the SRD.

724.5 Additional Information: The Planning Board may request additional information and data about site environmental conditions in order to assist it in making the determination required in Section 724.7(b).

724.6 Site Plan Review Procedure:

- (a) The Planning Board shall refer copies of the application within five (5) days to the Conservation Commission, Board of Appeals, Board of Health, Building Inspector, Board of Selectmen, Fire Department, Police Department and Highway Department, who shall review the application and submit their recommendations and comments to the Planning Board. Failure of a Board to make a recommendation within forty five (45) days of the referral of the application shall be deemed to be lack of opposition.
- (b) The Planning Board shall hold a public hearing to address the Special Permit application and Site Plan Approval application within sixty-five (65) days of the filing of a special permit application with the Planning Board. The Board shall then have ninety (90) days following the public hearing in which to act on the application.

724.7 Planning Board Action

- (a) In evaluating the proposed SRD, the Planning Board shall consider:
  - (1) the general purpose and objectives of this by-law;
  - (2) the existing and probable future development of surrounding areas;
  - (3) the appropriateness of the proposed layout of streets, ways, lots and structures;
  - (4) the proposed layout and use of the Common Land in relation to the proposed dwelling units in the SRD, the topography, soils and other characteristics of the tract of land in question; and
  - (5) the degree to which the proposed development would contribute to the supply of affordable housing in the Town.
- (b) The Planning Board may grant a special permit for an SRD if it finds that the SRD:
  - (1) complies with the requirements of this Section 720, other applicable requirements of the Zoning By-Laws and, where applicable, the construction and design standards of the Berlin Subdivision Rules and Regulations;
  - (2) is consistent with the purposes of this section;
  - (3) is sited on soil types that will support the proposed density of development; and
  - (4) is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood.

724.8 Special Permit Conditions: As a condition of approval, the Planning Board may require such changes in the proposed development plans and additional application materials and may impose such conditions and safeguards as it deems necessary to secure the objectives of this bylaw, and to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Berlin. Such conditions shall include the occupancy restrictions adopted under Section 723.2 and the permanent location, ownership and use of the Common Land approved under Section 723.5.

724.9 Additional Special Permit Conditions. As a condition of approval, the Planning Board may establish other special conditions as necessary to mitigate the impacts of the SRD on town services, such as (but not limited to): the arrangement for private disposal of solid waste

without use of town facilities for such disposal or arrangements for the private maintenance of roads within the SRD.

## **725 Change in Plans After Grant of Special Permit**

- 725.1 No change in the location or use of the Common Land shall be permitted. No change in any aspect of the approved SRD site plan shall be permitted unless approved in writing by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial.
- 725.2 No land for which a special permit for a Senior Residential Development has been granted shall be further subdivided, unless such special permit lapses or is rescinded.

## **726 Rules and Regulations**

The Planning Board may adopt and amend reasonable rules and regulations for the administration of this section. Such regulations shall include a schedule of fees and owner/occupancy reporting requirements to satisfy compliance with the age restriction, as well as such other items as the Board deems necessary.

## **730 INCLUSION OF AFFORDABLE HOUSING**

### **731 Purpose and Intent**

The purpose of this Bylaw is to increase the supply of housing in the Town of Berlin that is available to and affordable by low income and moderate income households who might otherwise have difficulty in finding homes in Berlin. It is to ensure that such housing is affordable over the long-term and provided in accordance with the requirements of Massachusetts General Law Chapter 40 B and its implementing regulations, the Berlin Comprehensive Permit Policy, the Berlin Master Plan and the programs of the Berlin Housing Partnership.

Accordingly, the provisions of the Section are designed to: (1) increase the supply of affordable rental and ownership housing in the Town of Berlin, (2) exceed the 10% affordable housing threshold established by the Commonwealth in M.G.L. Chapter 40-B, Section 20-23, (3) encourage a greater diversity and distribution of housing to meet the needs of families and individuals at all income levels, and (4) prevent the displacement of Berlin residents.

### **732 Definitions**

- 732.1 Affordable Housing Unit (AHU) -- A dwelling unit available at a cost of no more than 30% of gross household income of those households at or below 80% of the Boston MSA median income as reported by the U.S. Department of Housing and Urban Development, including units listed under MGL Chapter 40-B and the Commonwealth's Local Initiative Program.
- 732.2 Median Income -- The median income, adjusted for household size, for the Boston Metropolitan Statistical Area published by or calculated from regulations promulgated by the United States Department of Housing and Urban Development or any successor federal or state program.

- 732.3 Income, low or moderate –  
Low income - households making 50 % of the median income of the Boston MSA  
Moderate income – households making 80% of the median income of the Boston MSA
- 732.4 Project -- Any residential development including housing created both by new construction or remodeling and conversion of an obsolete or unused building or other structure from its original or more recent use to an alternate use, including those set forth in the section entitled "applicability." Where the project is a senior residential development as set forth below, the term "dwelling unit" shall be construed to mean "units within senior residential developments".

### **733 Applicability**

In all zoning districts, the provisions of this bylaw shall apply to the following uses:

- 733.1 any project that results in a net increase of six or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction or change of existing residential or non-residential space; and
- 733.2 any subdivision of land for development of six or more dwelling units; and
- 733.3 any senior residential development that includes six or more senior residential units and accompanying services

### **734 Provision of Affordable Units**

- 734.1 The development of any project as defined in this paragraph will require the granting of a special permit from the Planning Board.
- 734.2 As a condition for granting any special permit hereunder, applicants shall contribute to the Town's stock of affordable units in accordance with the following requirements:
- a. For projects resulting in a net increase of six or more dwelling units, the applicant shall be required to set aside a minimum of fifteen percent (15%) of the net increase as affordable units, and a minimum of fifteen (15%) of the total number of bedrooms provided as affordable housing.
  - b. Fractions: If when applying the percentage to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if one-half (1/2) or more shall be rounded up to the next whole number. If the resulting number of affordable units includes a fraction of a unit less than one-half, the equivalent cash value shall be paid to the Town to be used in the pursuit of increasing the Town's affordable housing supply.
  - c. Sale, lease or rental of units to low and moderate income households:  
Units set aside for sale, lease or rental to low and moderate-income households shall be restricted in perpetuity for occupancy by qualified households which meet the definition of "low" and "moderate" income set forth in this bylaw.
  - d. Distribution of affordability for rental and ownership units:  
In developments which are required to include fewer than three (3) affordable units all units shall serve moderate-income households.  
In developments which are required to include exactly three (3) affordable units,

One (1) affordable unit shall serve a low-income household and  
Two (2) affordable units shall serve moderate income households.

In developments which are required to include more than three (3) affordable units, the units shall be distributed as follows:

25% shall serve low-income households  
75% shall serve moderate income households

- e. Relationship to the State's affordable housing inventory: It is intended that the affordable low and moderate-income housing units that result from this bylaw be considered as Local Initiative Units in compliance with the requirements of the Commonwealth of Massachusetts Department of Housing and Community Development and or count as low or moderate-income housing units pursuant to MGL Chapter 40-B, 20-23.
- f. Relationship to public funding programs: Developers may participate in public subsidy programs and still meet the requirements of this Section. Such participation will be subject to the approval of the subsidizing agency and to the unit price limitations of the funding program, as well as those required by this Section. In case of conflicting price limitations, the lower price requirement shall prevail.

### 735 Standards

Projects containing affordable units shall meet the following standards:

- 735.1 Projects shall not be segmented or phased to avoid compliance with these provisions.
- 735.2 Affordable units shall be dispersed throughout the project so as to ensure a true mix of market-rate and affordable housing.
- 735.3 Affordable units shall conform to the general appearance of residences in the area and/or the project. Affordable units must contain at least 75% of the average floor area of the market rate units.
- 735.4 All affordable housing units created under this Bylaw shall be no less accessible to public amenities, such as open space, as the market-rate units.
- 735.5 The construction of the affordable units will be provided coincident with the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market rate units (%built)	Affordable housing units (%built)
Up to 30%	None required
30% to 50%	At least 30%
51% to 75%	At least 75%
76% or more	100 %

- 735.6 Preservation of Affordability; Restrictions on Resale:

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households in perpetuity. The resale controls shall be established through a deed restriction, acceptable to the Massachusetts Division of Housing and Community Development and the Berlin Housing Partnership, and recorded at Worcester County Registry of Deeds or the Land Court. Covenants and other documents necessary to ensure compliance with this section shall be executed and, if applicable, recorded prior to

and as a condition of the issuance of any building permit or certificate of occupancy, as the Planning Board shall deem appropriate.

Maximum rental price: Rents for the affordable units, including utilities shall not exceed 30% of the targeted annual gross household income.

Maximum sales price: Housing costs, including monthly housing payments, principal and interest payments, and insurance, shall not exceed 30% of the targeted gross household income.

Resale prices: Subsequent resale prices shall be determined in a manner consistent with the initial pricing of the affordable housing unit. The resale price will be established based on a discounted rate, which is the percentage of the median income for which the unit was originally sold. The method of resale price calculation shall be included as part of the deed restriction. This percentage may be increased or decreased by up to five per cent (5%) at the time of resale, in order to assure that the target income groups' ability to purchase will be kept in line with the unit's market appreciation and to provide a proper return on equity to the seller.

#### 735.7 Marketing Plan

The affordable units must be rented or sold using a plan for marketing which has been reviewed and approved by the Berlin Housing Partnership and the Berlin Planning Board. Such plan will be consistent with any affordable housing guidelines issued by the Berlin Housing Partnership. The plan shall describe marketing approaches, selection of occupants, initial rents and sales prices for the units designated as affordable and, prior to their being recorded, condominium, cooperative or other homeowner association documents as appropriate. This plan shall include a description of the lottery or other process to be used for selecting buyers, in conformity to Affordable Housing Guidelines.

#### 735.8 Preference for Berlin residents and persons employed within the Town of Berlin:

Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than fifty per cent (50%) of the affordable units shall be initially offered to current residents of the Town of Berlin who qualify under the income guidelines and who have resided in the town for a minimum of five years, to persons employed within the Town of Berlin for at least five (5) years, and to persons who, although not currently residents of the town, have previously resided in the Town of Berlin for a minimum of five years. The town may establish a system of priorities for selecting buyers or renters, in accordance with Affordable Housing Guidelines issued by the Berlin Housing Partnership.

#### 735.9 Ensuring that buyers are income eligible: Purchasers and would-be purchasers and renters are required to submit to the Berlin Housing Partnership copies of their last three year's tax returns and certify in writing that their income does not exceed eligibility guidelines.

### 736 Procedures

All projects shall comply with the following procedures as applicable:

#### 736.1 Pre-Application Meeting: The applicant shall convene a pre-application meeting with the Berlin Housing Partnership to discuss the project proposal and affordable housing requirements.



- 736.2 Submission of Affordable Housing Plan: The applicant shall fill out and submit an Affordable Housing Plan form to the Berlin Housing Partnership prior to making an application for a Special Permit. This form requires the following information:  
project units by location, square footage, unit types, number and types of rooms, and location of and number of affordable units. Specific floor plans shall be included with this submission.
- 736.3 Planning Board Application: The applicant shall make a formal application for a special permit to the Berlin Planning Board.
- 736.4 Housing Partnership Review: The housing partnership shall, in the next regularly scheduled meeting after necessary public notice, review the Affordable Housing Plan and prepare a recommendation to the Planning Board.
- 736.5 Planning Board Review: The Planning Board shall meet to hear the special permit application. The Planning Board decision may require modifications, conditions, and safeguards, including documentation regarding affordability. The Board shall explain any deviation from the Housing Partnership recommendations in writing in its decision.
- 736.6 Revised Affordable Housing Plan: As needed to secure Planning Board approval, a revised Affordable Housing Plan may be submitted to the Planning Board. No building permit shall be issued until the applicant submits proof that the special permit decision of the Planning Board has been recorded and that a final approval letter for the Affordable Housing Plan has been issued.

## **737 Enforcement**

- 737.1 Legal restrictions: Affordable units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent level, and sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the Berlin Housing Partnership.
- 737.2 The Berlin Housing Partnership shall maintain the Affordable Housing Inventory, to ensure compliance with approved plans.
- 737.3 The Berlin Housing Partnership or a designated 501(c)(3) organization assigned by the Town of Berlin will be the authority that will monitor, oversee and administer the details for all resale of any affordable units created under this Bylaw.

