

# **Chapter 145**

## **ZONING**

### **GENERAL REFERENCES**

**Historic District — See Ch. 51.**

**Wetlands — See Ch. 139 and Ch. 290.**

**Mobile home parks — See Ch. 78 and Ch. 235. Subdivision of land — See Ch. 270.**



ARTICLE I  
**General Provisions**

**§ 145-1. Authority; purpose.**

This chapter is enacted pursuant to and under the authority of MGL c. 40A, as amended, for the purpose of:

- A. Promoting the health, safety, convenience and general welfare of the inhabitants of the Town of Belchertown;
- B. Promoting sound and orderly growth;
- C. Providing a variety of housing types to meet the needs of Belchertown's diverse and growing population;
- D. Encouraging the expansion of suitable, economically and environmentally sound business and industry within the town;
- E. Protecting property values;
- F. Establishing a fair and reasonable set of standards for evaluating each development proposal impartially, on its own merit;
- G. Protecting the town's natural resources and amenities; and
- H. Encouraging the most appropriate use of land in Belchertown which is consistent with the intent and purpose of this chapter.

**§ 145-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY APARTMENT** — An accessory apartment shall mean a separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is smaller than the principal dwelling unit and separated from it in a manner that maintains the appearance of the primary structure as a single-unit dwelling. **[Added 5-12-2014 ATM by Art. 21]**

**ACCESSORY STRUCTURE** — A structure customarily incidental to a principal building on the same lot or on an adjoining lot under the same ownership and not attached to the building by any covered or roofed structure.

**ACCESSORY USE** — The use of a structure or premises which is customarily incidental to a principal permitted use.

**ADULT BOOKSTORE** — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other matter 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. **[Added 3-16-1998 STM by Art. 5]**

**ADULT ESTABLISHMENTS WHICH DISPLAY LIVE NUDITY** — Establishment which displays live nudity for its patrons, any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL c. 272, § 31. **[Added 3-16-1998 STM by Art. 5]**

**ADULT MOTION PICTURE THEATER** — An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31. **[Added 3-16-1998 STM by Art. 5]**

**ADULT PARAPHERNALIA STORE** — An establishment having as a substantial or significant portion of its stock 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 MGL c. 272, § 31. **[Added 3-16-1998 STM by Art. 5]**

**ADULT VIDEO STORE** — An establishment having a substantial or significant portion of its stock-in-trade videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in said MGL c. 272, § 31. **[Added 3-16-1998 STM by Art. 5]**

**AGRICULTURE** — This definition reads as given in MGL c. 128, § 1A, and is subject to any further amendments thereto as may be enacted. **[Amended 5-12-2008 ATM by Art. 16]**

**AGRITOURISM** — Refers to a supplemental enterprise at a working farm conducted for the enjoyment or education of visitors that generates income for the owner. The owner/operator must be engaged in agriculture, as defined under this section. This supplemental activity is not considered under other uses for the purposes of § 145-11, Schedule of Use Regulations, with the exception that it is subordinate to Open/General Uses 2, (agriculture on parcels less than five acres). Agritourism uses include, but are not limited to, farm stores, roadside stands, pick your own, wineries, on-farm food sales, agricultural processing demonstrations, farm workshops, educational activities, farm tours, agricultural festivals, on-farm theme playgrounds, on-farm fee fishing and hunting, farm vacations, gift shops, horseback riding/trail rides, cross-country trails, hayrides, mazes, crop art, on-farm picnic grounds, farm animal exhibits, bird/wildlife watching and nature-based attractions. **[Amended 5-12-2008 ATM by Art. 16]**

**AMBIENT BROADBAND SOUND LEVEL** — Background A-weighted sound level that is exceeded 90% of the time measured during equipment operating hours.

**AQUIFER** — A geologic feature that contains sufficient saturated permeable material, such as rock or sand and gravel, capable of yielding significant quantities of potable water for wells.

**BED AND BREAKFAST** — A building in which up to five rooms may provide overnight guest accommodations for compensation. Lodging includes breakfast and may include other meals available to registered lodgers only.

The owner or manager must reside on the premises. **[Added 5-8-2000 ATM by Art. 20]**

**BOARDINGHOUSE** — A building or part thereof containing up to 12 rooms, without individual kitchen facilities, occupied or to be occupied for sleeping purposes for compensation. Same as "lodging house." **[Added 5-8-2000 ATM by Art. 20]**

**BUILDING ENVELOPE** — That portion of a building lot contained within the zoning setback requirements under this chapter.

**BUILDING INSPECTOR** — The Inspector of Buildings per MGL c. 143, § 3. **[Added 5-9-1994 ATM by Art. 25]**

**BUILDING LOT** — A lot which meets the requirements of this chapter for the proposed use.

**BUSINESS LOCATION** — A tract of land designated for commercial activity on which one or more private businesses are sited on the same undivided lot as shown on the Town of Belchertown's Assessor's Map, the lot being in one ownership.

**CLUSTER DEVELOPMENT** — An alternative pattern of residential development in which reduced area and setback requirements may be authorized by special permit in exchange for the reservation of open space.

**COMMERCIAL TRANSPORTATION** — Vehicles for hire or for transport of commercial products, such as buses, rental automobiles, transport vans, limousines and tractor-trailers.

**COMMON DRIVE DEVELOPMENT** — A tract of land divided into two or more lots with each one having legal frontage on an existing public way and having access obtained through the common use of a private driveway (common drive) in conformance with Article X of this chapter.

**COMMON WALL** — That portion of a structure which vertically separates one dwelling unit from another, meeting the requirements of State Building Code 780 CMR for functions such as separation and sound transmission.

**CONTINUING CARE RETIREMENT COMMUNITIES (CCRC)** — A development that is part housing complex, part activity center and part health-care system for elderly persons. It is comprised of housing and associated services operated as a coordinated unit. Services usually include full medical and nursing services, and may include other amenities, such as educational and recreational activities, dining accommodations, shopping and banking facilities, beautician and barber facilities, and transportation services exclusively for the residents of the facility. **[Added 5-8-2000 ATM by Art. 20]**

**CONVENIENCE STORE** — A retail market serving a neighborhood proximal to the location of such store, as opposed to a supermarket type of retail activity oriented to serving a region in which it is located.

**DEVELOPMENT SCHEDULE** — The timing, sequence and rate of construction and/or improvements to be implemented on a particular parcel, as defined by stages.

DEVELOPMENT TRACT — A parcel or group of parcels in single ownership or under single control, considered as a unit for the purposes of development.

DWELLING UNIT — A structure containing, under one roof and within exterior abutting walls, one or more rooms providing complete living facilities for one or more individuals, including equipment for cooking or provisions for same, and including room or rooms for living, sleeping, eating and sanitation. **[Amended 5-8-2000 ATM by Art. 20]**

- A. SINGLE-UNIT DWELLING — A structure containing one dwelling unit.
- B. TWO-UNIT DWELLING — A structure containing two dwelling units.
- C. MULTIPLE-UNIT DWELLING — A structure containing three or more dwelling units.
- D. DWELLING UNIT, ATTACHED — A single-unit dwelling unit connected on one side to an adjacent single-unit dwelling unit by a common wall as described in Article 2, S.200.0 of the State Building Code 780 CMR.
- E. DWELLING UNIT, DETACHED — A single-unit or two-unit dwelling unit which stands alone and has no common walls or walls in common with an adjacent single-unit or two-unit dwelling unit or its accessory structure(s) if any.
- F. DWELLING UNIT, SPECIAL PURPOSE RESIDENTIAL — A dwelling unit which is used for institutional purposes to include child-care, elderly housing, emergency shelter, handicapped housing and rehabilitation corrections housing. This definition does not apply to congregate living arrangements among nonrelated persons with disabilities, as defined by any applicable federal and/or state law and/or regulations.

