

ZONING BYLAW

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Rutland 5-8-2006 by Art. 21. Amendments noted where applicable.]

ARTICLE I
General Provisions

§ 1. Purpose.

To promote the health, safety, convenience, morale and general welfare of its inhabitants, to lessen danger from fire and congestion, and to improve the Town under the provisions of MGL c. 40A, the use, construction, repair, alteration and height of buildings and structures and the use of premises in the Town are hereby restricted and regulated as hereinafter provided. For these purposes, the Town is divided into districts as herein defined and as shown on the Zoning Map on file with the Town Clerk, which map is a part of this bylaw.

§ 2. Greater restrictions to prevail.

Nothing contained in this bylaw shall be construed as repealing or modifying any existing Town bylaw or regulation, provided that wherever this bylaw imposes greater restrictions upon the use of the land or construction of buildings than are imposed by other bylaws, such greater restrictions shall prevail.

§ 3. Severability.

The invalidity of any section or provision of this bylaw shall not affect the validity of any other section or provision thereof.

§ 4. When effective.

This bylaw shall become effective upon adoption by the Town at a Town Meeting and approval by the Attorney General of the Commonwealth and by publication in the manner provided by law.

§ 5. Definitions.

In this bylaw, the following terms and words shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed by the Massachusetts Building Code or Rutland Subdivision Regulations.

ACCESSORY USE OR BUILDING — A use or building which is incidental or subordinate to the principal use or building.

BUILDING — Any roofed structure designed for housing or enclosing persons, animals, or personal property. A detached building is one separated on all sides from adjacent buildings by open spaces from the ground up.

DWELLING, MULTIFAMILY — A building containing three or more dwelling units.

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

EDUCATIONAL USE — Educational use as regarded in this Zoning Bylaw shall include public schools, schools operated by religious and charitable organizations, colleges, universities, and private or vocational schools operated in a standard institutional fashion, without noisome characteristics, and appropriate to the area where located.

FRONTAGE — Frontage as regarded in this Zoning Bylaw shall be determined as the distance measured along the street line of the front of a lot area from one side line of the lot to the other. In the case of a lot fronting on a curve or angle point in the street, the distance shall be measured from one side line of a lot to the other along the line which marks the minimum required front setback of a dwelling on such lot.

HOME OCCUPATION — Any use customarily conducted for profit by the inhabitants within a dwelling, provided that such use is clearly incidental and secondary to the use of the building for dwelling purposes and does not change the residential character thereof.

LOT — A parcel of land under separate ownership, occupied or intended to be occupied by a principal building and the structures and areas accessory to it, defined by metes and bounds or shown on a duly recorded plan.

LOT LINE — The property line bounding the lot.

MAJOR HOME OCCUPATION — A business or businesses where the operation of the business(es) may have a greater impact on the neighborhood than a customary home occupation. A business(es) shall be deemed a major home occupation if it has one or more of the following characteristics: it employs more than one nonresident on the premises, has outdoor storage of materials or equipment, has outdoor parking of more than one commercial vehicle exceeding 10,000 pounds' gross vehicle weight, occupies more than 25% of the floor area of the dwelling, occupies more than 500 square feet of floor space in accessory buildings, will routinely serve more than three customers or clients on the premises at any one time, or is potentially disruptive, offensive or harmful to the neighborhood.

MAJOR ROADWAY — For purposes of senior housing, major roadways are Main Street (Route 122A), Maple Avenue (Route 56), Pommogussett Road (Route 56), East County Road (Route 68), and Barre-Paxton Road (Route 122).

MOTEL — A building or group of buildings providing lodging for persons, intended primarily for the accommodation of transients, having a private entrance for each room or suite of rooms, and with suitable parking space provided on the premises for each of such rooms or suites of rooms.

NONCONFORMING USE — Use of a building or land existing at the time of enactment or subsequent amendment of this bylaw which does not conform to the regulations of the district in which it is situated.

RECORDED — Recorded or registered in the Worcester County Registry of Deeds.

SENIOR HOUSING — Independent living and assisted living facilities located in detached single-family dwelling units, townhouse-style dwelling units or multifamily dwelling unit buildings restricted to individuals or families in which all residents are aged 55 or older, with the exception of spouses or caregivers, or unless specifically precluded by a public housing program under which the proposal is submitted.

STREET — Any public way laid out for vehicular traffic or any private way laid out or used as a public way for such traffic.

STRUCTURE — A combination of materials assembled in a fixed location to give support or shelter or for other purposes. This shall include buildings, frameworks, sheds, platforms, swimming pools, signs, towers, and similar objects.

TOWN CENTER DISTRICT — A district established by Town Meeting as an area to establish a mixed-use style development, and as shown on the Rutland Zoning Map as amended from time to time

TRAILER or MOBILE HOME — Any vehicle or object on wheels so designed and constructed or reconstructed or added to by means of such accessories as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundations, and shall include the type of vehicle commonly known as a "mobile home," which shall be defined to mean a dwelling unit built on a chassis and containing complete electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters, and being less than 20 feet in width in its completed habitable form, but specifically excluding camping trailers, truck-mounted campers, modular homes, or prefabricated homes.

VARIANCE — An exception allowed by the Zoning Board of Appeals where strict enforcement of this bylaw would create unusual hardship.

VILLAGE CENTER DISTRICT — A district established by Town Meeting as an area to establish a mixed-use village style development, and as shown on the Town Zoning map as amended from time to time.

YARD, FRONT — An open, unoccupied space extending across the full width of the lot between the front wall of the principal building and the front lot line.

YARD, REAR — An open, unoccupied space extending across the full width of the lot between the rear wall of the principal building and the rear lot line.

YARD, SIDE — An open space between the building and a side lot line, extending from the front yard to the rear yard. Any yard not a front yard or a rear yard shall be deemed a side yard.

ARTICLE II

Zoning Districts Established**§ 6. Classes of districts.**

For the purpose of this bylaw, the Town of Rutland is hereby divided into the following classes of districts:

- A. Residence 40 and Residence 60 Districts as designated herein and by legend on the Zoning Map.
- B. Multifamily Residence District as designated herein and by legend on the Zoning Map.
- C. Business District as designated herein and by legend on the Zoning Map.
- D. Industrial District as designated herein and by legend on the Zoning Map.
- E. Light Industrial/Office as designated herein and by legend on the Zoning Map.
- F. Light Industrial as designated herein and by legend on the Zoning Map.
- G. Heights Planned Development District as designated herein and by legend on the Zoning Map.
- H. Village Center District as designated herein and by legend on the Zoning Map.
- I. Town Center District as designated herein and by legend on the Zoning Map. The Town Center District consists of two sub-districts, TC-1 and TC-2.
- J. Watershed Protection District as designated herein.

§ 7. Interpretation of district boundaries.

- A. The location of boundaries is as shown upon the Zoning Map and shall be determined as follows:
 - B. Where the zoning boundaries are shown on the map as the street lines of public or private streets or ways, the center lines of such streets or ways shall be the boundary lines.
 - (1) Where the zoning boundaries are shown approximately on the location of existing property or lot lines and the exact location of the zoning boundaries is not indicated by means of figures, in distance or otherwise, the property or lot lines shall be the zoning boundary lines.
 - (3) Where the zoning boundary lines are shown on the map outside of street lines and approximately parallel thereto, they shall be considered to be parallel to such street lines. Figures placed upon the map between the zoning boundary lines and the street lines show measurements at right angles to the street unless otherwise specified.

- B. In cases not covered by the provisions of Subsection A(1), (2) and (3), immediately preceding, the location of boundary lines shall be determined by the distances in feet, when given on the map, or, when distances are not given, by the scale of the map.
- C. Whenever the exact location of zoning boundary lines cannot be determined under the provisions stated in the foregoing, the location of such lines shall be determined by the Zoning Board of Appeals.
- D. Lots Divided by a Zoning District Boundary:

Where the boundary of a zoning district divides a lot having frontage on a street in a less restricted district, the provisions of this Bylaw covering the less restricted portion of the lot may extend not more than thirty feet (30') within the lot beyond the district boundary. See figure 1. Where the boundary of a district divides a lot having frontage on a street in a more restricted district, the provisions of this Bylaw covering the more restricted portion of the lot shall extend to the entire lot. For the purposes of this Section, the districts in descending order from more restricted to less restricted are: Watershed Protection, R-60, R-40, Multifamily Residence, Heights Planned Development, Village Center, Town Center 1 and 2, Business, Light-Industrial-Office, and Light Industrial.

Figure 1
Lot Divided by a Zoning Boundary



**ARTICLE III
Use Regulations**

§ 8. Residence District.

- A. In a Residence District, no building or structure shall be erected, altered, or used, and no premises or land shall be used, except for one or more of the following uses, provided that the use is not injurious, noisome, noxious, offensive, or harmful to the health of the neighborhood:
 - (1) One- or two-family dwellings.
 - (2) Church, library, utility, or municipal building.

- (3) Public schools, schools operated by religious and charitable organizations, colleges, universities, and private or vocational schools as defined in the definition of "educational use" contained herein.
- (4) Office of a professional person residing on the premises. A maximum of one office per residence is permitted.
- (5) Customary home occupations, handicrafts, hobbies, or activities of a similar nature, provided that such are carried on by residents of the dwelling and not more than one employee and that accessory buildings used for such purposes shall not be placed forward of the rear line of the dwelling.
- (6) Renting rooms or furnishing table board in a dwelling occupied as a private residence, but not to exceed five persons.
- (7) Farm, market garden, nursery, or greenhouse.
- (8) Community and recreational facilities, including camping areas as provided in § 14D, parks, playgrounds, golf courses other than miniature golf or driving ranges, ski areas, and bridle paths (with Board of Health approval) for use during the daylight hours. Sufficient off-street parking area shall be provided to accommodate users.
- (9) Any of the following uses only if authorized by the Zoning Board of Appeals as provided in §§ 64 and 65, with Board of Health notification where applicable:
 - (a) Accessory lighting of recreation areas, provided that such lighting is not detrimental to highways and area residences.
 - (b) Accessory buildings and uses customarily incidental to the foregoing purposes, such as restaurants, clubhouses, pro shops, ski shops, ski tows, chairlifts or other forms of skier transport, riding stables and bridle shops.
 - (c) Driving ranges and putting courses when incorporated with a golf course.
 - (d) Raising of swine and fur-bearing animals, provided that such activity is carried on at least 500 feet from any property line.'
 - (e) Hospitals; sanitariums; nursing, convalescent or rest homes; or semipublic institutions of a philanthropic, charitable, or religious character.
 - (f) Cemetery.
 - (g) Dog kennels.
 - (h) Roadside stands (goods principally produced by the owner).
 - (i) Clubs and lodges (nonprofit).

'Editor's Note: The wording "and is deemed unobjectionable" which was included at the end of this subsection was disapproved by the Attorney General and has been deleted.

B. Special permit for major home occupation. In order to allow proprietors of businesses flexibility to operate businesses out of their homes to a greater extent than is otherwise permitted by this bylaw as a customary home occupation, while preserving and protecting the rural or residential nature of the neighborhood, the Planning Board ("Board") may grant a special permit to allow a major home occupation.

(1) Major home occupations shall comply with the following standards:

- (a) No more than three employees not residing on the premises shall be allowed to report to the business site.
- (b) The home occupation shall be clearly incidental and subordinate to the primary residential nature of the property. The principal practitioner must be the owner of the property and maintain his permanent residence in the dwelling.
- (c) Utility areas (such as dumpsters, fuel storage facilities, etc.) and outdoor storage of equipment, vehicles, or supplies associated with the home occupation shall be adequately screened to minimize the visual intrusion on adjacent properties and views from public ways. The Board may require a coniferous vegetative screen with plantings of not less than three feet in width and not less than six feet in height at commencement of the use. At the discretion of the Board, fences may be used, which shall not exceed four feet in height in front yards or six feet in side and rear yards. Materials consisting of chain link, metal, plastic, fiberglass, concrete block or plywood are not acceptable.
- (d) Parking needed for employees and visitors shall be located at the side or rear of the dwelling and shall be suitably landscaped to minimize the visual impact on adjacent properties. On-street parking shall not be permitted.
- (e) One sign, in conformance with the Sign Bylaw, is permitted on the property to advertise the home occupation. No internal or external illumination of the sign is permitted.
- (f) Major home occupations may include the selling of products, the major portion of which is produced on the premises. Not more than 25% of the products sold shall be purchased or obtained elsewhere.
- (g) Lighting shall be appropriate to the building and its surroundings in terms of style, scale, hours, and intensity of illumination. Low-wattage systems are recommended, and site lighting shall be shielded, especially in developed residential areas.

(2) The Board may grant a special permit if it determines that the activities will not create a hazard to the public or natural environment, disturbance to any abutter, or injury to the neighborhood and will not create unsightliness visible from any public way or neighboring property. The Board may impose conditions deemed necessary to preserve neighborhood character and protect existing and future abutting land uses, including limitations on time and ownership. The special permit shall be granted to the owner and shall expire upon transfer of the property or

business; any new owner shall apply for a new special permit. The special permit may at any time be subject to review and/or renewal by the Board and may be further conditioned, amended, or revoked as necessary to ensure that the intent of this section is maintained.

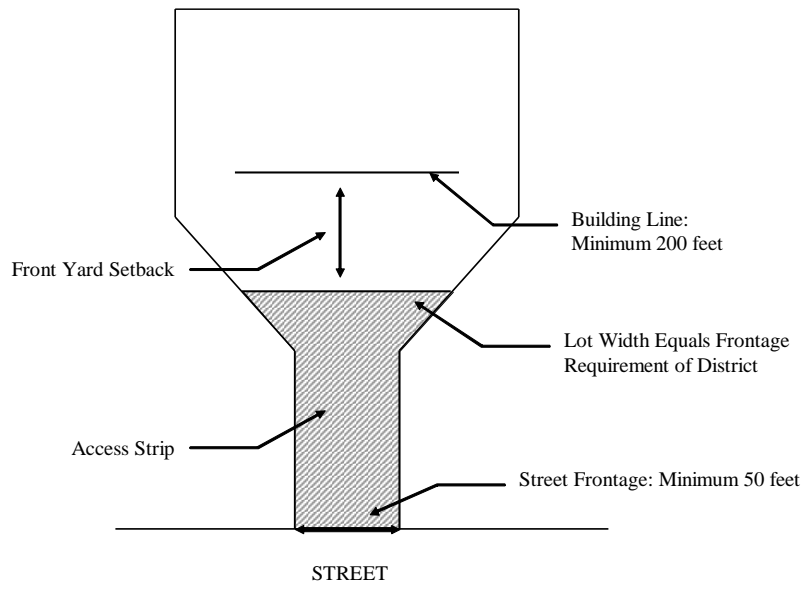
(3) Procedure for approval. The procedure for approval of the special permit for a major home occupation shall be as provided in Article VII, Special Permits. The applicant, within three days of the Board accepting the application as complete, shall submit one copy to the Zoning Board of Appeals, Board of Health, Building Inspector, Conservation Commission, Department of Public Works, and Police and Fire Chiefs with a request for their review and comment. Said boards and officials shall have 35 days to submit their comments to the Board.

- C. Special permit for senior housing. Senior housing, where there is direct access to a major roadway, may be allowed with a special permit from the Planning Board. Refer to Article VII, § 48 for special permit criteria.
- D. Traffic safety. Any wall, fence, structure, shrubbery or planting on a lot shall be so located as to provide for clear vision as pertains to traffic safety.
- E. Estate Lots

In Residence Districts, the Planning Board may grant a special permit for an Estate Lot provided the lot meets all of the requirements set below

1. The minimum lot area required for each estate lot shall be 5 acres. The “Access Strip”, as shown on the illustration below, shall not be included in the calculation of the minimum lot area of the lot. The measurement of the area for an estate lot shall begin where the lot width widens to the street frontage width required for a regular lot in the district. This line shall be designated on the plan along with the calculated square footage of the Access Strip and the square footage of the remainder of the lot.
2. An estate lot shall have a minimum continuous frontage of fifty (50) feet. No part of the lot between the front line of the principal building and street line shall be less than fifty (50) feet in width.
3. The width of the lot where the building will be located (building line) shall be a minimum of two hundred (200) feet. The plan shall show the proposed dwelling location.
4. Upon approval of the special permit, the applicant may submit a plan showing the estate lot to the Planning Board for endorsement under M.G.L. Chapter 41 §81P.
5. Any plan for approval or endorsement shall clearly identify the lot as an estate lot and bear a statement to the effect that such lot shall not be further divided to reduce its area or to create additional building lots. The statement shall also be recited in the deed for an estate lot.

- 6. All other dimensional requirements of the district in which the lot is located shall apply.
- 7. No more than three estate lots shall have contiguous frontage.



§ 9. Multifamily Residence District.

A. In a Multifamily Residence District, no building or structure shall be erected, altered, or used, and no premises or land shall be used, for any purpose except for one or more of the following uses, provided that the use is not injurious, noisome, noxious, offensive, or harmful to the health of the neighborhood:

- (1) Any use permitted in a Residence District.
- (2) Multifamily dwellings.

B. Site plan approval.

- (1) No dwellings or buildings in the Multifamily Residence District shall be constructed, altered, or expanded without a plan bearing an endorsement of approval by the Zoning Board of Appeals, and only after the Zoning Board of Appeals has held a public hearing.
- (2) The plan shall show, among other things, existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas, and other open uses.

Facilities for sewage, refuse and other waste disposal and for surface water drainage shall be shown. It shall also include all landscape features, such as fences, walls, planting areas, and walks.

- (3) Use of dwellings or buildings within a multifamily complex shall be limited to residence or purposes associated with churches, public schools, colleges, private or vocational schools as defined in the definition of "educational use" contained herein, libraries, or offices of professional persons residing on the premises, provided that they are not detrimental to adjoining premises.
 - (4) [Disapproved by Attorney General]
 - (5) Any wall, fence, structure, shrubbery or planting on a lot shall be so located as to provide for clear vision as pertains to traffic safety.
 - (6) Any individual desiring approval of a plan shall file with the Zoning Board of Appeals one original and two copies.
 - (7) The Zoning Board of Appeals shall, within 10 days after submission of a plan to it:
 - (a) Submit one copy to the Board of Health. The Board of Health shall examine the plan for suitability of land, or whether there exists any possible injury to the public health. If the Board of Health has any doubt, it shall notify the Zoning Board of Appeals in writing within 20 days.
 - (b) Submit one copy to the Planning Board. The Planning Board may, at its discretion, investigate the plan as to protection of the safety, convenience, and welfare of the inhabitants of Rutland and report its findings in writing to the Zoning Board of Appeals within 20 days.
 - (8) In addition, the Zoning Board of Appeals shall, within 30 days, hold a public hearing, notice of which shall be published in a newspaper of general circulation in the Town of Rutland. The notice shall include the time and place of such hearing and the subject matter and shall be published for two successive weeks, the first not less than 14 days before the day of the hearing. The Zoning Board of Appeals shall also send notice by mail, postage prepaid, to the petitioner and to the owners of property deemed to be affected thereby, as appears in the most recent local tax list, and to the Rutland Planning Board.
- C. Hearing action. At the hearing, any party, whether entitled to notice thereof or not, may appear in person or by agent. Thereafter, the Zoning Board of Appeals, after considering for not more than 30 days, shall either grant approval or deny approval.
- (1) The Zoning Board of Appeals shall have the power to modify or amend its approval of a site plan on application of the person owning or leasing the premises, or upon its own motion in the event of changes in physical conditions sufficient to justify such action within the intent of this section. All of the provisions of this section applicable to approval shall, where apt, be applicable to such modification or amendment.

- (2) In considering a site plan under this section, the Zoning Board of Appeals shall take into consideration any or all facts reported in writing by the Planning Board or Board of Health. In addition, it shall assure to a degree consistent with a reasonable use of the site for the purposes permitted by the regulations of the district in which located:
- (a) Protection of adjoining premises against seriously detrimental or offensive uses on the site.
 - (b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways and land.
 - (c) Adequacy of the methods of disposal for sewage, refuse, and other wastes resulting from the uses permitted on the site and the methods of drainage for surface water from its parking spaces and driveways.
 - (d) Adequacy of spaces for off-street parking and ease of accessibility to commercial delivery.
- (3) Upon reaching a decision, the Zoning Board of Appeals must state the basis by which approval or disapproval is given and record the vote of each member of the Board and file with the Town Clerk. The Planning Board must also be sent a copy of the decision.

§ 10. Business District.