## ARTICLE 8: OFF-STREET PARKING AND LOADING

### 810 NUMBER OF PARKING SPACES REQUIRED

#### 811 Table of Parking Regulations

Off-street parking and loading spaces shall be required as follows:

Use	Number of Parking Spaces Required
Dwellings	One (1) parking space for each dwelling unit therein and sufficient off-street parking for usual visitors and employees
Places of public assembly	One (1) parking space for each three (3) seats therein, or one (1) space for each sixty inches (60") of bleachers or benches, plus one (1) space for every two (2) employees thereof
Schools	One (1) parking space for each classroom and office therein, plus one (1) parking space for each three (3) seats in the auditorium thereof
Hotels, Motels, and other places providing overnight accommodations	One (1) parking space for each room accommodation therein, plus one (1) space for each two (2) employees, and adequate spaces for delivery vehicles
Retail	One (1) space per 200 square feet of gross floor area
Office	One (1) space per 150 square feet of gross floor area for medical and dental offices, and one (1) space per 250 square feet of gross floor area for non-medical offices
Restaurants	One (1) space per 100 square feet of gross floor area
Manufacturing	One (1) space per 400 square feet of gross floor area
Warehousing and Storage	One (1) space for every two (2) employees on the largest shift, but not less than one (1) space per 5,000 square feet of area devoted to storage (whether inside or outside)
All other non-residential establishments, except agricultural	As determined by the Board of Appeals based on the projected parking requirements of the initial use, but not less than one (1) parking space per 200 square feet of gross floor area

#### 812 Reduction in Number of Spaces

Required off-street parking and loading spaces shall not hereafter be reduced, nor shall one be counted as or substituted for the other.

#### 813 Change of Use

If a change of use occurs that would result in the need for greater parking spaces the Zoning Enforcement Officer may require the construction of such additional parking spaces. Adequate provision for loading space shall be made in addition to the above parking requirements.

## **814 Maximum Number of Spaces**

Except in the case of parking spaces for dwellings, the number of parking spaces shall not exceed by more than thirty (30) percent the minimum number of spaces required in Section 811.

## **815 Location of Parking Spaces**

- 815.1 All required spaces shall be located on the same lot as the use with which such spaces are connected or, in the case of unenclosed spaces, within two hundred feet (200) of the lot.
- 815.2 Off-street parking and loading areas shall be permitted in the Town of Berlin only when required by and appurtenant to buildings and structures and other permitted uses constructed in the Town of Berlin.

## **816 Shared Parking**

Two (2) or more businesses may jointly provide the required spaces on one (1) or more of their lots. The number of spaces in any such joint facilities shall at least equal the total number required under the provisions of this Section for their individual uses.

## **817 Appurtenant parking**

Off-street parking and loading areas shall be permitted in the Town of Berlin only when required by and appurtenant to buildings and structures and other permitted uses constructed in the Town of Berlin.

# **820 DESIGN OF OFF-STREET PARKING AND LOADING AREAS**

All parking facilities shall comply with the following design standards:

## **821 Location on Lot**

Where a building lot contains five (5) or more parking spaces, no portion of any parking area on the lot shall be located closer to the street than the front line of any building on the lot; except that required handicapped parking spaces may be located in front of the front building line if necessary to provide handicapped access. In the case of a structure built under the provisions of Section 621.3 'Increased floor area with open space restriction', upon the determination of the Board of Appeals, the parking requirements of Section 821 may be waived.

## **822 Parking Space Dimensions**

Each parking space shall contain a rectangular area at least 19 feet long and 9 feet wide, except that a parking space for parallel parking shall be not less than 22 feet long by 9 feet wide.

## **823 Parking Area Aisles**

Parking area aisle widths shall conform to the following table:

Parking Angle	Minimum Aisle Width (One-Way Traffic)	Minimum Aisle Width (Two-Way Traffic)
0° (Parallel)	12'	20'
30°	13'	20'
45°	14'	21'
60°	18'	23'
90°	24'	24'

## **824 Internal Circulation**

Required parking facilities shall be designed so that each vehicle may proceed to and from its parking space without requiring the movement of any other vehicle. In no case shall spaces be so located as to require the backing or maneuvering on to a sidewalk or into a public or private way upon entering or leaving the space.

## **825 Paving**

Except in the case of parking spaces provided for dwellings, off-street parking and loading areas shall be paved to specifications prepared by the Selectmen with the advice of the Planning Board.

## **826 Illumination**

Except in the case of parking spaces provided for dwellings, off-street parking and loading areas which are used after sundown shall be illuminated during hours of business, with illumination so arranged as not to shine on abutting properties or on streets.

## **830 LANDSCAPING AND SCREENING**

### **831 Setback Areas**

All setback areas shall be maintained in as natural a state as possible. Only driveways, walkways, lawns, and naturally landscaped areas shall be allowed.

### **832 Screening of Parking and Loading Areas**

All open off-street parking and loading areas, permitted and/or required, shall be screened from all adjoining lots and streets by a landscaped area with a width of between 10 and 25 feet, based on the following sliding scale:

Number of spaces	Depth of buffer strip
Up to 10	10 feet
11-24	10 feet plus 1 foot for each space in excess of 10
25 or more	25 feet

Such landscaped area shall be densely planted with a mixture of deciduous and evergreen trees and shrubs, and shall create an effective visual barrier. All trees shall be a minimum of two and one-half inches (2-1/2") caliper (trunk diameter) when planted. Native trees and shrubs shall be planted wherever possible, in order to capture the spirit of the locale. Trees which die or become diseased shall be replaced.

This provision shall not apply to (1) parking areas for single-family dwellings, or (2) side lot lines separating one Limited Industrial or Limited Business use from another.

### **833 Parking Lot Landscaping**

Parking lots containing more than ten (10) parking spaces shall incorporate shade trees and green areas conforming to the following standards:

- 833.1 Parking areas must be shaded by deciduous trees (either retained or planted by the developer) that have or will have when fully mature a trunk at least 12 inches in diameter.

- 833.2 At least one (1) shade tree shall be planted in or adjacent to the parking area for each ten (10) parking spaces. In sites that are presently wooded the retention of a greater number of trees is encouraged.
- 833.3 Each tree shall be presumed to shade a circular area having a radius of 15 feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, 20 percent of the parking area will be shaded.
- 833.4 No paving may be placed within 12.5 feet of any tree retained to comply with this section, or within 4 feet of any new tree. All new trees shall be located so that they are surrounded by at least 200 square feet of unpaved area per tree.
- 833.5 Parking areas shall be laid out and detailed to prevent vehicles from striking trees. Vehicles will be presumed to have a body overhang of three feet, six inches.
- 833.6 Planting shall be done in accordance with proper landscaping practices. Minimum trunk size shall be two and one-half inches (2-1/2") caliper at planting measured four feet (4') from the ground. Native trees and shrubs shall be planted wherever possible, in order to capture the spirit of the locale. Trees which die or become diseased shall be replaced.

## **840 ACCESS AND DRIVEWAY STANDARDS**

### **841 General**

Required off-street parking and loading spaces shall have adequate vehicular access to the street.

### **842 Number and Location of Access Points**

- 842.1 Except for residential and agricultural uses, each lot may have either (a) one two-way driveway (for ingress and egress), or (b) two one-way driveways (i.e., one for ingress and one for egress) through its lot frontage.
- 842.2 The minimum distance between an entrance or exit drive at the street (right-of-way) line and the curb line of an intersecting street shall be fifty (50) feet.

### **843 Driveway Widths**

- 843.1 The minimum width of a driveway shall be ten (10) feet for one-way traffic and eighteen (18) feet for two-way traffic. The minimum width of a driveway for two-way traffic may be reduced to ten (10) feet when the driveway is not longer than fifty (50) feet and provides access to not more than five (5) spaces, and sufficient turning space is provided so that vehicles need not back onto a public street.
- 843.2 The maximum width of an entrance or exit drive at the street (right-of-way) line shall be twenty-four (24) feet in the Residential and Agricultural District and thirty (30) feet in any other district. If the driveway is divided to separate entrance and exit movements, the total width may be increased to fifty (50) feet.

## **844 Modifications**

The Board of Appeals, acting as the Special Permit Granting Authority, may authorize departures from the above standards as follows:

- 844.1 The Board may authorize a greater number of access driveways if it determines that such additional driveways are necessary to provide adequate area for safe vehicular turning movements and circulation. In any case, there shall be no more than one additional access driveway for each 200 feet of frontage, and all two-way access driveways on a single lot shall be at least 200 feet apart measured from the centerline of each access driveway.
- 844.2 The Board may authorize a driveway with a greater width than provided for herein when such width would facilitate traffic flow and safety.
- 844.3 No special permit to increase the number or width of driveways shall be granted unless the Board finds that the proposed design would provide greater traffic safety than a design conforming to the design standards set forth herein.

## **ARTICLE 9: SIGNS**

### **910 GENERAL**

#### **911 Permitted Signs**

Only signs which refer to an allowed use or an approved special permit use as set forth in Articles 3 and 4 of the Zoning By-law are permitted, provided such signs conform to the provisions of this Section.

#### **912 Prohibited Signs**

- 912.1 Billboards, streamers, pennants, ribbons, spinners or other similar devices shall not be constructed, posted or erected in any zone. Exceptions include flags and buntings exhibited to commemorate national patriotic holidays, and temporary banners announcing charitable or civic events.
- 912.2 Flashing signs, roof signs, signs containing moving parts, and signs containing reflective elements which sparkle in the sunlight are not permitted. Signs indicating the current time and/or temperature are permitted provided they meet all other provisions of this by-law.
- 912.3 Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises is not permitted. Exceptions are granted to Landmark Signs which may be preserved and maintained even if they no longer pertain to the present use of the premises.
- 912.4 No single sign, other than wall signs, shall be larger than twelve (12) sq. ft. on one side, or a total of twenty-four sq. ft., if both sides of the sign are to be used.
- 912.5 No sign, except for a traffic, regulatory, or informational signs, shall use the words "stop", "caution", or "danger", or shall incorporate red, amber, or green lights resembling traffic signals, or shall resemble "stop" or "yield" signs in shape or color.
- 912.6 No sign shall have more than three colors, except in instances of an illustration. "Day-glow" colors are prohibited. Signs incorporating light emitting diodes that indicate the current time and/or temperature or, fuel prices are permitted provided they meet all other provisions of this by-law.

#### **913 Illumination Standards**

- 913.1 Signs shall be illuminated only with steady, stationary, shielded external light sources directed solely onto the sign without causing glare.
- 913.2 Strings of bulbs are not permitted, except as part of a holiday celebration. In addition, strings of bulbs may be permitted to decorate trees at the discretion of the Planning Board, provided that such display does not interfere with neighboring land uses.
- 913.3 No sign shall be illuminated between the hours of 9 p.m. and 6 a.m. unless the premises on which it is located is open for business.

## **914 Placement Standards**

- 914.1 No person may erect a sign which is affixed to a fence, utility pole or structure, or tree, shrub, rock, or other natural object.
- 914.2 Signs shall not be mounted on roofs or extend above the roof line (unless mounted on a parapet wall which extends above the roof line, in which case the sign may not extend above the top of said parapet).
- 914.3 No sign together with any supporting framework shall extend to a height above sixteen (16) feet.
- 914.4 Signs shall not cover architectural details such as, but not limited to arches, sills, moldings, cornices, and transom windows.
- 914.5 Except for temporary signs, no sign shall be placed less than seven (7) feet from the paved surface of a public way or abutting lot lines unless attached to a building."

## **915 Safety Standards**

No person may erect a sign which:

- (a) is structurally unsafe;
- (b) constitutes a hazard to public safety and health by reason of inadequate maintenance, dilapidation or abandonment;
- (c) obstructs free entrance or exit from a required door, window, or fire escape;
- (d) obstructs light or air or interferes with proper functioning of the building; or
- (e) is capable of causing electrical shock.

## **916 Maintenance**

A sign shall be maintained in a secure and safe condition. If the Sign Officer is of the opinion that a sign is not secure, safe, or in a good state of repair, written notice of this fact shall be given to the person responsible for the maintenance of the sign. If the defect in the sign is not corrected within the time permitted by the Sign Officer, the Sign Officer may revoke the sign permit and take possession of the permit until the owner pays the cost of removal, thus placing the sign owner in violation of the sign by-law and liable for a fine as specified in Section 1320.

## **917 Exceptions**

For the purposes of this Section, the term "sign" shall not include the following:

- 917.1 Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, by-law, or other regulation.
- 917.2 A bulletin board or similar sign not exceeding twelve (12) sq. ft. in display area, in connection with any church, museum, library, school or similar public or semi-public structure, provided that the top of such sign shall not be more than eight (8) feet above



ground level, and provided that it does not possess any of the characteristics listed in Section 912 above.