ESTATE LOT — A building lot consisting of a minimum of 50 feet of frontage and 150,000 square feet of area within which a circle 50 feet in diameter can be passed along a continuous line from the frontage of the lot to any point of the proposed dwelling on the lot without the circumference intersecting any side lot lines.

EXTERIOR ADDITION — An addition to a preexisting structure which results in an increase in the building footprint or the height of the building.

FIFTY-FIVE-AND-OVER HOUSING — A residential complex restricted to residents mainly aged 55 years and older consistent with the definition of "elderly" as currently promulgated by the U.S. Department of Housing and Urban Development (HUD) and with the Federal Housing for Older Persons Act of 1995. Specific criteria: **[Added 5-14-2001 ATM by Art. 24]**

- A. One person aged 55 or older must reside in each of at least 80% of the complex's occupied units.

- B. The complex must have published and must follow policies and procedures that demonstrate an intent to be housing for persons 55 and older.
- C. The units may have condominium ownership or they may be rental units.
- D. The units may be detached, or they may be attached in blocks up to four units.
- E. The minimum lot size for the complex is five acres.
- F. The maximum density of the units is six per acre.
- G. No unit may have more than two bedrooms.
- H. The complex and units must meet Americans with Disabilities Act standards.
- I. Any complex exceeding 12 units must have a community space for mail, messages, meetings and recreation.
- J. The complex must have an outdoor community space for passive or active recreation.
- K. The complex must accommodate transit vans and have bicycle facilities.
- L. An association agreement, or property management plan if units are to be rentals, guaranteeing maintenance of the community property must be submitted with the application.

FLOODPLAIN — That area adjacent to a watercourse or a drainageway subject to flooding when the watercourse or drainageway overflows its normal channel.

FLOODWAY —

- A. That area shown within the floodplain boundaries on the Town of Belchertown Flood Insurance Rate Map (FIRM) dated September 2, 1981, as Zones A and A1-A30, as amended, and on the Town of Belchertown Floodway Boundary Map (FWBM), dated September 2, 1981, as amended, and further defined by the floodway data tables contained in the Flood Insurance Study; and
- B. The area in the floodplain which lies 10 feet or more below the elevation of the floodplain limits described in Subsection A.

FORESTRY — Land primarily and directly used in raising forest products under a program certified by the State Forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, to include but not be limited to management

activities such as resource evaluation, forest harvesting and regeneration of forest stands.

**FRONTAGE** — A linear extent of a lot measured continuously along the adjacent street right-of-way between the intersection of one side lot line and that of the other or, in the case of corner lots, between one side lot line and the midpoint of the corner radius.

**GENERAL LAWS** — The General Laws of Massachusetts. In the case of a recodification of the General Laws, any citation of particular sections of the General Laws shall be applicable to the corresponding sections in the new codification.

**GROUNDWATER** —

- A. All the water found beneath the surface of the ground.
- B. Highly dynamic subterranean zone of free water saturation which accumulates over impervious strata, the upper limits of which tend to parallel the land surface.

**HAZARDOUS WASTE** — Any substance or mixture of such chemical, physical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies or other hazard to human health if such substance or mixture were discharged onto land or into air or waters. Hazardous materials are those designated by the United States Environmental Protection Agency (EPA) and the regulations of the Massachusetts Waste Management Act (MGL c. 21C) and include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and include such products as pesticides, herbicides, solvents and thinners.

**HOME OCCUPATION** — An accessory use of a dwelling unit or permitted accessory structure involving provision or sale of goods and/or services as set forth in § 145-25 of this chapter.

**HOTEL** — A building or part thereof which provides sleeping accommodation and which may also contain commercial uses and such additional facilities or services as a restaurant, a dining room, room service or public convention rooms. **[Added 5-8-2000 ATM by Art. 20]**

**IMPERVIOUS SURFACES** — Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

**IMPROVEMENT** — Any changes to the existing conditions of a site for the purpose of complying with this chapter or rendering the site suitable for development and/or human habitation.

**INN** — A building in which more than five but not more than 15 guest rooms are used to provide or offer overnight accommodations not more than 30 consecutive days in length to transient guests for compensation, which may include the serving of meals to guests, and a conference area, as accessory uses, all not to exceed, in the aggregate, a building capacity of 50 guests. **[Added 5-8-2000 ATM by Art. 20]**



## JUNKYARD —

- A. A yard, field or other parcel of land used as a place for disposal or long-term storage of:
- (1) Discarded, worn-out or junked plumbing or heating supplies or household appliances or furniture;
  - (2) Discarded, scrap or junked lumber; or
  - (3) Old or scrap copper, brass, rope, rags, batteries, paper, rubbish, debris, waste and all scrap iron, steel and other ferrous or nonferrous material.
- B. A junkyard shall also include garbage dumps, waste dumps, sanitary landfills and automobile graveyards.

LEACHABLE WASTE — Any waste material capable of releasing waterborne contaminants into the environment.

LODGING HOUSE — A building or part thereof containing up to 12 rooms, without individual kitchen facilities, occupied or to be occupied for sleeping purposes for compensation. Same as "boarding house."**[Added 5-8-2000 ATM by Art. 20]**

## LOT —

- A. A single area of land defined by boundaries which are recorded in the Hampshire County Registry of Deeds.
- B. An area of land in one ownership, with definite boundaries, used or available for use as the site of one or more buildings.
- C. "Lot" shall also mean "parcel," "site" or any similar terms.

LOT COVERAGE — That portion of a lot which is rendered impervious to rainfall, including but not limited to structures, pavement or permanent accessories.

LOT LINE — The established division line between lots or between a lot and a street.

- A. FRONT LOT LINE — The property line dividing a lot from a street (right-of-way). On a corner lot, one street line shall be designated the front lot line.
- B. REAR LOT LINE — The lot line opposite the front lot line.
- C. SIDE LOT LINE — The line or lines bounding a lot which extend from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots, all lines extending from streets shall be considered side lot lines.

MANDATORY OWNERS' ASSOCIATION — A nonprofit organization consisting of lot owners, homeowners or owners of dwelling units in which membership into said organization is automatic or mandatory for the

maintenance of common areas or facilities and the provision of services to residents. **[Amended 5-12-2003 ATM by Art. 27]**

**MEDICAL MARIJUANA OFF-SITE DISPENSARY (MMOD)** — A medical marijuana facility that is located off site from any cultivation/processing facility that is controlled and operated by the same registered and approved MMTC but which serves only to dispense the processed marijuana, related supplies and educational materials to patients registered and qualified under the provisions of 105 CMR 725.00 or their personal caregivers. **[Added 5-12-2014 ATM by Art. 19]**

**MEDICAL MARIJUANA TREATMENT CENTER (MMTC)** — A use operated by a non-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a "registered marijuana dispensary (RMD)," that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A MMTC shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products. **[Added 5-12-2014 ATM by Art. 19]**

**MEMORY CARE UNIT** — A care unit in a designated, separate area for individuals with Alzheimer's disease or other dementia that is locked, segregated, or secured to prevent or limit access by a resident outside the designated or separated area. **[Added 12-1-2014 STM by Art. 5]**

**MINIMUM LOT WIDTH** — The diameter of a circle of the prescribed minimum lot width for the zone in which a lot is situated being passed along a continuous line from the frontage of the lot through the rear of the lot's building envelope without the circumference intersecting any side lot lines, except as defined for estate lots (§ 145-26B) and open space community developments (§ 145-16, Table of Dimensional Regulations, Note 6) in this chapter. **[Added 5-13-1996 ATM by Art. 23]**

**MOBILE HOME** — A structure, transportable or movable in one or more sections, which meets the dimensional requirements of 760 CMR (Building Code) and which is built on a permanent chassis and designed to be used as a dwelling unit with or without permanent foundation when connected to the required utilities. This term is not intended to include manufactured modular homes.