- A. In a Business District, no building or structure shall be erected, altered, or used, and no premises or land shall be used, for any purpose except one or more of the following uses, provided that the use is not injurious to the neighborhood as a business district, or injurious, obnoxious, or offensive to a neighborhood by reason of smoke, noise, odor, gas, dust, or similar objectionable features, or dangerous to a neighborhood on account of fire or any other cause:
- (1) Any use permitted in a Residence District.
 - (2) Salesrooms, showrooms, new and used automobile lots, stores, or places of business for the conduct of any wholesale or retail mercantile business, not involving any manufacturing on the premises.
 - (3) Radio and television stations.
 - (4) Banks, office buildings, cleaners, telephone exchanges, business garages, garage repair shops, public garages, or gasoline selling stations.
 - (5) Drive-in theaters, theaters, halls, clubs, dancing academics, places of instruction (not defined as educational use), or other places of amusement and assembly.
 - (6) Drive-in or roadside restaurants, restaurants, dining rooms, or lunchrooms.
 - (7) Hotels and motels.

(8) Any accessory use customarily incidental to any of the above uses.

B. Site plan approval.

(1) No building or buildings for use in a Business District shall be constructed, altered, or expanded without a plan bearing an endorsement of approval by the Zoning Board of Appeals, and only after the Zoning Board of Appeals has held a public hearing.

(2) The plan shall show, among other things, existing and proposed buildings, structures, parking spaces, driveway openings, driveways, facilities for overhead lighting, service areas and other open uses. Facilities for sewage, refuse, and other waste disposal and for surface water drainage shall be shown. It shall also include all landscape features, such as fences, walls, planting areas, and walks when applicable.

(3) Any wall, fence, structure, shrubbery, signs, lighting supports, or planting on a lot shall be so located as to provide for clear vision as pertains to traffic safety.

(4) Any individual desiring approval of a plan shall file with the Zoning Board of Appeals one original and two copies.

(5) The Zoning Board of Appeals shall, within 10 days after submission of a plan to it:

(a) Submit one copy to the Board of Health. The Board of Health shall examine the plan for suitability of land, or whether there exists any possible injury to the public health, with regard to the most recent regulations of the Massachusetts Department of Public Health concerning environmental (water, air and noise) pollution. If the Board of Health has any doubt, it shall notify the Zoning Board of Appeals in writing within 20 days.

(b) Submit one copy to the Planning Board. The Planning Board may, at its discretion, investigate the plan as to protection of the safety, convenience, and welfare of the inhabitants of Rutland and report its findings in writing to the Zoning Board of Appeals within 20 days.

(6) In addition, the Zoning Board of Appeals shall, within 30 days, hold a public hearing, notice of which shall be published in a newspaper of general circulation in the Town of Rutland. The notice shall include the time and place of such hearing and the subject matter and shall be published for two successive weeks, the first not less than 14 days before the day of the hearing. The Zoning Board of Appeals shall also send notice by mail, postage prepaid, to the petitioner and to the owners of property deemed to be affected thereby, as appears in the most recent local tax list, and to the Rutland Planning Board.

C. Hearing action. At the hearing, any party, whether entitled to notice thereof or not, may appear in person or by agent. Thereafter, the Zoning Board of Appeals, after considering for not more than 30 days, shall either grant approval or deny approval.

- (1) The Zoning Board of Appeals shall have the power to modify or amend its approval of a site plan on application of the person owning or leasing the premises, or upon its own motion in the event of changes in physical conditions sufficient to justify such action within the intent of this section. All of the provisions of this section applicable to approval shall, where apt, be applicable to such modification or amendment.
- (2) In considering a site plan under this section, the Zoning Board of Appeals shall take into consideration any or all facts reported in writing by the Planning Board or Board of Health. In addition, it shall assure to a degree consistent with a reasonable use of the site for the purposes permitted by the regulations of the district in which located:
 - (a) Protection of adjoining premises against seriously detrimental or offensive uses on the site.
 - (b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to vehicular movement into and out of the site, having consideration for through traffic on adjacent thoroughfares.
 - (c) Adequacy of the methods of disposal for sewage, refuse, and other waste resulting from the uses permitted on the site and the methods of drainage for surface water from its parking spaces and driveways.
 - (d) Adequacy of space for off-street parking and for loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment.
- (3) Filing of the decision must be the same as provided in § 9C(3).

§ 10A. Village Center (VC) District.

A. Purpose

Village Center (VC) districts are target areas for small neighborhood-scale businesses including services, retail, restaurants, and meeting places. VC districts are intended to promote the development and re-development of the Town’s village centers, to provide opportunities for business growth to primarily serve the neighborhood, and to provide a mix of uses and diversity of housing types in Rutland.

B. Uses Allowed by Right in the VC District

(1) Residential Uses

Recognizing that village-style development entails a mixture of uses, the Planning Board, upon Site Plan Approval, may authorize a mix of residential and non-residential uses within the same building in the Village Center District. Single and two family dwellings are allowed by right without Site Plan Approval.

(2) Exempt Uses

Municipal buildings, parks, playgrounds, churches, schools, post office or other exempt uses are allowed by right, with site plan approval from the Planning Board, subject to reasonable height and bulk regulations as applied by the Board.

(3) Non-Residential Uses

The following non-residential uses are allowed by right, with site plan approval from the Planning Board, so long as the new or expanded structure is less than 5,000 square feet of gross floor area. For structures greater than 5,000 square feet, refer to §C (1) below:

- (a) Retail sales;
- (b) Personal Service shops, including but not limited to barber, salon, cosmetologist, massage therapist;
- (c) Business or professional offices;
- (d) Banks and other financial institutions, and accessory drive-up windows;
- (e) Package store;
- (f) Non-profit clubs and lodges;
- (g) Produce markets, including outdoor display; and roadside farm stands, where produce is grown on or off the premises, provided the market or stand is set back 30 feet from the street line, and that off-street space is available to provide safe vehicular parking and access/egress;
- (h) Day care facility;
- (i) Ice cream stands, sit down restaurants, fast food restaurants, coffee and donut shops, and accessory drive-up windows;
- (j) Shop of a potter, sculptor, silversmith, photographer, graphic artist, cabinet maker, or similar artisan or craftsman;
- (k) Bed and breakfast establishments.

C. Special Permit Uses in VC Districts

The following uses may be permitted upon issuance of a special permit from the Planning Board. Where the proposed use is to be located within an existing structure and no structural changes are proposed, and no alterations to the site are proposed, the Planning Board may waive the requirement for Site Plan Approval for non-residential uses and act directly on the special permit application.

(1) Floor Area greater than 5,000 square feet

Construction or expansion of the uses listed in section B (3) above resulting in a structure or structures containing greater than 5,000 square feet of floor area shall be allowed only upon grant of a special permit by the Planning Board.

(2) Non-Residential Uses

The Planning Board may allow the following non-residential uses of any size only upon the grant of a special permit:

- (a) Veterinary hospitals, clinics and grooming facilities; but not including kennels. Overnight stays of animals are permitted only if associated with medical procedures;
- (b) Gasoline and/or service stations;
- (c) An amusement enterprise, including but not limited to bowling alley, theater, performing arts center, skating or fitness clubs;
- (d) Hotel, motel or inn;
- (e) Small appliance or equipment repair, including but not limited to household appliances, lawnmowers, chain saws;
- (f) Dry cleaner or self-service coin-operated laundry;
- (g) Wireless communications facilities, but not including new towers, in accordance with Article VIII of this Bylaw.

(3) Residential Uses

As the intent of the Village Center District is to provide a mix of residential and non-residential uses, the Planning Board may approve multi-family residential uses (three or more dwelling units) by special permit where such units are in addition to business uses proposed on the site or where they complement existing non-residential uses in the District. As noted in section B (1) above, dwelling units are permitted on upper floors of structures by site plan approval from the Planning Board. In addition, Senior Housing may be permitted by grant of a special permit from the Planning Board in accordance with Article VII, section 48 of this Bylaw.

(4) Parking Reduction

The Planning Board may reduce the parking requirements specified for the use/structure proposed by up to 25% by special permit upon demonstration that adequate parking will be available to meet the demands of the existing and proposed use(s). The applicant may satisfy the parking needs of the premises by counting on-street spaces and/or entering into agreements with other property owners within three hundred feet (300') of the premises.

D. Filing Requirements

(1) Pre-Application Conference

The purpose of the pre-application conference is to inform the Planning Board as to the preliminary nature of the proposed project. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Board of the scale and overall design of the proposed project.

(2) Plan Filing Requirements

Unless the Planning Board determines at the pre-application conference that some of the following requirements are not necessary to reach a decision on the merits of the application, the applicant shall submit the following plans/items. Plans shall be prepared by a registered architect, landscape architect and professional engineer licensed in the Commonwealth of Massachusetts.

- (a) A locus map identifying the site of the proposed development at a scale of 1" = 1,000' or other reasonable scale to identify the site in context with surrounding roadways showing all existing buildings and the entirety of all abutting parcels of land;
- (b) A plan showing location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 100', clearly showing the relationship between proposed development and existing structures, parking areas, roads, driveways, sidewalks, open space, and utilities, including underground utility lines, water, sewer, electric power, telephone, gas, outdoor illumination and cable television within one hundred feet (100') of the premises;
- (c) Profiles/elevations showing location and dimensions of all existing and proposed buildings on the lot as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed a scale of 1"= 40';
- (d) The location, species and size of significant trees and other landscaped features, both existing and proposed, on the lot of the locus on a plan not to exceed a scale of 1"=100'.

E. Site Planning Standards

(1) Access

New curb cuts on existing public ways shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following methods:

- (a) through a common driveway serving adjacent lots or premises;
- (b) through an existing side or rear street thus avoiding the principal thoroughfare, or
- (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

(2) Parking

- (a) Parking areas shall be located to the side and rear of the structure. No parking area shall be within the front yard setback, except upon a finding of the Planning Board that no reasonable alternative exists, and the parking can be designed in a manner consistent with the traditional character of a village center;
- (b) To the extent possible, parking areas shall be shared with adjacent businesses.

(3) Landscaping and Appearance

Applicants shall incorporate appropriate landscaping and design elements into new and expanded development within the district. Landscape design plans should ordinarily be prepared by a landscape architect, although the Planning Board may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of the VC district.

- (a) A landscaped strip of at least the width of the side and rear setback may be required to buffer adjoining uses of different character. This buffer strip shall be planted with a combination of grass, appropriate height shrubs and trees; retention of naturally occurring vegetation is encouraged where appropriate. Driveways may cross lot lines to connect adjacent parking areas and facilitate internal vehicular and pedestrian circulation.
- (b) The Planning Board may require sidewalks along any portion of the lot with road frontage. A landscaped planting strip, continuous except for approved driveways, shall be established along the front lot line to visually separate buildings from the street. One tree shall be provided for each fifty feet (50') of frontage. Trees shall be placed at least three feet (3') from the edge of pavement, and at least two feet (2') from the sidewalk. When fully-grown, proposed trees shall have root systems that will not cause damage to adjacent sidewalks.
- (c) While landscaped islands are encouraged in small parking areas, large parking areas (greater than 25 parking spaces) shall have a minimum of 5% of the area of the lot in landscaped islands a minimum of six (6) feet in width. In all parking areas, a minimum of one (1) shade tree shall be planted for every five (5) parking spaces required. Trees within parking areas shall be planted in landscaped plots of at least 60 square feet of area.
- (d) Drainage systems shall be designed using Low Impact Development (LID) principles and techniques as set forth in the Planning Board's Subdivision Rules and Regulations. The Planning Board may authorize a conventional drainage system only where the applicant demonstrates that a LID design is infeasible or would have detrimental impacts on the neighborhood.
- (e) Exposed storage areas, machinery, garbage dumpsters, service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods.
- (f) To ensure that landscaped areas are maintained, the Planning Board shall include a condition of any site plan approval or special permit that the landscaping is maintained in a healthy condition and dead or diseased trees and shrubs are promptly replaced.
- (g) Ground floor space shall generally be reserved for pedestrian-oriented retail sales and services, with offices and housing above.
- (h) To the extent practicable, all wiring shall be placed underground to minimize the visual exposure of overhead wires and utility poles.

F. Dimensional Requirements

- (1) Lots for single and two family dwellings that are not in addition to business uses on the site shall conform to the dimensional requirements of the Residential 40 district.
- (2) A Village Development (see note 1) shall conform to the following dimensional requirements:

Minimum Lot Size:	10,000 sq. ft.
Additional Lot Area for Each Dwelling Unit Greater Than 2	6,000 sq. ft.
Minimum Frontage:	100'
Floor Area Ratio (2)	0.5
Yard Setbacks	
Minimum Front Setback (3)	20'
Maximum Front Setback (4)	20'
Minimum Side Setback	10'
Minimum Rear Setback	10'
Height	
Feet	50'
Stories	4
Minimum Open Space (5)	25%

Notes:

- (1) Village development: A development within a village center that may contain a variety of residential dwelling types, institutional uses, and commercial activities that is developed as part of a cohesive, pedestrian-scale neighborhood with consistent architectural character and a clearly defined streetscape. Single buildings and uses, such as single-family homes and stand-alone businesses, may be part of a village development if integrated into an existing village framework.
- (2) Floor Area Ratio (FAR): A number derived by dividing the gross floor area of the buildings on any lot by the total lot area, less wetlands and the area within the 100-year floodplain (net lot area). The floor area ratio multiplied by the net lot area produces the maximum amount of gross floor area that may be constructed on a lot. (Example: a 20,000 square foot building on a 40,000 square foot lot has an FAR of 0.5: $20,000 / 40,000 = 0.5$)
- (3) The minimum front setback shall apply along any state-numbered highway.
- (4) Maximum Front Setback (Build-to Line). A line which dictates the farthest distance the front of a building or a structure may be placed from the front lot line, measured parallel to the street right-of-way line on which the building fronts. Buildings with frontage on an interior roadway or non-state-numbered highway shall be set back no further than the maximum front setback. The Planning Board may authorize a greater setback due to topographic constraints (wetlands, steep slopes, etc.), to facilitate a consistent village design, or to minimize impacts on surrounding properties.

- (5) Open Space: The portion of the lot area not covered by any structure and not used for drives, parking, or storage. Man-made retention areas may be considered open space at the discretion of the Planning Board if they add to the open space amenities of the development. Open space shall be maintained in its natural state or landscaped with grass, trees, and shrubs.

G. Special Permit Review Criteria

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of this bylaw, and that the proposed use or structure is in conformance with the following criteria:

- (1) Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property.
- (2) The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities.
- (3) The project shall be compatible in character and scale with other properties in the district.
- (4) The project will not cause a nuisance due to air or water pollution, flooding, noise, dust, vibration, lighting, or visually offensive structures and accessories.
- (5) Construction will cause no more than minimal disturbance of existing land contours, and will, to the extent possible, preserve existing specimen trees and other desirable natural features.
- (6) The proposed project shall be consistent with Rutland's Master Plan.
- (7) The project shall comply with all Site Planning Standards of the VC district.
- (8) All permanent mechanical equipment and solid waste disposal facilities shall be screened from public view and from views from surrounding properties.

H. As-Built Plan Required

The Building Inspector shall not issue an occupancy permit until the Planning Board has reviewed and approved an as-built plan, certified by a Registered Professional Engineer. The Engineer shall certify that the work proposed on the approved site plan, including all associated off-site improvements, has been completed in accordance with the approved plan or with changes approved by the Board or its representative.

§ 10B. Town Center (TC) District.

A. Purpose

The Town Center (TC) district is an area for business including services, retail, restaurants, and meeting places to serve the entire Town. The TC district is intended to promote the development

and re-development of the Town's Center, to provide opportunities for business growth, and to provide a mix of uses and diversity of housing types. Furthermore, the intent of the TC-1 sub-district is to preserve and enhance the historic qualities and scale of the traditional Town Center. The intent of the TC-2 sub-district is to provide an area for larger scale development that complements the traditional Town Center, protects residential neighborhoods, and helps to meet the needs of the Town for goods and services.

B. Uses Allowed by Right in the TC District

(1) Residential Uses

Recognizing that the Town Center has traditionally included a mixture of uses, the Planning Board, upon Site Plan Approval, may authorize a mix of residential and non-residential uses within the same building. Single and two-family dwellings are allowed by right without Site Plan Approval.

(2) Exempt Uses

Municipal buildings, parks, playgrounds, churches, schools, post office or other exempt uses are allowed by right, with site plan approval from the Planning Board, subject to reasonable height and bulk regulations and site planning standards as applied by the Board.

(3) Non-Residential Uses

The following non-residential uses are allowed by right, with site plan approval from the Planning Board, provided the new or expanded structure has a building footprint of less than 2,500 square feet of gross floor area .¹ For structures with a building footprint of 2,500 square feet or more of gross floor area, refer to §C (1) below:

- (a) Retail sales including outdoor displays, provided all business is conducted within the principal building
- (b) Personal service shops, including but not limited to barber, salon, cosmetologist, and massage therapist
- (c) Business or professional offices
- (d) Banks and other financial institutions, and accessory drive-up windows
- (e) Package store
- (f) Non-profit clubs and lodges
- (g) Day care center
- (h) Ice cream stands, sit down restaurants, bakeries, fast food restaurants, coffee and donut shops or like uses, and accessory drive-up windows
- (i) Shop of a potter, sculptor, silversmith, photographer, graphic artist, cabinet maker, or similar artisan or craftsman

¹ As defined in the State Building Code.

- (j) Bed and breakfast establishment
- (k) Customary home occupation
- (4) Conversions of Single and Two-Family Dwellings: An Applicant may convert a single or two-family dwelling to a use permitted in the TC district upon site plan approval by the Planning Board. The Board may waive various Filing Requirements stated in Subsection E based upon information presented at the Pre-Application Conference.
 - (a) Residential Use: A portion of the premises shall remain in residential use, but the owner need not reside on the property.
 - (b) Residential Appearance: After conversion, such dwelling shall retain substantially its original character and appearance as a single or two-family residence. The applicant may submit photographs or drawings to display compliance with this standard. Proposed external site changes and outdoor lighting shall be shown on the site plan for Planning Board approval.
 - (c) Parking: Subject to Planning Board approval, off-street parking spaces shall occupy a location that will have the least intrusion on the neighborhood and lowest impact on abutting properties. Parking areas shall not be located within required setbacks.
 - (d) Signs: All signs shall comply with the Rutland Sign Bylaw.

C. Special Permit Uses in the TC District

The following uses may be permitted upon issuance of a special permit from the Planning Board. Where the proposed use is to be located within an existing structure and no structural changes are proposed, and no alterations to the site are proposed, the Planning Board may waive the requirement for Site Plan Approval for non-residential uses and act directly on the special permit application.

- (1) Construction or expansion of the uses listed in §B (3) above resulting in a structure or structures having a building footprint area of 2,500 square feet or more of gross floor area shall be allowed only upon grant of a special permit by the Planning Board.
- (2) Size Limit: In the TC-1 district, no building shall exceed a gross floor area of 2,500 square feet per floor.
- (3) Non-Residential Uses

The Planning Board may allow the following non-residential uses only upon the grant of a special permit:

- (a) Veterinary hospitals, clinics and grooming facilities; but not including kennels; overnight stays of animals are permitted only if associated with medical procedures
- (b) Gasoline and/or service stations

- (c) An amusement enterprise, including but not limited to bowling alley, theater, performing arts center, skating, or fitness club
- (d) Hotel, motel, or inn
- (e) Small appliance or electrical equipment repair, including but not limited to household appliances
- (f) Dry cleaner or self-service coin-operated laundry
- (g) Wireless communications facilities, but not including new towers, in accordance with Article VIII of this Bylaw
- (h) Supermarkets
 - (i) Auto sales
 - (j) Car washes
- (k) Assisted living facilities or Senior Housing, pursuant to §48 of this Zoning Bylaw
- (l) Medical clinic or hospital
- (m) Tavern
- (n) Major home occupation, pursuant to §8.B.

(4) Residential Uses

As the intent of the Town Center District is to provide a mix of residential and non-residential uses, the Planning Board may approve multi-family residential uses (three or more dwelling units) by special permit where such units are in addition to business uses proposed on the site or where they complement existing non-residential uses in the District. As noted in §B (1) above, dwelling units are permitted in mixed-use structures by site plan approval from the Planning Board. In addition, Senior Housing may be permitted by grant of a special permit from the Planning Board in accordance with Article VII, §48 of this Bylaw.

(5) Parking Reduction

In the TC-1 district, the Planning Board may reduce the parking requirements specified for the use/structure proposed by up to 25% by special permit upon demonstration that adequate parking will be available to meet the demands of the existing and proposed use(s). The Applicant may satisfy the parking needs of the premises by counting on-street spaces and public parking spaces within three hundred feet (300') of the premises, and/or entering into agreements with other property owners within three hundred feet (300') of the premises. All private properties being utilized to meet parking requirements under Section C Paragraph 5 Parking Reduction, must be included in the special permit application and any abutter within 300' of such properties must be properly notified.

- (6) Outdoor Storage: All permitted uses in the TC district must be conducted within completely enclosed buildings unless otherwise expressly authorized.

