Town of Ware
Zoning Bylaw

Adopted May 14, 2012

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Introduction

Information Relating To Laws And Regulations Governing Land Use
(Note, this information is included for convenience only and is not a part of the Zoning Bylaw.)

Land use in the Town of Ware is subject to regulation under various Town Bylaws and Statutes of the Commonwealth. Included among these are the Ware Zoning Bylaw, adopted pursuant to Chapter 40A, "The Zoning Act" as amended by Chapter 808 of the Commonwealth of Massachusetts, and the following:

State Environmental Code – Title 5 sets forth the minimum standards for the protection of public health and the environment when circumstances require the use of individual systems for the disposal of sanitary sewage in areas where municipal sewage systems are not available.

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

State Wetlands Protection Act is administered by the Conservation Commission and provides for public review of proposed projects which involve construction or other alterations of land in or near wetland or land deemed subject to periodic flooding.

Chronology of Zoning
The following table provides a brief summary of the chronology of Ware's zoning regulations, through the history of zoning adoption and amendment votes taken at the Town Meeting.

Applicant *(if other than PB)*	***Town Vote Date/ Article #***	***Approved By Atty. General***	***Subject***	***Section of Bylaw*** *(at time of amendment)*
	6-14-1971 Art. 12	8-23-1971	Original Zoning Bylaw adopted by Town Meeting; only dealt with mobile homes and campgrounds. Note, significant portions were disapproved by the AGO.	
	3-12-1973 Art. 38	5-18-1973	Added multi-family housing prohibition to the zoning.	
	5-12-1980 Art. 31	8-25-1980	Repealed previous zoning and replaced with bare bones predecessor of "modern" zoning.	
	5-11-1981	9-10-1981	Added Flood Plain District to the zoning.	
	12-28-1981 Art. 26	Unknown	Added provisions to multi-family restoration.	
	6-6-1983 Art. 29	8-26-1983	Amended multi-family dwellings. Added enumeration of districts, with a central business district and surrounding district (the first such districting in Ware).	
	6-3-1985 Art. 46-50	Unknown	Amended provisions (violations & penalties, mobile homes, multi-family dwellings) and added dimensional regulations.	

Applicant *(if other than PB)*	***Town Vote Date/ Article #***	***Approved By Atty. General***	***Subject***	***Section of Bylaw*** *(at time of amendment)*
	2-9-1987 Art. 1	4-13-1987	Repealed zoning & replaced with "modern" zoning bylaw.	
	4-24-1989 Art. 10-23 and 25-34	7-24-1989	Numerous minor amendments to 24 sections of the bylaw	
	5-14-1990 Art. 13 & 14	10-5-1990	Amended parking regulations by adding design standards; Added Estate Lots	5.21 5.7
	5-14-1991 Art. 19	9-9-1991	Amended use table to add office in zones RB1 & RR4	4.1
Richard O'Riley	1-18-1992 Art. 9	5-6-1992	Amended use table to add aviation in RR3	4.1
	5-10-1993 Art. 32	12-7-1993	Amended water supply protection district to allow certain uses by special permit	6.142
Darrell Goudreau	1999 Art. 15	5-27-1999	Amended use table to allow various uses in the Industrial district (farm stand, commercial greenhouse, various residential uses, roller rink, veterinarian office, and bowling alley)	4.1
	5-8-2000 Art. 15	6-30-2000	Added Groundwater Protection District to the Zoning Bylaw	§6.2
	5-11-2004 Art. 24-26	9-28-2004	Replaced definition for warehouse; amended mobile home provisions to prohibit them outside of mobile home parks; amended accessory use provisions; replaced sign regulations	1.2, 4.2, 5.0, 4.44, and 5.3
	5-9-2005 Art. 23	10-5-2005	Amended use table to require SP/SPA for retail uses in the HC district	4.1
	5-8-2006 Art. 28	10-4-2006	Added Flexible Residential Open Space District (FROSD), provisions for accessory apartments, and the Infill Development overlay district	6.3 5.7 6.2 (dup)
	5-14-2007 Art. 15, 16, 36, 37	12-5-2007	Added definitions regarding height and habitable room; amended FROSD to correct a typographical error; DT overlay; zoning map	1.2 5.4 6.3
BOS	11-10-2008 Art. 16	2-18-2009	Added Adult Entertainment Overlay District (AEOD)	8.1
BOS	5-11-2009 Art. 22	8-20-2009	Amended AEOD to add definition for adult cabaret and clarifying language regarding underlying districts	8.4 8.5
	5-10-2010 Art. 23-27	9-26-2011	Major amendments to the Sign regulations; amended the Water Supply Protection District; amended the Zone II Groundwater Protection District; and amended the provisions for Violations & Penalties	5.3 6.1 6.2 2.1
	12-1-2011 Art. 15	4-27-2012	Added Solar Energy Facilities Regulations	5.8
	5-14-2012 Art. 21	9-13-2012	Repealed Zoning Bylaw and adopted new one	All
	5-13-2013 Art. 27-29	9-26-2013	Amended §2.2 and 4.4.1.D.2 re: livestock and poultry; Amended §4.8.2.E re: wireless antenna arrays; Amended §5.5.1 re: dimensional table; Amended §1.9.1 re: abutting lots in common ownership;	

Applicant *(if other than PB)*	***Town Vote Date/ Article #***	***Approved By Atty. General***	***Subject***	***Section of Bylaw*** *(at time of amendment)*
			Amended zoning map re: boundary between MY & I.	
	5-12-2014 Art. 20	10-20-2014	Definition of product sign; Use Table re: residential uses in MY district; special provisions for residential use in MY; allow accessory apartments in detached structures; add new section allowing replacement of mobile homes; edits to purpose section of Floodplain Overlay district; applicability of buffer regulations; add provision to buffer section to maintain site lines; multiple modifications to signage regulations	2.2 4.2 4.3 4.4.1.E.1 4.8.7 4.9.1 6.2.2 6.2.6 6.5
	11-13-2017 Art. 21	6-5-2018	Added §4.8.8 re: Registered Marijuana Dispensaries (RMDs) and Marijuana Cultivation Sites (MCSs); Amended §2.2 Definitions to include marijuana-related definitions; Amended §4.2, Use Table, to add two new categories related to the above	-
	11-13-2017 Art. 22	7-2-2018	Amended Use Table	4.2
	3-11-2019 Art. 9, 10,11	8-23-2019	Refining language and adding definitions; Definitions: cargo container, marijuana cultivation structure, mobile storage unit, shed or permanent storage structure, wheeled trailer; Use Table: Marijuana Cultivation Facilities, Medical, Recreation or Hybrid Marijuana Sales; Added additional standards to §4.8.8G; Increase large ground mounted solar array setback	2.2 4.2 4.8.8 4.8.3
	6-22-2020 Art. 19		Revision of 4.8.3 Solar Energy Facilities	4.8.36
	3-27-2021	8-17-2021	Adding definitions and refining language; Definitions: freight & trucking terminal, campground, estate lot, town line, structure;	2.2
ZBA and PB Jointly	5-23-2022 Art. 21		Addition of § 1.9 "Adoption of Rules and Regulations"; §2.2 (Definitions); §4.2 (Use Table); §4.3 (Operational Standards; §4.8.5 (Earth Removal); §4.8.8 (Marijuana).	1.9 2.2 4.2 4.3 4.8.5 4.8.8
ZBA	5-23-2022		Temporary 12 month moratorium on large-scale battery storage and large-scale battery storage facilities.	4.8.3
	11-14-2022 Art. 6		The Prohibition on the Use of Contaminated Sediments and Soils as Fill Material [Urban Fill].	2.2 4.7 4.9.2

Applicant *(if other than PB)*	***Town Vote Date/ Article #***	***Approved By Atty. General***	***Subject***	***Section of Bylaw*** *(at time of amendment)*
	5-8-2023 Art.20	12-11-2023	Added Battery Energy Storage Systems (BESS), BESS related definitions, amended Use Table	2.2 4.8.9 4.2
	11-27-2023 Art. 3 & 4	3-14-2023	Include language regarding the Rural Business Overlay District to the bylaw and amend the zoning map	3.4 4.9
	6-10-2024 Art. 4		Revisions to the language that pertains to the floodplain bylaw sections.	4.1 4.9
	11-18-2024 Art. 2, 4, 6	6-20-2025	Revisions to the language that pertains to Accessory Dwelling Units	2.2 4.4.1.E 6.1
	4-8-2025		Creation of a 'Health Care District', amend Zoning Land Use Table, amend Zoning Map, and amend relevant sections of Bylaw.	2.2 3.1 4.8 5.1 5.3

Article 1 – General Provisions

1.1 Authority

The Town of Ware hereby enacts this Zoning Bylaw pursuant to and under the authority of the Zoning Act, Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended.

1.2 Purpose

The purposes of this Bylaw are:

- To promote the health, safety, convenience and general welfare of the present and future inhabitants of the Town of Ware;
- To protect the community and the town's natural resources, clean air, views and environment;
- To secure safety from fire, flood, pollution, overcrowding and other dangers by regulating the location and use of structures and the open spaces around them;
- To lessen congestion in the streets;
- To prevent overcrowding of land;
- To avoid undue concentration of population;
- To permit and promote planned, orderly growth;
- To conserve the value of land and buildings;
- To facilitate the adequate provision of public services;
- To preserve and increase the town's amenities;
- To reconcile the need and desire of Ware's diverse and growing population for adequate housing with the preservation of natural resources and the preventing of overcrowding of land and undue concentration of population;
- To encourage compatible development and the most appropriate use of the town's land and resources;
- To provide for the expansion of suitable, economically and environmentally sound business and industry within the town in order to diversify the local economy and the tax base;
- To establish a fair and reasonable set of standards for evaluating each development proposal impartially, on its own merit;
- To develop rational land development alternatives through an equitable and prescribed negotiation process so as to establish a balanced land use pattern that is responsive to the needs of property owners while minimizing the adverse effects of development; and
- To provide the town with the full protection authorized by Chapter 40A of the General Laws as amended.

1.3 Title

This bylaw, together with all maps referred to herein and all amendments hereto, shall be known as the "Town of Ware Zoning Bylaw."

1.4 Applicability

The construction, alteration, enlargement, relocation, height, size, and use of buildings and other structures; the size, frontage, and setback areas of newly created parcels; and the use of land within the Town of Ware is hereby regulated as provided in this Zoning Bylaw. For properties that are partially within the Town of Ware and partially within an abutting town, this Zoning Bylaw shall govern that portion within the Town of Ware.

1.5 Amendments

This Bylaw may be amended as provided in MGL c 40A §5.

1.6 **Effective Date**

This bylaw and any amendments thereto become effective upon passage by Town Meeting. The first Zoning Bylaw adopted by the Town of Ware was enacted on June 14, 1971. That bylaw was replaced in its entirety on May 12, 1980, that bylaw was replaced in its entirety on April 13, 1987, and that bylaw was replaced on May 14, 2012. Amendments thereto became effective upon passing by the Town Meeting March 27, 2021.

1.7 **Severability**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision hereof.

1.8 **Relationship to Other Town Bylaws**

Where this Bylaw imposes a greater restriction upon the use of land or the use or erection of buildings or other structures in the Town than is imposed by other bylaws of the Town, the provisions of this Bylaw shall control.

1.9 **Adoption of Rules and Regulations**

The Town of Ware shall allow the Planning Board and the Zoning Board of Appeals to adopt rules and regulations for procedural and substance matters directly, provided they are not inconsistent with the Town's current Bylaws. They shall be made and adopted by majority vote and filed with the Town Clerk. Rules and regulations with penalties attached must be filed with the Town Clerk within ten(10) business days from the date of adoption.

1.10 **Nonconformities**

Non-conforming Lots, Uses, and Structures shall be regulated as provided in MGL c. 40A §6 and as provided in this Bylaw. Any lawful building or structure, or use of a building, structure or land, existing at the time of adoption of this Bylaw or any amendment thereto which does not conform to the regulations thereof may be continued, subject to the provisions of this §1.9.

1.10.1 Nonconforming Lots

A. Vacant lots which are nonconforming for area, frontage, width, yard (setback), or depth requirements that were in existence prior to the effective date of the requirement which made them nonconforming may be used for construction of a single family or two family dwelling at any time, provided they are not adjacent to a lot in the same ownership, and provided the lot contains a minimum of 5,000 square feet and has a minimum of 50 feet of frontage. Such lots are not subject to increases in the setback requirements, if any.

B. Where two or more lots in single ownership abut each other, where one or both lots are nonconforming to the area, frontage, width, yard (setback), or depth requirements that were in existence prior to the effective date of the requirement which made them nonconforming, said lots shall be combined for the purposes of zoning, except as provided in Paragraph C.

C. Up to three adjoining commonly owned lots which are nonconforming for area, frontage, width, yard (setback), or depth requirements that were in existence prior to the effective date of the requirement which made them nonconforming may each be used for construction of one single family or two-family dwelling provided a building permit is obtained within five years of the date of the zoning change which made them nonconforming, and further provided that each lot has a minimum of 7,500 square feet of area and a minimum of 75 feet of frontage. When such lots are sold to different owners, this protection transfers to the new owner and runs with the land for the same five-year period from the date of adoption of the zoning change.

D. When two or three vacant lots in common ownership that lack required frontage or lot area abut, each lot may be used for a single family dwelling provided all of the following requirements are met:
   1. the lots were in existence prior to the effective date of the requirement which made them nonconforming;
   2. any lot proposed for construction of a dwelling is a minimum of 7,500 square feet and has a minimum of 75 feet of frontage;
   3. an adequate potable water supply and safe permanent sewage disposal can be assured;
   4. any structure built thereon shall conform to the setback requirements of the Zoning Bylaw in effect at the time of the application for a building permit; and
   5. off-street parking shall be provided for at least 2 vehicles.

E. Nonconforming lots shall not be further reduced in area or frontage in such a way that will increase the degree of nonconformity. If such a lot is subsequently combined with other land in such a way as to reduce or eliminate the non-conformity, it shall not again be subdivided except in accord with this Bylaw.

1.10.2 Nonconforming Structures

A. Single family or two-family residential structures.
   1. A pre-existing legal nonconforming single or two-family structure may be extended or altered by right (upon the issuance of a building permit), provided any such extension or alteration complies with the setbacks, building coverage, and height requirements of the zoning bylaw in effect at the time of application for the building permit.
   2. A pre-existing legal nonconforming single or two-family structure may be extended or altered such that the nonconformity is increased or intensified, but no more than the existing nonconformity, upon issuance of a special permit by the Zoning Board of Appeals, provided the Board makes a finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure, e.g. an addition that encroaches setbacks to the same or a lesser degree than the existing nonconformity.
   3. A pre-existing legal nonconforming single or two-family structure may be extended or altered such that the nonconformity is increased or intensified to a greater degree than the existing nonconformity only upon issuance of a variance from the Zoning Board of Appeals, and provided the Board makes a finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure, e.g. an addition that encroaches setbacks to a greater degree than the existing nonconformity. Note, the mandatory findings for granting a variance provided in §7.3 must also be made.

B. Multi-family residential and non-residential structures.
   1. A nonconforming multi-family residential and/or non-residential structure may be extended or altered such that the nonconformity is not increased or intensified upon issuance of a special permit by the Zoning Board of Appeals, provided the Board makes a finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure, e.g. an addition that does not encroach setbacks.
   2. A nonconforming multi-family residential and/or non-residential structure may be extended or altered such that the nonconformity is increased or intensified upon issuance of a variance by the Zoning Board of Appeals, provided the Board makes a

finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure, e.g. an addition that encroaches setbacks to any degree, whether more or less than an existing encroachment. Note, the mandatory findings for granting a variance provided in §7.3 must also be made.

C. Destruction of structures. Pre-existing non-conforming structures which are damaged or destroyed by accidental cause, including fire, or otherwise damaged or destroyed without the consent of the owner, may be repaired or reconstructed upon issuance of a building permit, provided that:
   1. The nonconforming nature of the repaired or reconstructed structure is not increased in any respect (if proposed to be increased, §1.9.2 A or B applies);
   2. The repaired or reconstructed structure shall be used in the same manner as the structure being replaced or otherwise used in compliance with the use limitations of the applicable zoning district; and
   3. A building permit for the repair or reconstruction is issued within two years from the date of the damage or destruction. Time incurred in resolving an appeal or other court action or insurance claim shall not be counted as part of the two-year limit.

1.10.3 Nonconforming Uses

A. Extension or Alteration. Nonconforming uses may be extended or altered upon issuance of a special permit by the Zoning Board of Appeals provided the Board determines that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The Board of Appeals shall not allow an existing nonconforming use to be changed to a more intense nonconforming use than exists at the time of application, in terms of density or type of use.

B. Discontinuance, Abandonment, and Reversion to Nonconforming Use
   1. Any nonconforming use of a structure or land which has been discontinued for a period of two years or more, or which has been abandoned, shall not be reestablished, and any future use of the structure or land shall comply with the provisions of this Bylaw.
   2. If a nonconforming use of a structure or land is changed to a conforming use, it shall not thereafter revert to a nonconforming use.

Article 2 – Definitions

2.1 **Word Usage**

In the interpretation of provisions in this Zoning Bylaw, the rules of this section (§) shall be observed and applied, except when the context clearly indicates or requires otherwise:

- Words used or defined in one tense or form shall include other tenses and derivative forms.
- Words in the singular number shall include the plural number and words in the plural number shall include the singular number.
- The masculine gender shall include the feminine and the feminine gender shall include the masculine.
- The word "shall" is mandatory.
- The word "may" is permissive.
- The word "person" includes individuals, firms, corporations, associations, trusts and any other similar entities or groupings of such entities.
- The word "building" shall be construed as though followed by "or structure or part or parts thereof."
- The words "built" and "erected" shall each contain the other and shall include the words "constructed," "reconstructed," "altered," "enlarged," "moved," and any others of like significance.
- The words "occupied" or "used" shall be considered as though followed by "or intended, arranged, or designed to be (used or occupied)."
- The symbol "§" means "section."
- In the case of any difference of meaning or implication between the text of this Zoning Bylaw and any caption, number, illustration or table, the text shall control, unless otherwise specifically noted herein.

2.2 **Definitions**

In this Bylaw, the following terms, unless a contrary meaning is specifically given, shall have the following meanings.

100 Year Flood: A flood at a level that, on average, is likely to occur once every 100 years, or more accurately, has a one percent chance of occurring in any given year.

Accessory: A use, activity, structure, or part of a structure that is subordinate and incidental to the main activity or structure on the site.

Accessory Dwelling Unit (ADU): A self-contained housing unit, inclusive of living, sleeping, eating, cooking, bathing, washing and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements. ADUs can be within an existing principal dwelling, attached to a principal dwelling as a new construction addition, or completely detached. An ADU shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; is not larger in gross floor area than ½ the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in G.L.c.64G, Section 1; provided, however, that no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental. ADUs may not be used as short-term rentals, as such term is defined in G.L.c.64G, or otherwise rented for a period of shorter than thirty-one (31) days.

Adult Cabaret: A cabaret, stage show, club, restaurant, bar, nightclub, juice bar or other establishment which features persons who appear nude or semi-nude including persons, dancers or performers who show the female breast below a horizontal line across the top of the areola or show the male or female buttocks

or genitals and including such establishments which display live entertainment including but not limited to persons, dancers or entertainers appearing in a state of nudity or other live performance distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, §31.

Adult Daycare: A facility providing care for elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day, generally during daytime hours.

Adult Entertainment Establishment: An Adult Cabaret, Adult Live Entertainment Establishment, Adult Motion Picture Theater, or Adult Store.

Adult Live Entertainment Establishment: An establishment, including but not limited to a nightclub, bar, restaurant, tavern, dance hall, cabaret, stage or other performance venue, which displays live entertainment, including but not limited to persons or entertainers appearing in a state of nudity or other live performance distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, §31.

Adult Motion Picture Theater: An enclosure or building, or any portion thereof, used for presenting visual media material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, §31.

Adult Store: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, videos, movies, devises, objects, tools, toys or other materials which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c.272 §31.

Agricultural Sign: A Sign which may have wording that may be changed periodically to advertise products raised or grown principally on the premises.

Agrivoltaics: Also known as Agricultural Solar Tariff Generation Unit, is co-developing the same area of land for both solar photovoltaic power as well as for agriculture. A Solar Tariff Generation Unit located on Land in Agricultural Use or Prime Agricultural Farmland that allows the continued use of land for agriculture meeting the requirements of 225 CMR 20.00.

Ancillary Use: A use which is customarily incidental, subordinate to, and supporting of the principal use of a lot or structure and is located on the same parcel or contiguous parcels as the principal structure or use. In conjunction with *Large-scale Photovoltaic Installations in conjunction with 4.8.3 of this bylaw, this may be rooftop installations or solar parking canopy installations over parking lots or other hardscaped areas.*

ANSI: American National Standards Institute.

Aquifer: Geologic formation composed of rock, sand or gravel that is permeable enough to yield economic quantities of water to wells.

> High Yield: An aquifer consisting of sand and gravel deposits which yield greater than 300 gallons per minute of water.
>
> Medium Yield: An aquifer consisting of sand and gravel deposits which yield between 100 and 300 gallons per minute of water.

Auto Body Shop: An establishment providing repair services to vehicle bodies and frames, including repair or replacement of damaged parts, painting, and undercoating.

Auto Fuel Station: An establishment providing fuel products for sale to the general public, including but not limited to gasoline, diesel fuel, electricity, biofuel, and other such fuels necessary to operate a vehicle.

Automotive Sign: A sign placed on an individual vehicle indicating that vehicle's sale price or features.

Auto Salvage/Auto Salvage Yard: A lot and/or structure where the principal purpose is to acquire, store, resell, disassemble, or otherwise be involved with motor vehicles that are in some way inoperative. This includes but is not limited to businesses requiring a Class 3 license pursuant to MGL c. 140 §58.

Auto Service: An establishment where passenger vehicles are serviced and repaired, including repair or rebuilding of engines, routine maintenance services such as oil changes, repairs to exhaust systems, and other general repairs but not including auto body work. Such establishments may include auto fueling.

Awning Sign: A permanent sign which is affixed to or consists of a permanent or retractable awning or marquee permanently mounted to the exterior surface of a building.

Banner Sign: A sign intended to be hung either with or without frames, possessing characters, letters, illustrations or ornamentations applied to paper, plastic or fabric of any kind. National flags, flags of political subdivisions and symbolic flags of any institution or business shall not be considered "banners" for the purpose of this section.

Battery(ies): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this bylaw, batteries utilized in consumer products are excluded from these requirements.

Battery Energy Storage Management System: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

Battery Energy Storage System (BESS): One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is classified a Tier 1, Tier 2, Tier 3, or Tier 4 BESS as follows:

1. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity equal to 250KWh or less and, whose purpose is to store energy from residential solar energy systems if in a room or enclosed structure, consisting of only a single energy storage system technology.
2. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity equal to 250KWh or less and, whose purpose is to store energy from commercial solar energy systems if in a room or enclosed structure, consisting of only a single energy storage system technology.
3. Tier 3 Battery Energy Storage Systems are defined as those that are interconnected to high voltage transmission lines and have an aggregate energy capacity greater 250 KWh but less than or equal to 10 MWh.
4. Tier 4 Battery Energy Storage Systems are defined as those that are interconnected to high voltage transmission lines and have an aggregate energy capacity greater than 10 MWh. The facility must comply with the State's most current electrical code (527 CMR. 12.00) and the State's most current Fire Code (527 CMR 1.00)

Bed & Breakfast: See "Inn".

Billboard: A structure for the permanent display of off-premises advertising.

Boarding House: See "Non-family Accommodations".

Bulletin Board: A board displaying a message, accessory to public and semi-public uses, schools, hospitals and places of worship and assembly.

Caliper: The diameter of the trunk of a tree measured 6 inches above the ground for trees up to and including 4 inches, or measured 12 inches above the ground for larger trees.

Campground: An area or tract of land on which accommodations for temporary occupancy (not to exceed 90 days) for transient recreation or vacation purposes are located or may be placed including cabins, tents, major recreational equipment or other types of movable or temporary shelter, which is primarily used for commercial recreational purposes and retains an open air or natural character.

Cannabis Cultivation Site: see "Marijuana Cultivation Site". See §4.8.8 F for additional information.

Cannabis Dispensaries: see "Registered Marijuana Dispensary (RMD)". See §4.8.8 F for additional information.

Cargo Container: A metal storage container, typically 20', 40', or 53' nominal length, designed to be utilized in intermodal transport, and quickly connected with an interchangeable, wheeled, separately registered and titled chassis for over-the-road movement. A Cargo Container shall be considered a permanent storage structure and must meet all zoning bylaw and building code requirements if it is in place for more than ninety (90) days unless it is being utilized on a site with an active building permit, or a site that is being reconstructed after a fire. In all such cases, the container must be removed or brought into compliance with zoning regulations within ninety (90) days of issuance of a Certificate of Occupancy following building construction or fire recovery completion. If no active reconstruction after a fire is substantially begun within ninety (90) days of an insurance settlement, then the Cargo Container must be removed or brought into compliance with zoning and building regulations.

Cell: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

Civic Organizational Sign: Directory sign erected by a civic or business promotional organization (e.g. Rotary or Chamber of Commerce) that lists local businesses and civic organizations.

Charitable Institution/Organization: A non-profit organization that is organized and operated for purposes that are beneficial to the public interest. No one person or group of people can own a non-profit. A charitable institution is required to operate on a not-for-profit basis, meaning any surplus funds are reinvested in the organization, rather than distributed among individuals or shareholders like for-profit organizations. Charitable institutions have a governing structure that includes trustees or board of directors, officers and employees who must work together in a position of trust that requires them to be transparent about their financial activities and be accountable for their use of funds to ensure that donors and the public are confident in the organization's mission and operations. An example of a charitable institution is a hospital or health-care organization that provides medical care, treatment and support to individuals in need. Other examples include religious, educational, art and cultural institutions, environmental, business leagues, and veterans' organizations, shelters, housing and welfare institutions.

Clinical Medical Laboratory: A laboratory where tests are conducted on clinical specimens to obtain information about the health of a patient to aid in diagnosis, treatment, and prevention of disease. Testing services can be found in hospitals, doctors offices, clinics, skilled nursing and long-term facilities, as well as commercial laboratories that operate as an independent business.

Commencing Building Activity: The state of building activity at which, in the opinion of the permitting authority, substantial manmade construction materials critical to a building's or site's functioning, have been permanently installed, or in cases where commencing such activity has been hindered due to circumstances beyond the control of the owner, a stage of building activity where, in the opinion of the permitting authority, proof can be shown that construction will unconditionally occur within six months.

Commercial Greenhouse: A greenhouse business producing nursery stock, flowers, vegetables or other plant materials and related supplies for wholesale and/or retail sale.

Common Driveway: A driveway that is shared through ownership and/or use by more than one property owner.

Commissioning: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

Composting Facility: A commercial or public facility for the processing of yard and garden waste using biological decomposition to transform the waste into soil or soil additives. This shall not include a facility as defined in MGL c. 111 section 150A.

Continuing Care Retirement Community (CCRC): A managed residential development designed to offer housing, convenience, services and nursing care to single and married older adults. These facilities offer a continuum of care ranging from independent living to assisted living, memory care, nursing home care and respite care that is intended to allow residents to remain housed in the same community as their services are adjusted and altered depending on their needs. It is a comprehensive and individualized plan offering such services as nursing and health care, housekeeping, meals and special diets, recreational activities, transportation and emergency help.

Construction Sign: A sign identifying the proposed building, the owner or intended occupant and the contractor, architect and engineers. A construction sign for more than a single lot will be considered to be a "subdivision sign."

Contaminated Sediments: Sediments containing oil and/or hazardous material associated with a release for which notification is required by 310 CMR 40.0300 and 40.1600.

Contaminated Soils: Soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Construction Trades: A trade or profession devoted to construction, such as but not limited to plumber, electrician, gas fitter, carpenter, cabinet maker, mason, landscaper, and heavy equipment operators (e.g. backhoe, excavator). A general contractor would be categorized as an office use unless there is storage of materials or equipment on site, in which case it would be categorized as a construction trade.

Craft Distillery: A plant or premise where distilled spirits are produced, manufactured, or distilled for human consumption, limited to a maximum annual production of 10,000 proof gallons (12,500 gallons) of distilled spirits per year. Such establishments may also offer on-site tastings, sell their product on-site and/or sell wholesale to other parties as stated in M.G.L. Ch. 138 §19E. Registered craft distilleries must be licensed as "farm distilleries" under M.G.L. Ch. 138 §19E.

Decorative Sign (Non-Business): A sign displaying a commercial product name, logo or likeness utilized on a private non-business property for which its only purpose is decoration to expressed nostalgic or historical context.

Dedicated-use Building: A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.

2) No other occupancy types are permitted in the building.

3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:

a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.

b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

Density: The number of dwelling units per acre of land. See §5.2, Interpretation Notes for Area Requirements, for additional information on calculating density.

Directional or Informational Sign: A sign which is necessary for the safety and direction of vehicular or pedestrian traffic.

Directory Sign: A sign listing the name and location of the occupants of a site or building.

Dwelling: A building or part of a building providing complete, independent, living facilities (dwelling units) for one or more families.

Dwelling, Multifamily: A building containing three or more dwelling units intended to be occupied exclusively by families living independently of each other.

Dwelling, Single Family: A building designed and intended for occupancy by a single family.

Dwelling, Single Family Attached: A dwelling unit in a townhouse configuration.

Dwelling, Single Family Detached: A dwelling unit which is not attached to any other dwelling unit by any means.

Dwelling, Two Family (aka Duplex): A building containing two dwelling units.

