

**ZONING BY-LAWS  
OF THE  
TOWN OF MATTAPOISETT  
MASSACHUSETTS**

**Article 1 -- Purpose**

To:

- 1.1       Lessen congestion in the streets
- 1.2       Conserve health.
- 1.3       Secure safety from fire, flood, panic and other dangers.
- 1.4       Provide adequate light and air.
- 1.5       Prevent overcrowding of land.
- 1.6       Avoid undue concentration of population.
- 1.7       Encourage housing for persons of all income levels.
- 1.8       Facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- 1.9       Conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- 1.10      Encourage the most appropriate use of land.
  
- 1.11      Preserve and increase amenities.

This By-Law is adopted pursuant to Chapter 40A as amended and Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

## Article 2 – Definitions

In this By-Law, the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:

- 2.1 **Accessory Structure.** A detached subordinate structure located on the same lot with the main building the use of which is customarily incidental to that of the main building or the use of the land.
- 2.2 **Accessory Use.** A use customarily incidental to that of the main building or to the primary use of the land.
- 2.3 **Dwelling Unit.** A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- 2.4 **Guest House.** Any accessory building including a garage, smaller than the principal dwelling, having not more than three (3) rooms, plus bath and kitchenette.
- 2.5 **Lot.** A single parcel of land, including swamp or water, having one owner or beneficial owner, or a group of owners or beneficial owners holding said parcel jointly or in common, defined by boundary lines on a legally recorded plan, deed or will and any contiguous such parcels of land having one owner, or a group of owners, holding said parcel jointly or in common or being beneficial owner or owners thereof, unless said contiguous parcels are required or permitted to be treated as separate parcels by any applicable provision of the General Laws.
- 2.6 **Marina.** The use of the harbor or adjoining waters for a small craft complex which may include some or all of the support and ancillary facilities needed or desired by boatmen, such as launching equipment, launch service, repair facility, a fueling station, restrooms, marine hardware supply, restaurants or parking facilities.
- 2.7 **Multi-family Dwelling.** Building or portion thereof containing two (2) or more dwelling units.
- 2.8 **Obnoxious.** The term obnoxious is the use of land or a structure so as to result in a nuisance or to be harmful to the inhabitants of the Town, injurious to their estate, dangerous to the public health, or attended by noisome and/or injurious odors. Injurious noise or odors would be of such a magnitude as to constitute an annoyance to a person of ordinary sensibilities to sound and smell, so as to materially interfere with the ordinary comfort of life, and impair the reasonable enjoyment of their habitation.
- 2.9 **Permit Granting Authority.** Permit Granting Authority shall mean the Board of Appeals.
- 2.10 **Screening.** Trees, shrubs, natural woods growth, Walpole type fence or its equivalent, at least six (6) feet high, so placed as not to constitute a traffic hazard.
- 2.11 **Special Permit Granting Authority.** Special Permit Granting Authority shall be the Board of Appeals except where this By-Law especially authorized the Board of Selectmen or the Planning Board to grant a special permit.
- 2.12 **Street.** Street means (a) a public way or a way which the town clerk certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law (G.L. c. 4I, s. 81K-81GG), or (c) a way in existence when the subdivision control law became effective in the town, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon; except that Interstate Route 195, a public way of limited access, shall not be considered a street.

- 2.13(a)\* **Trailer or Mobile Home.** Any vehicle basically designed for human habitation for occasional or frequent mobile use, whether resting on wheels or on a rigid foundation.
- 2.13 **Adult Live Entertainment Establishment.** A business in business premises which as a form of entertainment to customers allows a person or persons to perform in a state of nudity as defined in G. L. chapter 272, § 31 as amended, or allows a person or persons to work in a state of nudity as so defined.
- 2.14 **Adult Theater.** A business in business premises which presents to customers live or filmed performances distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. chapter 272, § 31 as amended.
- 2.15 **Sexually Oriented Business.** A business in business premises having as a substantial or significant portion of its stock in trade any of the following:
- 2.15.1 Books, magazines, newspapers, or other written material which are distinguished or characterized by depicting or describing sexual conduct or sexual excitement as defined in G.L. chapter 272, § 31 as amended;
- 2.15.2 Videos, movies, photographs or other filmed material which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in G.L. chapter 272, § 31 as amended;
- 2.15.3 Toys and novelty items which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in G.L. chapter 272, § 31 as amended; and
- 2.15.4 Sexual paraphernalia consisting of devices, objects, tools or toys which are distinguished or characterized by the purpose of stimulating sexual conduct or sexual excitement as defined in G.L. chapter 272, § 31 as amended, and which are without medical utility;
- 2.15.5 As used in this definition a “substantial or significant portion of stock in trade” shall be deemed to exist under any of the following circumstances:
- 2.15.5.1 When the cost of such a portion of the stock in trade on hand exceeds more than ten percent (10%) of the cost of all stock in trade on hand;
- 2.15.5.2 When monthly sales, including rentals, from such a portion of the stock in trade exceed more than ten percent (10%) of the monthly sales of all stock in trade;
- 2.15.5.3 When an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such portion of the stock in trade; or
- 2.15.5.4 In the event a business with any stock in trade listed in 2.15.1 through 2.15.4. fails upon request of the Inspector of Buildings to produce accurate figures establishing costs for determining 2.15.5.1. and sales for determining 2.15.5.2.
- 2.15.6 As used in this and the two (2) preceding definitions “business premises” are a building or buildings or part of a building or buildings occupied by a business in the Limited Industry (LI) District.

\*Note:To be corrected at town meeting

## Article 3 -- General Regulations

### 3.1 **Pre-Existing Nonconforming Structures, Lots and Uses.**

3.1.1 Any lawful structure or lot, or any lawful use of a structure or lot, or part thereof, existing at the time of adoption of this Zoning By-Law, or any amendment thereof, may be continued although such structure, lot or use does not conform to the provisions of this Zoning By-Law, or any amendment thereof.

3.1.2 A special permit from the Board of Appeals under this subsection 3.1 is required for:

3.1.2.1 any change of a nonconforming use or substantial extension of a nonconforming use;

3.1.2.2 any alteration of a nonconforming structure amounting to a reconstruction, extension or structural change, except when the alteration (1) does not increase the footprint, the total interior floor area or the height of the structure, or (2) is of a single or two-family residential structure that does not change the residential use of the structure and does not increase the nonconforming nature of it; and

3.1.2.3. any alteration of a nonconforming structure to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

3.1.3 No special permit may be granted by the Board of Appeals for any of the foregoing acts unless the Board finds that any such change of use, extension of use or alteration of a nonconforming structure shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood.

In determining whether any such change, extension or alteration is substantially more detrimental to the neighborhood, the Board of appeals shall consider the adequacy of the existing or proposed system for disposal of sewage on the premises. Where subsurface disposal of sewage on the site exists or is proposed, the owner shall submit to the Board of Appeals with his application for a special permit under this section a report of a registered professional engineer as to the adequacy of such existing or proposed system.

3.1.4 This subsection 3.1 shall not apply to billboards, signs and other advertising devices subject to the provisions of G.L. c. 93, s. 29 through 33, inclusive and G.L. c. 93D.

3.1.5 Any nonconforming use that is discontinued at least three (3) years, or in the case of an agricultural, horticultural or floricultural use, for at least five (5) years, may not be reestablished; and any future use shall be governed by the then applicable provisions of the Zoning By-Law.

3.1.6 Any nonconforming structure that is damaged or destroyed may be rebuilt within three (3) years thereafter without a special permit from the Board of Appeals under paragraph 2 above provided that the footprint, the total interior floor area and the height of the structure are no greater than they were prior to such damage or destruction.

### 3.2 **Accessory Uses in Residential Districts.**

3.2.1 An accessory professional, trade or home occupation use permitted as of right or by a Special Permit (see sections 5.1.4.1 and 5.4.3.1 and 5.4.3.2) shall not occupy more than 25% of the total floor area of all structures on the lot, or 480 square feet, whichever is less. In connection with any such use, not more than two (2) persons, not members of the household, shall be employed on the premises; there shall be no exterior display or storage of goods for sale or other materials and no other variation from the residential character of the neighborhood; no obnoxious noise, vibration, dust, odors, heat or glare shall be produced; and parking generated by the use shall be accommodated off-street.

3.2.2 An accessory use for a garage or garages for storage of motor vehicles, boats, related equipment and household equipment shall not occupy more than 864 square feet of the lot area; provided, however, that exceptions may be authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2. of the Zoning By-Law."

3.2.3 **Common Driveways**

3.2.3.1 **Common Driveway Defined**

A drive or road which does not meet the definition of a "street" under this By-Law but serves as a common vehicular access to more than one (1) but not more than five (5) residential lots is hereinafter referred to as a "CD" for the purposes of this By-Law. All CD's serve only as access to the building site and cannot be considered as streets for legal frontage as required under these Zoning By-Laws and this access does not need to originate from the street where the legal lot frontage is provided.

3.2.3.2 **Prohibition**

A CD which would serve more than five (5) residential lots is prohibited.

3.2.3.3 **Existing Common Driveways**

A CD which is in existence and use at the time of adoption of the By-Law will be allowed to continue; however, if it is expanded, extended, or otherwise substantially changed, it shall be subject to this By-Law.

3.2.3.4 **Design and Construction Standards**

A CD shall be at least sixteen (16) feet wide and be located in a driveway easement at least twenty (20) feet wide. The sixteen (16) foot wide CD shall be surfaced with a stable material; such as, but not limited to asphalt, reprocessed asphalt, concrete, brick, cobblestone, or compacted gravel at least twelve (12) inches thick. All CD's shall not have a paved or improved surface wider than twenty (20) feet within twenty (20) feet of a street line. If a CD is used for access these standards shall apply, even if the lots served could gain access separately. Turn around will be required at the end of the common driveway sufficient for maneuvering emergency vehicles as determined by the zoning enforcement office.

All CD's shall have appropriate signage at the intersection of the public or private way and elsewhere along the CD as needed to adequately identify the location of the properties served by the CD.

3.2.3.5 **Limitations**

Common driveways cannot serve six (6) or more single family houses except where they are approved as part of the Special Permit for a cluster development. As part of the Special Permit for a cluster, these common driveway standards can be modified as deemed appropriate by the Special Permit Granting Authority. A CD shall not become a public way and the Town of Mattapoisett shall not be required to provide maintenance, snowplowing, school bus pickup or police patrols along a CD."

3.3 **Parking.**

3.3.1 A "parking space" is an open or enclosed space of at least ten (10) feet wide by twenty (20) feet long, exclusive of drives and maneuvering space, located on the lot it serves and with direct access either to a street or to a driveway leading to a street.

- 3.3.2 In all districts where the use is allowed, off-street parking shall be provided as follows:
- 3.3.2.1 One (1) parking space shall be required for every four (4) persons seated in a place of public assembly;
  - 3.3.2.2 One (1) space for each housekeeping unit, plus one (1) space for each resident owner and operator of a motor vehicle;
  - 3.3.2.3 One (1) space for every two (2) persons for whom lodging or regular table board is furnished;
  - 3.3.2.4 One (1) space for each person other than the resident principal employed in a permitted home occupation or profession;
  - 3.3.2.5 Two (2) additional spaces for every permitted profession or business conducted on the premises;
  - 3.3.2.6 All hotels and motels shall have one (1) parking space for every two (2) regular employees and one (1) parking space for each guest room.
- 3.3.3 In Residential Districts:
- 3.3.3.1 No lot shall have more than one (1) unregistered car, truck or trailer ungaraged at any time, unless authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-law, nor shall any unregistered or unsightly car or truck be stored in the "front-yard."
  - 3.3.3.2 No trailer trucks, or units thereof, construction equipment, buses and no vehicles of more than one (1) ton capacity shall be parked between the rear line of the principal building on the lot and the street line, unless completely screened from view; this section shall not apply to boats, boat trailers, loaded or unloaded; or recreational vehicles.
- 3.3.4 **In Business Districts:**
- 3.3.4.1 Parking facilities off the street right-of-way shall be provided on the same lot as the building for each use within the district. Off-street parking shall be designed to prevent the necessity of any vehicle backing into a public way.
  - 3.3.4.2 An open space of at least twenty (20) feet shall be maintained at the sides of structures to allow access to the rear.
  - 3.3.4.3 There shall be no parking within five (5) feet of the right-of-way line of a street or way from which an entrance or exit is provided to or from a business property. A curbing or equivalent shall be installed around said area. There shall be no planting or placing of objects within the above area which will obstruct the view of vehicles entering or leaving the business property.
  - 3.3.4.4 Each off-street parking space shall be served by a two-way maneuvering lane at least twenty-eight (28) feet wide, except that if parking stalls are angled at sixty (60) degrees or less, a one-way maneuvering lane may be used with a minimum width of twenty-two (22) feet. Driveways serving parking areas shall have a minimum width of fourteen (14) feet per travel lane. The number of spaces for each use shall be determined by the Inspector of Buildings based upon the following criteria:

USE

SPACES

Retail Sales Outlet	5.0 for each 1000 feet of gross leaseable floor space area.
Restaurants or Clubs	1 for every 2 seats, or 1 for each 25 square feet of public floor area, whichever is greater.
Theatres, churches or other places of public assembly	1 for every 4 seats or each 50 square feet of gross floor area, whichever is greater.
Professional or business office, financial institutions	1 for each 200 square feet of floor area.
Hotels or motels	1 for each sleeping room plus 1 for every 2 employees.
Barber shops and beauty parlors	3 for each operator.
Health spas	1 for each 50 feet of gross floor area.
Bowling Alleys or Tennis Courts	4 for each alley or court.
Funeral Homes	1 for each 100 square feet of gross floor area.

**3.3.5 Limited Industry Districts.**

- 3.3.5.1 No parking shall be permitted within thirty-five (35) feet of any street. Parking in front of any building shall be limited to customers, visitors and/or employees. This Bylaw shall not permit any shipping, receiving or storage of any materials in front of any buildings.
- 3.3.5.2 One (1) off-street parking space shall be provided for each two (2) employees and five (5) additional spaces for each industrial unit.
- 3.3.5.3 Regulations 3.3.4.1, 3.3.4.2, 3.3.4.3 and 3.3.4.4 above shall be applicable to Limited Industry Districts.

**3.4 Screening.**

- 3.4.1 In all districts all exterior storage of equipment, materials, tools, implements or other substances and all exterior storage areas, unless located at the rear of the principal building, shall be screened from view. But, the above provisions shall not prevent the display of goods, where sales are permitted under this By-Law, at the front or sides of the principal building.