D. Dimensional Requirements

	TC-1	TC-2
Minimum Lot Size (sq. ft.)	10,000	20,000
Additional Lot Area for Each Dwelling Unit Greater Than 2 (sq. ft.)	6,000	10,000
Minimum Frontage:	100'	125'
Floor Area Ratio (1)	0.5	.25
Yard Setbacks		
Minimum Front Setback (4)	10'	15'
Maximum Front Setback (2)	20'	NA
Minimum Side Setback	10'	10'
Minimum Rear Setback	10'	25'
Height		
Feet	45'	50'
Stories	3	4
Minimum Open Space (3)	25%	35%

Notes:

(1) Floor Area Ratio (FAR): A number derived by dividing the gross floor area of the buildings on any lot by the total lot area, less wetlands and the area within the 100-year floodplain (net lot area). The floor area ratio multiplied by the net lot area produces the maximum amount of gross floor area that may be constructed on a lot. (Example: a 20,000 square foot building on a 40,000 square foot lot has an FAR of 0.5: $20,000 / 40,000 = 0.5$)

(2) Maximum Front Setback: The maximum front setback shall apply where the Main Street right-of-way is ten rods wide. The maximum front setback is the farthest distance the front of a building may be placed from the front lot line, measured parallel to the street right-of-way line on which the building fronts. The Planning Board may authorize a greater setback due to topographic constraints (wetlands, steep slopes, etc.), to facilitate a consistent village design, or to minimize impacts on surrounding properties.

(3) Open Space: The portion of the lot area not covered by any structure and not used for drives, parking, or storage. Retention areas may be considered open space at the discretion of the Planning Board if they add to the open space amenities of the development. Open space shall be maintained in its natural state or landscaped with grass, trees, and shrubs.

(4) When the average depth of front yards of existing buildings located within two hundred feet (200') of each side of a lot in the same block is less than the required minimum front setback, then the building on such lot may be as near the street as the average of the existing buildings.

E. Filing Requirements**(1) Pre-Application Conference**

The purpose of the pre-application conference is to inform the Planning Board as to the preliminary nature of the proposed project. As such, no formal filings are required for the pre-application conference. However, the Applicant should prepare sufficient preliminary architectural and/or engineering drawings to inform the Board of the scale and overall design of the proposed project.

(2) Plan Filing Requirements

Unless the Planning Board determines at the pre-application conference that some of the following requirements are not necessary to reach a decision on the merits of the application, the Applicant shall submit the following plans/items. Plans shall be prepared by a registered architect, landscape designer and professional engineer licensed in the Commonwealth of Massachusetts.

- (a) A locus map identifying the site of the proposed development at a scale of 1" = 800' or other reasonable scale to identify the site in context with surrounding roadways;
- (b) A sketch to scale showing location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 100', clearly showing the relationship between proposed development and existing structures, parking areas, roads, driveways, sidewalks, open space, wetlands and water bodies, historic features, and outdoor illumination and within one hundred feet (100') of the premises;
- (c) Profiles/elevations showing location and dimensions of all existing and proposed buildings on the lot as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed a scale of 1" = 40';
- (d) The location, species and size of significant trees and other landscaped features, both existing and proposed, on the lot of the locus on a plan not to exceed a scale of 1" = 100'.

F. New Construction in the TC-1 District

1. New construction should be consistent with the scale of the surrounding structures in terms of building height, width, proportion of height to width, proportion of wall area to door and window openings, size of overhangs, setbacks, and other dominant features. New construction should be compatible with surrounding buildings as to form, texture, scale, and character.
2. The Applicant shall provide drawings of the exterior facades visible from a public way with measurements of principal features and proportions listed above to enable comparison of the proposed structure with surrounding buildings.
3. New buildings shall have a roof pitch within the range of existing buildings on the same street to continue the rhythm of existing facades.

G. Site Planning Standards

(1) Access

New curb cuts on existing public ways shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following methods:

- (a) through a common driveway serving adjacent lots or premises;
- (b) through an existing side or rear street thus avoiding the principal thoroughfare, or
- (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

(2) Parking

(a) Parking areas shall be located to the side and rear of the structure. No parking area shall be within the front yard setback, except upon a finding of the Planning Board that no reasonable alternative exists, vehicles will not back out onto the street, and the parking can be designed in a manner consistent with the character of the Town Center;

(b) To the extent possible, parking areas shall be shared with adjacent businesses.

(3) Landscaping and Appearance

Applicants shall incorporate appropriate landscaping and design elements into new and expanded development within the district. Landscape design plans should ordinarily be prepared by a landscape architect, although the Planning Board may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of the TC district.

(a) A landscaped strip of at least the width of the side and rear setbacks is required to buffer adjoining uses of different character. This buffer strip shall be planted with a combination of grass, appropriate-height shrubs, and trees; retention of naturally occurring vegetation is encouraged where appropriate. Driveways may cross lot lines to connect adjacent parking areas and facilitate internal vehicular and pedestrian circulation.

(b) The Planning Board may require sidewalks along any portion of the lot with road frontage. A landscaped planting strip, continuous except for approved driveways, may be required along the front lot line to visually separate buildings from the street. One tree shall be provided for each fifty feet (50') of frontage. Trees shall be at least three feet (3') from the edge of pavement, and at least two feet (2') from the sidewalk. Applicants may propose ornamental trees in areas where shallow front yards make large trees impractical.

(c) While landscaped islands are encouraged in small parking areas, large parking areas (greater than 25 parking spaces) shall have a minimum of 5% of the area of the lot in landscaped islands a minimum of six (6) feet in width. In all parking areas, a minimum of one (1) shade tree shall be planted for every five (5) parking spaces required. Trees within parking areas shall be planted in landscaped plots of at least 60 square feet of area.

(d) Drainage systems shall be designed using Low Impact Development (LID) principles and techniques as set forth in the Planning Board's Subdivision Rules and Regulations. The planning Board may authorize a conventional drainage system only where the Applicant

demonstrates that a LID design is infeasible or would have detrimental impacts on the neighborhood.

(e) Exposed storage areas, machinery, garbage dumpsters, service areas, truck loading areas, utility buildings, and similar structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods.

(f) The Planning Board shall include a condition of any site plan approval or special permit that the landscaping remain in a healthy condition and dead or diseased trees and shrubs are promptly replaced.

(g) Ground floor space shall generally be reserved for pedestrian-oriented retail sales, offices, and services, with housing above.

(h) Commercial buildings should include features such as awnings, canopies, bay windows, plazas, balconies, decorative detail, and public seating to encourage visual interest for pedestrians.

(i) To the extent practicable, all wiring shall be placed underground to minimize the visual exposure of overhead wires and utility poles.

H. Special Permit Review Criteria

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of the TC district, and that the proposed use or structure is in conformance with the following criteria:

- (1) Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property.
- (2) The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities or utilities.
- (3) The project shall be compatible in character and scale with other properties in the district.
- (4) The project will not cause a nuisance due to air or water pollution, flooding, noise, dust, vibration, lighting, or visually offensive structures and accessories.
- (5) Construction will cause no more than minimal disturbance of existing land contours, and will, to the extent possible, preserve existing specimen trees and other desirable natural features.
- (6) The project shall comply with all Site Planning Standards of the TC district.
- (7) All permanent mechanical equipment and solid waste disposal facilities shall be screened from public view and from views from surrounding properties.

I. As-Built Plan Required

For new construction, the Building Inspector shall not issue an occupancy permit until he receives an as-built plan, certified by a Registered Professional Engineer, that the work has been completed in accordance with the approved site plan.

§ 11. Industrial District.

A. In an Industrial District, no building or structure shall be erected, altered, or used, and no premises or land shall be used, for any purpose except for one or more of the following uses, provided that such use is not detrimental or offensive and that such use would not tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire:

- (1) Any use permitted in a Residential or Business District.
- (2) Any manufacturing or industrial use, including processing, fabrication and assembly, and warehousing.

B. Site plan approval. The prerequisites for site plan approval in an Industrial District shall be the same as in § 1.0B, without exception.

C. Hearing action. Hearing action and action of the Zoning Board of Appeals shall be the same as in § 10C, without exception.

§ 11A. Light Industrial District / Office (LI/O)

The purpose of the LI district is to reserve an area for tax-generating non-residential uses that can be located in Rutland without detrimental impact to the community or the surrounding neighborhood. The LI/O district accommodates larger business and industry than in the other business districts and maintains a quality of design through vegetative buffers to residential areas and other design standards. No building or use shall be constructed, altered, or expanded without Site Plan Approval by the ZBA in accordance with Article IX.

1. Uses Allowed by Right in the LI/O District

The following uses are allowed by right in the Light Industrial/Office (LI/O) District, with site plan approval from the ZBA in accordance with Article IX. See the Dimensional Table for maximum floor area ratio and lot coverage requirements.

- a) Lumber yard, contractor's yard, building trade supplier or other open-air establishment not stated elsewhere herein for the storage, distribution, or sale at wholesale or retail, of materials (excluding salvage materials), merchandise, products or equipment provided that all open storage of materials and vehicles are screened from public view;
- b) Research and Development (R&D) or light manufacturing including general offices with research, testing, training, light manufacturing or warehouse facilities for computer, telecommunication, photographic, instrumentation, biomedical or similar high-technology or light manufacturing uses, including processing, fabrication and assembly; where such uses are conducted within the confines of a building;
- c) Distribution facilities; including wholesale product preparation, storage and transfer of goods;
- d) Dry cleaner or self-service coin-operated laundry;
- e) Mini-storage facilities open for public rental and containing greater than ten storage units;

- f) Light Manufacturing, packaging, processing and testing, including printing or publishing plant, bottling works, manufacturing establishment, or other assembling, packaging, finishing or processing use where the proposed use does not cause negative environmental or neighborhood impacts associated with noise, smoke, odors, or traffic that cannot be successfully mitigated;

2. Uses Allowable by Special Permit in the LI/O District

- a) Gasoline and/or repair service stations with or without mini-market. An establishment for the repair, maintenance, and painting of automobiles or other motor vehicles, provided that all but minor repairs shall be conducted wholly within a building sufficiently sound-insulated and ventilated to confine disturbing noise and odors to the premises.
- b) Automobile showrooms, new and used automobile lots; Vehicular dealerships, including salesroom and related dealership facilities for automobiles, boats, motorcycles, trucks, off-road vehicles or farm implements.
- c) Warehouse or other storage facilities;
- d) Wireless communications facilities;
- e) Office building or Office Park, providing for one or more buildings on a lot integrated to provide for attractive and functional office space, vehicular and pedestrian circulation and overall site plan;
- f) Any accessory use customarily incidental to any of the above uses.

§ 11B. Light Industrial District (LI)

The purpose of the LI district is to reserve an area for tax-generating non-residential uses that can be located in Rutland without detrimental impact to the community or the surrounding neighborhood. The LI district accommodates larger business and industry than in the other business districts and maintains a quality of design through vegetative buffers to residential areas and other design standards. No building or use shall be constructed, altered, or expanded without Site Plan Approval by the ZBA in accordance with Article IX.

1. Uses Allowed by Right in the LI District

The following uses are allowed by right in the Light Industrial (LI) District, with site plan approval from the ZBA in accordance with Article IX. See the Dimensional Table for maximum floor area ratio and lot coverage requirements.

- a) Lumber yard, contractor's yard, building trade supplier or other open-air establishment not stated elsewhere herein for the storage, distribution, or sale at wholesale or retail, of materials (excluding salvage materials), merchandise, products or equipment provided that all open storage of materials and vehicles are screened from public view;
- b) Research and Development (R&D) or light manufacturing including general offices with research, testing, training, light manufacturing or warehouse facilities for computer, telecommunication, photographic, instrumentation, biomedical or similar high-technology or light manufacturing uses, including processing, fabrication and assembly; where such uses are conducted within the confines of a building;

- c) Distribution facilities; including wholesale product preparation, storage and transfer of goods;
- d) Dry cleaner or self-service coin-operated laundry;
- e) Mini-storage facilities open for public rental and containing greater than ten storage units;
- f) Light Manufacturing, packaging, processing and testing, including printing or publishing plant, bottling works, manufacturing establishment, or other assembling, packaging, finishing or processing use where the proposed use does not cause negative environmental or neighborhood impacts associated with noise, smoke, odors, or traffic that cannot be successfully mitigated;

2. Uses Allowable by Special Permit in the LI District

- a) Gasoline and/or repair service stations with or without mini-market. An establishment for the repair, maintenance, and painting of automobiles or other motor vehicles, provided that all but minor repairs shall be conducted wholly within a building sufficiently sound-insulated and ventilated to confine disturbing noise and odors to the premises.
- b) Automobile showrooms, new and used automobile lots; Vehicular dealerships, including salesroom and related dealership facilities for automobiles, boats, motorcycles, trucks, off- road vehicles or farm implements.
- c) Warehouse or other storage facilities;
- d) Wireless communications facilities;
- e) Office building or Office Park, providing for one or more buildings on a lot integrated to provide for attractive and functional office space, vehicular and pedestrian circulation and overall site plan;
- f) Adult Entertainment Uses as per Article X of this bylaw
- g) Any accessory use customarily incidental to any of the above uses.

§ 12. Watershed Protection District.

A. Purpose. The purpose of this district is to:

- (1) Preserve and protect the watershed of Muschopauge Pond, a public water supply used by the Towns of Rutland and Holden, from uses which could contaminate the water and adversely affect the health, safety and general welfare of the residents of those towns;
- (2) Preserve and protect the watercourse and wetlands within the watershed;
- (3) Protect the Town against the detrimental use and development of land adjoining the watercourse and the pond; and
- (4) Preserve and maintain the groundwater table because of its contribution to the amount and quality of water in the pond.

B. Definition. The Watershed Protection District is superimposed over any other district established by this bylaw and includes all land within the Muschopauge Watershed as

delineated on the map of the United States Department of Interior, Geological Survey of the Wachusett Quadrangle, AMS 6668, IV, NW, Series V814, and all land within 50 feet thereof.

- C. Interpretation and application. Any proposed use to be located within the limits of the district as defined in Subsection B above shall be governed by all provisions of this section as well as all other applicable provisions of the Zoning Bylaw.
- D. Permitted uses. Within the Watershed Protection District, the following uses shall be allowed:
 - (1) Municipal uses, such as waterworks, pumping stations and other essential services and parks and any buildings and structures accessory thereto;
 - (2) Agricultural, horticultural, and floricultural uses, subject to any conditions imposed by the Rutland Board of Health; and
 - (3) Any use existing at the time of the passage of this section shall be allowed to continue.
- E. Uses allowed by special permit:
 - (1) Dumping, filling, excavating or transferring of any earth material, except that this section shall not apply to or prohibit ordinary gardening areas on a lot where the principal use is for a residence existing at the time of passage of this section.
- F. Special permit procedure. For the purpose of this section, the Rutland Planning Board shall be the special permit granting authority. Application and issuance procedure shall be in accordance with Article VII, Special Permits, of this Zoning Bylaw. The Planning Board shall submit a copy of all applications to the Board of Health and the Conservation Commission within three days of receipt. The Board of Health and Conservation Commission shall transmit their comments in writing to the Planning Board within 20 days of receipt of a copy of the application, but in any event before the scheduled hearing on the application.

§ 13. Non-Conforming Uses and Structures

Except as hereinafter provided, this by law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the date of the first publication of the notice of the public hearing on any such by law as required MGL C. 40A, § 5.

- 1. Non-conforming structures 10 years or older. In accordance with MGL C 40A, §7, a structure, which has not been in compliance with this chapter, or with the conditions set forth in any special permit or variance affecting the structure, for a period of 10 years or more from the commencement of the violation may not be the subject of any enforcement action by the town to compel the removal, alteration or relocation of such structure. Structures which qualify under MGL C. 40A, § 7, are considered to be non-conforming structures and are entitled to treatment as such as provided in this section.

2. As described in MGL, C. 40A, § 6, pre-existing, non-conforming structures or uses may be extended, altered or changed only by special permit from the Board of Appeals. Any such change, extension or alteration shall require a finding by said Board that it is not substantially more detrimental to the neighborhood than the existing non-conforming use or structure. For the purposes of this by-law, any extension, alteration or change shall not apply to work that does not increase the amount of living/usable space in the structure or does not increase the footprint or size of the structure.
3. In the event a non-conforming use or structure has been discontinued or abandoned for a period of more than two (2) years, it shall lose its non-conforming status except in the event said discontinuance or abandonment is caused by service in the Armed Forces, or as may be otherwise allowed by this by-law or state statute.
4. In the event a non-conforming use or structure becomes conforming under the terms of this by-law, it shall lose its non-conforming status.
5. A non-conforming structure may be reconstructed after the same has been partially or totally destroyed by fire or other casualty, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two (2) years after such fire or other casualty, and provided that the building(s) as reconstructed shall be only as great in area as the original non-conforming structure. Nothing in this by-law shall be construed to permit the reconstruction or resumption of use of a building or structure destroyed or damaged by fire or other casualty except substantially as it existed prior to said destruction or damage, and in compliance with any existing laws except as provided herein. In the event that the proposed reconstruction would result in the structure exceeding the total floor area of the original non-conforming structure, a special permit shall be required from the Board of Appeals.

§ 14. Special uses.

This section shall relate to certain uses which are not otherwise covered under the appropriate district. The use may be specifically allowed or disallowed as specified herein.

- A. To provide for low- and moderate-income housing, Chapter 774 of the Acts of 1969 (including any amendments thereto), the Zoning Board of Appeals may waive certain requirements of this bylaw which in its opinion render the proposed construction economically unfeasible. Application for construction is limited to:
 - (1) Public agencies.
 - (2) Nonprofit organizations.
 - (3) Limited dividend organizations.
- B. The use of trailers or mobile homes shall be limited to temporary office space at construction sites. They shall be removed from the site within 21 days after the completion of construction.

- C. While constructing a new home or repairing a home so badly damaged by fire or other disaster that it cannot be lived in, a temporary permit may be issued by the Zoning Board of Appeals for occupancy of a trailer or mobile home on the home lot for a period of one year, such permit being subject to the approval of the Board of Health. A trailer or mobile home shall be used as a permanent dwelling unit provided its foundation enclosed area conforms to the requirements of the Massachusetts State Building Code for the foundation enclosed area of a one-story dwelling, as provided in the Massachusetts State Building Code. All trailers in use prior to the adoption of this bylaw shall be deemed to be nonconforming uses and shall not be increased in kind or number.
- D. Trailers, travel trailers, truck-mounted campers, and other temporary sleeping quarters may be used for overnight lodging from April through October at camping areas with sanitary facilities as approved by the Board of Health.
- E. The owner of an existing dwelling desiring to replace that dwelling with a new dwelling on the same parcel while occupying the existing dwelling, may obtain a temporary permit from the Building Inspector to continue occupancy while the new dwelling is built. All existing appurtenances to the existing dwelling, including but not limited to well, water, sewer, septic and electrical used for the existing dwelling must conform to or be brought to current regulation requirements at the time of connection to the new dwelling. The temporary permit shall expire thirty (30) days after issuance of the occupancy permit of the new dwelling, and the existing dwelling shall be completely razed, and the foundation and the land it occupied shall be graded to be compatible with surrounding area. ((May 7, 2016 amendment)

§ 14A Solar Energy Facilities

A. Purpose

The purpose of this bylaw is to promote the development of solar energy facilities by providing standards for the placement, design, construction, operation, monitoring, modification, and removal of such facilities, to protect public health, safety, and welfare, to minimize impacts on scenic, natural and historic resources of Rutland, and to provide adequate financial assurance for the eventual decommissioning of such facilities.

B. Applicability

This section applies to all ground-mounted solar energy facilities proposed after the effective date of this section and to physical modifications that materially alter the type, configuration, or size of these facilities or related equipment.

C. Definitions

Large-Scale Ground-Mounted Solar Photovoltaic Facility: A solar photovoltaic system that is structurally mounted on the ground and has a minimum nameplate capacity of 250 kw DC.

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

Small-Scale Ground-Mounted Solar Photovoltaic Facility: A solar photovoltaic system that is structurally mounted on the ground and has a nameplate capacity of less than 250 kw DC.

- D. Location:** Solar energy facilities are permitted in Rutland’s zoning districts in the manner provided below. “Y” means the use is permitted by right with site plan approval of the Planning Board. “SP” means the use is permitted by special permit with site plan review of the Planning Board. “N” means the use is prohibited.

District	Small-Scale Solar Facility	Large-Scale Solar Facility
Residence 60	Y	Y
Residence 40	Y	SP
Village Center	SP	N
Town Center 1	N	N
Town Center 2	SP	N
Multifamily Residence	SP	N
Heights Planned Development	Y	Y
Watershed Protection Overlay	Y	SP
Business	Y	Y
Light Industrial	Y	Y
Light Industrial/Office	Y	Y

- E. Exemptions:** Ground-mounted solar energy facilities on municipal properties are permitted in all districts upon site plan approval from the Planning Board. The following solar energy facilities are exempt from this bylaw but require a building permit prior to installation:

- (1) Solar energy facilities for the primary purpose of agriculture
- (2) Solar energy facilities less than 50 kw DC for one and two family dwellings
- (3) Roof-top solar energy facilities.