Dwelling Unit: A single space within a building designed and intended for occupancy by a single family, which contains areas for living, sleeping, cooking, and sanitary facilities.

Eating Establishment: Any establishment that sells food for on or off-premise consumption; may include the sale of alcoholic beverages. Examples include restaurants, drive-ins, fast food establishments, yogurt or ice cream shops and coffee shops. Note: establishments preparing food that is not for immediate consumption and that do not have accommodations for on-premises consumption, such as catering businesses, are classified as retail businesses.

Eating Establishment, High Turn-Over: A sit-down eating establishment with turnover rates normally of less than one hour, with or without take-out facilities. Generally, these restaurants serve breakfast, lunch and dinner. This type of restaurant is often moderately priced, and frequently belongs to a restaurant chain.

Eating Establishment, Low Turn-Over: A sit-down eating establishment with turnover rates generally of more than one hour. Typically, these restaurants do not serve breakfast, and many serve only dinner.

Eating Establishment, Drive-In or Drive-Through: A high turn-over establishment that includes either drive-in or drive-through facilities; it may include seating indoors and/or outdoors.

Electronic Message Sign: A sign which utilizes electricity to form images, letters, messages or shapes in order to display information or attract attention to a product, service, person or place.

Emergency Department: An area of acute care hospital (ER) staffed and equipped for the reception and treatment of persons needing immediate medical care 24 hours a day/seven days a week and receives ambulance patients. A freestanding emergency department (FSED), operating a licensed facility that is structurally separate and distinct from a hospital and provides emergency care. There are two types of FSEDs; a hospital outpatient department (HOPD), also referred to as an off-site satellite emergency department (ED) owned and operated by a medical center or hospital system, and an independent freestanding emergency center (IFEC) owned by a separate entity not affiliated with a hospital.

Equestrian Stable: An establishment where horses are boarded and cared for, and where instruction in riding, jumping, and showing is offered. Includes the sale or hiring out of horses to the general public, and may include breeding of horses. Note: a private stable on a residential parcel which does not involve boarding, training, sale, or hiring out of horses to the public is considered an accessory use to the residence (see §4.4.1 D).

Erecting: Any installing, constructing, reconstructing, replacing, relocating, re-lettering, except as specifically provided, extending, altering or otherwise changing of a sign. "Erecting" shall not include repairing or maintaining an existing sign.

Estate Lot: A lot created with less than the required frontage in exchange for increased square footage for the purpose of construction of a single family dwelling and/or preservation of open space as described in Section 5.2.10.

Facility Operator: The person or firm responsible for the day-to-day monitoring, operation, and maintenance of a solar or wind energy facility.

Family: Any number of individuals related by blood, marriage, or adoption, living and cooking together as a single housekeeping unit, provided that a group of not more than four persons living and cooking together, but not necessarily related by blood or marriage each to the other, may be considered a family.

Family Daycare Home: A childcare service provided within a private home which serves no more than six children. Refer to MGL c. 28A §9 for full definition, which is hereby adopted by reference.

Family Daycare Home, Large: A childcare service provided within a private home which serves more than six but fewer than ten children. Refer to MGL c. 28A §9 for full definition, which is hereby adopted by reference.

Farm: A property used for commercial agriculture (raising crops, hemp, and/or livestock), horticulture (raising fruits, flowers, ornamental plants [to include trees farms], or vegetables), silviculture (forestry), aquaculture (raising fish or shellfish), or viticulture (raising grapes). This includes facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 percent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located.

Farmstand: A structure located in a district in which agricultural uses are allowed, from which raw produce, not less than half of which is grown on the premises, is offered for sale to the public.

Fill Material: Soil, sediments, rock and/or stone obtained off-site that is used to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.

Flag: Flags and insignia of any government or organization.

Flexible Residential Open Space Development (FROSD): A form of residential development where the density is no greater than would be permitted in the district in which the FROSD is located, but where the lot size and other dimensional standards may be reduced in exchange for the preservation of permanently protected open space, recreational land, forests, or farmland.

Flicker: The glare or shadow(s) cast by rotating blades of a wind turbine that can cause a flickering effect.

Freestanding Sign: A non-movable sign not affixed to any building but constructed in a permanently fixed location of the ground with its own support structure and displaying a sign face on not more than two (2) sides. Examples include monument signs, pole signs, and pylon signs.

Freight & Trucking Terminal: A building or area in which product, material, or freight is brought by any means of conveyance for the short-term storage not to exceed thirty (30) days and shipping of finished goods used in commerce or industry, whether such storage and processing be in an enclosed facility or not (this does not include Auto Salvage or raw earthen material).

Frontage: The continuous line of a parcel boundary along the edge of a street right-of-way between the points of intersection of the side parcel boundaries with the street right-of-way.

Fundraising Sign: A sign associated with a fundraising event being conducted or in association with a local organization.

Gasoline Pump Sign: The standard type of gasoline pump bearing thereon in the usual size and form the name or type of gasoline and the price thereof.

Gross Floor Area: The sum of the horizontal areas of the several stories of a building, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall. Gross floor area shall exclude basements and attics, unless they are designed for immediate or future use as habitable space.

Ground Mounted Solar Energy Facility: A solar energy facility that is mounted on the ground, either directly or on supports which do not constitute a building under the Building Code. As a point of clarification, solar energy facilities that are mounted on buildings (e.g. roof mounted systems) are not subject to the zoning regulations in §4.8.3.

Groundwater: Water beneath the surface of the ground whether or not flowing through known and definite channels.

Habitable Space: Any space within a building that meets the requirements of the Massachusetts State Building Code (780 CMR) for sleeping, living, cooking, or dining purposes.

Half-Story: A story under a sloping roof with a habitable area less than three quarters of the area of the story immediately below it.

Health and Human Service**:** This use includes the residential, administrative and health care facilities associated with an organization whose purpose is the provision of mental, social and health services.

Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol (THC) and tetrahydrocannabinol acid (THCA) in any part of the plant of the genus Cannabis regardless of moisture content. Production of Hemp is separate from marijuana cultivation, and is considered an acceptable agricultural crop within this bylaw.

Height: The vertical distance measured from the average finished grade of the ground adjoining a structure to the highest point of the structure, as specified in §5.3.

Historic Building: A building listed in the Massachusetts Cultural Resource Information System (MACRIS) or the Massachusetts State Register of Historic Places, or that is categorized for pending future land marking by the Ware Historical Commission and/or Massachusetts Historical Commission.

Home Occupation: An occupation carried on in a dwelling unit by a resident thereof. See §4.4.1 F for additional information.

Historic Fill: Fill Material that based on the weight of evidence and consistent with the Conceptual Site Model (see 310 CMR 40.0006):

(a) was emplaced before January 1, 1983;

(b) may contain, but is not primarily composed of, construction and demolition debris, reworked soils, dredge spoils, coal ash, wood ash or other solid waste material;

(c) was contaminated with metals, hydrocarbons, and/or polycyclic aromatic hydrocarbons prior to emplacement, at concentrations consistent with the pervasive use and release of such materials prior to 1983;

(d) does not contain oil or hazardous materials originating from operations or activities at the location of emplacement;

(e) is not and does not contain a generated hazardous waste, other than Oil or Waste Oil;

(f) does not contain chemical production waste, manufacturing waste, or waste from processing of metal or mineral ores, residues, slag or tailings; and

(g) does not contain waste material disposed in a municipal solid waste dump, burning dump, landfill, waste lagoon or other waste disposal location.

Hospital: A healthcare facility that provides around the clock in-patient medical, surgical and skilled nursing care for sick or injured people. It is typically equipped with specialized staff, advanced technology and various departments or units that cater to different health care needs. A hospital is staffed by medical professionals, including doctors, nurses and other providers, as well as healthcare support workers and the many other hospital personnel needed for a hospital to function properly. A hospital has a wide range of departments and units that may include an emergency room intensive care unit, inpatient and outpatient departments, general surgery and operating theatre, cardiology, neurology, oncology, maternity, pediatrics, psychiatry, and more with supportive departments including radiology, laboratory, pharmacy, food service, housekeeping, technical administration, maintenance, outreach and community services. Hospitals are classified as general community hospitals, teaching hospitals, federal hospitals for military and veterans, long-term care hospitals, mental health hospitals and various specialty hospitals. A hospital can be either public or private, funded by the public sector, health organizations, health insurance companies, or charities including direct charitable donations and trusts; and it must operate under various regulations and standards set forth by the healthcare authorities.

Hospital Helipad: A designated landing area within a medical center's premises, specifically tailored for medical emergency helicopters. The size of the helipad is determined by the design helicopter intended to use it, ensuring a perfect fit for safe landing and take-offs.

Homeowners Association: A private non-profit organization (corporation, association, or other legal entity) established by a developer to manage, maintain, support, and finance the common facilities and common open space of an FROSD or a subdivision, and to enforce certain covenants and restrictions.

Hotel: An establishment that provides temporary lodging for transient guests which has access to sleeping rooms from a corridor internal to the building. Hotels may or may not have public dining rooms, recreational or entertainment amenities, conference facilities, or personal service facilities for the guests.

Hybrid Marijuana Establishment: a business where the combined sale of both medical and recreational marijuana and products containing and/or associated to legalized marijuana use is authorized. See §4.8.8 F for additional information.

Impervious Surface: A surface that has been compacted or covered with a layer of material such that it prevents or impedes the infiltration of water into the soil. Examples include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, and compacted gravel or clay surfaces.

Individual Letter Sign: A wall sign consisting of individual letters mounted to a building surface without any background or frame.

Industry, Heavy: Manufacturing or other enterprises with significant external effects, or which pose significant risks due to the involvement of explosives, radioactive materials, poisons, pesticides, herbicides, or other hazardous materials in the manufacturing or other processes.

Industry, Light: A use that involves the manufacturing, production, processing, fabrication, assembly, packaging, treatment, or repair of finished products, predominantly from previously prepared or refined materials or raw materials that do not need refining.

Inn: A building that contains a dwelling unit occupied by an owner or resident manager in which up to ten guest rooms are offered on a day to day basis to the general public for compensation, either with or without meals.

Interim Wellhead Protection Area (IWPA): The primary protected recharge area for public water supply groundwater sources in the absence of an approved Zone II, as determined by MA DEP.

Intermediate Care Facility: A facility primarily engaged in providing skilled nursing care and related services for residents who require medical and nursing care, or rehabilitation services for injured, disabled or sick persons, at a lower level than a hospital or nursing home, or on a regular basis, health-related care and services to individuals who because of their mental or physical condition require services which can be made available to them only through an institutional facility, is not primarily for the care and treatment of mental diseases, and the intermediate care facility has in effect a transfer agreement with one or more hospitals.

Kennel: A structure used for the boarding, breeding, raising, or training of dogs, cats, or other household pets.

Large Solar Energy Facility: A commercial solar facility whose primary purpose is electrical generation for the wholesale electricity markets. It includes service and access roads, equipment, machinery and structures utilized in connection with the conversion of solar energy into electrical power with a rated nameplate capacity of greater than 100kW (0.1MW).

Leachable Wastes: Waste materials capable of releasing water-borne contaminants into the environment, including but not limited to solid wastes, sludge, sewage, pesticides, and fertilizer waste.

Livestock: All cattle or animals of the bovine species; all horses, mules, burros, and asses or animals of the equine species; all goats or animals of the caprine species; all swine or animals of the porcine species; and all sheep or animals of the ovine species.

Local Event Sign: A sign, which is to be portable, to announce a church bazaar, fair, circus, carnival, festival, business or shop opening, special sale by a store or business or similar event. Such sign shall identify the event and the date of the event, and it may display the event's sponsor, organizer or main feature.

Lodging House: See "Non-family Accommodations".

Lot (aka Parcel): A contiguous piece of land in identical ownership throughout, bounded by other lots or streets and not divided by a street, river or railroad, and used or set aside and available for use as a site for one or more buildings or other definite purpose. For the purpose of this bylaw, a lot may or may not coincide with a lot of record.

Lot of Record: A lot recorded in the Hampshire District Registry of Deeds or in the Land Court of the Commonwealth of Massachusetts either as an individual lot or as a lot within a subdivision.

Marijuana Cultivation Site: A business where the cultivation, possession, processing (including development of related products such as food, tinctures, aerosols, oils, or ointments), warehousing, distribution, transferring and transporting of marijuana and products containing marijuana is authorized. See §4.8.8 F for additional information.

Marijuana Cultivation Structure: a structure that is equipped with climate control systems, such as heating and ventilation capabilities, and that uses a combination of natural and supplemental artificial lighting for marijuana cultivation.

Marijuana Facility/Dispensary: see "Registered Marijuana Dispensary" (RMD).

Marijuana Delivery Operator: An entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, and Microbusiness, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana

Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license.

Medical Clinic or Urgent Care Center: An outpatient care facility licensed or approved by the Massachusetts Department of Public Health to provide medical or surgical services. Such facility may include emergency services, specialty medical diagnostic or treatment services, and accessory facilities and integral functions such as laboratories, training, staff offices, and similar adjunct facilities and functions but not in-patient facilities.

Medical/Dental Center or Office: A building or group of buildings designed or occupied and used by one or more licensed medical practitioners providing outpatient health care, including physicians, nurses, dentists, therapists, optometrists, ophthalmologists, chiropractors, and other healthcare professionals engaged in all fields related generally to medicine, (but not veterinarians), and accessory facilities and services such as medical laboratories, patient care services, and administrative offices with no accommodations for overnight stays.

Medical Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of medical marijuana and products containing medical marijuana is authorized. See §4.8.8 F for additional information.

Menu Sign: A sign associated with a walk up or drive-thru window for ordering food or merchandise designed to be readable from within twenty (20) feet and not readily readable by incidental passersby.

Microbrewery: An establishment that specializes in the production and manufacturing of beer/malt beverages and sells at least 25 percent or more of its beer/malt beverages for on-site consumption. Such establishments can sell their beer/malt beverages at wholesale under the regulations set forth in M.G.L. Ch. 138. This definition includes brewpubs, taprooms, and craft breweries. Microbreweries located in the Rural Residential District must have a Farmer Brewery license under M.G.L. Ch.138 §19C and shall produce no more than 1,000 barrels (31,000 gallons) of beer/malt beverages annually. Microbreweries located in all other zoning districts may have either a farmer brewery license (M.G.L. Ch.138 §19C) or a pub brewery license (M.G.L. Ch.138 §19D) and shall produce no more than 15,000 barrels (472,000 gallons) of beer/malt beverages annually.

Mining: The removal or relocation of geologic materials such as but not limited to topsoil, sand, gravel, metallic ores, and bedrock.

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

Mobile Home (aka Manufactured Home): A structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

Mobile Home Park: Premises which have been planned and improved for the placement of two or more mobile homes.

Mobile Storage Unit: A storage unit less than 20', without a wheeled chassis that is designed to be hauled from one location to another on a truck, used for the storage of goods and materials; often marked for temporary (i.e. ninety (90) days or fewer) storage at residential dwellings: also marketed as "pods" by storage and moving companies. Mobile Storage Units shall be considered a permanent storage structure and must meet all zoning bylaw and building code requirements if it is in place for than ninety (90) days.

Motel: An establishment which provides temporary lodging for transient guests and in which the rooms are directly accessible from an outdoor parking area.

Motor Vehicle Sales: A lot and/or structure where motor vehicles are on display for sale and service. May include recreational vehicles including motor homes, boats, and off-road vehicles, or vehicles and equipment for agricultural or construction use (e.g. tractors, back-hoes).

Net Useable Area: The total area of a parcel minus the area of wetlands as defined in the Massachusetts Wetlands Protection Act (MGL c. 131 §40).

Nonconforming Lot: A lot which does not conform to the dimensional regulations of the district in which it is situated (e.g. lot size or frontage).

Nonconforming Structure: A structure which does not conform to the dimensional and bulk regulations of the district in which it is situated (e.g. setbacks, height, building coverage).

Nonconforming Use: A use which does not conform to the use regulations of the district in which it is situated.

Nursing Home: A facility maintained for the purpose of providing 24/7 skilled nursing care and medical supervision at a lower level than a hospital to individuals who by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. Nursing homes technically "long-term care facilities" are subject to state and federal law, as well as regulations issued by the Massachusetts Department of Public Health (DPH), the state Medicaid program (Mass Health), the Office of the Attorney General and the federal Center for Medicare and Medicaid Services (CMS).

Non-Family Accommodations: Establishments that provide lodging for five or more persons not within the second degree of kindred to the person conducting the establishment, in facilities such as boarding houses, lodging houses, dormitories, or similar accommodations. For the purposes of this Zoning Bylaw, this definition does not include hotels.

Office: A place (room, suite of rooms, or building) for the transaction of business where the functions of conducting the business or profession are performed, records are kept or services rendered, but where little or no retail sales are offered and where no manufacturing, assembling or fabricating takes place. Examples include but are not limited to professional services such as lawyers, accountants, engineers, or architects; financial businesses such as lenders, brokerage houses or real estate agents; corporate headquarters; data processing; sales offices; government offices and public utility offices; TV and radio studios; and healthcare facilities. Office uses may be either the primary use or a secondary (accessory) use.

Office Building: A building used primarily for offices.

Off-premises Sign: A sign which advertises a business, service, product, commodity, entertainment or similar object or activity which is conducted, sold, or offered on a lot other than the lot on which the sign is erected.

Open Space: Undeveloped land set aside in common or individual ownership, with conservation easements or other deed restrictions to ensure that the land will remain permanently open and undeveloped.

Overspeed Control: The action of a control system, or part of such system, that prevents excessive rotor speed in a wind turbine.

Park: A municipally, state, or privately owned area that is used for active or passive recreation, or a place dedicated to the use of the public, which may include equipment and facilities for active recreation and play such as playfields, play structures, courts, swings, slides, dog parks, pools, splash parks, public assembly and accessory uses such as restrooms. It may also include areas for passive recreation such as gardens, walking/hiking trails, picnic areas, benches, tables, seating areas, and undeveloped open space.

A park may also serve as an area for formalized sanctioned events, civic gatherings, a place for reflection or remembrance (such as a monument park), and accommodate related municipal uses such as educational facilities, or facilities for storage and maintenance of equipment used in the park.

Pennant Sign: Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

Permanent Sign: A sign that is permanently attached to a building or having in-ground supporting structure(s) or braces.

Permitting Authority: The Building Inspector for projects that require only a building permit, the Planning Board for projects requiring site plan review and/or certain special permits, or the Zoning Board of Appeals for certain special permits, variances, or certain appeals.

Photovoltaic System: (also referred to as Photovoltaic Installation) – An active solar energy system that converts solar energy directly into electricity.

Political Sign: A sign designated to influence the action of voters for the passage or defeat of a measure, or the election of a candidate to a public office at a national, state, county or local election.

Potential Drinking Water Sources: Areas which could provide significant potable water in the future.

Poultry: Any domesticated fowl, including but not limited to chickens, ducks, geese, turkeys, and pheasants (including peafowl).

Pre-Existing Legal Nonconformity: A lot, structure, or use that was in compliance with the zoning bylaw in effect at the time of creation of the lot, construction of the structure, or establishment of the use, but which due to amendments to the zoning bylaw, is no longer in compliance. Includes lots, structures, and uses in existence prior to the enactment of zoning which are not in compliance with the current bylaw.

Prime Agricultural Soils: Agricultural land with soils designated as prime or of statewide significance by the U.S. Natural Resources Conservation Service.

Private Membership Club or Lodge: An organization or facility which is open to people upon invitation, nomination, or payment of fees or dues, for social, recreational, and/or entertainment activities.

Private Property: A term that refers to ownership of a property by an individual or other entities, rather than the government. Ownership means legal title to private property with exclusive rights to use, manage, modify, rent, lease, sell or gift the property and exclude people from entry onto one's property. While property owners generally have the right to use their property as they wish, there are laws and regulations (like zoning laws) that may restrict certain activities. Private property includes real, personal, tangible and intangible assets, including intellectual property. Example of private property may include land, homes, commercial and industrial buildings, and personal property such as motor vehicles, boats and agricultural machinery.

Product Sign: An affixed sign attached to a structure defining a product being offered for sale at an establishment.

Projecting Sign: A sign which is permanently affixed to the exterior of a building such that the face of the sign is perpendicular to the building surface to which it is attached.

Public Garage: A structure owned by a public or public-subsidized entity that provides space for automobile parking for the general public.

Public property: A term that refers to assets and resources owned by the government or a collective body of people and is meant to be shared for the benefit of the community. The government or community collectively owns public property as the government is made up of the people. Therefore the people own the property that is entrusted to the government for care with taxpayer dollars and public donations, thus

no single individual can claim exclusive rights over it. Examples of public property include public parks, libraries, hospitals, roads and public buildings.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. The manufacturer typically specifies this output with a "nameplate" on the equipment.

Recreational Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of recreational marijuana and products containing and/or associated to recreational marijuana (e.g., aerosols, art, clothing, food, jewelry, literature, oils or ointments, tinctures, etc.) is authorized.

Registered Marijuana Dispensary (RMD): A use operated by an entity registered and approved by the MA Department of Public Health in accordance with 105 CMR 725.000, 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. A RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

Real Estate Sign: A sign which is used to offer for sale, lease, rent or auction the property upon which the sign is placed.

Recharge Areas: The portion of a drainage basin where water enters a saturated zone and the net flow of groundwater is directed from the saturated zone to an aquifer or waterbody. Recharge areas may include areas designated as Zone I, Zone II, or Zone III by MA DEP.

Recycling Center: A facility where recyclable material is collected from the public and sorted, processed, and/or baled in preparation for shipment to others for remanufacture into new materials. This shall not include auto salvage or a facility as defined in MGL c. 111 §150A.

Research and Development Laboratory: A scientific laboratory for research, testing and development which may pertain to medical/scientific research and/or product development with the objective of creating end-products employing only electric or other substantially noiseless and inoffensive motor power, and free from neighborhood disturbing agents such as odors, gas, fumes, smoke, cinders, refuse matter, heat, vibration, noise, or electromagnetic radiation; provided that all operations are located entirely within an enclosed building and there is no outside storage of materials or finished goods.

Retail Sales and Service: Businesses involved in the sale, lease or rent of new or used products or the provision of services or consumer product repair to the general public. These uses are further categorized as small scale or large scale, which is determined based on the character of the surrounding uses and area: small scale is generally in more densely developed areas such as the downtown, while large scale is generally in outlying areas where large parcels and open spaces afford the opportunity for large buildings and parking areas.

Roof-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted to the roof of a building.

Rotor: The blades and hub of a wind turbine that rotate during turbine operation.

Sandwich Board Sign: Single or double sided, "A" frame type signs, that are moveable and taken down during non-business hours.

Self-service Storage Facility: A building or group of buildings divided into separate compartments leased to and designed to meet the storage needs of individuals, organizations, and businesses.

Setback: The distance from the lot line to the nearest point of a structure, measured at right angles to the property line. For the purpose of this definition, "structure" does not include signs, retaining walls, fences, tents, poles, swing sets, and other similar items.

Front: The setback from the front property line (along the frontage).
Side: The setback from the side property lines.
Rear: The setback from the rear property line.

Setback Line: A line that is parallel to a property line (front, side, or rear) that lies at the distance required in this Zoning Bylaw for the district in which the property lies.

Shed or Permanent Storage Structure: A storage unit that is either a site-built structure constructed of wood, metal, masonry, or other materials; or a similar prefabricated building that is brought to a site from a place of construction.

Sign: Any words, lettering, parts or letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or trademarks, whether stationary or portable, by which anything is made known, such as are used to designate or locate an individual, a firm, an association, a corporation, a profession, a business or a commodity or product, which are visible from a public or private street or right-of-way and used to attract attention.

Sign Area: The total surface area of a sign, including all lettering, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the sign. The sign area of an individual letter sign, awning sign or irregular shaped sign shall be the area of the smallest rectangle into which the letters, designs or symbols will fit. Where sign faces are placed back-to-back and face in opposite directions, the sign area shall be defined as the area of one face of the sign. Sign area is determined by calculating the rectangular area based on taking the most extreme points of the sign face in the horizontal and vertical directions to obtain the square footage.

Site Analysis Map: A map which identifies, locates, and describes noteworthy features to be taken into consideration in a site or subdivision design, such as vegetation, wetlands, steep slopes, farmland soils, historic or cultural features, threatened or endangered species, unusual geological formations, and scenic views or viewsheds.

Small Solar Energy Facility: All equipment, machinery and structures utilized in connection with the conversion of solar energy into electrical power. This includes, but is not limited to, storage, electrical collection and supply equipment, and transformers that have a total rated nameplate capacity of not more than 100kW (0.1MW). As a point of clarification, small solar energy facilities are not subject to the zoning regulations in §4.8.3, whether ground or building mounted.

Solar Access: The access of a solar energy system to direct sunlight

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Photovoltaic (PV) Array: An arrangement of solar photovoltaic panels

Solar Parking Canopy: An elevated structure that hosts solar panels installed over parking lots or other hardscape areas. Also may be called solar carport installation.

Special Permit Granting Authority (SPGA): The Board responsible for granting a Special Permit under these Zoning Bylaws; can be either the Planning Board or the Zoning Board of Appeals, as stipulated in the various sections of this Bylaw.

Sponsor Sign: A sign containing the name of a commercial venture when advertising a noncommercial event; provided the commercial venture portion of the sign does not comprise more than twenty-five percent (25%) of the total sign area.

Sports Field Sign: A sign mounted within an indoor or outdoor sports venue that is placed so as primarily be noticed by attendees of the event with only incidental viewing by those passing by outside the venue.

Story: That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Street: Any public or private way laid out for vehicular traffic.

Street, Private: A street which has not been dedicated and publicly accepted by any governmental entity.

Street, Public: A street which has been dedicated and publicly accepted by a governmental entity, and which has not been discontinued or abandoned by any official government action.

Structure: Any construction or assemblage of materials with a fixed location, including a building, platform, tower, pole, sign, fence, wall, dam, swimming pool, or any part of the above and requiring piling, footings, or a foundation for support.

Tag Sale Sign: A sign indicating a private sale of used goods.

Tank Farm: A facility containing any number of above ground tanks for the storage of petroleum products, chemicals, or other materials where the aggregate capacity of all storage tanks is more than 10,000 gallons.

Taxicab Business: A service that offers transportation in passenger automobiles, vans, and limousines to persons including those who are handicapped in return for remuneration. The business may include facilities for servicing and repairing the vehicles.

Temporary Sign: A sign that is used for a limited period of time.

Tourist House: See "Inn".

Tow Service/Tow Yard: An establishment that provides for the removal and temporary storage of vehicles but does not include disassembly, disposal, salvage, or storage of inoperable vehicles for greater than 12 months.

Town Line: The Town of Ware boundary line shall be considered a property line. In the event the town line dissects a tract of land all setbacks appropriate to the side, rear, or front setback of the Dimensional Requirements of the Dimensional Regulations of The Zoning ByLaw shall apply.

Toxic or Hazardous Material: Any substance or combination of substances or material or combination of materials or chemical or mixture of chemicals which because of its quantity, concentration or physical, chemical or infectious characteristics poses or may pose a present or potential threat to human health, safety or welfare or to the environment if such substance or mixture were discharged to land or waters of the Town, including but not limited to organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids, and alkalis, and all substances defined as Toxic or Hazardous under M.G.L. Chapter 21C and 21E, and 310 CMR 30.00, and those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning Community Right-to-Know Act of 1986: (including any revised version of the list as may be made pursuant to subsection (d) or (e), and those hazardous substances and/or materials or chemicals set forth in 40 CFR 261 et. seq.

Transient Vendor Sign: Sign associated with a vendor that temporarily sells merchandise in an open air setting or out of a truck, tent or other temporary structure at a location not associated with a locally sponsored event, bazaar, fair, carnival, festival, store promotion, or in association with any other locally based civic or non-profit or charitable function or organization.

Utility-Scale Solar Facility: a solar photovoltaic installation over 15MW in size that connects direction into h voltage transmission line.

Utility, Major: Infrastructure services providing Town-wide service, such as but not limited to public water supply wells, water towers, waste treatment plants, communication towers, electrical substations, and renewable energy sources (such as wind, solar, and hydro).

Utility, Minor: Infrastructure services that need to be located in or near the area where the service is provided, such as but not limited to water or sewage pump stations, stormwater retention or detention facilities, and telephone exchanges.

Wall Sign: A sign which is painted or otherwise permanently affixed to a vertical exterior surface of a building or structure with the face of the sign positioned parallel with the wall to which the sign is mounted, and including such a sign affixed to a parapet or to the lower slope of a gambrel or mansard roof.

Warehouse: A facility for storage and/or distribution of manufactured products, supplies, and equipment; does not include self-service storage facilities.

Wetlands: Areas of land that are inundated or saturated by water at a frequency and duration sufficient to support vegetation typically adapted for life in saturated conditions, more specifically as described in MGL c. 131 §40.

Wheeled Trailer: A storage unit that is purpose-built with permanent wheels and "landing gear" on a non-detachable chassis; typically, with a wooden floor and metal sides, roof, and doors. When originally constructed, this kind of unit is issued a vehicle identification number (VIN). The unit utilizes a "king pin/fifth wheel" or "tongue hitch" connection for a motive power unit. An unregistered Wheeled Trailer is considered a vehicle and must comply with general Town of Ware Bylaw requirements related to unregistered vehicles. A Wheeled Trailer, originally manufactured with a VIN issued, which has had its wheels and/or landing gear removed such that the cargo doors are at or substantially near ground level shall be considered the same as a Cargo Container.

Wholesale: An establishment engaged in the sale and/or distribution of merchandise to other businesses – commercial, industrial, institutional, etc. – and not directly to the general public.

Wind Energy Facility (WEF): All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads, and machinery associated with the use. A wind energy conversion facility may consist of one or more wind turbines.