- 917.3 Directional signs solely indicating ingress and egress placed at driveway locations, containing no advertising material, and where display area does not exceed two (2) sq. ft. or extend higher than three (3) feet above ground level. Such sign will conform in all respects with the requirements of this code.
- 917.4 Signs relating to trespassing and hunting, not exceeding two (2) sq. ft. in area.
- 917.5 Signs on gasoline pumps indicating price, brand etc.
- 917.6 Flags with the word "Open" printed on them, provided they are no larger than twelve (12) sq. ft.
- 917.7 Any existing community bulletin board whose sole use is for the purpose of informing the general public of events sponsored by civic and not-for-profit organizations.

## **918 Non-Conforming Signs and Sign Structures**

- 918.1 At the time of original adoption of these sign regulations in 1990, a seven-year amortization period was established within which non-conforming signs could continue to be displayed, so as to provide a reasonable opportunity for the owner to benefit from the investment made in the sign. This seven-year period has elapsed; therefore, signs and sign structures which do not comply with this by-law no longer qualify for protection as non-conforming structures, and shall be removed or otherwise brought into compliance with this by-law. Any such signs not removed shall be deemed a public nuisance, subject to the removal provisions of this Section, and shall be removed by the Town of Berlin if the sign owner or property owner fails to do so after being so ordered by the Sign Officer. Costs of said removal shall be borne by the sign and/or property owner and may be recovered by the Town, if necessary, in an action of contract in the District court, or by placing a lien, in accordance with appropriate state law, on the property from which the sign has been removed.
- 918.2 Removed Signs to be Stored: A sign or sign structure removed by the Town shall be held not less than (30) days by the Town during which period it may be recovered by the owner upon paying the Town for cost of removal and storage, and upon payment of any imposed fine. If not recovered with the thirty (30) day period, the sign or sign structure is hereby declared abandoned and title thereto shall be vested in the Town for disposal in any manner permitted by law.

## **920 ADMINISTRATION**

### **921 Permits**

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

- 921.2 Permits shall be issued only if the Sign Officer determines the sign complies or will comply with all applicable provisions of this by-law and the state Building Code, Article 14. Such application may be filed by the owner of the land or building, or any person who has the authority to erect a sign on the premises.
- 921.3 The Sign Officer shall act within 30 days of receipt of such application together with the required fee. The Sign Officer's action or failure to act may be appealed to the Board of Appeals under the provision of Chapter 40A.

## **922 Regulations and Fees**

A schedule of fees for such permits may be established and amended from time to time by the Planning Board.

## **923 Enforcement**

The Zoning Enforcement Officer is hereby designated as the Sign Officer, and is hereby authorized to enforce this By-law. The Sign Officer is authorized to order the repair or removal of any sign and its supporting structure which is judged dangerous, or in disrepair, or which is erected or maintained contrary to this By-law. Whenever a Sign Officer is designated, that person or Board should notify the State Outdoor Advertising Board.

## **924 Removal of Signs**

Any sign which has been ordered removed by the Sign Officer, or is abandoned or discontinued, shall be removed by the person, firm, or corporation responsible for the sign within thirty (30) days of written notice to remove.

## **925 Measurement of Sign Area**

- 925.1 Sign measurement shall be based upon the entire area of the sign, within a single continuous perimeter enclosing the extreme limits of the actual surface.
- 925.2 For a sign painted on or applied to a building, the area shall be considered to include all lettering, wording and accompanying designs or symbols, together with any background of a different color than the natural color, or finish material of the building.
- 925.3 For a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall, or window, the area shall be considered to be that of the smallest rectangle or other shape which encompasses all of the letters and symbols.
- 925.4 The area of supporting framework (for example brackets, posts, etc.) shall not be included in the area if such framework is incidental to the display.
- 925.5 When a sign has two (2) faces, the area of both faces shall be included in determining the area.

## **926 Measurement of Height**

The height of any sign shall be measured from the surface of the road up to the highest point of the sign. In situations where a sign is intended to be visible from two roads of different elevations, measurement shall be from the surface of the lower roadway.

## **930 GENERAL STANDARDS FOR TEMPORARY AND PUBLIC SERVICE SIGNS**

Temporary signs do not require a permit from the Zoning Enforcement Officer unless illuminated, provided they comply with the requirements set forth in this by-law. Such signs are not included in computing total sign area allowed.

### **931 Construction Signs**

931.1 Such signs shall not exceed six (6) sq. ft. in area, nor four (4) ft. in height.

931.2 One such sign may be maintained on the building or property for the interim of construction, and not more than thirty (30) days following the completion of said construction.

### **932 For Sale/Rent/Lease Signs**

An on-premises sign advertising the property being sold or rented.

932.1 Such signs shall not exceed six (6) sq. ft. nor four (4) ft. in height.

932.2 Such signs shall advertise only the property on which the sign is located.

932.3 A maximum of two such signs may be maintained on any property being sold or rented, and they shall be removed by the owner or agent within thirty (30) days of sale, rent, or lease.

### **933 Political Signs**

933.1 Such signs shall not exceed six (6) sq. ft nor four (4) ft. in height.

933.2 Disapproved by the Attorney General, April 2, 1998 and again June 24, 2013 and yet again in part August 19, 2015

### **934 Public Service Signs**

934.1 Such signs necessary for public safety and convenience shall not exceed (2) sq. ft.

934.2 Such signs shall bear no advertising.

### **935 Yard or Barn Sales Signs**

935.1 Such temporary signs shall conform to Section 914.1

935.2 Such signs shall be removed within three days of the completion of such sale and failure to do so may place the sign owner in violation of the sign by-law and liable to a fine as specified in Section 1320.

## **940 GENERAL STANDARDS FOR SPECIFIC TYPES OF SIGNS**

### **941 Address Signs**

941.1 Every building, including, but not limited to, dwellings, apartment buildings, condominiums, and business establishments shall have affixed thereto a number representing the address of such building. Said number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street or road providing vehicular access to such buildings. If visibility from the street or road is not practicable, then the number shall be attached to the building at a location that is visible from the building's driveway or main access way and, the address number shall also appear on a sign attached to a post or mailbox adjacent to the drive or main access way.

941.2 A sign containing an address number may include identification of an on-premises professional office or customary home occupation. Such sign may be attached to the building or may be on a post not more than eight (8) feet high. A maximum of one such sign is allowed on a lot and it may not exceed six (6) sq. ft. in area.

### **942 Awning Signs**

942.1 Such sign must be painted on or attached flat against the surface of the awning, but not extend beyond the valance or be attached to the underside.

942.2 Letters shall not exceed ten (10) inches in height.

942.3 A minimum of eight (8) feet above the sidewalk level must be allowed for pedestrian clearance.

### **943 Free-Standing Signs**

943.1 Dimensional standards for free-standing signs in different districts are specified below, based on the character of each area and the speed at which traffic usually travels within them.

**Table of Dimensional Standards for Free-Standing Signs**

	Industrial or Business	Commercial	Commercial Village	Agricultural Agricultural use	& Residential Residential use
Typical Speed Limit	35-55	35-45	20-35	25-45	25-45
Free-Standing Pole Signs					
Height (max. ft.)	16	12	10	8	8
Area (max. sq. ft./side)	12	12	10	10	3
Ground Clearance (min. ft.)	8	7	7	4	4
Other Free Standing Signs					
Height (max. ft.)	4	4	4	4	4
Area (max. sq. ft./side)	12	12	10	10	3
Ground Clearance (min. ft.)	0	0	0	0	0

943.2 Free-standing signs may have no more than two (2) sides.

943.3 A lot with frontage of three hundred (300) feet or more may have two (2) free-standing signs, not less than one hundred seventy five (175) feet apart.

#### **944 Illuminated Signs**

944.1 Neon window signs may be permitted in cases where they are custom designed to be compatible with the building's historic and/or architectural character, and where their color has been selected to harmonize with the building's exterior colors.

944.2 Gas-filled light tubes shall be allowed for indirect illumination and when placed in such a manner that the tubes are not exposed to view from any point along the public roadway or sidewalk.

#### **945 Marquee Signs**

945.1 Such signs may be painted on or attached flat against the surface of, but not extending beyond or attached to the underside of the overhang.

945.2 Letters or symbols shall not exceed ten (10) inches in height.

945.3 A minimum clearance of ten (10) feet above the sidewalk level must be allowed for pedestrian clearance.

#### **946 Painted Wall Signs**

946.1 Any new painted wall sign shall require a special permit, and shall comply with the dimensional requirements of a wall sign.

946.2 Painted wall signs which are landmark signs may be preserved and maintained, even if they no longer pertain to the present use of the premises.

## **947 Projecting Signs**

- 947.1 If flat, each face shall not exceed twelve (12) sq. ft.
- 947.2 The total area of a three dimensional sign shall be determined by enclosing the largest cross-section of the sign in an easily recognizable geometric shape and computing its area which shall not exceed nine (9) sq. ft.
- 947.3 Such sign shall be hung at a right angle to the building and shall not project closer than ten (10) feet to the curb line.
- 947.4 The supporting framework shall be in proportion to the size of such sign.
- 947.5 Signs which overhang a public way (including sidewalks) shall be covered by a public liability insurance policy which names the Town as the insured party.
- 947.6 Projecting signs shall have a minimum clearance of eight (8) feet above grade when located adjacent to or projecting over a pedestrian way. If projecting over an alley or driveway, the clearance must be at least thirteen (13) feet.

## **948 Wall Sign**

- 948.1 Such sign shall not project more than fifteen (15) inches from the building surface.
- 948.2 Such sign shall not obscure architectural features of the building, not limited to features such as arches, sills moldings, cornices, and transoms.
- 948.3 Such sign shall have an aggregate area not exceeding one and one half (1.5) sq. ft. for each lineal foot of building face parallel to a street lot line, or ten percent (10%) of the wall area to which it is attached, whichever is less. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.
- 948.4 Where two (2) or more wall signs are affixed to one wall, the gross display area shall be the sum total of all signs.
- 948.5 Wall signs shall not extend higher than the eave line or top of the parapet wall of the principal building.
- 948.6 The size of signs attached to buildings may be increased in area (over allowable size) by twenty-five 25% for every 100 feet of building setback. This shall apply to buildings set back more than 100 feet from the road right-of-way, and the increase may be pro-rated according to the actual setback distance.

## **949 Window Signs**

- 949.1 Window signs shall not exceed more than thirty percent (30%) of the window area in which they are displayed.
- 949.2 Non-temporary signs hung inside windows shall be made of clear materials such as plexi-glass with lettering painted on them.

## **950 SPECIAL SIGN PROVISIONS**

## **951 Landmark Signs**

An older sign of artistic or historic merit, uniqueness or extraordinary significance to the town. The character of such signs warrants their preservation in original condition, or their restoration. The Planning Board may determine that the total area or some portion of the total area of a Landmark sign should not be considered when figuring total area allowed on a given site.

## **952 Movable Signs**

Movable signs are not permitted in any district except Commercial District - Village and Commercial District. In these areas, movable signs made of wood, standing on legs, and not over four (4) feet in total height, may be allowed by special permit. Portable signs on wheels are not allowed in any District.

## **953 Multiple signs**

A group of signs clustered together in a single structure or compositional unit may be used to advertise several occupants of the same building or building complex.

- 953.1 The display board shall be of an integrated and uniform design.
- 953.2 The maximum sign area permitted is twelve (12) sq. ft. for the sign bearing the name of the building or office park, and two (2) sq. ft. for the name of each business or office located there.
- 953.3 Complexes with over 300 feet of frontage will be allowed two (2) free-standing signs.

## **954 Off-Premises Signs**

- 954.1 Informational and directional signs containing no advertising are permitted to direct traffic flow and locate businesses provided an annual fee is paid to the Town of Berlin. Such fee to be determined by the Planning Board. Specifications for Off-premise signs will be determined by the Planning Board.
- 954.2 Off premises signs shall be acquired, erected, and maintained by the business. Signs will be placed on the following streets near their junction with side roads. Such signs may be erected on Town property with the specific location to be determined by the Planning Board with the comments of other town officers.

West Street	Linden Street	Central Street
South Street	Pleasant Street	Highland Street
Coolidge Road	Sawyer Hill Road	Randall Road

Or any other street / road determined by the Planning Board

- 954.3 Any permitted use can have one Off-premises sign on one of the streets listed above.
- 954.4 Replacement or refurbishing of the sign shall be at the direction of the Sign Officer.
- 954.5 Off-Premises directory boards containing small identification signs conforming to the above requirements may be permitted in special situations where visibility is a significant problem and where they can be harmoniously integrated with the environment.

## **955 Individual Letters or Symbols**

- 955.1 Letters or symbols attached to an awning, marquee, building surface, wall or signboard shall not project more than twelve (12) inches from the building surface.
- 955.2 Such letters and symbols shall not obscure the architectural features of the building to which they are attached.
- 955.3 Such letters and symbols shall not extend above the lowest part of the roof, nor beyond the ends of the wall to which they are attached.
- 955.4 Letters or symbols shall have an aggregate area not exceeding one (1) sq. ft. for each foot of building face parallel to a street lot line, or ten percent (10%) of the wall area to which they are affixed, whichever is less. When a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.