F. Site Plan Review Procedure

- (1) Site Plan Documents: The applicant shall submit the documents specified in Article III, section 10B of the Rutland Zoning Bylaw for site plan approval, to the Planning Board, which shall be the permit granting authority.
- (2) Solar Energy System Plans and Documents

The applicant shall submit the following plans and documents that fully describe the nature of the proposed solar energy system:

- (a) Plans and drawings of the solar facility signed and stamped by a Professional Engineer licensed to practice in Massachusetts showing the proposed layout of the system and any potential shading from nearby structures or trees;
 - (b) One or three line electrical diagram detailing the solar facility, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - (c) Technical specifications of the major system components, such as solar arrays, mounting system, transformers, and inverters;
 - (d) The name, address, and contact information of the proposed installer and operator;
 - (e) Proof of actual or proposed control of access ways and the project site sufficient to allow for installation and use of the proposed facility;
 - (f) An operation and maintenance plan;
 - (g) Proof of liability insurance; and
 - (h) Financial surety that satisfies Subsection K (4) of this Bylaw.
- (3) Fees: The applicant shall pay the site plan review fees contained in the Board's fee schedule at the time of submission of the application.
 - (4) Operation & Maintenance Plan: The applicant shall submit a plan for the operation and maintenance of the solar facility, which shall include measures for maintaining safe access, storm water controls, and general procedures for operating and maintaining the facility.
 - (5) Utility Notification: The applicant shall submit evidence that he has informed the utility company of his intent to install a solar energy facility and that the utility company has responded in writing to the notice. Off-grid systems are exempt from this requirement.
 - (6) Procedures: For special permit applications, the applicant shall comply with the provisions of Article VII of the Rutland Zoning Bylaw. For site plan applications, the applicant shall submit ten copies of the site plan, the required fee, and abutter mailing labels from the Board of Assessors. The Planning Board shall hold a public hearing within 45 days of submission of the application and file its decision within 45 days from the close of the public hearing. The time for acting on a Site Plan may be extended upon written request of the person submitting the plan and approval of the request by the Board. Approval of a site plan shall require three affirmative votes of the Board. The Planning Board's final action shall consist of either:

- (a) Approval of the site plan based on a determination that the proposed project will constitute a suitable development and will not result in substantial detriment to the neighborhood or the Town.
- (b) Disapproval of the site plan with an explanation of the reasons for such disapproval and the elements of the proposal the Planning Board finds are not capable of revision or are so deficient in important elements and intrusive on the interests of the public that they warrant disapproval.
- (c) Approval of the site plan subject to such reasonable conditions, modifications, and restrictions as the Planning Board may deem necessary to insure that the proposed project will constitute a suitable development and will not result in substantial detriment to the neighborhood or town.

G. Dimension and Density Requirements

- (1) Setbacks: Both large and small-scale ground-mounted solar energy facilities shall have a setback from front, side and rear property lines and public ways of at least twenty-five feet (25'). The Planning Board may allow a ten-foot (10') setback along a property line, where in its judgment, the proposed facility is not likely to negatively affect an existing or permitted land use.
- (2) Natural Buffer for Large-Scale-Solar Projects: The site plan shall provide a natural vegetative buffer of fifty feet (50') between a large solar energy facility and a property in residential use, including houses across a street. If the visual buffer would have a detrimental effect on the ability to generate power, the Planning Board may grant a waiver from this requirement.
- (3) Appurtenant Structures: All appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations shall be subject to applicable regulations concerning bulk and height, setbacks, parking, building coverage, and vegetative screening to avoid adverse impacts on the neighborhood or abutting properties.

H. Design Standards

- (1) Lighting: Lighting shall be limited to that required for safety and operational purposes, and shall not be intrusive in any way on abutting properties. Lighting shall incorporate full cut-off fixtures to reduce light pollution.
- (2) Signage: The solar facility shall comply with the Rutland sign bylaw. A sign shall identify the operator and provide a 24-hour emergency contact phone number. Solar facilities shall not display any advertising except for reasonable identification of the manufacturer or operator of the facility. The site shall have a secondary sign providing educational information about the facility and the benefits of renewable energy.

- (3) **Utility Connections:** The applicant shall place all utility connections underground except in unique cases where the Planning Board finds that soil conditions, topographic constraints, or utility company requirements make underground connections unfeasible.

I. Emergency Services: The operator shall provide a copy of the operation and maintenance plan, electrical schematic, and site plan to the Fire Chief. The operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the facility shall be clearly marked. The premises shall identify a qualified contact person available 24 hours per day / 7 days per week to provide assistance during an emergency; the operator shall change the contact information immediately whenever a change in personnel occurs.

J. Monitoring and Maintenance

- (1) **Maintenance:** The operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. The operator shall be responsible for maintaining adequate access for emergency vehicles and maintenance equipment.
- (2) **Modifications:** All material modifications to the facility proposed after issuance of the building permit require approval of the Planning Board and Inspector of Buildings.

K. Abandonment or Decommissioning

- (1) **Removal Requirements:** Any solar facility that has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the facility within one hundred fifty (150) days after the date of discontinued operations in compliance with the requirements of the Inspector of Buildings. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal.
- (2) **Decommissioning:** Decommissioning shall consist of:
 - (a) Physical removal of the solar arrays, structures, equipment, security barriers, and electrical transmission lines from the site.
 - (b) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or below-grade foundations in order to minimize erosion and disruption of vegetation.
- (3) **Abandonment:** Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar facility shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator fails to remove the facility in accordance with the requirements of

this section within one hundred fifty (150) days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the facility.

- (4) **Financial Surety:** Prior to final inspection, the applicant shall provide a form of surety, either through a cash deposit, bond or otherwise acceptable to the Planning Board, in an amount determined by the Planning Board to cover the cost of removal and site restoration. Such surety will not be required for municipal facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an escalator for calculating increased removal costs due to inflation.

§ 14B Wind Turbine Bylaw

1.0 Purpose

The purpose of this by-law is to provide by special permit for the construction and operation of wind facilities and to provide standards for the placement, design, construction, modification and removal of wind facilities that address public safety, minimize impact on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning.

1.1 Applicability

This section applies to all utility-scale and on-site wind facilities proposed to be constructed after the effective date of this section. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate capacity.

Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment may at the discretion of the Planning Board require a special permit.

2.0 Definitions

Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

Height: The height of a wind turbine measured from the natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

Special Permit Granting Authority: The special permit granting authority shall be the Planning Board.

Substantial Evidence: Such evidence as a reasonable mind might accept as adequate to support a conclusion.

Wind Facility: All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speed and direction, used to determine how much wind power a site can be expected to generate.

Wind Turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator.

3.0 General Requirements

3.1 Special Permit Granting Authority

No wind facility over 60 kilowatts of rated nameplate capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a Special Permit from the Planning Board. The construction of a wind facility shall be permitted in any zoning district subject to the issuance of a Special Permit and provided that the use complies with all the requirements set forth in sections 3, 4, 5, and 6. All such wind facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No Special Permit shall be granted unless the Planning board finds in writing that:

- (a) the specific site is an appropriate location for such use;
- (b) the use is not expected to adversely affect the neighborhood;
- (c) there is not expected to be any serious hazard to pedestrians or vehicles from the use;
- (d) no nuisance is expected to be created by the use; and
- (e) adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to reasonable regulations concerning the bulk and height of structures and determining yard size, lot areas, setbacks, open space, parking, and building coverage requirements.

3.2 Compliance with Laws, Ordinances, and Regulations

The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state, and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

3.3 Proof of Liability Insurance

The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by failure of the facility.

3.4 Site Control

At the time of its application for a Special Permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

4.0 General Siting Requirements

4.1 Height

Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that the wind facilities may exceed 400 feet if:

- (a) the applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;
- (b) such excess height is necessary to prevent financial hardship to the applicant, and
- (c) the facility satisfies all other criteria for the granting of a Special Permit under the provisions of this section.

4.2 Setbacks

Wind turbines shall be set back a distance equal to 1.2 times the overall blade tip height of the wind turbine from the nearest existing residential or commercial structure, nearest property line, or private or public way.

4.2.1 Setback Waiver

The Planning Board may reduce the minimum setback distance as appropriate based on site specific considerations, if the project satisfies all other criteria for the granting of a Special Permit under the provisions of this section.

5.0 Design Standards

5.1 Color and Finish

The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color is encouraged.

5.2 Lighting and Signage

5.2.1 Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

5.2.2 Signage

Signs on the wind facility shall comply with the requirements of the town's sign regulations, and shall be limited to:

- (a) those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger;
- (b) educational signs providing information about the facility and the benefits of renewable energy.

5.2.3 Advertising

Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

5.2.4 Utility Connections

Unless physically impossible all utility connections shall be underground. Electrical transformers for utility connections may be above ground if required by the utility provider.

5.3 Appurtenant Structures

All appurtenant structures to such wind facilities shall be subject to reasonable regulations regarding the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, and parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures shall be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

6.0 Safety, aesthetic and environmental Standards

6.1 Emergency Services

The applicant shall provide a copy of the project summary and site plan to the Rutland Fire and Police Departments. Upon request the applicant shall cooperate with said departments in developing an emergency response plan.

6.1.1 Unauthorized Access

Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.

6.2 Shadow/Flicker

Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have a significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

6.3 Noise

The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Planning Board agree that those provisions shall not be applicable. A sound source will be considered to be violating these regulations if the source:

- (a) increases the broadband sound level by more than 10 dB(A) above ambient, or
- (b) produces a "pure tone" condition - when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The Planning Board, in consultation with the department, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

6.4 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility or is otherwise prescribed by applicable laws, regulations, and ordinances.

7.0 Monitoring and Maintenance**7.1 Facility Conditions**

The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repair, and integrity of security measures. Site access shall be maintained to a level acceptable to the Rutland Fire and Police Chiefs. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

7.2 Modifications

All material modifications to a wind facility made after issuance of the Special Permit shall require approval by the Planning Board.

8.0 Abandonment or decommissioning

8.1 Removal Requirements

Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

- (a) physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site;
- (b) disposal of all solid and hazardous waste in accordance with local and state disposal regulations;
- (c) stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

8.2 Abandonment

Absent a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the Planning Board. The Planning Board shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility.

8.3 Financial surety

The Planning Board shall require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the Planning Board. In no event shall the amount exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment. Such surety shall not be required for municipally or state owned facilities.

9.0 Term of Special Permit

A Special Permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the Planning Board upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the Special Permit. Submitting a renewal request shall allow for continued operation of the facility until the planning board acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

10.0 Application Process and Requirements

10.1 Application Procedures

10.1.1 General

The application for a wind facility shall be filed in accordance with the rules and regulations of the Planning Board concerning Special Permits.

10.1.2 Application

Each application for a Special Permit shall be filed by the applicant with the Town Clerk pursuant to section 9 of chapter 40A of the Massachusetts General Laws.

10.2 Required Documents

10.2.1 General

The applicant shall provide the Planning Board with 10 copies of the application. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

- (a) Name, address phone number and signature of the applicant, as well as all co-applicants or property owners, if any;
- (b) The name, contact information and signature of any agents representing the applicant;
- (c) Documentation of the legal right to use the wind facility site, including the requirements set forth in 3.4 of this section.

10.3 Siting and Design

The applicant shall provide the Planning Board with a description of the property which shall include:

10.3.1 Location Map

A copy of the most recent USGS Quadrangle Map at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

10.3.2 Site Plan

A one inch equals 60 feet plan of the proposed wind facility site, with contour intervals of no more than 5 feet, showing the following:

- (a) property lines for the site parcel and adjacent parcels within 300 feet;
- (b) outline of all existing buildings, including purpose(e.g. residence, garage, etc) on site parcel and all adjacent parcels within 500 feet (include distances from wind facility to each building shown);
- (c) location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent;
- (d) existing areas of tree cover, including average height of trees, on the parcel and adjacent parcels within 300 feet;

- (e) proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.;
- (f) location of viewpoints referenced below in 10.3.3 of this section.

10.3.3 Visualizations

The Planning Board shall select between 3 and 6 sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated or public ways within a 2 mile radius of the facility. View representations shall have the following characteristics:

- (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility(e.g. superimpositions of the wind facility onto photographs of existing views).
 - (b) All view representations will include existing, or proposed, buildings or tree coverage.
- c) Include description of the technical procedures followed in producing the visualization(distances, angles, lens, etc...).

10.4 Landscape Plan

A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

10.5 Operation and Maintenance Plan

The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility.

10.6 Compliance Documents

If required under previous sections of this by-law, the applicant shall provide with the application:

- (a) Proof of financial surety that satisfies 8.3 of this section;
- (b) proof of liability insurance that satisfies 3.3 of this section;
- (c) certification of height approval from the FAA;
- (d) a statement that satisfies 6.3, listing existing and maximum projected noise levels from the wind facility.

10.7 Independent Consultants

1. Upon submission of an application for a wind-energy facility special permit, the Special Permit Granting Authority may engage, at the applicant’s cost, professional and technical consultants, including legal counsel, to assist the Authority with its review of the application, in accordance with the requirements of MGL c. 44, § 53G.

2. The applicant shall pay to the Special Permit Granting Authority an initial deposit of Five Hundred (\$500.00) Dollars for small wind-energy facilities, One Thousand Five Hundred (\$1,500.00) Dollars for large wind-energy facilities and Three Thousand (\$3000.00) Dollars for utility-scale wind energy facilities for such review at the time of submission of the permit application, which shall be deposited into a special account established by Town Treasurer under MGL c. 44, § 53G. The balance of this account shall at no time be less than ½ the initial deposit, and the applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit upon notice from the Special Permit Granting Authority, by first-class mail, that the amount on deposit has been decreased by the expenditures described herein to an amount at or below ½ of the initial deposit. If the applicant fails to restore the account balance and the balance is insufficient to pay incurred professional and technical review fees, the Special Permit Granting Authority shall send the invoice directly to the applicant for immediate payment. Failure to comply with this section shall be good grounds for denying the special permit application. Upon approval of the special permit application and completion of the installation of the wind facility, any excess amount in the account attributable to the project, including any interest accrued, shall be repaid to the applicant or the applicant’s successor in interest.

**ARTICLE IV
Area Regulations**

§ 15. Residence District.

A dwelling hereafter erected in any Residence 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 dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

	Dwelling Type	Residential Classification	Minimum Lot Area	Minimum Lot Frontage
(a)	Single family	Residential District-40 (“R-40”)	43,560 SF	150 ft.
(b)	Single family	Residential District-60 (“R-60”)	65,340 SF	200 ft.

- A. Lot area for a two-family dwelling shall be 50% greater than corresponding one-family dwelling.
- B. Maximum height of dwellings in this district shall be 2 1/2 stories or 35 feet.
- C. Minimum yard dimensions shall be as follows: front yard 30 feet; side yards 20 feet; and rear yard 25 feet. On corner lots, the side yard nearest to the corner shall be 30 feet, except for senior housing which shall have the yard requirements as set forth in Article VII, § 48.

D. A lot or parcel of land having an area or frontage of lesser amount than required by this table may be considered as coming within the area and frontage requirements of this section provided that such lot or parcel of land was shown on a plan or described in a deed duly recorded or registered at the time of adoption of this bylaw and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.

E. Senior housing. See Article VII, § 48.

F. Common Driveways

1. Purpose

- a. The purpose of this bylaw is to authorize the Planning Board to approve plans for the use and installation of Common Driveways. The Board shall consider the site's topography, slope, soil conditions, wetlands, endangered species habitat, historic and archaeological features, scenic roads and viewsheds, and other amenities of the site and its environs. The Board may impose conditions to insure the proposed Common Driveway will be in the best interest of the Town of Rutland and does not compromise public safety.
- b. Through Site Plan Review, the Planning Board may approve Common Driveways in residential zones serving two lots. Common driveways serving three lots may be permitted by grant of a special permit by the Planning Board. The applicant(s) shall submit a site plan showing the location and dimensions for all lots that will share a common driveway. This Common Driveway Bylaw shall not apply to non-residential uses.
- c. The Planning Board may adopt Regulations to establish appropriate fees and procedures for submission and approval of common driveway site plans.

2. Common Driveway Review Criteria

- a. The strip of land containing the common driveway shall be located within the subject lots with a full and perpetual easement for access to the individual lots served thereby.
- b. All lots sharing a common driveway must have adequate frontage as required by the zoning district where the lots are located along a street as defined in Section 5 of this Zoning Bylaw. A Common Driveway shall not exempt the applicant(s) from meeting frontage requirements for each individual building lot.
- c. The maximum length of a common driveway is five hundred (500) linear feet. The length is measured along the centerline of the driveway from the street line to the point where the common driveway enters the lot of the furthest single family dwelling served by the common driveway.
- d. For existing common driveways serving two lots, the Planning Board may grant a special permit for one additional single family dwelling lot that will be served by the common driveway. The common driveway shall be improved to meet the design standards of the Board's Common Driveway Regulations.

- e. Prior to approval of the site plan, the applicant(s) shall submit a Common Driveway Homeowners Agreement for review and approval by the Planning Board and Town Counsel. No driveway opening permit for a common driveway shall be approved, and no certificate of occupancy shall be issued on a subject lot, until an approved Agreement is recorded in the Worcester District Registry of Deeds (WDRD). The Agreement shall address, at a minimum, the following:
1. A definition of the use of the easement, including the right to pass and re-pass and to install utilities as necessary.
 2. Text of proposed easements including accurate dimensions.
 3. Specific standards for the maintenance of all structures located in the easement, including but not limited to the travel way.
 4. Provisions for allocating responsibility, including formulas for cost allocation, for maintenance, repair and/or reconstruction of the common driveway and any other structures within the easement.
 5. A procedure for the resolution of disagreements. The Agreement shall clearly state that the Town is not a party to the resolution of disagreements.
 6. A statement to the effect that the Town of Rutland shall not be required to plow, maintain, assume ownership or provide school bus service or other service, other than emergency services (police, fire, ambulance), along the common driveway.
 7. A statement that the agreement runs with the land and is binding upon the lot owners and their successors.
 8. A statement that the lot owners shall indemnify and hold harmless the Town of Rutland, or its duly authorized representatives, from all claims, demands and liability for any and all personal injuries, damages, losses and expenses, of whatever kind and nature, incurred by any person, arising out of, or in connection with, the performance or execution of services, including, but not limited to, emergency services, which would require use of the common driveway for access to the lots.
 9. A statement that no obligation shall be imposed on the Town of Rutland, and that the right-of-way shall remain at all times a common driveway intended for the use and enjoyment of the lot owners and their invitees.
- f. The Common Driveway construction shall conform to the Planning Board's Regulations and shall be approved by the Department of Public Works Superintendent prior to the issuance of a certificate of occupancy. The Planning Board may require certain standards of subsurface preparation, drainage, and surfacing.
- g. For emergency access purposes, a sign of at least one (1) square foot in size, with numbers and/or letters no less than six (6) inches in height shall be placed at each intersection where an individual driveway begins. Such sign shall clearly provide the address of the lot to which the

driveway belongs. In accordance with the House Numbering Bylaw (adopted May 10, 1996), a sign, visible from the public street, shall be placed within the Common Driveway easement. Such sign shall provide the address numbers of all lots that use the Common Driveway, shall be no smaller than two (2) square feet and shall use numbers and/or letters that are a minimum of six (6) inches in height.

- h. The approved plan shall be recorded with the Worcester District Registry of Deeds and a copy of such plan shall be provided to the Rutland Town Clerk, Planning Board, Board of Assessors, Building Department, Police Department, Fire Department and the Department of Public Works.

§16. Multifamily Residence District.

A multifamily dwelling hereafter erected in a Multifamily Residence District shall be located on a lot having not less than the minimum requirements set forth in the table below. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

Public Service	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)
Public sewer and water	18,000 plus 6,000 per unit	150
Public sewer or water	18,000 plus 6,000 per unit	200
Neither public sewer nor water	30,000 plus 7,000 per unit	250

- A. In a multifamily development, more than one structure shall be allowed on a lot. Structures may be arranged in any convenient or desirable manner on the lot, provided that the area is increased in conformance with the table above.
- B. Maximum height of dwellings in this district shall be three stories or 40 feet.
- C. Minimum yard dimensions shall be as follows: front yard 30 feet; side yards 20 feet; and rear yard 25 feet. Side and rear yard dimensions will be 50 feet when adjacent to a Residence District.
- D. Any structure hereafter constructed for multifamily dwelling use shall be located upon its parcel of land so that there shall be provided an off-street parking area of two spaces per unit.
- E. In a development of 10 or more units, a maximum of 10% shall have three or more bedrooms.
- F. The maximum number of units per structure or building shall be six.

§ 17. Business and Industrial Districts.