**3.5 Signs.**

- 3.5.1 In all districts no exterior, or interior signs with an exterior effect, of the neon, flashing, moving, portable or mobile type are permitted. This section shall not prohibit signs relating to construction or improvements to the premises provided said signs are removed immediately upon completion of the work. All signs shall be erected so as not to be in conflict with the last sentence of section 3.3.4.3.

**3.5.2 In Residential Districts.**

- 3.5.2.1 One (1) sign of not more than three (3) square feet of surface per side pertaining to a permitted accessory use shall be permitted, provided that if illuminated, the illumination shall be derived from not more than one (1) 60 watt incandescent bulb or equivalent per side, suitably concealed by a reflecting shield to direct the illumination primarily on the sign surface.
- 3.5.2.2 One (1) sign of not more than four (4) square feet of surface per side, pertaining only to lease or sale of the premises shall be permitted. The same restrictions as to illumination primarily on the sign surface.

3.5.2.3 One (1) sign for temporary use at the site of real estate development of not more than forty-eight (48) square feet per side shall be permitted. Such sign shall be removed on completion of the development.

3.5.3 In all districts the Board of Selectmen may grant a Special Permit for the erection of any off premises sign for advertising.

### 3.6 **Trailers.**

Not more than (1) house trailer may be kept on any parcel of land. No house trailer may be used as living quarters while so located, except that the owner or occupant of a parcel of land may permit occupancy of such land by a nonpaying guest, using a trailer or mobile home for living purposes for a period not exceeding two (2) weeks in any calendar year. A permit for this purpose must be obtained from the Board of Selectmen or its agent before the land can be so occupied. Space shall not be leased for trailers. Provided, however, that the foregoing shall not prohibit the establishment of a trailer camp under the provisions of Chapter 140 of the General Laws. Further, the Board of Selectmen may issue a permit to occupy a trailer for a period up to two (2) months in cases of extreme emergency or calamity as determined by said Board of Selectmen. Said permit may be renewed by the Board of Selectmen for a period not to exceed a total of eight (8) months in the aggregate.

An owner or occupier of a resident which has been destroyed by fire or other natural holocaust, may, subject to the State Sanitary Code and any Board of Health Rule, Regulation, or Order, place a mobile home on the site of such residence and reside in such mobile home for a period not to exceed twelve (12) months, while the residence is being rebuilt. The rebuilding of said residence shall commence as soon as possible after said residence is destroyed and shall proceed in a reasonable manner. The mobile home shall be permanently removed from the site no later than twelve (12) months after it was first brought on the site, or thirty (30) days after construction is complete, whichever event first occurs.

### 3.7 **Windpower Generator System.**

3.7.1 In all districts, windpower generator systems are permitted if authorized by a Special Permit by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law provided they are not detrimental, dangerous or obnoxious to neighboring areas and further provided:

3.7.1.1 Said Special Permit shall contain restrictions and/or safeguards with regard to:

3.7.1.1.1 Certification by registered professional engineer as to the safety and structural stability of the entire windpower generator system.

3.7.1.1.2 Noise control and height.

3.7.1.1.3 Assuring there will be no electrical emissions that will interfere with electrical reception of the neighboring property.

3.7.1.1.4 Certification by a professional engineer that the structure as erected complies with all representations submitted to the Board of Appeals.

3.7.1.2 Said Special Permit may contain restrictions and/or safeguards with regard to, but not limited to the following matters:

3.7.1.2.1 Fencing and liability insurance.

3.7.1.2.2 Exceptions to the setback regulations as stipulated in section 6.5 of the Zoning By-Law.

### 3.8 **Cluster Subdivision (Single Family de-attached)**

In order to permit maximum flexibility for developing land for single family housing, and to encourage the preservation of open space and promote the more efficient use of the land in harmony with its natural features, tracts of land consisting of eight (8) acres or more in the following districts R 80, RR 45,R 40, RR 40, R 30, RR 30 and shall be made available for cluster housing subject to the requirements of this Section.

To afford the Town of Mattapoisett ample assurance that such developments will enhance the amenities of the neighborhoods in which they occur, and the Town as a whole, Cluster Subdivision may be constructed by filing a cluster subdivision plan under the Subdivision Control Law, MGL Ch, 41, Sec. 81K – 81GG with the Planning Board as hereinafter defined.

#### 3.8.1 **Statement of Purpose**

Cluster residential housing shall be designed to achieve the following goals:

- 3.8.1.1 To encourage the more efficient use of land in harmony with its natural features;
- 3.8.1.2 To encourage creativity in the design of developments through a carefully controlled process;
- 3.8.1.3 To encourage a less sprawling form of development, a shorter network of streets and utilities, more economical development of land with less consumption of open space;
- 3.8.1.4 To preserve permanently, natural topography and wooded areas within developed areas, and to preserve usable open space and recreation facilities close to home;
- 3.8.1.5 To provide an efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhoods in which they occur and the Town as a whole;
- 3.8.1.6 To promote diverse at a variety of costs and in particular housing types that meets the needs of the Town's aging population.
- 3.8.1.7 To support alternative residential development that has a positive impact on the community and incorporates unique public benefits.
- 3.8.1.8.1.1 To ensure that alternative residential development is compatible with surrounding land uses and that the impacts on public services will not exceed conventional residential development.

#### 3.8.2 **Filing of Application**

Each application for a cluster subdivision shall be filed with the Planning Board in accordance with the provisions of Chapter III, Section C-1 of the Rules and Regulations of the Planning Board Governing the Subdivision of Land. The application for a cluster subdivision shall be accompanied by a preliminary plan showing the dimensions and area of lots as they might be established under conventional zoning.

A pre-application meeting with the Planning Board prior to formal submission of the application is recommended.

3.8.3 **Uses and Density**

3.8.3.1 **Uses**

The permitted uses in the Cluster Subdivision (de-attached) include single family homes on separate lots and open space subject to the restrictions of section 3.8.11.

3.8.3.2 **Density**

The base number of units shall be determined by showing on a preliminary subdivision plan the total number of lots that could be obtained from the tract by utilizing a conventional subdivision plan in accordance with the Rules and Regulations of the Planning Board Governing the Subdivision of Land. Wetlands, as defined under the Wetlands Protection Act, water bodies, and any land otherwise prohibited from development by local by-law or regulations shall not be included in the overall area when calculating density. The burden of proof shall be upon the applicant in determining the allowable number of units. Where the site proposed for cluster division includes more than one ownership and/or lies in more than one district, the number of units allowed shall be calculated for each district and summed up to give an overall allowable density total without respect to allowable sub-totals by district or ownership areas.

3.8.3.3 **Density Bonus**

A cluster subdivision can increase the base density of the development up to a maximum density bonus of 25%, if the following objectives/requirements are met.

3.8.3.3.1 Two (2) additional units for each acre of open space land preserved that exceeds the 40% minimum.

3.8.3.3.2 One (1) additional unit for each affordable unit.

3.8.3.3.3 One (1) additional unit for each legally restricted over 55 unit.

3.8.4 **Dimensional Requirement**

3.8.4.1 The total area of the tract to be developed shall not be less than eight (8) acres.

3.8.4.2 The following minimum dimensional regulations shall apply in lieu of those identified in Article 6, for conventional single-family developments:

Minimum lot area		15,000 sq. ft.
Minimum lot frontage	80 ft*	
Minimum front yard setback		25 ft.
Minimum side and rear yard setback		10 ft.
Maximum lot coverage		25%
Maximum building height		35 ft.

\*A lot with frontage on tidal water or the non-tidal portions of the Mattapoissett River shall have a minimum shore frontage of 150 feet measured in a straight line between the point of the intersection of the side lot lines with the shore at normal high water elevation.

3.8.4.3 The minimum width of common open space shall be thirty (30) feet.

**3.8.5 Lots**

3.8.5.1 Each building lot shall contain a site which, subject to the approval of the Board of Health, may be suitable for an on-site septic disposal system, or will be served by a public sewer. The requirement for an on-site system may be waived where the Board of Health approves a variance for a clustered leeching field serving more than one (1) home; said leeching field may be located within a portion of the common open space.

3.8.5.2 Each lot shall be of a size and shape as shall provide a building site that shall be in harmony with the natural terrain and other features of the site.

3.8.5.3 The front, side and rear yards of each lot shall be shown on the plan by dashed lines indicating the area within which a building may be built.

3.8.5.4 New lots in a cluster development shall front on newly created streets serving the cluster rather than the existing street system from which the cluster takes its access.

**3.8.6 Design Standards**

3.8.6.1 The housing shall provide for an effective and unified treatment of the development possibilities of the project site making appropriate provision for the preservation of natural features and amenities of the site and the surrounding areas wherever possible.

3.8.6.2 All housing shall be arranged so as to preserve visual and audible privacy between adjacent houses wherever possible.

**3.8.7 Landscape Design Standards**

3.8.7.1 Whenever possible, existing trees and vegetation shall be preserved and integrated into the landscape design plan.

3.8.7.2 Whenever possible, the existing terrain shall be preserved and earth moving shall be kept to a minimum.

3.8.7.3 Suitable indigenous shrubs and other plant material may be used for screening. Lands used for buffers may be maintained as common open space or as private open space subject to a deed restriction.

3.8.7.4 Wherever possible existing trees and vegetation along the Town's existing street system shall be preserved with the only intrusions being the rights-of-way for new streets.

**3.8.8 Circulation System**

3.8.8.1 There shall be an adequate, safe and convenient arrangement of roadways and driveways. Access driveways to individual lots shall be off the interior street system rather than the existing major roadway system of the Town.

**3.8.9 Common Open Space**

3.8.9.1 Cluster Subdivisions shall provide at least a minimum of forty (40) percent of the total land area of the property shall be open space and that the open space shall include all land not dedicated to roads or lots. The open space is intended to provide an open natural area for the active and passive recreation use and visual enjoyment of the occupants of the residential development, and in some cases, for residents of the adjacent neighborhood and the public generally. Of this open space, at least sixty (60) percent must be useable – upland area with well drained soils that is suitable for recreational use.

- 3.8.9.2 A portion of the remaining forty (40) percent of the required open space may be used for common leaching fields. Areas which are considered by the Planning Board as marginal or unsuitable for building, such as floodplains, inaccessible wetland and water areas, steep slopes, shall not be counted towards the common open space.
- 3.8.9.3 To the maximum extent possible, the open space provided shall be consistent with the open space and trails system proposals of the Mattapoisett Growth Management and Land Use Plan and the Mattapoisett Open Space and Recreation Plan as they are from time to time adopted.
- 3.8.9.4 Open spaces may be utilized as natural courses for disposal for storm drainage on the sites, but can not be used to meet the above requirement for useable land area. No conditions are allowed which are likely to cause erosion or flooding of any structures.
- 3.8.9.5 Such open space may be in one (1) or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board.
  - 3.8.9.5.1 The common open space shall increase visual amenities for residents of the development and residents of the adjacent neighborhoods.
  - 3.8.9.5.2 The common open space should be readily accessible to those it is designed to serve, whether the residents of the cluster development or the general public.
- 3.8.10 **Ownership of Common Open Space**

The open space, and such other facilities as may be held in common, shall be conveyed in one (1) of the following manners, and determined by the Planning Board:

  - 3.8.10.1 Land to be Used by Residents of the Cluster Housing

To a corporation or trust comprising a Homeowners Association whose membership includes the owners of all lots contained in the tract. The developer shall include in the deed to the owners of individual lots, beneficial rights in said open land, and shall grant a conservation restriction to the Town of Mattapoisett over such land pursuant to G.L. c.184, s.31-33, to insure that such land be kept in an open and natural state and not built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town in any proceeding authorized by G.L. c.184, s.33. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the Homeowners Association assumes such responsibility. In order to ensure that the Association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Plymouth County Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

    - 3.8.10.1.1 mandatory membership in an established Homeowners Association as a requirement of ownership of any lot in the tract;
    - 3.8.10.1.2 provision for maintenance assessments of all lots in order that the open space is maintained in a condition suitable for the uses approved by the Homeowners Association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the Homeowners Association or the owner of any lot;
    - 3.8.10.1.3 provision which, so far as possible under existing law, will ensure that the restrictions placed on the use of land will not terminate by operation of law.

**3.8.10.2 Land to be Made Accessible to the General Public**

To a non-profit organization such as the Mattapoisett Land Trust, the principal purpose of which is the conservation of open space, the developer or charity shall grant a conservation restriction as set out above. If the non-profit organization ceases to exist as a legal entity, all lands conveyed under this section shall revert to the Town of Mattapoisett.

or

To the Town of Mattapoisett for park or open space use, subject to acceptance by the Town for management by an agency of the Town, with covenants insuring that it be maintained as open space.

**3.8.11 Use of Open Space**

Subject to the provisions of section 3.8.10, the open space may be used for recreational purposes including walking and riding trails, golf courses, tennis courts, gardens and swimming pools. The Planning Board may permit open space owned by a Homeowners Association to be used for individual septic systems, or community (cluster) septic systems if it, and the Board of Health, are convinced that proper safeguards exist for proper management of a communally owned system.

In all cases, a perpetual restriction of the type described in G.L. c.184, s.31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the common open space shall be retained in perpetuity for one or more of the following uses: conservation, recreation, open space or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the common open space as the Planning Board may deem appropriate.

**3.8.12 Cluster Subdivision Restrictions**

3.8.12.1 No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a note to this effect shall be shown on the plan. Subsequent to granting the permit, the Planning Board may permit minor adjustments of lot lines within the cluster, that do not result in the creation of additional lots.

3.8.12.2 No Certificate of Occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the Planning Board hereunder.

3.8.12.3 The subdivision approval granted under this section shall lapse within two (2) years excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if the construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.

3.8.12.4 The Planning Board may impose other conditions, safeguards, limitation on time and use, as it deems reasonable to achieve the state purposes of this section.”