**MOTEL** — A hotel having an outside entrance for each sleeping unit and provided with automobile parking spaces directly accessible to each such unit. **[Added 5-8-2000 ATM by Art. 20]**

**OPEN SPACE** — Any undeveloped area of land.

A. **OPEN SPACE (OSCD)** — Any restricted area of land or combination of land and water within a development tract designed or intended for

the common recreational, forestry or agricultural use or enjoyment of the residents of that development tract and/or the general public or an organization controlled thereby, the Town of Belchertown or a nonprofit conservation organization.

- B. OPEN SPACE COMMUNITY DEVELOPMENT (OSCD) — A cluster development according to Article XI of this chapter.

OWNER — A person or persons holding record title to a parcel of land or structure.

PRIMARY AQUIFER RECHARGE AREA — All areas which are underlain by surficial geologic deposits, including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward the area of influence of water supply wells.

PRINCIPAL BUILDING OR PRINCIPAL STRUCTURE — The building or other structure on a lot which is constructed to serve a principal residential, commercial, agricultural or industrial use of the lot.

PRIOR NONCONFORMING USE — A use of land, building or premises which is not a use permitted by the provision of this chapter for the district in which such land, building or premises is situated but which was legally existing at the effective date thereof.

PROMOTIONAL SIGNS — Signs pertaining to fund drives, campaigns or other charitable activities of a civic, philanthropic, educational, charitable, political or religious nature.

RECORDED — Filed in the Hampshire County Registry of Deeds or filed with the Recorder of the Land Court.

RECREATION AREA — An area for sports, leisure or social activities carried on in whole or in part out of doors.

RIGHT-OF-WAY —

- A. That portion of land which is, or is intended to be, made available for the construction of roadways, ditches, drainage structures and utility lines.
- B. The parcel of land between street property lines which is defined as the limit of land dedicated, secured or reserved for public transportation uses.

SITE PLAN — A scale drawing showing proposed and preexisting uses and/or structures for a parcel of land required by § 145-27 of this chapter.

STAGE OF DEVELOPMENT — The work to be done and the number of structures to be constructed within any of the time limits defined by the development schedule.

STORY — Refer to 780 CMR 502.0 DEFINITIONS (of the Massachusetts Building Code). **[Added 1-14-2008 STM by Art. 9]**

**STREET** — A public or private way either shown on a plan approved in accordance with Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown, as amended, or otherwise qualifying a lot for access and frontage under MGL c. 41, § 81L.

**STRUCTURE** — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall for a structure, tent, reviewing stand, platform, bin, flagpole, mast for radio antenna or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."

**TRUCK STOP** — A service point for tractor-trailer vehicles providing fuel and/or maintenance for such vehicles and travel services for their drivers.

**UNIQUE NATURAL AND/OR HISTORICAL RESOURCE AREA** — A site or area noted as a rare, uncommon or significant source of information about or valued as a rare, uncommon or significant example of:

- A. Uncultivated or undeveloped physical terrain features; or
- B. The historical past.

**WETLAND RESOURCE AREA** — Includes water areas and other land in any of the following categories:**[Amended 5-9-1994 ATM by Art. 21]**

- A. All areas defined as wetland under MGL c. 131, § 40, the Wetland Protection Act.
- B. All areas defined as wetland under Chapter 139, Wetlands Protection, and Chapter 290, Wetlands, of the Code of the Town of Belchertown.
- C. Lands within the Wetlands Protection District as described in § 145-12 of this chapter.

**WIRELESS COMMUNICATIONS FACILITIES** — The structures and devices designed to facilitate cellular telephone services, personal communications services and enhanced specialized mobile radio service as defined in Section 704 of the Federal Telecommunications Act of 1996. Included are towers, antennas mounted to towers or other structures and accessory structures, such as sheds, which are directly required for facility operations. Not included in this definition are antennas and dishes used solely for residential television and radio reception; antennas and dishes used for commercial or public purposes which are not visible from any neighboring property or public way; and amateur radio facilities used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that the tower is not used for commerce.**[Added 11-17-1997 STM by Art. 21]**

**YARD** — A required open space, unoccupied except as herein permitted, between a principal structure and a street or lot line.

- A. **FRONT YARD** — A yard extending between side lot lines from the frontmost portion of the principal structure to the street line(s).

- B. REAR YARD — A yard extending between side lot lines from the rearmost portion of the principal structure to the rear lot line.
- C. SIDE YARD — A yard extending between the side lot line and the principal structure from the front yard to the rear yard.

ZERO LOT LINE — The provision of zero-foot side yard setback so as to allow for placement of a single dwelling unit and its accessory structure(s), if any, to abut the adjacent side property line and share a common wall with the adjacent single dwelling unit.

ZONING PERMIT — An official finding that a particular existing structure or proposed structure or lot or use of the structure or lot, as indicated by an application, complies with the requirements of the Belchertown bylaws or meets conditions of a variance or special permit at the time of application for said permit.



ARTICLE II  
**Zoning Districts**

**§ 145-3. Establishment.**

The Town of Belchertown is hereby divided into the following classes of zoning districts:

AG-A	Primary Agricultural
VR	Village Residential
AG-B	Rural Residential
LR	Lakes Residential
MDR	Multiple-Dwelling Residential
MHP	Mobile Home Park Residential
B1	Limited Business
B2	General Business
LI	Light Industrial
I	Industrial

**§ 145-4. Overlay districts.**

The following overlay districts are hereby established:

WP	Wetland Protection
FP	Floodplain
AP	Aquifer Protection
HVP	Historic Village Protection

**§ 145-5. Zoning Map.**

A. The location and boundaries of zoning and overlay districts hereby established are shown on a series of maps entitled "Zoning Map of the Town of Belchertown," revised through June 1992, which accompanies and is hereby declared to be part of this chapter.<sup>1</sup> This series of maps is comprised of:

- (1) Zoning District Map;
- (2) Aquifer Protection District Overlay (tracing based upon enlargement of the United States Geological Survey Topographic Map from 1:25000 Belchertown, Ludlow, Palmer, Windsor Dam Quadrangle to one inch to 1,000 feet); and
- (3) Wetland Protection and Floodplain Overlay District (provided by Pioneer Valley Planning Commission through a Strategic Planning

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**1. Editor's Note: The Zoning Map is included in a pocket at the end of this volume. The most recent Zoning Map was adopted 2-12-2001 STM by Art. 8.**

Grant, Executive Offices of Communities and Development, June 1989).

- B. Said map is hereinafter referred to as the "Zoning Map." All explanatory legend and memoranda thereon or attached thereto are hereby declared to be a part of this chapter. Any change in the location of boundaries of a zoning district hereafter made through the amendments of this chapter shall be indicated by the alteration of the Zoning Map, and the Zoning Map, thus altered, is declared to be a part of this chapter thus amended.
- C. Copies of the Zoning Map, including overlays, amendments and memoranda, are on file in the Town Clerk's office. All Mylars (originals) are on file in the Planning Board office.