A building or structure hereafter erected in a Business or Industrial District shall be located on a lot having not less than the minimum requirements set forth in the table below. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

Public Service	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)
Public sewer and water	12,000	100
Public sewer or water	21,780	130
Neither public sewer nor water	43,560	200

- A. In a shopping center development or an industrial park complex, more than one structure shall be allowed on a lot. Structures may be arranged in any convenient or desirable manner on the lot.
- B. Maximum height of all structures shall be three stories or 40 feet.
- C. Minimum yard dimensions shall be as follows: front yard 30 feet; side yards and rear yard 20 feet. The side and rear yard dimensions will be 50 feet when adjacent to a Residence or Multifamily Residence District.

§ 18. Requirements for all districts.

- A. In any district, the limitation on height of structures shall not apply to chimneys, ventilators, towers, spires, or other ornamental features of buildings if the features are in no way used for living purposes.
- B. If the dwellings or other principal buildings located on each side of a particular lot, and adjacent thereto, have an average setback from the center and/or exterior line of the street of less than 30 feet, the Zoning Board of Appeals may authorize, on the particular lot in question, a building, structure, sign or open use having a setback of not less than said average.
- C. No accessory building or structure shall be permitted within the required front yard area, and no accessory building shall be located in any side yard area nearer to the side lot line than 10 feet, except that when the side yard is on a corner and is adjacent to a street, the minimum shall be 30 feet.
- D. No accessory building or structure shall be permitted within 10 feet of the rear yard area or nearer to another principal or accessory building than 10 feet.

ARTICLE V
Heights Planned Development District (HPDD)

§ 19 Purpose

The Heights Planned Development District (HPDD) is a flexible mixed-use district planned in accordance with the Reuse Plan for the redevelopment of the former Rutland Heights Hospital property and the Commonwealth of Massachusetts disposition legislation, Chapter 245 of the

Acts of 2000 (the “Act”). It is the intent of said Act that the Rutland Development and Industrial Commission (RDIC) be the developer of the site. The purpose of the HPDD is to provide for the reuse and redevelopment of the former Rutland Heights Hospital property in an effort to (i) create jobs and new economic opportunities in the Rutland area; (ii) promote a mix of uses of the site including but not limited to light industrial, manufacturing, offices, retail, senior housing, recreation and municipal uses, and (iii) provide development and architecture in a setting that reflects the aesthetics and character of the Town of Rutland. It is the specific intent to prohibit single-family homes, (unless in conjunction with a senior housing project) public schools, and hotel/inns in the HPDD.

§20 Definitions Specific to the HPDD

"Applicant" shall be any person, corporation or other entity that completes an application in accordance with Section 25B with the intent of developing any portion of the HPDD in accordance with Chapter 245 of the Acts of 2000, the Reuse Plan and the Rutland Zoning By-laws.

"Concept Plan" shall mean the first set of conceptual plans presented for review by the HPDD Review Board under Section 25B, prepared prior to moving forward with detailed engineering and Formal Site Plans.

"District" or "HPDD" shall mean the Heights Planned Development District comprising the 88-acre +/- locus of the Rutland Heights State Hospital property.

"Formal Site Plan" shall mean iterations of the Formal Site Plans after the Concept Plan has been approved by the HPDD Review Board. The Formal Site Plans may evolve through the public review process and become more detailed in time.

"HPDD Review Board" The HPDD Review Board shall consist of five (5) members appointed by the RDIC; two (2) from the RDIC, one (1) member of the Zoning Board of Appeals, and two (2) members at-large. The initial terms will consist of one (1) member of the RDIC appointed for three years, one (1) member of the RDIC appointed for two (2) years, the Zoning Board of Appeals member will be appointed for three (3) years, member's at-large will be one (1) appointed for two (2) years and one (1) appointed one (1) year. At the conclusion of each member's initial term the position will be reappointed for three years.

"Open Space" shall mean any parcel of land or water essentially unimproved to be set aside, dedicated, designated, or reserved as such.

"Master Plan" shall refer to the Rutland Master Plan prepared by the Rutland Planning Board and approved by town meeting vote in May, 2000 as the same may be amended.

"Reuse Plan" shall refer to the Rutland Heights Reuse Plan prepared by the Land Planning Committee in consultation with the Massachusetts Division of Capital Planning (now Division of Capital Asset Management) and approved by town meeting vote in May 1997 as the same may be amended.

"RDIC" shall refer to the Rutland Development and Industrial Committee, which shall have development control over the HPDD.

"Submission date" shall be the day that the Application is filed with the town clerk.

§21 Jurisdiction

The RDIC shall have the authority to approve Concept Plans that are consistent with the Reuse Plan, the Act, the Master Plan and this zoning bylaw for further review under this section. The HPDD Review Board shall have jurisdiction over Formal Site Plan Review for development proposed within the HPDD as set out hereunder or in the Planning Board's regulations. It is the intent of this section that the applicant work closely with the HPDD Review Board in the early stages of plan development to identify appropriate site planning goals and challenges.

In the event there is a conflict, inconsistency or ambiguity, the Rutland Zoning By-law as it applies to the proposed use shall govern. This section shall not exempt the Applicant from obtaining all other federal, state or local permits that may be required.

§ 22 Allowable Uses

Allowable uses include business or light industrial uses; small retail; recreation; open space and senior housing, including independent, assisted or congregate living facilities and renewable energy or allowable revisions under reuse plan. Any development within the HPDD shall require Formal Site Plan Review by the HPDD Review Board. The HPDD Review Board may allow any compatible uses not clearly defined herein upon a finding that the nature and scale of use is consistent with the intent of this section.

§23 Mix of Uses

To maintain a planned development that is in keeping with the Master Plan and the Reuse Plan, the development uses set forth below are permitted uses. To provide for the most desirable site planning, including location of buildings and open space to best protect the scenic qualities, natural resources and provide the most efficient use of the site for the anticipated mix of uses, sub- districts of permitted uses are not specifically defined; rather, the Applicant and HPDD Review Board shall determine the most appropriate use and site layout through the public review process.

A Business/Light Industrial Park type uses

The acreage located in the rear of the property as set forth on the Reuse Plan shall have as its preferred uses, both business and light industrial uses. It is however the intent of this bylaw, in conjunction with Section 22, to allow any of the uses as may be approved in accordance herewith.

B. Senior Housing

Is allowed within the HPDD and the eligibility thereof shall be defined by Mass General Laws and Title 19 XIX and Title 18 XVIII of the Social Security Acts.

C. Recreational

Recreational development is allowed within HPDD area.

Conversion of Open Space: It is the intent of this bylaw that the land designated as Open Space shall remain protected from development until such time as the RDIC recommends that any portion of such land should be utilized for expansion of any allowable uses on site.

§ 24 Setback Requirements

Setback requirements shall be as follows:

- a. A minimum (30) foot buffer shall be provided at the rear and side district lines of the HPDD. The HPDD Review Board may require a larger buffer depending upon the incompatibility of abutting uses.
- b. Non-residential structures shall not be located closer than (30) feet to any residential structure.
- c. All structures and uses shall also comply with the Town of Rutland Zoning Bylaw.

§ 25 Process

Any agreement to rent, convey, or otherwise dispose of an interest in real property, or to acquire and interest in real property by purchase or rental must conform to Chapter 32B of the Massachusetts General Laws, uniform Procurement Act.

A. Pre-Application Conference

Proposals shall only be received from Applicants as defined herein. The Applicant is strongly encouraged to confer with the RDIC to obtain information and guidance before entering into binding commitments, preparation of plans, surveys, engineering or other development preparations.

B. Submission of Concept Plans

The Applicant shall file ten (10) copies of the Concept Plan accompanied by the Application Form titled "Application for review of Concept Plan in HPDD", a Narrative description of the proposal and two thousand five hundred (\$2,500.00) dollars filing fee by delivery to the RDIC. A copy of the Concept Plan and the Application Form and Narrative shall also be filed concurrently in the Office of the Town Clerk. The official submission date, from which review periods are calculated, shall be the date of receipt by the Town Clerk.

C. HPDD Review Board Review of Concept Plans

- (1) The RDIC shall distribute copies of the Concept Plan within fifteen (15) days of the submission date to the HPDD Review Board, Planning Board, Board of Selectmen, Building Inspector, Zoning Board of Appeals, Department of Public Works, Conservation Commission, Recreation Commission, Board of Health, Fire and Police chiefs for review and comment by said boards and commissions. Comments must be received prior to the scheduled public hearing date. The HPDD Review Board shall within forty five (45) days of the submission date hold a public hearing to review the Application including but not limited to:
 - a. type and location of uses;

- b. amount of useable open space and its interconnection with built uses on and off site;
- c. aesthetics of scale and architecture of the proposed buildings consistent with the type of use;
- d. ability to provide local jobs, senior housing needs, and community recreation;
- e. compliance with the Act, Reuse Plan and Rutland Master Plan; and
- f. scope and suitability of green initiatives.

(2)The Applicant shall address the comments of the HPDD Review Board in its revision to the Concept Plan. The Applicant may elect to continue the concept plan review to permit review of the revised Concept Plans prior to developing more detailed Formal Site Plans or may immediately prepare and file Formal Site Plans for the development.

D. Contents of Concept Plan

The Concept Plan is intended to be preliminary in nature, , while providing critical information necessary to review the proposed location of buildings, roadways, trails and other uses on the site. The following items are required to ensure that the Concept Plan is adequate for "planning purposes" and to allow an applicant an opportunity to explore the feasibility of its proposal:

1. Property Boundaries, north point, date, scale, legend, and title block including the title "Concept Plan: Heights Planned Development District", the name or names of applicants, and engineer or designer.
2. Proposed land uses for each area of the site, and approximate location of proposed streets.
3. Approximate location of existing wetlands, open water, streams and the topography. This information can be extrapolated from USGS maps and information available from existing documents.
4. Existing and proposed buildings, structures and proposed open space in a general manner.
5. The natural features of the site, including wetlands, floodplains, steep slopes, known soil conditions, and other features requested by the HPDD Review Board.

E. Submission of Formal Site Plans

Following a review and approval of the Concept Plans by the HPDD Review Board, the applicant shall file ten (10) copies of the Formal Site Plans accompanied by the application form titled "Application for review of Formal Site Plan in HPDD", a detailed Narrative description of the proposal and filing fee of five thousand (\$5,000.00) dollars to the HPDD Review Board by delivery to the RDIC. A copy of the Formal Site Plan, the Application Form and Narrative shall also be filed concurrently in the Office of the Town Clerk. The official submission date, from which review periods are calculated, shall be the date of receipt by the Town Clerk.

F. HPDD Review Board Review of Formal Site Plan

The RDIC shall distribute copies of the Formal Site Plan within fifteen (15) days of the submission date to the HPDD Review Board, Planning Board, Board of Selectmen, Building Inspector, Department of Public Works, Conservation Commission, Recreation Commission, Board of Health, Fire and Police chiefs for review and comment. The HPDD Review Board shall within forty five (45) days of the submission date of the Application hold a public hearing and a decision shall be made within ninety (90) days of the submission date, unless extended by mutual consent of the Applicant and the HPDD Review Board in writing.

The HPDD Review Board may grant, grant with conditions, or deny the site plan; however, it shall not deny a site plan unless it fails to furnish adequate information for review of the project or fails to meet the requirements related to the various considerations imposed by this By-law, the Act, and the Reuse Plan, or the Rutland Zoning Bylaw.

G. Contents of Formal Site Plan

The Formal Site Plan is intended to follow the Concept Plan, which has the benefit of public input and direction of the HPDD Review Board. The Formal Site Plan shall therefore contain all necessary detailed information to address issues raised in the concept phase. The Formal Site Plans shall include the following items, unless waived by the HPDD Review Board.

1. Property Boundaries, north point, date, scale, legend, and title block including the title "Formal Site Plan: Heights Planned Development District", the name or names of applicants, engineer or designer, and signature and seal of licensed or registered professionals who prepared the plans.
2. Proposed land uses for each area of the site, location of proposed streets, buildings, and other structures.
3. Location of existing wetlands, open water, streams, stonewalls, fences, trees larger than 15 inches (trees only in areas of the site to be developed) and other significant natural or man-made features.
4. Topography as determined by a Massachusetts licensed surveyor. Topography shall be shown at 2-foot contour intervals in all areas of the site to be developed. All elevations shall be North American Vertical Datum (NAVD) of 1998.
5. Proposed contours shown on the same sheet as existing topography.
6. Setbacks to property lines, adjacent uses and buildings where such uses or buildings are less than 200 feet distant.
7. Street and utility construction plans and profiles for each street or way, consisting of the layout plan of the street within the site and beyond it to the limit of the proposed construction necessary to provide adequate access and connection of municipal services, and of a profile matching the layout and located on the plan for ease in identifying corresponding points.

8. All existing and proposed construction features, such as pavement, walks, curbing, drains, catch basins, manholes, water mains, other underground conduits where known, retaining walls, traffic islands, grass plots, bituminous berms and gutters. Centerline stations shall be designated at 100-foot intervals and at or opposite points of tangency, angles in street line, manholes, catch basins and culverts.
9. All crossings of wetland resource or stream areas must have a detailed cross-section prepared with the following information: depth of organic soils, proposed limits of work and excavation, culvert location and size, and any other available data pertinent to the design of the crossing.
10. The size and location of existing and proposed water mains, sewer lines, storm drains and appurtenant facilities for water, sewer and other municipal services within or in the vicinity of the site.
11. Detail drawings shall be provided as necessary to show any special construction features, deviating from or not covered by standard specifications.
12. A plan for the control of erosion and sedimentation.
13. A statement as to ownership of the roads and ways and if said ways are to be public, a plan for maintenance of such ways, easements and roads for the time prior to acceptance by the Town.
14. Suitable space to record the action of the HPDD Review Board, including space for reference to any conditions or limitations of approval, the date, signatures of Board members, and the Town Clerk's certificate of no appeal.

The Applicant and HPDD shall comply with the Rules and Regulations of the Planning Board as they relate to Definitive Plans for details related to the above requirements.

§ 26 Minimum Requirements

The HPDD Review Board shall have the authority to review the Formal Site Plans in accordance with the review criteria specified herein and in Article XIV, Site Plan Review of the Town of Rutland Zoning Bylaw. The Plan shall be subject to the following conditions and the HPDD Review Board shall make a determination that the project meets all of the following conditions before approving, approving with conditions, or denying any site plan:

- a. The project is consistent with the purposes set out in this Section 23, Heights Planned Development District.
- b. Vehicular ingress and egress from the site is designed so as to avoid hazard to vehicles or pedestrians.
- c. Parking facilities are provided for each use and structure in the development.
- d. Facilities or functions that require location within scenic areas (e.g. tops of hills or street frontage) are designed to be visually compatible with the natural or historical characteristics.

- e. The project does not adversely affect the natural environment to the detriment of community character, public health or safety.
- f. Land uses are located so as to allow aesthetic circulation between one use and another; undeveloped land is located in a manner that provides active and passive recreation, resource protection and pedestrian/wildlife links to adjacent uses on and off site, where feasible.

ARTICLE VI
Open Space Design Option

§ 27. General description.

This article is intended to supplement the Rutland Zoning Bylaw (hereinafter referred to as "this bylaw"). An open space design shall mean a residential development in which the buildings and accessory uses are clustered together with reduced lot sizes into one or more groups. The land not included in the building lots or street rights-of-way shall be dedicated as permanently preserved open space. Overall housing density shall not exceed that which could be built under a conventional development plan.

§ 28. Purposes.

The purposes of open space design are to:

- A. Protect open land for conservation, forestry, agriculture, surface water and groundwater resource protection, wildlife habitat, outdoor recreation, and scenic or historic value;
- B. Encourage land uses which are harmonious with natural features and existing observation points through more sensitive siting of buildings and better overall site planning;
- C.. Enable economical street, utility, and public facility installation and maintenance and efficient provision of municipal services; and
- D. Encourage a range of housing development alternatives which add recreational and aesthetic amenities to neighborhoods and allow for integration of a variety of housing styles and design approaches while protecting individual property rights.

§ 29. Applicability; special permit granting authority.

Applicants proposing residential development on lands of five acres or greater within the Residence District may apply for special permits to allow open space design as specified in § 36 of this article. For the purposes of this article, the Rutland Planning Board (hereinafter called "the Board") shall act as the special permit granting authority.

§ 30. Use standards.

Single-family dwelling units for residential use and other lawful accessory buildings may be constructed on certain lots in an open space design, although such lots have less area, frontage and/or front, rear and side yard dimensions than normally required by this bylaw.

§ 31. Density standards.

- A. Maximum permitted lots. Overall housing density shall not exceed that which could be built under a conventional development plan. Toward that end, the Board shall require verification of the number of lots that would have been accommodated upon the parcel under a conventional development plan. This shall be in the form of either a "plan believed not to require subdivision approval" in accordance with Section III of the Rutland Subdivision Rules and Regulations or a preliminary plan in accordance with Section IV of the Rutland Subdivision Rules and Regulations showing, but not limited to, topography at the ten-foot contour interval, surface waters and watercourses, bordering vegetated wetlands subject to the jurisdiction of the Rutland Conservation Commission, lands affected by the Massachusetts Watershed Protection Act, lands subject to easements or development restrictions, and street and lot lines.

- B. Density verification for unsewered areas. The conventional development plan shall show the locations and results of at least two soil evaluations performed in separate areas within each soil phase classification proposed for residential development on the parcel. The Board, after consultation and agreement with the Rutland Board of Health, may require the applicant to perform further soils evaluations on selected lots shown on the conventional development plan. Those lots not meeting the requirements of Title 5 of the Massachusetts State Environmental Code and any additional requirements of the Rutland Board of Health shall be subtracted from the total number of lots.

- C. Unbuildable lots. There shall be excluded from the number of lots shown on the conventional development plan all lots which the Board finds are not reasonably buildable, whether by reason of excessive development and site preparation measures or costs; sanitary disposal, drainage, water supply or vehicular access problems; restrictive easements or encumbrances; limited or unusually configured buildable area; the presence of bordering vegetated wetlands, slopes greater than 15%, land subject to flooding, or land subject to state or federal restrictions; or a combination of the foregoing. In consideration of the foregoing, the Board may rely upon findings and recommendations of the Board of Health, Sewer and Water Commission, Conservation Commission, Highway Department, or any appropriate state or federal agencies.

§ 32. Open space standards.

- A. Open space. All land not used for road rights-of way or building lots shall be dedicated as

open space. Such open space, when added to the building lots, shall be at least equal in area to the land area required by the Rutland Zoning Bylaw for the total number of dwelling units contemplated in the development.

- B. Minimum required open space. The minimum required open space dedication shall be 33% of the gross parcel area under consideration. Of the minimum open space required, no more than 50% may consist of bordering vegetated wetlands under the jurisdiction of the Rutland Conservation Commission or areas with slopes greater than 15%. Areas of dedicated open space in excess of the minimum required area may contain any percentage of bordering

vegetated wetlands or slopes greater than 15% and may contain common well, sewage treatment, septic disposal or drainage facilities, in addition to recreational facilities such as buildings, parking stalls and picnic areas.

§ 33. Dimensional standards.

The following dimensional standards amend and/or supplement those found in § 15 of this bylaw:

- A. Lot sizes. The minimum size for any lot in an open space design shall be according to Town water and sewer availability, as follows:
- (1) Town water and sewer: no less than 15,000 square feet (0.34 acre).
 - (2) Town water or sewer: no less than 30,00 square feet (0.69 acre).
 - (3) No Town water and sewer: no less than 43,560 square feet (one acre).
- B. Frontage. The minimum lot frontage for an open space design shall be 120 feet. Individual lot frontages may be further reduced to 80 feet, provided that in no case shall there be less than 120 feet at the building line.
- C. Flag lots. Flag lots with a minimum frontage and width of 40 feet at any point may be permitted in an open space design, provided that the pole portion does not exceed 500 feet in length and that the flag portion meets all applicable lot area requirements in Subsection A of this section. No two flag lots may adjoin on another at the street.
- D. Yards. For all dwelling units, the minimum front yard setback shall be 20 feet, the minimum side yard setback shall be 15 feet, and the minimum rear yard setback shall be 30 feet. Accessory buildings shall be set back from any property boundary by a minimum of 10 feet. Where perimeter lots are adjacent to residence-zoned property which is not a part of the open space design, setbacks for dwelling units from the property line shall be increased to up to 50 feet in order to provide up to 100 feet of horizontal separation from any existing dwelling units currently existing on the adjacent property.

E. Table. Dimensional standards used in this article are summarized in the following table:

Summary of Dimensional Requirements

	Current		Open Space Design	
	Sewer/No Sewer	Water and Sewer	Water or Sewer	None
Minimum land area (acres)	None	5	5	5
Minimum open space	None	33%	33%	33%
Minimum lot size (square feet)	30,000/65,340	15,000	30,000	43,560
Minimum frontage (feet)	150/200	120/80	120/80	120/80
Width at building line (feet)	N/A	120	120	120
Minimum setback (feet)				
Front	30	20	20	20
Side	20	15	15	15
Rear	25	30	30	30

§ 34. Site design standards.