**3.9 Site Plan Approval**

**3.9.1 Statement of Purpose**

The purpose of the site plan review procedure is to encourage a desirable and compatible character of development within the Town of Mattapoisett and to assure safety, promote logic, imagination, and innovation in the design process while complying with all zoning requirements. The requirements of this section shall be applicable to any the following:

- 3.9.1.1 All new or modified nonresidential development that results in an increase in on-site parking of more than ten (10) spaces.
- 3.9.1.2 All new or modified nonresidential development that increases gross floor area more than one thousand (1,000) square feet.
- 3.9.1.3 All new or modified nonresidential development that increases impervious coverage more than five thousand (5,000) square feet.
- 3.9.2 Site plan review will be processed by the following means:
  - 3.9.2.1 All projects requiring Site Plan Review shall submit the following information to the Planning Board for review and processing:
    - 3.9.2.1.1 Ownership, zoning, use, and the general location of structure and topography within two hundred (200) feet of the property lines of the site or adjacent land contiguously owned with the site.
    - 3.9.2.1.2 All site features, existing or proposed, including but not limited to the following:
      - 3.9.2.1.2.1 Driveways, including widths.
      - 3.9.2.1.2.2 Parking facilities, including dimensions thereof.
      - 3.9.2.1.2.3 Loading facilities.
      - 3.9.2.1.2.4 Service areas.
      - 3.9.2.1.2.5 Street line, including widths.
      - 3.9.2.1.2.6 Roadways, including widths.
      - 3.9.2.1.2.7 Pedestrian walks, including widths.
      - 3.9.2.1.2.8 Signs, including proposed sizes, mounting heights.
      - 3.9.2.1.2.9 Lighting, including plan location and detail information, size, type and wattage.
      - 3.9.2.1.2.10 Servicing, indicating treatment of all surfaces.
      - 3.9.2.1.2.11 Existing trees on the site which are a caliper of six (6) inches or larger.
      - 3.9.2.1.2.12 Wetlands
      - 3.9.2.1.2.13 Drainage, including detail design data, pipe sizing, etc.
      - 3.9.2.1.2.14 Stone walls.
      - 3.9.2.1.2.15 Topography at two-foot contour intervals (one foot with spot elevations for flat areas).
      - 3.9.2.1.2.16 Sewage disposal information.
      - 3.9.2.1.2.17 Water Supply.
      - 3.9.2.1.2.18 Curbing
      - 3.9.2.1.2.19 The Planning Board may reasonably request traffic count, study, etc.
    - 3.9.2.1.3 The construction of the work as detailed on the site plan shall not deviate from the work shown on the approved site plan except as expressly authorized herein. The site plan shall contain a sufficient level of detail to ensure that the Planning Board has adequate data to determine that, when constructed, the project will satisfy the standards required by this section. Supporting details and documentation shall be presented as part of the site plan submission.
- 3.9.2.2 Incomplete applications for review shall not be accepted by the Planning Board. Following submission of a site plan to the Planning Board, the Board or its designee shall review the plan for completeness within sixteen (16) business days of the submission. If the submission is determined incomplete by the Planning Board or its agent, notice will be mailed to the applicant by certified mail within sixteen (16) business days of the submission specifying the deficiencies and copy of notice to be filed in the Office of the Town Clerk. Application must be resubmitted upon correction of deficiencies.
- 3.9.3 The plan shall be prepared by a professional engineer, land surveyor, architect, or landscape architect registered to practice in the Commonwealth of Massachusetts and shall be submitted

with seven (7) copies to the office of the Planning Board, together with an application form. Copy of application shall be filed in the Office of the Town Clerk along with the appropriate filing fee.

### **3.9.4 Approval Required**

3.9.4.1 Site plan approval shall be granted upon determination by the Planning Board that the following standards are complied with. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the "Rules and Regulations of the Planning Board Governing the Subdivision of Land" and shall be so designed that for the given location and type and extent of land use, the design of building form, building location, egress points, grading and other elements of the development shall be so as to:

3.9.4.1.1 Minimize the volume of cut and fill, the number of removed trees six (6) inches in caliper and 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 the threat of air or water pollution.

3.9.4.1.2 Maximize pedestrian and vehicular safety and convenience within the site and egressing from it.

3.9.4.1.3 Minimize obstruction of scenic views from publicly accessible locations.

3.9.4.1.4 Minimize visual intrusion by minimizing the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zones; minimizing glare from headlights through plantings or other screening; minimizing lighting intrusion through the use of such devices as cutoff luminaires confining direct rays to the site; fixture mounting height not higher than twenty (20) feet avoiding unreasonable departure from the character of building in the vicinity.

### **3.9.5 Public Hearing**

3.9.5.1 Before taking any action to approve, modify or disapprove a Site Review Plan, the Board shall hold a hearing at which parties of interest shall have an opportunity to be heard, in person or by agent or attorney. The Planning Board may, where it determines that such action is in the public interest, or in order to avoid an unreasonable hardship, waive any requirement of section 3.9.4, provided that such waiver is not inconsistent with the intent or purpose of the zoning bylaw. Any such waiver may be granted by a majority vote of the Board. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town of Mattapoisett once in each of two (2) successive weeks, the first date of publication to be not less than fourteen (14) days before the date of the hearing and by mailing a copy of such notice to the applicant and to all owners of land abutting the land and all owners of land within three hundred (300) feet of a property line of the land shown on the plan, as shown on the most recent tax list.

### **3.9.6 Other Costs and Expense**

3.9.6.1 The applicant is responsible for preparing a Certified List of Abutters. This listing shall be certified by the Board of Assessors and delivered to the Planning Board at the time of submission of the Site Review Plan. All abutters shall be notified by certified mail return receipt requested at the applicant's expense. Return receipts are to be addressed to the Planning Board. All other expenses including, without limitation, professional review services, recording fees and filing fees for documents, and costs for sampling and/or testing required by the Board or its agent shall be paid solely by the applicant.

### **3.9.7 Payment**

3.9.7.1 All required payments shall be presented to the Town Clerk who will acknowledge receipt thereof in the form of a signed dated receipt (or an acceptable substitute), a non-returnable copy of which shall be presented to the Planning Board at the time of the submission. Any addition payments

required by the Board, the costs of which are required to be borne by the applicant, shall be made within thirty (30) days of the billing date.

### 3.9.8 **Planning Board Action**

3.9.8.1 The Planning Board shall act on an application for site plan approval and shall notify, in writing, the applicant, the Inspector of Buildings and the Office of the Town Clerk of its action within sixty (60) days of the receipt of the application. Failure of the Planning Board to so act and to notify the applicant within said sixty (60) days shall constitute approval of the site plan. The actions allowed by the site plan approval are authorized for a two (2) year period from the date of grant thereof. The applicant may be granted a single two (2) year extension by applying to the Planning Board, in writing, prior to the date of expiration upon a successful showing of due cause by the applicant. If the actions permitted are not exercised or the approval not extended, they shall lapse and a new application notice and hearing will be required.

### 3.9.9 **Minor Departures**

3.9.9.1 Minor departures from site plan as approved may be authorized by the Inspector of Building if required by engineering or other circumstances not foreseen at the time of plan approval. Any change increasing the size of any building or structure, changing the location of any building, parking, or access road by more than ten (10) feet or reducing landscaping or screening may be made only through review by the Planning Board following the same procedures as for an original submittal. Any departure must be requested, in writing, with the basis for the change given. Any change authorized shall be recorded on the file copy of the site plan with the Inspector of Buildings signature and the date.

### 3.9.10 **Compliance**

3.9.10.1 The issuance of an occupancy permit shall not occur prior to the satisfactory completion of all elements and conditions of the approved site plan. A temporary occupancy permit may be issued after the satisfactory completion of all items essential to public health and safety and sufficient bonding acceptable to the Planning Board is provided to the town to cover all outstanding items.

### 3.9.11 **Signs**

3.9.11.1 Refer to section 3.5 Signs. of the Zoning By-Law of the Town of Mattapoisett.

### 3.9.12 **Egress**

3.9.12.1 Any driveway likely to carry more than two hundred (200) trips per average business day must comply with the following:

3.9.12.1.1 Existing vehicle unobstructed sight distance at edge of traveled way - 200 feet.

3.9.12.1.2 Driveway centerline separation from other driveways serving 200 plus trips - 100 feet.

3.9.12.1.3 Driveway centerline separation from intersecting street sideline - 75 feet.

3.9.12.1.4 Maximum driveway width unless greater width justified by engineered design - 30 feet.

3.9.12.1.5 Curb Radius - 20 feet.

3.9.12.1.6 Minimum driveway width - 24 feet.

3.9.12.2 No existing parcel shall be divided into lots with frontage which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

### 3.9.13 **Landscaping**

- 3.9.13.1 A landscaping plan shall be part of the application showing location, type and size of proposed plantings.
- 3.9.13.2 When possible, existing trees and vegetation will be incorporated as part of landscaping plan.
- 3.9.13.3 All plant materials shall be maintained in a healthful condition. Dead limbs shall be promptly removed, and dead plants shall be replaced at the earliest appropriate season. Any fences required for screening shall be properly maintained.

### 3.10 **Bed and Breakfast Establishments**

#### 3.10.1 **Purpose**

It is the purpose and intent of this section to allow Bed and Breakfast establishments, hereinafter referred to as B&B, in larger, older homes to provide an adaptive reuse for the structures and in doing so, encourage the maintenance and enhancement of older buildings which are part of the community character. This use will also create low intensity in accommodations for tourists and visitors and enhance the economic climate of the Town. By requiring that the operation is owner occupied and managed, the town seeks to insure that the use will be properly managed and well maintained.

#### 3.10.2 **Definition**

The renting of not more than three (3) rooms as lodging without separate cooking facilities and for not more than six (6) persons for a term of residence of not more than fourteen (14) days. These establishment shall be residential in both character and appearance and the owner of the property shall be required to reside on the premises.

#### 3.10.3 **Submittal and Review Requirements**

3.10.3.1 The B&B and operation shall be located within an existing owner-occupied single family residential dwelling containing a minimum of three (3) bedrooms. All guest rooms shall be located in the principal structure.

3.10.3.1.1 No more than three (3) bedrooms shall be rented for B&B purposes and there shall be no more than a total of six (6) guests at any one time.

3.10.3.1.2 No cooking facilities, including, but not limited to, stoves, microwave ovens, toaster ovens, and hot plates, shall be available to guests and no meals, except breakfast, shall be served to guests. Alcohol shall also be prohibited from being served on the premises.

3.10.3.1.3 The owner of the property shall be responsible for the operation of the property and shall be a resident of the property when the B&B is in operation.

3.10.3.1.4 The single family residence in which the B&B is located shall be maintained so that the appearance of the building and grounds remain that of a single family residence.

3.10.3.1.5 There shall be no enlargements or extensions of the dwelling in connection with the facility except for minimal additions necessary to comply with building, safety or health codes.

3.10.3.7 There shall be four (4) off-street parking spaces for use of the residents and guests.

3.10.3.7.1 No more than (2) outdoor parking spaces shall be located in the required front yard. All other parking spaces shall be either:

3.10.3.7.1.1 Outdoor parking spaces located in a side or rear yard or

- 3.10.3.7.1.2 In a garage or carport.
- 3.10.3.7.2 Parking spaces shall be located so that there is direct and unimpeded access to the street without passing through another parking space.
- 3.10.3.8 Signs: Interior or exterior display of signs associated with any B&B are prohibited except as allowed in section 3.5.2.1.
- 3.10.3.9 Exceptions to the provisions of these sections may be granted by a Special Permit issued by the Board of Appeals in accordance with section 7.2.2.”
- 3.10.3.10 Additionally, prior to any B&B opening for business, the property shall be inspected for compliance by the Mattapoissett Fire Department for applicable safety rules and regulations, by the Board of Health for health regulations and by the Inspector of Buildings for zoning and building code regulations.”

### **3.11 Special Residential Development**

In order to permit maximum flexibility for developing land for residential purposes, broaden housing opportunities, encourage the preservation of open space and promote the more efficient use of the land in harmony with its natural features, Special Residential Development (SRD) is permitted subject to the requirements of this Section. SRD may be constructed only under a special permit granted by the Planning Board acting in accordance to M.G.L. 40A, section 9 and as hereinafter defined.

#### **3.11.1 Statement of Purpose**

SRD shall be designed to achieve the following goals:

- 3.11.1.1 To encourage the more efficient use of land in harmony with its natural features;
- 3.11.1.2 To encourage creativity in the design of developments through a carefully controlled process;
- 3.11.1.3 To encourage a less sprawling form of development, a shorter network of streets and utilities, more economical development of land with less consumption of open space;
- 3.11.1.4 To preserve permanently, natural topography and wooded areas within developed areas, and to preserve usable open space and recreation facilities close to home;
- 3.11.1.5 To provide an efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhoods in which they occur and the Town as a whole;
- 3.11.1.6 To promote diverse housing at a variety of costs, and in particular housing types that meet the needs of the Town’s aging population;
- 3.11.1.7 To support alternative residential development that has a positive impact on the community and incorporates unique public benefits; and
- 3.11.1.8 To ensure that alternative residential development is compatible with surrounding land uses and that the impacts on public services will not exceed conventional residential development.

#### **3.11.2 Definition of Special Residential Development**

Special Residential Development (SRD) is a residential development of three or more detached single-family dwellings or semi-attached dwellings or townhouse dwellings or combination thereof (as defined by this bylaw) on a tract of land divided into one or more lots for dwellings and open space.

**3.11.3 Special Permit Required**

An application for a SRD shall be filed as a special permit with the Planning Board acting as a Special Permit Granting Authority (SPGA) in accordance with the provisions of Section VII.B.2 of this bylaw (except as noted below), with a copy filed forthwith with the Town Clerk. Consistent with the provisions of Section 3.9 Site Plan Approval of this bylaw, a SRD shall be exempt from the requirement for a Site Plan Approval Special Permit. Submissions shall be governed by the zoning requirements for SRD as contained in this bylaw, the Planning Board's Rules and Regulations for the Subdivision of Land, and such other regulations governing SRD as may be adopted and amended from time to time.

**3.11.4 Applications and Procedures**

Said application and plan shall be prepared and processed in accordance with the requirements contained in the Board's Rules and Regulations.

**3.11.5 Relation to Municipal Subdivision Control**

A special permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Rules and Regulations of the Planning Board governing the subdivision of land or MGL Chapter 41 Sections 81K-81GG. The Planning Board, by granting a special permit, is not obligated to approve any definitive plan nor reduce any time periods for the Planning Board's consideration.

**3.11.6 Uses and Density**

**3.11.6.1 Uses**

The dwelling units of a SRD may be detached single-family dwellings, semi-attached dwellings, townhouse dwellings, or a combination of these types, as defined by this bylaw. The SRD may include three or more residential dwelling units on a tract of land divided into one or more lots for dwellings and open space. A SRD may have one or more lots used for the development in: condominium ownership, cooperative ownership, or one ownership where individual dwelling units are rented.