Wind Monitoring Tower: A facility consisting of a tower and related wind-measuring devices that is solely used to measure the speed and characteristics of winds.

Window Sign: A sign, picture, symbol or message that is placed inside a window, drawn, painted or etched on the window pane or otherwise attached in or on a window and visible from the exterior of the window, not including any part of a customary window display of merchandise or other product.

Wind Turbine: A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft. A wind turbine typically consists of a rotor, gearbox and generator, and is installed at the top of a supporting tower.

Yard: An area of land that lies between the property line (front, side, or rear) and the setback line. Front and rear yards extend from one side property line to the other, while side yards extend from the front setback line to the rear setback line.

Zone II Groundwater Protection District: The DEP approved area defined as that area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone IIs shall extend up gradient to its point of intersection with prevailing

hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary). (Source: 310 CMR 22.02).

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Article 3 – Establishment of Districts

3.1 **Zoning Districts**. The Town of Ware is hereby divided into the following districts:

3.1.1 *RQ – Rural Quabbin:* This extensive area is almost entirely lands owned by the Commonwealth of Massachusetts for the purpose of protecting the public water supply of the Quabbin Reservoir, with the exception of one parcel which is privately owned.

3.1.2 *RR – Rural Residential:* Covering the majority of the Town, this district includes a mixture of agricultural, forestry, and low density residential uses, and is key to the rural character of the town.

3.1.3 *SR – Suburban Residential:* These areas are almost entirely residential, at densities greater than those in the rural areas of town, and are located closer to the downtown, commercial and industrial areas, public utilities (water and sewer), and major transportation routes. Primarily residential, some low impact non-residential uses are also allowed under specific circumstances.

3.1.4 *BLR – Beaver Lake Residential:* This district surrounding Beaver Lake consists of dense residential development on lots that are substantially smaller than the surrounding Rural Residential district. With its unique development history, this district has land use issues not experienced in other districts.

3.1.5 *DTR – Downtown Residential:* This district encompasses the high density residential neighborhoods that were developed during the time period when the mills were the major employer of the town, long before Zoning was in place. As such, more than half of the parcels in the district are less than 10,000 square feet, in fact nearly one quarter are less than 5,000 square feet. Over the years many single family homes in this district have been converted into two or more units, creating a diverse area with many streets that retain the single family character yet have higher population densities than suburban type neighborhoods with modest size lots. While numerous small shops existed throughout the neighborhoods, particularly closer to the downtown, today only a handful of commercial establishments exist in this district.

3.1.6 *RB – Residential Business:* While primarily consisting of moderate density residential areas along Route 32, this district contains some commercial and institutional uses; however, those uses are currently less than 12 percent of the total number of parcels within the district. Given the negative impact that increasing traffic volumes on Route 32 have on residential uses, a gradual conversion to more non-residential uses is expected in these areas.

3.1.7 *DTC – Downtown Commercial:* This area of Ware represents what was once the primary commercial center of the town, and although other retail areas have since built up, it remains the true center and exhibits the characteristics of a walkable center where people can live, work, shop, dine, and meet others as they conduct their business. While residential uses are currently lacking, the intention is to encourage more residential units in upper story spaces on Main Street, both existing and new construction.

3.1.8 *MY – Mill Yard:* This district encompasses the area of the old industrial center of Ware that is in close proximity to the downtown, which the Town has envisioned as a mixed use area for many years. To accomplish that goal, one step is to create a regulatory environment that encourages all types of uses – high density multi-family residential, commercial, institutional, and some light industrial uses as well.

3.1.9 *HC – Highway Commercial:* There are two HC districts in Ware, with quite different characteristics. The HC district on Route 32 south of downtown is the location of the majority of the retail and businesses in town. Nonetheless, there are still a substantial number of residences in the area, including two multi-family developments. Future development in this district is expected to continue the suburban character of the existing commercial development, with large parking lots in front of moderate to large stores. The HC district along Route 9 east of downtown consists mostly of small or narrow lots with shops or services, although it also includes two larger commercial buildings that are along the rail line. Future uses in this area are expected to be commercial.

3.1.10 *CI – Commercial Industrial:* Located at the southern end of Route 32 in Ware, this district incorporates a high intensity commercial shopping center as well as numerous smaller businesses and some residential uses. The district includes a substantial amount of undeveloped land which could be used for both high intensity commercial uses such as hotels, and light industrial uses such as some manufacturing and business uses geared toward serving a potential large scale entertainment complex in the region.

3.1.11 *I – Industrial:* This district provides for light industrial and service related businesses with large buildings or outdoor storage requirements. The district includes one area of what is sometimes referred to as "mill housing"; industrial uses within this area will be reviewed with a focus on minimizing negative impacts on remaining residences. A variety of commercial uses are also permitted within this district.

3.1.12 HCS – Health Care Services: The purpose of the health care services district is to promote future development and provide for development of the former Mary Lane Hospital site and adjacent properties, for essential medical and medical-related services to ensure residents have access to healthcare, and also a senior living and care community as part of this district. The HCS district is designed to accommodate the health care needs of the region by providing a zoning district for a hospital and/or the customary supporting facilities and uses, and to allow related health services including, but not limited to, outpatient clinics, offices of health practitioners and other healthcare professionals, patient care services, radiology, and other diagnostic services, clinical medical laboratories, intermediate care such as rehabilitation centers, assisted living, memory care, continuing care retirement facilities, nursing homes, research and development facilities, daycare centers, medical education and training centers, and sale of materials and supplies for medical use.

3.2 **Location of Districts**. The location and boundaries of the zoning districts are hereby established as shown on a map entitled "Zoning Map of the Town of Ware", dated May 15, 2019, which is on file in the office of the Town Clerk. The Zoning Map, and any amendments thereto, together with all explanatory matter thereon, are hereby made a part of this zoning bylaw.

3.3 **Interpretation of District Boundaries**.

3.3.1. *Location of boundary*. Where a district boundary is indicated as within or parallel to a street, highway, railroad right-of-way, water course or municipal boundary, such district boundary shall be construed as the right-of-way line of such street, highway, or railroad right-of-way, or the centerline of the water course or municipal boundary, unless otherwise shown on the zoning map. Boundaries which appear to follow a property (parcel) line shall coincide with that property line. 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 Building Inspector, with appeal to the

Zoning Board of Appeals. Note that any modification of district boundaries requires a zoning amendment pursuant to MGL c. 40A §5.

3.3.2 Parcels transected by one or more zoning district boundaries.

A. The use regulations for the less restricted portion of such parcel may extend not more than 30 feet into the more restricted portion, or, by special permit, not more than 100 feet into the more restricted portion. In such applications, the Special Permit Granting Authority shall first determine that the proposed use will have no detrimental impact on abutting properties and uses. This provision does not apply to overlay districts.

B. The area, frontage, and setback requirements of §5.1 shall be determined based on the requirements of the district where at least 50% of the proposed structure will be located.

3.4 Overlay Districts

3.4.1 FP – Floodplain. The purposes of the floodplain 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 floodplain, and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

3.4.2 AP – Aquifer Protection. The purposes of the aquifer protection district are to protect, preserve and maintain present and potential sources of public and private water supplies including their recharge areas, conserve the natural resources of the town, and prevent temporary and permanent contamination of the environment due to adverse land use practices.

3.4.3 *RRB – Rural Business*. The purpose of the rural business overlay district is to preserve the scenic rural character of the route 9 corridor, while allowing for commercial development that is in keeping with adjoining uses and in harmony with the natural environment. This district allows for the potential of economic development while minimizing the impacts to the rural character of the corridor.

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Article 4 – Use Regulations

4.1 **Use Designations**.

4.1.1 *The Principal Use* is the primary use on a parcel or site, and they are allowed in each zoning district as specified in §4.2, Table of Uses. In the table, the following notations apply:

A. Uses Permitted By Right: "Y" indicates that a use is allowed by right in the district. See also §4.6, Exempt Uses. Note that some uses may also require a site plan approval, which is covered in §7.4.
B. Special Permit Uses: "SP" indicates that a use is allowed only if approved by the Special Permit Granting Authority, in accordance with the special permit review procedures of §7.2. All conditions listed in the applicable sub-section of §4.3 must be met for a special permit to be granted.
C. Uses Not Permitted: "N" indicates that a use is not allowed in the district. See also §4.7, Prohibited Uses.
D. For specific uses which are not listed but are clearly within a category listed in the Table, the Building Inspector shall make the determination as to whether the proposed use is permitted, and if so, which category it will be classified in.
E. In the Mixed Use districts (RB, DTC, and MY), it is possible to have more than one principal use on the property, and permitting shall follow the Use Table. For example: if one use is allowed by right and another is by special permit, then a special permit must be obtained for that use prior to its establishment. If both uses are permitted by right in the Use Table, then no special permits are required.

4.1.2 *An Accessory Use* is one that is subordinate to the principal use. §4.4 sets forth the provisions for accessory uses.

4.2 **Use Table**. Please refer to the Use Table in the Appendix.

4.3 **Specific Permitting Standards**. The following standards must be met for the particular use to be approved by the permitting authority. Note, the numbers in parenthesis refer to the item numbers in the Table of Uses.

4.3.1 *Single Family* (A-1) or *Two Family* (A-2). In the MY district, a single housing unit or two housing units are permitted provided they are located in an upper floor or an area on a street level floor that is to the rear of a nonresidential use; the building must contain space designated for nonresidential uses allowed in the MY district as well as residential units (i.e. have mixed uses).

4.3.2 *Multi-Family* (A-3). In the SR or DTR districts:

A. Multi-family buildings may not contain more than 12 dwelling units in a single building.
B. Multi-family projects shall be designed to comply with all design standards in Article 6 of this Zoning Bylaw.
C. An impact statement must be submitted with the site plan application for all projects proposing ten or more dwelling units, and must include a discussion of the probable impacts of the proposed development on municipal utilities, traffic, public schools, municipal service costs, and the supply of housing for low and moderate income households.

4.3.3 *Mobile Home Park* (A-4). New mobile home parks must meet the following:

A. Shall be located on a parcel of at least ten acres.
B. The site plan shall meet the requirements of §7.4 and shall show all park roads and individual sites for the placement of mobile homes, with no more than one mobile home on one site.

C. Individual sites for placement of mobile homes shall be at least 12,000 square feet, with 75 feet of frontage on a park road.
D. Mobile homes and all accessory structures attached to the mobile home shall be placed at least 40 feet from the front site line and 15 feet from any individual side or rear site line.
E. Water supply and sewage disposal systems, whether individual private systems or community systems, must meet all applicable requirements of state or other local authorities, including provisions for fire protection.
F. Park roads must be constructed in accordance with the Ware Subdivision Regulations, with the exception that roads may be 24 feet in width (20-foot travel surface plus 2 foot shoulders on each side). On-street parking shall be prohibited.
G. Recreational areas must be provided, at the rate of one acre for every ten acres of area developed for the mobile home park.
H. A community center, which may include a laundry facility for use by the residents of the mobile home park, is permitted provided it is included in the plans approved by the Planning Board.
I. No mobile home may be placed within the park until the Planning Board certifies that all site work has been completed for the phase within which the mobile home is to be placed.

4.3.4 *Major Utilities* (B-12) are permitted provided they are appropriately screened with landscaping and/or fencing, at the discretion of the SPGA.

4.3.5 *Large Ground Mounted Solar Facilities* (B-13) are permitted in accordance with §4.8.3.

4.3.6 *Wind Energy Facilities* (B-14) are permitted in accordance with §4.8.4.

4.3.7 *Farms less than five acres in size* (C-2) are permitted in the SR, DTR, and MY districts provided the SPGA makes a finding that the proposed use will have a minimal detrimental impact on all abutting land, regardless of current use, and any buildings for housing animals shall be located a minimum of 100 feet from any property boundary.

4.3.8 *Equestrian Stables* (C-5) are permitted in the SR and DTR districts on parcels less than five acres in size provided the SPGA makes a finding that the proposed use will have a minimal detrimental impact on all abutting land, regardless of current use, any buildings for housing animals shall be located a minimum of 100 feet from any property boundary, and any paddock area shall be located (and fenced) a minimum of 30 feet from any property boundary.

4.3.9 *Laboratories* (D-4) and *Research Facilities* (D-5) are permitted in the SR district provided they are located near a hospital and are related to the health care industry.

4.3.10 *Auto Body Shops* (E-2) are permitted by special permit in the RB, DTC or MY districts provided that all activities are conducted entirely within a building, and disassembled vehicles and/or parts are not stored outdoors. At the discretion of the SPGA in consideration of nearby uses, such buildings may be required to be sound-insulated and designed to protect the neighborhood from vehicle exhaust, paint fumes, and other by-products of vehicle repairs and restoration.

4.3.11 *Auto Service* (E-4) is permitted in the DTC or MY districts provided that repair activities are conducted entirely within a building, and disassembled vehicles are not stored outdoors. At the discretion of the SPGA in consideration of nearby uses, such buildings may be required to be sound-insulated and designed to protect the neighborhood from vehicle exhaust and other by-products of vehicle servicing.

4.3.12 *Construction Trades* (E-8) are permitted by special permit in the RR district provided the parcel is a minimum of three acres in size, the building or outside area used for storage of equipment or materials is a minimum of 50 feet from any lot line and 200 feet from any existing dwelling, and the area between any abutting property and the storage area is vegetated with either dense natural vegetation or landscaped to provide a dense buffer.

4.3.13 *Eating Establishments, Drive-in or Drive-thru* (E-9) are permitted in the RR district provided they are associated with an agricultural use (e.g. an ice cream stand at a dairy farm). Note that most such uses will likely be accessory to the primary use of agriculture but this provision allows separate lots in separate ownership to own and operate such eating establishments.

4.3.14 *Inns, Bed & Breakfasts, and Tourist Homes* (E-19) shall be limited to a maximum of eight rooms for guests, and all required parking shall be provided on-site.

4.3.15 *Kennels or Pet Day Care Establishments* (E-20) are permitted in the RR district provided any buildings housing the animals are either located in an area where sound will be buffered so as to not cause a disturbance to the neighborhood or the buildings are sound-insulated, all dog wastes shall be collected and properly disposed of in a manner to prevent pollution of surface or ground waters; and dogs shall not be permitted to bark excessively at night (e.g. for periods longer than fifteen minutes) so as to create a nuisance.

4.3.16 *Non-family Accommodations* (E-22) are limited to a maximum number of fifteen residents in addition to the property owner or resident manager's family, and all required parking shall be provided on-site.

4.3.17 *Outdoor Recreation Facilities* (E-23) are permitted provided they have a minimum 50-foot buffer between any activity areas and the exterior boundary lines of the parcel.

4.3.18 *Parking Facilities* (E-24) are permitted within the BLR district provided they are open to the public or to a lake association and are for the purpose of providing parking for access to the lake. Such parking facilities shall be designed to minimize sedimentation of the lake and to minimize the visual impact of parked vehicles on abutting properties.

4.3.19 *Private Membership Clubs or Lodges* (E-26) are permitted provided all activity is conducted within the building or off the premises, or the SPGA makes a finding that there will be no detrimental impact to properties within the neighborhood. In those districts where such establishments are permitted by right, those that propose to serve alcohol or to have outdoor activities (e.g. occasional events or everyday games or sports) shall be subject to the granting of a special permit, for the purpose of ensuring that potential negative impacts on the neighborhood are mitigated.

4.3.20 *Small Scale Retail Sales and Service, with no Outside Storage* establishments (E-31) are permitted in the RR district by special permit provided they are a maximum of 3,000 square feet GFA inclusive of retail, office, and storage spaces.

4.3.21 *Taxicab Businesses* (E-34) are permitted by special permit in the DTC district provided all parking associated with the business (vehicles for hire and employees) is on-site or off-site on a parcel under the business owner's control, that no spaces within public parking lots will be utilized, and that no on-street spaces will be utilized.

4.3.22 *Veterinarian or Pet Grooming Establishments* (E-36) are permitted in the SR or DTR districts provided they are sound-insulated and provide adequate off-street parking as determined by the SPGA.

4.3.23 *Registered Marijuana Facilities* (G-3) are permitted in the DTC, MY, and HC districts subject to the provisions of 4.8.8.

4.3.24 *Industrial classification uses* (all uses listed under F) are required to meet the following performance standards whether permitted by right or by special permit. When reviewing an application, the permitting authority may require the submission of a statement from an independent authority qualified in addressing a specific type of environmental concern indicating that the proposed structure and/or use will not constitute a detriment to the community with respect to that particular environmental concern. The cost of preparing said statement shall be borne by the applicant. In enforcing these standards, the Building Inspector may call upon specific standards, technical specifications, and the technical expertise of such appropriate federal, state or regional agencies having an interest in the specific kind of environmental disturbance under question.

A. General. No use shall be conducted in a manner as to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactivity or other hazard; noise or vibration; smoke, dust, odor or other form of environmental pollution; electrical or other disturbance; glare, liquid or solid refuse or wastes; conditions conducive to the breeding of insects, rodents, or other substances, conditions or elements in an amount as to affect adversely the surrounding environment.

B. Vibration. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or at any point beyond the lot line; nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration measuring equipment.

C. Noise.
   1. The maximum permissible sound-pressure level of any continuous, regular or frequent source of sound produced by any use or activity shall not exceed the following limits at the property line or the sound source: from 7:00 am to 9:00 pm, a maximum dBA level of 70, and from 9:00 pm to 7:00 am, a maximum dBA level of 60.
   2. Sound pressure shall be measured at all major lot lines at a height of at least four feet above the ground surface. Noise shall be measured with a sound-level meter meeting the standards of the American Standard Institute, ANSI S 1.4, 1983, Specification for Sound Level Meters, as amended. The instrument shall be set on the A-weighted response scale. Measurements shall be conducted in accordance with ANSI SI 51.2-1962, American Standard Meter for the Physical Measurement of Sound, as amended.
   3. Sound levels specified shall not be exceeded for more than 15 minutes in any one day, except for temporary construction or maintenance work, agricultural activity, timber harvesting, church bells, emergency working devices or other similar special circumstance.
   4. An intermittent, irregular or infrequent source of sound shall be considered in violation of this section if the source:
      a) Increases the broadband sound level by more than 10 dBA above ambient;
      b) Produces a "puretone" condition. A "puretone" condition exists when any octave band center frequency sound-pressure level exceeds the two adjacent center frequency sound-pressure levels by three decibels or more; or

c) Occurs between the hours of 9:00 p.m. and 7:00 a.m., except in emergency situations.

D. Air Pollution. Atmospheric emissions of gaseous or particulate matter generated by any land use shall conform to the then current regulations of the Massachusetts Department of Environmental Protection (DEP). If the proposed land use shall be of a nature to arouse the concern of the Building Inspector and/or Planning Board, the applicant may be required to produce plans and specifications of detail sufficient for review by DEP. Determination by DEP that potential exists for emissions in excess of allowable limits shall be grounds for permit refusal.

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

F. Fire and Explosion. All activities and all storage of flammable and explosive materials at any point shall be provided with adequate fire-fighting and fire-suppression devices and equipment.

G. Radioactive Materials. The handling of radioactive materials, the discharges of such materials into the air and water, and the disposal of radioactive wastes, shall be in conformance with the regulations of the Atomic Energy Commission as set forth in the Title 10, Chapter One, Part 20 – Standards for Protection Against Radiation; as amended; and all applicable regulations of the State of Massachusetts.

H. Non-Radioactive Liquid or Solid Wastes. There shall be no discharge at any point into any public or private sewage disposal system or stream, or into the ground, of any liquid or solid materials except in accordance with the regulations of the Ware Board of Health and the Massachusetts DEP.

I. Electromagnetic Radiation. The following standard shall apply. It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation or such purposes as communication, experimentation, entertainment, broadcasting, heating, navigation, therapy, vehicle velocity measurement, weather survey, aircraft detection, topographical survey, personal pleasure, or any other use directly or indirectly associated with these purposes which are in conflict with the standards of the Federal Communications Commission regarding such sources of electromagnetic radiation.

J. Heat and Glare. Except for approved exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building. Glare shall be shielded in such a way that it will not be visible from other lots or public ways.

K. Insects and Rodents. All materials, including wastes, and all grounds and buildings shall be kept in a manner which will not attract or aid the propagation of insects or rodents creating a health hazard.

L. Waste and Refuse. No waste material or refuse shall be dumped upon, or permitted to remain upon, any part of the lot outside of buildings constructed thereon. Waste material or refuse stored outside buildings shall be placed in completely enclosed containers.

M. Water Pollution. The use and discharge of substances into lakes, streams or similar water bodies shall not violate the rules and regulations of the Ware Conservation Commission or the standards of the Massachusetts DEP.

4.3.25 *Auto Salvage* (F-1) is permitted by special permit and site plan review in the Industrial (I) district. Unregistered motor vehicles that are stored on site for the purpose of reselling, disassembling, or reusing for parts shall be stored for a period no greater than three (3) years. No person shall establish, operate or maintain an auto salvage yard within one thousand (1000) feet of the nearest edge of the right-of-way of any interstate or primary highway (Routes 9 and 32) unless such auto salvage yard is:

- screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from the main traveled way of the road system, or otherwise removed from sight as specified by the Special Permit Granting Authority, or
- located within an area within the Industrial (I) zoning district, or
- is not visible from the main traveled way of the road system.

Auto salvage yards shall be placed at least one-hundred (100) feet from the front property line, fifty (50) feet from the side property lines, and one-hundred (100) feet from any residential property line and shall be properly screened as determined by the Special Permit Granting Authority.

4.3.26 *Earth Removal* (F-3) is permitted subject to the provisions of §4.8.7.

4.3.27 *Earth Processing* (F-4) shall be defined as the processing of more than 1000 cubic yards of earth materials (soil, loam, peat, sand, gravel, stone, or compost) brought on site or brought in and stored for processing in any 12-month period, this includes gravel pits. Earth processing shall be allowed by special permit (see §7.2) in the Highway Commercial (HC), Commercial Industrial (CI) and Industrial (I) zoning districts. In addition to a special permit, earth processing operations shall warrant a site plan review by the Special Permit Granting Authority (SPGA). A special permit for earth processing may not be required if:

- Conducted on the site of an earth removal operation that was allowed by special permit (only applicable to earth materials generated on site),
- Conducted on the site of a privately owned subdivision for the sole purpose of developing the private roadway,
- Conducted on the site of, incidental to, and in connection with earth removal necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw.

4.3.28 *Solid Waste Facilities* (F-8) as defined in MGL c. 111 §150A which have received a site assignment pursuant to MGL c. 111 §150A are permitted in the CI and I districts by special permit imposing reasonable conditions on the construction or operation of such facilities.

4.3.29 *Wood Processing, Lumber Mills* (F-12) limited to the cutting and/or milling of lumber, timbers, and cordwood from raw trees, shall be permitted in the RR district by special permit provided there is a minimum 100 foot heavily vegetated buffer between the area of wood processing activity and any abutting property (including across a street or stream), and/or the activity is carried on inside a building which is insulated to reduce the negative impacts on abutting properties of noise emanating from the wood processing activity.

4.3.30 Marijuana Cultivation Facilities (G-1) are permitted in the MY, CI, RR, and I districts subject to the provisions of 4.8.8.

4.4 **Accessory Uses**

Accessory uses shall be permitted in all districts on the same lot with the principal use. The accessory uses listed below are subject to the conditions and requirements stated in the respective sections.

4.4.1 *Residential Accessory Uses* (these apply to Category A in §4.2, Use Table)

A. Private garage or carport for not more than four motor vehicles, small solar energy system, non-commercial greenhouse, shed, barn, permanent storage structure, cargo container, or wheeled trailer or mobile storage unit, subject to the dimensional requirements for accessory structures in Article 5.

B. Swimming pool or tennis court provided that such recreational facilities are used only by the residents and their guests subject to the dimensional requirements for accessory structures in Article 5.

C. Breeding for sale of dogs, cats or other pets, provided that not more than four such animals more than one-year old shall be permitted. Breeding of more than four such animals shall be permitted upon the granting of a special permit.

D. The raising or keeping of livestock or poultry for pets or for use by the residents of the premises but not for commercial purpose is permitted on residential parcels with a single family or two family dwelling as follows:
   1. Livestock:
      a) In the RR district, all structures housing or sheltering such animals must comply with the minimum dimensional requirements of Article 5 of the Zoning Bylaw. For parcels less than 2 acres in size, a special permit is required; for parcels of 2 acres or more, a special permit is not required.
      b) In the SR and DTR districts, all structures housing or sheltering such animals must comply with the minimum dimensional requirements of Article 5 of the Zoning Bylaw and must be located a minimum of 100 feet from any abutting residence (the house, not the property line or an accessory structure). For parcels less than 2 acres in size, a special permit is required; for parcels of 2 acres or more, a special permit is not required.
      c) In all other districts, a special permit is required and all structures housing or sheltering such animals must comply with the minimum dimensional requirements of Article 5 of the Zoning Bylaw and must be located a minimum of 100 feet from any abutting residence (the house, not the property line or an accessory structure).
      d) In all districts, for parcels of 5 or more acres, if the keeping of livestock is an agricultural use, then the provisions of this section shall not apply.
      e) In all districts, the SPGA may impose a limit on the number of livestock animals that may be kept on the property as a condition of approval of a special permit.
   2. Poultry:
      a) In all districts, the keeping of no more than 5 female adult chickens or 3 of any other poultry is permitted without a special permit.

b) In the RR district, the keeping of more than 5 female chickens or 3 of any other poultry is permitted without a special permit if on a parcel of 2 acres or more, or by special permit if on a parcel less than 2 acres.
c) In all other districts, the keeping of more than 5 female chickens or 3 of any other poultry is permitted by special permit regardless of the parcel size.
d) In all districts, the following standards must be met regardless of the permitting requirements:
   i. the structures housing or sheltering the poultry must comply with the minimum dimensional requirements of Article 5 of the Zoning Bylaw and must be located a minimum of 100 feet from any abutting residence (the house, not the property line or an accessory structure);
   ii. the coop and run areas must be maintained to control dust and odor so as to not constitute a nuisance or safety hazard;
   iii. the poultry must be restricted to the premises; and
   iv. all stormwater runoff from the coop, run, and compost areas shall be contained on the premises.
e) The keeping of roosters or cockerels is not permitted on parcels less than 5 acres in size.
f) In all districts, for parcels of 5 or more acres, if the keeping of poultry is an agricultural use, then the provisions of this section shall not apply.
g) In all districts, the SPGA may impose a limit on the number of poultry that may be kept on the property as a condition of approval of a special permit.

3. The SPGA may impose such conditions as are necessary to minimize potential nuisance conditions for any abutter.

E. Accessory Dwelling Units (ADUs). Accessory Dwelling Units shall be permitted in districts that allow single family residential development in accordance with the requirements below.

1. The purpose of the Accessory Dwelling Unit Bylaw is to:
   a) Provide homeowners with a means of obtaining, through tenants in accessory dwelling units, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
   b) Add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old;
   c) Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory dwelling units are installed under such additional conditions as may be appropriate to further purposes of this bylaw; and
   d) Legalize conversions to encourage compliance with the State Building Code.

2. Accessory Dwelling Unit Standards. The following standards and criteria must be met:
   a) Only one accessory dwelling unit may be created on a parcel with a principal dwelling or, if compliant with the following criteria, attached to a single family dwelling as a new construction, or as a completely detached structure and meet the following:
      i. all utilities to the extent possible are to be connected through the existing single family home and not directly connected to the service lines;
      ii. the accessory dwelling unit shall comply with all lot area frontage, setback, height and lot coverage requirements, as may be applicable to single family homes as contained in Table 5.1.1 and Table 5.3.1 of Article 5, Dimensional Regulations of the Zoning Bylaw;

iii. the accessory housing unit can be located on the ground floor or on an upper floor, such as above a garage.

b) Approval shall be required from the Department of Public Works, the Board of Health, and the Building Department, prior to any construction of the Accessory Dwelling Unit.

c) All additional accessory dwelling units after the initial accessory dwelling unit shall be permitted only upon issuance of a Special Permit.

d) Owners of the principal dwelling unit or property with the accessory dwelling unit do not have to occupy any of the units as their primary residence. For the purpose of this bylaw, "owners" shall be one or more individuals or entities holding title to the property. The ADU shall not be held in or transferred to separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.

e) The accessory dwelling unit shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence. Where feasible, any new entrances should be located on the side or rear of the building. Any exterior changes made must conform to the single family character of the neighborhood. When an accessory apartment is located in a detached structure, it must be designed to fit the character and architectural style of the buildings on the site.

f) An accessory dwelling unit shall be no greater than 900 square feet or ½ the gross floor area of the principal dwelling, whichever is smaller. An addition to the existing principal dwelling is permitted provided that the addition does not increase the floor area of the original building by more than 20 percent, and the addition will not alter the character of the building. In order to provide for the development of housing units for disabled and handicapped individuals, the SPGA will allow reasonable deviation from these limits to allow installation of features that facilitate access and mobility for the occupants in cases where a new accessory dwelling unit is designed for such individuals.

g) One (1) parking space shall be required for an ADU, but if the ADU is located within 0.5 miles of a commuter rail station or bus station, no additional parking space shall be required for the ADU.

h) A Sanitarian or Professional Engineer, registered in the Commonwealth of Massachusetts, has certified that the existing or proposed improvements to new or existing sewage disposal systems are adequate and in accordance with 310 CMR 15.000, the State Environmental Code (Title 5).

i) All ADUs are required to obtain Site Plan approval from the Planning Board pursuant to the procedures of Section 7.4 of the Zoning Bylaw, providing that the site plan review criteria shall only be limited to the following.

i. The ADU should minimize tree, vegetation and soil removal with grade changes.

ii. Architectural style should be compatible with the existing principal dwelling.

iii. The ADU shall be serviced with adequate water supply and sewer or septic service.

iv. The Plan shall demonstrate adequate parking, as required hereunder and shall maximize convenience and safety for vehicular and pedestrian movement within the property and in relation to adjacent ways.

v. The Planning Board may request reasonable plan modifications of the site plan for an ADU that may impose reasonable conditions that are not inconsistent with this bylaw or the provisions of G.L.c.40A Section 3.

j) Mobile homes, travel trailers or campers (commonly known as RVs), shipping containers and tiny houses constructed on a moveable trailer shall be prohibited from being used as accessory dwelling units.
k) An ADU may not be used as a short-term rental as such term is defined in G.L.c.64G, Section 1, or otherwise rented for a period shorter than thirty-one (31) days. However, no municipality shall unreasonably restrict creation or rental of an ADU that is not a short-term rental.