**§ 145-6. Interpretation of boundaries.**

For the purposes of interpretation, it shall be assumed that:

- A. Boundaries that appear to follow public and private ways, railroads or watercourses shall coincide with the center line thereof.
- B. Where the boundary lines are shown upon the Zoning Map approximately on the location of property or lot lines and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.
- C. Boundary lines which appear to run parallel to the side lines of public and private ways shall be regarded as parallel to such side lines, with dimensions shown in figures placed upon the Zoning Map to specify the distance between the boundary line and such side lines, such distances being measured at right angles to such side lines, unless otherwise indicated.
- D. Boundary lines dependent on contour lines shall be based on United States Geological Survey mean sea level datum.

**§ 145-7. Division of lots by district boundaries.**

Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established at adoption or amendment of this chapter, the regulations and provisions applicable to each of the different portions of said lot shall be those pertaining to the district in which each portion is located.

**§ 145-8. Intent of districts.**

The Zoning Districts established in this article have the following intent and characteristics:

- A. Residential.



- (1) Village Residential (VR). These are neighborhoods located in the town's water and sewer service area and located on smaller lots.
- (2) Agricultural-B (AG-B). These are neighborhoods which are characterized by their relatively quiet atmosphere and the exclusion of nonresidential use.
- (3) Lakes Residential (LR). Historically a resort area of town, these neighborhoods surround the small lakes and are environmentally sensitive.
- (4) Multiple-Dwelling Residential (MDR). These are areas which are suitable to meet the needs of more intensive residential use.
- (5) Mobile Home Park Residential (MHP). These are areas best suited for mobile home parks.

B. Open.

- (1) Agricultural-A (AG-A). These areas containing prime farm soils and/or active farm and forest operations are best suited to the land uses and activities common in the less developed areas of a rural town, particularly farm and farm-related uses.

C. Business.

- (1) Limited Business (B-1). These are areas in which primarily retail and professional activities will be encouraged while large businesses and industrial-type developments will be restricted.
- (2) General Business (B-2). These are areas suitable for concentrated commercial use and serve areas larger than the immediate neighborhood.

D. Industrial.

- (1) Light Industrial (LI). These are areas which limit the type and intensity of industrial uses and which are intended for use by research laboratories, office buildings and other "clean" or "light" industries which are compatible with a low-density, rural residential community.
- (2) Industrial (I). These are areas suited for manufacturing and other business uses which require large expanses of land, convenient access by truck rail and/or isolation from residential areas.

**§ 145-9. Intent of overlay districts.**

- A. Wetland Protection Overlay (WP). This district applies to all lands within 100 feet of the annual high-water line of a stream, lake, pond or watercourse and all lands within 100 feet of all poorly or very poorly drained soils as classified by the National Cooperative Soil Survey,

mapped by the United States Soil Conservation Service, as shown as an overlay on the Zoning Map.

- B. Floodplain Overlay (FP). This district applies to these areas within the boundary of the one-hundred-year flood which are considered hazardous areas as shown on the Federal Emergency Management Agency (FEMA), Town of Belchertown Flood Insurance Rate Map (FIRM), dated September 2, 1981.
- C. Aquifer Protection Overlay (AP). This district applies to those lands lying within the primary recharge areas of groundwater aquifers which provide public water supply and are shown as an overlay on the Zoning Map.
- D. Historic Village Protection Overlay (HVP). This district applies to those areas within the Belchertown Center Historic District in order to limit the type, intensity and appearance of business and other uses because of the historic character of the area.

ARTICLE III  
**Use Regulations**

**§ 145-10. Permitted uses; accessory uses and buildings.**

- A. No land in any district shall hereafter be used or occupied, and no building or structure shall hereafter be occupied, used, erected or the use of buildings or land altered, except as set forth in the following Schedule of Use Regulations or as specifically regulated or provided otherwise under other sections hereof, provided that the accessory uses and buildings not enumerated in the schedule but necessarily or customarily incidental to a principal use, including the signs otherwise allowed, shall be deemed to fall into the same category as such principal use.
- B. Where an activity may be classified under more than one use listed in the Schedule of Use Regulations, the more specific classification shall apply, and if equally specific, the more restrictive classification shall govern.

**§ 145-11. Schedule of Use Regulations.**

The use types of each district are set forth in the following schedule, with supplemental information provided in other sections of this chapter.<sup>2</sup>

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**2. Editor's Note: The Schedule of Use Regulations is included at the end of this chapter.**



ARTICLE IV  
**Overlay Districts**

**§ 145-12. Wetland Protection District. [Amended 5-9-1994 ATM by Art. 21]**

A. Purpose.

- (1) The Wetland Protection District is an overlay protection district. It applies to all lands within 100 feet of a wetland resource area as defined under MGL c. 131, § 40, the Wetlands Protection Act, and Chapter 139, Wetlands Protection, of the Code of the Town of Belchertown and as shown on an overlay on the Town Zoning Map referred to as in § 145-5 of this chapter.
- (2) The purpose of this section is to:
  - (a) Protect citizens from flooding, poor drainage, reduced property values, impaired water supplies and threats to health and safety in wetlands and along streams and other watercourses; and
  - (b) To complement the provisions of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.

B. Permitted uses. Any use permitted in the underlying zone (Village Residential, Multiple-Dwelling Residential, Agricultural-A and Agricultural-B, Mobile Home Park Residential, Limited Business, General Business, Light Industrial, Industrial or Floodplain District) is permitted in the Wetland Protection District.

C. A building permit in the Wetland Protection District shall be obtained in the following manner:

- (1) The applicant shall submit to the Building Inspector the original or a certified copy, in addition to other requirements for a building permit, of:
  - (a) A negative determination of applicability of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, issued by the Conservation Commission, as described in that Act; or
  - (b) An order of conditions, as defined in the Wetlands Protection Act, issued by either the Belchertown Conservation Commission or the Massachusetts Department of Environmental Protection, covering the proposed structures and related improvements.
- (2) The Building Inspector may issue a building permit only after receipt from the applicant of the original or a certified copy of either Subsection C(1)(a) or (b) above.

- D. Any use or uses which may be permitted by special permit in the underlying zone by the Board of Appeals are also permitted by special permit in the Wetland Protection Overlay, as long as they conform to Article XIII of this chapter (Board of Appeals) and with any and all requirements of the applicable zone. The applicant shall submit to the Board of Appeals, in addition to other requirements for a special permit, a determination of applicability of the Massachusetts Wetlands Protection Act from the Conservation Commission, as described in that Act.
- E. Anyone filling, dredging, grading or otherwise altering land, water bodies or watercourses within the Wetland Protection Overlay must obtain a permit from the Building Inspector. The Building Inspector shall issue a permit after the applicant has complied with the procedures specified in Subsection C above. Normal maintenance and improvement of land in agricultural use is excepted from the provisions of this subsection.

### **§ 145-13. Floodplain District.**

- A. Purpose. The purposes of this district are:
  - (1) To provide that lands in the Town of Belchertown subject to seasonal or periodic flooding as described hereinafter shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof;
  - (2) To protect the persons and property within the Town of Belchertown from the hazards of flood inundation by assuring the continuation of natural flow patterns and the maintenance of adequate and safe floodwater storage capacity; and
  - (3) To protect the community against pollution and costs which may be incurred when unsuitable uses occur along watercourses, wetlands, ponds and reservoirs or in areas subject to flooding.
- B. District delineation.
  - (1) The Floodplain District is established as an overlay district and shall be superimposed on the other districts established in this chapter. All regulations on the Belchertown Zoning Map applicable to such underlying districts shall remain in effect, except that where the Floodplain District imposes additional regulations, such regulations shall prevail. All development, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with MGL c. 131, § 40 and with the requirements of the Massachusetts State Building Code pertaining to construction in floodplains.
  - (2) The general boundaries of the Floodplain District are shown on the Town of Belchertown Flood Insurance Rate Map (FIRM) dated September 2, 1981, as Zones A and A1-30 to indicate the one-

hundred-year floodplain. The exact boundaries of the district are defined by the flood profiles contained in the Flood Insurance Study. The floodway boundaries are delineated on the Town of Belchertown Floodway Boundary Map (FWBM) dated September 2, 1981, and further defined by the floodway data tables contained in the Flood Insurance Study. These two maps, as well as the accompanying study, are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Building Inspector.