**3.11.6.2 Impacts and Density**

The projected impacts of a SRD shall not exceed the total projected impacts of the tract of land developed as a conventional subdivision based on the yield plan submitted (see Rules and Regulations of the Planning Board), under each and all of the following three criteria:

3.11.6.2.1 Building Lot Coverage,

3.11.6.2.2 Total Number of Occupants, and

3.11.6.2.3 Vehicular Daily Trip Generation.

3.11.6.2.4 The following shall be used for calculating these impacts:

<i>Type of Plan</i>	<i>Building Lot Coverage</i>	<i>Total Number of Occupants*</i>	<i>Vehicular Daily Trip Generation*</i>
Conventional Layout/ Yield Plan	2000 sf. per unit	(persons per household for new construction single family (assume 4 BRs)** X (Number of units)	ITE Trip Generation Manual- most recent edition
SRD Plan	Building Lot coverage as defined under this bylaw	Most recent US Housing Survey (by US Census Bureau) for Occupants by housing type X Number of units by housing type**	ITE Trip Generation Manual – most recent edition

\* The applicant may propose alternative calculations based on data about similar developments in Massachusetts or data from professional planning or transportation publications and the Planning Board may accept these alternatives provided the methodology and relevance of the data is sufficiently documented.

\*\* For most current figures see the Rules and Regulations of the Planning Board.

3.11.6.2.4.1 The maximum development then, is not pre-determined as a number of dwelling units. The number of dwelling units permitted is the number that occurs in a development when none of the impact measures above exceeds the respective number calculated for a conventional subdivision plan, in accordance with the yield plan Rules and Regulations of the Board, for the same tract of land.

3.11.6.2.4.2 An applicant is not entitled to the maximum development as allowed under the above measures, nor is the applicant entitled to approval of a SRD. The amount of development permitted cannot exceed that which meets the criteria above but is also subject to the Planning Board's evaluation of the proposed development in accordance with the findings required by Section 3.11.14 below.

3.11.6.3 **Density Bonus**

The Planning Board may award a density bonus to increase the number of dwelling units above that permitted under the above impact evaluation under one or more of the following circumstances:

3.11.6.3.1 the land area to be preserved as open space is of exceptional resource value, because of special habitat, fragile terrain, scenic importance, historic or agricultural value, critical public recreational need, or other distinguishing quality, or the open space area exceeds the minimum;

3.11.6.3.2 the development provides a significant public benefit in the form of public infrastructure or special facility provision including, but not limited to: improvements as may be identified in Mattapoissett's Master Plan and/or Capital Improvement Plan, bikeways, walking trails, sidewalks, playgrounds, playfields, other active public recreation facilities, and sewer or water line extensions that service more than the proposed development;

3.11.6.3.3 dwelling units are legally restricted to occupancy by persons over the age of fifty-five;

3.11.6.3.4 dwelling units are developed as affordable housing in accordance with MGL Section 40 B Sect. 20-23 and 760 CMR 30.00 and 31.00 and restricted for a period of time determined appropriate by the Planning Board.

Such a density bonus is contingent on findings by the Planning Board that the additional density will not be a burden on public facilities and, after consultation with the Board of Health, that the additional density will not threaten the quality of ground or surface waters. The amount of the density bonus shall be established by the Planning Board but shall not exceed 20% of the yield number for the site.

### 3.11.7 Dimensional Requirement

3.11.7.1 The following table indicates the minimum size tract of land eligible for a SRD special permit and the minimum amount of open space, by zoning district:

<i>District</i>	<i>Minimum Tract Size</i>	<i>Open Space Requirement</i>
VR10	2 acres	10%
R20	2 acres	20%
R30/MR30/W30/RR30	3 acres	30%
R40/RR40/R45	3 acres	40%
R80/RR80	5 acres	40%
GB	1 acre	10%

3.11.7.2 The maximum building height is 35 feet.

3.11.7.3 Except as specified in a special permit granted under this section, all requirements of the Zoning Bylaw shall be in full force and effect.

3.11.7.4 A buffer area of thirty (30) feet shall be provided at the following locations: perimeter of the property where it abuts residentially zoned and occupied properties, resource areas such as agricultural or recreational land, land held for conservation purposes and existing public ways. The Planning Board may allow a smaller buffer requirement in locations where it determines that a smaller buffer (or no buffer) would be adequate to meet the overall objectives of this section.

3.11.7.5 Lot area, width, frontage and setbacks are flexible as long as the plan meets the other standards of this section and the Planning Board determines the proposed lots are consistent with the findings required of Section 3.11.14.

### 3.11.8 Open Space Standards

The minimum open space requirements, by district, are in the table above.

3.11.8.1 Open space shall include all land not dedicated to roads or lots. The open space is intended to provide an open natural area for the active and passive recreation use and visual enjoyment of the occupants of the residential development, and in some cases, for residents of the adjacent neighborhood and the public generally. Of this open space, at least 60% must be useable upland area with well-drained soils that is suitable for recreational use.

3.11.8.2 Areas which are considered by the Planning Board as marginal or unsuitable for building, such as floodplains, wetlands, water areas, steep slopes, highly erodible or poorly drained soils, areas of very shallow bedrock, or of very high water table shall not be counted towards the open space.

3.11.8.3 To the maximum extent possible, the open space provided shall be consistent with the open space and trails system proposals of the Mattapoisett Master Plan and the Mattapoisett Open Space and Recreation Plan as they are from time to time adopted.

3.11.8.4 Open space may be utilized as natural courses for disposal for storm drainage on the sites, but these areas cannot be used to meet the above requirement for useable land area. Retention and detention ponds shall not qualify towards the minimum open space or useable open space required. No conditions are allowed which are likely to cause erosion or flooding of any structures.

3.11.8.5 Such open space may be in one (1) or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board.

- 3.11.8.6 The open space shall increase visual amenities for residents of the development and residents of the adjacent neighborhoods.
- 3.11.8.7 The open space should be readily accessible to those it is designed to serve, whether the residents of the SRD, the general public or both.

### **3.11.9 Use of Open Space**

Subject to the provisions of this section, the open space may be used for recreational purposes including walking and riding trails, golf courses, tennis courts, gardens and swimming pools. The Planning Board may permit open space owned by a Homeowners Association to be used for individual septic systems, or community septic systems if it, and the Board of Health, are convinced that proper safeguards exist for proper management of a communally owned system. Land area used for septic systems cannot be used to meet the above requirement for useable upland area.

In all cases, a perpetual restriction of the type described in G.L. c.184, s.31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the common open space shall be retained in perpetuity for one or more of the following uses: conservation, recreation, open space or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the common open.

### **3.11.10 Ownership of Open Space**

The open space, and such other facilities as may be held in common, shall be conveyed in one (1) of the following manners, as approved by the Planning Board:

- 3.11.10.1 Land to be used by residents of the SRD to a corporation or trust comprising a Homeowners Association whose membership includes the owners of all lots contained in the tract. The developer shall include in the deed to the owners of individual units, beneficial rights in said open space, and shall grant a conservation restriction to the Town of Mattapoisett over such land pursuant to MGL Chapter 184, Sections 31 - 33, to insure that such land be kept in an open and natural state and not built upon for residential use or developed for accessory uses such as parking or roadways. Such restriction shall provide that the common open space shall be retained in perpetuity for one or more of the following uses: conservation, recreation, open space or park. This restriction shall be enforceable by the Town in any proceeding authorized by MGL Chapter 184, Section 33. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the Homeowners Association assumes such responsibility. In order to ensure that the Association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Plymouth County Registry of Deeds a Declaration of Covenants and Restrictions that shall, at a minimum, provide for the following:
  - 3.11.10.1.1 mandatory membership in an established Homeowners Association as a requirement of ownership of any unit in the tract;
  - 3.11.10.1.2 provision for maintenance assessments of all lots in order that the open space is maintained in a condition suitable for the uses approved by the Homeowners Association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the Homeowners Association or the owner of any lot;
  - 3.11.10.1.3 provision that, so far as possible under existing law, will ensure that the restrictions placed on the use of land will not terminate by operation of law.
- 3.11.10.2 Land to be made accessible to the general public to a non-profit organization such as the Mattapoisett Land Trust, the principal purpose of which is the conservation of open space, the developer or charity shall grant a conservation restriction as set out above. If the non-profit organization ceases to exist as a legal entity, all lands conveyed under this section shall revert to the Town of Mattapoisett.

- 3.11.10.3 To the Town of Mattapoisett for park or open space use, subject to acceptance by the Town for management by an agency of the Town, with covenants insuring that it be maintained as open space.

### **3.11.11 Design Standards**

- 3.11.11.1 Attached units may be in groups of no larger than 6 units.
- 3.11.11.2 The housing shall provide for an effective and unified treatment of the project site making appropriate provision for the preservation of natural features and amenities of the site and the surrounding areas wherever possible.
- 3.11.11.3 The housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site wherever possible.
- 3.11.11.4 All housing shall be arranged so as to preserve visual and audible privacy between adjacent houses wherever possible.
- 3.11.11.5 Whenever possible, existing trees and vegetation shall be preserved and integrated into the landscape design plan.
- 3.11.11.6 Whenever possible, the existing terrain shall be preserved and earth moving shall be kept to a minimum.
- 3.11.11.7 Suitable indigenous shrubs and other plant material may be used for screening. Lands used for buffers may be maintained as open space or as private property subject to a deed restriction.
- 3.11.11.8 Wherever possible existing trees and vegetation along the Town's existing street system shall be preserved with the only intrusions being the rights-of-way for new streets.
- 3.11.11.9 Negative visual impacts of the development, if any, shall be adequately screened from adjacent properties and nearby streets by landscaping and other site plan techniques.

### **3.11.12 Circulation System**

There shall be an adequate, safe and convenient arrangement of roadways, driveways and parking areas. Wherever possible, access driveways to individual lots shall be off the interior street system rather than the existing major roadway system of the Town. Major access roadways shall be constructed in accordance with the standards of the subdivision control laws, including the provisions for waivers.

### **3.11.13 Special Permit Conditions**

In accordance with MGL Chapter 40A, Section 9 the Planning Board has authority to impose reasonable conditions with the granting of special permits. SRD special permits shall incorporate the following conditions, as deemed appropriate by the Planning Board:

- 3.11.13.1 No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a note to this effect shall be shown on the plan. Subsequent to granting the permit, the Planning Board may permit minor adjustments of lot lines within the SRD, that do not result in the creation of additional lots. However, any change in overall density, street layout, or open space layout will require further hearings.
- 3.11.13.2 Except insofar as the subdivision is given eight (8) years protection under MGL Chapter 40A, Section 6, the special permits granted under this section shall lapse within two (2) years (excluding time required to pursue or await the determination of an appeal), from the grant thereof, if a substantial use has not sooner commenced or if the construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.
- 3.11.13.3 The Planning Board may impose other conditions, safeguards, limitation on time and use, as it deems reasonable to achieve the stated purposes of this section.

### **3.11.14 Findings of the Planning Board**

- 3.11.14.1 The Planning Board may grant a special permit under this section only if it finds that the applicant has demonstrated that the SRD plan:
  - 3.11.14.1.1 will be in harmony with the general purpose of this bylaw and the requirements of MGL Chapter 40A, and the Master Plan for the Town of Mattapoisett as it is from time to time adopted.
  - 3.11.14.1.2 will not have a detrimental impact on the neighborhood and reflects due consideration for health and safety,
  - 3.11.14.1.3 is superior to a conventional plan in preserving open space, meeting housing needs and is consistent with the goals of Mattapoisett's Open Space and Recreation Plan as it is from time to time adopted,
  - 3.11.14.1.4 minimizes environmental disruption,
  - 3.11.14.1.5 allows for more efficient provisions of services,
  - 3.11.14.1.6 allows for greater variety in prices or types of housing,
  - 3.11.14.1.7 incorporates high design standards, and
  - 3.11.14.1.8 meets special needs or provides unusual public benefit.
- 3.11.14.2 In connection with issuing or denying a special permit under this section, the Planning Board shall issue to the applicant and shall file with the Town clerk a written decision which shall include:
  - 3.11.14.2.1 A copy of the approved plans,
  - 3.11.14.2.2 A finding that the plan is in harmony with the proposals and intent of the zoning by-law and this section, and
  - 3.11.14.2.3 A list of any conditions imposed by the Planning Board.

### **3.12 Special Dwelling Conversions**

In all zones, on an existing parcel of land with an existing building, the building can be renovated into a multi-family dwelling provided that:

- 3.12.1 the parcel is at least twice the size of the minimum allowed by zoning;
- 3.12.2 the number of units allowed to be constructed would be equal to the number of lots that could be created under the Town's subdivision Rules and Regulations, Zoning By-Law and Board of Health regulations. No bonuses will be allowed.
- 3.12.3 all other standards of this By-law (parking, setbacks, coverage etc. ) are met;
- 3.12.4 the Planning Board acting as a Special Permit Granting Authority (SPGA), issues a special permit, in accordance with Article 7 of this bylaw and the following findings:
  - 3.12.4.1 The use is in harmony with the general purpose and intent of this By-Law;
  - 3.12.4.2 The use will not be detrimental to the general character of the neighborhood and Town; and
  - 3.12.4.3 The use reflects due consideration of health and safety.
- 3.12.5 The Planning Board may impose conditions, safeguards, and limitations, as necessary, including deed restrictions preventing further subdivision of the lot and/or restricting development of the land area that was the basis of the dwelling conversion.

### **3.13 Village Business Development**

Village Business Development is an alternative set of standards for development of property within the Village Business District only. Village Business Development is permitted subject to the requirements of this section. Village Business Development may be constructed only under a special permit granted by the Planning Board acting in accordance with M.G.L. 40A, Section 9 and as hereinafter defined.