F. Use of Residence for Business Purposes. There are three categories of businesses (including professions and trades) that may be conducted in or at a residence (dwelling) as an accessory use: a home business, a customary home occupation, and a home based contractor.

1. Home Business — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and does not involve more than occasional business vehicular traffic to the property. Examples include but are not limited to artists, desktop publishers, software developers, craftsmen, contractors who only operate an office at the home, and people who work at home and conduct business by mail or electronic communication (including employees who telecommute). Home businesses are subject to the provisions of paragraphs 4 and 5 below.

2. Customary Home Occupation — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and involves an increase in traffic for clients, customers, patients, associates, or employees. Examples include but are not limited to lawyers, accountants, beauticians, professional consultants (such as mental health, design, and real estate), and small retail businesses not exceeding 300 square feet GFA. Customary Home Occupations are subject to the provisions of paragraphs 4 and 6 below.

3. Home Based Contractor — A business which is conducted by a resident of the premises accessory to a residential use, but not entirely enclosed within structures. Examples include but are not limited to building, plumbing, electrical, cabinetry, landscaping, and other similar contractors who perform their work off-site but use the residence as a base of operations including an office and small scale storage of materials. This category is meant to serve the needs of small businesses with limited space needs, with the expectation that once the business has grown to a larger size it will be moved to a more appropriate location in a commercial or industrial district. Home Based Contractors are subject to the provisions of paragraphs 4 and 7 below.

4. General Requirements.
a) The activity must be operated by residents of the dwelling unit.
b) The activity must be clearly incidental and secondary to the primary use of the premises as a residence.
c) The activity must not change the character of the premises or surrounding neighborhood. There shall be no window displays or other features not normally associated with residential use.
d) Required parking must be accommodated off-street, and new parking areas must be screened from the view of abutters and from public ways (streets or pedestrian ways) utilizing plantings, fencing, and/or topography. Parking areas shall be located at the side or rear of the residence or accessory buildings.

e) Proof of compliance with all applicable environmental controls is required. This includes the floodplain and aquifer protection overlay districts, and the Wetlands Protection Act.

5. Home businesses are permitted in all zoning districts without need for a special permit, but must conform to the following provisions in addition to those listed in paragraph 4 above:
   a) The business must be conducted entirely within the residence or an accessory building.
   b) No non-resident employees are permitted on site.
   c) There shall be no exterior display, no exterior storage of materials or equipment, no parking or storage of business vehicles or equipment greater than 10,000 pounds gross vehicle weight, and no other variation from the residential character of the premises other than a sign in conformance with §6.5, Sign regulations.
   d) For contractors, no more than one motor vehicle, not to exceed 10,000 pounds gross vehicle weight, plus one trailer associated with the business may be parked or stored at the residence. (Those contractors with more than this are categorized as home based contractors.)
   e) The business shall not generate traffic that is inconsistent with the traffic associated with a single family residence, either in quantity or type.
   f) Any resident wishing to establish such a business shall submit a request to the Building Department on the form provided, for review by the Building Inspector. If the Building Inspector determines that the proposed business meets the criteria of this category, then he shall sign the form stating that the proposed home business does not require approval under paragraphs 6 or 7 (i.e. a special permit is not required).

6. Customary Home Occupations are permitted in all zoning districts by special permit, if in compliance with the following provisions in addition to those listed in paragraph 4:
   a) The business must be conducted entirely within the residence or an accessory building.
   b) Not more than two non-resident people shall be employed in the business at the site.
   c) There shall be no exterior display, no exterior storage of materials or equipment, and no other variation from the residential character of the premises other than a sign in conformance with §6.5, Sign regulations.
   d) The business shall not necessitate more than four parking spaces for clients, customers, patients, non-resident employees, or other business related demands.

7. Home Based Contractors are permitted by special permit, if in compliance with the following provisions in addition to those listed in paragraph 4:
   a) The parcel on which the business is operated is within the RR or SR district.
   b) The parcel must be a minimum of two acres in size.
   c) Not more than eight vehicles associated with the business (maximum of four construction equipment such as loader/backhoe, skidder, etc.) shall be parked at the site at any given time, including employee vehicles and construction vehicles, but excluding personal vehicles not typically used for the operation of the business.
   d) The activities related to the business may be conducted in part outdoors, but all such activities, equipment, and storage shall be substantially and permanently

screened from the view of abutters and from public ways by buffers such as planting, fences, and/or topography.

e) No more than 25% of the parcel, exclusive of areas covered by buildings, shall be used for business activities, including outdoor storage or parking.

f) The total square footage of buildings used for storage or garaging of vehicles or equipment associated with the business shall be no greater than 2,000 square feet. This shall not be construed to mean that a greater number of vehicles may be parked at the site than is permitted above.

g) The SPGA shall take into consideration the road network serving the proposed business location in regard to safety of the residents of the vicinity and the types of vehicles to be used by the business, including delivery trucks, and the projected number of trips to and from the site each day.

4.4.2 *Business Accessory Uses* (these apply to Categories B, C, D, and E in §4.2, Use Table)

A. The rental of automobiles, light trucks or trailers, light construction vehicles, and similar light motor vehicles provided that such rental is secondary to a use permitted under §4.2, Table of Uses.

B. Truck or trailer cleaning and washing provided that the trucks or trailers are necessary for the conduct of the principal use.

C. Drive-up facilities in a bank or retail store may be authorized by special permit from the Planning Board.

D. Storage building, truck trailer used for storage, mobile storage unit, fenced storage area, shed, garage, or other accessory building or use when located in a non-residential or mixed use district is allowed provided all buildings and storage areas comply with the minimum dimensional requirements of Article 5 and the minimum buffering requirements of Article 6, do not adversely impact available parking on the site, and are shown on a site plan approved by the Planning Board.

4.4.3 *Industrial Accessory Uses* (these apply to category F in the Use Table)

A. Uses necessary in connection with scientific research or scientific development or related production may be authorized by special permit, provided the SPGA makes a finding that the proposed accessory use does not substantially derogate from the public good.

B. Truck or trailer cleaning and washing provided that the trucks or trailers are necessary for the conduct of the principal use.

C. Rental of heavy trucks including truck-trailers and industrial equipment provided such rental service is secondary to a permitted heavy vehicular sales establishment.

4.5 **Temporary Uses**

4.5.1 *Temporary housing unit on parcel with a damaged home or on a vacant parcel.* A manufactured home (including a mobile home) may be placed on the same parcel as a residence which has been rendered uninhabitable, for the occupancy of the property owner during construction of a new or

reconstruction of a damaged home or on a vacant parcel when a new home is to be constructed. The manufactured home shall not be occupied or left on site for a period greater than 12 months, with no option for renewal or extension. The manufactured home may be placed within required setback areas but not closer than five feet from the property line if absolutely necessary to avoid conflict with the construction or reconstruction of the permanent residence. The manufactured home shall be in compliance with all applicable regulations for water supply and sewage disposal. The manufactured home shall be removed from the property within 30 days of the issuance of the Certificate of Occupancy for the permanent residence, or at the end of the abovementioned 12-month period, whichever comes first.

4.5.2 *Temporary housing unit on another parcel.* A manufactured home (including a mobile home) may, upon the granting of a special permit, be placed on a site other than that on which a damaged residence is located, when that damaged residence is destroyed by fire or natural disaster and the parcel is of insufficient size to reasonably place the temporary housing unit (manufactured home) and complete repairs to or reconstruct the permanent residence. The following criteria shall apply:

A. The application must include a written statement by the property owner where the manufactured home will be located, consenting to the location of the trailer.

B. There shall be sufficient space on the property for parking to serve the needs of the temporary housing unit as well as all other uses on the property, without necessitating on-street parking.

C. The temporary housing unit shall meet setback requirements to the greatest extent possible, and in no case shall the unit be placed closer than 10 feet to the side or rear property lines or 20 feet to the front property line.

D. The temporary housing unit shall be subject to the provisions of the State Sanitary Code.

E. The temporary housing unit shall be removed within one year of the issuance of a building permit for said temporary unit. The SPGA may, upon written application and for good cause, grant an extension of up to three months.

F. No more than one temporary housing unit shall be permitted on a lot.

G. A plan shall be submitted with the special permit application showing the location of the existing buildings, the proposed location of the temporary housing unit, and all access points from streets into the property. A copy of the Assessors map with these features shown, with dimensions written in, shall be acceptable.

4.5.3 *Occupancy of an existing single family dwelling during construction of a new single family dwelling* on the same parcel is allowed by special permit for a period to be determined by the SPGA based on a construction schedule to be submitted with the application for the special permit. The special permit shall specify the timeframe within which the existing single family dwelling shall be removed.

4.5.4 *Any use associated with a temporary event*, such as a fair, shall not be subject to the restrictions of this Article provided the use has been duly permitted by the appropriate authority.

4.5.5 *Wind Monitoring Towers* are permitted in locations where wind energy facilities are allowed, for a maximum of one year, for the purpose of determining whether winds at a given location are

sufficient to operate a wind energy facility. A wind monitoring tower shall not exceed the height recommended by the manufacturer, or 150 feet maximum from the base of the structure to the highest point of the equipment, or 35 feet above the surrounding tree canopy, whichever is less. The minimum setback requirement for a wind monitoring tower shall be equal to two times the height of the tower. At the end of the monitoring period, or one year from the date of construction, whichever comes first, the tower and all accessory structures shall be removed from the site unless an application for a special permit for a wind energy facility is submitted pursuant to §4.8.4 of this Zoning Bylaw.

4.6 **Exempt Uses**. MGL c. 40A §3 lists uses which are exempt from local Zoning Bylaws, but which may be required to conform to certain standards. These include churches or other religious institutions, schools and other educational uses, and daycare centers, which shall be permitted in any district within the Town of Ware, subject to the dimensional requirements of Article 5, the parking requirements of Article 6, §6.1, and the buffering requirements of Article 6, §6.2.

4.7 **Prohibited Uses**

4.7.1 Prohibited Uses. Any use not specifically or generically listed in §4.2, Use Table, or not otherwise permitted in a district shall be deemed as prohibited, including the specific uses below which are spelled out as a matter of clarification.

A. Any nonresidential use which is dangerous or detrimental to a neighborhood because of fire or explosive hazard, offensive noise, smoke, vibration, harmful radioactivity, electrical interference, dust, odor, fumes, heat, glare, unsightliness or other objectionable characteristics, as determined by the Building Inspector.

B. Mobile Homes are prohibited in all districts unless located in a Mobile Home Park.

C. Motels.

D. Occupancy of a recreational vehicle for more than 30 days in a calendar year (whether continuous or not) is prohibited. This shall not be construed to mean a homeowner cannot park his own recreational vehicle on his lot for storage purposes.

E. Motorized sports facilities, such as but not limited to off-road vehicle tracks and race car tracks, are prohibited.

F. The use of Contaminated Sediments and Contaminated Soils as Fill Material (see §2.2) to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.

4.8 **Special Use Regulations**

4.8.1 Flexible Residential Open Space Development (FROSD) is allowed by-right in the RR, SR, DTR, and RB districts, and is intended to provide an alternative to landowners wishing to develop land for residential use in a more efficient manner than a standard subdivision, while preserving open space.

A. The purposes of Flexible Residential Open Space Development are:
   1. To allow for greater flexibility and creativity in the design of residential subdivisions;
   2. To encourage the permanent preservation of undeveloped land for open space, agricultural use, forestry use, wildlife habitat, and the preservation of other natural resources including aquifers, waterbodies, wetlands, archeological sites, and historical sites;

3. To protect the existing rural landscape and scenic views along roads by preserving undeveloped frontage along existing roads and encouraging development that is out of view from the roads.
4. To emulate the traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands; and
5. To allow for the economical and efficient provision of infrastructure.

B. Permitted Uses:
   1. single family detached dwellings
   2. two family dwellings
   3. multi-family dwellings for persons fifty-five years of age or older
   4. incidental recreational uses and facilities
   5. agriculture, forestry, wildlife, and conservation uses
   6. infrastructure elements such as stormwater or wastewater management facilities that require location within the common open space areas due to site and engineering considerations.

C. Minimum tract dimensions: the tract (one or more contiguous parcels) shall consist of a minimum of ten acres, with a minimum of 100 feet of contiguous frontage.

D. Minimum tract setbacks and buffers: there shall be a minimum setback/buffer of 40 feet from all property boundaries for all structures, utilities, roads, and parking areas, with the exception that entrance roads and utilities may cross the setback/ buffer area. Lots created within the FROSD shall not be platted into this setback/ buffer area. Natural vegetation shall be retained whenever possible, and where insufficient to serve as an effective visual screen, landscaping may be required to provide such a screen. Landscaping may include berms and/or decorative fencing of an appropriate height.

E. Access: No lot within a FROSD may access directly to an existing public street.

F. Density: The number of dwelling units permitted shall be the same as would be allowed under a standard subdivision for the zoning district in which the proposal is located.

G. Dimensional allowances for lots within a FROSD:
   1. Lot size: there is no minimum lot size for individual buildings; the purpose of FROSD is to foster creative designs that do not mimic conventional subdivisions but that respect the natural topography and features of a tract, including existing farmland that could potentially be used for agricultural purposes either now or in the future. FROSD projects are not required to have individual lots, and except for single family projects normally will not. Where public sewer is not available, placement of individual or community septic systems may be within open space areas so as to allow appropriate placement of dwellings in accordance with the purposes of these FROSD provisions; thus lot size is not related to Title 5 requirements.
   2. Frontage: for FROSD projects that are designed with individual lots, the minimum frontage for such lots shall be 50 feet.
   3. Setbacks: to promote creative design, there are no minimum setbacks from lot lines required; however, buildings shall be located a minimum of 20 feet from one another. This does not eliminate the requirement for a setback/buffer along the perimeter of the tract as provided above.

H. Common Open Space:

1. Area: a minimum of 50% of the tract shall be common open space. A maximum of 50% of that acreage may be wetland that counts toward the open space requirement; applicants are encouraged to include additional wetland areas in the open space area for long term protection of the resource. A maximum of 30% of the open space acreage may be within the tract perimeter buffer, unless the Planning Board finds that due to the unique physical characteristics of the tract a higher percentage would provide a more desirable design.
2. Utilities: stormwater drainage, septic systems, and other utilities, whether shared or not, are permitted within the common open space. If needed, easements shall be established to ensure long term maintenance of the utility.
3. Restriction on future development: common open space may be owned by the homeowners association, the Town of Ware Conservation Commission, or a land trust. In all cases, a conservation restriction to the Town of Ware shall be recorded and referenced on the plans and applicable deeds to prohibit further subdivision of the open space and prohibit any development other than accessory structures for permitted recreational uses or infrastructure elements sited within the common open space.
4. Location: in so far as possible, the common open space areas should be contiguous. Where applicable, undeveloped lands along public roads should be included in the common open space to the extent possible. Common open space in relatively small areas distributed throughout the development but without connection to other common open space areas will not be counted as part of the required 50%. The Planning Board may approve separate areas of common open space if the nature of the tract warrants such a design as the most beneficial for the development and the Town, and, if appropriate, pedestrian connection is provided between the common open space areas. In so far as possible, open space areas shall connect to open space areas on adjacent properties, regardless of ownership.
5. Access: All recreational facilities, common areas, and common open space shall be reasonably accessible to all residents of the development.

4.8.2 Wireless Communication Facilities

A. Purpose. The purpose of this §4.8.2 is to maximize the use of existing towers and other structures in order to reduce the number of wireless communication facilities needed to serve the community, which will protect residential areas from potential adverse impacts of such facilities. It will also endeavor to protect public safety and avoid potential damage to adjacent properties from facility failure through proper engineering and careful siting of facilities. All providers are encouraged to co-locate their facilities.

B. Applicability. This §4.8.2 shall apply to all wireless facilities, including but not limited to voice, sound, video, and data transfer, except for antennas or satellite dishes located on a residential property and used exclusively by the occupants of that residence. Satellite dishes under 10 feet in diameter are exempt from this regulation when ground mounted or located on an existing non-residential building.

C. Consistency With Federal Law. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:
   1. They do not prohibit or have the effect of prohibiting the provision of personal wireless services.
   2. They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

3. They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

D. Exempted Wireless Data Transfers Uses. This bylaw specifically exempts the following wireless communications facilities: police, fire, ambulance and other emergency dispatch; and citizen band radio. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that:
   1. The tower is not used or licensed for any commercial purpose.
   2. The tower shall be removed upon loss or termination of said FCC license.
   3. No personal wireless data transfer facility or repeater shall be considered exempt from this bylaw for any reason whether or not said facility or repeater is proposed to share a tower or other structure with such exempt uses.

E. Use Regulations
   1. Existing Facilities.
      a) Any existing tower or pole may be replaced with a new tower or pole of equal or greater structural capacity by application for a building permit, provided that the original tower or pole is removed within 60 calendar days after the erection of the replacement tower or pole and provided that the replacement tower or pole is not greater in height than the original tower or pole. An increase in height of the tower or pole requires a special permit under this section. The replacement structure installed shall be made of such materials and/or painted so as to blend in appearance to the extent practicable with the building or structure or landscape upon which it is to be installed.
      b) Existing antennas may be replaced or augmented with additional antennas by application for a building permit, provided they do not exceed the current height of the top of the antennas that are mounted at the top of the structure by more than one third of the length of the existing antenna. (Example: if the existing antenna is 6 feet long and the top of it is 140 feet above the ground, then the top of the replacement antenna cannot be more than 142 feet above the ground.)

   2. New facilities.
      a) Except as provided in §4.8.2.E.1.b, new wireless communication facilities shall, to the extent possible, be mounted on existing structures including towers, poles, buildings, steeples, water tanks, smokestacks, and other such structures which provide the height and siting characteristics required for wireless communication facilities, upon the granting of a special permit, provided the ancillary equipment of the wireless facility does not extend more than ten feet above the highest point of the building or structure on which the facility will be installed and shall be made of such materials or painted so as to blend in appearance to the extent practicable with the building, structure or landscape upon which it is to be installed.
      b) New wireless communication facilities with new structures shall be placed or constructed only upon the granting of a special permit.

F. Special Permit Application Requirements: In addition to the criteria set forth in §7.2 of this zoning bylaw, all Special Permit applications under this section shall be accompanied by the following information, unless the provision of such information is specifically waived by the SPGA.
   1. A site plan prepared by a professional land surveyor or professional engineer licensed in the State of Massachusetts, at a suitable scale which shall show all property lines, street

lines, and the exact location of the proposed structures, landscape features, residential dwellings and all buildings within five hundred (500) feet of the facility.

2. A description of the facility and the technical, economic and other reasons for the proposed location, the height and the design.

3. Confirmation that the facility complies with all applicable Federal and State standards.

4. A description of the capacity of the facility including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.

5. If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, or the Massachusetts Department of Public Health.

6. Any applicant proposing not to co-locate their facility shall provide written evidence and documentation demonstrating why it is not feasible for the facility to be co-located, including all co-location and alternative sites that were considered.
7. Applicants shall submit one of the following:
   a) Eight view lines shown in a one-mile radius from the site beginning at true North and continuing clockwise at 45-degree intervals. These view lines shall, to the extent feasible, be taken from existing vantage points commonly used by the public such as public ways, buildings or other facilities. The submittal shall include unaltered photographs taken from eye level (five feet above grade) which show the existing conditions of these view lines, as well as accurate scale perspective elevation drawings, computer altered photographs or other accurate representations showing said view lines with the facility in place.
   b) The results of a height test, where either a large balloon or a crane or similar equipment is used to clearly show the proposed height of a new tower. Such height test shall be performed for a minimum of five hours and shall be advertised in a newspaper of local circulation by way of an advertisement approximately 3 by 5 inches which shall state the day and times of the height test which must be prior to the public hearing date, the day and times of an alternate in the event of unsuitable weather conditions, the purpose of the height test, the location of the test, and the probable areas of town where the object used for the test can be seen. The results shall be in the form of a report describing the test and the areas where the object is visible, and shall include color photographs showing the test object from public roads and public properties.

8. A certified copy of all abutting property owners, according to the latest available tax listing, within one-quarter mile or a 1,320-foot radius of the proposed facility location, for purposes of notification of the public hearing.

G. General Requirements

1. New wireless service facilities shall be considered by the SPGA only upon a finding by the Board that existing or approved facilities cannot accommodate the wireless communications equipment planned for the proposed facility.

2. Freestanding wireless service facilities shall be set back from the nearest lot line a distance at least 1.5 times of the height of the structure, or a distance of 300 feet, whichever is greater.

3. No freestanding wireless service facility shall exceed 150 feet in height as measured from ground level at the base of the facility. This shall include all antennas and other equipment mounted at the top of the facility.

4. To minimize the number of wireless service facilities that are freestanding towers in the community, any proposed tower facility shall be designed and constructed so that it is reasonably capable of accommodating other users, including other wireless communication companies and local police, fire and ambulance service unless it is determined to be technically infeasible based on the SPGA's evaluation of information submitted.
5. No tower or other facility structure shall contain any sign or other devices for the purpose of advertisement.

6. The visible portions of ancillary facilities and structures for wireless service facilities such as vaults, equipment buildings or enclosures and utilities shall be constructed out of and/or finished with non-reflective materials. The ancillary facilities and equipment shall not be more than 12 feet in height. When visible from public ways or abutting properties, equipment shelters shall be camouflaged behind an effective year-round landscape buffer, or wooden fence, that is equal to the height of the proposed building. The SPGA shall determine if the proposed style of fencing and/or landscape buffer is compatible with the neighborhood. All other ancillary uses (including but not limited to maintenance depot, vehicle storage, etc.) are prohibited.

7. Existing on-site vegetation shall be preserved to the maximum extent practicable. Landscaping shall be provided around the base of the facility adjacent to a security fence at least six feet in height. The landscaping shall consist of a planting strip at least 25 feet wide, with ground cover and/or grass, and shall include at least one row of 6-foot high evergreen trees at least 2-inch caliper planted no more than 20 feet on center. Applicants may substitute alternative landscaping plans that satisfy the purpose of this paragraph.

8. The SPGA may impose conditions consistent with current requirements in the Town of Ware to ensure that wireless communication facilities are as visually unobtrusive as possible from all perspectives. These conditions may include structural design, painting, lighting and landscaping requirements.

9. Except as required by the FAA, towers shall not be artificially lighted.

10. All wireless communication facilities shall be protected against unauthorized climbing or other access by the public.

11. In no event shall any freestanding facility be located closer than two miles to any other such facility, unless the applicant can demonstrate that co-location on the existing facility or site is not feasible from a business and technical standpoint, and service coverage will be inadequate if not located within the two-mile limit.

12. Access to a tower site shall respect the natural terrain and not appear as a scar on the landscape. The adequacy of the access shall be reviewed by the SPGA and Fire Chief to assure emergency access at all times.

13. All unused facilities or parts thereof, or ancillary facilities and structures which have not been used for one year shall be dismantled and removed at the owner's expense.

14. Prior to the issuance of a building permit for a wireless service facility, the applicant shall post and submit a bond or other financial surety acceptable to the Town in an amount sufficient to cover the cost of removing the facility in the event that the Building Inspector condemns the property or deems it to have been abandoned or not used for more than one year. In the event the posted amount does not cover the cost of removal, the Town may place a lien upon the property covering the difference in cost. Said surety shall be maintained for the entire time the facility exists.

15. A wireless service facility may be located on a lot that contains another principal use, subject to the provisions of this section.

16. The SPGA may waive strict adherence to the requirements of this §4.8.2, with the exception of the height limit, if it finds that such a waiver will not adversely affect the safety and wellbeing of the public.

17. Review Fees. The Planning Board may, in accordance with MGL c. 44 §53G, impose a Project Review Fee to hire outside consultants with expertise in wireless installations. This fee shall be estimated at the time of application and a deposit of at least 75% of that estimate collected prior to the public hearing, with the balance due upon receipt of the final invoice from the review consultant. This fee shall be deposited into a separate account in compliance with MGL c. 44 §53G, and any balance (including interest) remaining when the project is completed shall be returned to the applicant.

4.8.3 Solar Energy Facilities

A. Purpose. The purpose of this bylaw is to regulate the development of solar energy facilities by providing standards for the placement, design, construction, operation, monitoring, modification, and removal of such installations, to protect public safety, to minimize impacts on scenic, natural and historic resources of Ware, and to provide adequate financial assurance for the eventual decommissioning of such installations. This purpose is to:
    1. facilitate the protection of open space, agricultural land, forested land and mature forest;
    2. facilitate the protection of natural, historic, and scenic resources;
    3. protect endangered or threatened species, wildlife corridors and habitat;
    4. take into consideration sensitive and noteworthy natural, scenic, historic and cultural resources;
    5. identify and protect physical features: streams, wetlands, steep slopes, land forms, cultural assets, and agricultural resources;

B. Applicability. This §4.8.3 applies to all Large Solar Energy Facilities and to physical modifications that materially alter the type, configuration, or size of these facilities or related equipment. Solar facilities for the primary purpose of agriculture are exempt from this §4.8.3 pursuant to MGL c. 40A §3. Solar facilities for one and two family dwellings are also exempt

from this §4.8.3. Solar facilities built as a solar parking canopy are also exempt from §4.8.3, but will require Site Plan Review.

C. General Requirements

1. Permit Required. Large Solar Energy Facilities are permitted by-right upon approval of a Site Plan in the Highway Commercial (HC), the Commercial Industrial (CI), and the Industrial (I) districts, and upon the granting of a Special Permit and Site Plan Approval in the Residential Business (RB) and the Rural (RQ and RR) districts. Large Solar Energy Facilities are not permitted in the Beaver Lake Residential (BLR), Suburban Residential (SR), Downtown (DTR and DTC), or the Mill Yard (MY) districts, given the density of development in these areas.
2. Review Fees. The Planning Board may, in accordance with MGL c. 44 §53G, impose a Project Review Fee to hire outside consultants to review the proposed project. This fee shall be estimated at the time of application and a deposit of at least 75% of that estimate collected prior to the public hearing, with the balance due upon receipt of the final invoice from the review consultant. This fee shall be deposited into a separate account in compliance with MGL c. 44 §53G, and any balance (including interest) remaining when the project is completed shall be returned to the applicant.
3. Site Control
    a) No more than fourteen (14) total large scale solar arrays shall be permitted within the Town of Ware.
    b) Utility-Scale Solar Facility
        1. No more than one (1) utility-scale solar facility shall be permitted within the Town of Ware. Such facility shall be identified as a large scale solar array over 15MW in total size.
        2. Solar array approvals already permitted as of May 11, 2020 may not be combined with new projects to create a utility-scale solar facility.
        3. Utility-scale solar facility shall be minimally visible from public ways.
        4. If a utility-scale solar facility is proposed to be developed over multiple properties (as recorded at any Massachusetts Registry of Deeds) the dimensional setback and buffer requirements may be reduced at the discretion of the Planning Board. This setback reduction shall only be considered for interior parcel lines where both parcels are being proposed to be developed for a utility-scale solar facility.
        5. A utility-scale solar facility may be excluded from frontage requirements so long as there is legal frontage and access for the project as a whole entity. Frontage and access are not required to be at the same point. Access must be on a public way.
        6. For a utility-scale solar project, a minimum area equal to the total project area must remain as natural open space (i.e. not used in any way by the solar developer) for the life of the project. If the proposed project is to be developed over multiple properties (as recorded at any Massachusetts Registry of Deeds) the fifty percent (50%) open space may be calculated using the total acreage of all parcels included in the project. Nothing in this section shall restrict the landowners from using their property that is subject to a utility-scale solar facility project for other uses, if properly permitted and allowed.