Where appropriate in the judgment of the Board, the following additional criteria shall be incorporated into the proposed site plan for an open space design:

- A. Pedestrian circulation. Dedicated open spaces shall be laid out in conjunction with existing and proposed streets and sidewalks so that the greatest degree of internal pedestrian circulation and access to both on-site and off-site open space is achieved. Where the open space is to be owned by the Town of Rutland, adequate provisions shall be included to accommodate public use, including locations for placement of future parking spaces and signage.
- B. Vehicular circulation. To the greatest extent feasible, through streets shall be laid out to connect with existing or potential streets on adjacent land.
- C. Development location. Residential lots and access streets shall be grouped in locations designed to take advantage of solar heating opportunities; maintain scenic views, particularly those seen from Rutland's Town roads; protect prime wildlife habitat; preserve historic and prehistoric sites and their environs; and protect natural features, such as, but not limited to, surface waters, drainage courses, vernal pools, wetland, floodplain, prime aquifers, older-growth trees, and unique geologic formations.
- D. Landscaping. Naturally occurring vegetation shall be conserved to the greatest extent

feasible, especially along existing Town roads. Landscaping and tree removal are subject to the approval of the Board prior to any work and final approval of the open space design. Common

areas (such as community greens, cul-de-sac islands, and both sides of new streets) shall be landscaped with deciduous shade trees (minimum two-inch diameter at breast height) and flowering shrubs with high wildlife conservation value. The suggested street tree interval is 50 feet but may vary according to species selected and site-specific factors, at the discretion of the Board.

E. Greenways. Dedicated open spaces shall, to the greatest extent feasible, be laid out in deference to the Rutland Open Space Plan so as to be contiguous with open space areas of similar character (whether permanently preserved or not) on adjacent parcels and to facilitate the through movement of wildlife.

F. Shoreline areas. Notwithstanding the provisions of 310 CMR 10.00 and 350 CMR 11.00, in areas within 200 feet from each bank (as defined by MGL c. 131, § 40) of any water body or watercourse, lots shall be laid out, to the greatest extent feasible, to achieve the following objectives:

- (1) A significant portion of the shoreline shall be a part of the dedicated open space.
- (2) No excessive erosion, sedimentation, water pollution or disruption of the natural flow of the water will result from the construction.
- (3) Fisheries and wildlife habitat within and along the water body or watercourse are protected.
- (4) An uncut buffer strip of native vegetation 50 feet back from each affected bank is maintained.
- (5) A minimum setback for structures from all banks of 100 feet and from bordering vegetated wetlands of 50 feet is maintained.

G. Agricultural areas. In agricultural areas, lots shall be laid out, to the greatest extent feasible, to achieve the following objectives, without conflicting with the provisions of Subsection F above:

- (1) Developed areas are located on the least fertile soils for agricultural use so that land mapped as "prime agricultural land" or of "state importance" by the United States Department of Agriculture, Natural Resources Conservation Service in the Field Office Technical Guide for Worcester County, Massachusetts, will remain available for future agricultural use.
- (2) Structures are located within any wooded upland on the parcel, or along the far edges of open fields.
- (3) Residential and agricultural areas are situated to minimize the lengths of any common boundaries between new house lots and lands preserved for agriculture.

- (4) Dwelling units and nonagricultural structures are separated from the agricultural uses by a one-hundred-foot-wide buffer strip of trees and native plantings sufficient to reduce conflicts between farming operations and residents.

H. Upland areas. In areas of greater than fifteen-percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent feasible, to achieve the following objectives:

- (1) Potential building sites are located so the tops of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the tops of structures shall be lower than the existing canopy height of trees on the ridge or hilltop.
- (2) The removal of native vegetation is minimized.
- (3) Grading or earth-moving is planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.

I. Forestry areas. In forested areas where there exists a potential for a sustained yield of forest products (based on existing vegetation, parcel size, contiguity with other forestry parcels, and forestry site indices), lots shall be laid out, to the greatest extent feasible, to achieve the following objectives:

- (1) Areas of older growth forest or productive forest soils are included in the dedicated open space.
- (2) Access for logging equipment is provided in a manner that does not conflict with the residential uses.
- (3) Adequate buffering is provided in order to minimize disruption of residential areas or conflicts with the use of other open space areas and to assure the safety of the residents.

§ 35. Use restrictions, ownership and management.

A. Use restrictions. Further subdivision of open space, or its use for other than conservation, forestry, agriculture, surface water and groundwater resource protection, wildlife habitat or noncommercial outdoor recreation, shall be prohibited, and the approved plan shall be so endorsed in writing. In any case where such open space is not conveyed to the Town of Rutland, a restriction enforceable by the Town of Rutland shall be recorded providing that such open space shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses, such as parking or roadway, except that, subject to approval of the Board, limited open space areas may be utilized for shared well, septic disposal, sewage treatment or drainage facilities, in addition to recreational facilities such as buildings, parking stalls and picnic areas. These restrictions shall be recorded in a conservation restriction in perpetuity (as authorized by MGL c. 184, §§ 31 to 33). Where the aforementioned conservation restriction is deemed by the Board not to be appropriate for all or a portion of the open space, the Board may authorize an alternative method of restriction.

- C. Ownership. The proposed ownership of all open space shall be shown on the development plan. Subject to approval by the Board, all open space created hereunder shall either be:
- (1) Conveyed to the Town of Rutland and accepted by it for park or open space use;
 - (2) Conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space;
 - (3) Conveyed to a corporation or trust owned or to be owned by the owners of the lots or residential units within the development (hereinafter referred to as a "homeowners' association");
 - (4) Retained by the owner or other entity for use or lease in accordance with Subsection A above; or
 - (5) An appropriate combination of the above.

C. Homeowners' association.

- (1) Maintenance. Where applicable [Subsection B(3) above], a nonprofit, incorporated homeowners' association shall be established requiring membership of each lot owner in the open space design and requiring that ownership of the open space shall pass with conveyances of the lots. The homeowners' association shall be responsible for the permanent maintenance of all commonly owned water, septic, sewage treatment, drainage, open space, recreational, street, bikeway and trail facilities. A homeowners' association agreement or covenant shall be submitted with the special permit application guaranteeing continuing maintenance of such common utilities, land and facilities and assessing each lot a share of maintenance expenses. Such agreement or covenant shall be subject to review and approval by the Board and the Rutland Town Counsel. The Board may commission further legal review of any documents submitted, the cost of which shall be borne by the applicant.
- (2) Failure to maintain. Such agreements or covenants shall provide that in the event that the homeowners' association fails to maintain the common open land or infrastructure facilities in reasonable order and condition in accordance with the agreements or covenants, the Town of Rutland may, after notice to the homeowners' association and a public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the commonly owned land from becoming a public nuisance. The costs of such maintenance by the Town of Rutland shall be assessed proportionately against each of the properties within the development.

§ 36. Review and approval process.

- A. Pre-application review. To promote better communication and to avoid misunderstandings, the applicant is encouraged, prior to preparation of a formal application, to meet with the Board for general discussions and to review any preliminary conventional or open space design plans.

- C. Special permit. Application, hearing and decision procedures shall be in accordance with Article VII, Special Permits, of this bylaw, except that the Planning Board shall act as the special permit granting authority. Evaluation of a special permit for an open space design shall be in accordance with the submission requirements and standards set forth in §§ 28, 30, 31, 32, 33, 34 and 35 of this bylaw. The required number of additional copies of any application materials shall be provided by the applicant at his/her expense.
- C. Other Town board reviews. The applicant for an open space design shall submit, with a request for comment to the Board, copies of all application materials to the Rutland Board of Health, Conservation Commission, Highway, Police and Fire Departments and, where applicable, the Sewer and Water Commission within three days after the Board has accepted the application as complete.

§ 37. Effect on other laws and regulations.

- A. General powers. Nothing contained in this article is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws or bylaws of the Rutland Planning Board, the Rutland Board of Health, the Rutland Conservation Commission, the Town of Rutland, or the Commonwealth of Massachusetts which pertain to the subject matter of this article, with the following exception. Unless otherwise indicated, this article shall govern and supersede any conflicting provisions of the Town of Rutland Zoning Bylaw as applied to open space designs within the geographically applicable areas of this article. If no conflicting provision exists, the Rutland Zoning Bylaw shall control.
- B. Subdivision regulation. Insofar as an open space design constitutes a subdivision (as per MGL c. 41, § 81L), both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development which constitute a subdivision shall be required as set forth in the Rutland Subdivision Rules and Regulations, including the approval of the streets and utility system. A favorable action which may be made by the Board on a special permit application for an open space design shall not, therefore, be deemed either to constitute subdivision approval under the Rutland Subdivision Rules and Regulations or to imply that such approval will be given.
- C. State laws. A favorable action which may be made by the Board on a special permit application for an open space design shall not be deemed either to constitute approval under 310 CMR 15.00, 310 CMR 10.00, or 350 CMR 11.00 or to imply that such approval will be given.

§38. Definitions.

The following definitions pertain to this article and are intended to supplement those found in § 5 of this bylaw:

BUILDING LINE — The shortest distance between side lot lines measured through the point of the dwelling closest to the street on which the lot fronts.

CONVENTIONAL DEVELOPMENT PLAN — A "plan believed not to require subdivision approval" in accordance with Section III of the Rutland Subdivision Rules and Regulations or a preliminary plan in accordance with Section IV of the Rutland Subdivision Rules and Regulations.

(DEDICATED) OPEN SPACE — Those portions of the development parcel not specifically shown within road rights-of-way or building lots.

FLAG — That portion of the lot meeting the frontage requirements in § 33B of this bylaw.

FLAG LOT (also known as "pork chop lot") — Generally, a lot connecting to the street with a narrow access strip (pole) which opens at the rear to the dimensions of a full-sized building lot (flag); specifically, a building lot within an open space design which has the frontage and area dimensions specified in § 33C of this bylaw.

PARCEL — The overall land area under consideration for a special permit for an open space design.

POLE — That portion of the lot not meeting the frontage requirements in § 33B of this bylaw.

PRIME WILDLIFE HABITAT AREAS — Areas within a parcel which, at the time of application, are shown on an Estimated Habitat Map or Priority Habitat Map in the Massachusetts Natural Heritage Atlas.

ARTICLE VII Special Permits

§ 39. Special permit granting authority.

The special permit granting authority (SPGA) shall hear and decide on applications for special permits. The SPGA shall be either the Planning Board or the Zoning Board of Appeals, as specified in this bylaw. Uses identified as requiring a special permit shall follow the process below. The time frames stated herein are intended to be consistent with state statute; the SPGA shall process permit applications efficiently and in a reasonable time, consistent with the scale of the project, but in no case shall render its decision later than the time periods stated in this article, except by consent of the applicant.

§ 40. Rules; application requirements.

Each SPGA may adopt, and from time to time amend, rules governing the issuance of such permits; such rules may prescribe the form, size, style, contents, and number of copies of plans and the procedures for filing and processing all applications for special permits, and an up-to-date copy of the rules must be kept on file in the office of the Town Clerk. At a minimum, the SPGA's rules shall require the applicant to submit, or in the absence of such rules the applicant

shall submit, the required fee and nine copies of the special permit application and other information specified below to the Town Clerk. The Town Clerk shall stamp each copy with the date and time of submission. Eight copies of said application and information shall be filed forthwith by the applicant with the SPGA. The applicant shall specify in the application the appropriate SPGA for the proposed use. The applicant shall submit a site plan with the special permit application showing the location of the buildings and structures, utility areas, parking, lighting, fencing, drainage, landscaping and buffering, location and size of any signage and access to the lot from existing public ways.

§ 41. Notice and public hearing.

In accordance with MGL c. 40A, §§ 9 and 9A, the SPGA shall hold a public hearing within 65 days from the date of filing of the application. Notice of the hearing shall be given, in accordance with MGL c. 40A, §11, by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing, and also by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of the hearing. Notice to parties in interest or specific boards or other agencies shall be delivered by hand or sent by mail, postage prepaid. The SPGA shall be responsible for publishing and delivery or mailing such notice; however, the applicant may be required to pay for such notice.

§ 42. Decision or failure to act.

- A. A vote in favor of at least four members of the Planning Board or three members of the Zoning Board of Appeals is necessary to grant the special permit. The decision of the Board shall be made within 90 days following the date of the close of the public hearing. The required time limits for a public hearing and decision may be extended by written agreement between the applicant and the Board. Only those Board members who attend the public hearings may vote. The Board shall make findings, in accordance with the criteria below, and issue a written decision of approval, conditional approval or denial of the application for special permit. The Board shall keep a detailed record of its proceedings, the votes of its members, and the reason for its decision, copies of which shall be filed with the Town Clerk within 14 days. The Board shall mail notice of the decision to the applicant, to the parties in interest, and to every person present at the public hearing who requested such a notice.
- B. Failure of the special permit granting authority to take final action within 90 days, or the extended time, if any, shall be deemed to be a grant of the special permit. An applicant who seeks approval by reason of the failure of the SPGA to act within the time prescribed shall notify the Town Clerk within 14 days of the expiration of the 90 days, or extended time, of such approval and that notice has been sent by the petitioner to parties in interest. The notice sent to parties in interest by mail shall specify that appeals, if any, shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed.
- C. After the expiration of 20 days without notice of appeal to the Superior Court or, if an appeal has been taken, after receipt of certified records of the Superior Court indicating that

approval has become final, the Town Clerk shall issue a certificate stating the date of approval and, if appropriate, the fact that the SPGA failed to take final action and that approval resulting from such failure has become final. Such certificate shall be forwarded to the petitioner.

§ 43. Appeals.

Appeals, if any, shall be filed within 20 days after the date that the Town Clerk received notice of the decision, or from the time the Town Clerk received such written notice from the petitioner that the SPGA failed to act within the time prescribed.

§ 44. Subsequent amendments; lapse of permit.

Construction on or use of property under a special permit shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. A special permit shall lapse two years from the granting thereof or such shorter time as specified in said permit if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Any such period shall be extended by the time required to pursue or await determination of an appeal.

§ 45. Violations.

Upon notification by the Building Inspector that a violation of the special permit has occurred, the SPGA shall review the special permit and may revoke or amend said permit or impose additional conditions to ensure compliance with the standards of this bylaw. In acting on such matters, the SPGA shall follow the same procedures for issuance of special permits as specified above.

§ 46. Review criteria.

A. Special permits shall be granted at the discretion of the SPGA. As such, the reviewing board shall impose such additional conditions and safeguards as further the following objectives:

- (1) To lessen congestion in the streets;
- (2) To conserve health and secure safety from fire, flood, panic and other dangers;
- (3) To provide adequate light and air;
- (4) To facilitate the adequate provision of drainage, parks, and open space;

- (5) To ensure provision of appropriate facilities for providing water, waste disposal, and public utilities;
 - (6) To encourage housing for persons of all economic levels;
 - (7) To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; and
 - (8) To encourage the most appropriate use of lands throughout the Town and to preserve and increase amenities.
- B. A special permit may be granted, with or without conditions, when in the opinion of the SPGA the public welfare and convenience will be substantially served thereby and where the requested permit will not negatively affect the neighborhood and only for uses which are in harmony with the general purpose and intent of this bylaw.

§ 47. Design criteria.

The following design criteria shall apply to all requests for special permits. Generally, the design of buildings, building location, access points, grading and other elements of the development shall:

- A. Be suitably located in the neighborhood in which it is proposed and be compatible with existing uses and other uses permitted by right in the same district.
- B. Not create a nuisance due to air or water pollution, flooding, noise, dust, vibration, lighting or visually offensive structures and accessories.
- C. Provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements. The SPGA may require a traffic impact report if it determines that the proposal is likely to have a significant adverse impact on traffic patterns.
- D. Minimize the visual intrusion of parking areas, storage areas, loading docks, dumpsters, utility buildings and similar features as viewed from public ways or abutting premises.
- E. Minimize the removal of trees 12 inches in diameter or larger.
- F. Control soil erosion and minimize the volume of and depth of cut and fill of earth material.
- G. Avoid an increase in peak-hour stormwater flow from the site for a one-year, ten-year and one-hundred-year storm event.
- H. Minimize site lighting, including impacts to abutting properties, unnecessary lighting of the nighttime sky, and mitigation of headlight glare.
- I. Provide adequate and appropriate facilities for the proper operation of the proposed use.

- J. Reasonably protect the adjoining premises against possible detrimental or offensive use on the site.
- K. Ensure adequate space for parking and loading incidental to the normal operation of the use.
- L. Provide adequate methods of disposal and storage for sewage, refuse and other waste resulting from the uses permitted and the methods of drainage for surface water.
- M. Protect, to the extent feasible, unique or important natural, historic or scenic features, including views to or from the site.
- N. Provide adequate landscaping, including screening of adjacent residential uses and provision of street trees, landscape islands and parking lot and landscape buffers along street frontage.
- O. Otherwise be in harmony with the general purpose and intent of this bylaw.

§ 48. Senior housing.

The purpose of the senior housing special permit is to provide people over 55 years of age the opportunity to live in a home of comfortable size and designed specifically for their needs, equipped with the appropriate amenities and located within reasonable proximity to shopping and services. The following design criteria shall apply to applications for a special permit for senior housing to ensure that the project fits within the intent of the bylaw and the community character of Rutland. Where the provisions of this section conflict with other sections of the Zoning Bylaw, this section shall be controlling.

- A. The applicant shall demonstrate the effect of the project on the range of available housing choices for residents 55 years of age and older and identify housing needs of the senior population, especially that of Rutland residents.
- B. More than one dwelling unit and/or residential structure may be erected on the same lot.
- C. The density of the development shall be as follows: Where public water and/or sewer is available, the minimum lot size is 18,000 square feet plus 6,000 square feet for each unit. Where public water and sewer are not available, the minimum lot area is 30,000 square feet plus 7,000 square feet per unit. The density of the development shall not exceed one unit for the first 18,000 square feet (or 30,000 square feet, as applicable) plus one unit per 6,000 square feet of land area (5,000 square feet for affordable senior housing proposals) where the area used in the calculation may include 100% of sensitive areas where more than 80% of the lot is upland; 50% of the sensitive areas where more than 60% of the lot is upland; and 20% of the sensitive areas where 60% or less of the lot is upland. For purposes of this section, "sensitive areas" shall include any bordering vegetative wetland, open water or floodplain as defined by Rutland bylaws and/or MGL c. 131, § 40 and 310 CMR 10.00 et seq., and "upland" shall be all land area not included in the sensitive areas as defined herein.

(1) Examples:

- (a) A ten-acre lot with water and sewer containing three acres of sensitive areas will yield 59 units: eight acres upland plus 1.5 acres (50% of three sensitive areas) equals 8.5, less 0.41322 acre (18,000 square feet) equals 8.08668 acres divided by 0.13774 acre (6,000 square feet) equals 58, plus one (for the base 18,000 square feet) equals 59.
 - (b) An eight-acre lot with no water or sewer and containing more than 80% upland would yield 46 units: eight acres less 0.6887 acre (30,000 square feet) equals 7.31129 divided by 0.16070 (7,000 square feet) equals 45, plus one (for the base 30,000 square feet) equals 46.
 - (c) A ten-acre lot with water and sewer containing more than 80% upland would yield 70 units.
 - (d) A ten-acre lot with water and sewer containing five acres of sensitive areas would yield 41 units: five plus one (20% of five sensitive area acres) equals six less 0.41322 acre (18,000 square feet) equals 5.58678 acres divided by 0.13774 acre (6,000 square feet) equals 40, plus one (the base 18,000 square feet) equals 41.
 - (e) A five-acre lot of all upland would yield 34 units.
- (2) Where 10% of the senior dwelling units will be affordable, complying with the Massachusetts Department of Housing and Community Development guidelines, the density may be increased to no more than 5,000 square feet per unit.
- D. Independent senior housing units shall be contained in structures containing no more than eight residential units each; assisted living units may be provided in buildings of a scale compatible with the neighborhood and the particular site on which the development will occur.
- E. Each housing unit shall have no more than two bedrooms.²
- F. Exterior building walls shall reflect a single-family residential scale, to the greatest degree possible.
- G. No one building shall exceed 10,000 square feet gross floor area, including garages but excluding unfinished basement and attic storage spaces.
- H. Area and frontage requirements. The site shall have not less than 100 feet of frontage and an area of not less than 18,000 square feet plus 6,000 square feet per unit, except that where the developed area of the site is set back at least 200 feet, the frontage may be reduced to 30 feet.

² The following wording which appeared in this subsection was disapproved by the Attorney General and has been deleted: “and all exterior and interior doorways of at least 1/3 of the units shall be constructed in accordance with ADA (Americans with Disabilities Act) guidelines so as to provide for wheelchair access.”