#### **3.13.1 Statement of Purpose**

In accordance with the Mattapoisett Master Plan of 2000, this section supports the development of a Village Business District along Route 6 near the traditional village of Mattapoisett in order to promote a more functional and attractive community through the use of recognized principles of urban design. These standards allow increased density and more intensive use of property in order to keep key commercial and civic activities in a central walkable district and to thereby encourage community building activities and interactions. The Village Business Development shall be designed to be consistent with the following overall goals for the Village Business District:

- A variety of land uses including design elements supporting pedestrian and vehicular accessibility. These would include landscaped public spaces directly accessible from the public right of way, appropriate night lighting, sidewalks and landscaped walkways through the parking areas. It shall be a goal to create a pedestrian friendly environment that encourages people to park once and visit multiple businesses.
- A high level of attention to site and building design to promote attractive functional development that is compatible with a mix of uses including residences and offices.
- As much space as possible that encourages interaction among people. This includes public space such as the Post Office, museums, and parks; and equally important private commercial space that is used for recreation, dining, or performance.
- A concentration of small retail stores so that the Mattapoisett residents have a local alternative to making out of town trips.
- A concentration of buildings that encourages walking, and allows multiple revenue generating activities on one lot. This allows desirable businesses to thrive even if not the most lucrative use of the property.
- Appropriate signs and architectural style so that, while styles can differ, no one building or sign can dominate the others and businesses do not have to compete with each other for attention.
- Easy access to, and circulation of cars within, the area requiring minimal use of and turns off of Route 6.
- Affordable housing in otherwise unused or unbuilt second (and third) floor space.

#### **3.13.2 Definition of Village Business Development**

A Village Business Development (VBD) is a development within the Village Business District permitted by special permit in accordance with both the standards outlined below and any regulations promulgated hereunder.

#### **3.13.3 Special Permit Required**

An application for a VBD shall be filed as a special permit application with the Planning Board acting as a Special Permit Granting Authority in accordance with the provisions of Section VII.B.2 of this bylaw (except as noted below), with a copy filed forthwith with the Town Clerk. Given the scope of review hereunder, a VBD shall be exempt from the requirement for a Site Plan Approval Special Permit under Section 3.9 of this by-law. Submissions shall be governed by the zoning requirements for VBD as contained in this bylaw, the Planning Board's Rules and Regulations for the Subdivision of Land (if applicable), and such other regulations, standards and policies as may be adopted and amended by the Planning Board from time to time.

#### **3.13.4 Applications and Procedures**

Said application and plan shall be prepared and processed in accordance with the requirements contained in the Board's Rules and Regulations.

The Planning Board may approve a VBD if it is judged consistent with the Statement of Purpose and deemed an asset to the town. Review of VBD applications shall also be consistent with special permit requirements under Section 7.2.2 of this by-law. The Planning Board is not obligated to approve the special permit.

#### **3.13.5 Site Plans**

A site plan is required which includes elevations from each side, signs including size and mounting height, driveways, walkways, parking, all existing and proposed trees and vegetation, and any other details deemed essential by the Planning Board for a full review of applications. The Planning Board's regulations may set forth additional plan requirements

#### **3.13.6 Density**

Notwithstanding Article 6, the following exceptions are allowed in a VBD:

Total impervious coverage may be a maximum of 80% of the lot.

Street set back is 10 feet to Route 6 and 10 feet from any side street.

There is no minimum side set back unless the property abuts residential property. In this case, setback is 10 feet, or the setback of any existing structure, or the setback granted by an easement from the abutter, whichever is less.

Rear setback is unchanged at 30 feet, but may be reduced to 15 feet in the presence of adequate landscaping or screening.

#### **3.13.7 Streetscape**

Site design should encourage the flow of pedestrians from parking areas to the Route 6 streetscape by optimizing site design opportunities, provide accessibility to all persons (children, pedestrians, handicapped), and make use of urban design amenities. The site design should minimize abrupt grade changes.

The site design should encourage the flow of pedestrians by maximizing side street pedestrian walkways (good crosswalks) at street corners, including the use of traffic calming devices and urban design elements such as bollards, changes in pavement and alignments, and lighting in preference to the use of signage and signals for crossing.

#### **3.13.8 Buildings**

All new buildings must directly front the sidewalk and must provide primary access from the front of the building. In order to visually reinforce the building facade line of the street, at least 50% of the first and second floor street side facade of any new building or of any addition to the front or street side of existing buildings must extend to the Build-To-Line (i.e. the horizontal distance at which the nearest side of the building must be located from the right-of-way, which shall be 10 feet). The remainder of the building facade may be set back from the street side property line to accommodate shop entrances, arcades, plazas, sidewalk cafe's, other approved urban design amenities, or landscaping required pursuant to the provisions of this section and/or the conditions of any special permit granted hereunder.

Marquees, awnings, open-air balconies and colonnades may occur forward of the Build-to-Line but shall not extend past the property line or impede pedestrian flow or vehicular sight lines. On corner lots, no sign or sign structures nor any otherwise allowed design elements shall be located within a clear sight triangle area. This clear sight triangle area is formed by the street right-of-way lines and the line connecting points twenty (20) feet from the intersection of such street right-of-way lines extended.

All new buildings and additions to existing buildings must have usable finished second stories available to sell or rent. Third stories are permitted and may be left unfinished for later use. It is strongly preferred that primary access to the upper stories be from an entryway in the front (Route

6 side) of the building and that this entryway include any lobby area, internal directory, and mail delivery facilities that are provided or required.

### 3.13.9 Architectural Standards

The front facade of the principle building on any lot shall face the street.

The architectural features, materials, and the articulation of the facade of a building must be continued on all sides, unless the Planning Board determines that alternative architectural features are more desirable on the sides. Where feasible, site design features such as paving, plantings, lighting, signage, and site furnishings from the streetscape along Route 6 should also be continued along the sides of buildings and into parking areas.

Buildings are encouraged to realize architectural and site design opportunities to articulate a complementary meeting of building walls to the ground plane.

Buildings or portions of a building mass over 75 feet wide are encouraged to divide their elevations into smaller parts. A pronounced change in massing, pronounced changes in wall planes and introduction of significant variations in the cornice/roof line are all possible methods to accomplish the desired divisions of elevations into smaller parts.

The following elements are prohibited:

- (a) structures which are of symbolic design for reasons of advertising
- (b) high intensity, metallic, or fluorescent colors
- (c) neon tubing, fiber optics, or similar lighting
- (d) high gloss vinyl and plastic awnings
- (e) unpainted or plain/unfinished exterior facades other than natural wood or brick
- (f) smooth faced painted concrete masonry block
- (g) drive through facilities
- (h) storage containers except during construction or as allowed by the Planning Board as a temporary use

### 3.13.10 Parking and Circulation

No parking may be in front of the back plane of the building except for spaces along the side of the building parallel to the side of the building and the direction of flow through any driveways. Parking may be allowed up to the front plane of the building in the case where an existing structure is being rehabilitated.

Notwithstanding parking requirements contained in Article 3, parking requirements may be reduced to these minimums:

- i. each commercial use must provide one parking space for each 500 sq. feet of gross building area.
- ii. each residential unit must provide one parking space
- iii. parking within 300 feet of a building's entrance may be applied toward minimum requirements.
- iv. parking may be located off premises if shared parking between businesses or uses can be demonstrated via long term agreements, leases, and licenses of five years or more and to the satisfaction of the planning board.
- v. these requirements may be further reduced at the discretion of the planning board by up to 50% to account for uses that are complimentary in days and/or hours of operation.

The maximum parking allowed on site is 5 spaces per 1,000 feet of commercial space and 2 spaces per residential unit.

Notwithstanding Section 3.3, a parking space for a VBD must be at least 8 feet wide and 18 feet long (unless state or federal law requires larger dimensions), must be served by a maneuvering lane that is 18 feet wide, and driveways shall have a minimum width of 14 feet.

Connections for both vehicles and pedestrians between adjacent parking areas are encouraged.

Site design should place the highest priority on pedestrians, bicycles, motorized chairs, and push carriages in parking areas. Examples might include:

- site design elements to define pedestrian walkways
- providing principal walks to the front of the building and streets
- providing space for bicycle parking
- traffic calming measures in parking areas
- use of shade trees to cool pavement
- Each parking lot shall provide a bicycle rack

#### 3.13.11 Other restrictions

- In issuing special permits hereunder, Planning Board may impose other conditions, safeguards, or restrictions as it deems reasonable to achieve the stated purposes of this section.

### **Article 4 Establishment of Districts**

#### **4.1 Types**

For the purposes of this By-Law, the Town of Mattapoisett is hereby divided into thirteen (13) classes of districts and three (3) overlay districts:

Residence 80 (R 80)	
Rural Residence 80 (RR 80)	
Rural Residence 45 (RR 45)	Marine Residence (MR 30)
Residence 40 (R 40)	Waterfront 30 (W 30)
Rural Residence 40 (RR 40)	Residence 20 (R 20)
Residence 30 (R 30)	Village Residence (VR 10)
Rural Residence 30 (RR 30)	General Business (GB)
Village Business (VB)	Limited Industry (LI)
Mattapoisett River Aquifer Protection District (MRAPD) Overlay District	
Flood Plain Overlay District	
Telecommunication Facilities Overlay District (TFO)"	

#### **4.2 Location.**

Said Districts are located and are bounded as shown on a map entitled "Zoning Map Town of Mattapoisett, Massachusetts, dated November 1, 1967." as revised, and on file in the office of the Town Clerk. Said Zoning Map with all explanatory matter thereon, is hereby made a part of this By-Law.

Zone boundary lines designated by property lines, street lines, easement lines and river channel lines, without giving dimensions, are the nearest such lines existing when this zone was established.

Zone boundary lines drawn approximately parallel to street lines shall be considered parallel and the given offset dimensions measured at right angles to the street.

Zone boundary lines not otherwise defined shall be determined by the scaled distance from adjacent map features.

The Village Business District is defined as all lots fronting the North and South sides of Route 6 between Tub Mill Brook on the west and a line 2,750 feet from the centerline of the intersection of North Street and Route 6 on the East.

- 4.3 Except as provided in section 7.2 hereof, no building or structure shall be constructed, and no building, structure, or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure, or land is located, or set forth as permissible by special permit in said district and so authorized.

## **Article 5 Use Regulations**

- 5.1 Residence 40, Residence 80 (R 40 & R80), Permitted Uses:
- 5.1.1 Detached one family dwelling with private garage, barn, boathouse, wharves, and other accessory private structures.
- 5.1.2 Renting of rooms for not more than two (2) persons in a dwelling regularly occupied for residential purposes, provided no signs are displayed.
- 5.1.3 Stabling of not more than two (2) riding horses for the personal use of the occupants of the premises, provided that the stable, stablyard and paddock are at least sixty (60) feet from the street and forty-five (45) feet from the side lines of the lot and are adequately screened from the street and adjacent premises and approval of the Board of Health is obtained. One (1) additional horse for each additional 10,000 square feet of area of the lot, over 20,000 square feet, may be stabled, provided approval of the Board of Health and the Board of Appeals in accordance with section 7.2.2 of the Bylaw are obtained. This section applies to Residence R 40 and R 30 exclusively.
- 5.1.4 **Accessory Uses Permitted:**
- 5.1.4.1 Use of a room or rooms in a dwelling or accessory building by resident occupants for the following occupations:  
The professions of medicine, dentistry, law, architecture, interior decorating, accounting, engineering, real estate, and insurance. Further, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law professions other than these but having similar attributes, are permitted.
- 5.1.5 The following uses, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By Law.:
- 5.1.5.1 Religious, educational, civic and municipal use.
- 5.1.5.2 Not more than one (1) guest house provided the lot size for a principal dwelling and one (1) guest house is at least 50,000 square feet.
- 5.1.5.3 Family day care home as defined in G.L. c. 28A s. 9.
- 5.1.5.4 **FAMILY-RELATED APARTMENTS**
- 5.1.5.4.1 Definitions

5.1.5.4.1.1 A “family-related apartment” is a separate housekeeping unit complete with its own sleeping, cooking and sanitary facilities, which is substantially contained within, or added to, the structure of a single-family dwelling.

5.1.5.4.1.2 A “family-related member” is a person related by blood, marriage, or adoption.

5.1.5.4.1.3 A “single family” is one or more persons related by blood, marriage, or adoption, or two persons not so related, living and cooking together as a single housekeeping unit.

#### 5.1.5.4.2 Purpose and Intent

The intent of this section is to permit the creation of family-related apartments for the purpose of providing affordable housing for family-related persons. This By-Law is designed to ensure that in creating a family-related apartment, the single-family character of the owner occupied principal dwelling will be retained and, in addition, it is intended to enable the viability of Mattapoisett’s single family residences to be continued. Also to:

5.1.5.4.2.1 provide an opportunity for family members who choose to live in a close proximity, but separate from other family members, to remain within that family environment.

5.1.5.4.2.2 provide a variety of housing types to meet the changing needs of the community.

5.1.5.4.2.3 protect residential stability, property values and the single family character of the neighborhoods.

5.1.5.4.2.4 to make it possible for the Town of Mattapoisett to supervise and monitor such additions and conversions for code compliance and public safety.

#### 5.1.5.4.3 Permitting Procedures and Conditions

The Board of Appeals may authorize a family-related apartment in any residential or business district, provided that the following standards and criteria are met:

5.1.5.4.3.1 The family-related apartment may be created within a single family residence, subject to the conditions and procedures of this section 5.1.5.4.3 of the by-laws..

5.1.5.4.3.2 Only one family-related apartment may be created within a single family residence.

5.1.5.4.3.3 The family-related apartment shall be designed so that the appearance of the building remains that of a one-family residence. To ascertain this, architectural plans may be required. The family-related apartment may be constructed in or added to an existing or new single-family residence.

5.1.5.4.3.4 The family-related apartment may consist of no more than one living room, one bathroom, one kitchen and one bedroom. Maximum of three occupants shall be allowed.

5.1.5.4.3.5 The family-related apartment shall clearly be a subordinate part of the single-family dwelling in which it is located. It shall contain not more than 500 square feet, including habitable space, closets and storage. Any new entrance to the residence shall be located on the side or rear of the building as long as it meets the requirements of existing codes.

5.1.5.4.3.6 At least three off-street parking spaces shall be available on the premises for use by the residence and the family-related apartment. Only two may be located within the front yard set back. Exception is for dwelling located within the Village Residence (VR 10) zoning district.

5.1.5.4.3.7 The construction of any family-related apartment must be in conformity with all State and local requirements. This includes but is not limited to fire, health, conservation, building and zoning requirements.

5.1.5.4.4 **Application Procedure**

5.1.5.4.4.1 The procedure for application for a special permit authorizing a family-related apartment shall include in addition to any other information, a statement from the owner(s) verified or affirmed under the penalties of perjury, attesting that (s)he/they will occupy the main portion of the residence and that family-related member(s), indicating each family-member by name and relationship, shall occupy the other portion.