7. A utility-scale solar facility may be a second primary use on a property where a primary use already exists.

4. Required Documents, Plans, Drawings & Submissions. In addition to the submission requirements in §7.4, Site Plan Review, the applicant shall provide, with the site plan application, documents, plans, drawings & submissions addressing the below listed criteria:

a) Signed and stamped plans and drawings, by a Professional Engineer licensed to practice in Massachusetts and in good standing, showing in complete detail the proposed layout of the facility and specifically and completely providing all information required by criteria (b) through (l) below.

b) Existing conditions showing property lines and physical features, including but not limited to: wetlands and related buffer zones, rivers and associated riverfront areas, vernal pools, flood zones, ledge, outcropping, logging or access roads, forested areas, stone walls and stone foundations or other historic features, and roads for the project site

c) Locations of local or National Historic Districts

d) Locations of Priority Habitat Areas and Bio Map 2 Critical Natural Landscape Core Habitat mapped by Natural Heritage & Endangered Special Program (NHESP)

e) Proposed changes to the site including: grading, slope, vegetation clearing and planting, exterior lighting, boundaries of vegetative buffer, zoning setback lines, screening vegetation or structures

f) Landscape plan identifying location, size and species of all proposed plantings

g) Proposed layout of the system and related structures, including final stormwater and other site management devices, fences, emergency management turnarounds and staging areas, and access road(s)

h) Visual renderings showing sight lines from abutting residential structures, commercial structures and public ways.

i) Construction stormwater management and erosion control

j) Post-installation stormwater management

k) Construction phases with detailed notes on plan including material lay down and staging areas

l) One- or three- line electrical diagram detailing the solar installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices

m) Technical specifications of the major system components, including the solar arrays, mounting system, inverter, and any on-site battery storage

n) Evidence that the utility company has been notified of the intent to install a solar energy facility and that the utility company has responded in writing to the notice. Off-grid systems are exempt from this requirement

o) Evidence the solar PV modules shall be positioned in such a way that there is minimal or no level of glare on a residence or public way at any time during the day. No solar energy facility shall produce glare that would constitute a nuisance to the public.

p) The name, address, and contact information of the proposed installer, operator, and owner of the solar energy facility

q) Documentation of actual or proposed control of access ways and the project site sufficient to allow for installation and use of the proposed facility

r) An Operation and Maintenance Plan which shall include measures for maintaining safe access, storm water controls, and general procedures for operating and maintaining the installation

s) Proof of liability insurance

t) Financial surety that satisfies §4.8.3 H 5 of this Bylaw

u) A comprehensive decommissioning/removal plan

Any portion of these documentary requirements may be waived for good cause shown upon written request submitted to the Planning Board. Waiver will be granted if the Planning Board determines that there is good cause and that the materials submitted are sufficient for the board to make a decision.

5. Modifications. All major modifications to the site plan that are proposed after site plan approval has been granted require approval by the Planning Board.
6. Dimensional Requirements
    a) Setbacks. Large Solar Energy Facilities and all accessory structures shall have a setback from front, side and rear property lines and public ways of at least one-hundred (100') feet.

    b) Along property lines abutting land owned by the Department of Fish & Wildlife, Department of Conservation & Recreation, a Land Trust or similar entity, or that is under a Conservation Restriction, solar collectors shall have a setback of two-hundred (200'). This may also include land classified as Chapter 61, 61A, or 61B at the time of the application, particularly if such land is in chapter for the conservation of open space and protection of wildlife habitat. This dimensional setback may be reduced at the discretion of the Planning Board, particularly in locations where the applicant can demonstrate that enforcing this setback would be a hardship to a proposed project and the Board can be shown there is sufficient protection of existing abutting wildlife habitat, such as in the Rural Quabbin district. This may not be reduced to less than the 100' solar setback.

c) Any Large Solar Energy Facilities property along a designated Scenic Road shall have a setback of two-hundred 200'. The Planning Board may require additional buffering along such roads that is consistent with the rural New England character of said roads.

d) Buffer. The site plan shall provide a buffer of one-hundred (100') feet between the solar array and all properties. This buffer shall be of undisturbed natural vegetation, or if existing vegetation is inadequate, as determined by the Planning Board, to provide a visual screen then new landscaping with or without an earthen berm shall be designed and installed to provide the screening. If the applicant provides information showing that the visual buffer would have a detrimental impact on the ability to generate power, the Planning Board may grant a waiver to reduce the size of the buffer, but shall not eliminate it. Consideration should be given to designing buffers in situations where topography may negate the effectiveness of the buffer; the intent is to provide visual screening from existing residences to the array, and as such the location of the buffer can be modified to provide a more effective screen.

D. 7. Accessory Structures. All accessory structures including but not limited to equipment shelters, storage facilities, transformers, battery storage and substations shall be subject to reasonable conditions by the Planning Board concerning bulk and height, parking, building coverage, and vegetative screening to avoid adverse impacts on the neighborhood or abutting properties. Design Standards

1. Lighting
   a) Lighting shall be limited to that required for safety and operational Purposes, and shall not be intrusive in any way on abutting properties.
   b) Lighting shall incorporate full cut-off fixtures to reduce light pollution.
2. Signage
   a) The facility shall have one sign not to exceed 32 square feet which identifies the operator and provides a 24-hour emergency contact phone number.
   b) The site may have a secondary sign not to exceed 32 square feet providing educational information about the facility and the benefits of renewable energy.
3. Utility Connections
   a) The applicant shall place all wiring from the solar installation underground, except in cases where the soil conditions of the site make underground wiring infeasible.
   b) All utility poles and connections shall be located in the least invasive location as feasibly possible

4. Environmental Impacts
   a) Proposed structures (including solar collectors) shall be integrated into the existing terrain and surrounding landscape by minimizing impact to wetlands, steep slopes, and hilltops; protecting visual amenities and scenic views; minimizing tree, vegetation and soil removal; and minimizing grade change.

b) To the greatest extent feasible, solar PV arrays shall be designed to minimize the number of trees removed, the length of stone walls removed, and the area of wetland vegetation disturbed.
c) No earth material shall be removed from the site. All cuts and fills of earth material shall be balanced.
d) Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Large Solar Energy Facility
e) The topping or pollarding of trees is not allowed in order to promote and protect natural, scenic resources
f) For all projects, a minimum area equal to the total project area must remain as natural open space for the life of the project. This land must be on the same lot and contiguous in area. No more than fifty percent (50%) of the lot may be developed for a large scale solar array.

5. Historical Impacts

6. All Large Solar Energy Facility projects shall be reviewed by the Historical Commission. The removal of stonewalls, historic foundations or other historic land features shall be avoided to the greatest extent possible.

7. Prime Farmland Impacts
   a) Prime Farmland may only be developed if co-developed as an area for both solar power as well as for agriculture. Such dual-use solar arrays developed on Prime Farmland shall adhere to construction performance standards as outlined in §4.8.3 as applicable to dual-use operation.

8. Stormwater
   a) Stormwater generated from the project area shall not be allowed to enter any public ways so as to cause an unsafe condition and no stormwater shall be drained of site in excess of the pre-development conditions.
   b) Stormwater must recharge on site
   c) The stormwater management and treatment facility shall be sized to accommodate a 100-year storm event.
   d) Design shall create an environmentally sensitive site design by incorporating Low Impact Development (LID) techniques, as appropriate.

9. Access
   a) Access roads shall not have a slope greater than 10%. If an access road is to be paved, the slope may be greater if approved by the Fire Chief.
   b) Main access roads shall be at least twelve (12) feet wide to provide adequate access to all main controls, battery storage, or other appurtenant structures
   c) Adequate access must be provided between the solar collectors and perimeter fence in a width of at least eight (8) feet. This shall be a material other than grass, such drive-on pavers with gravel or grass fill, or gravel.
   d) All stream crossings, bridges, and access road shall have the load capacity of fifty (50) tons
   e) Plans must be reviewed by the Ware Fire Department prior to commencement of project.

E. Maintenance
   1. The operator shall maintain the facility in good condition.

2. Maintenance shall include but not be limited to painting, structural repairs, and integrity of security measures.
3. The operator shall be responsible for maintaining adequate access for emergency vehicles and maintenance equipment.
4. The operator shall be responsible for maintaining safe access, stormwater controls, vegetation controls – including the prompt replacement of any dead/diseased screening trees in the buffer, and general procedures and schedules for operating and maintaining the energy facility.
5. Replacement of dead/diseased screening trees must be replaced with a tree of same or similar size in height, width, and condition as the other species in the screening buffer to maintain a continuous buffer.
6. If applicable, a battery end-of-life plan shall be included in the Operation & Maintenance Plan – detailing procedures for the removal, disposal, and replacement of retired batteries.
7. The owner of the large scale solar array shall file an operation and maintenance report annually with the Planning Board no later than forty-five (45) days after the end of the calendar year, confirming that the operation is ongoing, has not been abandoned, and that the operation and maintenance plan is being followed. Failure to file the report within the required time frame may be considered evidence that the facility has been abandoned.

F. Emergency Services
1. The operator shall provide a copy of the operation and maintenance plan, electrical schematic, and site plan to the Fire Chief.
2. The operator shall cooperate with local emergency services in developing an emergency response plan; this plan shall be reviewed annually with local emergency officials and revised as necessary. If applicable, this shall include battery storage hazard mitigation.
3. All means of shutting down the installation shall be clearly marked. Signage on the premises (see §6.5) shall identify a qualified contact person to provide assistance during an emergency; the operator shall change the contact information immediately whenever a change in personnel occurs.
4. If access to the site is gated and locked, the owner shall provide the Fire Department with a means of entering the property (key, combination, or some other means acceptable to the Fire Department).
5. Fire Chief will review and approve all site plans for large scale solar arrays to ensure slope of access roads, width of access roads, emergency staging area, and any other emergency protocols needed to accommodate emergency vehicles are addresses.

G. Decommissioning
1. Removal Requirements.
   a) Any solar installation that is discontinued or abandoned shall be removed in compliance with the requirements of the Building Inspector.
   b) The owner or operator shall physically remove the installation within 180 days after the date of discontinued operations or receipt of a notice of abandonment from the Town.
2. Notice to Town.
   i. Town of Ware officials (Town Manager and Planning Board via the PCD Department) shall be notified by certified mail thirty (30) days prior to any change of ownership of the property, lease holder and/or plant operating company within thirty (30) days of such notice, or at a mutually-convenient

time, the new party shall arrange to meet with the Planning Board to review the operating conditions of the Special Permit, or as soon as convenient to both parties

ii. In the event a Large Solar Energy Facility is anticipated to be out of service for a period of at least one year, written notice shall be sent by certified mail to the Planning Board, Building Inspector, and Fire Chief stating the anticipated period of non-operation as well as the reason for the shut-down.

iii. In the event of decommissioning, the notice shall provide the anticipated schedule for removal and site restoration along with a site plan indicating the site conditions after the decommissioning is completed, including topography at the same contour interval that was provided in the initial site plan approval, if topographical changes will be made.

3. Abandonment.
   i. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar facility shall be considered abandoned when it fails to operate for more than one year. Upon determining that the facility has not been in operation for more than one year, the Building Inspector shall send a written notice by certified mail to the property owner and the last known solar energy facility operator, with a copy to the Planning Board that the Town has found the facility to be abandoned. If the owner or operator fails to remove the installation in accordance with the requirements of this section, the Town may, to the extent it is otherwise duly authorized by law, enter the property and physically remove the facility.
4. Decommissioning shall consist of:
   i. Physical removal from the site of the solar arrays, structures, equipment, security barriers, and electrical transmission lines.
   ii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Inspector may allow the owner or operator to leave landscaping, below-grade foundations, and/or access roads in place in order to minimize erosion and disruption of vegetation.
5. Financial Surety.
   i. Prior to commencing operation, the applicant shall provide a form of surety, either through a cash deposit, in an amount determined to be adequate by the Planning Board to cover the cost of removal and site restoration.
   ii. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an escalator for calculating increased removal costs due to inflation. Salvage for solar panels shall not be included in decommissioning calculations. Salvage may be included for other parts of the installation at the discretion of the Planning Board.
   iii. The surety shall be maintained by the developer for the lifespan of the facility, with annual certification notices from the surety company or bank for surety bonds submitted to the Planning Board. Such surety is not required for municipal facilities.

4.8.4 Wind Energy Facilities

A. Purpose. The purpose of this §4.8.4 is to provide opportunities for construction and operation of Wind Energy Facilities in the Town of Ware, while minimizing any adverse visual, safety, and environmental impacts of the facilities. The Town of Ware is committed to allowing these

facilities subject to reasonable conditions that will protect the public health, safety and welfare while allowing for the production of clean, renewable energy.

B. Applicability. This §4.8.4 applies to all wind energy facilities and to physical modifications that materially alter the type, configuration, or size of these facilities with the exception of the following wind energy facilities, which are exempt:
   1. Those for the primary purpose of agriculture, pursuant to MGL c. 40A, §3;
   2. Those for one and two family dwellings; and
   3. Those that measure less than 50 feet in height, limited to one turbine.

C. General Requirements
   1. Permit Required. Wind energy facilities are permitted upon the granting of a special permit and site plan in the Rural Quabbin (RQ) and Rural Residential (RR) districts.

   2. Review Fees. The Planning Board may, in accordance with MGL c. 44 §53G, impose a Project Review Fee to hire outside consultants with expertise in wind energy facility installations. This fee shall be estimated at the time of application and a deposit of at least 75% of that estimate collected prior to the public hearing, with the balance due upon receipt of the final invoice from the review consultant. This fee shall be deposited into a separate account in compliance with MGL c. 44 §53G, and any balance (including interest) remaining when the project is completed shall be returned to the applicant.

   3. Required Documents. In addition to the submission requirements in the Planning Board's Site Plan Review Regulations, the applicant shall provide the following documents:
      a) Plans and drawings of the wind energy facility signed and stamped by a Professional Engineer licensed to practice in Massachusetts, and in good standing, showing the proposed layout of the system.
      b) One of the following:
         (1) Eight view lines shown in a one-mile radius from the site beginning at true North and continuing clockwise at 45-degree intervals. These view lines shall, to the extent feasible, be taken from existing vantage points commonly used by the public such as public ways, buildings or other facilities. The submittal shall include unaltered photographs taken from eye level (five feet above grade) which show the existing conditions of these view lines, as well as accurate scale perspective elevation drawings, computer altered photograph or other accurate representations showing said view lines with the facility in place.
         (2) The results of a height test, where either a large balloon or a crane or similar equipment is used to clearly show the proposed height of a new tower. Such height test shall be performed for a minimum of five hours and shall be advertised in a newspaper of local circulation by way of an advertisement approximately 3 by 5 inches which shall state the day and times of the height test which must be prior to the public hearing, the day and times of an alternate in the event of unsuitable weather conditions, the purpose of the height test, the location of the test, and the probable areas of town where the object used for the test can be seen. The results shall be in the form of a report describing the test and the areas where the object is visible, and shall include color photographs showing the test object from public roads and public properties.

c) One- or three- line electrical diagram detailing the wind energy installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
d) Technical specifications of the major system components, including the mounting system, redundant braking systems, aerodynamic overspeed controls (including variable pitch, tip, and other similar systems), and mechanical brakes.
e) Evidence that the utility company has been notified of the intent to install a wind energy facility and that the utility company has responded in writing to the notice. Off-grid systems are exempt from this requirement.
f) The name, address, and contact information of the proposed installer, operator, and owner of the wind energy facility.
g) Documentation of actual or proposed control of access ways and the project site sufficient to allow for installation and use of the proposed facility.
h) An operation and maintenance plan which shall include measures for maintaining safe access, maintaining storm water management facilities, and general procedures for operating and maintaining the installation.
i) Proof of liability insurance.
j) Financial surety that satisfies §4.8.4 H 5 of this Bylaw.

D. Dimensional Requirements
1. Setbacks. Wind energy facilities shall have a setback from front, side, and rear property lines and public ways of at least 1.5 times the height of the wind turbine plus the diameter of the rotor, and the minimum setback requirement from the base of any wind turbine to any other turbine shall be equal to two times the height of the wind turbine. If the owner of an abutting property executes an easement for the purpose of providing a "fall zone" on a portion of his/her property, said easement area shall be included in the required setback area. Any such easement must remain in force for the life of the wind energy facility, and no structures shall be constructed within the easement.

2. Height. The overall turbine height shall not exceed the height recommended by the manufacturer, or 300 feet from the base of the turbine (tower) to the tip of the blade at its highest position, or 50 feet from the top of the surrounding tree canopy to the tip of the blade at its lowest position, whichever is less. The minimum distance between the ground and any part of a rotor, or turbine blade, shall be 30 feet, and wind turbines shall not be climbable up to 15 feet above ground surface. The SPGA may reduce the minimum height requirements as appropriate, based on site specific considerations, if the desired project satisfies all other criteria for the granting of a special permit under §4.8.4 C of this bylaw.

3. Accessory Structures. All accessory structures, including but not limited to: equipment shelters, storage facilities, transformers, wind monitoring towers, and substations shall be subject to reasonable conditions by the Planning Board concerning bulk and height, parking, building coverage, and vegetative screening to avoid adverse impacts on the neighborhood or abutting properties.

E. Design Standards
1. Lighting. The design and installation of the wind energy facility shall comply with applicable Federal Aviation Administration and Federal Communication Commission regulations. No wind turbine shall be artificially lit, except to the extent required by the Federal Aviation Administration, or other applicable governmental authority that

regulates air safety. Lighting shall be limited to that required for safety and operational purposes, and shall not be intrusive in any way on abutting properties. All lighting on the site shall incorporate full cut-off fixtures to reduce light pollution.

2. Signage. The facility shall have one sign not to exceed 32 square feet which identifies the operator and provides a 24-hour emergency contact phone number. The site may have a secondary sign not to exceed 32 square feet providing educational information about the facility and the benefits of renewable energy. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

3. Utility Connections. The applicant shall place all wiring from the wind energy facility underground, except in cases where the Planning Board finds that soil conditions of the site make underground wiring unfeasible.

4. Color. A neutral, non-reflective design of the facility is encouraged as to blend with the surrounding environment.

5. Flicker. The facility owner and operator shall make reasonable efforts to minimize shadow flicker to any occupied building on a non-participating landowner's property.

6. Noise. The wind energy facility shall conform with the provisions of the MA DEP Division of Air Quality Noise Regulations (310 CMR 7.10) unless both the DEP and the SPGA agree that those provisions shall not be applicable. The Town of Ware recommends that audible sound generated by a wind energy facility not exceed 60 dB(A), as measured at the property line of any abutter. A noise performance guarantee from the wind energy facility manufacturer shall be sufficient to demonstrate compliance with Massachusetts noise regulations.

7. Environmental Standards. Wind energy facilities shall be designed to minimize land clearing and fragmentation of open space areas. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state and local regulations and all wind energy facilities shall be located in a manner consistent with all applicable local and state wetlands regulations.

8. Safety. The design and installation of the wind energy facility shall comply with the most current applicable industry safety standards. All equipment necessary for monitoring and operation of the facility should be secured within the wind turbine tower or a separate structure equipped with proper locking capabilities to prevent entry by non-authorized people.

9. Modifications. All modifications to the rotor or tower of a wind energy facility that are proposed after issuance of a special permit require approval of the Planning Board for an amended special permit, with the exception of routine repairs, inspections, testing, troubleshooting, and emergency scenarios.

F. Maintenance. The operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. The operator shall be responsible for maintaining adequate access for emergency vehicles and maintenance equipment.

G. Emergency Services. The operator shall provide a copy of the operation and maintenance plan, electrical schematic, and site plan to the Fire Chief, Police Chief, and the closest State Police barracks. The operator shall cooperate with local emergency services in developing an emergency response plan; this plan shall be reviewed annually with local emergency officials and revised as necessary. All means of shutting down the installation shall be clearly marked. Signage on the premises shall identify a qualified contact person to provide assistance during an emergency; the operator shall change the contact information immediately whenever a change in personnel occurs. If access to the site is gated and locked, the owner shall provide the Fire Department with a means of entering the property (key, combination, or some other means acceptable to the Fire Department).

H. Decommissioning

1. Removal Requirements. Any wind energy facility that is discontinued or abandoned shall be removed in compliance with the requirements of the Building Inspector. The owner or operator shall physically remove the installation within 180 days after the date of discontinued operations or receipt of a notice of abandonment from the Town.

2. Notice to Town. In the event a wind energy facility is anticipated to be out of service for a period of at least one year, written notice shall be sent by certified mail to the Planning Board, Building Inspector, and Fire Chief stating the anticipated period of non-operation as well as the reason for the shut-down. In the event of decommissioning, the notice shall provide the anticipated schedule for removal and site restoration along with a site plan indicating the site conditions after the decommissioning is completed, including topography at the same contour interval that was provided in the initial site plan approval, if topographical changes will be made.

3. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the wind energy facility shall be considered abandoned when it fails to operate for more than one year. Upon determining that the facility has not been in operation for more than one year, the Building Inspector shall send a written notice by certified mail to the property owner and the last known wind energy facility operator, with a copy to the Planning Board, that the Town has found the facility to be abandoned. If the owner or operator fails to remove the installation in accordance with the requirements of this section, the Town may, to the extent it is otherwise duly authorized by law, enter the property and physically remove the facility.

4. Decommissioning shall consist of:
   a) The facility owner, operator or landowner shall, at its expense, remove wind turbines, structures, buildings, cabling, electrical components, roads, foundations (to a depth of 36 inches), and any other associated facilities within twelve (12) months.
   b) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Building Inspector may allow the owner or operator to leave landscaping or below-grade foundations in place in order to minimize erosion and disruption of vegetation.
   c) All waste materials from a decommissioning shall be disposed of in accordance with local and state solid waste disposal regulations.
   d) Disturbed earth shall be graded and re-seeded. At the option of the property owner, access roads may be left as-is, provided they are stable and do not pose a risk of sedimentation to wetlands, streams, or waterbodies.

5. Financial Surety. Prior to commencing operation, the applicant shall provide a form of surety, either through a cash deposit or non-cancellable surety bond, in an amount determined to be adequate by the Planning Board to cover the cost of removal and site restoration. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an escalator for calculating increased removal costs due to inflation. The surety shall be maintained by the developer for the lifespan of the facility, with annual certification notices from the surety company or bank for surety bonds submitted to the Planning Board. Such surety is not required for municipal facilities.

4.8.5 Earth Removal

A. Intent. It is the intention of this §4.8.5 to protect the public safety and property values; avoid the pollution of water resources by preventing excessive erosion; control noise and protect neighboring residential properties and public ways from any adverse impacts which may be caused by this use; to provide for the restoration of the land for its reuse at the termination of the extractive activity; and to protect the aesthetic quality of the area. These regulations are designed to ensure that land will be useable for residential, nonresidential, or agricultural purposes following the removal of the earth materials.

B. Applicability
   1. The removal of 1,000 cubic yards or more of earth materials (soil, loam, peat, sand, gravel, or stone) from a parcel or contiguous parcels in common ownership in any 12-month period requires a special permit.
   2. The removal of less than 1,000 cubic yards of earth materials from a parcel or contiguous parcels in common ownership is allowed upon the approval of a site plan by the Planning Board, except as provided in paragraph C. Approval of earth removal in this manner is only permitted once; if additional materials are proposed to be removed at a later date, a special permit is required at that time.
   3. The use of an exhausted earth removal site for earth processing or storage of earth materials from another site requires a special permit.

C. Exemptions. A special permit is not required in the following situations:
   1. For moving earth within the limits of a parcel or contiguous parcels in common ownership. For the purposes of section 4.8.5, properties separated by a public way are not considered contiguous.
   2. When earth removal is at the site of, incidental to, and in connection with the excavation and grading necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw. However, earth removal of 500 cubic yards or more will require approval of a site plan by the Planning Board.
      a. For the purpose of Earth Removal, the definition of "structure" within§4.8.5 shall not include: pole, sign, fence, wall, any small constructs (less than 100 sq.ft.), or any part of the above.
         i. Any garages, sheds, barns or similar structures between 100 to1000 sq.ft. may be exempt from this definition at the discretion of the Special Permit Granting Authority.
   3. For earth removal that is necessary for the construction of infrastructure within an approved subdivision.
   4. For earth removal pursuant to an Order of Conditions issued under the Wetlands Protection Act (MGL c 131 §40) when such removal is incidental to a permitted use.

5. For earth removal operations that are accessory to agricultural uses, pursuant to MGL c. 40A §3.
6. For earth removal operations that were in existence on April 13, 1987 (date of adoption of the original earth removal provisions).

D. Operational Standards
1. No excavation shall be permitted below the grade of a road bounding the property at any point nearer than 150' to such road.
2. No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary.
3. No slope created by the removal operation shall be finished at a grade in excess of two feet horizontal to one-foot vertical (2:1).
4. All excavated areas shall, upon completion of the operation or within two years of the issuance of the permit, be covered with not less than four inches of loam suitable for seeding, brought to the finish grade and seeded in a manner complying with Mass DOT standards.
5. Within the Flood Plain Overlay District, excavation of earth products shall be prohibited if such excavation will lower the level of the water table or will interfere with the natural flow pattern or reduce the flood storage capacity of a stream.
6. For Earth Removal projects requiring a special permit, no excavation shall be made at less than 10 feet above the annual high water table, as established from monitoring wells which are installed and gauged quarterly, or at a frequency determined by the Special Permit Granting Authority.
7. All top soil and subsoil stripped from operation areas shall be stockpiled, seeded with an erosion control seed mixture, and used in restoring the area.
8. Trucking routes and methods shall be specified by the Board which shall seek the advice of the Chief of Police with regard thereto.
9. All access roads leading to public ways shall be treated with suitable material to reduce dust and mud for a distance of 200 feet back from the public way.
10. Standard Massachusetts accepted road signs warning of "Trucks Entering" shall be placed on the road on each side of the entrance, in locations approved by the Ware Department of Public Works and Ware Police Department.
11. The boundaries of the area of operation must be clearly marked by the applicant and maintained at all times.
12. Operators shall immediately clean up any spillage on public ways, and are responsible for repairs to any public ways damaged as a result of the trucking traffic serving the earth removal operation.
13. Any shelters or buildings erected on the premises for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within 60 days after they are no longer needed for work upon that site.

E. Application
In addition to the submission requirements of §7.2 for a special permit, applications for a special permit under this §4.8.5 shall be accompanied by plans and specifications prepared by a Registered Professional Engineer, Registered Land Surveyor, or Professional Geologist as follows:
1. A plan of the area from which removal is proposed plus a strip 150 feet wide surrounding said area, showing all man-made features, lot lines, zoning boundaries, vegetative cover, wetlands, rivers, streams, soil characteristics, and existing topography at two-foot contour intervals;

2. A plan of the area showing the finished grade and treatment of the site after the proposed completion of the excavation;
3. An analysis of the impact of the proposed earth removal on existing site features, particularly groundwater elevation, and any existing surface water, wetlands and vegetative cover; and
4. The estimated quantity of materials to be removed and topsoil to be stripped and replaced, and the treatment of the site during operations to reduce dust and mud.
5. If processing of earth materials is proposed to be done on the site, the area for such processing shall be shown on the plan.

F. Decision
1. The SPGA shall take into consideration the following in reaching its decision:
   a) The health, safety and general welfare of the inhabitants of the Town;
   b) The removal will not be detrimental or injurious to abutters or the neighborhood, either by the alteration of existing topography or by a substantial change in the use of the streets in the neighborhood; and
   c) The effect on natural resources, including but not limited to the recharge of the water table or condition of the surface water.
   d) The removal will not violate section 4.3.24 of this zoning bylaw in regard to vibration and noise.
2. The SPGA may impose conditions pertaining to:
   a) methods of removal,
   b) type and location of structures and fencing,
   c) hours of operation to be set by the SPGA on a case by case and/or zoning district basis,
   d) area, location and depth of excavation and steepness of slopes,
   e) drainage,
   f) disposition of boulders and stumps,
   g) restoration and planting,
   h) an updated topography map of the project site showing the current grade with volume calculations shall be sent to the SPGA every 5 years or as determined otherwise by the SPGA,
   i) The SPGA may request as a condition that the applicant furnish a performance bond, of cash certified check or a surety company to the Town as obligee in a penal sum to be fixed by said SPGA as it shall deem sufficient to cover the cost of the performance of all the conditions, limitations, and safeguards may be imposed by said SPGA in connection with the removal of the particular earth substances for which the permit has been issued,
      i. The bond, check or cash deposit shall be held by the Town Treasurer until all conditions of the permit have been met to the satisfaction of the SPGA. If after (18) eighteen months from the issuance of the permit, or extension thereof, all conditions as required in the permit have not been met (especially grading and seeding), the SPGA shall cause the monies to restore the site to its natural state,
   j) sufficient security and covenants to ensure compliance with the special permit, which shall not be released until the surveyor or engineer has filed with the SPGA an as-built plan and certification that the site has been restored in compliance with the special permit and the plans, and
   k) other such conditions as it deems necessary to comply with the intent of this §4.8.5.

3. A special permit granted under this §4.8.5 may be issued for a period not exceeding one year in duration. Owners of earth removal operations may apply annually for an extension of said permit for a period not exceeding one year. Said application shall be accompanied by an annual report to include the volume of material removed in the previous year, as shown on trucking documents (e.g. bill of lading) or other reliable source, and activities related to restoration, including photographs of the site sufficient to show such activities. In addition, if any modifications to the approved plans are proposed, new plans in compliance with this §4.8.5 shall be submitted.

4.8.6 Adult Entertainment

A. Purpose and Authority. It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that adult entertainment establishments are distinguishable from other business uses and that the location of adult entertainment uses degrades the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime, decreased tax base, and blight resulting from the clustering and concentration of adult entertainment uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This bylaw is enacted pursuant to MGL c. 40A §9A and the Massachusetts Home Rule Amendment with the purpose and intent of regulating and limiting the location of adult entertainment establishments so as to prevent the secondary effects associated with these establishments, and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Ware.

B. Intent. The provisions of this Section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the intent or effect of this Section to restrict or deny access by adults to sexually oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matter or materials may have to sell, distribute, or exhibit such matter or materials. Nor is it the intent or effect of this Section to legalize the distribution of obscene matter or materials.

C. Applicability. This Section applies to all adult entertainment establishments, as defined in §2.2 of this Zoning Bylaw (adult cabaret, adult live entertainment establishment, adult motion picture theater, and adult store).

D. Special Permit Submittal Requirements. In addition to the submittal requirements for a special permit as detailed in §7.2, special permit applications for approval under this Section shall contain the following information:
   1. Name and address of the legal owners of the establishment and the property, as well as the manager of the proposed establishment;
   2. The total number of employees;
   3. Proposed security precautions;
   4. The external and internal physical layout of the premises;
   5. Full description of the intended nature of the business.