## **960 SPECIAL SIGN PROVISIONS IN THE REGIONAL SHOPPING CENTER OVERLAY DISTRICT**

### **961 General**

Within the Regional Shopping Center Overlay District, all provisions of Sections 910 through 950 shall apply, except as modified below.

### **962 Permitted Signs and Dimensional Requirements**

The following requirements shall be substituted for the provisions of Sections 912.4, 912.6, 914.4, 914.7, 940 and 950:

Only the following types of signs shall be permitted:

#### **962.1 Free-standing pole signs:**

Maximum number	3 signs
Minimum distance between signs	175 feet
Maximum height	35 feet
Minimum ground clearance	12 feet
Maximum area	400 square feet per side
Maximum area of changeable copy	20 percent of total sign area

#### **962.2 Wall signs identifying: (i) retail stores having Gross Leasable Area of greater than 25,000 square feet; (ii) the food court; (iii) the tire, batteries and auto accessories store identified in Section 424.4; and (iv) the Regional Shopping Center, provided that no wall sign shall extend higher than the top of the parapet wall:**

Maximum number of signs:	2 times the total number of exterior public entrances
Maximum aggregate area of all signs on a wall:	5 percent of the area of the wall
Maximum projection from wall surface:	15 inches

#### **962.3 Wall signs designating loading areas, service courts, employee entrances and similar areas:**

Maximum number	No limit
Maximum height	8 feet



Maximum area 4 square feet

962.4 Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the site:

Maximum number: No limit

Maximum height: 8 feet

Maximum area:

Text: 25 square feet

Trademark, logo or other graphic: 20 percent of the total sign area

962.5 Banners shall be permitted, notwithstanding the requirements of Section 912.1.

### **963 Illumination Standards**

The following requirements shall be substituted for the provisions of Section 913, "Illumination Standards":

963.1 Signs may be illuminated either by back-lighting, internally or with shielded external light sources directed solely onto the sign without causing glare. All illumination shall be with steady, stationary light sources. Neon lighting is permitted, subject to reasonable limitations to be imposed by the Planning Board as to exterior use.

963.2 Signs shall be illuminated only between 9:00 A.M. and one-half hour after closing.

### **964 Administration**

No special permit or sign permit shall be required for signs that are in conformance with the standards set forth above, but such signs shall be approved by the Planning Board and shall be consistent with the Site Plan.

7. 921.4 – Delete 921.4 in its entirety.

8. 922 – Delete Section 922 in its entirety.

11. 933.2 - Add "Such signs shall be removed within thirty (30) days of the election."

## **ARTICLE 10: PERFORMANCE STANDARDS**

### **1010 BUILDING CONSTRUCTION**

All buildings shall be constructed in accord with the By-laws of the Town of Berlin.

### **1020 NOISE**

#### **1021 General Requirements**

1021.1 Noise as measured at any property line of the lot shall not exceed the following intensities:

7:00 A.M. – 11:00 P.M..... 55 dBA

10:00 P.M. – 7:00 A.M..... 50 dBA

1021.2 The above limitations shall not apply to:

- (a) Temporary construction activity that takes place between the hours of 7:00 A.M. and 7:00 P.M.;
- (b) Snow removal operations;
- (c) Parking lot vacuuming/sweeping operations or trash removal operations that take place between the hours of 7:00 A.M. and 7:00 P.M.;
- (d) Noise making devices which are maintained and utilized exclusively to serve as warning devices.

1021.3 During construction, the site contractor shall make reasonable efforts to limit noise associated with site work operations.

#### **1022 Special Provisions in the Regional Shopping Center Overlay District**

1022.1 The maximum sound levels in paragraph 1021.1 shall apply to land at the perimeter of the Regional Shopping Center in the Town of Berlin.

1022.2 Because the likely noise-generating activities will take place at a significant elevation above property lines that abut residential property, the maximum sound levels for the Regional Shopping Center established in paragraph 1021.1 shall be determined by measurements taken at the edge of the Development Lot property line at the same elevation as, or at a greater elevation than, the closest paved area of the Regional Shopping Center to the point of measurement.

### **1030 EXTERIOR LIGHTING**

#### **1031 General Requirements**

1031.1 No exterior lighting, other than street lighting approved by the Selectmen, shall shine on adjacent properties or towards any street in such a manner as to create a nuisance or hazard.

- 1031.2 Lighting intensity shall not exceed 0.2 foot-candles at the lot line, measured at ground level.
- 1031.3 Lighting fixtures shall not be attached to any structure or light pole at a height greater than twenty-five (25) feet from the ground.
- 1031.4 All lighting fixtures, with the exception of pedestrian lighting with a height of less than eight feet, 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 lot.

## **1032 Special Provisions in the Regional Shopping Center Overlay District**

- 1032.1 For a Regional Shopping Center in the RSCO district, the terms “adjacent properties” in paragraph 1031.1, “lot line” in paragraph 1031.2, and “lot” in paragraph 1031.4, shall be construed to mean “adjacent properties within Berlin,” “Development Lot boundary line within Berlin,” and “Development Lot within Berlin,” respectively.
- 1032.2 Certain types of lighting fixtures may exceed the height limit specified in paragraph 1031.3 as follows:
- (1) Lighting fixtures for the illumination of surface parking areas may be up to forty (40) feet above finished grade.
  - (2) Lighting fixtures for the illumination of parking decks shall be as low as possible while providing necessary light intensity levels for safety and security. Such lighting may be up to twenty-five (25) feet above the top level of such decks, but shall not exceed fifty-five (55) feet above the finished grade of the lowest parking level.
- 1032.3 Floodlighting of building facades or similar lighting used to identify the Regional Shopping Center (or individual establishments within the center) shall be prohibited from one-half hour after closing until one-half hour before opening, except that if an individual establishment having a separate entrance remains open when the Center is closed, that establishment’s identification lighting shall be permitted to be on from one-half hour before opening until one-half hour after closing of that establishment.

## **1040 HEAT, GLARE, VIBRATION AND RADIATION**

No heat, glare, or vibration shall be discernible from the outside of any structure, and all radiation shall be contained within a structure.

## **1050 DUST**

During construction, the site contractor shall make reasonable efforts to limit dust associated with site work operations.

## **1060 STORAGE**

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

## **1070 WASTE DISPOSAL AND WATER SUPPLY**

Regulations of the Massachusetts Department of Public Health and the Massachusetts Division of Water Pollution Control shall be met and shall be as indicated on the approved site plan.

## **ARTICLE 11: NONCONFORMING USES AND STRUCTURES**

### **1110 APPLICABILITY**

This Zoning By-Law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5, at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

### **1120 NONCONFORMING USES**

The Board of Appeals may grant a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- (a) Change or substantial extension of the use.
- (b) Change from one nonconforming use to another, less detrimental, nonconforming use.

### **1130 NONCONFORMING STRUCTURES**

The Board of Appeals may grant a special permit to reconstruct, extend, alter or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- (a) Reconstruction, extension or structural change to the existing structure;
- (b) Alteration to the existing structure to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
- (c) Reconstruction after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within twelve (12) months after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure.

### **1140 NONCONFORMING SINGLE AND TWO-FAMILY RESIDENTIAL STRUCTURES**

#### **1141 Allowed Changes**

Nonconforming single and two-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Zoning Enforcement Officer that such proposed reconstruction, extension, alteration or change does not increase the nonconforming nature of said structure, and the issuance of a building permit where applicable.

## **1142 Changes Requiring a Special Permit**

In the event that the Zoning Enforcement Officer determines that the nonconforming nature of such 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 than the existing nonconforming structure to the neighborhood.

## **1150 ABANDONMENT OR NON-USE**

A nonconforming use or structure which has been abandoned, or not used for a period of two (2) years, shall lose its protected status and be subject to all of the provisions of this zoning by-law.

## **1160 REVERSION TO NONCONFORMITY**

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

## **ARTICLE 12: ADMINISTRATION**

### **1210 BOARD OF APPEALS**

#### **1211 Establishment**

There shall be a Board of Appeals of five members appointed by the Selectmen as provided in Section 14 Chapter 40A of the General Laws of Massachusetts, as amended. The members shall be appointed for terms of such length and so arranged that the term of one appointee will expire each year, and thereafter, appointments shall be for a term of five years. The Selectmen shall also appoint three Associate Members, in like manner to sit on the Board in case of absence, inability to act, or interest on the part of a member thereof.

#### **1212 Powers**

This Board of Appeals shall have and exercise all the powers granted to it by this By-Law and by Chapters 40A, 40B and 41 of the General Laws of Massachusetts. The Board's powers are as follows:

- 1212.1 To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section 1220, or as otherwise specified.
- 1212.2 To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10.
- 1212.3 To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
- 1212.4 To hear and decide applications for comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

#### **1213 Public Hearings**

The Board of Appeals shall hold public hearings in accordance with the provisions of the General Laws, with regard to all appeals and petitions brought before it.

### **1220 SPECIAL PERMITS**

#### **1221 Special Permit Granting Authority**

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

## **1222 Public Hearings**

Special permits shall only be issued following public hearings held within sixty-five (65) days after the filing of an application with the Special Permit Granting Authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.

## **1223 Criteria**

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

- 1223.1 Social, economic or community needs which are served by the proposal;
- 1223.2 Traffic flow and safety, including parking and loading;
- 1223.3 Adequacy of utilities and other public services;
- 1223.4 Neighborhood character and social structures;
- 1223.5 Impacts on the natural environment;
- 1223.6 Potential fiscal impact, including impact on town services, tax base and employment.

## **1224 Conditions**

Special permits may be granted with such reasonable conditions, safeguards or limitations on time or use as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

## **1225 Expiration**

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

## **1226 Regulations**

- 1226.1 A Special Permit Granting Authority may promulgate regulations under this By-Law where specifically authorized to do so or where it deems regulation necessary to clarify or implement any provision of this By-Law. All such regulations shall require the vote of a majority of the members of the entire Board.
- 1226.2 Notice of making of regulations under this law is to be filed with the Town Clerk and posted at the Town Hall and at least one other public location in the Town at least 10 days before the meeting at which the regulation shall be presented for adoption. Such notice need not contain the text of the regulation, but must indicate the intention to make regulations under this By-Law.



## **1227 Fees and Expenses**

1227.1 A Special Permit Granting Authority may establish a schedule of Administrative Fees to offset the expense of review by the SPGA and its office of an application required by this By-Law. Such fee schedule shall be established by regulation promulgated in accordance with Section 1226.

1227.2 A Special Permit Granting Authority may also require a separate Project Review Fee to pay for the direct costs of review of applications which, as determined by the board, require the services of outside consultants for the review process due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. Such fee shall be imposed subject to regulations adopted in accordance with Section 1226 and G.L. Chapter 44, section 53G.

## **1230 SITE PLAN APPROVAL**

### **1231 Purpose**

The intent of site plan approval is to further the purposes of this by-law and to ensure that new development is designed in a manner which reasonably protects visual and environmental qualities and property values of the Town, and to assure adequate drainage of surface water and safe vehicular traffic.

### **1232 Projects requiring site plan approval**

No special permit or building permit shall be issued for any of the following uses unless a site plan has been endorsed by the Board of Appeals in accordance with the provisions of this section:

- a. the construction or exterior alteration of a commercial structure;
- b. the construction or exterior alteration of an industrial structure;
- c. any other use falling in a category specified in Section 320, Table of Use Regulations, which indicates Site Plan Approval is required;
- d. a change of any specific use allowed within such categories to another specific use allowed within the same category.

### **1233 Application**

1233.1 Each application for Site Plan Approval shall be submitted to the Board of Appeals by the current owner of record, accompanied by ten (10) copies of the site plan. A complete copy of the application and site plan shall also be filed with the Town Clerk.

1233.2 Each application shall be accompanied by a Site Plan Filing Fee to be determined by the Board of Appeals, and a Site Plan Review Fee equal to 0.5% of the construction value. Such fee will be used to cover any expenses connected with public hearing costs and the review of plans including the costs of any legal, engineering, planning or other consultant services necessary for review purposes. Any unused portion of the review fee will be returned to the proponent. Notwithstanding this section, expenses incurred by the Town in excess of any review fee shall be reimbursed by the applicant.

## **1234 Required Site Plan Contents**

All site plans shall be prepared by a registered architect, landscape architect, or professional engineer unless this requirement is waived by the Board of Appeals because of unusually simple circumstances. All site plans shall be on standard 24" by 36" sheets and in electronic format and shall be prepared at a sufficient scale to show.