5.1.5.4.4.2 Upon receiving a building permit for a family-related apartment, the owner(s) shall execute and record a "Declaration of Covenants" at the Plymouth County Registry of Deeds (or Land Court if applicable) on a form provided by the building inspector which shall provide that the right to use the family-related apartment ceases upon transfer of title. A time stamped copy of the recorded Declaration shall be provided to the Town Clerk, Building Department and the Board of Health, prior to any occupancy of the family-related member..

5.1.5.4.4.3 In order to provide for the development of family-related apartments for disabled and/or handicapped persons, the Board of Appeals may allow reasonable deviation from stated conditions where necessary to install features that facilitate access and mobility for disable persons.

5.1.5.4.5 **Transfer of Ownership of a Dwelling With a Family-Related Apartment**

5.1.5.4.5.1 The authorization for a family-related apartment in a single-family residence shall terminate upon the sale of the property or transfer of title to the dwelling.

5.1.5.4.5.2 The new owner(s) must apply for re-approval to the Board of Appeals for a family-related apartment, stating that the conditions at the time of the original approval remain unchanged.

5.1.5.4.5.3 Upon receipt of the re-approved Special Permit, the new owner(s) must file on the subject property a "Declaration of Covenants" at the Plymouth County Registry of Deeds (or Land Court if applicable) on a form provided by the Building Inspector which shall provide that the right to use the family-related apartment ceases upon transfer of title. A time-stamped copy of the recorded Declaration shall be provided to the Town Clerk, Building Department, and the Board of Health prior to any occupancy of the family related member.

5.1.5.4.6 **Inspections**

5.1.5.4.6.1 The family-related apartment shall be inspected at least once every two years by the Building Department for which there shall be an additional user's fee in the amount stipulated in the fee of the Building Department. Fee is payable at date of inspection.

5.1.5.4.6.2 The Building Department shall maintain a running, up-to-date log of approved and/or inspected family-related apartments.

5.1.5.4.6.3 Failure to pass inspection shall allow the Building Inspector to require removal of cooking, sanitary, sleeping facilities or structural portions previously approved, associated with the addition of the family-related apartment to the single-family residence. The Building Inspector shall further order removal of the cooking, sanitary, and sleeping facilities or structural portions associated with the addition of the family-related apartment when the family-related apartment is no longer in compliance with the section 5.1.5.4 of the by-laws.

5.1.5.4.7 **Penalties**

Any owner of a single-family residence and associated family-related apartment violating any provision of Section .5.1.5.4 shall be liable for a fine of not more than \$200.00 with each day constituting a separate offense.

5.1.6 Agricultural, horticultural and floricultural uses; except that the lot must be used primarily for said agricultural, horticultural and floricultural purposes and no such use will be permitted on a parcel of land less than one (1) acre in size and further, excluding piggeries, mink or fox farms or other obnoxious uses.

5.2 **Residence 30 (R 30), Permitted Uses:**

5.2.1 Any use permitted in Residence 40 (R 40) except that the lot size for a principal dwelling and one (1) guest house shall be at least 40,000 square feet.

5.3 **Residence 20 (R 20), Permitted Uses:**

5.3.1 Any use permitted in Residence 30 (R 30).

5.3.1.1 Land serviced by the Town's common sanitary sewer shall be subject to Zoning District R 20 density regulations pursuant to section 6.5.

5.3.1.2 Land serviced by on site sewerage disposal systems shall be subject to Zoning District R 30 density regulations pursuant to section 6.5.

5.4 **Waterfront 30 (W 30), Permitted Uses:**

5.4.1 Any use permitted in Residence 30 (R 30).

5.4.2 Renting of rooms and furnishing of board for not more than four (4) persons, in a dwelling regularly occupied for residential purposes, provided no signs are displayed.

5.4.3 **Accessory Uses Permitted:**

5.4.3.1 Use of a room or rooms in a dwelling or accessory structure for the following:

5.4.3.1.1 Home occupations conducted by resident occupants such as dressmaking, candy making, teaching of music, dramatics, arts, crafts, academic pursuits, hairdressing, washing or baby sitting.

5.4.3.1.2 Trades conducted by resident occupants such as carpenters, electricians, electronic technicians, plumbers, masons, landscapers, welders, painters, or general contractors.

5.4.3.2 If authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2. of the Zoning By-Law, home occupations, or trades other than those specified in section 5.4.3.1, but having similar attributes.

5.4.4 The following uses, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning ByLaw:

5.4.4.1 A private athletic club, yacht club, or social club not conducted for profit.

- 5.4.4.2 The conversion of a one-family dwelling existing at the adoption of this By-Law into a two-family dwelling on the same lot, provided the lot retains at least 20,000 square feet unoccupied by buildings.
- 5.4.4.3 A hospital, sanitarium, convalescent home, medical clinic or funeral parlor.
- 5.5 **Village Residence (VR 10), Permitted Uses:**
- 5.5.1 Any use permitted in Waterfront 30 (W 30).
- 5.5.2 The following uses, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning ByLaw.
  - 5.5.2.1 Inns on North side of Water Street only.
  - 5.5.2.2 Multi-family dwellings of no more than four dwelling units and no more than two and one-half stories in height, provided the lot retains at least 40,000 square feet unoccupied by buildings.
  - 5.5.2.3 The conversion of a one-family dwelling existing at the time of adoption of this By-Law into a two-family dwelling on the same lot, provided there are no additions to the dwelling and that the alteration preserves the character of the dwelling. Further, provided that the land is serviced by the Town's common sanitary sewer.
- 5.6 **Marine Residence (MR), Permitted Uses:**
- 5.6.1 Any use permitted in Waterfront 30 (W 30).
- 5.6.2 The following uses, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law.
  - 5.6.2.1 **Inns and hotels.**
  - 5.6.2.2 Marinas with associated accessory services, provided these are not detrimental to the surrounding area.
- 5.7 **Rural Residence 30 , 40 ,45 and 80 (RR 30, RR 40, RR 45 & RR 80), Permitted Uses:**
- 5.7.1 Any use permitted in Waterfront 30 (W 30).
- 5.7.2 All agricultural, horticultural and floricultural uses, including the breeding and keeping of dairy animals and horses but excluding piggeries, mink or fox farms or other obnoxious uses, except as authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law.
- 5.7.3 Roadside stands, owned and operated by a resident for the sale of produce at least 75% of which is grown in Town.
- 5.7.4 Public access and private golf courses with 9 or 18 regulation length golf holes located on a parcel or parcels of land containing not less than 75 acres, such golf courses to include any other facilities normally associated with a 9-hole or 18-hole golf course, with such associated facilities subject to a Special Permit granted by the Board of Appeals pursuant to section 7.2.2. of the Zoning By-Law.

**5.8 General Business (GB), Permitted Uses and Exceptional Uses:**

- 5.8.1 Structures or premises may be used for one or more of the following permitted uses:
  - 5.8.1.1 Uses permitted in any residential district except multi-family which only will be allowed following the issuance of a special permit by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law and the standard provided in this paragraph a. The density of multi-family housing on Route 6 shall not exceed that of the nearest adjoining residential district except where such units may be served by public sewers. Where multi-family units are served by public sewers, the density shall not exceed three (3) units per acre. The following standards shall apply to multifamily development except where the Board of Appeals, in a special permit procedure, determines that substantial increases in building setbacks are necessary to remove the housing from the noise and activity of Route 6.
    - 5.8.1.1.1 In determining whether the multifamily density rate has been complied with, all land in the development lot or parcel not reasonably suited for residential development, such as wetlands, shall be excluded.
    - 5.8.1.1.2 The minimum lot size and dimensional requirements of section 6.5.
    - 5.8.1.1.3 Maximum lot coverage; forty (40) percent to include the gross ground floor area of all buildings and parking areas.
    - 5.8.1.1.4 Minimum usable open space: there shall be provided for each lot or building site area a minimum usable open space of not less than forty (40) percent of the lot area. Usable open space shall include all the lot area not covered by buildings, accessory buildings and/or structures, or surface parking areas. The area devoted to lawns, landscaping, walks, roadways, drives and exterior recreation areas shall be included in usable open space.
  - 5.8.1.2 Professional offices, and personal service agencies.
  - 5.8.1.3 Home Based Businesses and Retail Structures with a gross floor area of 2,000 feet or less
    - 5.8.1.3.1 that sell, display and store all goods for sale inside a fully-enclosed building on a lot, or
    - 5.8.1.3.2 that sell, display and store goods for sale inside a fully-enclosed building on a lot and display goods for sale on the lot outside the building only during regular business hours, such goods being displayed or stored inside a building at all other times, or
    - 5.8.1.3.3 that sell, display and store goods for sale inside a fully-enclosed building on a lot and display or store during and beyond regular business hours only trees, shrubs, plants, flowers, wreaths, greenery and similar goods for sale on the lot outside the building.
  - 5.8.1.4 Restaurants, as defined in G.L. c. 138, s. 1, not including fast-food restaurants or restaurants having fast-food functions, that is, restaurants that serve food to customers occupying motor vehicles located on the premises.
  - 5.8.1.5 Drive thru facilities are not permitted in the General Business district.
- 5.8.2 Structures or premises may be used for other business uses not permitted as of right under subsections 5.8.1.1 – 5.8.1.4, above, except for junkyards, as defined in G.L. c. 140B, sec 1, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law."

**5.9 Limited Industry (LI), Permitted Uses:**

- 5.9.1 Any use permitted in any District except residential uses.
- 5.9.2 The following uses provided that such use will not be detrimental, dangerous or obnoxious to adjoining areas:
  - 5.9.2.1 Warehousing, storage and/or sale of equipment, materials or fuel oil.
  - 5.9.2.2 Product fabrication or assembly of parts.
  - 5.9.2.3 Research laboratories and small component manufacturers.
  - 5.9.2.4 Clerical, statistical and construction service offices.
  - 5.9.2.5 Publishing and printing businesses.
  - 5.9.2.6 Food processing and packaging.
  - 5.9.2.7 Marine industry.
- 5.9.3 Adult Live Entertainment Establishment, Adult Theater and/or Sexually Oriented Business, as defined in Article 2 – Definitions if authorized by a Special Permit granted by the Board of Appeals pursuant to Article 7-Section 7.2.2 of the Zoning By-Law. Each application for such a Special Permit shall be made by the owners of the property at which the business will be located and shall include the following:
  - 5.9.3.1 The name of the proposed business, a copy of any lease for the business premises, a detailed description of the type of business for which the special permit is sought, and the proposed days and hours of operation.
  - 5.9.3.2 The name and address of each person who has or will have a legal or beneficial interest in the business. If a corporation has such a legal or beneficial interest, the application shall include the names and addresses of the officers and directors and, if such corporation is not publicly owned, the names of the stockholders. If a partnership has such a legal or beneficial interest, the application shall include the names and addresses of all general and limited partners and all persons with a beneficial interest in the partnership.
  - 5.9.3.3 The name and address of each person who will have management responsibility for the proposed business and specification of the days and times at which each such person will be present at the business premises. The application shall include the names and addresses of each person with management responsibility who shall be authorized and available to respond promptly to complaints at any time when a manager is not present at the business premises and shall specify how each such person can be contacted without delay at any such time.
  - 5.9.3.4 A certification that none of the persons named in the previous two subparagraphs has ever been convicted of violating the provisions of G.L. chapter 119, §63 or G.L. chapter 272, §28.

- 5.9.3.5 A plan to scale showing the lot on which the proposed business will be located, including all buildings, designation of parking spaces to be used by the proposed business, driveways, abutting streets and lots and any proposed landscaping; a floor plan to scale showing the proposed layout of the business premises; and exterior elevations to scale showing the proposed exterior appearance of the business premises, including each proposed sign and its content and the treatment of doors and windows.
- 5.9.3.6 A traffic study reliably determining the effect on traffic, which is likely to be caused by the proposed business, and setting out all measures proposed to be taken to mitigate any adverse traffic impact. The traffic study shall reliably determine the parking needs of the proposed business and shall specify how these needs will be met without adverse impact on other businesses.
- 5.9.3.7 Specification of the number of employees to be employed by the proposed business and the hours during which they are expected to work.
- 5.9.3.8 A proposed security plan ensuring that minors shall in no event be exposed to sexually explicit material or performances except as authorized by law.
- 5.9.3.9 A proposed plan for ensuring that the stock in trade of the business or any performances presented shall include no obscene material.
- 5.9.3.10 If an application seeks a renewal special permit, it shall contain a certification that there has been compliance with the terms and conditions of the special permit for which renewal is sought.
- 5.9.4 The Board of Appeals shall promulgate rules governing the issuance of special permits for such Adult Live Entertainment Establishments, Adult theater, and/or Sexually Oriented Businesses and shall file a rules in the Office of the Town Clerk, as required by G.L. chapter 40A, § 9A.
- 5.9.5 In considering whether to grant a special permit for an Adult Live Entertainment Establishment, Adult Theater, or Sexually Oriented Business, the Board of Appeals shall apply its guidelines and rules as it has established them, except that the Board of Appeals shall not grant such a special permit unless the proposed use complies with the following requirements:
  - 5.9.5.1 An application containing inaccurate or incomplete information shall be cause for denying a special permit. If a special permit is issued and information in the application is later discovered to be false, this shall be cause for revoking the special permit. In determining whether to issue a special permit and in specifying conditions, limitations and safeguards, the Board of appeals shall consider the information in the application and other relevant information presented to it. An application for a renewed special permit shall be determined in the same manner as the original application except that failure to comply with the conditions, limitations and safeguards of an original special permit shall be cause for denial of a renewed special permit, as well as cause for revoking the original special permit. Any special permit issued under this paragraph shall be for a term specified by the Board of Appeals not to exceed two (2) years;
  - 5.9.5.2 A maximum lot coverage of less than 50 percent (50%) is required. Parking and driveway areas shall be included in the calculation of the lot coverage.
  - 5.9.5.3 An eight hundred (800) foot minimum setback is required from existing educational uses, public parks, public recreational facilities, and religious uses. A two hundred (200) foot minimum setback is required from existing residential uses.
  - 5.9.5.4 A five hundred (500) foot minimum setback is required from any establishment licensed under the provisions of G.L. chapter 138, § 12.
  - 5.9.5.5 A vegetative buffer consisting of evergreen shrubs or trees not less than five (5) feet in height at the time of planting, shall be provided between adult uses and abutting residential districts.