- (3) The above-described Floodplain District is hereinafter also referred to as the "floodplain." The floodway is hereby defined to include the area shown as within the floodway on the above-referenced maps and the area within the floodplain which lies 10 feet or more below the elevation of the floodplain limits. The boundaries of the floodway shall be determined by the limits of the more extensive of the aforesaid areas.
  - (4) Within Zone A, where the one-hundred-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and they shall be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of this section or the State Building Code. If the data are sufficiently detailed and accurate, they shall be relied upon to require compliance with this chapter and the State Building Code.
- C. Permitted uses. The following uses of low flood damage potential and causing no obstruction to flood flows shall be allowed, provided that they are permitted in the underlying district and they do not require structures, fill or storage of materials or equipment:
- (1) Agriculture (such as farming, grazing, truck farming, horticulture, etc.).
  - (2) Forestry or nursery.
  - (3) Outdoor recreation (including fishing, boating, play areas, etc.).
  - (4) Conservation of water, plants and wildlife.
  - (5) Wildlife management areas and foot, bicycle and/or horse paths.
  - (6) A temporary nonresidential structure used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
- D. Uses by special permit. Uses which may be permitted in the floodplain but not the floodway by the Board of Appeals in accord with the regulations listed in Article XIII of this chapter are:
- (1) Nonresidential structures or uses which comply in all respects with the provisions of the underlying district, including excavation, filling and storage of materials or equipment.

- (2) Construction and maintenance of at-grade roads, driveways, utilities and other associated roadway facilities when access to land which is not situated in the floodplain is not possible because of ownership patterns or the provisions of Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown.

E. General regulations.

- (1) The portion of any lot within the area delineated in this section may be used to meet the area and yard requirements for the district or districts in which the remainder of the lot is situated.
- (2) All encroachments, including fill, new construction, substantial improvements to existing structures and other development, are prohibited unless certification by a licensed professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.
- (3) All improvements to existing residential structures must have their lowest floor (including basement) elevated to or above the base flood level.
- (4) All new nonresidential structures and substantial improvements to existing structures must have the lowest floor (including basement) elevated or floodproofed to or above the base flood level.
- (5) Any extension, restoration or reconstruction to a preexisting mobile home shall provide that:
  - (a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level.
  - (b) Adequate surface drainage and access for a hauler are provided.
  - (c) In the instance of elevation on pilings, lots are large enough to permit steps; piling foundations are placed in stable soil no more than 10 feet apart; and reinforcement is provided for piers more than six feet above the ground level.
  - (d) The mobile home is anchored to resist flotation, collapse or lateral movement by requiring that:
    - [1] Over-the-top ties shall be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side.
    - [2] Frame ties shall be provided at each corner of the home, with five additional ties per side at intermediate points



and mobile homes less than 50 feet long requiring four additional ties per side.

[3] All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

[4] Any additions to the mobile homes, except in an existing mobile home residential park, are prohibited in the floodway.

(e) The placement of mobile homes, except in an existing mobile home residential park, is prohibited in the floodway.

#### **§ 145-14. Aquifer Protection District.**

- A. Purpose. The purpose of this section is to promote the health, safety and welfare of the community by protecting and preserving the groundwater resources of Belchertown from any use of land or structures which reduce the quality or quantity of its water resources.
- B. Scope of authority. The Aquifer Protection District is an overlay district and shall be superimposed on the other districts established by this chapter. All uses, dimensional requirements and other provisions of this chapter applicable to such underlying districts shall remain in force and effect, except that where the Aquifer Protection District imposes greater or additional restrictions and requirements, such restrictions or requirements shall prevail. Any uses not permitted in underlying districts shall remain prohibited.
- C. Establishment of district. The Aquifer Protection District is herein established to include all specified lands within the Town of Belchertown. The intent of the Aquifer Protection District is to include lands lying within the primary recharge areas of groundwater aquifers which provide public water supply. The map entitled "Aquifer Protection District," Town of Belchertown, on file with the Town Clerk, delineates the boundaries of the district. Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should be properly located. At the request of the owner(s), the Town may engage a professional hydrogeologist to determine more accurately the location and extent of an aquifer or primary recharge area. In the case of a determination by a hydrogeologist that the bounds delineated on the above said map are incorrect for the property in question, the Town shall pay for the investigation. In the case of a determination by a hydrogeologist that the bounds delineated on the above said map are correct for the property in question, the owner(s) shall pay for the investigation.
- D. Prohibited uses. The following uses are prohibited in the Aquifer Protection District:

- (1) Commercial uses which manufacture, process, store or dispose of hazardous wastes in amounts exceeding the minimum threshold amounts requiring compliance with Massachusetts Department of Environmental Protection Hazardous Waste Regulation 310 CMR 30:
  - (a) Trucking or bus terminals and motor vehicle gasoline sales.
  - (b) Car washes, except when located on public water and sewer.
  - (c) Wood preserving and furniture stripping.
  - (d) Solid waste landfills, dumps and junk and salvage yards, with the exception of the disposal of brush and stumps.
  - (e) Business and industrial uses, not agricultural, which involve the on-site disposal of process wastes from operations.
  - (f) Disposal of liquid or leachable wastes, except for:
    - [1] The installation or enlargement of a subsurface waste disposal system for a residential dwelling.
    - [2] Normal agricultural operations.
    - [3] Business or industrial uses which involve the on-site disposal of wastes from personal hygiene and food preparation for residents, patrons and employees.
  - (g) Underground storage and/or transmission of oil, gasoline or other petroleum products, excluding liquefied petroleum gases.
  - (h) Outdoor storage of salt, de-icing materials, pesticides or herbicides.
  - (i) The use of septic system cleaners which contain toxic chemicals.
- (2) The rendering impervious by any means of more than 15% of the area of any single lot.

E. Restricted uses.

- (1) Excavation for removal of earth, sand, gravel and other soils shall not extend closer than five feet above the annual high groundwater table. A monitoring well shall be installed by the landowner to show groundwater elevations. This subsection shall not apply to uses incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal. An access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.

- (2) The use of sodium chloride for ice control shall be minimized, consistent with public highway safety requirements.
  - (3) Commercial fertilizers, pesticides, herbicides or other leachable materials shall not be used in amounts which result in groundwater contamination.
  - (4) Manure shall be stored in a structure which prevents leachable elements from contaminating groundwater.
  - (5) Individual septic systems may not exceed design standards set in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per 1/4 acre under one ownership per day or 440 gallons of sewage on any one acre under one ownership, whichever is greater, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design.
- F. Drainage. All runoff from impervious surfaces shall be recharged in the site by being diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination.
- G. Uses by special permit. **[Amended 5-9-1994 ATM by Art. 20]**
- (1) Nonconforming uses which were lawfully existing, lawfully begun or in receipt of a building or special permit prior to the first publication of notice of public hearing for the Aquifer Protection District section of this chapter may be continued. Such nonconforming uses may be extended or altered, as specified in MGL c. 40A, § 6, provided that there is an additional finding by the Board of Appeals that such a change does not increase the danger of groundwater pollution from such use. Proposed extensions or alterations of commercial or industrial activities must include a site plan, as outlined below.
  - (2) Procedure. In addition to meeting the requirements of § 145-69 of this chapter, the applicant must file six copies of the plan. Said application and plan shall be prepared in accordance with the data requirements of the proposed development, including but not limited to a site plan, which shall show, but not be limited to:
    - (a) Provisions for protection of hazardous materials from vandalism.
    - (b) Provisions for the prevention of corrosion and leakage of containers storing hazardous materials.
    - (c) Provisions for the indoor storage of all hazardous materials.
    - (d) Provisions for impervious floor surfaces with no interior drain.