E. Standards For Adult Entertainment Establishment Special Permits. No special permit may be granted for an adult entertainment establishment unless the following conditions are satisfied:

1. Location Conditions. Adult Entertainment Establishment shall be located a minimum of 1,000 feet measured from property line to property line to a parcel occupied by a residence, school, library, church or other religious use, child care facility, park, playground, recreational area, any establishment licensed under the provisions of MGL c. 138 §12, or another Adult Entertainment Establishment. Under no circumstances shall an Adult Entertainment Establishment be permitted as a home occupation or home based business.

2. Display Conditions. No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise or other implements, items or advertising, depicting, describing or relating to nudity, sexual conduct or sexual excitement as defined in MGL c. 272 §31 shall be displayed in the windows of, or on the building of, any adult entertainment establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.

3. Setbacks and Screening. All structures housing such establishments shall have a setback from the front property line of a minimum of one hundred (100 feet) feet. All building openings, entries, and windows shall be screened in such a manner as to prevent visual access by the public to the interior of the adult entertainment establishment. A five-foot high solid fence or a landscaped buffer of evergreen trees or shrubs five-foot high at the time of planting shall be provided and maintained along the side and rear property lines.

4. Minors. No adult entertainment establishment shall be allowed to disseminate adult matter to minors, cause adult entertainment establishment displays to be viewed by minors, or allow minors to linger on the premises.

5. Outdoor Operations. No adult entertainment establishment shall operate outside of a building.

6. Applicant Conditions. No special permit shall be issued to any person convicted of violating the provisions of MGL c. 119 §63 or MGL c. 272 §28.

7. Parking. Parking for adult entertainment establishments shall be provided only in side or rear yard areas. All parking areas shall be illuminated and such lighting shall be contained within the subject property lines.

8. Hours of Operation. Adult live entertainment establishments which display live nudity for its patrons shall not be permitted to open for business earlier than 10:00 A.M. and shall close not later than 11:00 P.M, except adult cabarets which display live nudity for its patrons shall not be permitted to open for business earlier than 11:00 A.M. and shall close not later than 11:00 P.M.

9. Noise and Light. No adult entertainment establishment shall operate in a manner which allows or produces noise or sound or light disruptive to the surrounding neighborhood.

F. Expiration of Special Permit. Any special permit granted for an adult entertainment use shall be personal to the applicant, shall not run with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject's property/business.

G. Compliance With Other Laws. Any adult entertainment use granted a special permit shall comply with all other Town Bylaws and all statutes, Federal Laws and all laws of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof.

H. Lapse of Adult Entertainment Establishment Special Permits. A special permit issued under this §4.8.6 shall lapse upon any one of the following occurrences:
1. There is a change in the location of the adult use; or
2. There is a sale, transfer or assignment of the business or the license; or
3. There is any change in ownership or management of the business.
4. Failure to begin a permitted adult entertainment establishment within six months of the granting of such permit, except for "good cause", including the time necessary to await a court appeal to establish an adult entertainment establishment shall result in the lapse thereof.
5. Expiration: Any adult entertainment use special permit granted shall expire after a period of one calendar year from its date of issuance and shall be automatically renewable for successive one year periods thereafter, provided that a written request for such renewal is made to the SPGA prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted, conditions imposed by the special permit granting authority at the time the permit was issued or renewed and violations of the bylaw itself.

I. Conditions, Safeguards and Limitations For Adult Entertainment Uses. In granting a special permit, the SPGA may impose additional conditions, safeguards and limitations on the permit including but not limited to additional buffer zones, or screening.

J. Severability. If any section or portion of this bylaw is ruled invalid, such ruling shall not affect the validity of the remainder of the bylaw.

4.8.7 *Replacement of Existing Mobile Home not in Mobile Home Park* – Mobile homes on individual parcels that are not in common ownership with any adjacent parcels may be replaced with a modular home or a site-built home upon receipt of a Building Permit provided the following criteria are met:

A. The minimum lot size for a parcel in the Rural Residential district shall be 25,000 square feet, and in any other district shall be 5,000 square feet.

B. The replacement home may be larger than the existing mobile home, but must either comply with the setback requirements of §5.1.1 or first receive a special permit or variance under the provisions of §1.9.2.

C. If not already served by municipal utilities (water and/or sewer) and said utilities are available within reasonable distance of the lot, the new house must be connected to said utilities. If municipal utilities are not available, the applicant must secure the appropriate approvals from the Board of Health prior to obtaining a Building Permit.

D. The parcel is not vacant at the time of application for a building permit.

E. The mobile home has been used for human habitation for a period of time during the two years prior to the application for a building permit under this section, as proven to the Building Commissioner by submission of copies of utility statements.

4.8.8 Registered Marijuana Facilities (RMF), Marijuana Cultivation Sites (MCS), and Marijuana Delivery Operators (MDO)

A. Purpose. The purpose of this Section 4.8.8 is to allow the siting, development and operation of Registered Medical, Recreational and/or Hybrid Marijuana Facilities (RMFs), Marijuana Cultivation Sites (MCSs) and Marijuana Delivery Operators (MDOs) in the Town of Ware in order to:

1. Enable individuals with a debilitating medical condition, for which medical marijuana is a viable treatment, to have access to registered marijuana facilities consistent with state law, the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. 1-1 – Chapter 369 of the Acts of 2012, and the Department of Public Health Regulations, 105 CMR 725, and

2. To allow for the orderly siting of establishments for the retail sale or delivery of marijuana and marijuana products.

B. Intent. It is the intent of Section 4.8.8 to protect public health and safety; to regulate the siting, design, and safety of Registered Medical, Recreational and Hybrid Marijuana Facilities (RMFs), Marijuana Cultivation Sites (MCSs) and Marijuana Delivery Operators (MDOs); to minimize adverse impacts on abutting properties; to provide adequate separation from schools (pre-schools, kindergartens, elementary, middle and high schools), parks, public libraries, recreation facilities, and other areas where children commonly congregate in an organized, ongoing, formal basis, or which are dedicated to the use of children; and to provide for site security to deter crime and uphold the safety of surrounding neighborhoods.

C. Definitions

Hybrid Marijuana Establishment: a business where the combined sale of both medical and recreational marijuana and products containing and/or associated to legalized marijuana use is authorized.

Marijuana Cultivation Site: a business where the cultivation, possession, processing (including development of related products such as food, tinctures, aerosols, oils, or ointments), warehousing, distribution, transferring and transporting of marijuana and products containing marijuana is authorized.

Marijuana Cultivation Structure: a structure that is equipped with climate control systems, such as heating and ventilation capabilities, and that uses a combination of natural and supplemental artificial lighting for marijuana cultivation.

Marijuana Delivery Agreement: A contract between a licensed Marijuana Establishment and a Delivery Licensee or Marijuana Establishment with a Delivery Endorsement to deliver Marijuana or Marijuana Products from the Marijuana Establishment directly to Consumers and as permitted, Marijuana Couriers to Patients and Caregivers, under the provisions of a Delivery License.

Marijuana Delivery Endorsement: The authorization granted to Licensees in categories of Marijuana Establishments identified by the Cannabis Control Commission to perform

deliveries directly from the establishment to Consumers. Delivery items refers to Finished Marijuana Products, Marijuana Accessories, and Marijuana Established Branded Goods.

Marijuana Delivery License: A Marijuana Courier License or a Marijuana Delivery Operator License.

Marijuana Delivery Licensee: A Marijuana Courier or a Marijuana Delivery Operator authorized to deliver Marijuana and Marijuana Products directly to Consumers and as permitted, Marijuana Couriers to Patients and Caregivers.

Marijuana Delivery Operator (MDO): An entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, and Microbusiness, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license.

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

Medical Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of medical marijuana and products containing medical marijuana is authorized.

Recreational Marijuana Establishment: a business where the possession, sale, distribution, dispensing and administration of recreational marijuana and products containing and/or associated to recreational marijuana (e.g., aerosols, art, clothing, food, jewelry, literature, oils or ointments, tinctures, etc.) is authorized.

Registered Marijuana Dispensary (RMD): A use operated by an entity registered and approved by the Cannabis Control Commission (or appropriate licensing authority), 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. A RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

D. Special Permit and Site Plan Approval Required. Registered Medical, Recreational, and Hybrid Marijuana Facilities, Marijuana Cultivation Sites, and/or Marijuana Delivery Operators require a Special Permit and Site Plan Approval. In addition to the requirements in Article 7 – Administration, Section 7.2, Special Permits, and Section 7.4, Site Plan Review, the provisions of this Section 4.8.8 shall apply to Registered Medical, Recreational, and Hybrid Marijuana

Facilities (RMFs) Marijuana Cultivation Sites (MCSs), and Marijuana Delivery Operators (MDOs).

1. Host Community Agreement: Applicants shall submit a proposed Host Community Agreement that describes the measures the Applicant intends to take to mitigate potential negative impacts on the Town and abutting neighborhood from the Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site and/or Marijuana Delivery Operator.

E. Separation and Setbacks. No Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator may be located closer than three hundred feet (300') (measured from door to door) of a facility used, at the time of the first notice of the public hearing, for a park (measured from door to property line), playground (measured from door to property line), pre-school, kindergarten, elementary, middle or high school, state-licensed child day care center, public library, recreation facilities, and other areas where children commonly congregate in an organized, ongoing, formal basis, or which are dedicated to the use of children. This measurement shall be the distance between the Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and the front entrance of the building in question. Such uses shall not be prohibited from locating within three hundred feet (300') of a Registered Medical, Recreational and Hybrid Marijuana Facility, a Marijuana Cultivation Site, and/or a Marijuana Delivery Operator nor shall a Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator become nonconforming under the Zoning Bylaw if a park (measured from door to property line), playground (measured from door to property line), pre-school, kindergarten, elementary, middle or high school, state-licensed child day care center, or other areas where children commonly congregate in an organized, ongoing, formal basis or which are dedicated to the use of children, later locates within three hundred feet (300') of a preexisting Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator.

F. Security Plan. In addition to the submission requirements for Special Permit and Site Plan Review, the application shall include a Security Plan designed to deter crime and protect the public safety. The Plan may include measures such as locks, gates, cameras, alarms, fences, lighting, and monitoring protocols. The Ware Police Chief, or his/her designee, may recommend changes to the Security Plan and the Town of Ware Planning Board will incorporate the Chief's recommendations in the Special Permit decision to the fullest extent practicable.

G. Standards Applicable to Registered Medical, Recreational and Hybrid Marijuana Facilities, Marijuana Cultivation Sites and/or Marijuana Delivery Operators

1. An applicant shall possess a Certification of Registration from the Massachusetts Cannabis Control Commission as a Registered Marijuana Dispensary, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and shall comply with the Department's regulations at all times.

2. The siting, development, and operation of Registered Medical, Recreational, and/or Hybrid Marijuana Facilities, and Marijuana Delivery Operators shall be allowed by Special Permit and Site Plan Approval in the Downtown Commercial (DTC), Mill Yard (MY) and Highway Commercial (HC) zoning districts. Marijuana Cultivation Sites are to

be allowed by Special Permit and Site Plan Approval in the Rural Residential (RR), Mill Yard (MY), Commercial Industrial (CI) and Industrial (I) zoning districts.

3. The proposed plan shall conform to §7.2, Special Permits, §7.4, Site Plan Review, and to those zoning districts per §4.2, Use Table, where these uses are allowed.

4. Use of property as a Marijuana Retailer, Cultivation facility, or Delivery Operator shall be deemed a principal use for purposes of this Zoning Bylaw, and shall be permitted exclusively in accordance with this Article. No Marijuana Establishment shall be allowed within Town as an accessory use. Cultivation of marijuana shall not take place in a residential property with an established accessory use, unless the marijuana is for personal consumption in accordance with Massachusetts State law.

5. Any Marijuana Delivery Operator application for a Special Permit shall include the anticipated number of vehicles operating from the location, number of employees for all operations including fulfillment, administration, and vehicle drivers shall be identified and may be conditioned as such. A copy of the Application of Intent and Management and Operations Profile submitted, to the extent permitted by law, as an integral part of the Special Permit application.

6. The proposed plan shall provide urban design and landscaping elements to harmonize the proposed project with abutting uses so as to protect and enhance the aesthetics and architectural look and character of the surrounding vicinity.

7. The use shall not generate outside odors from marijuana use and/or production of marijuana products.

8. The proposed plan shall refer to §6.5, Signage, for the installation, type, number and size considerations of signs, as applicable.

9. Hours of operation shall be between 8:00 AM and 8:00 PM Monday thru Sunday.

10. Noise shall comply with the Noise Policy of the Commonwealth of Massachusetts Department of Environmental Protection and Division of Air Quality regulations, 310 CMR 7.10, and any local noise abatement bylaw. A noise source violates the noise regulation if the source: a.) Increases the broadband sound level by more than 10 dB(A) above ambient, or b.) Produces a "pure tone" condition – when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line of the Registered Medical, Recreational, and Hybrid Marijuana Facility, Marijuana Cultivation Site and/or Marijuana Delivery Operator and at the nearest inhabited dwelling unit. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time, measured during equipment operating hours.

11. The Town of Ware Planning Board may require a traffic study that includes an analysis of parking demand to justify the number of proposed parking spaces.

12. A Special Permit granted under this Section 4.8.8 shall be personal to the applicant and shall lapse if the applicant no longer is the holder of the Certification of Registration from the Commonwealth of Massachusetts Cannabis Control Commission as a Registered Marijuana Dispensary, Marijuana Cultivation Site and/or Marijuana Delivery

Operator. A change of the registrant shall require submission of a new Special Permit application.

13. All applicable rules and regulations established under the auspices of the Massachusetts Cannabis Control Commission (CCC) must be adhered to.

14. All other applicable regulations such as wetland, septic, water supply, etc. are required to be compiled with as appropriate. This permit does not supersede any other requirements.

15. Applicant for the permit must be the property owner or duly authorized agent.

16. The property area required to operate a marijuana cultivation structure in the Rural Residential (RR) district will be:

    i. Minimum of 5 acres: up to 5,000 square feet (Tier 1 per CCC)
    ii. 10 acres or more: up to 20,000 square feet (Tier 3 per CCC)

17. Any building utilized for the purposes of marijuana cultivation within the Rural Residential (RR) zoning district shall use architectural and landscape design elements that resemble the typical New England agricultural/farm building styles seen on a farm such as a "butler type metal building" or wood or masonry wall and finished in neutral colors or a color in harmony with existing buildings on adjacent properties. The Planning Board may, at its discretion, entertain and allow proposals for other building styles.

18. The rehabilitation of existing buildings for marijuana cultivation in the Rural Residential (RR) zoning district may deviate from the height restriction if they already exceed it, to the extent that any linear addition may continue existing lines, so long as no additional height is added. Additions added non-linear to the primary axis (ridge line) of the existing building shall not exceed 18 feet (eave height).

19. New buildings and those occupied and used buildings constructed prior to July 1, 2018 under this law which are proposed to be used as marijuana cultivation structures in the Rural Residential (RR) zoning district shall be located at a minimum of one-hundred (100') feet from a Town or State road right of way line.

20. Existing buildings which are proposed to be used a marijuana cultivation structures in the Rural Residential (RR) zoning district and that are located within two-hundred (200') feet of an existing residential structure on an adjacent property or one-hundred (100') feet of a roadway are required to establish and maintain a year-round dense vegetated barrier of at least ten (10') feet between the residence and/or roadway. A waiver or modification to this provision may be granted by the Planning Board after review for appropriateness and a determination that a modified, reduced or no barrier, would not be substantially detrimental to the adjacent neighborhood.

21. Hoop houses utilized as marijuana cultivation structures in the Rural Residential (RR) zoning district shall utilize an opaque wall film to preclude direct viewing of the vegetation growth.

22. Outdoor cultivation may occur in provided that screening, security and other provisions complies with 935 CMR500.

23. For outdoor cultivation, this bylaw will require that security fencing be screened with natural vegetation or topography. On large properties, it is likely that the cultivator will place the relatively small growing area far from any property boundary so that it is screened from the public by existing vegetation and/or topography. If vegetation is planted to screen the fence, the cultivator will have3-years for the vegetation to reach maturity and full coverage. It is required that any barbed or razor wire type fencing materials not be used or be entirely hidden from view from public ways or neighboring property. The cultivar must include these security provisions within its special permit application.

24. Outdoor cultivation must not occur within 3000 feet of a pre-existing hemp farm.

25. Outdoor cultivation must not store fertilizers, compost, soils, materials, machinery, or equipment within the required front, side, and rear yard setbacks.

26. A Site Plan review is required as part the Special Permit to assure compliance with parking, waste management, lighting, and all other zoning regulations.

27. When a conflict arises between that of a local or state regulations, the more restrictive of these shall be in full force.

28. Any change in ownership of the property, operator, duly authorized agent, or co-op association shall require notification to the Planning Board, a review and reissuance of the Special Permit by the Planning Board, prior to the new ownership or other changes taking place.

29. The Special Permit shall terminate on dissolution of the co-op, change in ownership, or revocation of the authorization to operate by the Massachusetts Cannabis Control Commission (CCC).

30. The Planning Board, Town Planner, and Town Manager shall be notified of any violations, citations or other sanctions by the Massachusetts Cannabis Control Commission (CCC) or other regulatory agency, as related to operations conducted under this Special Permit, by the permit applicant and/or property owner, via mail and certified mail, within three (3) business days from the date of the violation.

31. Operations under a Special Permit issued by the Planning Board must comply with all other local, state, or other rules, regulations and requirements.

4.8.9 Battery Energy Storage Systems (BESS)

A. Purpose

The purpose of this bylaw is to provide for the construction and operation of Battery Energy Storage Systems (BESS) and to provide standards for the placement, design, construction, monitoring, modification and removal of energy storage systems that address public safety, protection of the Town and private drinking water supply, minimize impacts on scenic, natural and historic resources of the Town of Ware, and provide adequate financial assurance for decommissioning. The provisions set forth in this

section shall take precedence over all other sections when considering applications related to the construction, operation, and/or repair of Battery Energy Storage Systems.

B. Definitions – Refer to definitions in Section 2.2.

C. Applicability
   1. Building-integrated Battery Energy Storage Systems
      a) Battery Energy Storage Systems that are building-integrated, whether a residential or commercial building, energy storage systems shall not be erected, constructed, installed, or modified as provided in this section without first obtaining a building permit from the Building Inspector.
      b) Building-integrated energy storage systems may be coupled with rooftop solar or behind the meter applications for peak shaving.
      c) Building-integrated battery energy storage systems may be located in any zoning district of the Town of Ware.
   2. Co-located Battery Energy Storage Systems
      a) Battery Energy Storage Facilities are encouraged to co-locate with solar photovoltaic installations, energy, power generation stations, and electrical sub-stations.
      b) Battery Energy Storage Systems associated with on-site solar power generation shall be permitted in the same districts as Large-Scale Solar Arrays by Special Permit and Site Plan Review.
      c) If co-located with a solar photovoltaic installation, the BESS shall not exceed the necessary capacity and size generated by the output of the co-located solar photovoltaic installation.
   3. Battery Energy Storage systems not associated with on-site solar generation shall only be permitted in the Commercial Industrial (CI), Millyard (MY) and Industrial (I) Districts, and shall require a Special Permit and Site Plan Review from the Planning Board. Battery Energy Storage Systems not associated with on-site solar generation are prohibited in the Aquifer Protection Overlay District.
      a) The nameplate capacity of an Energy Storage system shall not exceed the total kw of renewable energy being produced on the 3-phase distribution line that the energy storage system will be interconnected to.
      b) Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this bylaw.

D. General Requirements
   1. In accordance with Section C above, all battery energy storage systems shall require a special permit and site plan approval by the Planning Board prior to construction, installation, or modification as provided in this bylaw.
   2. The construction, operation, and decommissioning of all battery storage energy storage systems shall be consistent with all applicable local, state, and federal requirements, including but not limited to all applicable environmental, safety, construction, fire, and electrical requirements.
   3. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.

E. Application Materials

1) In addition to requirements of Section 7.2 Special Permits and Section 7.4 Site Plan Review the application for a Special Permit under this Section 4.8.9 shall include the following:
   a) A site plan prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts, that shows the following:
   b) An existing condition plan with property lines and physical features, including topography and roads, characteristics of vegetation (trees- mature, old growth, shrubs, open field, etc.), wetlands, streams, ledge, for the project site;
      1. Proposed changes to the landscape of the site, including grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, driveways, snow storage, and storm water management systems; including total acreage of disturbed area, total vegetation cleared, not including mowed fields;
      2. Trees with a DBH of 20" or greater within project parcel(s) shall be identified to determine tree loss, along with inventorying of diseased or hazard trees slated to be removed due to proposed development;
      3. Property lines and physical dimensions of the subject property with contour intervals of no more than 10 feet;
      4. Property lines of adjacent parcels within 300 feet.
      5. Location, dimensions, and types of existing major structures on the property;
      6. Location of the proposed battery energy storage structures, foundations, and associated equipment;
      7. The right-of-way of any public road that is contiguous with the property;
      8. Any overhead or underground utilities;
      9. At least one color photograph of the existing site, measuring eight (8) inches by ten (10) inches;
      10. Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP;
      11. Locations of floodplains or inundation areas for moderate or high hazard dams;
      12. Locations of local or National Historic Districts; and
      13. Stormwater management and erosion and sediment control.

   c) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed, including manufacturer and model. A final equipment specification sheet shall be submitted prior to the issuance of building permit;
   d) One- or three-line electrical diagram showing associated components, and electrical interconnection methods, with all NEC compliant disconnects and overcurrent devices;
   e) Contact information and signature of the project proponent, as well as all co-proponents, if any, and all property owners;
   f) Contact information and signature of agents representing the project proponent, if any;
   g) Contact information for the person(s) responsible for public inquiries throughout the life of the system;

h) An operations and maintenance plan for Battery Energy Storage System. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information;
i) Energy Storage System technical specifications, including manufacturer and model;
j) Electrical schematic;
k) Documentation that shows the owner of the Energy Storage System has site control, which shall include easements and access roads;
l) Documentation that shows the owner of the Energy Storage System has notified the electric utility of this installation.
m) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
    1. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
    2. Procedures for inspection and testing of associated alarms, interlocks, and controls.
        i. This includes hazmat appliances for conducting atmospheric monitoring with a scientific officer to support.
    3. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
    4. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
    5. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
    6. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
    7. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
    8. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
        i. Training must be provided and organized by the applicant.
n) Proof of liability insurance: The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and property caused by the failure of the system.
o) A noise study, prepared by a qualified individual with experience in environmental acoustics, to assess the impact of all noise sources generated from the project to abutting properties, and determine the appropriate layout, design, and control measures. The report should include details of assessment

methods, summarize the results, and recommend the required outdoor as well as any indoor control measures.

F. Design and Site Standards

1. In addition to the standards for Special Permit and Site Plan Review in the Zoning Bylaw, the applicant shall adhere to the following standards and provide such information on the site plan:
    a) Utility Lines. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility.
    b) Signage. The signage shall include the type of technology associated with the systems, any special hazards associated, the type of suppression system installed, and 24-hour emergency contact information. All information shall be clearly displayed on a light reflective surface. Clearly visible warning signs concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
    c) Lighting. Lighting of the systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
    d) Setbacks. Battery Energy Storage Systems not co-located with solar photovoltaic installations shall adhere to a fifty (50) foot setback from the front, side, and rear property lines and shall adhere to a one hundred fifty (150) foot setback from any residential buildings. . BESS's shall also adhere to a one hundred (100) foot setback from water wells (both private and public) located either on-site or on abutting properties.
    e) Fire protection. Battery Energy Storage Systems not co-located with solar photovoltaic installations shall be located on properties serviced by the public water system or by a water supply acceptable to the Planning Board and Ware Fire Department.
    f) Vegetation and Tree-Cutting. Areas within ten (10) feet on each side of a system shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees or shrubbery and cultivated ground covers such as green grass, ivy, succulents, or similar plants shall be exempt provided that they do not form a means of readily transmitting fire. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the system and that which is otherwise prescribed by applicable bylaws and regulations.
    g) Noise. The 1-hour average noise generated from the systems, components, and associated ancillary equipment shall not exceed a noise level of 60 dBA as measured at the property line.

G. Safety

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:
    a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
    b) UL 1642 (Standard for Lithium Batteries),
    c) UL 1741 or UL 62109 (Inverters and Power Converters),
    d) Certified under the applicable electrical, building, and fire prevention codes as required.
    e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

H. Special Permit Criteria

1. The Planning Board may approve an application if the Board finds that the system complies with the Site Plan Review and Approval criteria and with the conditions for granting Special Permits. Battery energy storage systems shall also satisfy the following additional criteria:
    a) Environmental features of the site are protected, and surface runoff will not cause damage to surrounding properties or increase soil erosion and sedimentation of nearby streams and ponds.
    b) The Planning Board may also impose conditions as it finds reasonably appropriate to safeguard the town or neighborhood including, but not limited to, screening, lighting, noise, fences, modification of the exterior appearance of electrical cabinets, battery storage systems, or other structures, limitation upon system size, and means of vehicular access or traffic features.
    c) No occupancy permit shall be granted by the Building Commissioner, nor shall the site be energized or interconnected to the utility until the Planning Board has received, reviewed, and approved an as-built plan that demonstrates that the work proposed on the approved site plan, including all stormwater management components and associated off-site improvements, have been completed in accordance with the approved plan and certified same to the Building Commissioner.
    d) The Planning Board may, in its discretion, approve an as-built plan upon provision of a type of surety as determined by the SPGA, to secure incomplete work where such work is not immediately necessary for lawful operation of the system without negative effect on public health and safety and surrounding properties.
    e) The applicant shall make every effort to coordinate necessary surveying and finalization of the as-built plans and submission of required construction control documents prior to the conclusion of construction. Notwithstanding the above, a temporary occupancy permit may be granted with the approval of the Planning Board subject to conditions for completion of work imposed by the Board.

I. Decommissioning

1. As part of the applicant's submission to the Board, the applicant shall submit a decommissioning plan, to be implemented upon abandonment or in conjunction with removal from property. The plan shall include:
    a) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the property.
    b) Disposal of all solid and hazardous waste in accordance with local, state, and federal regulations.
    c) The anticipated life of the battery energy storage systems.
    d) The estimated decommissioning costs and how said estimate was determined.
    e) The method of ensuring that funds will be available for decommissioning and restoration.
    f) The method by which the decommissioning cost will be kept current.
    g) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress,

and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed.

h) A listing of any contingencies for removing an intact operational battery energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

2. Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town, in an approved form for the removal of the battery energy storage system, in an amount to be determined by the SPGA for the period of the life of the facility. All costs of the financial security shall be borne by the applicant. The amount shall include a mechanism for calculating increased removal costs due to inflation.
3. An inspection of the completed decommissioned area shall be reviewed by a consultant hired by the Planning Board before approving the decommissioning work in accordance with the Decommissioning Plan. The owner and/or operator shall pay for the cost of this review with such payment being provided by the owner and/or operator prior to the consultant undertaking said review, in accordance with MGL Chapter 44, Section 53G.

J. Abandonment

The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than twelve (12) months. The system shall be presumed abandoned if the owner and/or operator fails to respond affirmatively within thirty (30) days to a written inquiry from the Building Inspector as to the continued validity and operation of the system. If the owner or operator fails to comply with decommissioning upon any abandonment, the Town, may, at its discretion, and utilize the 88 for the removal of a system and restore the site in accordance with the decommissioning plan.

K. Severability

If any provision of this By-Law is found to be invalid by a court of competent jurisdiction, the remainder of this By-Law shall not be affected but remain in full force. The invalidity of any provision of this By-Law shall not affect the validity of the remainder of the Ware Zoning By-Law.

4.8.10 Health Care Services District (HCS)

A. Purpose. The purpose of the Health Care Services District is to:

1. Promote hospital uses, related health services, clinics and treatment facilities, offices of health practitioners, nursing homes, continuing care retirement facilities, daycare centers and laboratories for research and development within the HCS zone;

2. Maintain the neighborhood scale and ensure compatibility between uses within the Health Care Services District and abutting districts through height and dimensional requirements;

3. Not be detrimental to the health, safety or welfare of the neighborhood or town;

4. Preserve open space for conservation and wildlife, and future recreational uses which shall be secondary to the primary medical use within the HCS zone.

B. District Delineation. The general boundaries of the Health Care Services District are shown on the "Health Care Services District" Map dated (Month of Town Meeting approval), 2025.

C. Use Regulations

1. The Health Care Services District is established as a commercial district.

2. All development in the Health Care Services District, including structural and non-structural activities, must be in compliance with all applicable local, state and federal regulations including but not limited to the state building codes and wetland protections.

3. Multiple principal buildings and uses are permitted per lot.

4. All buildings or structures constructed on or after the effective date of this bylaw shall conform to the applicable requirements of Article 5 – Dimensional Regulations and Article 6 – Design Standards.

5. Parking and loading as specified in Section 6.1, Parking and Loading, Table 6.1.1 of the Town of Ware Zoning Bylaw shall apply. Buffers and landscaping as specified in Section 6.2, Buffers and Landscaping, of the Town of Ware Zoning Bylaw shall apply. Lighting as specified in Section 6.3, Lighting, of the Town of Ware Zoning Bylaw shall apply. Stormwater as specified in Section 6.4, Lighting, of the Town of Ware Zoning Bylaw, shall apply. Signage, as specified in Section 6.5, Signage, of the Town of Ware Zoning Bylaw, shall apply.

6. Permitted Uses. The following uses are allowed by Special Permit and Site Plan review (see Section 7.2 and Section 7.4) in the Health Care Services District:

a) Hospital including customary supporting uses and facilities;

b) Emergency room (ER) attached to a hospital, and freestanding emergency facilities structurally separate and distinct from a hospital;

c) Intermediate Care Facility

d) Medical Clinic or Urgent Care Center

e) Nursing Home, Memory Care Community, Assisted Living Residence

f) Continuing Care Retirement Community (CCRC)

g) Adult Day Care Center

h) Medical/Dental/Psychiatric Center or Office

i) Business and professional offices related to healthcare

j) Hospital helipad

k) Museum

l) Other health care facilities and services

D. Special Permit Approval Criteria. The Planning Board may grant a special permit after a duly noticed public hearing in accordance with Section 7.2 of this Zoning Bylaw provided it finds that the proposed use is in harmony with the purpose and intent of this ordinance and will promote the purposes of the Health Care Services District.