- 1234.1 the location and boundaries of the lot, adjacent streets or ways, and the location and owner's names of all adjacent properties.
- 1234.2 Existing and proposed topography including contours, the location of wetlands, streams, water bodies, drainage swales, areas within the Flood Plain District, and unique natural land features.
- 1234.3 Existing and proposed structures both on the property and within two hundred (200) feet of the property lines, including dimensions and elevations.
- 1234.4 The location of parking and loading areas, driveways, walkways, access and egress points.
- 1234.5 The location and description of all existing and proposed septic systems, water supply, storm drainage systems, utilities, and refuse and other waste disposal methods both on the property and within two hundred (200) feet of the property lines.
- 1234.6 Proposed landscape features including the location and a description of screen, fencing, and plantings.
- 1234.7 The location, dimensions, height, and characteristics of proposed signs.
- 1234.8 The location and a description of proposed open space or recreation areas.
- 1234.9 The location and description of the proposed exterior lighting and the hours it will be in use.
- 1234.10 Written evidence from the Building Inspector, the Board of Health, and the Conservation Commission that the proposed use is capable of complying with the by-laws, rules, and regulations and statutes within their jurisdiction.

The Board of Appeals may waive any information requirements it judges to be unnecessary to the review of a particular plan.

## **1235 Procedures for Site Plan Review**

- 1235.1 The Board of Appeals shall refer copies of the application within five (5) days to the Conservation Commission, Planning Board, Board of Health, Building Inspector, Board of Selectmen, Fire Department, Police Department and Highway Department, who shall review the application and submit their recommendations and comments to the Board of Appeals. Failure of Boards to make recommendations within forty five (45) days of the referral of the application shall be deemed to be lack of opposition.
- 1235.2 The Board of Appeals shall hold a public hearing within sixty-five (65) days of the receipt of an application and after due consideration of the recommendation of the Board shall take final action within ninety (90) days from the time of hearing.

1235.3 The period of review for a special permit requiring site plan approval shall be the same as any other special permit and shall conform to the requirements of chapter 40 A, Sec. 9, "Special Permits." Specifically, a joint public hearing to address the Special Permit application and Site Plan Approval application shall be held within sixty-five (65) days of the filing of a special permit application with the Board of Appeals. The Board of Appeals shall then have ninety (90) days following the public hearing in which to act.

## **1236 Site Plan Review Criteria**

The following criteria shall be considered by the aforementioned Boards in the review and evaluation of a site plan, consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district in which it is located:

1236.1 If the proposal requires a special permit, it must conform to the special permit requirements of this by-law.

1236.2 The development shall be integrated into the existing terrain and surrounding landscape, and shall be designed to protect abutting properties and community amenities. Building sites shall, to the extent feasible:

- (a) minimize use of wetlands, steep slopes, floodplains, hilltops;
- (b) minimize obstruction of scenic views from publicly accessible location;
- (c) preserve unique natural or historical features;
- (d) minimize tree, vegetation and soil removal and grade changes;
- (e) maximize open space retention;
- (f) screen objectionable features from neighboring streets properties and roadways.

1236.3 Building Design Standards: The following design standards shall apply:

(a) Exterior Materials

- (1) Exterior walls shall be a combination of architectural materials, including but not limited to wood, brick, glass, stone, stucco, EIFS, precast concrete architectural panels, stainless steel, split face block. No standard scored or flat face block will be allowed.
- (2) Colors shall be medium values of natural building materials such as earth, stone, etc. Extremes of colors shall not be used except as accents at entrances, etc.

(b) Façade treatments

- (1) To avoid long unbroken expanses of wall, the architecture shall incorporate, as appropriate, design features providing horizontal and vertical relief including projections, building jogs, architectural detailing, and changes in surface materials.
- (2) The design of public entrance ways shall incorporate architectural features and elements to emphasize the entrance locations and interrupt long stretches of building façade.

(c) Relationships among structures and components

- (1) Buildings shall be designed with common elements that both create a sense of unity and express a relationship to the interior (for example, using ornamentation to reflect floor levels). These elements may include the horizontal spacing of bays, columns and windows; and the vertical alignment and spacing of floors.
- (2) Architectural detailing and surface textures and colors of adjoining components should be related and contribute to an overall sense of cohesion. While a variety

of design treatments is encouraged to avoid monotony, individual components shall be designed to avoid overly strong contrasts.

- (d) Rooftop mechanical features (heating and air conditioning units, vents, stacks, mechanical penthouses) shall be screened by use of parapet walls or similar elements.
- (e) Service areas such as loading areas, dumpsters, etc. shall be shielded consistent with vehicular access, to provide visual screening.
- (f) The initial site plan submitted for review under the Site Plan Approval process shall include specific reference to these design standards and shall include a memorandum describing compliance with the design review standards.

1236.4 The development shall be served with adequate water supply and waste disposal systems. For structures to be served by on-site waste disposal systems, the applicant shall submit a septic design prepared by a Certified Engineer.

1236.5 The plan shall maximize the convenience and safety of vehicular traffic and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site.

1236.6 The site plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased run-off and potential for flooding. Drainage shall be designed so that run-off shall not be increased, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

1236.7 The development will not place excessive demands on Town services or infrastructure.

1236.8 Electric, telephone, cable TV, and other such utilities shall be underground where physically and environmentally feasible.

1236.9 Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened to protect the neighbors from objectionable features.

1236.10 The site plan shall comply with all zoning requirements for parking, loading, dimensions, environmental performance standards, and all other provisions of this by-law.

Before approval of a site plan, the reviewing board may request the applicant to make modification in the proposed project design to ensure that the above criteria are met.

## **1237 Final Action**

The Board of Appeals final action shall consist of either:

- a. A determination that the proposed project will constitute a suitable development and is in compliance with the criteria set forth in this by-law;
- b. A written denial of the application stating the reasons for such denial; or
- c. Approval subject to any condition, modification, and restriction as the Board of Appeals may deem necessary.

## **1238 Enforcement**

1238.1 The Board of Appeals may require the posting of a bond to assure compliance with the plan and conditions covering such items as landscaping, road construction, drainage and similar elements of the project and may suspend any permit or license when work is not performed as required.

1238.2 The Board of Appeals may periodically amend or add rules and regulations relating to the procedures and administration of this section.

## **1240 AMENDMENT**

This by-law may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Section 6 of Chapter 40A.

## **ARTICLE 13: ENFORCEMENT**

### **1310 ZONING ENFORCEMENT OFFICER**

This by-law shall be enforced by the Zoning Enforcement Officer in the manner prescribed by Chapter 40A of the General Laws of Massachusetts. Unless otherwise designated by Town Meeting, the Zoning Enforcement Officer shall be the Building Inspector.

### **1320 VIOLATIONS**

Whoever violates any provision of the foregoing Zoning By-laws may be punished by a fine not exceeding \$300.00 for each offense. Each day such violation continues shall constitute a separate offense.

## **ARTICLE 14: DEFINITIONS**

For the purpose of this by-law, certain terms and words are herein defined as follows:

Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number; the word “shall” is mandatory and not directory; the word “building” includes the word “structure”; the word “lot” includes the word “plot”; and the word “land” includes the words “marsh” and “water”.

### **Accessory Building or Use**

A use or detached building, which is subordinate to the main use or building, and located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of the land. Where a substantial part of the wall of an accessory building is a part of the wall of the main building, or where an accessory building is attached to the main building, such accessory building shall be counted as a part of the main building in determining site location.

### **Adult Use Establishment**

An establishment for which a substantial or significant portion of its business consists of:

- (a) the display of films or other forms of entertainment distinguished or characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31; or
- (b) the trade, rental or sale of books, magazines, films, videotapes, paraphernalia or other materials characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

### **Affordable multi-family house**

A structure containing no more than 4 units and no more than 10 total bedrooms and no more than three bedrooms per unit. Provided that all dwelling units meet the affordability criteria contained in section 730 of the Berlin Zoning By-Law.

### **Apartment, Accessory**

A group of rooms in an owner-occupied single family residence, or in a separate structure accessory to such residence, with its own bathroom and kitchen facilities, used as a separate apartment.

### **Apartment, In-Law**

A group of rooms in an owner-occupied single-family residence, with its own kitchen and bathroom facilities, used as a separate apartment for a limited number of persons such as in-laws, elderly persons, or grown children.

### **Assisted Living Residence (ALR)**

A facility as defined by MGL Chapter 19D, containing Assisted Living Units and associated uses that provides room and board and assistance with activities of daily living and personal care services for three or more non-related adults.

### **Assisted Living Unit**

One or more rooms in an Assisted Living Residence designed for and occupied by one or two individuals

### **Bed and Breakfast**

A use, accessory to a dwelling unit, consisting of overnight lodging with breakfast. In a bed and breakfast no meals other than breakfast shall be served and no breakfast shall be served nor shall any retail and consumer services be provided to any member of the public not lodged as an overnight guest.

**Building**

A structure having a roof or cover supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

**Building Lot**

A building lot is that area of land described in an application for a building permit or an application to the Board of Appeals for a special permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a street which is relied upon to qualify the lot as to frontage.

**Building, Main or Principal**

A building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling or apartment building shall be deemed to be a main building on the lot on which the same is situated.

**CCRC Independent Living Unit**

A Dwelling located within a Continuing Care Retirement Community, excluding any units, rooms or other areas within a CCRC that are used as Assisted Living Units, Residential Care Facilities (such as, memory support, nursing and similar units and/or facilities)

**Continuing Care Retirement community (CCRC)**

A facility providing living accommodations (including any combination of CCRC Independent Living Units, Assisted Living Residence, and/or Residential Care Facilities) and communal facilities for persons over age 62 and that includes at least (a) responsible staff on-site 24 hours a day; (b) a common dining area in which at last one main full meal is served each day; (c) optional laundry, housekeeping and personal services available to residents; (d) transportation services; and (e) common indoor passive or active recreational areas and access to outdoor passive or active recreational areas. Such a facility may include: (a) medical and/or nursing home components, (e.g. Residential Care Facilities); and (b) amenities, retail sales and services for the convenience of residents.

**Convenience Store**

A retail store with a floor area of less than 3,500 square feet that sells groceries and household items and may also sell gasoline, does not include

**Day Care Home**

Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs. In either case, the total number of children under sixteen in a family day care home can not exceed six, including participating children living in the residence. A family day care home does not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

**Development**

"Development" shall mean a single parcel or set of contiguous parcels of land held in common ownership at any time on or after the date of adoption of this by-law, for which one or more building permits will be sought.

**Development Lot**

The land depicted on the Development Plan for a Regional Shopping Center as being within the boundaries of the RSCO District.

**Development Plan**

A plan, together with all explanatory matter thereon, adopted or amended by Town Meeting for a Regional Shopping Center Overlay District. The Development Plan includes:

- (1) A preliminary site plan showing:



- (a) Boundaries of the Development Lot and areas and buildings within 100 feet of the boundaries of the Development Lot;
- (b) Existing water bodies, statutory wetlands and buffer areas, and 100-year flood plain areas;
- (c) The approximate location and layout of all buildings and structures; parking areas, access and circulation facilities; stormwater management facilities; and major landscaped and buffer areas; the specific locations to be approved by the Planning Board as part of the Site Plan Approval process.

The preliminary site plan shall serve as the basis for the final site plan to be approved by the Planning Board through the Site Plan Approval process.

(2) Overlays on the preliminary site plan:

- (a) An overlay delineating the “permissible building area”, “permissible parking structures area”, “permissible basement area” and “permissible impervious surface area”.
- (b) An overlay delineating the areas within which building heights may be up to 80 feet, as provided in Section 425.3.

The delineation of the “permissible building area”, the “permissible parking structures area”, and the “permissible impervious surface area” shown on these overlays shall be final, provided that the provisions of Section 425 shall apply within these areas.

**Direct Broadcast or MMDS Antenna**

A dish or other antenna for receiving multichannel multi-point distribution services or direct broadcast satellite services.

**Dwelling**

Any building, or part thereof, used in whole or in part for continuous or permanent habitation for one (1) or more persons, but not including trailer or mobile homes, however mounted, or commercial accommodation for transient occupancy. Each dwelling to have one (1) or more rooms with cooking, living, sanitary, and sleeping facilities arranged for the continuous or permanent use of one or more individuals living together as a single housekeeping unit as contrasted to a group living together such as a club.

**Dwelling, Multiple**

Any dwelling which houses more than one (1) housekeeping unit.

**Dwelling, Single Family**

A dwelling which houses only one (1) housekeeping unit.

**Farm**

A parcel of land used in the raising of agricultural products, live stock, poultry, and dairy products, including necessary farm structures and the storage of equipment used.