- 5.9.5.6 At a minimum, a twenty (20) foot wide landscaping buffer shall be provided along the side and rear property lines of the use authorized pursuant to this section, consisting of evergreen shrubs or trees not less than five (5) feet in height at the time of planting.
- 5.9.5.7 All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- 5.10 **Village Business District, Permitted Uses**
- 5.10.1 Structures or premises may be used for one or more of the following permitted uses:
- 5.10.1.1 Uses permitted in any residential district except multi-family which only will be allowed following the issuance of a special permit by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law and the standard provided in this paragraph a. The density of multi-family housing on Route 6 shall not exceed that of the nearest adjoining residential district except where such units may be served by public sewers. Where multi-family units are served by public sewers, the density shall not exceed three (3) units per acre. The following standards shall apply to multifamily development except where the Board of Appeals, in a special permit procedure, determines that substantial increases in building setbacks are necessary to remove the housing from the noise and activity of Route 6.
- 5.10.1.1.1 In determining whether the multifamily density rate has been complied with, all land in the development lot or parcel not reasonably suited for residential development, such as wetlands, shall be excluded.
- 5.10.1.1.2 The minimum lot size and dimensional requirements of section 6.5.
- 5.10.1.1.3 Maximum lot coverage; forty (40) percent to include the gross ground floor area of all buildings and parking areas.
- 5.10.1.1.4 Minimum usable open space: there shall be provided for each lot or building site area a minimum usable open space of not less than forty (40) percent of the lot area. Usable open space shall include all the lot area not covered by buildings, accessory buildings and/or structures, or surface parking areas. The area devoted to lawns, landscaping, walks, roadways, drives and exterior recreation areas shall be included in usable open space.
- 5.10.1.2 Professional offices, and personal service agencies.
- 5.10.1.3 Retail Establishments
- 5.10.1.3.1 with 2<sup>nd</sup> or 3<sup>rd</sup> floor residential housing above commercial space
- 5.10.1.3.2 that sell, display and store all goods for sale inside a fully-enclosed building on a lot, or
- 5.10.1.3.3 that sell, display and store goods for sale inside a fully-enclosed building on a lot and display goods for sale on the lot outside the building only during regular business hours, such goods being displayed or stored inside a building at all other times, or
- 5.10.1.3.4 that sell, display and store goods for sale inside a fully-enclosed building on a lot and display or store during and beyond regular business hours only trees, shrubs, plants, flowers, wreaths, greenery and similar goods for sale on the lot outside the building.
- 5.10.1.4 Restaurants, as defined in G.L. c. 138, s. 1, not including fast-food restaurants or restaurants having fast-food functions, that is, restaurants that serve food to customers occupying motor vehicles located on the premises.
- 5.10.1.5 Drive thru facilities are not permitted in the General Business district.

- 5.10.2 Structures or premises may be used for other business uses not permitted as of right under subsections 5.8.1.1 – 5.8.1.4, above, except for junkyards, as defined in G.L. c. 140B, sec 1, if authorized by a Special Permit granted by the Board of Appeals pursuant to section 7.2.2 of the Zoning By-Law."

## **Article 6 Density Regulations**

- 6.1 In Business and Limited Industrial District, multiple units may be constructed not more than 300 feet long. No structure or structures shall cover more than 25% of the lot. Except in the Limited Industry District, no structure or structures shall cover more than 50% of the lot. An existing single lot having at least 100 foot frontage may be built upon.
- 6.2 **Residential Districts:**
- 6.2.1 Exceptions as to existing lots as provided in Section 6 of Chapter 40A of the General Laws of Massachusetts.
- 6.2.2 Special Permits may be granted by the Board of Appeals as provided by section 7.2.2 for the erection of a structure upon a lot or lots, although containing less area or less frontage than is hereby prescribed provided that surrounding areas have been previously developed by the construction of structures on lots generally smaller than is prescribed by this By-Law and the standard of the neighborhood so established does not reasonably require a subdivision of the applicant's land into lots as large as is hereby prescribed; or that lots as is hereby prescribed would not be readily saleable and could not be economically or advantageously used for building purposes because of the proximity of the land to through ways bearing heavy traffic, or to a railroad or because of other physical conditions or characteristics affecting it.
- 6.3 **In all Districts:**
- 6.3.1 No structure need be setback from the street right-of-way line more than the average of the set-backs of the building or lot next thereto within 250 feet on each side; except in Business Districts on Route 6, where the minimum set-back from Route 6 shall be 65 feet. On all streets entering Route 6 in Business Districts, the minimum set-back shall be 50 feet for a distance of 150 feet from the right-of-way line of Route 6.
- 6.3.2 No structure of 150 square feet or less of floor area need be set-back from the rear or side property lines more than five (5) feet.
- 6.3.3 No structure shall be over thirty-five (35) feet high, exclusive of chimneys, spires, antennae or other accessory features. Windpower Generator Systems authorized by section 3.7 of this By-law are exempt from this prohibition. Height shall be measured from the average finish grade level adjoining the building at all exterior walls.
- 6.3.4 The Board of Appeals may grant Special Permits under section 7.2.2 for exceptions to section 6.5 of the Zoning By-Law in cases where the zoning map has divided the lot into two (2) different zoning districts or placed a residential lot in a business district.
- 6.3.5 Except as otherwise expressly provided herein, setbacks are to be measured from the street right of way or property line to the closest extension or protrusion of any structure, including, without implied limitation, eaves, steps, decks, bulkheads, chimneys or bay windows.
- 6.4 Frontage is defined as the boundary between the lot and the abutting street line, located between two side lot lines or, in the case of a lot abutting two or more intersecting streets (corner lot), such lot shall be required to have applicable minimum legal frontage on only one such street, which shall be measured from the intersection of one sideline to the intersection of street lines or to the middle of the corner rounding curve connecting such street lines, said lot is also required to maintain front yard setback lines from the street the lot abuts

- 6.4.1 Lot Shape - Said lot must be capable of containing a circle whose diameter must be at least 80% of the required frontage and said circle must touch the frontage at a single point.
- 6.4.2 Any new driveway and vehicle access must be approved by the Planning Board with review by the Mattapoisett Highway department
- 6.5 Any structure hereafter erected in any District shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one (1) dwelling shall be located upon such a lot, except that a "guest house" is not classified as a dwelling for this purpose. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below:

District	Lot <u>Sq.Ft.Feet</u>	Frontage	Set-Back <u>Street*</u>	Set-Back <u>Rear</u>	Set-Back <u>Side</u>
R 80	80,000	150	50	40	30
RR 80	80,000	150	50	40	30
RR 45	45,000	150	50	40	30
R 40	40,000	150	50	40	30
RR 40	40,000	150	50	40	30
R 30	30,000	150	50	40	30
RR 30	30,000	150	50	40	30
W 30	30,000	125	35	30	20
MR 30	30,000	125	35	30	20
R 20	20,000	125	35	30	20
VR 10	10,000	100	25	30	10
GB		150	65	30	20
LI		200	75	50	50

Except that any dwelling existing on April 3, 1973 may be added to or accessories built and said dwelling shall continue to be governed by the density regulations applicable to said dwelling on April 3, 1973, without increasing the number of dwelling units contained therein.

\*Measured from the street right-of-way line

- 6.6. The inspector of buildings may, without permission from the Board of Appeals, issue a building permit for alteration, addition or extension of an existing lawfully non-conforming single-family or two-family residential structure, if the alteration, addition or extension complies with height requirements of these By-Laws, and meets the setback provisions of the Zoning District in which it is located or, in the case of a residence existing on April 3, 1973, the setback provisions applicable thereto on April 3, 1973.

**Article 7 -- Administration**

**7.1 Enforcement.**

- 7.1.1 This By-Law shall be enforced by the Selectmen or their agent. In addition to any method of enforcement of this By-Law provided under Chapter 40A of the General Laws of Massachusetts and amendments thereof, any person violating any of the provisions of this By-Law may be fined not more than one hundred (100) dollars for each offense. Each day said violation continues, after notification thereof in writing, shall constitute a separate offense.

- 7.2 **Board of Appeals or other Permit Granting Authority.** There is hereby established a Board of Appeals of five (5) members and five (5) associate members to be appointed by the Selectmen, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this By-Law in the manner described in Chapter 40A of the General Laws. The Board of Appeals or other Permit Granting Authority shall have the following powers.

- 7.2.1 Appeals. To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A, General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings or other administrative official in violation of any provision of Chapter 40A, General Laws, or of this By-Law.
- 7.2.2 Special Permits. To grant in accordance with General Laws, Chapter 40A, Section 9 a Special Permit for an exception as provided by sections of this By-Law when it shall have found that the use involved is in harmony with the general purpose and intent of this By-Law and will not be detrimental to the established and future character of the neighborhood and Town and subject to appropriate conditions or safeguards as deemed necessary. Any special permit granted by the Board of Appeals under the Zoning By-Law shall lapse within two (2) years, which shall not include such time as is required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not begun by such date except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date except for good cause.
- 7.2.2.1 Within five (5) working days after receipt of an application for special permit, the special permit granting authority shall transmit copies thereof, together with copies of the accompanying plans, to the Planning Board (when it is not the special permit granting authority), the Conservation Commission, and the Board of Health, and such other municipal boards, agencies or officials as the special permit granting authority may designate by rule or regulation. All such boards or officials may investigate the application and report in writing their recommendations to the issuing special permit granting authority.
- The special permit granting authority shall not take final action on such application until it has received a report thereon from any of the boards listed above or until said boards have allowed thirty (30) days to elapse after the initial filing of such application without submission of a report. Failure to file a report shall be interpreted as non-opposition to the application.
- 7.2.2.2 Special permits shall be granted only upon the special permit granting authority's written determination that the proposal's benefits to the Town will outweigh any adverse effects on the Town or the vicinity in view of the particular characteristics of the site and of the proposal in relation to the site. The determination shall indicate consideration of the following:
- 7.2.2.2.1 Social, economic, or community needs which are served.
- 7.2.2.2.2 Preservation of scenic vistas and public access to the shoreline where applicable.
- 7.2.2.2.3 Traffic flow and safety with special consideration of peak summer period congestion.
- 7.2.2.2.4 Impact on nearby uses and whether they would be supported or damaged under the proposal.
- 7.2.2.2.5 Adequacy of roads, drainage and other public services in relation to the location.
- 7.2.2.2.6 Impacts on the natural environment including, but not limited to, consideration of erosion, siltation, potential groundwater or surface water contamination, habitat disturbance or loss of natural vegetation.
- 7.2.2.2.7 Potential demands on community facilities and services.
- 7.2.3 Variances. To authorize in accordance with General Laws, Chapter 40A, Section 10, upon appeal, or upon petition with respect to a particular parcel of land or to an existing structure thereon, a variance from the terms of this By-Law, including the restrictions governing use of any such parcel or structure, where the Board of Appeals specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, a literal

enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or By-Law.

7.3 **Amendment.**

This By-Law may be amended from time to time at an annual or special town meeting in accordance with the provisions of Section 5 of Chapter 40A.

7.4 **Validity.**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.

**Article 8 -- Regulation of Flood Hazard Areas**

8.1 **Statement of Purpose**

It is the purpose of this By-Law to promote the public health, safety and general welfare and to minimize losses by provisions designated to:

8.1.1 Restrict or prohibit uses which are dangerous to health, safety or property due to water or erosion hazards or which cause damaging increases in erosion or in flood heights or velocities.

8.1.2 Require that uses vulnerable to floods, including facilities which serve such uses be protected against flood damage at the time of initial construction.

8.1.3 Discourage individuals from buying lands which are unsuited for intended purposes because of flood hazard.

8.1.4 Control the alteration of dunes and other natural protective barriers.

8.1.5 Control filling, grading, and mineral extraction which may increase flood damage.

8.1.6 Regulate the construction of seawalls, bulkheads, groins, jetties, and other works which may increase flood damage to other lands.

8.2 **LANDS TO WHICH BY-LAW APPLIES AND ESTABLISHMENT OF REGULATORY FLOOD PROTECTION ELEVATION**

8.2.1 This By-Law shall apply to all lands within the jurisdiction of Mattapoisett shown on the National Flood Insurance Program "Flood Insurance Rate Map (FIRM) Town of Mattapoisett, Massachusetts Plymouth County Effective Date September 30, 1995" as being located within the boundaries of the Special Hazard Area (Zone A1 - 30 and/or AE, AH, AO, A99 and A; V1 - 30, VE and V).

8.2.2 **Establishment of Official Flood Plain Zoning Map.**

The Flood Plain District is herein established as an overlay district. The underlying permitted uses are allowed, provided they meet the following additional requirements, as well as those of

the Massachusetts State Building Code dealing with construction of flood plains and coastal high hazards.

The Flood Plain District includes all special flood hazard areas designated as Zone A1 - 30 and/or AE, AH, AO, A99 and A; V1 - 30, VE and V on the Mattapoisett Flood Insurance Map (FIRM), Effective Date: September 30, 1995, on file with the Town Clerk, Planning Board and Building Inspector, said map hereinafter referred to as the Flood Insurance Rate Map.

### 8.2.3 **Rules for interpretation of District Boundaries.**

The boundaries of the Flood Plain District shall be determined by scaling distances on the Flood Insurance Rate Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Flood Insurance Rate Map (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Board of Appeals shall make the necessary interpretation. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

### 8.2.4 **Compliance.**

No structure or land in the Flood Plain District shall be used and no structure shall be built, located on, extended, converted or structurally altered without full compliance with the terms of this By-Law, the Massachusetts State Building Code, the Federal Register Federal Emergency Management Agency 44 CFR Ch. 1, Section 60.3(e) as amended from time to time and other applicable regulation.

### 8.2.5 **Abrogation and Greater Restrictions.**

It is not intended by this By-Law to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this By-Law imposes greater restrictions, the provisions of this By-Law shall prevail.

### 8.2.6 **Warning and Disclaimer of Liability.**

The degree of flood and erosion protection required by this By-Law is considered reasonable for regulatory purposes and is based on scientific methods of study. Larger floods may occur. This By-Law does not imply that areas outside the Flood Hazard District boundaries or land uses permitted within such districts will be free from flooding or flood damages. This By-Law shall not create liability on the part of the Town of Mattapoisett or any officer or employee thereof for any flood damages that result from reliance on this By-Law or any administrative decision lawfully made thereunder.

### 8.2.7 **Severability.**

If any section, clause, provision or portion of this By-Law is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this By-Law shall not be affected thereby.

### 8.2.8 The Regulatory Flood Protection Elevation for Mattapoisett shall be as indicated on the Flood Insurance Rate Map.