4.9 Overlay District Regulations

4.9.1 Floodplain

A. Purpose. The purposes of the Floodplain District are to:
   1. Enhance public safety through reducing the threats to life and personal injury.
   2. Minimize new hazards to emergency response officials resulting from flooding conditions;
   3. Prevent the occurrence of public emergencies resulting from water quality contamination, and pollution due to flooding;
   4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
   5. Minimize costs associated with the response and cleanup of flooding conditions;
   6. Minimize damage to public and private property resulting from flooding waters.

B. Designation of community Floodplain Administrator. The Town hereby designates the position of Building Commissioner to be the official floodplain administrator.

C. District Delineation
   1. The general boundaries of the Floodplain district are shown on the Overlay Zoning District Map dated March 8, 2012. The official boundaries of the Floodplain district are shown on the Town of Ware Flood Insurance Rate Map (FIRM), dated August 17, 1981, as Zone A, A2, A7, A10, or A13 which indicate the one-hundred-year water surface elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study, dated February 17, 1981. The floodway boundaries are delineated on the Town of Ware Flood Boundary-Floodway Map (FBFM), dated August 17, 1981, and further defined by the Floodway Data Tables contained in the Flood Insurance Study. These two maps, as well as the accompanying Study are incorporated herein by reference and are on file with the Board of Selectmen, Town Clerk, and Planning Board.

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

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

   4. Base Flood Elevation Data. Base flood elevations for each developable parcel shown on design plans are required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones. Such data is to

be prepared by a professional engineer registered in Massachusetts and submitted to the Planning Board by the applicant.

D. Notification of Watercourse Alteration. The following entities are to be notified of any alteration or relocation of a watercourse in a riverine situation: adjacent communities, the National Flood Insurance Program (NFIP) State Coordinator, and the NFIP Program Specialist, FEMA Region 1.

E. Use Regulations

1. The Floodplain District is established as an overlay district over all other districts. Any uses permitted in the underlying districts by right or by special permit shall continue to be permitted by right or by special permit, subject to all the provisions of this section.

2. Reference to Existing Regulations. All development in the floodplain district, including structural and non-structural activities, must be in compliance with all applicable state regulations, including but not limited to the state building code, wetlands protection, and subsurface disposal of sanitary sewage.

3. Permitted Uses. The following uses of low flood-damage potential and causing no obstructions to flood flows shall be permitted provided 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, foot, bicycle, and/or horse paths, etc.
   d) Conservation of water, plants, and wildlife
   e) Wildlife management areas
   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.

4. Uses Permitted by Special Permit. A special permit is required for all proposed construction or other development in the floodplain overlay district including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties. No earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted. The SPGA may grant a special permit under this §4.9.1 provided:
   a) The proposed use complies in all respect to the provisions of the underlying district in which the land is located;
   b) All encroachments, including fill, new construction, substantial improvements to existing structures and other development, are certified by a registered professional engineer demonstrating that such encroachment will not result in any increase in flood levels during the occurrence of the one-hundred-year flood. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering

practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

c) The SPGA takes into consideration reports from the Conservation Commission and Board of Health, unless no such report is received from said boards within 35 days from the date of transmission of the application to said boards; and

d) The SPGA may specify such additional requirements and conditions as it finds necessary to protect the health, safety, and welfare of the public and occupants of the proposed use.

5. AO and AH zones drainage requirements. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

6. Subdivision proposals. All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that:

a) Such proposals minimize flood damage;
b) Public utilities and facilities are located & constructed so as to minimize flood damage;
c) Adequate drainage is provided.

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

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

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

a) NFIP State Coordinator
   ii. Massachusetts Department of Conservation and Recreation
b) NFIP Program Specialist
   i. Federal Emergency Management Agency, Region 1

10. Variances to building code floodplain standards. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

11. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP). A variance from these floodplain bylaws must meet the requirements

set out by the State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

12. Abrogation and the greater restriction section. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

13. Disclaimer of liability. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

14. Severability section. If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

F. Definitions

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

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

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

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. (US Code of Federal Regulations, Title 44, Part 59)

Historic Structure: Any structure that is:

1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district of a district preliminarily determined by the Secretary to qualify as a registered historic district;
3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
a. By an approved state program as determined by the Secretary or
b. Directly by the Secretary of the Interior in states without approval programs.
(US Code of Federal Regulations, Title 44, Part 59)

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

Recreational Vehicle: means a vehicle which is:
1) Built on a single chassis;
2) 400 square feet or less when measured at the largest horizontal projection;
3) Designed to be self-propelled or permanently towable by a light duty truck; and
4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
(US Code of Federal Regulations, Title 44, Part 59)

Regulatory Floodway – See Floodway.

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

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

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

Substantial Repair of a Foundation: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. (As amended by MA in the 9th Edition BC)

Variance: A grant of relief by a community from the terms of the flood plain management regulation. (US Code of Federal Regulations, Title 44, Part 59)

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

4.9.2 Aquifer Protection

A. Purpose. The purpose of the Aquifer Protection Overlay District is to promote the health, safety, and general welfare of the community by ensuring an adequate supply of potable water through the protection of present and potential sources of water supply, including aquifer and aquifer recharge areas. To this end, there are two levels of regulation for such areas in Ware; a higher level which covers the areas known to contribute directly to a public water supply, and a lower level which covers the areas thought to potentially contribute to a water supply.

B. Location.
   1. The Aquifer Protection Overlay District is comprised of two areas: the Zone II Groundwater Protection Area plus the Interim Wellhead Protection Area (IWPA), and the high plus medium yield aquifer areas.
   2. The Aquifer Protection Overlay District is shown on the Aquifer Protection Overlay District map dated March 8, 2012, which is hereby incorporated as part of this Zoning Bylaw.
   3. Where a boundary of the Aquifer Protection district is in dispute, the burden of proof for determining the correct location shall rest with the applicant, and any agreed upon resolution of ambiguity in the precise location of the boundary may be used in the administration of this §4.9.2. The boundaries of the Aquifer Protection district shall only be modified by a zoning amendment adopted by Town Meeting, pursuant to MGL c. 40A §5.
   4. When a parcel is split by a boundary of the Aquifer Protection district, the provisions of this §4.9.2 shall only apply to the area within the Aquifer Protection district.
   5. As an overlay district, the regulations for the underlying district remain in effect but all uses are subject to the provisions of this §4.9.2.

C. Regulations Applicable to the Entire Aquifer Protection District.
   1. Permitted Uses. The following uses are permitted within all areas of the Aquifer Protection district, provided that all necessary permits, orders, or approvals required by local, state, or federal law are obtained:
      a) conservation of soil, water, plants, and wildlife;
      b) outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
      c) foot, bicycle and/or horse paths, and bridges;
      d) normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
      e) maintenance, repair, and enlargement of any existing structure, subject to the provisions of this Section;
      f) residential development, subject to the provisions of this Section;
      g) farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to prohibited uses and special permitted uses;

h) construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels. Underground storage tanks related to these activities are not categorically permitted.

2. Prohibited Uses:
   a. disposal of leachable wastes with the exception of subsurface waste disposal systems approved through Title V;

   b. The use of Contaminated Sediments and Contaminated Soils as Fill Material (see §2.2) to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.
   c. Disposal of leachable wastes with the exception of subsurface waste disposal systems approved through Title V;
   d. Battery Energy Storage Systems per section 4.8.9

3. Uses Requiring a Special Permit:
   a) Any proposed new development that will render 50% or more of the parcel impervious.
   b) Nonresidential uses permitted by right or by special permit in the underlying district, except for those specifically prohibited in this §4.9.2.
   c) Disposal of solid waste other than brush or stumps.

D. Regulations Applicable to the Zone II and IWPA Areas:
1. Prohibited Uses:
   a) landfills and open dumps as defined in 310 CMR 19.006.
   b) automobile graveyards and junkyards, as defined in MGL c. 140B §1.
   c) landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to NLG-LC-21 Sec. 2-6 through 53, MGL c. III §17; MGL c. 83 §6 and 7, and regulations promulgated thereunder.
   d) facilities that generate, treat, store, or dispose of hazardous waste that are subject to MGL c. 21 C and 310 CMR 30.00, except for the following:
      (1) very small quantity generators as defined under 310 CMR 30.000;
      (2) household & hazardous waste centers and events under 310 CMR 30.390;
      (3) waste oil retention facilities required by MGL c. 21 §52A;
      (4) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
   e) petroleum, oils, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the US Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and other subsequent amendments.
   f) storage of liquid hazardous materials, as defined in MGL c. 2IE, and liquid petroleum products, unless such storage is above ground level and on an impervious surface, and either in container(s) or above ground tank(s) within a building, or outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping,

dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.

g) storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.

h) storage of deicing chemicals or animal manure unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

i) earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within ten feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United Stated Geological Survey, except for excavations for building foundations, roads, or utility works.

j) treatment or disposal works subject to 314 CMR 5.00, for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
   (1) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
   (2) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMP. 5.05(3), or 5.05(13);
   (3) publicly owned treatment works.

k) stockpiling and disposal of snow and ice removed from highways and streets located outside the Zone II that contain sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

l) storage of commercial fertilizers, as defined in MGL c. 128 §64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate.

m) any floor drainage systems in existing facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pretreatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

2. Uses Requiring a Special Permit:

a) Pre-existing nonconforming uses may be extended or altered upon the granting of a special permit.

b) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, except as prohibited under §4.9.2 D.1.

c) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. For such proposals, a system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sedimentation traps to facilitate removal of contamination. Any

and all recharge areas shall be permanently maintained in full working order by the owner.

E. Application Requirements. The applicant shall file five (5) copies of a site plan, to be prepared by an Engineer registered in the Commonwealth of Massachusetts, which shall include, at the minimum, the following:
   1. Provisions to prevent contamination of groundwater by petroleum products, hazardous materials or wastes;
   2. Drainage recharge features and provisions to prevent loss of recharge;
   3. Provisions to prevent soil compaction;
   4. Provisions to prevent seepage from sewer pipes;
   5. A complete list of chemicals, pesticides, fuels and other hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Those businesses using or storing such hazardous materials shall file a definitive operating plan; for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include;
      a) provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and cleanup procedures,
      b) provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
      c) evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
   6. A plot plan showing:
      a) Location of wetlands, streams, water bodies, and flood plain;
      b) Existing drainage patterns;
      c) Existing woodland;
      d) Areas having slopes exceeding 15';
      e) Areas to be disturbed by construction;
      f) Areas where earth and other material subject to erosion will be temporarily stockpiled;
      g) Areas to be used for disposal or storage of construction debris, stones, stumps, etc. if within the district;
      h) Temporary and permanent erosion control measures planned, such as sediment basins, storm water basins, diversions, riprap, stabilization seedings, etc.;
      i) Temporary work roads to be used during projects;
      j) Locations and sizes of septic system;
      k) Suitable method to contain spillage in fuel filling areas.
   7. A storm drainage plan showing:
      a) Locations of drains and culverts, and names of streams, rivers, ponds, or reservoirs in the town into which they flow;
      b) Discharge peaks and expected velocities at drain or culvert outlets;
      c) Conditions above and below outlets and expected flow velocities;
      d) Supporting computations for the above.
   8. A grading plan showing existing topography and planned grade along existing and/or proposed street or highway profiles.
   9. A siltation and sedimentation control plan including:
      a) Sediment and erosion control structures such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation together with

referred standards for soil erosion and sediment as appropriate, and design calculations as required for each structure;

b) Seeding and/or sodding requirements for all exposed areas including seedbed preparation, seed mixtures, lime, fertilizer, and mulching requirements with referenced standards;

c) Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate dates when critical area stabilization, paving, seeding, mulching or sodding is to be completed;

d) General notes for sediment control that spell out the procedures for implementing the plan.

F. Special Permit Approval Criteria. The SPGA may grant a special permit after a duly noticed public hearing in accordance with §7.2 of this Zoning Bylaw provided it finds that the proposed use:

1. Will in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of groundwater;
2. Will be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed;
3. Is in harmony with the purpose and intent of this ordinance and will promote the purposes of the Aquifer Protection Overlay District; and
4. Is consistent with the existing and probable future development of surrounding areas.

4.9.3 Rural Business

A. Purpose. The purposes of the Rural Business District are to:

1. Allow for commercial development that is in keeping with adjoining uses and in harmony with the natural environment.
2. Preserve the scenic rural character of the route 9 corridor.
3. Promote economic development along a heavily traveled state highway.

B. District Delineation

1. The general boundaries of the Rural Business Overlay District are shown on the "Rural Business Overlay District" Map dated (Month of STM Approval), 2022.

C. Use Regulations

1. The Rural Business District is established as an overlay district over the Rural Residential (RR) district. Any uses permitted in the RR district by right or by special permit shall continue to be permitted by right or by special permit.
2. Reference to Existing Regulations. All development in the Rural Business Overlay District, including structural and non-structural activities, must be in compliance with the dimensional and parking requirements as required in the RR district, unless otherwise specified for each permitted use in this section.
3. Permitted Uses. The following uses are allowed by right in the Rural Business Overlay District:
   a) All uses allowed by right (Y) in the Rural Residential (RR) District. (refer to section 4.2 Use Table)
4. Uses Permitted by Special Permit and Site Plan Review. The following uses are allowed by Special Permit and Site Plan Review (see section 7.4.2) in the Rural

Business District:

a) All uses allowed by special permit (SP) in the Rural Residential (RR) District. (see section 4.2 Use Table)
b) Business, Finance, or Other Professional Offices
c) Office or clinic for health services
d) Self-service Storage Facility
e) Light Industry (see section 2.2 Definitions)
f) Tank Farm
    1. Limited only to the storage of gases including natural gases, propane, methane, butane, and ethane.
    2. Tank farms shall adhere to a setback requirement of 125 feet from the nearest residential property line and 200 feet from the nearest residential structure in order to protect the welfare and safety of abutting neighbors.

5. Prohibited Uses. The following uses are prohibited in the Rural Business Overlay District:
    a) Auto Salvage Yards (see section 2.2)
    b) Junkyards/Automobile Graveyards (as defined in MGL c. 140B section 1)
6. All uses permitted by Special Permit in the Rural Business Overlay District shall have a 50-foot buffer and shall include a 20-foot vegetated buffer that screens the use

D. Special Permit Approval Criteria. The SPGA may grant a special permit after a duly noticed public hearing in accordance with §7.2 of this Zoning Bylaw provided it finds that the proposed use:
    1. Will be designed to avoid substantial disturbance to the natural environment to include (but not limited to) soils, topography, drainage, vegetation, and ground water;
    2. Is in harmony with the purpose and intent of this ordinance and will promote the purposes of
    3. the Rural Business Overlay District; and
    4. Is consistent with the existing and probable future development of the surrounding area.

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Article 5 – Dimensional Regulations

5.1 Area Requirements

5.1.1 Table of Area Requirements

Zoning District	Minimum Lot Area (sq. ft.)	Minimum Lot Frontage (feet)	Maximum Density MF (du/a)	Minimum Setbacks Front	Side	Rear
RQ	SF = 60,000	150	NA	30	30	40
RR	SF = 60,000[1] TF = 80,000[1] NR = 60,000	150	NA	30	30	40
SR	SF = 20,000 TF = 25,000 MF = 60,000	SF = 125 TF = 125 MF = 200	6	25	20	30
BLR	SF = 12,000	75	NA	30	20	20
DTR[2]	SF/TF = 8,000	125	8	25	20	30
RB	SF/TF = 20,000 NR = 30,000	SF/TF = 125 NR = 175	NA	25	20	30
DTC	R = 5,000 NR = none	50	20	R = 15 NR = 0	R = 10 NR = 0	R = 20 NR = 20
MY	5,000	0	22	20	10	10
HC	20,000	100	10	25	20	30
CI	40,000	200	NA	25	20	30
I	40,000	0/200[3]	NA	25	20	30
HCS	20,000	100	NA	25	20	30

Key and Notes:
du/a = dwelling units per acre
SF = single family
TF = two family
MF = multi-family
R = residential (all types)
NR = non-residential
NA = not applicable (use is not allowed)

1. The minimum required lot area shall be reduced by 20,000 square feet if the parcel is serviced with municipal water or sewer.
2. See also §5.2.7.
3. Parcels in existence prior to May 13, 2013 shall have no frontage requirement, and parcels created after May 13, 2013 shall have a 200 foot frontage requirement.

5.1.2 Interpretation notes for area requirements.

A. Lot area shall include all areas within a lot, including any area within said lot over which easements have been granted, provided that no area within a street (public or private) or under the surface of a lake or pond shall be included in determining minimum lot area.

B. Frontage is measured along the right-of-way line for the street between the points of intersection of the side lot lines with the street. For corner lots, at least 80% of the frontage requirement must be met on one street, and 115% of the requirement must be met on the two streets combined, in a continuous measurement (i.e. not separated by another parcel).

C. Setbacks are measured at right angles to the property line from that line to the nearest point of the structure. When the shape of the lot is so irregular as to make unclear the classification of side and rear lot lines, the Building Inspector shall determine which setback requirement applies.

D. Density for multi-family development shall be based on the total acreage of the parcel or parcels which are included in the development proposal, regardless of whether separated by a stream or right-of-way.

5.2 Specific provisions for area requirements

5.2.1 *Structures permitted within setbacks*. The following structures are permitted within the setback areas required in §5.1:

A. fences below 6 feet in height;
B. uncovered steps, landings, ramps or terraces;
C. covered walkways providing protected access from a sidewalk or parking area, provided the covering structure is a maximum of 10 feet wide;
D. all facilities (ramps, walkways, etc.) that provide handicap access to any residential building;
E. eaves and overhangs that do not project more than 2 feet from the exterior wall of the building;
F. bay windows that do not project more than 2 feet from the exterior wall of the building and which do not have a foundation;
G. chimneys that do not project more than 2 feet from the exterior wall of the building;
H. sign posts;
I. pedestrian lighting facilities with a height of less than 10 feet;
J. flagpoles;
K. other similar structures at the discretion of the Building Inspector.

5.2.2 *Detached Accessory Structures* on residential parcels as permitted in §4.4.1 A shall have setbacks as follows:

A. Garages, carports, or other structures for the storage of vehicles shall have a 10-foot setback from the side and rear lot line, provided said structure is located within the rear yard (i.e. anywhere behind the house from one side property line to the other), and the height is a maximum of 75% of the maximum height for the district specified in §5.3.1.
B. Other accessory structures (e.g. sheds, mobile storage units) shall have a 5-foot setback from the side and rear lot line, provided said structure is located within the rear yard (i.e. anywhere behind the house from one side property line to the other).
C. Any future connection of an accessory structure to a primary structure that creates a nonconformity with regard to setbacks may be allowed by Special Permit.

5.2.3 *Land conveyed for public purpose*. Land conveyed to any public entity by any means, including eminent domain, donation, sale, or other method, shall not be subject to the dimensional

requirements of this Zoning Bylaw, unless it is for the purpose of construction of one or more buildings. Furthermore, when such conveyance renders the remainder of the lot nonconforming with the dimensional requirements of this Zoning Bylaw, that lot shall be considered to be a buildable lot provided it has a minimum of 5,000 square feet and 50 feet of frontage, regardless of what zoning district it is within; however, this shall not be construed to mean that a parcel may then be subdivided into new lots of 5,000 square feet each.

5.2.4 *Single Family/Two Family residential restriction*. Only one single family or two family dwelling shall be erected on a single lot. This shall not apply to structures constructed within and specifically for the operation of overnight camps, or to multi-family residential developments which include buildings of three or more dwelling units (and which may include two unit buildings as part of a mixture of building types).

5.2.5 *Residential setback exception*. When a residential building (single family, two-family, or multi-family) is erected on a street where the existing dwellings are within the required front setback area (i.e. they do not meet the required front setback), the new residential building may be erected to the average front setback depth of the existing dwellings on either side, for a distance of three dwellings or to the end of the street, whichever is less. Any lots which are vacant are to be counted as if they comply with the required setback.

5.2.6 *Side entry garages*. When a garage is proposed which will require vehicular entry from the side (i.e. the garage door faces the side property line), the minimum distance from the garage door to the side property line shall be 40 feet measured perpendicular to the garage door to allow adequate room for vehicular movements without impacting the abutting property. This shall not be interpreted as an increase in the setback for the overall structure.

5.2.7 *DTR District*. For the purposes of determining compliance with zoning for additions, alterations, and rebuilding, parcels within the DTR district which were in existence as of June 3, 1985 (when area and dimensional standards were first adopted in Ware) and which are occupied by a structure as of May 14, 2012 shall have a minimum of 5,000 square feet, 50 feet of frontage, a 15-foot front setback, 10 feet side setbacks, and a 20-foot rear setback.

5.2.8 *Double counting land area*. When multiple uses and/or buildings occupy a single lot, no area of the lot may be counted towards the dimensional requirements for more than one use/building.

5.2.9 *Minimum net useable area*. All new lots created in the Town after May 14, 2012 shall contain a minimum net useable area, which shall be contiguous land, of:

A. 15,000 square feet if the lot relies on an individual on-site sewage disposal system; or
B. 5,000 square feet if the lot has access to the public sewer system.
C. This provision shall not apply to parcels created for recreation or open space purposes provided such lots have permanent restrictions indicating they are not buildable lots.
D. This provision shall not be interpreted as an increase in the minimum lot size or a decrease in the maximum number of dwellings which can be developed on a given tract of land. Thus, for newly created parcels in districts with smaller lot size requirements, the minimum net useable area shall equal the minimum lot size.

5.2.10 *Estate Lots*. The purpose of this regulation is to allow for the creation of lots with less than the required frontage in exchange for increased square footage, for the purpose of construction of single family dwellings and the preservation of open space, and to allow for the construction of single family homes on existing parcels that meet the dimensional requirements for estate lots. Approval of the creation of such lots is by the Planning Board in compliance with the Subdivision

Regulations. Parcels that meet the dimensional requirements below are eligible for a building permit for a single family dwelling.

A. Dimensional Requirements for Estate Lots:
   1. Area – minimum of 3 acres
   2. Frontage – minimum of 50 feet
   3. Width – minimum of 50 feet
   4. Setback from public way – minimum of 200 feet
   5. Setback from rear lot line of any parcel that lies between the developable portion of the estate lot and the public way – minimum of 100 feet.
   6. Setback from side and rear lot lines – minimum of 40 feet.

B. Access.
   1. The estate lot entrance/driveway shall be clearly designated with a house number sign, not to exceed six square feet in area. Mail boxes shall not suffice. The sign permit shall be issued with the building permit.
   2. The grade, length and location of access driveways shall be constructed and maintained to provide:
      a) Adequate access and turn-around for emergency vehicles, year round.
      b) A width of at least 15 feet.
      c) A maximum grade of 12 percent, with the exception that within 40 feet of the intersection with the public way the grade shall not exceed 5 percent.
      d) A maximum access length of 1,000 feet between the public way and the main portion of lot (i.e. the spot where the lot width increases to allow construction of the dwelling).
      e) A minimum of 10 feet to any abutting property line.
      f) Approval from the Department of Public Works (for drainage issues) and Fire Department (for emergency vehicle access).
      g) No parking areas or structures shall be allowed in the access strip (the narrow portion of the parcel).
      h) The apron area between the roadway frontage line and the existing paved or treated public way must be paved with 3 inches of bituminous concrete (in two layers of 1 ½ inches each) over a minimum of 12 inches of compacted gravel.
      i) The need for the installation of culverts or other drainage facilities to control storm water run-off shall be determined by the Director of Public Works, and shall be installed by the property owner at his/her own expense.
      j) If common driveways are to be used, they shall comply with §6.6.

C. There shall not be consecutive estate lots fronting on a public way.

D. No more than 10 percent of the lots in a new subdivision may be estate lots.

E. The Planning Board may vary the requirements of paragraphs A and B provided the proposal will not be detrimental to the public health, safety, or welfare, and that the particular physical conditions of the site warrant the variation.

5.3 Height and Coverage Requirements

5.3.1 Table of Height & Coverage Requirements

5.3.2

Zoning District	Max Height (feet)	Max Number of Stories	Max Building Coverage (%)	Max Impervious Surface Coverage (%)
RQ	30	2.5	15	20
RR	30	2.5	15	20
SR	40	3	20	40
BLR	30	2.5	15	20
DTR	40	3	60	75
RB	30	2.5	20	40
DTC	40	3	60	80
MY	75	5	50	80
HC	30	2.5	20	40
CI	75	5	45	60
I	75	5	60	75
HCS	75	5	60	75

Interpretation Notes for Height and Coverage Requirements

A. Maximum height is the vertical distance measured from the average finished grade of the ground adjoining the structure to the roof surface for flat roofs, to the deck line of mansard roofs, and to the average (arithmetic mean) height between the eaves and ridge for gable, hip and gambrel roofs, or for structures without a roof, to the highest point of the structure.

B. Exempted elements of a structure. The maximum height limitation shall not apply to chimneys, TV antennae, vent stacks, or other such minor elements of a building, provided that such elements are constructed or erected so as to fall within the boundaries of the lot upon which the structure is located in the event of collapse (approved by the Building Inspector in the building permit application process). For proposals where any element of a structure (e.g. tank, tower, silo) is proposed to exceed the maximum height in Table 5.3.1, a special permit must be granted prior to issuance of a building permit. The SPGA must make a finding that the requested increase will not be detrimental to the surrounding properties and it will be in harmony with the general purpose and intent of the Zoning Bylaw. Facilities which come under §4.8.2, Wireless Communication, or §4.8.4, Wind Energy Facilities, shall comply with all provisions of those sections.

C. Maximum building coverage is the amount of the lot which can be occupied by buildings, including accessory buildings and structures.

D. Maximum impervious coverage shall apply to all non-residential development and multi-family residential development, and is the amount of the lot which can be covered with any impervious material, including buildings and other structures, paved parking areas, and any other material which prevents water from infiltrating into the ground, but not sidewalks. In-

ground infiltration systems may be used to comply with this requirement at the discretion of the Building Inspector or, in the case of Planning Board or Zoning Board of Appeals action, by approval of said Board.

Article 6 – Design Standards

6.1 Parking and Loading

6.1.1 Number of Spaces

A. No land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking and loading space requirements as specified in the table below are met. These requirements apply to all zoning districts within the Town, except for the Downtown Commercial (DTC) district where the following shall be used as a guideline only, see §6.1.1 I. Note: GFA in this table means gross floor area.

Use	*Number Spaces Required*	*Comments*
Dwelling, single or two-family	2 per unit	Accessory apartments are required to have 1 space, per §4.4.1 E 2 f.
Dwelling, multi-family	1.5 per unit	For buildings with 7 or more units, one additional space per 7 units shall be provided for visitor parking.
Accessory Dwelling Unit	1 per additional unit	No additional spaces required if unit is within ½ mile of public transit.
Non-family accommodations	1.2 per bedroom for let + 2 for a permanent residence.	
Hotel	1.2 per guest unit + 1 per two employees on the largest shift	
Nursing, convalescent, assisted living facility, or hospital	.33 per bed	
Day care – any age	1 per 170 sq ft GFA	May be reduced by permitting authority[1] upon submittal of licensing material showing fewer spaces are needed based on maximum enrollment permitted by the licensing authority.

Use	*Number Spaces Required*	*Comments*
Health Services	1 per 200 sq ft GFA	Includes doctor's office, dentist's office, clinics, etc. Does not include offices for administrative functions or labs with only occasional patient visits (see Office).
Places of Assembly	.33 per seat or per 30 sq ft GFA if no seating provided	Includes churches, museums, clubs, theaters, funeral establishments, and similar uses.
School: Private trade or professional	.5 per seat	Does not include K-12 schools.
Office	1 per 400 sq ft GFA	Includes banks, professional, and administrative offices.
Retail Sales	1 per 300 sq ft GFA	
Retail Service	1 per 350 sq ft GFA	Includes personal services, dry cleaners, tailors, etc.
Laundromat	1 per 4 machines	
Bowling Alley	4 spaces per lane	
Shopping Center	1 per 335 sq ft GFA	Includes all uses in center
Eating Establishments	1 per 100 sq ft GFA + 1 per 100 sq ft gross area used for outdoor dining	For drive-up, see §6.1.3 in addition to this requirement.
Automotive sales and services	1 per 200 sq ft GFA used for offices (including sales desks) and waiting areas, + 1 per repair bay	Does not include area for storage and display of motor vehicles for sale.
Outdoor recreation	1 per 3 golf holes or 3 courts	Includes golf courses, tennis courts, etc.
Laboratory or Research facility	1 per 1,000 sq ft GFA	
Industrial	1 per 1,000 sq ft GFA	May be modified by permitting authority[1] if supporting documentation is submitted.
Warehouse	1 per 2,500 sq ft GFA	
Self-Storage facility	1 per 15,000 sq ft GFA including office and storage areas	

Use	***Number Spaces Required***	***Comments***
All other uses	To be determined by the permitting authority based on a similar use in this table, or based on applicant submitted data.	
1. The permitting authority is the Building Inspector for projects only requiring a building permit or a business certificate, or the Zoning Board of Appeals or Planning Board for projects requiring approval by either board. In the event a project requires approvals by both the Planning and Zoning boards, the Zoning Board shall make any determination on parking requirements.		