- I. Yard requirements. Each site for senior housing shall provide a minimum setback of 50 feet from the front property line and minimum side and rear yards of 30 feet. Where the development includes six units or more and abuts a single-family district, an increased setback at the side and rear yards of 50 feet shall apply, of which at least 25 feet shall be retained in a natural vegetated state or landscaped to provide a perimeter buffer to the abutting single-family district.
- J. A portion of the land area of the site shall be left open and reserved as open space for recreation, conservation or parks or used as a buffer to adjacent land.
- K. Deed restrictions shall be placed on the entire site and shall be referenced in all leases as applicable, requiring that all residents, with the exception of spouses and/or caregivers, shall have reached the age of 55. Town Counsel shall review these restrictions for acceptance. The cost of such review shall be the responsibility of the applicant. In the case of projects developed under Commonwealth of Massachusetts affordable housing programs, the rules of said programs shall supersede this requirement where necessary.
- L. There shall be a minimum of one parking space per independent dwelling unit. A minimum of 25% of the dwelling units shall have garages, which shall count towards the one parking space per unit requirement. Assisted living facilities shall provide one parking space for each living unit. Handicapped spaces shall be provided in accordance with state code. Additional spaces may be required depending on the size and type of the units, at the discretion of the Planning Board.
- M. Parking areas for multiunit buildings shall not contain more than eight contiguous spaces without providing areas of landscaping. Landscaped islands shall be provided at a rate of 250 square feet for each eight spaces.
- N. Outdoor lighting fixtures shall be the full cutoff type, mounted no higher than 15 feet, oriented and shielded to avoid glare on adjoining premises and the nighttime sky.
- O. Sight visibility in each direction at the site entrance shall be at least 200 feet.
- P. Sidewalks shall be provided within the development on at least one side of the street or drive that provides access to the units.
- Q. Proposed streets, drives and utilities shall provide service functionally equivalent to that assured individual lots in accordance with the Subdivision Rules and Regulations in effect at the time of application.
- R. Accessory uses and structures. Garages, swimming pools or other accessory structures or uses, including community buildings for use by the residents, shall be allowed at the discretion of the SPGA so long as the setback and buffer requirements that otherwise apply are met and the structures are in keeping with the scale and character of the neighborhood.

- S. Fire lanes. All buildings shall be surrounded by an open space in which no vehicle may be parked and in which no building, structure, fence, stair or other building projection may be erected without written permission from the Chief of the Rutland Fire Department, except that buildings may be interconnected by corridors or walkways if provision is made for access by fire apparatus to all outside walls. Said lane need not be paved and may contain plantings that will not impede access by fire-fighting vehicles.³

ARTICLE VIII

Wireless Communications Facilities

§ 49. Purpose and intent.

It is the express purpose of this article to minimize the visual and environmental impacts of personal wireless service facilities. This article enables the review and approval of personal wireless service facilities by the Rutland Zoning Board of Appeals in keeping with the Town's existing bylaws and historic development patterns, including the size and spacing of structures and open spaces. This article is intended to be used in conjunction with other regulations adopted by the Town, including site plan review and other local bylaws designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development in Rutland. The design standards in § 52 are intended to mitigate negative impacts of these facilities.

§ 50 Definitions.

As used in this article, the following terms shall have the meaning indicated:

ABANDONED — A wireless telecommunications structure is abandoned when the owner notifies the Town that it is no longer needed for use for telecommunications purposes; the owner fails to renew its special permit for use of the structure; or if the SPGA believes the structure to have been abandoned or use discontinued, and after notice to the owner by the SPGA to that effect with an opportunity to defend such claim, the SPGA may determine the structure to be abandoned following 30 days with no response from the owner, or, alternatively, after a hearing, the SPGA may determine that the use has been abandoned.

ABOVE GROUND LEVEL (AGL) — A measurement of height from the natural grade of a site to the highest point of a structure.

ANTENNA — The surface from which wireless radio signals are sent and received by a personal wireless service facility.

³ The following sentence which appeared in this subsection was disapproved by the Attorney General and has been deleted: "The lane shall be 15 feet in width, extending from the plane of the outside of the building wall."

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 is considered camouflaged. .

CARRIER — A company that provides wireless services, sometimes known as "provider."

COLLOCATION — The use of a single mount on the ground by more than one carrier (vertical collocation) and/or several mounts on an existing building or structure by more than one carrier.

CROSS-POLARIZED (OR DUAL-POLARIZED) ANTENNA — A low mount that has three panels flush mounted or attached very close to the shaft.

ELEVATION — The measurement of height above sea level, as contrasted with AGL above.

ENVIRONMENTAL ASSESSMENT (EA) — 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.

EQUIPMENT SHELTER — An enclosed structure, cabinet, shed or box at the base of the mount, and connected by cable, within which are housed batteries and electrical equipment. Equipment shelters are also called "base transceiver stations" for PCS.

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.

FUNCTIONALLY EQUIVALENT SERVICES — Cellular, personal communication services (PCS), enhanced specialized mobile radio, specialized mobile radio and paging.

GUYED TOWER — A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

HISTORIC STRUCTURE — Any building within the Town Center Business District, any church, or any other structure built before 1940, unless the SPCA finds that the particular structure in question is insignificant from a historic, architectural or cultural perspective.

LATTICE TOWER — A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

LICENSED CARRIER — A company authorized by the FCC to construct and operate a commercial mobile radio services system.

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. Vertical collocations often have arrays at intermediate positions on the monopole.

MOUNT — The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. Roof mounted: mounted on the roof of a building.
- B. Side mounted: mounted on the side of a building.
- C. Ground mounted: mounted on the ground.
- D. Structure mounted: mounted on a structure other than a building.

OMNIDIRECTIONAL (WHIP) ANTENNA — A thin rod that beams and receives a signal in all directions, having less range but a thinner silhouette than a panel antenna.

PANEL ANTENNA — A flat surface antenna usually developed in multiples, often deployed in three directional "sectors."

PERSONAL WIRELESS SERVICE FACILITY — Facility for the provision of personal wireless services, as defined by the Telecommunications Act.

PERSONAL WIRELESS SERVICES — The three types of services regulated by this article. Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services are the FCC personal wireless services as described in the Telecommunications Act of 1996.

RADIO-FREQUENCY (RF) ENGINEER — An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO-FREQUENCY RADIATION (RFR) — The emissions from personal wireless service facilities.

SECURITY BARRIER — A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

SEPARATION — The distance between one carrier's array of antennas and another carrier's array.

51. Permit required.

A personal wireless service facility shall require a building permit and may require a special permit from the Zoning Board of Appeals or site plan review by the Planning Board. The following criteria shall apply:

- A. Special permit. A personal wireless service facility involving construction of one or more ground or building (roof or side) mounts shall require a special permit. Such facilities may locate by special permit in all zoning districts within the Town, provided that the proposed use complies with the height requirements of § 53 and setback requirements of § 54 and all

of the special permit criteria set forth in § 58 of this article.

- B. Exception for location on existing towers. A personal wireless service facility may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower or water tower, provided that the installation of the new facility does not increase the height of the existing structure except as provided in § 53D below. Such installations shall not require a special permit but shall require site plan review by the Planning Board.

§ 52. Location.

Applicants seeking approval for personal wireless service facilities shall comply with the following location considerations:

- A. Collocation. Licensed carriers shall share personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless service facilities that are stand-alone facilities. All applicants for a special permit for a personal wireless service facility shall demonstrate a good faith effort to collocate with other carriers. Such good faith effort includes:
- (1) A survey of all existing structures that may be feasible sites for collocating personal wireless service facilities;
 - (2) Contact with all the other licensed carriers for commercial mobile radio services operating in the county; and
 - (3) Sharing information necessary to determine if collocation is feasible under the design configuration most accommodating to collocation.
- B. Location on existing structures. If feasible, personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
- C. Camouflaging. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to use of compatible building materials and colors, screening, landscaping and placement within trees.
- D. Legal rights. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or special permit.
- E. Statement of infeasibility. In the event that collocation is found to be not feasible, a written

statement of the reasons for the infeasibility shall be submitted to the Town. The Town may retain a technical expert in the field of RF engineering to verify if collocation at the site is not feasible or is feasible given the design configuration most accommodating to collocation. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a special permit to an applicant that has not demonstrated a good faith effort to provide for collocation.

§ 53. Height requirements.

Personal wireless service facilities shall comply with the following height requirements:

- A. General. Regardless of the type of mount, personal wireless service facilities shall be no higher than 10 feet above the building to which they are attached, or the average height of buildings within 300 feet of the proposed facility, or, if there are no buildings within 300 feet, these facilities shall not project higher than 10 feet about the average tree canopy height, measured from ground level (AGL). In addition, the height of a personal wireless service facility shall not exceed by more than 10 feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged, such as within a flagpole, steeple, chimney, or similar structure. Personal wireless service facilities may locate on a building that is legally nonconforming with respect to height, provided that the facilities do not project above the existing building height.
- B. Ground-mounted facilities. In addition to Subsection A, if there are no buildings within 300 feet of the proposed site of the facility, all ground-mounted personal wireless service facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may exist on the subject property or be planted on site. Since open fields represent a significant part of the character of the Town of Rutland, however, it is not the intent to allow the construction of towers in the middle of open fields, even if surrounded by newly planted trees.
- C. Side- and roof-mounted facilities. In addition to Subsection A, side- and roof-mounted personal wireless service facilities may locate on a building that is legally nonconforming with respect to height, provided that the facilities do not project above the existing building height.
- D. Existing utility structures. New antennas located on electric transmission and distribution towers, telephone poles and similar existing utility structures shall be exempt from the height restrictions of this article provided that there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility. This exemption shall not apply within 150 feet of the right-of-way of any scenic roadway or in scenic viewsheds as identified by the SPGA.

§ 54. Setbacks; fall zone.

All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. **In** addition, the following setbacks shall be observed:

- A. Fall zone. In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be 110% of the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone."
- B. Existing structures. In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of preexisting nonconforming structures, personal wireless service facilities and their equipment shelters shall not increase any nonconformity.

§ 55. Flexibility.

In reviewing a special permit application for a personal wireless service facility, the Planning Board (for site plan applications) or Zoning Board of Appeals (for special permit applications) may reduce the required fall zone and/or setback distance of the zoning district by as much as 50% of the required distance, if it finds that a substantially better design will result from such reduction. In making such a finding, the reviewing board shall consider both the visual and safety impacts of the proposed use.

§ 56. Design standards.

All personal wireless service facilities shall comply with the performance standards set forth in this section, in addition to the special permit procedures in § 58.

A. Visibility/camouflage. Personal wireless service facilities shall be camouflaged as follows:

(1) Camouflage by existing buildings or structures.

- (a) When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
- (b) Personal wireless service facilities that are side mounted shall blend with the existing building's architecture and, if over five square feet, shall be painted or shielded with material that is consistent with the design features and materials of the building.

(2) Camouflage by vegetation. If personal wireless service facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless service facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. A buffer of at least 50 feet is desired. Trees and vegetation may exist on the subject property or be installed as part of the proposed facility or a combination of both. The reviewing board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

(3) Color.

(a) Personal wireless service facilities which are side mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

(b) To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding them, they shall be painted in a light grey or light blue hue so that they are less visible against the skyline/horizon.

B. Equipment shelters. Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:

(1) Equipment shelters shall be located in underground vaults;

(2) Equipment shelters shall be designed consistent with traditional architectural styles and materials, with a roof pitch of at least 10/12 and wood clapboard or shingle siding or otherwise consistent with other buildings in the area; or

(3) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The SPGA shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood.

C. Lighting and signage.

(1) Lighting shall be limited to minimal security lighting and that required by the Federal Aviation Administration (FAA) only.

(2) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town's sign regulations.

(3) All ground-mounted personal wireless service facilities shall include a sign posted on the tower (or security fence) indicating a contact telephone number of the owner or operator that is available 24 hours per day. "No trespassing" signs shall be allowed at the owner or operator's option.

D. Historic buildings and areas.

- (1) Any personal wireless service facilities located on or within an historic structure, as defined in § 50 above, shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
- (2) Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.

E. Scenic landscapes and vistas.

- (1) Personal wireless service facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. As required in Subsection A above, all ground-mounted personal wireless service facilities which are not camouflaged by existing buildings or structures shall be surrounded by a buffer of dense tree growth.
- (2) Any personal wireless service facility that is located within 300 feet of a scenic vista, scenic landscape or scenic road as identified by the SPGA shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic vista, scenic landscape or scenic road, the height regulations described elsewhere in this article will apply.

§ 57. Environmental standards.

- A. Personal wireless service facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
- B. No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a scaled floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- C. Stormwater runoff shall be contained on site.
- D. Ground-mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db at the property line.
- E. Roof-mounted or side-mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.

§ 58. Application procedures.

- A. Special permit granting authority (SPGA). The special permit granting authority (SPGA) for personal wireless service facilities shall be the Zoning Board of Appeals.
- B. Pre-application conference. Prior to the submission of an application for a special permit under this article, the applicant is strongly encouraged to meet with the SPGA at a public meeting to discuss the proposed personal wireless service facility in general terms and to clarify the filing requirements. The SPGA shall meet with an applicant under this article within 30 days following a written request submitted to the SPGA and the Town Clerk. If the SPGA fails to meet with an applicant who has requested such a meeting within 30 days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a special permit application under this article without need for a pre-application conference.
- C. Pre-application filing requirements. The purpose of the conference is to inform the SPGA as to the preliminary nature of the proposed personal wireless service facility. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the SPGA of the location of the proposed facility, as well as its scale and overall design.
- D. Special permit filing requirements. The following shall be included with an application for a special permit for all personal wireless service facilities:
 - (1) General filing requirements.
 - (a) Name, address and telephone number of applicant and any co-applicants as well as any agents for the applicant or co-applicants.
 - (b) Co-applicants may include the landowner of the subject property, licensed carriers and tenants for the personal wireless service facility.
 - (c) The applicant or a co-applicant must be a licensed carrier.
 - (d) Original signatures for the applicant and all co-applicants applying for the special permit. If an agent will represent the applicant or co-applicant, an original signed authorization of the agent to represent the applicant and/or co-applicant is required.
 - (e) Filing fee as determined by the fee schedule of the SPGA. The SPGA may hire, at the applicant's expense, such qualified professionals as the SPGA deems necessary for review of the application. The applicant shall be required to deposit with the Town a sum of money sufficient to cover costs associated with this review. The moneys deposited with the Town shall be subject to MGL c. 44, § 53G.

(2) Location filing requirements.

- (a) Locus map identifying the subject property by including the Town as well as the name of the locality, name of the nearest road or roads, and street address, if any.
- (b) Tax map and parcel number of the subject property.
- (c) Zoning district designation for the subject parcel.
- (d) A scaled parcel map showing the lot lines of the subject property and all properties within 300 feet and the location of all buildings, including accessory structures, on all properties shown.
- (e) A Town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one mile of its corporate limits.
- (f) The proposed locations of all existing and future personal wireless service facilities in the Town on a Town-wide map for this carrier.
- (g) If the applicant does intend to collocate or to permit collocation, drawings and studies that show the ultimate appearance and operation of the personal wireless service facility at full build-out.
- (h) Estimates of RFR emissions will be required for all facilities, including proposed and future facilities.
- (i) If the SPGA approves collocation for a personal wireless service facility site, the special permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the special permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved special permit shall require a new special permit.

(3) Siting filing requirements.

- (a) A vicinity plan at a scale one inch equals 40 feet, showing the following:
 - 1 Property lines for the subject property and all properties within 300 feet.
 - 2 Tree cover on the subject property and adjacent properties within 300 feet, by dominant species and average height, as measured by or available from a verifiable source.
 - 3 Outline of all existing buildings, including purpose (e.g., residential buildings, garages, accessory structures, etc.), on the subject property and all adjacent properties within 300 feet.
 - 4 Proposed location of antenna, mount and equipment shelter(s).

- 5 Proposed security barrier, indicating type and extent as well as point of controlled entry.
- 6 Location of all roads, public and private, on the subject property and on all adjacent properties within 300 feet, including driveways proposed to serve the personal wireless service facility.
- 7 Distances, at grade, from the proposed personal wireless service facility to each building on the vicinity plan.
- 8 Topography at two-foot contours for the subject property and adjacent properties within 300 feet.
- 9 All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
- 10 Location of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the personal wireless service facility.
- 11 Sight lines showing viewpoint (point from which view is taken) and visible point (point being viewed) from Subsection D(3)(b) below.

(b) Sight lines and photographs as described below:

- 1 A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the personal wireless service facility. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.
- 2 Existing (before condition) photographs. Each sight line shall be illustrated by one color photograph of what can currently be seen from any public road within 300 feet.
3. Proposed (after condition). Each of the existing condition photographs shall have the proposed personal wireless service facility superimposed on it to show what will be seen from public roads if the proposed personal wireless service facility is built.

- (c) Elevation drawings showing the view at grade from the north, south, east and west for a fifty-foot radius around the proposed personal wireless service facility plus from all existing public and private roads that serve the subject property. Elevations shall be at a scale of 1/4 inch equals one foot or 1/8 inch equals one foot and shall show the following:

- 1 Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
- 2 Security barrier. If the security barrier will block views of the personal wireless service facility, the barrier drawing shall be cut away to show the view behind the barrier.
- 3 Any and all structures on the subject property.
- 4 Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation.
5. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

(4) Design filing requirements.

- (a) Equipment brochures for the proposed personal wireless service facility, such as manufacturer's specifications or trade journal reprints, shall be provided for the antennas, mounts, equipment shelters, cables, as well as cable runs, and security barrier, if any.
- (b) Materials of the proposed personal wireless service facility specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables, as well as cable runs, and security barrier, if any.
- (c) Colors of the proposed personal wireless service facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables, as well as cable runs, and security barrier, if any.
- (d) Dimensions of the personal wireless service facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
- (e) Appearance shown by at least two photographic superimpositions of the personal wireless service facility within the subject property. The photographic superimpositions shall be provided for the antennas, mounts, equipment shelters, cables, as well as cable runs, and security barrier, if any, for the total height, width and breadth.
- (f) Landscape plan, including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.
- (g) Within 30 days of the pre-application conference or within 21 days of filing an application for a special permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least seven days but not more than 21 days prior to the

test. The balloon shall be flown or crane shall be present for a minimum of 72 hours.

(5) Noise filing requirements.

- (a) The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless service facilities, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:
 - 1 Existing, or ambient: the measurements of existing noise.
 - 2 Existing plus proposed personal wireless service facilities: maximum estimate of noise from the proposed personal wireless service facility plus the existing noise environment.
- (b) Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the environmental standards set forth in § 57D and E.

(6) Radio-frequency radiation (RFR) filing requirements.

- (a) All equipment proposed for a personal wireless service facility shall be authorized according to FCC Guidelines for Evaluating the Environmental Effects of Radio-Frequency Radiation (FCC Guidelines).
- (b) The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed personal wireless service facility for the following situations:
 - 1 Existing, or ambient: the measurements of existing RFR.
 - 2 Existing plus proposed personal wireless service facilities: maximum estimate of RFR from the proposed personal wireless service facility plus the existing RFR environment.
- (c) Certification, signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines.
- (d) A copy of the Massachusetts Department of Public Health letter of approval.

(7) Federal environmental filing requirements.

- (a) The National Environmental Policy Act (NEPA) applies to all applications for personal wireless service facilities. NEPA is administered by the FCC via procedures adopted as Subpart 1, Section 1.1301 et seq. (47 CFR Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any personal wireless service facility proposed in or

involving any of the following:

- [1] Wilderness areas;
 - [2] Wildlife preserves;
 - [3] Endangered species habitat;
 - [4] Historical Site;
 - [5] Indian religious site;
 - [6] Floodplain;
 - [7] Wetlands;
 - [8] High-intensity white lights in residential neighborhoods; or
 - [9] Excessive radio-frequency radiation exposure.
- (b) At the time of application filing, an EA that meets FCC requirements shall be submitted to the Town for each personal wireless service facility site that requires such an EA to be submitted to the FCC.
- (c) The applicant shall list location, type and amount (including trace elements) of any materials proposed for use within the personal wireless service facility that are considered hazardous by the federal, state or local government.
- (8) Waiver. The SPCA may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed personal wireless service facility.

§ 59. Modifications.

A modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a special permit when the following events apply:

- A. The applicant and/or co-applicant wants to alter the terms of the special permit by changing the personal wireless service facility in one or more of the following ways:
- (1) Change in the number of facilities permitted on the site.
 - (2) Change in technology used for the personal wireless service facility that will alter the structure or the emissions of the facility.

- B. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

§ 60. Monitoring and maintenance.