- (e) Provisions to prevent hazardous materials spillage outside.
  - (f) Provisions for storage of accumulated waste.
  - (g) Provisions for the immediate containment and cleanup of any hazardous spills.
- (3) Procedures for special permit in the Aquifer Protection District.
- (a) The Zoning Board of Appeals (ZBA) shall refer copies of the application to the Board of Health, Planning Board, Conservation Commission and the Town Engineer, who shall review the application either separately or jointly and shall submit their recommendations and comments to the ZBA. Failure of the boards/departments to make recommendations within 35 days of the referral of the application shall be deemed a lack of opposition.
  - (b) After notice and public hearing, and after due consideration of the reports and recommendations of the boards/departments, the ZBA may grant such a special permit, provided that it finds that the proposed use:
    - [1] Is in harmony with the purpose and intent of this chapter and will promote the purposes of the Aquifer Protection District.
    - [2] Is appropriate to the natural topography, soils and other characteristics of the site to be developed.
    - [3] Has adequate public sewerage and water facilities or the suitable soil for on-lot sewerage and water systems.
    - [4] Will not, during construction or thereafter, have an adverse environmental impact on groundwater resources in the district.
    - [5] Will not adversely affect the existing or potential quality and quantity of water in the Aquifer Protection District.<sup>3</sup>

### **§ 145-15. Historic Village Protection District.**

- A. Purpose. The purpose of this district is to protect the historic character of the Belchertown Town Common and adjacent areas of the Belchertown Center.
- B. District delineation.
  - (1) The Historic Village Protection District is established as an overlay district and shall be superimposed on other districts established in this chapter. Any land lying within the Historic Village Protection

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**3. Editor's Note: Original Sec. 4.27, which immediately followed this subsection, was deleted 5-9-1994 ATM by Art. 20.**

District shall be subject to the development and use regulations of the underlying district in which the land is situated; provided, however, that where such regulations are inconsistent with the additional regulations imposed by the Historic Village Protection District, the latter regulations shall prevail. Any uses not permitted in the underlying districts shall remain prohibited.

- (2) The general boundaries of the Historic Village Protection District are as shown on the Belchertown Zoning Map and on a map entitled "Belchertown Center Historic District," which appears in Chapter 51, Historic District, of the Code of the Town of Belchertown, adopted May 14, 1990.
- C. Mixed uses. Mixed uses are permitted within the Historic Village Protection District (HVP). As defined herein, a mixed use shall constitute the use of a structure which combines a business use or uses within the B-1 Zoning District of the HVP with a residential use or uses. Business uses shall include those allowed in the B-1 Zoning District according to Article III, Use Regulations, of this chapter. **[Amended 5-8-1995 ATM by Art. 27]**
- D. Nonconforming uses.
- (1) Nonconforming uses which were lawfully existing, begun or in receipt of a building permit or special permit prior to the first publication of notice of public hearing for this chapter may be continued. Such nonconforming uses may be extended or altered, as specified in MGL c. 40A, § 6, provided that such a change does not adversely affect the existing historic character of the Town Common and Belchertown Center.
  - (2) For the purpose of this subsection, any alteration to the interior of a preexisting nonconforming structure made solely for the purpose of accommodating a change in or to a conforming use shall be deemed not to be substantially more detrimental to the neighborhood than the existing nonconforming structure and shall be allowable as a matter of right; provided, however, that such interior alterations comply with all other applicable requirements of the town. **[Added 5-8-1995 ATM by Art. 27]**
- E. Prohibited uses. The following uses are prohibited in the Historic Village Overlay Protection District:
- (1) Smokehouse or sugar house.
  - (2) Loam removal for commercial purposes.
  - (3) Lounge with more than 1,000 square feet of floor space.
  - (4) Veterinary office or animal hospital.
  - (5) Motor vehicle service station or motor vehicle repair shop.

- (6) Motor vehicle sales or rental.
- (7) Commercial transportation.
- (8) Bowling alley.
- (9) Roller-skating rink.
- (10) Public parking areas and garages.

ARTICLE V  
**Dimensional Regulations**

**§ 145-16. Regulations established.**

See the Table of Dimensional Regulations.<sup>4</sup>

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**4. Editor's Note: Said table is included at the end of this chapter.**





ARTICLE VI  
**General Regulations**

**§ 145-17. Nonconforming uses.**

- A. The lawful use of any structure or land existing at the time of amendment or subsequent amendment of this chapter may be continued, although such structure or use does not conform to provisions of this chapter.
- B. Alteration. A nonconforming structure may not be altered or reconstructed if the cost of such alterations exceeds 50% of the physical value of the structure at the time of the change.
- C. Extension or addition. **[Amended 5-9-1994 ATM by Art. 22]**
- (1) Alteration, extension or change. As provided in MGL c. 40A, § 6, a nonconforming single- or two-family dwelling may be altered or extended, provided that the Building Inspector determines that doing so does not increase the nonconforming nature of said structure.
  - (2) Other alteration, extension or change to a preexisting nonconforming structure or use may be permitted by special permit in accord with the requirements and procedures of § 145-69 if the Board of Appeals finds that such alteration, extension or change shall not be more detrimental to the neighborhood than the existing nonconforming use. **[Amended 5-9-1994 ATM by Art. 23]**
  - (3) For the purpose of this subsection, any alteration to the interior of a preexisting nonconforming structure made solely for the purpose of accommodating a change in or to a conforming use shall be deemed not to be substantially more detrimental to the neighborhood than the existing nonconforming structure and shall be allowable as a matter of right; provided, however, that such interior alterations comply with all other applicable requirements of the town. **[Amended 5-8-1995 ATM by Art. 26]**
- D. Restoration. A structure devoted to a nonconforming use (whether in whole or in parts) or a building or structure which is nonconforming as to front, rear and side yard setback, frontage or area may, if damaged or destroyed by fire or other accidental cause, be repaired or reconstructed within the same portion of the lot and to the same extent in size and use as before, provided that such repair or reconstruction is substantially completed within 24 months of the date of the damage or destruction.
- E. Usage termination. Nonconforming uses or structures which are not used for a period of two years shall not be reestablished, and any future use shall conform to this chapter.