**Fast Food Restaurant**

A restaurant which specializes in the preparation of food from a limited menu, using throw away food packaging and with a drive through ordering and pick-up window.

**Floor Area**

The interior floor area of a dwelling unit exclusive of basements, stair wells, halls, bath rooms, corridors, attics, walls, partitions, and attached accessory buildings.

**Frontage**

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

**Garage, Private**

Covered space for the housing of motor vehicles, but not for rental of more than two (2) stalls, nor for commercial repair or commercial storage.

**Garage, Public**

Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other motor vehicles, body work and/or supplying of gasoline or oil to motor vehicles.

**Garage, Station**

An establishment which provides for the sale of gasoline and accessory items, servicing and repair of motor vehicles, and operations incidental thereto, exclusive of body work, provided that such repairs be performed in a suitably constructed building.

**Gross Floor Area**

The sum of the area of all stories of a building that is used for commercial, business or industrial use. Gross Floor area shall include storage ancillary to such use, but excluding any area exclusively used for heating, air-conditioning, other mechanical equipment and excluding any area designated for accessory off-street parking. Gross Floor Area shall be measured from the exterior faces of the exterior walls or from the centerline of any common wall separating buildings.

**Gross Leasable Area**

The total floor area of a building or buildings designed for exclusive occupancy of tenants, or, in the case of a building that is owner occupied, the owner of the building.

**Growth Rate Limit**

"Growth rate limit" shall mean the maximum number of building permits for new dwelling units that may be authorized in a twelve-month period, which shall be 15 permits. The growth rate limit is based upon the average number of building permits issued for new dwelling units in each of the five preceding years beginning in 1994.

**Height**

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

**Highway Shopping Center**

A group of commercial establishments (including retail, service and/or office uses) containing at least 250,000 square feet of Gross Leasable Area, together with ancillary utility facilities, parking areas and driveways, roads, landscaped areas and buffer areas. A Highway Shopping Center may consist of one or more lots and one or more buildings that may be built in phases, provided that all lots and buildings are developed with a unified approach to access and circulation, parking, truck loading, vehicular entrances and exits, drainage, utilities and management of landscaped and buffer areas.

**Home-Based Contracting Business**

The use of a portion of an owner-occupied dwelling or of a building accessory thereto as a place for incidental work and storage in connection with an off-premises trade by a resident builder, carpenter, electrician, painter, plumber, arborist, landscape gardener, or similar contractor, where such use is clearly secondary to the use of the premises for dwelling purposes and involves no retail sales from the premises.

**Home Occupation**

An activity conducted by the permanent resident(s) of a dwelling unit and inside the dwelling unit or in an accessory structure, including the following:

- (a) Customary home occupation such as dressmaking, preserving, or home cooking; repair of portable equipment but not to include vehicles of any kind or appliances; real estate agent; craft manufacturing; selling and collecting of antiques; private instruction in art, music or dancing; hairdressing; or home day care; but not including general retail sales.

- (b) Professional home office of a physician, dentist, attorney, architect, engineer, accountant, or member of a similar profession.

**Hotel**

A building or group of buildings providing accommodations on a transient basis for compensation, where the individual units do not contain separate kitchen facilities, and which may include facilities for meetings, conferences and other events.

**HSCO Development Lot**

The land depicted on the HSCO Development Plan for a Highway Shopping Center as being within the boundaries of the HSCO District.

**HSCO Development Plan**

A plan, together with all explanatory matter thereon, adopted or amended by Town Meeting for a Highway Shopping Center Overlay District. The HSCO Development Plan includes:

- (1) A scaled site plan showing:
  - (a) Boundaries of the HSCO Development Lot and areas and existing buildings within 100 feet of the boundaries of the HSCO Development Lot.
  - (b) Existing water bodies, statutory wetlands and riverfront areas.
  - (c) The limits of areas to be utilized for buildings and structures, parking areas, and access and circulation facilities; the specific layout and locations to be approved by the Planning Board as part of the Site Plan Approval process.
  - (d) The general locations of major stormwater management facilities (such as water quality ponds, filter basins, wet retention ponds and detention ponds) and major landscaped and buffer areas located outside of the permissible impervious development area; the specific layout and locations to be approved by the Planning Board as part of the Site Plan Approval process.
    - Such scaled site plan shall serve as the basis for any site plan to be approved by the Planning Board through the Site Plan Approval process.
- (2) Overlays including:
  - (a) An overlay delineating the “permissible building area”
  - (b) An overlay delineating the “permissible impervious surface area”.
    - The delineation of the “permissible building area” and the “permissible impervious surface area” in the HSCO Development Plan shall be final, provided that the provisions of Section 445 shall apply within these areas.

**Inn**

A building providing accommodations on a transient basis for compensation, where the individual units do not contain separate kitchen facilities, and containing not more than 10 separate units.

**Kennel or Pen**

Accessory building or enclosure for keeping of domestic pets, animals, or birds.

**Large-Scale Ground-Mounted Solar Photovoltaic Installation:**

A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

**Limited Industrial Park**

An area planned for varied limited industrial use with on-site parking facilities developed and managed as a unit.

**Loading Space, Off-street**

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

**Lot**

See Building Lot.

**Lot, Corner**

A lot abutting on two (2) or more streets at their intersection.

**Membership Club**

A private organization, building, or grounds, to include specifically country clubs and fraternities and other organizations to which membership is limited or controlled.

**Marijuana Definitions:**

- a. **Marijuana Cultivator:** an entity licensed to cultivate, process and package marijuana and to transfer marijuana to other Marijuana Establishments, but not to consumers.
- b. **Marijuana Establishment:** a Marijuana Cultivator, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed adult use marijuana-related business, or any combination thereof, except a Registered Marijuana Dispensary (RMD).
- c. **Marijuana Product Manufacturer:** an entity licensed to obtain manufacture, process and package marijuana and marijuana products, and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers.
- d. **Marijuana Retailer:** an entity licensed to purchase and transport marijuana and marijuana products from Marijuana Establishments and to sell, or otherwise transfer marijuana and marijuana products to Marijuana Establishments and consumers.
- e. **Marijuana Research Facility:** means an entity licensed by the Cannabis Control Commission to engage in marijuana research projects.
- f. **Marijuana Products:** products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
- g. **Independent Testing Laboratory:** an entity licensed by the Cannabis Control Commission to test marijuana and marijuana products, including certification for potency and the presence of contaminants.
- h. **Registered Marijuana Dispensary (RMD):** A use operated by an entity registered and approved by the Cannabis Control Commission in accordance with 935 CMR 501.00, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. An RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products.
- i. **Marijuana Transporter:** an entity with a fixed location that is licensed by the Cannabis Control Commission to purchase, obtain, and possess marijuana and marijuana products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers.

**Mixed Use Village**

A planned development characterized by a mix of residential and non-residential uses as permitted under Section 454, in a compact, walkable environment consistent with the Village Development Plan and complying with the standards set forth in Section 450.

**Motel**

A building, or portion thereof, or a group of buildings, on a single lot, intended to be used for the more or less temporary occupancy of more than five (5) individuals who are lodged, with or without meals, and in which major provision for cooking may be made in a central kitchen.

**Neighborhood Electric Vehicle (NEV)**

A four-wheeled motor vehicle that has a gross vehicle weight rating of less than 3,000 pounds and a top speed of 25 miles per hour.

**Non-Conforming Use**

An existing use of land or building which does not conform to the regulations for the district in which such use of land or building exists and which existed at the time of adoption of the regulation to which it does not conform.

**Regional Shopping Center**

A group of commercial establishments (including, without limitation, retail and service establishments, one or more restaurants or other establishments serving food for eating on the premises, movie theaters, and such other uses customarily found in a regional shopping center) containing a total Gross Leasable Area for all establishments of not less than 250,000 square feet, together with ancillary utility facilities, parking areas and driveways, roads, landscaped areas and buffer areas. A Regional Shopping Center may consist of one or more lots and one or more buildings, provided that the lots and buildings are subject to an operating agreement providing that the areas used in common, including the central enclosed mall area, the parking garages and parking and circulation areas, and the area between the permissible impervious surface area and the boundaries of the Development Lot, are under integrated management, and provided that the buildings, except as provided in Section 424.3 and Section 424.4, are connected by a continuous enclosed area, and provided that the separate lots and buildings are developed with a unified approach to pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, utilities and management of landscaped and buffer areas.

**Residential Care Facility**

Any institution, licensed by the state, which is maintained for the purpose of caring for three (3) or more persons admitted for nursing or convalescent care; for supervision and care incident to old age for ambulatory persons; or for retirement home care for elderly persons, including convalescent or nursing homes, rest homes, and homes for the aged.

**Residential Conference and Training Center**

A building or buildings providing conference and educational facilities, that may also include facilities for preparation and serving of food, and sleeping and living accommodations.

**Riding Stable**

The commercial housing of three or more horses by means of rental of stalls and/or stables and/or the use of property for the purposes of horseback riding lessons, horse training and similar uses. It shall include any stable where horses are kept for hire to the general public and shall include, but not be limited to, guided and unguided riding or carriage driving.

**Sanitary Wastes**

Wastewaters resulting from ordinary domestic water use as from toilets, sinks and bathing facilities.

**Shopping Center**

A group of two or more commercial facilities existing on a single lot and serving the general retail trade and including retail sales and service stores, shops, banks, restaurants and similar establishments.

**Sign**

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

**Sign, Address**

An on-premises sign displaying the street number or name of the occupant of the premises, or both.

**Sign, Awning**

A sign painted on or attached to the cover of a movable metallic frame,

**Sign, Free-Standing**

A self-supporting sign not attached to any building or wall, but in a fixed location. This does not include portable or trailer type signs.

**Sign, Construction**

An on-premise sign identifying the contractor, architect, landscape architect, and/or engineer's name, address, and other pertinent information.

**Sign, Marquee**

A sign painted on, attached to, or consisting of an interchangeable copy reader, on a permanent overhanging shelter which projects from the face of a building.

**Sign, Painted Wall**

A permanent mural or message painted directly onto a building surface.

**Sign, Projecting**

A wall-mounted sign perpendicular to the building surface.

**Sign, Public Service**

A sign located for the purpose of providing directions towards or indication of use not readily visible from the street (e.g. restrooms, telephone, etc.)

**Sign, Wall**

A sign which is attached parallel to the surface of a building or structure.

**Sign, Window**

Any sign which is painted or mounted onto a window pane, or which is hung directly inside the window.

**Site Plan Approval**

The process set forth in Section 1230 of this by-law.

**Street**

Either (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (b) a way shown on a plan approved in accordance with the subdivision control law, or (c) a way in existence when the subdivision law became effective in the Town, having in the opinion of the Planning Board sufficient width, suitable grades, and adequate construction in relation to the proposed use of land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Solar**

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

**Street Line**

The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out the way upon which the lot abuts.

**Structure**

Any construction, erection, assemblage, or other combination of materials upon the land necessitating pilings, footings, or a foundation for attachment to the land.

**Swimming Pools**

Any structure, whether above or below ground level, that is capable or designed to contain water of a depth of twenty-four (24) inches or more, and/or a surface area of one hundred fifty (150) square feet or more and including any such structure of any size if equipped with water recirculating system.

**Trailer or Mobile Home**

A structure transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling or commercial space, with or without a permanent foundation when connected to the required utilities, but not including recreational vehicles or travel trailers.

**Village Development Parcel**

Land within the boundaries of the VO District, consisting of one or more lots, or any portion thereof, and depicted on the Village Development Plan, that is made subject to the provisions of Section 450 by proper application.

**Village Development Plan**

A plan, together with all explanatory matter thereon, adopted, and as it may be amended, by Town Meeting for the VO District. Such plan shall serve as the basis for the Site Plan(s) to be approved by the Planning Board within the VOO District through the VO Site Plan Approval process described in Section 459. The Village Development Plan shall consist of:

- (1) A scaled site plan showing:
  - (a) Boundaries of the VO District, related Village Center components, and the general location of Village Green areas, and buildings within 100 ft. of the boundaries of the VO District;
  - (b) Existing water bodies, statutory wetlands and riverfront areas;
  - (c) The approximate location and layout of all buildings and structures, parking areas and stormwater management facilities (such as water quality ponds, filter basins, wet retention ponds and detention ponds), as well as major landscaped and buffer areas and access/circulation facilities located outside of the permissible impervious development area.  
The specific locations of all such elements, and the relative boundaries and configurations of the Village Center, shall be approved by the Planning Board as part of VO Site Plan Approval.
- (2) An overlay delineating the Permissible Building Area. The delineating of the Permissible Building Area shown on this overlay shall be final, provided that the provisions of Section 456 shall apply within these areas.

**Village Development Plan Area**

All land located within the boundaries of the VO District made subject to the provisions of Section 450 and the Village Development Plan adopted, and as it may be amended, by Town Meeting for such land.