B. The enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed.

C. Where the computation of required parking or loading spaces results in a fractional number, only the fraction of one-half or more shall be counted as one.

D. Maximum number of spaces: The maximum number of spaces shall not exceed 110% of the number of spaces required by §6.1.1 A.

E. Reserve parking spaces: The permit granting authority may authorize a decrease in the number of parking spaces constructed from that which is required provided that:
   1. A maximum of 30 percent of the required spaces may be designated as reserve spaces.
   2. The site plan shall include the reserve spaces which shall be clearly labeled as reserve spaces for future construction if needed. The reserve spaces shall be designed as an integral part of the overall parking layout, with all engineering design completed to allow construction at any time.
   3. Reserve spaces shall not be located in areas counted as buffer, parking setback or open space.
   4. A request for designating reserve parking spaces shall be accompanied by documentation to support the decrease in constructed spaces that is based on the specific use or nature of use of the building that would warrant the decrease.
   5. The permit granting authority shall not approve reserve parking spaces if there is evidence to suggest that undue congestion or traffic hazards would result.
   6. If, after one year after the issuance of a Certificate of Occupancy, the Building Inspector finds that there are insufficient parking spaces to adequately accommodate the parking needs at the site, he may require that all or a portion of the reserve parking spaces be constructed.

F. Overflow parking: For major retail uses such as shopping centers or other uses which may on occasion require additional parking to serve demand, an area not to exceed 25% of the required parking (as calculated by §6.1.1 A) may be used for overflow parking. This area shall be constructed with a pervious surface, preferably with a grass cover, and shall not be used for storage of any materials or products except snow. Overflow parking areas shall be designed to withstand the normal loads of passenger vehicles, with the exception that when a portion (e.g. a drive aisle) is to be used as emergency vehicle access for secondary access to the site, that portion shall be designed to withstand the normal loads for emergency vehicles and equipment. Overflow parking areas shall not be lit during night time hours except when

actually in use, such as during heavy volume shopping periods (e.g. between mid-November and the end of December).

G. Location of parking: A minimum of 50% of the required parking must be located on the same lot as the use which it serves, and any remaining required parking may be located on another lot provided the parking is within 800 feet of the use and a permanent parking easement is provided in favor of the use/building which requires said parking.

H. Where multiple uses exist on a single lot or within a single building, the parking requirement shall be computed for each use separately and added together. (For example, a motel with a restaurant would be required to provide parking for both the motel units and for seating capacity of the restaurant.)

I. The number of parking spaces for uses in the DTC and MY districts shall be required to the extent that it is physically possible to provide said parking on the site. The permitting authority shall determine the number of spaces required, taking into consideration issues such as rehabilitation of existing structures and availability of off-site public or private parking, including on-street parking.

6.1.2 Parking Area Design And Location

A. Parking space size. Each parking space shall measure a minimum of 9 feet wide by 20 feet long exclusive of drives and maneuvering space.

B. Parking areas for five (5) or more cars shall be designed with enough maneuvering space so that vehicles need not back into a public way.

C. Parking aisle width shall be a minimum of 24 feet for parking lots with fewer than 100 spaces. For parking lots with 100 or more spaces, either the aisle width shall be increased to a minimum of 28 feet, or the parking spaces shall be a minimum width of 10.5 feet.

D. All parking areas and driveways that fall under the review of this bylaw shall be paved with bituminous concrete or cement. This provision may be waived by the permitting authority in cases where complete paving is seen to be unnecessary and in contradiction to other planning and zoning objectives of the Town of Ware.

E. Drainage facilities for each parking area shall be designed and constructed in accordance with MA DOT.

F. No parking area shall be illuminated in such a way that it causes glare for motorists, pedestrians, or neighboring premises, as specified in §6.3.

G. Landscaping and Buffering
   1. Parking areas for 10 or more cars shall contain a minimum of one tree of minimum two-inch diameter at breast height per 8 parking spaces, to be located within the parking area in landscaping areas of a minimum of 40 square feet per tree, or to be located within 5 feet of the edge of the parking area.
   2. All parking areas shall be separated from adjacent streets by a landscaped buffer with a minimum depth of 15 feet. Such buffer shall extend the entire frontage of the parking area, except for driveway curb cuts. A sidewalk may intersect this area and be counted

as part of the 15-foot buffer. The Downtown Commercial District shall be exempt from this provision.

3. All parking areas containing more than 1,000 square feet that are located in non-residential districts shall be buffered on each side adjoining residential properties, unless the parking area is already buffered from the residential property by a natural feature. Such screening shall be a solid wall or fence, not less than 5 feet in height. In lieu of such a fence, a dense evergreen hedge of not less than 3 feet in height at time of original planting may be used. The fence, wall and/or hedge shall be maintained in good condition and no advertising shall be placed thereon. The screening shall be designed so that vehicle sight distance shall not be affected at entrances, exits or at street intersections.

H. Parking Area Access. All parking areas shall have access to the street in conformance with the following design standards, and shall require approval from the Department of Public Works:
   1. width of the driveway shall be a minimum of 15 feet and a maximum of 24 feet;
   2. maximum grade of 12 percent, with the exception that within 40 feet of the intersection with the public way the grade shall not exceed 5 percent;
   3. The apron area between the front property line and the public way must be paved with 3 inches of bituminous concrete (in two layers of 1 ½ inches each) over a minimum of 12 inches of compacted gravel.
   4. Culverts or other drainage facilities to control storm water run-off within the public right-of-way shall be installed by the property owner at his/her own expense, after review and approval by the Director of the Department of Public Works.

I. Loading areas. Adequate off-street loading and receiving areas shall be provided for all business, commercial and industrial uses.

J. The requirements of this §6.1.2 may be waived by the permitting authority when requested by the applicant in writing, and the permitting authority makes a finding that the requested variation would create a safer and more convenient circulation pattern within the parking area and on the site, without creating any negative impacts on abutting properties or the public good.

6.1.3 *Drive-up Facilities*. In addition to the parking requirements above, any establishment installing a drive-up window must provide for the safe stacking of vehicles and an escape lane from the drive-up window on the site.

A. Establishments typically utilizing drive-up windows include, but are not limited to: coffee shop, fast food, bank (full service or ATM), pharmacy, and dry cleaner.

B. An escape lane is defined as a lane adjacent to a stacking lane which would allow a patron to exit from a stacking lane prior to reaching the service window/machine. Multiple stacking lanes shall be allowed to use a common escape lane.

C. Stacking and escape lanes shall be a minimum width of 10 feet except for curved sections which shall be a minimum of 12 feet.

D. All drive-up and escape lanes must be laid out in a way so as not to block or interfere with traffic circulation in the parking lot or interfere with parking spaces.

E. The required number of stacking spaces shall be determined by the permitting authority based on data submitted by the applicant, but in no case shall it be less than 5 spaces (20 linear feet shall equal one stacking space).

F. Where necessary due to site constraints, pedestrian ways across drive-up and escape lanes are permitted, provided appropriate signage and permanent pavement markings are installed to warn drivers of the presence of pedestrians and to give a safe path for pedestrians to walk.

6.2 **Buffers and Landscaping**

6.2.1 *Purpose*. The purpose of a buffer is to provide aesthetically acceptable visual and spatial separation between adjacent land uses, thereby enabling the juxtaposition of land uses of different types by minimizing negative impacts that a land use will impose on its neighbors. Landscaping on a site is meant to minimize the visual effect of the bulk and height of buildings, structures, parking areas, lights, and signs, as well as to minimize the impact of the use of natural resources.

6.2.2 *Applicability*. Wherever a non-residential or multi-family residential use abuts a residential use, regardless of what zoning district such use is located in, a buffer designed to mitigate the impact of the more intense use on the abutting residential district shall be provided along all property lines adjacent to the residential district.

6.2.3 *Applicability to Exempt Uses*. As provided in Article 4, §4.6 of this Zoning Bylaw, uses which are exempt under MGL c. 40A §3 are permitted in any zoning district provided they meet the minimum buffer requirements. Those minimum requirements shall be that such uses shall provide buffering of outdoor activity areas from adjacent residential uses utilizing landscaping, solid fencing, topography, and/or distance to reduce noise levels and other potential nuisances at nearby residential properties.

6.2.4 *Waiver*. In cases where a public way divides the non-residential or multi-family residential use and the residential district, the buffer requirements may be waived by the permitting authority, if in their opinion, such buffering would interfere with the operation, access or visibility of the site to the public to the extent that requiring the buffer would be contrary to the purpose of this Zoning Bylaw.

6.2.5 *Dimensions*. The buffer shall be a minimum width of either 30 feet or the required building setback distance as provided in Table 5.1, whichever is smaller, except for multi-family residential developments where the buffer shall be a minimum of 40 feet from property boundaries abutting residential uses, and 30 feet from property boundaries abutting all other uses.

6.2.6 *Design*.

A. Plant material. All buffers shall contain appropriate plant material to soften the visual impact of the structures or use from public view and from adjacent property. Existing trees and under story vegetation shall be retained wherever possible with additional plantings as necessary.
B. Structural elements in buffers. Structural elements, such as fences, walls, berms or other elements, may also be used depending on adjacent existing or zoned land uses. When fences or walls are used, adequate distance shall be maintained between the structure and the exterior property line for plant material to create a softening effect on the structure.
C. Avoid monotonous forms. To the extent practical, buffering materials shall be designed and maintained in a staggered or undulating manner to create a more natural looking buffer.

D. Outdoor storage areas. In cases where outdoor storage of equipment or products is proposed in areas of a site adjacent to a residential district, a combination of landscaping and fencing must be adequate to completely screen such storage areas from view of the residential properties.
E. Maintaining sight triangles. All landscaping planted within sight triangle areas at all driveways shall be planted and maintained to preserve the visibility of the adjacent roadway for drivers exiting the driveway.

6.3 **Lighting**

6.3.1 *Purpose*. The purpose of this section is to provide standards for the lighting of commercial and industrial developments so as to reduce traffic safety hazards and protect property values and the aesthetic and historical appearance of the town through the reduction of light pollution and the preservation of the "night sky."

6.3.2 *Applicability and Standards*. All commercial and industrial uses which are required to obtain site plan approval shall meet the following outdoor lighting standards:

A. The luminaries/lighting fixtures shall be the shoe box type or decorative in nature (with interior directional shields), with the architectural theme of the development. All luminaries/lighting fixtures shall have a total cutoff of all light at less than 76 degrees from vertical, except as provided below. The lighting source (lamp) shall only be visible from below.

B. Reflectors of proper distribution shall be selected for maximum efficiency. Reflectors and shielding shall minimize to the greatest extent practicable light spilling over to adjacent properties. In addition, a line drawn from the height of the luminaire along the angle of cutoff shall intersect the ground at a point within the development site.

C. The luminaries/lighting fixtures shall not exceed 35 feet in height, unless a greater height is shown by the applicant to result in a lesser impact on surrounding properties, roads, and sky glow. The luminaries/lighting fixtures for sidewalks or paths shall not exceed 12 feet in height.

D. Where wall-pack type luminaries/lighting fixtures are utilized, the fixture shall be equipped with a prismatic lens to reduce glare. Wall pack lighting shall be designed to a maximum cutoff of 70 degrees from vertical. The location of the wall-pack on the structure shall not exceed 20 feet from the ground directly below the fixture.

E. All luminaries/lighting fixtures shall be restricted to a maximum foot-candle level of 8.0 (initial), as measured directly below the fixture at grade.

F. All wiring for lighting fixtures shall be underground.

G. All lighting on a non-residential site shall be reduced in intensity by a minimum of 50% within one hour of closing, and shall remain at such reduced intensity until within one hour of opening.

6.4 **Stormwater**

6.4.1 *Applicability*. For any site containing 80,000 square feet of land area or more, the peak rate of storm water runoff from the development site shall not exceed the rate existing prior to the new construction based on a 10-year design storm. The applicant shall provide the analysis, certified

by a Massachusetts registered professional engineer or professional geologist, necessary to document the previous and proposed run-off rates. The permitting authority may authorize the use of storm water drainage facilities located off the development site and designed to serve one or more lots provided it finds that the peak rate of storm water runoff from such offsite facilities does not exceed the rate existing prior to the new construction based on a 25-year design storm, and the applicant has retained the rights and powers necessary to assure that the offsite storm water drainage facilities will be properly maintained in good working order.

6.5 **Signage**

6.5.1 Purpose and Intent

It is recognized that signs perform important functions in the community which are essential for the public safety and general welfare, such as communicating messages, providing information about goods and services available and providing orientation. Simplicity in design and restrained use of signs are necessary to prevent a sign overload which creates clutter and is as confusing as no signs at all. It is further recognized that because of their potential detrimental impact on the visual and perceptual environment, signs must be regulated in order to:

- Minimize hazards to vehicular and pedestrian traffic;
- Minimize conditions which have a blighting influence and contribute to declining property values;
- Provide for easy recognition and legibility of all permitted signs and other uses in the immediate vicinity; and
- Preserve the amenities and visual quality of the town, minimize light pollution, and curb the deterioration of the community environment.

Therefore, it is the intent of this section to protect property values, create a more attractive business climate, and enhance and protect the physical appearance of the community through the regulation of signage within the town.

6.5.2 Applicability. All new signs erected and reconstruction of existing signs shall comply with this §6.5. Any sign which has deteriorated to the extent that restoration of the sign, including its support system, would exceed 50 percent of the replacement cost of the sign, including its support system, shall not be repaired, rebuilt, or altered except to conform to the requirements of this §6.5.

6.5.3 Exempt Signs. The following signs are exempt from the provisions of this Section:

A. Signs not exceeding one square foot in area displaying only property numbers, post box numbers, and names of occupants of premises.
B. Signs erected by governmental bodies, such as but not limited to legal notices, identification information, temporary signs announcing public events (regardless of whether product or company logo is included), or direction signs.
C. Signs for directing traffic within a site, except as provided in §6.5.7.
D. "Open" and "Closed" signs, provided such signs do not exceed two square feet and do not flash on and off [to comply with §6.5.4.B].
E. Signs associated with political candidates for local, county, state or federal elections, or for ballot questions.
F. Menu sign that is associated with a drive-through facility.
G. Real estate sign, provided the sign does not exceed 32 square feet if located in a non-residential district (HC, CI, or I), or 16 square feet in a mixed use district (RB, DTC, or MY), or 4 square feet if located in a residential district (RQ, RR, SR, BLR, or DTR).
H. Agricultural signs associated with on-site agricultural activities.
I. Sports field signs

J. Tag sale signs
K. Automotive signs
L. Fund raising signs
M. Local event signs, provided it is not in place for more than 30 days.
N. Sponsor signs
O. Property notice signs such as "No Hunting", "No Fishing", "No Trespassing" etc.
P. Decorative signs, non-business
Q. Gasoline pump signs
R. Similar signs as determined by the Building Inspector to not be a circumvention of the requirements of this §6.5 and which meet the purpose and intent of this §6.5.

6.5.4 Prohibited Signs

A. Billboards.
B. Flashing, moving and animated signs, including signs containing reflective elements which sparkle in sunlight, except as provided in §6.5.5 C.
C. Any sign advertising or identifying a business or an organization which is either defunct or no longer located on the premises.
D. Any banner or sign painted on or temporarily affixed to a non-registered motor vehicle or trailer for the purpose of providing a sign for a business or commercial purpose.
E. Roof signs, except for existing roof signs at premises that have undergone a change in the business occupying the space, provided the space is re-occupied and the roof sign is re-lettered within six months of its vacancy.

6.5.5 Requirements Applicable to All Districts

A. General

1. Permit Required. All signs except those expressly exempted from the provisions of this §6.5 must be permitted as provided in §6.5.8.

2. Sign Content. Signs shall relate to the premises on which they are located unless they are legally conforming off-premises signs as provided for in this §6.5, or unless the message displayed is a public service announcement.

3. No sign shall be attached to marquees or awnings. This does not include materials that are integral to the marquee or awning, however the sign area is included as part of the total signage allowed for the wall area for the business.

4. All lighting for signs for non-residential uses shall be turned off no later than 10:00 PM unless otherwise permitted or restricted in a permit or approval issued by the Planning Board or Zoning Board of Appeals. Signs associated with emergency services such as police, fire or hospital services are exempt from this regulation. Such exempt signs should be kept to the minimum practical size as determined by the enforcement authority and be constructed so as to minimize nuisance to abutters while still providing needed orientation.

5. Any sign over 32 square feet, constructed or installed utilizing a material other than fabric or non-metallic rope, must meet all safety requirements associated with construction and may require inspection at the discretion of the Building Inspector.

6. Exterior product displays may contain only the product being sold and no branding logos other than that which are integral to the product's basic packaging.

7. Signs must not be placed so as to obstruct the view of traffic entering or leaving a premises, as determined by the Building Inspector.

8. Signs may not cause visual background clutter or interference with traffic signals. Inspection of a sign's interference with traffic signals may be conducted at any time there is a question as to this matter. Determination of an interference situation may result in a requirement that the sign be modified or removed at the cost of the sign owner or property owner.

9. No sign shall overhang any abutting property without the expressed written consent of the abutting property owner, nor shall any sign overhang into the public way in the Downtown Commercial District except as provided in §6.5.7 B.4.

10. Bulletin boards accessory to public and semipublic uses such as schools, hospitals and places of worship and assembly shall not exceed 25 square feet in area.
11. The type, direction, or amount of illumination on a sign shall not constitute a hazard to vehicular traffic.

12. Signs shall not constitute a distraction or nuisance to the motoring public or abutters, as determined by the permitting authority.

13. Banners and pennant signs shall be allowed for a period of 30 days per permit, consecutive or non-consecutive, for up to four times within a calendar year (i.e. maximum of 120 days, including all banner and pennant signs).

14. Civic Organizational Signs are allowed provided they do not exceed 32 square feet and 8 feet in height from the ground below the sign to the top of the sign, may be illuminated as permitted in the zoning district in which it is located, shall have complementary landscaping to the extent such landscaping is feasible, and must have the written permission of the property owner for the placement of the sign on his property.

15. Construction signs are allowed provided they do not exceed 32 square feet, and they must be removed within two days of the issuance of the certificate of occupancy for a building or within one month of acceptance of a road for a subdivision.

B. Off-Premises Signs. It is recognized that some business are located on dead end roads and/or little used roads, and signs located off the premises of the establishment being advertised are allowed in these instances, provided the following criteria are met:

1. The off-premises sign must conform to the dimensional requirements of the zoning district in which it is placed (§6.5.6 or 6.5.7 A), except that off-premises signs may not exceed 15 square feet.

2. The off-premises sign must be located as near as is practical to the next intersection to the road that the subject business is located on.

3. The business owner applying for the off-premises sign must submit a written and signed statement from the property owner where the sign is to be located giving permission for the sign to be located on his property.

4. When more than one off-premises sign is located at an intersection, the signs must be coordinated and placed in a uniform, neat manner as determined by the Building Inspector, at the cost of the sign owners.

5. The off-premises sign may be illuminated in districts where lighted signs are allowed.

C. Electronic Message Signs are allowed as a technological advancement of a manual letter board (aka changeable copy) sign, in mixed use and non-residential zoning districts provided the following criteria are met:

1. In no case are video style signs allowed.

2. Message signs including both manual and electronic letter boards shall be non-flashing, non-moving, non-animated and of one lettering color only. Background shall also be of one color only.

3. Signs shall be dimmable to account for day and night lighting differences. If not dimmable, then night brightness shall be the governing factor.

4. Sign brightness shall be adjusted to conform to that of signs at adjacent businesses.

5. All electronic message signs except for time, temperature and date signs, shall be turned off during non-business hours.

6. There shall be a crisp change in message with no fades or wipes.

7. Messages displayed may not change more than one time per minute.

8. Message face may not exceed thirty-two (32) square feet per sign face, and shall be included in the size allowances in §6.5.7.

9. Displays associated with gas station pricing signs, other than those on pumps, are included in the total size allowances in §6.5.7.

10. Signs displaying only time, temperature and date information may change at any rate and may operate during non-business hours.

D. Construction and Maintenance of Signs

1. Signs shall be constructed of durable and weatherproof material.

2. Signs shall be maintained in safe structural condition and good visual appearance at all times and no sign shall be left in a dangerous or defective state.

3. The Building Inspector shall have the authority to inspect any sign and order the owner to paint, repair or remove a sign which constitutes a hazard or a nuisance due to

improper or illegal installation, dilapidation, obsolescence or inadequate maintenance.

4. No sign shall be painted or posted directly on the exterior surface of any wall, including windows and doors. All signs must be painted, printed, posted or otherwise securely affixed to a substantial intermediate removable surface, and such surface shall be securely affixed to the wall of the building. The foregoing, however, shall not prevent installation of a sign by individual letters or devices cut into or securely affixed to the exterior wall of a building, provided that such letters or devices have a minimum depth or projection of one-fourth of an inch. The material of the sign and intermediate surface and the manner of affixation of the sign to the intermediate surface and of the intermediate surface to the wall of the building shall be subject to the approval of the Building Inspector for the purpose of protecting the safety of the public.

5. No sign shall be attached to a utility pole, fire hydrant, street sign, fence, tree or light post, without the expressed written permission of the owner of the object. No sign shall be placed such that any portion of the sign or its support structure is within five feet of a fire hydrant.

6. Signs for defunct entities or for a business no longer operating at the location must be removed within one year of the business closing, by the sign owner or property owner. Blanking of such signs, if the location is to be re-used by a future tenant, is acceptable. Reversal of panels in lighted signs is not acceptable if the former sign can still be seen in a reversed manner. Panels may not be removed so as to leave the internal portions of the sign exposed.

7. A new permit shall be required when the original wording of a sign is modified. Re-lettering a sign with no changes in sign content does not require a permit.

6.5.6 Requirements Applicable to Residential Districts (RO, RR, SR, BLR, and DTR). One permanent sign is permitted per lot, subject to the following restrictions:

A. Lighted signs are prohibited.
B. Signs in relation to the use of a residence for business purposes, as provided in §4.4.1 F, shall not exceed three square feet.
C. The maximum height of a sign attached to a building shall be eight feet from the ground below the sign to the top of the sign.
D. The maximum height of a freestanding sign shall be six feet from the ground below the sign to the top of the sign.

6.5.7 Requirements Applicable to Mixed Use and Nonresidential Districts (RB, DTC, MY, HC, CI, and I)

A. Type, Number, and Size. Signage in these districts shall conform to the standards in the following table.

	RB	DTC	MY	HC	CI	I
Four or Fewer Businesses on Site[1]						
Freestanding Signs						
Number allowed per site	1	1	1	1	1	1
Max Size (sq ft)	50	24	32	75	50	*Note 4*
Max Height (ft)	16	15	15	28	28	10
Wall Signs and Projecting Signs						
Number allowed per business	1 primary and 1 secondary per business (in all districts).					
Primary[2] Max Size	50	40	40	*Note 6*	*Note 6*	*Note 4*
Secondary[3] Max Size	32	16	16	40	40	NA
Five or More Businesses on Site						
Freestanding Signs						
Number allowed per 10 businesses[5]	1	1	1	1	1	1
Max Size (sq ft)	75	75	75	100	100	*Note 4*
Max Height (ft)	16	10	10	28	28	10
Min Distance Between Signs (ft)	100	100	100	100	100	100
Wall Signs and Projecting Signs						
Number allowed per business	1 primary and 1 secondary per business (in all districts).					
Primary Max Size	32	32	32	*Note 6*	*Note 6*	*Note 4*
Secondary Max Size	16	16	16	16	16	NA

Notes for Table 6.5.7 A:

1. For the purposes of this table and Section, "site" shall mean the parcel or parcels that comprise a commercial or industrial center.
2. Primary wall signs are located on the front of the building, which is where the primary entrances to the businesses are located.
3. Secondary wall signs are located on side or rear walls of a building.
4. In the Industrial zone, the total area for all signs on the site is a maximum of 200 sqft.
5. One freestanding sign is permitted for sites with 5 – 10 businesses; two are permitted for sites with 11 – 20 businesses; three are permitted for sites with 21 – 30 businesses, etc.
6. Two square feet per linear foot of building front (i.e. side of building where the main entrance is located), not to exceed 100 square feet in the HC district and 200 square feet in the CI district.

B. Placement.
   1. A freestanding sign must be erected on the site which is advertised and such that no portion shall be located within the airspace above any abutting property.
   2. Wall signs and projecting signs shall be securely attached to the wall of the building.
   3. Wall signs in the RB, DTC, MY, HC, and CI districts shall not project more than 12 inches out from the face of the wall.
   4. Projecting signs in the RB, DTC, MY, and CI districts shall not project more than six feet out from the face of the wall nor to within three feet of the street curb, and shall provide a minimum of seven feet of clearance from the sidewalk or ground directly below the sign to the bottom of the sign.
   5. Wall signs in the Industrial District:
      a) may extend up to 42 inches above the top of the wall to which it is attached;
      b) may project up to 24 inches out from the face of the wall to which it is attached (whether a wall sign or a projecting sign); and
      c) may not extend beyond the end of the wall to which it is attached.
   6. If the sign is attached to a parapet, it shall not exceed the height of the parapet.

C. Directional Signs. Each site, as defined in the table in §6.5.7 A, may have a maximum of four signs within the front setback area for the purpose of directing and guiding traffic in and out of the site, but bearing no advertising matter, provided such signs do not exceed two square feet and three feet in height above the ground.

D. Directory Sign. There may be not more than one directory of the occupants or tenants of the building affixed to the exterior wall of the building, with an area not to exceed one square foot per occupant or tenant of the building.

E. Product Signs. Each business may have a maximum of three permanent or temporary product signs, each not to exceed 15 square feet in size which shall not be counted as part of the size requirements given in §6.5.7 A, and which may be located anywhere on the site provided they do not constitute a hazard or otherwise conflict with the provisions of §6.5.4 or §6.5.5.

F. Window Signs. Temporary signs affixed to the inside of a window shall not exceed 30 percent of the window area of the storefront.

G. Exterior Temporary Signs. In addition to product signs permitted in §6.5.7 E, one exterior temporary sign per allowable freestanding sign is permitted for a period not to exceed 60 calendar days within a 12-month period, not to exceed five square feet per side, and located a minimum of 30 feet apart in the case where two or more such signs are permitted.

H. Sandwich Board Signs. Each business may have one sandwich board sign, not to exceed 30 inches in width and 48 inches in height, and the sign must be located within 20 feet of the entrance to the business but shall not obstruct pedestrian or vehicular traffic. Such signs, when located in the public way, shall be removed from the public way when the business closes each day.

I. Changeable copy signs. A freestanding sign which has a portion of the sign area used for changeable copy messages shall include a portion of the sign for the name of the business in a permanent manner.

J. Transient Vendor Signs. One temporary sign securely attached to the vehicle or structure from which the sales or promotion is conducted, not to exceed 32 square feet, is allowed for a maximum of 7 days in a calendar year.

6.5.8 Administration

A. Application for a Sign Permit. Anyone wishing to erect a sign pursuant to this Section shall submit an application for a sign permit to the Building Inspector which shall include the following:
   1. A completed application form;
   2. A plan showing the location of the property boundaries, buildings, parking areas, and curb cuts, and the proposed location of any freestanding signs, including directional signs as provided in §6.5.7. It shall be the burden of the applicant to accurately determine the location of the property boundaries.
   3. A scaled drawing of the sign and supporting structure, including details of construction sufficient to allow the Building Inspector to determine compliance with all relevant codes in effect at the time of application.
   4. Information regarding the proposed lighting of the sign, including type of lighting, brightness, and dimming operations.
   5. Any other information, drawings or documentation that the permit granting authority may deem necessary for evaluation of the proposed installation.

B. Enforcement
   1. Upon finding a violation of this §6.5, the Building Inspector shall issue a written warning to the owner of the sign and the property owner, if different. The sign owner is primarily responsible for the correction of the infraction, however, the property owner bears responsibility if the sign owner fails to correct a violation.
   2. Either party has ten business days to correct the violation.
   3. Failure to comply with the written warning will result in the Building Inspector issuing a written order to comply with this §6.5, as provided in Article 7.

6.6 **Common Driveways**

6.6.1 Purpose. The purpose of allowing common driveways is to reduce traffic hazards from numerous individual driveways, to consolidate access to the buildable areas of lots across wetland resources, and to minimize the removal of trees and other vegetation, thereby preserving the rural character.

6.6.2 Applicability. Common driveways may be permitted upon the granting of a special permit to service no more than two lots for single family dwellings.

6.6.3 Standards. The applicant shall submit documents, plans, and profiles for approval to the Planning Board to assure compliance with the following standards for common driveways:

A. The maximum grade shall be 12% except for a 5% maximum grade within 50 feet of the driveway's intersection with a street. The minimum centerline radius shall be 45 feet. The maximum length shall be 2,000 feet.

B. The minimum width for the durable surface shall be 18 feet and maximum width shall be 24 feet, with a 3-foot wide gravel shoulder on at least one side. Driveways shall be surfaced with a durable, all season non-dusting material, drained and suitably maintained to the extent necessary to avoid any nuisance by reason of dust, erosion or water flow onto streets or adjoining property.

C. The common driveway shall exit onto the street with a minimum angle of intersection of 45 degrees, and shall be located entirely within the boundaries of the lots being served.

D. An easement with a minimum width of 24 feet shall be created and recorded along with the deeds for the lots to assure maintenance, drainage, snow removal, rubbish collection, and the like, and liability for the common driveway shall remain the responsibility of the private parties, or their successors-in-interest, in perpetuity. A copy of the draft maintenance agreement shall be submitted with the application.

E. The Planning Board may grant waivers to the requirements of paragraphs A, B, and C if they make a finding that doing so would not have a detrimental impact on the public safety.

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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 **Variances**

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 Site Plan Review

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. 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.

F. 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.

G. 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.

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

I. 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.

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.