- A. After the personal wireless service facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the special permit, measurements of RFR from the personal wireless service facility. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines.
- B. After the personal wireless service facility is operational, the applicant shall submit, within 90 days of the issuance of the special permit, and at annual intervals from the date of issuance of the special permit, existing measurements of noise from the personal wireless service facility. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the environmental standards set forth in § 57D and E.
- C. The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

§ 61. Abandonment or discontinuation of use.

- A. At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier shall notify the Town by certified United States 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 such discontinuation of operations.
- B. 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:
 - (1) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - (3) Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading performed for the facility shall remain in place.

- C. If a carrier fails to remove a personal wireless service facility in accordance with this section, the Town shall have the authority to enter the subject property and physically remove the facility. The SPGA may require the applicant to post a permanent bond at the time of construction to cover costs for the removal of the personal wireless service facility in the event the Town must remove the facility.

§ 62. Existing structures.

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this article⁴ may be reconstructed, altered, extended or replaced on the same site by special permit, provided that the Planning Board (SPGA) finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits, such as opportunities for collocation, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than 20 feet.

§ 63. Term of special permit.

A special permit issued for any personal wireless service facility over 50 feet in height shall be valid for five years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new special permit shall be required.

ARTICLE IX
Administration and Enforcement

§ 64. Zoning Board of Appeals.

- A. The Zoning Board of Appeals for this Zoning Bylaw shall be the Zoning Board of Appeals provided for by the provisions of the Building Bylaws of the Town of Rutland, as appointed by the Selectmen.
- B. Powers of the Zoning Board of Appeals. The Zoning Board of Appeals shall have the power provided for under MGL c. 40A, § 14, as follows:
- (1) To hear and decide appeals taken as provided in MGL c. 40A, § 8 and this chapter.

⁴ This article was originally adopted 1-22-2001.

- (2) To hear and decide applications for special permits for exceptions as provided in MGL c. 40A, § 9, which provides that exceptions may be allowed to the regulations of this bylaw, provided that such exceptions are in harmony with the general purpose and intent of this bylaw.
- (3) To authorize upon appeal, or petition, in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this bylaw where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw, but not otherwise. Variances shall be granted in accordance with the provisions of MGL c. 40A, § 10.
- (4) To hear and decide appeals from the decisions of the Building Inspector in accordance with MGL c. 40A, § 13.

C. Variances and exceptions as provided above may be granted to permit to alter, repair, or reconstruct nonconforming buildings.

D. Permits as provided above may allow, where the dwelling was built prior to March 22, 1962, an accessory building, such as a garage, to be placed five feet from the side lot line, provided that such construction shall not be detrimental to fire protection.

E. Permits as provided above may allow, with limitations, persons to occupy the basement or cellar of an uncompleted building. Said permit shall not be granted for more than one year or extended for more than one year. The Zoning Board of Appeals shall in no case grant such a permit prior to receiving a report from the Board of Health that said basement or cellar is in no way dangerous to the health and safety of its intended occupants or of the community.

§ 65. Proceedings on appeal cases.

A. Proceedings on appeal cases. In cases arising under § 64 hereof, including all cases of any person or persons desiring to obtain the approval of the Zoning Board of Appeals for any purpose for which approval is required by this bylaw, application shall be made in writing to the Zoning Board of Appeals, which shall hold a public hearing on the application and thereafter render a decision. The proceedings on the appeal case shall be as follows:

- (1) Upon receiving an application for a permit, exception, or variance, the Zoning Board of Appeals shall, within 65 days, hold a public hearing relative to the application.
- (2) The Zoning Board of Appeals shall publish in a newspaper of general circulation in the Town of Rutland a notice of the time and place of such hearing and the subject matter. It shall be published for two successive weeks, the first not less than 14 days

before the day of the hearing. The Zoning Board of Appeals shall also send notice by mail, postage prepaid, to the applicant and to the owners of property deemed to be affected thereby, as appears in the most recent local tax list, and to the Rutland Planning Board and, when applicable, to the Rutland Board of Health.

- (3) When applicable, the Board of Health shall notify the Zoning Board of Appeals in writing within 20 days, subject to whether there exists any possible injury to the public health.
- (4) The Planning Board may, at its discretion, investigate the intended permit, exception, or variance as to protection of the safety, convenience, and welfare of the inhabitants of Rutland and report its findings in writing to the Zoning Board of Appeals within 20 days.

B. Hearing action. At the hearing any party, whether entitled to notice thereof or not, may appear in person or by agent. In addition, the Zoning Board of Appeals should inform those attending of the requirements of this bylaw in relationship to the appeal. Following the hearing, the Zoning Board of Appeals, after consideration for not more than 100 days, shall either grant approval or deny approval.

- (1) In considering the appeal, the Zoning Board of Appeals shall take into consideration any or all facts reported in writing by the Planning Board or Board of Health but shall not be influenced by any opinion which may be reported.
- (2) The Zoning Board of Appeals shall consider whether the granting of the variance will be a detriment to the public good, which may affect the happiness, peace of mind, or economic welfare of many people.

C. Filing the decision. The decision of the Zoning Board of Appeals must state the basis by which approval or disapproval is given and the record by vote of each member. The decision shall be filed with the Town Clerk and a copy shall be sent to the Planning Board.

§ 66. Enforcement officer.

It shall be the duty of the Building Inspector to enforce the provisions of this bylaw, and in so doing he shall have the right to enter at any reasonable hour any premises included within the several zoning districts of the Town for the purpose of inspection and enforcement of the Zoning Bylaw.

§ 67. Violations and penalties.

Violation of this Zoning Bylaw shall be subject to a penalty of not more than \$300. Each day such violation continues shall constitute a separate offense.

§ 68. Amendments.

This bylaw may be amended from time to time at an Annual or Special Town Meeting, by a two-thirds vote, in accordance with the provisions of MGL c. 40A, § 5.

ARTICLE X

Adult Entertainment

1.0. Authority, Purpose and Intent

The purpose of this section is to serve the compelling Town interests of limiting the location of certain adult entertainment enterprises, in response to studies demonstrating their deleterious effect. This section addresses and mitigates the secondary effects of adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime and blight, the flight of existing businesses, and adverse impacts on public health, property values of residential and commercial properties, the business climate, and the general quality of life in the community. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Rutland and its inhabitants.

This section is intended to be consistent with the provisions of M.G.L. chapter 40A and the Town's authority under the Home Rule Amendment to the Massachusetts Constitution. The provisions of this by-law have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials that are protected by the U.S. or Massachusetts Constitutions, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Similarly, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene or other illegal matter or materials.

2.0 Definitions Specific to Adult Entertainment

As used herein, and consistent with the definitions in M.G.L. c.40A, section 9A, Adult Uses shall include the following: adult bookstore, adult video store, adult paraphernalia store, adult motion picture theatre establishment, adult live entertainment, massage service establishment, sexual encounter club, adult cabaret or club, adult motel or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or sexual excitement as defined in MGL c. 272 §31, as it may be amended.

Adult uses shall include an establishment with a combination of adult use materials as listed above including books, magazines, devices, objects, tools, or toys, movies, videos, and any similar audio/visual media for sale, rent, or use which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272 §31, as it may be amended which in combination, is either:

- (a) greater than fifteen percent 15% of the subject establishment's inventory stock measured by volume and /or value; or
- (b) greater than twenty-five percent (25%) of subject premise's gross floor area, or 200 square feet, whichever is greater.

Adult Use - a use of a building or business (whether partial or entire) for the purpose of engaging in the sale, display, hire, trade, exhibition or viewing of materials or entertainment depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, §31, as it may be amended including adult bookstores, adult live entertainment, adult motion-picture theaters, adult paraphernalia stores and adult video stores, massage service establishments, sexual encounter clubs, adult cabaret or club, adult motel or similar establishment customarily excluding any minor by reason of age as a prevailing practice, as may be further defined in this bylaw.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock in trade devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31, as it may be amended.

Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies, computer software, computer discs, laser discs, film, or other recorded or electronically generated material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, §31, as it may be amended.

Nudity - Uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For the purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered as defined in M.G.L. c. 272, §31, as it may be amended.

Sexual Conduct - Human masturbation, sexual intercourse, actual or simulated, normal or perverted, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship, any lewd touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, and any depiction or representation of excretory functions in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted as defined in M.G.L. c. 272, §31, as it may be amended .

Sexual Excitement - The condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity as defined in M.G.L. c. 272, §31, as it may be amended.

Sexual Encounter Club - A business or commercial enterprise, public or private, that as one of its primary business purposes, offers for any form of consideration: (A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (B) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (A) or (B) are distinguished or characterized by its emphasis

depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31, as it may be amended.

Adult Cabaret or Club - A restaurant, or other establishment licensed under Section 12 of Chapter 138, of the General Laws, which, as a form entertainment, which features exotic dancers, strippers, male or female impersonators or similar entertainers, or allows a person or persons to work in a state of nudity; or provides films, motion pictures, video cassettes, compact disks, slides, photographic reproductions, or other visual and/or audio media, regardless of form or method of presentation, which are characterized by the depiction or description of sex-related anatomical areas, or relating to any sexual activity, including sexual conduct or sexual excitement, as defined in M.G.L. c. 272 § 31, as it may be amended.

Adult Motel - A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31, as it may be amended.

Membership Club - A social, sports, or fraternal association or organization used exclusively by members and their guests and which may contain bar facilities, but excluding sexual encounter clubs.

3.0 Special Permit

Adult entertainment uses shall be allowed only in the light industrial zoning districts, where such uses shall be allowed only upon the grant of a Special Permit by the Planning Board in accordance with Article XI and following Site Plan Approval by the Zoning Board of Appeals in accordance with Article XII.

4.0 Filing Requirements, Siting Criteria, Conditions

4.1 Submission Requirements

1. The application for a special permit for an adult use shall provide
 - a. name and address of the legal owner of the establishment,
 - b. legal owner(s) of the property,
 - c. manager of the proposed establishment,
 - d. proposed number of employees
 - e. proposed security precautions, and
 - f. adequate description(s) and illustration(s) of the physical layout of the premises which shall be no less than professionally engineered site plan(s) and architectural renderings of all facilities to be constructed, renovated, or used.
 - g. Type(s) of adult use proposed

2. No adult use special permit shall be issued to any applicant, or the representative of an owner(s), operator, or manager of an adult entertainment facility who has been convicted of violating the provisions of M.G.L. c. 119, §63 (Inducing or abetting delinquency of a child) or

M.G.L. c. 272, §28 (Crimes against chastity, morality, decency and good order) or equivalent statutes in other jurisdictions. The application shall include authorization for the Town to confirm criminal record information through the appropriate authorities.

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

4.2 Siting Criteria

Adult entertainment uses shall comply with the following siting criteria, where the distance from the developed portion of the subject site shall:

- a. Adult uses shall not be located closer than 250 feet from a residential zoning district or residential dwelling;
- b. Not be located within 500 feet from a church, school, playground, play field, cemetery, public open space, youth center, day care center or other location where groups of minors regularly congregate; or
- c. The distances specified in this section shall be measured by a straight line from the nearest developed portion of the premises on which the adult entertainment use is proposed (including structures proposed to contain adult uses and associated accessory structures) to the nearest property line of the uses stated in a. and b. above.

4.3 Conditions

1. No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises. All entrances to an adult entertainment business, or portion of the business displaying material of adult content, shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises or portion of the business as the case may be.
2. If the Adult Use allows for the showing of films or videos within the premises, any booths in which the films or videos are viewed shall not be closed off by curtains, doors or screens. All booths must be able to be clearly seen from a central point within the establishment.
3. No adult use shall be allowed within a building containing residential uses.
4. No adult use shall be allowed within a shopping center, shopping plaza or mall. For the purposes of this section “shopping center”, “shopping plaza”, and “mall” shall be defined as an integrated group of retail establishments and associated parking whether located on one or more parcels of land.
5. No loudspeakers or sound equipment shall be used by an Adult Entertainment Business for the amplification of sound to a level discernible by the public

beyond the walls of the building in which the Adult Entertainment Business is conducted.

6. An Adult Entertainment Business shall not remain open for business, or permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 1:00 A.M. and 10:00 A.M. of any particular day. In the case of Adult Bookstores, Video Stores, and Adult Paraphernalia Stores, business hours shall be limited to hours between 9:00 A.M. to 10:00 P.M. These hours of operation may be further restricted in the conditions granting a Special Permit for an Adult Entertainment Business.
7. A Certificate of Occupancy for an Adult Use shall not be issued until the applicant has first received all required licenses and permits from the appropriate Licensing Boards.
8. A violation of any one of these conditions may result in the revocation of the establishment's Special Permit.

5.0 Site Plan Approval

No adult entertainment use shall be established prior to Site Plan Approval by the Zoning Board of Appeals. Simultaneously with the submission of the Special Permit Application to the Planning Board, the applicant shall submit a site plan to the Planning Board.

1. In addition to the requirements of Article XII, the site plan shall depict all existing and proposed buildings, parking spaces, driveways, service areas, open space and other land uses. The site plan shall show the distance between the proposed adult entertainment use and the boundary of the nearest residential zoning district or property and the location of other uses noted in section 4.2 above if located within 500 feet.
2. In addition to the dimensional requirements specified in Article VI, a twenty (20) foot vegetative buffer and or fence containing adequate screening, given the character of the neighborhood it abuts and the intensity of the use, shall be provided between adult entertainment uses and abutting uses, if any. The applicant shall provide a landscaping plan illustrating proposed landscaping, fences, walls or other design features. Any buffer vegetation shall be evergreen and of a height and breadth to sufficiently shield the adult use from abutting uses year round. Alternatively, a combination of design features may be used to provide the buffer. A maintenance plan shall also be provided to ensure that the applicant will be responsible for the care and maintenance of the buffer.
3. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment, or any portion thereof in which regulated adult uses take place, from the exterior.
4. All signs must satisfy the requirements of the Rutland Sign by-law. Furthermore, no adult use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any sexually explicit figures or words as defined in M.G.L. c. 272, § 31, as it may be amended.

5. The applicant shall demonstrate that adequate off-street parking is provided and shall comply with the parking requirements set forth in Article XIV.
6. No adult entertainment use shall have any flashing lights visible from outside the establishment.

6.0 Retroactive Application

Each adult use in existence upon the effective date of this section shall apply for an adult use special permit within 90 days of the adoption of this By-Law, consistent with the provisions of M.G.L. c. 40A §9A.

ARTICLE X1

MEDICAL MARIJUANA DISPENSARIES

1. Purpose

The purpose of this bylaw is to provide for the establishment of Registered Medical Marijuana Dispensaries (RMD) in locations appropriate for the use and to regulate the use under strict conditions in accordance with the passage of Chapter 369 of Massachusetts General Laws, An Act for the Humanitarian Use of Marijuana, and as implemented by 105 CMR 725.000; To minimize the adverse impacts of RMD on adjacent properties, residential neighborhoods, schools and other places where children or families congregate, local historic districts, and other land uses potentially incompatible with said RMD use; To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of RMDs.

2. Applicability

No RMD shall be established except in compliance with the provisions of this bylaw. Nothing in this bylaw shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of medical marijuana. The cultivation, production, processing, assembly, packaging, retail, trade, distribution or dispensing of Marijuana for Medical Use is prohibited unless permitted under Chapter 369 of the Acts of 2012, An Act for the Humanitarian Use of Marijuana and 105 CMR 725.000.

3. Definitions

Registered Marijuana Dispensaries (RMD): An RMD shall mean a not-for-profit entity, incorporated pursuant to G.L. c.180, registered by the Department of Public Health under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as edibles, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered patients or their personal caregivers.

Marijuana for Medical Use: Marijuana that is designated and restricted for use by, and for the benefit of, Registered Patients in the treatment of Debilitating Medical Conditions as set forth in

Chapter 369 of the Acts of 2012, An Act for the Humanitarian Use of Marijuana and 105 CMR 725.000.

Marijuana: has the meaning given "Marihuana" in MGL c. 94C §1.

4. General Requirements and Conditions for all RMDs

A. RMDs may only be located in existing business and industrial zones.

B. The RMD shall be contained within a building or structure.

C. No RMD shall have a gross floor area of less than 2,500 square feet or in excess of 20,000 square feet, not including growth facility.

D. RMDs shall not be located in buildings that contain any medical doctor's offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.

E. The hours of operation of RMDs shall be set by the Planning Board who is the Special Permit Granting Authority, but in no event shall said RMDs be open and/or operating between the hours of 8:00 p.m. and 8:00 a.m.

F. No RMDs shall be located on the same lot or a lot which abuts or which is within 1,000 feet of any public or private school building, day care facility or any public playground, recreation facility, athletic field or other park where children congregate. The 1000 foot distance under this section shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

G. No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of an RMD.

H. RMDs shall not be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a trailer, recreational vehicle, movable or stationary mobile vehicle.

I. Signage for all RMDs shall conform with the Rutland town bylaw. Exterior signs shall identify the name of the establishment but shall not contain any other advertising information.

J. RMDs shall provide the Rutland Police and Fire Departments with the names, phone numbers and email addresses of all management staff and keyholders to whom one can provide notice if there are operating problems associated with the establishment and update that list whenever there is any change in management staff or keyholders.

5. Special Permit Requirements

A. RMDs shall only be allowed by Special Permit and site plan review issued by Planning Board in accordance with 40A MGL 9, subject to the following statements, regulations, requirements, conditions and limitations.

B. A Special Permit for RMD shall be limited to one or more of the following uses:

(1) cultivation of RMD marijuana;

(2) processing and packaging of RMD products, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;

(3) retail sale or distribution of RMD products to Registered Qualifying Patients under 105 CMR 750.015 or Personal Caregivers under 105 CMR 750.020.

C. In addition to the application requirements established by Planning Board regulations and elsewhere in this Bylaw, a Special Permit application for RMD shall include the following:

(1) the name and address of the non-profit entity applying for the RMD, its principal officers and the property owner;

(2) copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the RMD;

(3) evidence of the applicant's right to use the site for the RMD, such as a deed, or lease;

(4) A notarized statement disclosing the names of all of the principal officers and board members of a non-profit entity incorporated pursuant to G.L. c.180 for purposes of cultivating and/or dispensing medical marijuana through the RMD;

(5) proposed security measures for the RMD, including, but not limited to, lighting, fencing, surveillance cameras, gates and alarms to ensure the safety of persons and to protect the premises from theft. The security measures shall be reviewed and approved by the Police and Fire Departments.

(6) Annual Reporting: RMDs permitted under this bylaw shall, as a condition of its Special Permit, file an annual report with the Police Chief and the Town Clerk no later than January 31st of each year. The Annual Report shall include a copy of all current applicable state licenses for the establishment and/or its owners and demonstrate continued compliance with the conditions of the Special Permit. In the event that the Annual Report is not received by January 31st or if the report is incomplete, the owners of the RMD will be required to appear before the Board of Selectmen to provide the required information.

(7) A Special Permit granted under this Section shall have a term limited to the duration of the applicant's ownership or lease of the premises as the RMD. A Special Permit may not be transferred.

6. Abandonment or Discontinuance of Use

A. If a RMD ceases to operate, allows its registration to expire without being renewed, or has its registration revoked or become void, the RMD shall follow the procedures as set forth in 105 CMR 725.105(O).

B. A Special Permit shall lapse if not exercised within two years of issuance;

C. An RMD shall be required to remove all materials, plants, equipment and other paraphernalia;

(1) prior to surrendering its state issued licenses or permits; or

(2) within six months of ceasing operations whichever comes first.

7. Severability

If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end, the provisions of this Section are severable.

Chapter DL DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of amendments to the Zoning Bylaw of the Town of Rutland subsequent to its adoption under Article 21 of the May 2006 Annual Town Meeting. [Amendments to the Zoning Map are considered to be non-Code material (NCM).1

Art. No.	Adoption Date	Subject	Disposition
# 16	May 2006	Non-Conforming Uses and Structures § 13	AG Approval
# 18	May 2006	Residential R-40 & R-60 § 15	AG Approval
# 3	June 2006	Light Industrial/Office § 11A	AG Approval
# 4	June 2006	Light Industrial § 11B	AG Approval
# 5	June 2006	Adult Entertainment Article X	AG Approval
# 26	October 2007	Common Driveways § 15 F	AG Approval
# 18	May 2008	Village Center District § 10 A	AG Approval
# 21	May 2008	Estate Lots § 8 E	AG Approval
# 29	May 2010	Town Center District § 10 B	AG Approval
# 31	May 2010	Lots Divided by a Zoning District Boundary § 7D	AG Approval
# 5	October 2011	Solar Energy Facilities § 14A	AG Approval
# 22	May 2013	Wind Turbine Bylaw § 14B	AG Approval
# 20	November 2013	Heights Planned Development District § 19-26	AG Approval

Art. No.	Adoption Date	Subject	Disposition
# 16	May 2016	Special Uses § 14 E	AG Approval
# 20	May 2017	Medical Marijuana Dispensaries Article XI	AG Approval