- F. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

**§ 145-18. Accessory structures.**

- A. Non-attached accessory structures shall not be located within the required front yard setback area.
- B. Attached accessory structures shall conform to Article V of this chapter.
- C. No detached structure shall be located in any side or rear yard area nearer to the side or rear lot line than 10 feet.
- D. In a mobile home park, detached accessory structures shall be limited to a total of 350 square feet on each mobile home site. Such accessory structure shall not be located on a site any closer than three feet to the side or rear lot line and shall be located no closer to the front lot line than the mobile home structure. **[Amended 5-9-1994 ATM by Art. 24]**

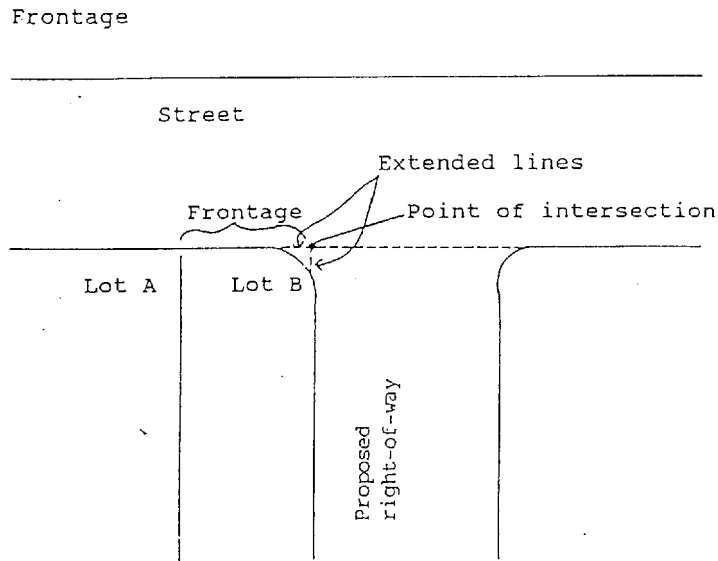
**§ 145-19. Temporary structures.**

- A. Upon application to the Building Inspector, an owner of real estate located within the Town of Belchertown may seek permission to be allowed to reside with his/her family in a temporary structure, which shall include but not be limited to a mobile home, on said real estate, which proposed habitation is necessitated by a disaster rendering their residence or said property unfit for human habitation. If the Building Inspector grants such permission it shall not exceed 12 months from the date of the permit. In considering the granting of any such extension(s), the Building Inspector shall determine if the restoration and/or reconstruction of said residence on said premises has proceeded in a diligent manner.
- B. It is not the intent of this provision that individuals shall have the right to reside within a temporary structure either conflicting or in conflict with other provisions of this chapter, but only under the circumstances outlined in this section.

**§ 145-20. Corner lots.**

- A. All corner lots shown on plans of land (MGL c. 41, §§ 81P, 81S and 81T) shall be required to have a curve radius as established in the Chapter 270, Subdivision of Land, § 270-35E(2), as amended.
- B. All corner lots shall have the minimum frontage requirements. Frontage measurements shall be made by extending the property line of the corner lot and extending the property line of the existing or proposed right-of-way until the two lines intersect. Frontage shall be measured uninterrupted along the street right-of-way line on which the lot abuts to the point of intersection of the two extended property lines. (See illustrative example.)

**Corner Lot**



- C. Extension of said property lines is for administrative purposes only and does not constitute a rescinding of the curb requirements as established in Chapter 270, Subdivision of Land, § 270-35E(2), as amended.
- D. All corner lots shown on plans of land shall be accompanied by a deed to the owner of said lot describing the area necessary to complete the linear frontage line.
- E. The front yard setbacks facing on both frontages on a corner lot shall conform to Article V of this chapter.

**§ 145-21. Fences; swimming pools.**

- A. No fence shall be erected or maintained in the front yard of a corner lot in a manner which interferes with traffic visibility across the corner.
- B. Fences shall be placed with the most attractive side (e.g., in the case of a picket fence, the side without horizontal members) facing the street and neighboring properties. All commercial chain link fences, including posts and rails, must be black or green so to blend into the landscape. **[Amended 5-11-2009 ATM by Art. 14]**
- C. The maximum height of a fence shall be six feet, except in the B-2 zone. In the B-2 Zone the maximum height of a fence shall be eight feet. **[Amended 5-11-2009 ATM by Art. 14]**
- D. All swimming pools which contain more than 18 inches of water (below grade), or any aboveground pool with a wall height of more than 18 inches but less than 48 inches above ground level, shall be enclosed as described below:

- (1) Such enclosures, including any gates, shall be secured against unauthorized entry and must not be less than four feet in height. (Public or semipublic pools must have enclosures of not less than six feet in height.)
  - (2) A structure or accessory structure may be used as part of such enclosure, provided that there are no windows, doors or other openings which open into the pool enclosure that cannot be made secure against unauthorized entry.
- E. Aboveground pools which have a wall height of 48 inches or more above the ground level shall be considered to have complied with the above regulations, provided that any decks, docks, ladders or catwalks within six feet of said pools shall be secured against unauthorized entry.
- F. Livestock fencing is addressed in § 145-24. **[Added 5-12-2008 ATM by Art. 18]**
- G. A special permit granting authority may allow a higher fence under a special permit when determined to be necessary for safety or security. **[Added 5-11-2009 ATM by Art. 14]**

**§ 145-22. Signs. [Amended 5-12-1997 ATM by Art. 13; 5-11-2009 ATM by Art. 13]**

- A. Purpose. The purpose of this section is to:
- (1) Ensure that signage does not contribute a visual blight upon the landscape and the character of the Town of Belchertown;
  - (2) Maintain and enhance the aesthetic environments and the Town's ability to attract sources of economic development;
  - (3) Encourage signs which, by their location and design, are harmonious with the buildings and sites which they occupy, and which eliminate excessive and confusing sign display;
  - (4) Improve pedestrian and traffic safety; and
  - (5) Enable fair and consistent enforcement of these sign regulations.
- B. Applicability. The provisions of this section shall apply to the construction, erection, alteration, use, illumination, location and maintenance of all signs located out-of-doors, including signs affixed on any part of a building, freestanding signs, and signs visible through windows from outside a building. Any sign in the Historic District must be approved by the Historic District Bylaw Commission prior to the grant of a permit.
- C. Definitions. As used herein this § 145-22, the following words and terms shall have and include the following respective meanings.

**AWNING SIGN** — A permanent sign affixed to or consisting of a permanent or retractable awning or marquee permanently mounted to the exterior surface of a building.

**BANNER** — A temporary sign, typically promoting special civic events sponsored by public or private not-for-profit organizations, usually made of lightweight fabric, plastic or other flexible materials and mounted on the face of a building or hung from a pole or suspended over a street.

**BILLBOARD** — A large display advertising goods or services not necessarily sold where the sign is located.

**CANOPY** — A sign painted on or incorporated into the cover of an awning, canopy or other fixed or retractable protective cover attached to a building or structure, and typically located over a door, entrance, window or outdoor service area.

**DIRECTORY SIGN** — An on-premises sign identifying individual tenants or occupants of a building or group of buildings and that may indicate their respective professions or business activities.

**DISPLAY AREA** — The total surface area of a sign, including all lettering, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the sign.

**ELECTRONIC VARIABLE MESSAGE SIGN** — An electrically activated sign or portion thereof whose alphabetic, pictographic or symbolic informational content can be changed or altered at intermittent intervals on a fixed display surface by means of computer-programmed electronic impulses, remote control or similar technology.

**ERECTING** — Any installing, constructing, reconstructing, replacing, relocating or extending of a sign, but shall not include repairing, maintaining, relettering, or repainting of an existing sign.

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

**IDENTIFICATION SIGN** — An off-premises sign which indicates the direction, distance to or general site location of a building, business development or geographic area. An identification sign may contain the name, address, logo, trademark or other generic identifying symbol of the building or development, but it does not list or advertise individual businesses or commercial enterprises within the development.

**ILLUMINATED SIGN** — Any sign artificially illuminated, either internally or externally, by means of electricity, gas, oil, or fluorescent paint.

**MENU BOARD** — A freestanding sign that displays menu items and prices that is located on the premises of a food service establishment offering drive-through window service.