**Village Green Area**

Land conceptually shown on the Village Development Plan that is not to be occupied by buildings, structures, paved areas or other hard surfaces (including streets, driveways, parking areas, sidewalks, swimming pools, tennis courts, etc.) except that items listed in Sec. 456.2 of this By-Law shall be allowed.

**Village Center**

Land identified on Village Development Plan that is within the Permissible Building Area as delineated by the Village Development Plan to be occupied by a mix of land uses, including, but not limited to, retail, office, residential, recreational, open space and associated land uses.

**Village Overlay Site Plan Approval**

The site plan approval process described in Section 459, also referred to as "VO Site Plan Approval".

**Wireless Communications Facility**

A facility for the provision of wireless communications services, including antennas and enclosing structures, but not including direct broadcast or MMDS antennas.

**Wireless Communications Facility, Enclosed**

A wireless communications facility located entirely within an existing structure which conforms to the dimensional regulations of the applicable zoning district, and whose principal use is allowed by right or by special permit in the zoning district. This term does not apply to any wireless communications facility that is the sole or principal use of the structure within which it is located.

**Wireless Communications Services**

The provision of personal wireless services such as cellular telephone, personal communications and enhanced specialized mobile radio services; but not including the provision of video programming through over-the-air television broadcast signals, multichannel multi-point distribution services, or direct broadcast satellite services.

**Wireless Communications Tower**

A structure (with antennas, if any) designed to facilitate wireless communications services

**Yard**

An open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and a lot line, and is not occupied or obstructed from the ground upward by a building or structure.

**Yard, Front**

A yard extending across the full width of the lot and lying between the front lot line and the nearest line of the building. The depth of a front yard shall be the minimum horizontal distance between the building and front lot line, measured at a right angle to the street or front lot line.

**Yard, Rear**

A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum horizontal distance between the building and the rear lot line.

**Yard, Side**

A yard between the side lot line of the lot and the nearest line of the building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The depth of a side yard shall be the minimum horizontal distance between the building and the side lot line.

**Zoning Enforcement Officer**



The designated authority, or duly authorized representative, appointed by the Selectmen, and charged with the enforcement of this by-law.

## **ARTICLE 15: GROWTH MANAGEMENT**

### **1510 INTENT AND PURPOSE**

The purpose of this section, GROWTH MANAGEMENT, is to promote orderly growth and development in the Town of Berlin, consistent with the rate of residential growth over the last five (5) calendar years. This will allow the Town to provide, in a planned and rational manner, the basic facilities necessary for the health, safety, and welfare of its citizens, and to adequately support Berlin's existing and future population, through the adoption of growth criteria which will coordinate residential growth with the provision of community services and the preservation of community character.

### **1520 APPLICABILITY**

- a. Beginning on June 1, 1999, no building permit for a new dwelling unit or units shall be issued unless in accordance with the regulations of this Article 15, or unless exempted by Section 1560, herein.  
This by-law shall apply to all definitive subdivisions plans, divisions of land pursuant to M.G.L. Chapter 41, Section 81P (hereafter called "A-N-R division"), variances and special permits which would result in the creation of a new dwelling unit or units.
- b. The provisions of Article 15 shall expire on June 1, 2018; however, by vote of the Town Meeting before said date, the provisions of this Article 15 may be extended in order to continue municipal comprehensive planning and studies necessary to promote the orderly growth.

### **1530 IMPLEMENTATION**

- a. When the number of building permits for new dwelling units issued and the number of building permit applications for such units submitted in the current month, together with the number of such building permits issued in the previous eleven months exceeds 15 in number, then the building inspector shall issue building permits for additional dwelling units only in accordance with a development schedule as established under Section 1540 or pursuant to an exemption under section 1560.
- b. The building inspector shall apply the provisions of this Article 15 to building permits in the order in which they are submitted. The Planning Board may establish forms and regulations for the implementation of this Article by vote of the Board after public hearing that complies with notice requirements of the Subdivision Control By-law.
- c. In a single development where the number of new dwelling units are 1 to 3 in total, building permits may be issued even if the 15 unit limit has been reached. Once issued, these exempt permits shall be calculated in the 15 building permit limit as noted in Section 1530.a.

### **1540 DEVELOPMENT SCHEDULE**

- a. All definitive subdivisions and ANR divisions that are affected by the limits contained in Section 1530(a) must apply to the Planning Board for the establishment of a development schedule. The Planning Board shall establish a development schedule consistent with the terms of subsection 1530(b). The development schedule shall set forth the units to be developed and the date upon which each unit or group of units may be developed. Once approved, the development schedule (and any amendments thereto) shall be recorded at the Registry of Deeds and shall have no effect unless so recorded.

- b. The Planning Board shall establish a development schedule only in accordance with the following guidelines:

Number of New Units in development	Dwelling Units/Year
1-3	100%
4-10	up to 50%
11-20	up to 33%
21-40	up to 24%
41+	up to 20%

- c. Where the applicable growth rate limit does not allow development consistent with the table set forth above, the Planning Board shall establish a development schedule which allows fewer than the maximum number of dwelling units per year. However, the Planning Board shall not establish any development schedule which phases development for longer than a ten (10) year period.

## **1550 ZONING CHANGE PROTECTION**

The protection against zoning changes as granted by Mass. General Law Chapter 40A, Section 6 shall be extended for the period imposed by the development schedule established pursuant to Section 1540.

## **1560 EXEMPTIONS**

The following developments are specifically exempt from limits of the Growth Management by-law and shall not affect the number of 15 building permits that shall be issued in any 12-month period.

- a. An application for a building permit for the enlargement, restoration or reconstruction of a dwelling in existence as of the effective date of this by-law, provided that no additional residential unit is created.
- b. Dwelling units built pursuant to an SRD special permit pursuant to Section 720 or a Village Overlay District special permit pursuant to Section 450 of the Zoning By-Law, provided (and to the extent) that the Planning Board shall establish as a part of the Special Permit that the units shall be entitled to exemption hereunder.
- c. Any tract of land existing and not held in common ownership with an adjacent parcel on the effective date of this by-law shall receive a one-time exemption for the purpose of constructing one single family dwelling unit on the parcel owned, provided that the single-family dwelling unit shall be owned and occupied by the owner of the parcel of land.
- d. Dwelling units to be built under any program or statute categorizing said unit(s) as low or moderate income housing, or otherwise defined as affordable housing units provided that such housing units have deed restrictions to ensure that they remain affordable for no less than the period specified by the program or statute.

## **ARTICLE 16: TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS**

### **1610 PURPOSE**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016 and as further amended on July 28, 2017, Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning By-laws, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment"), as defined in M.G.L. Chapter 94G, Section 1, is not specifically addressed in the Zoning By-laws. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning By-laws regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact by-laws in a consistent manner.

### **1620 DEFINITION**

"Recreational Marijuana Establishment" shall mean a "marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business."

### **1630 TEMPORARY MORATORIUM**

For the reasons set forth above and notwithstanding any other provision of the Zoning By-laws to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018 or until such time as the Town adopts Zoning By-law amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning By-laws in response to these new issues.

## **ZONING DISTRICT LOCATION NOTES** (including date current zone was approved)

### **Residential and Agricultural District**

All areas except the following (5/6/98):

- 1) All areas specifically designated as included in another zoning district by vote of the 1998 Annual Town Meeting;
- 2) All areas specifically designated as included in another zoning district by vote of the Special Town Meeting of June 9 and 10, 1997;
- 3) All overlay zones;
- 4) the commercial village zone encompassing the central village;
- 5) the commercial district located in East Berlin in the vicinity of Central Street, Old Central Street, Coolidge Road and Gates Pond Road.

Central Street: Assessors Map 16: Parcels 24 and 35 (3/29/99) [gas station formerly commercial]

### **Commercial - Village Districts**

In the area of Center Village

- a. Along both sides of Central Street from Linden Street to a point 1,000 ft. easterly of Pleasant Street, parallel to the street lines and extending 250 feet back from the street lines (10/13/58)
- b. Land described in Article 34 of the 1971 Annual Town Meeting (3/2/71) [The portion of Assessors Map 10.4: Parcel 29 that is within 500 feet of Central Street].

In the area of South Berlin Post Office (5/5/98)

- a. Assessors Map 2: Parcels 3-7, 16-18, 23-25, the parts of Parcels 15 and 26 that are within 250 feet of the street line of Pleasant Street and north of the extension of the boundary line between Parcels 22 and 23 and the parts of Parcels 26 and 27 that are within 250 feet of the street line of South Street
- b. Assessors Map 6: Parcels 37-39, and the part of Parcel 35 that is within 250 feet of the street line of Pleasant Street south of the extension of the boundary line between Parcels 36 and 37, and north of the extension of the boundary line between parcels 7 and 8 on Assessors Map 2.

In the vicinity of South Berlin Rotary (5/5/98)

- a. Assessors Map 2: The portion of Parcel 15 that is east of the westerly boundary of the New England Power Company easement and the northerly extension of the northeast boundary line of Parcel 12;
- b. Assessors Map 3: Parcel 2, the portions of Parcels 1, 12 and 13 that are within 400 feet of the street line of Whitney Road and River Road West and that are south of the southeasterly extension of the southwest boundary line of Parcel 2 and that are north of the easterly corner of Parcel 12 on Assessors Map 2;
- c. Assessors Map 7: the portion of parcel 27 that is within 250 feet of South Street or River Road and east of the New England Power Company Easement.

In the area of West Berlin (5/5/98)

- a. Assessors Map 14.1: Parcels 14-16
- b. Assessors Map 14.3: Parcels 6, 7, 12-14, and 22, and the parts of Parcels 4, 5, 8, 9, 10, 19, 23 and 24 that are within 250 feet of the street line of West Street

### **Commercial Districts**

In the area of West Street and Carter Street (5/5/98)

- a. Assessors Map 15.1: Parcels 6, 9-12, 14-18, and that part of Parcel 13 that is within 250 feet of the street line of Carter Street;
- b. Assessors Map 15.2: Parcel 7 and that part of Parcel 6 that is within 250 feet of the street line of Carter Street;

On West Street near Clinton Town Line (5/5/98) Assessors Map 19: Parcel 2

In the area of Old Central Street, Coolidge Road, and Gates Pond Road

- a. Along both sides of Old Central Street from the Hudson Town Line to a point 1,000 ft. westerly of Gates Pond Road, parallel to the street lines and extending 250 feet back from the street lines (10/13/58)
- b. Along both sides of Gates Pond Road 1,000 ft. southerly from Old Central Street, parallel to the street lines and extending 250 feet back from the street lines (10/13/58)
- c. Land described in Article 24 of the 1973 Annual Town Meeting (3/5/73) [Assessors Map 22: Parcel 1 - Heritage Mall]

### **Limited Business Districts**

In the area of Sawyer Hill Road (5/5/98) Land described In Article 25 and 26 of the Warrant for the 1961 Annual Town Meeting including the following:

- a. Assessors Map 15: Parcel 37.
- b. Assessors Map 16: Parcels 6 and 7.
- c. Assessors Map 20: Portions of Parcels 49 & 54.
- d. Assessors Map 21: Parcels 14-16 and a portion of Parcel 13.

In the area of Taylor Road (5/6/98) Assessors Map 16: Parcels 23, 25, 26, 27, 32, 33, 34, and that part of Parcel 36 lying 500 feet or more from Central Street.

In the area of Banner Road (5/6/98) Assessors Map 3: Parcels 14 and 18.

South of the Assabet River (9/25/2000) Assessors Map 3: the land bounded on the south by the Marlborough-Berlin town line and on the north by a line 200 feet south of the Assabet River centerline.

North of River Road (9/25/2000)

- a. Assessors Map 7: Parcels 29, 36-39 and the portions of parcels 8, 10, 13, 15, 17, 28, 34 and 35 that are described in Article 20 of the 1969 Annual Town Meeting Warrant.
- b. Assessors Map 7: Parcels 40-42 and that part of Parcel 35 that is described in Article 24 of the 1971 Annual Town Meeting Warrant.
- c. Assessors Map 11: Parcels 16 and 17.
- d. Assessors Map 12: Parcels 1-3.

### **Agricultural-Recreation-Conservation Districts**

Gates Pond Area (6/9/97) Assessors Map 11: Parcels 15 and 18. (5/4/2004) Assessors Map 11: Parcel 16; Assessors Map 12: Parcel 3; Assessors Map 16: Parcel 31.

Town of Hudson Land (6/9/97) Assessors Map 17: Parcel 30.

Central Street (6/9/97) Assessors Map 16: Parcel 18, and that part of Parcel 17 that is east of the extension of the western boundary of Parcel 18.