Located within the Flood Plain District are areas designated as coastal high hazard areas (Zone V1 - 30, VE and V). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provision shall apply:

#### 8.2.8.1 All new construction shall be located landward of the reach of the mean high tide.

### 8.3 ESTABLISHMENT OF ZONING DISTRICT

The flood hazard area within the jurisdiction of this By-Law is Special Hazard Area (Zone A1 - 30 and/or AE, AH, AO, A99 and A; V1 - 30, VE and V). The boundaries of these districts are shown on the Flood Insurance Rate Map which is hereby incorporated by reference. Within these districts, all uses not allowed as Permitted Uses or Special Exceptions shall be prohibited; except as may be permitted by a Variance from these By-Laws by the Board of Appeals.

### 8.4 PERMITTED USES.

The following uses which have low flood damage potential and do not threaten other lands during times of flood shall be permitted within the Special Hazard Areas (Zone A1 - 30 and/or AE, AH, AO, A99 and A; V1 - 30, VE and V) provided they are not prohibited by any other zoning regulations or other By-Laws and do not require storage of materials, structures, flood control works, substantial filling or grading, or disturbance of dunes or beaches. But no use shall be permitted which adversely affects the capacity of the channels or floodways of streams, drainage ditches, or any other drainage facility or system.

- 8.4.1 Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- 8.4.2 Industrial - commercial uses such as loading areas and parking areas.
- 8.4.3 Municipal uses such as water works, pumping stations and other essential services, private and public recreational uses such as beaches, beach cabanas not suitable for use as dwellings, boardwalks and steps to permit access across dunes and beaches, pavilions and other similar small platforms, lifeguard stations, golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails, temporary structures for sale of food and refreshments, arts and crafts.
- 8.4.4 Residential uses such as lawns, gardens, parking areas, and structures for storage not designed for human habitation.
- 8.4.5 Residential dwellings constructed in accordance with applicable building codes including Flood Proofing Regulations.

## **Article 9 - Mattapoissett River Aquifer Protection District**

### 9.1 Establishment of Overlay District

There is hereby established the Mattapoissett River Aquifer Projection District which is delineated on an overlay map entitled "Mattapoissett River Aquifer Protection District, Town of Mattapoissett" dated March 1, 1990 Revised January 2, 1991. The Map is hereby made a part of this By-Law and is on file in the Office of the Town Clerk.

Except as specifically provided otherwise, this Section applies to the Mattapoissett River Aquifer Protection District. All uses, dimensional requirements, and other provisions of the By-Law applicable to such underlying districts shall remain in force and effect, except where greater or additional restrictions and requirements of this Section shall prevail.

## 9.2 Permitted Uses

Within the Mattapoisett River Aquifer Protection District, the following uses are permitted subject to the provisions of section 9.4 provided that all necessary permits, orders and approvals required by local, state and federal law also are obtained:

- 9.2.1 Conservation of soil, water plants and wildlife;
- 9.2.2 Outdoor recreation not involving the use of motor vehicles or motor boats, including boating, fishing, nature study, and hunting where otherwise legally permitted;
- 9.2.3 Foot, bicycle and horse paths and bridges;
- 9.2.4 Maintenance, repair or alteration of any existing structure, provided that no more than fifteen (15) percent of the lot size, or 2500 square feet, whichever is greater, is thereby rendered impervious;
- 9.2.5 Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- 9.2.6 Single family residential development permitted in the underlying district, provided that no more than fifteen (15) percent of the lot size, or 2500 square feet, whichever is greater, is thereby rendered impervious;

## 9.3 Prohibited Uses

- 9.3.1 Storage of liquid petroleum products of any kind except the following:
  - 9.3.1.1 normal household use, outdoor maintenance and heating of a structure;
  - 9.3.1.2 waste oil facilities required by statute, rule or regulation;
  - 9.3.1.3 emergency generators required by statute, rule or regulation;
  - 9.3.1.4 treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters; provided that storage, as listed in items 9.3.1.1 through 9.3.1.4 above, in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the containers' total storage capacity.
- 9.3.2 Facilities that generate, treat, store or dispose of hazardous waste, subject to G. L. c.21C, as amended, and 310 CMR 30.00, except the following:
  - 9.3.2.1 very small quantity generators as defined under 310 CMR 30.00;
  - 9.3.2.2 household hazardous waste collection centers and events under 310 CMR 30.390;
  - 9.3.2.3 waste oil retention facilities as required by G. L. c. 21, § 52A;
  - 9.3.2.4 water remediation treatment works as approved under 314 CMR 5.00.
- 9.3.3 Storage of hazardous materials as defined in G. L. c. 21E, unless such storage is in either a free-standing container within a building or in a free-standing container above ground level with protection adequate to contain a spill the size of the container's storage capacity;
- 9.3.4 Landfills and open dumps as defined in 310 CMR 19.006;
- 9.3.5 Junkyards and automobile graveyards as defined in G. L. c. 140B, § 1;

- 9.3.6 Landfilling of septage and sludge as defined in 310 CMR 32.05;
- 9.3.7 Storage of septage and sludge unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- 9.3.8 Disposal of solid wastes other than brush or stumps;
- 9.3.9 Storage of road salt and other materials;
- 9.3.10 Disposal of snow that contains deicing chemicals and that has been brought in from outside of the District;
- 9.3.11 Industrial uses which discharge process water on the site;
- 9.3.12 Outdoor storage of fertilizers, herbicides and pesticides, and outdoor uncovered storage of manure, or indoor storage of any such materials without the provision of an adequate impervious layer so as to prevent release above or below ground;
- 9.3.13 Dry cleaning establishments;
- 9.3.14 Metal plating establishments;
- 9.3.15 Boat and motor vehicle service, repair and washing establishments;
- 9.3.16 The rendering impervious of more than fifteen (15) percent of the size, or 2500 square feet, whichever is greater, of any lot, unless an artificial recharge system for excess runoff, which will not degrade ground water quality, is provided.
- 9.3.17 Mining of land within four (4) feet of the historic high ground water table elevations, except for foundations and utility works;
- 9.3.18 Individual sewage disposal systems that are designated in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design;
- 9.3.19 Treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
  - 9.3.19.1 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;
  - 9.3.19.2 The replacement of existing subsurface sewage disposal system (s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system (s);
  - 9.3.19.3 Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contamination groundwater.

#### 9.4 **Uses by Special Permit**

The following uses, unless prohibited by a specific provision of section 9.3, may be permitted upon the issuance of a special permit by the Board of Appeals:

- 9.4.1 Multi-family uses if allowed in an underlying district, provided that the maximum density in any unsewered area shall not exceed one (1) dwelling unit per 40,000 square feet.;
- 9.4.2 Commercial uses allowed in the underlying district;

- 9.4.3 Public facilities owned or operated by the Town of Mattapoisett.

## **Article 10 Telecommunications Facilities Overlay District**

### **10.1 Establishment of Overlay District**

There is hereby established the Telecommunications Facilities Overlay District which shall consist of an area parallel to and encompassing I 195 from Fairhaven to Marion on the north side of I 195 and from Fairhaven to the easterly line of Acushnet Road and from the easterly line of Industrial Drive to Marion on the south side of I 195, for a distance of seven hundred fifty feet (750') north and south of the centerline of I 195 and perpendicular to the centerline of the layout.

The Telecommunications Facilities Overlay District pertains to ground mounted self-supporting towers only.

Except as specifically provided otherwise, this Section applies to the Telecommunications Facilities Overlay District. All uses, dimensional requirements, and other provisions of the By-Law applicable to such underlying district shall remain in force and effect, except where greater or additional restrictions and requirements of this Section shall prevail.

### **10.2 Purpose**

The Telecommunications Facilities Overlay District is established for the purpose of permitting wireless communications towers and related facilities in specific areas of Mattapoisett, in order to minimize visual impacts from such towers and facilities on the Town's rural, residential and village areas.

### **10.3 Definitions**

- 10.3.1 Above Ground Level (AGL). A measurement of height from the natural grade of a site to the highest point of a structure.
- 10.3.2 Antenna. The surface from which wireless radio signals are sent and received by a personal wireless service facility.
- 10.3.3 Camouflaged. A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure if considered "camouflaged".
- 10.3.4 Carrier. A company that provides wireless services.
- 10.3.5 Co-Location. The use of a single mount on the ground by more than one carrier(vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.
- 10.3.6 Cross-Polarized (Or Dual-Polarized ) Antenna. A low mount that has three panels flush mounted or attached very close to the shaft.
- 10.3.7 Elevation. The measurement of height above sea level.
- 10.3.8 Environmental Assessment (EA). An EA is the document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
- 10.3.9 Equipment Shelter. An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

- 10.3.10 Fall Zone. The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- 10.3.11 Functionally Equivalent Services. Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
- 10.3.12 Guyed Tower. A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- 10.3.13 Lattice Tower. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- 10.3.14 Licensed Carrier . A company authorized by the FCC to construct and operate a commercial mobile radio service system
- 10.3.15 Monopole. The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.
- 10.3.16 Mount. The structure or surface upon which antennas are mounted, including the following four types of mounts:
  - 10.3.16.1 Roof-mounted. Mounted on the roof of a building.
  - 10.3.16.2 Side-mounted. Mounted on the side of a building.
  - 10.3.16.3 Ground-mounted. Mounted on the ground.
  - 10.3.16.4 Structure-mounted. Mounted on a structure other than a building.
- 10.3.17 Omnidirectional (Whip) Antenna. A thin rod that beams and receives a signal in all directions.
- 10.3.18 Personal Wireless Service Facility. Facility for the provision of personal wireless services, as defined by the Telecommunications Act.
- 10.3.19 Personal Wireless Services. The three types of services regulated by the By-law.
- 10.3.20 Radiofrequency (RF) Engineer. An engineer specializing in electrical or microwave engineering, especially the study of radiofrequencies.
- 10.3.21 Radiofrequency Radiation (RFR). The emissions from personal wireless service facilities.
- 10.3.22 Security Barrier. A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.
- 10.3.23 Separation. The distance between one carrier's array of antennas and other carrier's array.

10.4 **General Requirements**

10.4.1 **Submittal Requirements**

Each application for a special permit for a wireless communications tower or other exterior wireless communications facility shall be filed with the Planning Board who is the Special Permit Granting Authority (SPGA) in accordance with the provisions of Section VII.B.2, with a copy filed forthwith with the Town Clerk, and shall be accompanied by seven (7) copies of a site plan

prepared by a professional engineer or land surveyor registered to do business in the Commonwealth of Massachusetts, which shall show the following at minimum:

- 10.4.1.1 Ownership, zoning, use, the general location of structures and topography within two hundred feet of the property line of the site; and
- 10.4.1.2 All major site features; including but not limited to:
  - 10.4.1.2.1 Driveways, including widths;
  - 10.4.1.2.2 Parking areas;
  - 10.4.1.2.3 Street line, including width;
  - 10.4.1.2.4 Roadways, including widths;
  - 10.4.1.2.5 Pedestrian walks, including widths;
  - 10.4.1.2.6 Wetlands;
  - 10.4.1.2.7 Drainage, including detail design data, pipe sizing, etc.; and
  - 10.4.1.2.8 Stone walls.
- 10.4.2 The applicant shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures.

## 10.5 **Standard For Towers**

- 10.5.1 Construction of wireless communication towers shall be subject to all of the following conditions:
  - 10.5.1.1 Only self supporting towers shall be permitted. Guyed towers are specifically prohibited.
  - 10.5.1.2 Tower height shall not exceed 190 feet above existing terrain.
  - 10.5.1.3 A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower plus 20 feet (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base.
  - 10.5.1.4. A tower shall be set back from any public way, except Interstate highways, and Industrial Drive, a distance at least equal to three times the vertical height of the tower, measured at the mean finished grade of the tower base.
  - 10.5.1.5 Towers shall be designed to accommodate facilities for at least three separate carriers, and the owners shall allow co-location by such carriers, on terms and conditions prevailing in the marketplace. The applicant shall submit analysis of existing tower capacities and use or other evidence of the need for additional locations.
  - 10.5.1.6 Towers shall not include facilities for microwave transmission.
  - 10.5.1.7 All network interconnections from the communications site shall be via land lines.
  - 10.5.1.8 One telecommunications facility accessory building, not to exceed in the aggregate 300 square feet gross floor area per carrier may be constructed, provided that the building is similar in architectural style and materials to the other structure on the site.

- 10.5.1.9 Any electrical generators shall be shielded so as to prevent unreasonable noise impacts on neighboring properties.
- 10.6 **Standards For Roof-Mounted, Side Mounted Structure Mounted Facilities.**
- 10.6.1 Structure for “roof” and “side” mounted facilities, “roof” and “side” mounted personal wireless service facilities shall not project more than ten feet above the height of an existing building nor project more than ten feet above the height limit of the zoning district within which the facility is located. Personal wireless service facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- 10.7 **Requirement Findings**
- 10.7.1 A special permit may be granted by the Planning Board for a tower only if it meets all of the following findings:
- 10.7.1.1 Existing or approved towers available for use by the applicant cannot accommodate the wireless communications equipment planned for the proposed tower.
- 10.7.1.2 The design of the tower and supporting facilities will minimize adverse visual effects on the environment to the extent feasible.
- 10.7.1.3 Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.
- 10.7.1.4 Conditions: The Planning Board may impose reasonable conditions on a special permit granted under this section, including fencing requirements and painting and lighting standards.
- 10.8 **Modification Of Approved Facility**
- 10.8.1 Additional antennas and equipment may be added to a facility that has received a special permit under this section, unless specifically prohibited in the special permit decision. The Zoning Enforcement Officer must be notified at least 30 days prior to any such modification.
- 10.8.2 Any modifications to approved facilities must be consistent with the requirements of the foregoing subsections 10.4, 10.5, and 10.6.
- 10.9 **Abandonment Or Discontinuation Of Use**
- 10.9.1 The applicant and co-applicant shall maintain the personal wireless service facility in good condition. An initial bond shall be posted to cover construction costs and annual maintenance bond to cover the access road, site and structures in an amount approved by the SPGA. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, access road maintenance and maintenance of the buffer areas and landscaping. A separate bond shall be posted to cover estimated demolition cost of tower after abandonment or discontinuation as stated in 10.9.2.
- 10.9.2 At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon discontinuation of operations.

- 10.9.3 Upon abandonment or discontinuation of use, the carrier shall physically remove the personal wireless service facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
  - 10.9.3.1 Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  - 10.9.3.2 Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - 10.9.3.3 Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition."