Article 7 – Administration

7.1 Zoning Board of Appeals (ZBA)

7.1.1 *Establishment and Membership.* There shall be a Zoning Board of Appeals consisting of five members and two alternate members, each appointed by the Board of Selectmen for three year terms.

7.1.2 *Rules.* Pursuant to MGL c. 40A §12, the Zoning Board of Appeals shall adopt rules not inconsistent with the General Laws and the provisions of this Bylaw governing the conduct of its business, and shall place said rules on file with the Town Clerk.

7.1.3 *Powers.*

A. Appeals. To hear and decide appeals, as provided in MGL c. 40A, including an appeal taken by any person aggrieved by his inability to obtain a permit or enforcement action.

B. Special Permits. To hear and decide applications for special permits as provided in this Zoning Bylaw. See §7.2 below.

C. Variances. To authorize upon application a variation from the terms of this Zoning Bylaw except that no variation to the district boundaries or uses permitted therein shall be allowed. See §7.3.

7.1.4 *Procedures.* Appeals, applications, and petitions authorized by this Bylaw and/or by MGL Ch. 40A shall be processed in compliance with all applicable provisions of MGL c. 40A.

7.2 Special Permits

7.2.1 *Special Permit Granting Authority (SPGA)*

A. Zoning Board of Appeals. The Zoning Board of Appeals shall be the Special Permit Granting Authority for all special permits issued under §1.9, Nonconformities.

B. Planning Board. The Planning Board shall be the Special Permit Granting Authority for all other uses or proposals which require a Special Permit.

C. The Planning Board may include one alternate member, who shall be appointed by the Chairman to serve in place of a full member who cannot sit on a special permit application. The alternate member shall be appointed by the Town Manager pursuant to the Town Charter.

7.2.2 *Rules and Regulations.* The Zoning Board of Appeals and the Planning Board shall each file a copy of their Special Permit Granting Authority Rules and Regulations with the Town Clerk.

7.2.3 *Application and Review Procedure*

A. Application. The applicant shall file an application for a special permit together with the required filing fee with the Town Clerk. If applicable, the application shall include a site plan in compliance with §7.4. A copy of the application including the date and time filed, as certified by the Town Clerk, shall be filed forthwith with the SPGA. The procedures set forth in MGL c. 40A §9 shall be followed.

B. Public Hearing and Decision. The applicant and the Special Permit Granting Authority shall follow the procedures set forth in MGL c. 40A with respect to special permits.

C. Reports from Town Boards or Departments. The Special Permit Granting Authority shall transmit forthwith a copy of the application and plan(s) to other boards, departments, or committees as it deems necessary or appropriate, for their written reports. Any such entity to which applications are referred for review shall make such recommendation or submit such reports as they deem appropriate and shall send a copy thereof to the SPGA and to the applicant. Failure of any such entity to make a recommendation or submit a report within 21 days of receipt of the application shall be deemed a lack of opposition.

D. Effective Date of Special Permit. No special permit or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Hampshire District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days has elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or such appeal has been dismissed or denied.

E. Time Limitation on Special Permit. A special permit shall lapse if a substantial use thereof has not been commenced or, in the case of a permit for construction, if construction has not commenced within two years from the granting of the special permit or other period of time as specified by the SPGA, not to exceed two years from the date of grant thereof.

F. Extension of Special Permit. An extension may be granted by the SPGA for good cause upon the submission of an application and letter which explains the reasons for the requested extension. Such application shall follow the normal procedure as provided in paragraphs A and B above, and must be filed with the Town Clerk prior to the expiration date of the special permit. Any such extension shall be for a period of no more than one year.

G. Repetitive Applications. No application which has been unfavorably acted upon by the SPGA shall be again considered by said Board within two years after the date of such unfavorable action unless the Planning Board and Zoning Board of Appeals consent thereto under the provisions of MGL c. 40A §16.

7.2.4 *Findings*

The Special Permit Granting Authority may grant special permits for certain uses or structures as specified in the Use Table (§4.2) and elsewhere in this Bylaw. Before granting a special permit, the Special Permit Granting Authority, with due regard to the nature and condition of all adjacent structures and uses, shall find all of the following conditions to be fulfilled:

A. The proposal is in harmony with the general purpose and intent of this Bylaw and it will not be detrimental to the health, safety or welfare of the neighborhood or the Town.

B. The proposal is compatible with existing uses and development patterns in the neighborhood and will be harmonious with the visual character of the neighborhood in which it is proposed.

C. The proposal will not create a nuisance to the neighborhood due to impacts such as noise, dust, vibration, or lights.

D. The proposal will not create undue traffic congestion nor unduly impair pedestrian safety, and provides safe vehicular and pedestrian circulation within the site.

E. The proposal ensures adequate space onsite for loading and unloading of goods, products, materials, and equipment incidental to the normal operation of the establishment or use.

F. The proposal will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the proposed use or any existing use will be unduly subjected to hazards affecting health, safety, or the general welfare.

G. The proposal minimizes environmental impacts including erosion, siltation, changes to ground and/or surface water levels (quantity), or changes to ground or surface water quality.

H. For Multi-Family development, the following findings must also be made:
   1. The proposed project is not out of character with the area in which it is located;
   2. The parking facilities are located away from the areas along the public street(s), or are integral to the buildings (i.e. garages); and
   3. The proposed project does not increase the Average Daily Traffic (ADT) of roads within the general area by more than 10 percent in any given year, nor reduce the Level of Service at intersections within the same area to less than a "C" standard as determined by a professional traffic engineer.

I. For Large Scale Retail Sales and Service, the following findings must also be made:
   1. The access roads, utilities and site drainage are designed in accordance with the Planning Board's rules and regulations governing subdivision; and
   2. The proposed project does not increase the Average Daily Traffic (ADT) of roads within 1,000 feet of the site by more than 20 percent of any arterial, 30% of any major collector, or 35% of any minor collector, nor reduce the Level of Service at

intersections within the same area to less than a "C" standard as determined by a professional traffic engineer.

7.2.5 Conditions.

The Special Permit Granting Authority may impose in addition to any other condition specified in this Bylaw such additional conditions as it finds reasonable and appropriate to minimize impacts on abutters, safeguard the neighborhood, or otherwise serve the purposes of this Bylaw. Such conditions may include but are not limited to the following:

A. Dimensional requirements greater than the minimum required by this Bylaw.

B. Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, plantings or other devices.

C. Modification of the exterior features or appearance of the structure.

D. Limitation of size, number of occupants, method and time of operation, and extent of facilities, or duration of the permit.

E. Regulation of number, design and location of access drives, drive-up windows and other traffic features.

F. Regulation of off-street parking or loading beyond the standards required by this Bylaw.

G. Requirements for performance bonds or other security.

H. Installation and certification of mechanical or other devices to limit present or potential hazard to human health, safety, or welfare of the Town or of the environment resulting from smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise, vibration or any other objectionable impact generated by any given use of land.

7.3 <u>Variances</u>

7.3.1 Application and Review Procedure

A. Application. The applicant shall file an application for a variance with the Town Clerk together with the required filing fee. A copy of the application including the date and time filed, as certified by the Town Clerk, shall be filed forthwith with the Zoning Board of Appeals.

B. Public Hearing and Decision. The Zoning Board of Appeals shall hold a public hearing no later than 65 days after the filing of an application. Notice of the public hearing shall be as prescribed by MGL c. 40A §. 11. The Zoning Board of Appeals shall have the power to continue a public hearing under this section if it finds that such continuance is necessary to allow the applicant to provide information of an unusual

nature and which is not otherwise required as part of the variance application. For a variance to be granted, four of the five members of the Zoning Board of Appeals must vote to grant the variance. The provisions of MGL c. 40A shall be followed.

C. Reports from Town Boards or Departments. The Zoning Board of Appeals shall transmit forthwith a copy of the application and plan(s) to other boards, departments, or committees as it deems necessary or appropriate for their written comments. Any such entity to which applications are referred for review shall make such recommendation or submit such comments as they deem appropriate and shall send a copy thereof to the Zoning Board of Appeals and to the applicant. Failure of any such entity to make a recommendation or submit a report within 21 days of receipt of the application shall be deemed a lack of comment.

D. Effective Date of Variance. No variance or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Hampshire District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days has elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or such appeal has been dismissed or denied.

E. Time Limitation on Variance. A variance shall lapse if a substantial use thereof has not been commenced or, in the case of a permit for construction, if construction has not commenced within one year from the granting of the variance or other period of time as specified by the Zoning Board of Appeals, not to exceed one year from the date of grant thereof.

F. Extension of Variance. An extension may be granted by the ZBA for good cause upon the submission of an application and letter which explains the reasons for the requested extension. Such application shall follow the normal procedure as provided in paragraph A above, and must be filed with the Town Clerk prior to the expiration date of the variance. Any such extension shall be for a period of no more than six months.

G. Repetitive Applications. No application which has been unfavorably acted upon by the Zoning Board of Appeals shall be again considered by said Board within two years after the date of such unfavorable action unless the Planning Board and Zoning Board of Appeals consent thereto under the provisions of MGL c. 40A §16.

7.3.2 *Mandatory Findings*. Before the granting of any variance from the terms of this bylaw, the Board of Appeals must specifically find that:

A. Owing to circumstances relating to the soil conditions (e.g. wetlands, ledge, etc.), shape (e.g. oddly shaped lot or building, but not simply undersized lot) or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant; and

B. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw.

7.3.3 *Conditions.* The Zoning Board of Appeals may, in order to minimize impacts on abutters or the neighborhood caused by the granting of a variance, impose such conditions, safeguards and limitations as it deems appropriate to protect the abutters or the neighborhood. However, no variance may be conditioned on the continued ownership of the land or structures by the applicant to whom the variance was issued.

7.4 <u>Site Plan Review</u>

7.4.1 Purpose. The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which do not require definitive subdivision review and may have significant impacts both within the site and in relation to adjacent properties and streets on pedestrian and vehicular traffic, public services and infrastructure, environmental, unique and historic resources, or on abutting properties or community needs, and to minimize potential adverse impacts of such development.

7.4.2 Applicability. The following activities for all uses except single family detached or two family residential dwellings or for any exempt use under MGL c. 40A §3 require site plan review by the Planning Board:

A. The following require Minor Site Plan Review. For the purposes of computing the total increase in the footprint of the structure, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years.
   1. Exterior alteration or expansion which increases the footprint size of the structure by more than 500 square feet but less than 2,000 square feet.
   2. Construction of new accessory structures that have a footprint of more than 500 square feet but less than 2,000 square feet.
   3. Construction of a new parking lot up to 4,000 square feet.
   4. Expansion of an existing parking lot not associated with increases in building size where the parking lot will be enlarged by more than 2,000 but less than 4,000 square feet, whether used for parking or storage purposes.
   5. Change of use from one use category to another (e.g. residential to commercial), where in the opinion of the Building Inspector the change will alter the use of the site to the extent that site plan review is necessary to further the purposes set forth in §7.4.1.

B. The following require Major Site Plan Review:
   1. Construction of new structures except as provided above.
   2. Exterior alteration or expansion which increases the footprint size of the structure by 2,000 square feet or more.
   3. Construction of a new parking lot over 4,000 square feet.

4. Expansion of an existing parking lot not associated with increases in building size where the parking lot will be enlarged by 4,000 square feet or more, whether used for parking or storage purposes.
5. All multi-family development projects that propose ten or more dwelling units, including conversions of existing buildings and new construction.
6. Mobile Home Parks unless the project is processed as a subdivision under the Ware Subdivision Regulations.
7. Flexible Residential Open Space Development, unless the project is processed as a subdivision under the Ware Subdivision Regulations.

7.4.3 Procedure.

A. Applicants for site plan review shall submit fourteen (14) copies of the application and site plan, plus one digital version (in pdf format) to the Planning Board through the Planning & Community Development Department. At least two copies of the site plan must be full size, and the remaining copies may be smaller (but at least 11x17 inches), provided they are legible with the naked eye.

B. The Planning & Community Development Department shall forward a copy of the site plan to the Director of Public Works, the Fire Chief, the Board of Health, and any other applicable department for their advisory review and comments, which shall be submitted to the Planning & Community Development within 21 days of receipt. Failure to report within this time frame shall be interpreted to mean there are no objections or comments on the site plan as submitted.

C. For major site plan review, the Planning Board shall hold a public hearing and review and act upon the site plan, with such conditions as may be deemed appropriate, within 60 days of its submission and shall notify the applicant in writing of its decision. Notice of the public hearing shall be as prescribed by MGL c. 41 §81T. The decision of the Planning Board shall be upon a majority of the Board as constituted (i.e. 3 out of 5) and shall be in writing.

D. For minor site plan review, a public hearing is not required, but deliberations and decisions must be made by the Planning Board in an open public meeting.

E. For any projects pertaining to Town owned properties or projects, a site plan review shall not be required.

F. No building permit or certificate of occupancy shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 60-days lapse from the date of the submittal of the site plan without action by the Planning Board, unless the Board and applicant have agreed to a time extension.

G. When the Planning Board serves as the special permit granting authority for proposed work, it may consolidate its site plan review and special permit procedures, at the request of the applicant.

H. When a special permit and/or variance is required from the Zoning Board of Appeals, the applications for the special permit or variance and site plan review may be filed concurrently at the option of the applicant. If filed concurrently, the Planning & Community Development shall coordinate the review processes by the two boards and a joint hearing may be held. When the applicant chooses to file with the ZBA first, such as to establish whether the use will be permitted, a preliminary site plan may be submitted with that application to avoid the expense of a full blown site plan; in such cases the site plan review process shall proceed with the Planning Board after ZBA approval.

I. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

J. No deviation from an approved site plan shall be permitted without approval by the Planning Board, unless the deviation does not create significant site design modifications and is required by the Zoning Board of Appeals in acting on an application before them.

7.4.4 Preparation of Plan

A. Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a conceptual discussion with the Planning Board at a regularly scheduled meeting.

B. All Site Plans shall be submitted on 24 inch by 36 inch sheets and shall be prepared by a Registered Professional Engineer, Architect, or Landscape Architect, as appropriate, licensed to practice in Massachusetts and in good standing. All plans that include land survey information shall be prepared by a Registered Land Surveyor. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans should have a minimum scale of 1"=40', with 1" =20' as the standard.

7.4.5 Contents of Major Site Plan. The contents of a major site plan are to be as follows, although the Planning Board may, upon written request from the applicant, waive or modify any of the following provided such waiver or modification will not negatively impact the Board's ability to make an informed decision on the application, and the Board must state their reasons for doing so in writing as part of their decision:

A. Locus plan, at a scale of 1 inch equals 500 feet, showing the entire project and its relation to existing areas, buildings, roads, and zoning districts (including overlay districts) for a distance of 1,000 feet from the project boundaries or such other distance as may be approved or required by the Planning Board or town planner.

B. Site layout, showing the boundaries of the parcels in the proposed development, proposed structures, drives, parking spaces, loading facilities, required setbacks and

buffers, fences, walls (including existing or proposed stone walls), walks, outdoor lighting, and areas for snow storage after plowing.

C. Grading and drainage plan, showing the existing and proposed final topography at two foot intervals, plans for handling stormwater drainage, and all wetlands and floodplain areas on the site and within 100 feet of the site. Drainage calculations prepared by a registered professional engineer, which conform to the subdivision regulations, shall be submitted with the drainage plan.

D. Utility and open space plan, showing all facilities for refuse and sewerage disposal and storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities (including fire lanes) on and adjacent to the site, proposed recreational facilities, and open space areas including archeological or historical features on the site.

E. Landscaping plan, showing the limits of work, existing trees and tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and proposed erosion control measures (including dust control during construction).

F. Lighting plan, showing the location of all lighting fixtures, the illumination data to show compliance with §6.3, Lighting, and detail drawings of the fixtures to be used, including heights.

G. Floor plan, showing the basic layout of various spaces on each floor (office space, retail space, manufacturing space, warehouse space, etc.).

H. Details as needed to show specific information such as but not limited to cross sections of driveways, roads, parking areas, and sidewalks; lighting fixtures; signage; and drainage facilities.

I. A narrative, describing the project and indicating the number of dwelling units and/or square footage of non-residential buildings categorized by general use (retail, office, warehouse, etc.); the percentage of building coverage and impervious surfaces on the site; the acreage of the site in general categories (residential, commercial, open space, road and utility rights-of-way, etc.); the forms of ownership contemplated for the project and a summary of the provisions of the maintenance of commonly held areas; and an indication of the estimated time required to complete the proposed project and any and all phases thereof. The narrative shall also include a written cost estimate, showing a breakdown of the costs of all site improvements planned.

J. A development impact assessment which shall include the following:

1. Traffic impact assessment which will document existing traffic conditions in the vicinity of the proposed project, describe the volume and impact of the projected traffic generated by the proposed project and identify measures proposed to mitigate any adverse impacts on traffic. The assessment data shall be no more

than 12 months old as of the date of the application. The traffic impact assessment shall include:

a) Existing traffic conditions; average daily and peak hour volumes, average and peak speeds, sight distance, accident data and levels of service (LOS) of intersections and streets likely to be affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1,000 feet of the project boundaries.
b) The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels.
c) The projected traffic flow pattern, including vehicular movements, at all major intersections likely to be affected by the proposed use of the site.

2. Environmental impact assessment, which will describe the potential impacts of the proposed project with respect to on-site and off-site environmental quality, and shall include:
   a) Description and evaluation of air quality, on-site or off-site flooding, erosion and/or sedimentation resulting from alterations to the project site, including grading changes and increases in impervious areas; on-site or off-site hazards, radiological emissions or other hazardous materials; adverse impacts on temperature and wind conditions on the site and adjacent properties; impacts on solar access of adjacent properties; and off-site noise or light impacts.
   b) Evaluation of the adequacy of existing or proposed systems and services for water supply and disposal of liquid and solid wastes.
   c) Description of potential impacts to natural resources which shall include but not be limited to rivers, streams, floodplains, ponds, lakes or other surface or subsurface water resources; destruction of wetlands, open spaces, natural areas, wildlife habitat, parks or historic districts or sites.
   d) Description of proposed measures for mitigation of any potential adverse impacts identified above.

3. Fiscal impact assessment, which will describe the projected impacts of the proposed project with respect to fiscal issues, and shall include:
   a) Projections of costs arising from increased demands on public services and infrastructure.
   b) Projections of the impacts from increased tax revenue, employment (both construction related and permanent), and value of the public infrastructure to be provided.
   c) Projections of the impacts of the proposed development on the values of properties in the neighborhood.

4. Community impact assessment, which will describe the manner in which the proposed project fits in with the neighborhood and the potential impacts to historic or archeological resources, and shall include:
   a) Evaluation of the relation of the proposed new or altered structure to the surrounding neighborhood in terms of the location and configuration of proposed structures, the character and intensity of those structures (e.g.

scale, materials, colors, setbacks, roof and cornice lines and other major design elements), parking areas, landscaping, buffering, and open space with respect to neighboring properties.

b) Identification of impacts on significant historical properties, districts or areas, or archaeological resources (if any) in the vicinity of the proposed development.

c) Evaluation of the proposed project's consistency of compatibility with existing local and regional plans.

d) Projected economic impact of the proposed project including anticipated total investment in US Dollars.

7.4.6 *Contents of Minor Site Plan.* Minor site plans shall include all of the information required by §7.4.5 with the following exceptions, and waivers may be granted by the Planning Board as provided in §7.4.5:

A. The plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey;

B. The scale of the site plan may be 1"=80';

C. A utility and open space plan is not required unless new utility service lines are proposed, in which case those shall be shown on the site plan;

D. A landscaping plan is not required unless new or additional landscaping is proposed or is required by the Planning Board to screen the proposed development from public ways and/or abutting properties;

E. A floor plan is not required;

F. A drainage plan and calculations are only needed to comply with any Conservation Commission approval; and

G. A development impact analysis is not required.

7.4.7 *Approval.* Site Plan approval shall be granted upon determination by the Planning Board that the plan is in compliance with the applicable design standards in Article 6 and that it meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, limiting hours of operation, and other reasonable conditions to promote these objectives.

A. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

B. Maximize pedestrian and vehicular safety both on the site and entering and exiting the site;

C. Minimize obstruction of scenic views from publicly accessible locations;

D. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

E. Minimize glare from headlights and light trespass;

F. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

G. Prevent contamination of groundwater from operations on the premises involving the use, storage, handling, or containment of hazardous substances; and

H. Ensure adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the requirements of the Planning Board's subdivision regulations.

7.4.8 *Denial.* In the event the application is not revised as requested by the Planning Board to meet the objectives in §7.4.7, the Planning Board may deny the application. The decision shall be in writing and shall clearly state the reasons for denial with sufficient detail to enable the applicant to revise the site plan to meet the objectives in §7.4.7. There shall be no time penalties against the applicant to file a new site plan application, but said application shall require payment of a new fee.

7.4.9 *Filing of Decision and Appeal.* The decision of the Planning Board shall be filed with the Town Clerk. The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of MGL c. 40A §17.

7.4.10 *Lapse.* Site plan approval shall lapse after two years from the date of approval if construction has not yet begun. Site plan approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

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

7.5 Enforcement

7.5.1 *Zoning Enforcement Officer*

This Bylaw shall be administered and enforced by the Building Inspector of the Town of Ware. He/she shall issue no permit for the erection or alteration of any structure or part thereof, the plans, specifications, and intended use of which are not in all respects in conformity with the provisions of this Zoning Bylaw. For any uses not specifically listed in §4.2 (Use Table), the Zoning Enforcement Officer shall make a determination as to the closest appropriate applicable category, or to determine that the proposed use does fit appropriately in any category and deny with a written explanation.

7.5.2 *Conformance to Subsequent Amendments*

Construction or operations under a building permit or special permit issued before the effective date of an amendment to this Bylaw shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of one year after issuance of a building permit or within two years after the issuance of a special permit. In cases involving construction begun within such one-year period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable. Construction or operations under a building permit or special permit issued after the effective date of an amendment to this Bylaw shall conform to the Bylaw as amended.

7.5.3 *Maintenance of Common Areas, Landscaping and Improvements.*

The recipient of any permit under this Bylaw, or any successor, shall be responsible for maintaining all common areas, landscaping and other improvements or facilities required by this Bylaw or any permit issued in accordance with its provisions. Those areas, improvements, or facilities for which an offer of dedication to the public has been accepted by the appropriate public authority are excluded. Such improvements shall include, but are not limited to, private roads and parking areas, water and sewer lines, passive and active recreational facilities, and vegetation and trees used for screening and landscaping. Such improvements shall be properly maintained so that they can be used in the manner intended. Vegetation and trees indicated on approved site plans shall be replaced if they die or are destroyed.

7.6 Violations and Penalties

7.6.1 Violations

A. If the Building Inspector is informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been or is being violated, he shall make an investigation of the facts, including an inspection of the premises where the violations may exist.

B. Where written complaint is made to the Building Inspector, he shall take action upon such complaint within 14 days of receipt thereof and shall report such action in writing to the complainant and the Zoning Board of Appeals or Planning Board, if applicable.

C. Upon finding that a violation has occurred, the Building Inspector shall issue an order to cease and desist and refrain from such violation.

D. If the Building Inspector determines that a violation presents an immediate danger to the health, safety, or welfare of the public or of any individual, or poses an immediate danger to the environment or otherwise constitutes an emergency situation, the Building Inspector may seek immediate judicial relief from the Superior Court.

E. If after such order, such violation continues and no appeal to the Zoning Board of Appeals is taken within 30 days, the Building Inspector may make application to the Superior Court for an injunction or order restraining the violation and shall take such other action as is necessary to enforce the provisions of the Zoning Bylaw.

F. If an appeal to the Board of Appeals is filed with the Town Clerk, and after a public hearing, the Zoning Board of Appeals finds that there has been a violation or prospective violation, the Building Inspector shall issue an order to cease and desist and refrain from such violation unless such order has been previously issued. If such violation continues, the Building Inspector may make application to the District or Superior Court, as applicable, for an injunction or order restraining the violation and shall take such other action as may be necessary to enforce this Zoning Bylaw.

G. If the Building Inspector finds no violation, any person aggrieved by his decision, or any officer or Board of the Town may within 30 days appeal his decision to the Zoning Board of Appeals.

7.6.2 *Penalties.* Any violation of the provisions of this Bylaw, or any violation of any plan or permit approved under the provisions of this Bylaw, including any conditions placed thereon, shall be liable to a fine of not more than three hundred dollars ($300) for each violation. Each day such violation continues shall constitute a separate offense.