Pleasant Street/Brewer Brook Flood Control Project (6/9/97) Assessors Map 6: Parcels 23 through 25; Assessors Map 10: Parcels 39 through 41, 43 through 45, and 52 through 53. (5/4/2004) Assessors Map 10.4: Parcels 29, 31 and 34.

South Street/Jones Road (6/9/97) Assessors Map 6: Parcels 50 and 62.

Ross Flood Control Project (6/9/97) Assessors Map 9: Parcels 39 and 40; Assessors Map 10: Parcel 1; Assessors Map 14: Parcels 17 through 19; Assessors Map 14.2: Parcels 8 through 11, 17 through 19, and 21 through 24; Assessors Map 15.1: Parcel 28. (6/28/99) Assessors Map 14: Parcels 15 and 16, Assessors Map 14.2: Parcel 12. (5/4/2004) Assessors Map 14.1: Parcels 17 through 19; Assessors Map 14.3: Parcels 20 and 21.

Off Coburn Road (6/28/99) Assessors Map 15: Parcel 2, excluding the following lot:

Parcel "A" as shown on a plan entitled "Land in Berlin, Mass. surveyed for the Town of Berlin" Scale: 1"=60' Date: Sept. 8, 1998 David E. Ross Associates, Inc. 111 Fitchburg Rd. Ayer, Mass. containing 10.7 acres more or less, located on the westerly side of Coburn Road.

Forty Caves/Lancaster Road (6/9/97) Assessors Map 19: Parcel 58; Assessors Map 23: Parcels 6-1, 7 and 37; (6/28/99) Assessors Map 23: Parcels 8 and 10. (5/4/2004) Assessors Map 23: Parcels 23-8 and 39.

Mt. Pisgah (6/9/97) Assessors Map 5: Parcels 15 and 16.

Ball Hill Road (6/9/97) Assessors Map 8: Parcel 1, excluding the following two lots:

Lot "A-1" as shown on a plan entitled "Plan of Land in Berlin, Mass. - Owned by: Heritage Path Realty Trust II - Bk 17732 Pg 152 - Scale: 1"=80' - Date: January 7, 1997 - Highland Land Surveyors, Inc. - 69 Maple Street - Marlboro, Mass., "containing 43.668 acres, located on the westerly side of Ball Hill Road.

Lot "B-2" as shown on a plan entitled "Plan of Land in Berlin, Mass. - Owned by Dianne M. Santana et als. - Bk 6064 Pg 371 - Bk 11707 pg 154 - Bk 13480 Pg 136 - Scale: 1"=100' - Date: March 4, 1996 - Highland Land Surveyors, Inc. - 69 Maple Street - Marlboro, Mass., "containing 10.295 acres, located on the southerly side of Linden Street and the westerly side of Ball Hill Road.

On and near Boylston Road (6/9/97) Assessors Map 13: Parcel 11. (6/28/99) Assessors Map 13: Parcels 8 and 10, Assessors Map 14: Parcels 2 through 5. (5/4/2004) Assessors Map 13: Parcels 1 and 4.

Between Barnes Hill and Derby Roads (5/4/2004) Assessors Map 9: Parcel 8-5.

Linden Street (5/4/2004) Assessors Map 9: Parcel 43.

Assabet River (6/9/97) Assessors Map 3: Parcels 5 and 15.

Maynard/Morse Roads area (6/9/97) Assessors Map 6: Parcel 3-14. (5/4/2004) Assessors Map 5: Parcels 44 through 46, Assessors Map 6: Parcel 4.

References to Assessors map and lot numbers are based on the maps in effect at the time of zoning property to present zone.

## **OVERLAY DISTRICTS**

**Flood Plain District** - See Section 412 (10/9/80), amended Art. 38, May 5, 2014

**Regional Shopping Center Overlay District** - See Section 422 (3/26/94)

**Senior Residential Development Overlay District** –

1. 28.86 acres on River Road described as Map 7, Parcel 34 on the current Assessors Maps (3/29/99)
2. 78+/- acres on westerly side of Highland Street, on Berlin Assessors' Map 15 as Block 27 (5/1/2017)

**Village Overlay District** – See Section 452 (12/2/2009)

Minimum Residential lot size established at 30,000 sq. ft. with 150 ft. frontage (10/13/58)

Minimum Residential lot size increased to 40,000 sq. ft. (3/6/72)

Minimum Residential lot size increased to 80,000 sq. ft. with 200 ft. frontage (5/2/77)

## **Town of Berlin Zoning By-law      Amendment / Approval Notes**

First Zoning By-law adopted    October 13, 1958	Approved by A. G. October 21, 1958
Revised Zoning By-law adopted    June 9, 1997	Approved by A. G. April 2, 1998
Amended under Articles 3, 4, 5, 7, 8    June 9-10, 1997	Approved by A. G. April 2, 1998
Amended under Articles 41, 42, 44, 45, 46, 47, 48, 49 May 5-6, 1998	Approved by A. G. September 10, 1998
Amended under Articles 1, 2, 3, 4, 5, 6, 9, 10    March 29, 1999	Approved by A. G. April 14, 1999
Amended under Articles 6, 7, 8    June 28, 1999	Approved by A. G. October 5, 1999
Amended under Articles 15, 16, 17, 18    September 25, 2000	Approved by A. G. January 26, 2001
Amended under Articles 41, 42, 43    May 7, 2002	Approved by A. G. August 28, 2002
Amended under Articles 16, 17, 18    October 21, 2003	Approved by A. G. January 30, 2004
Amended under Articles 33, 34    May 4, 2004	Approved by A. G. August 13, 2004
Amended under Articles 29, 30, 31, 32, 33    May 2, 2005	Approved by A. G. July 5, 2005
Amended under Articles 39, 41, 42    May 2, 2006	Approved by A. G. May 30, 2006
Amended under Article 44, 45, 46, 47    May 8 2007	Approved by A. G. July 16, 2007
Amended under Article 2    May 14, 2008	Approved by A. G. August 5, 2008
Amended under Article 22, 23, 24, 25    May 4, 2009	Approved by A. G. August 12, 2009
Amended under Article 2    December 2, 2009	Approved by A. G. March 8, 2010
Amended under Articles 12, 38, 39 40, 41, 42, 43    May 2, 2011	Approved by A. G. August 15, 2011
Amended under Article 37    May 7, 2012	Approved by A. G. July 19, 2012
Amended under Articles 37, 38, 39, 40    May 6, 2013	Approved by A. G. June 24, 2013
Amended under Articles 2, 3,, 5, 6    November 12, 2013	Approved by A. G. January 21, 2014
Amended under Articles 37, 38    May 5, 2014	Approved by A.G. June 27, 2014



Amended under Article 34 May 4, 2015

Approved by A.G. August 19, 2015

Amended under Articles 39, 40, 42

Approved by A.G. August 10, 2017

Amended under Article 9, 10, 11 December 11, 2017

Approved by A.G. March 6, 2018

Amended under Articles 32, 33 May 7, 2018

Approved by A.G. August 27, 2018

### **Electronic Submission Requirements for Subdivision, ANR, Site Plans and As-built Plans**

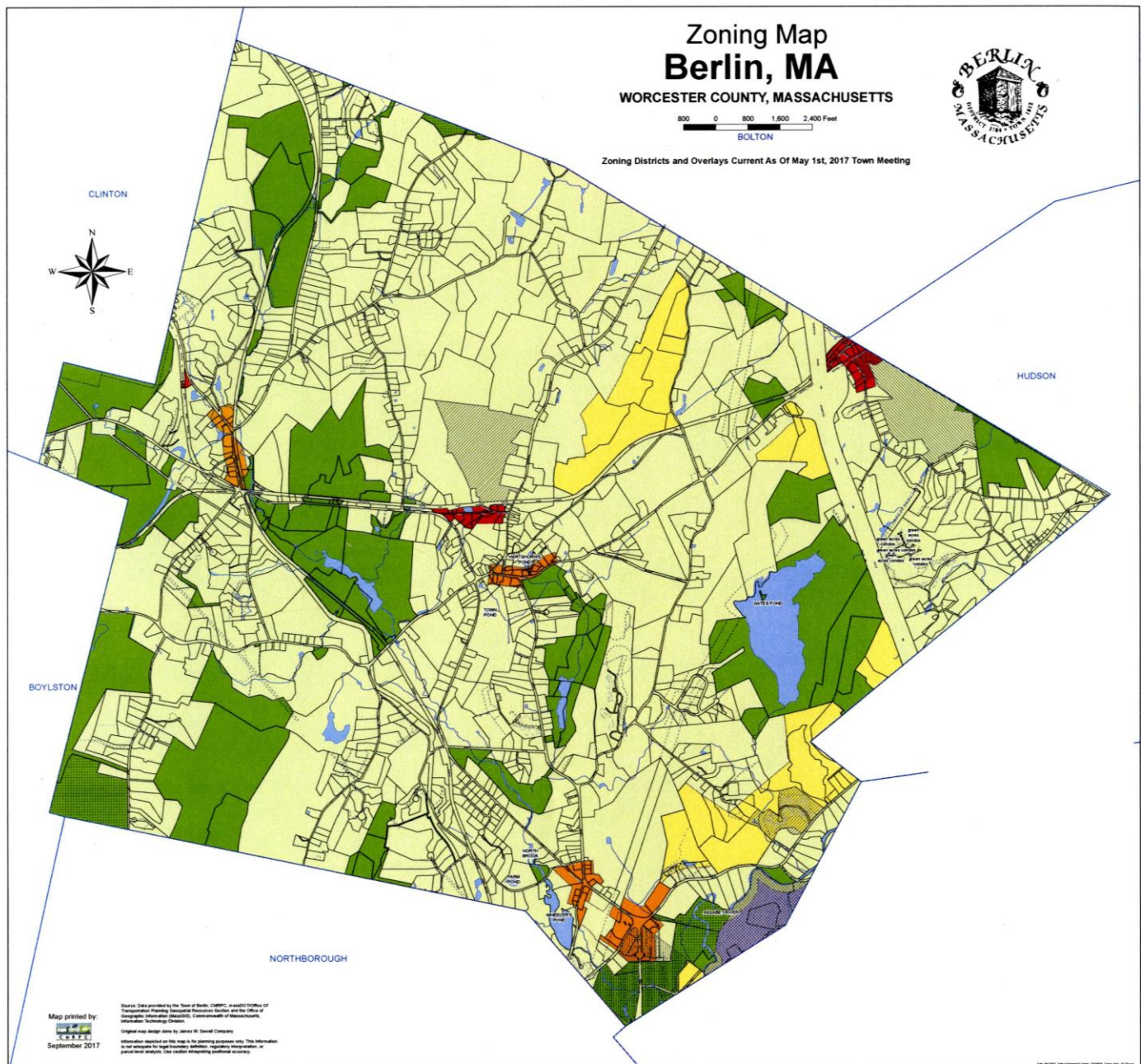
January 28, 2008 – The Berlin Planning Board has incorporated new filing requirements for any plans submitted to the Board for approval. The following text explains the modification.

“Electronic submission requirements for subdivision, ANR, As-built plans and Site Plans.

For subdivision, ANR and As-Built plans, the Applicant shall submit on CD-ROM or DVD or media specified by the Planning Board a standard digital file and all other requirements, including documentation, as referenced and in accordance with Level III of the Current Version of the Office of Geographic and Environmental Information (MassGIS) Standard for Digital Plan Submittals to Municipalities. This publication, or any succeeding edition of this publication, is hereby incorporated as part of these Regulations by reference. The publication may be accessed via the MassGis website <http://www.mass.gov/mgis/standards.htm>

A standard digital file template can be downloaded from the MassGIS website. The Town of Berlin will accept the North American Vertical Datum 88 (NAVD88) where applicable. The coordinate system and projection for all data submitted must meet those specific in Level III of the MassGis Standard for Digital Plan Submittals to Municipalities.

If you have questions or comments please forward those to the Berlin Planning Board, 23 Linden Street, Berlin, MA 01503 or contact Assistant Assessor at 978-838-2256.



## Legend

### Zoning Overlays

- HIGHWAY SHOPPING CENTER OVERLAY
- REGIONAL SHOPPING CENTER OVERLAY
- SENIOR RESIDENTIAL DEVELOPMENT OVERLAY
- VILLAGE DISTRICT OVERLAY

### Zoning

- AGRICULTURAL-RECREATION-CONSERVATION
- ARC-CONSERVATION RESTRICTION
- COMMERCIAL
- COMMERCIAL-VILLAGE
- LIMITED BUSINESS
- LIMITED INDUSTRIAL
- RESIDENTIAL AGRICULTURE

### Planning Board Members:

*[Handwritten signatures of Planning Board Members]*

September 11, 2018