**MOVABLE SIGN** — A sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to: portable signs mounted on a chassis and wheels; unregistered motor vehicles and trailers with signage; signs supported by legs, including A-frames or T-frames; menu and sandwich board signs; and balloons and other inflatable devices used as signs. Movable signs are classified as temporary signs.

**OFF-PREMISES SIGN** — Any sign that directs attention to an occupant, business, commodity, service, or entertainment conducted, sold, or offered at a location other than the lot on which the sign is located. See § 145-22D(3)(f).

**ON-PREMISES SIGN** — Any sign that directs attention to an occupant, business, commodity, service, or entertainment conducted, sold, or offered at a location where the sign is erected or maintained.

**PENNANT/FLAG** — A flag or similar device hung on a pole or on the face of a building, decorated with graphics, designs, artwork, symbols and/ or lettering. Pennants that contain no commercial advertising messages, logos or symbols are not considered signs under this article. Bunting and patriotic flags, such as United States, Massachusetts or Town flags, are not considered signs and are exempt from this article.

**POLITICAL SIGN** — A sign of a nonpermanent nature relating to a candidate for public office, an issue to be voted on at a town meeting or an election, or some other issue which may be of general concern, interest or controversy.

**PROJECTING SIGN** — A sign which is permanently affixed to the exterior surface of a building or structure with the display area positioned perpendicular to the wall to which the sign is mounted. A projecting sign may be erected on a building provided the display area shall not exceed 12 square feet in the Business and Industrial Districts and six square feet in the Residential and Agricultural Districts. Projecting signs are prohibited in the Historic District. The thickness between sign faces shall not exceed one foot. A projecting sign shall not project more than three feet from the face of a wall and maintain a minimum clearance of eight feet over a walkway or sidewalk.

**ROOF SIGN** — A sign located above, or projected above, the lowest point of the eaves or the top of the parapet wall of any building, or which is painted on or fastened to a roof or parapet wall.

**SPECIAL EVENT SIGN** — A temporary noncommercial promotional sign displayed for special events sponsored by religious, governmental or legitimate charitable organizations, which may be in the form of a poster, banner or other nonpermanent or flexible device.

**TEMPORARY SIGN** — Any sign, including its support structure, not permanently mounted and intended to be maintained for a reasonably short or definite period.

WALL SIGN — Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building. The sign shall project no more than 15 inches out from the building. Mounting hardware shall be placed to minimize its visibility.

WINDOW SIGN — A sign affixed to the surface of a window (inside or outside) or displayed behind a window so as to attract attention from the outside.

D. General regulations.

(1) Permits.

(a) No new sign exceeding one square foot shall hereafter be erected, constructed or altered without the approval of the owner, rendered in accord with 780 CMR Art. 29, Sec. 2901.1, except as herein provided, and until after a permit has been issued by the Building Commissioner. All signs, wherever located, must be in conformity with the State Building Code.

(b) Application. All applications for signs requiring a sign permit shall be made to the Building Commissioner using the Town of Belchertown's approved application form. The application must be signed by the owner of the sign and the owner of the lot where the sign is to be erected. The Building Commissioner shall have the authority to reject any sign permit application which is not complete when submitted.

(c) Time limitations. The Building Commissioner shall approve or disapprove any application for a sign permit within 30 days of receipt of the application. If the Building Commissioner should fail to approve or disapprove an application for a sign permit within such thirty-day period, the application shall be deemed to be approved.

(d) Fees. The Board of Selectmen shall establish and from time to time review a sign permit fee which shall be published as part of a sign permit application form and be paid to the Building Commissioner upon application for each sign permit issued under this section.

(2) Signs that do not require a sign permit.

(a) Temporary construction signs. One temporary sign, not exceeding 10 square feet, except as required under federal and state agency regulations, denoting the architect, engineer, owner and contractor performing construction, repair, renovation or development currently in progress on the premises where the sign is located is permitted, provided that for a subdivision a separate sign may be placed at each street entrance thereto, and further provided that the sign or signs

shall be promptly removed within 48 hours upon completion of construction, repair or renovation.

- (b) Special event signs, provided that such a temporary promotional sign:
  - [1] Shall be firmly anchored;
  - [2] Shall be removed within 48 hours after the event to which it relates has taken place;
  - [3] Shall not be attached to a fence, utility pole, tree or similar structure on public property;
  - [4] Shall not exceed 10 square feet; and
  - [5] May be erected on Town property with the consent of the Board of Selectmen or their designee and the Zoning Enforcement Officer.
  - [6] Hand-held signs shall be exempted from Subsection D(2)(b)[1] above.
- (c) Political, ideological, or charitable message signs. Display or expressions of political, ideological or charitable ideas shall be exempt from the provisions of this section, provided that no such sign shall be affixed to a tree or utility pole in a public way.
- (d) Real estate signs. One real estate sign having an area of not more than 10 square feet and advertising the sale, rental or lease of the premises on which it is maintained is permitted. In a residential district, one for sale, rent or lease sign shall be allowed per lot, and one such sign shall be permitted for each business or establishment in any other zoning district. Such a sign shall not be illuminated, may be a movable sign and shall be removed immediately following the closing of a sale, lease or rental agreement.
- (e) Agricultural signs. A sign associated with an agricultural use as referred to in § 3 of MGL c. 40A, offering for sale produce and other farm products. The maximum display area of such sign shall be 12 square feet. Such sign may be movable.
- (f) Fuel pump signs. Fuel pump signs located on service station fuel pumps identifying the name or type of fuel and price thereof.
- (g) Governmental signs. Signs, including movable signs, erected and maintained by the Town of Belchertown, the Belchertown Water District, the City of Springfield, the Town of Amherst, the Bondsville Water and Fire District, any other municipal corporation, the Commonwealth of Massachusetts, or the



federal government on any land, building or structure in use by such governmental entity. Any other signs erected by such governmental entity at any location required for public or environmental health, safety or notification purposes, or announcing the date, time and place of elections or Town meetings.

- (h) Identification signs. For single- and two-family residential uses in any zoning district, one sign on a lot identifying the occupants of the dwelling, an authorized home occupation and/or any other use which is conducted on the lot and is permitted in a residential district. In a residential district, one sign on a lot identifying a nonconforming use. All such signs shall not exceed two square feet of display area and shall not be illuminated, except when coincidental to the illumination of a building, driveway or similar feature.
- (i) Landmark signs. Any sign determined by the Board of Selectmen to be of particular artistic or historic merit that is unique or extraordinarily significant to the Town. Such a sign may be new or old, it may or may not comply with this section, it may be a picture, mural, statue, sculpture or other form of artistic expression, it may warrant preservation in its original form or may be in need of restoration, or it may be a marker to identify or commemorate a particular significant location, a historic event or person, or a natural feature.
- (j) Menu signs. One menu sign per restaurant, affixed to the exterior wall of a restaurant with a maximum display area of two square feet.
- (k) Multifamily dwelling signs. A sign identifying the name of a multifamily residential dwelling, not exceeding six square feet in display area. If freestanding, its height shall not exceed four feet above ground level and if mounted to the exterior wall of a building no portion thereof shall be higher than six feet from the ground.
- (l) Religious signs. Signs identifying a religious use and erected on the same lot as the religious use. Such signs shall not be illuminated and shall be limited to one wall sign with a maximum display area of 12 square feet, and one freestanding sign with a maximum display area of eight square feet and a maximum height of five feet.
- (m) Traffic signs. Standard traffic signs and control devices. Sign limitations do not apply to traffic or directional signs which are necessary for the safety and direction of residents, employees, customers and visitors, whether in a vehicle or on foot, of any business, industry or residence. Such signs shall not carry the name of any business or project.

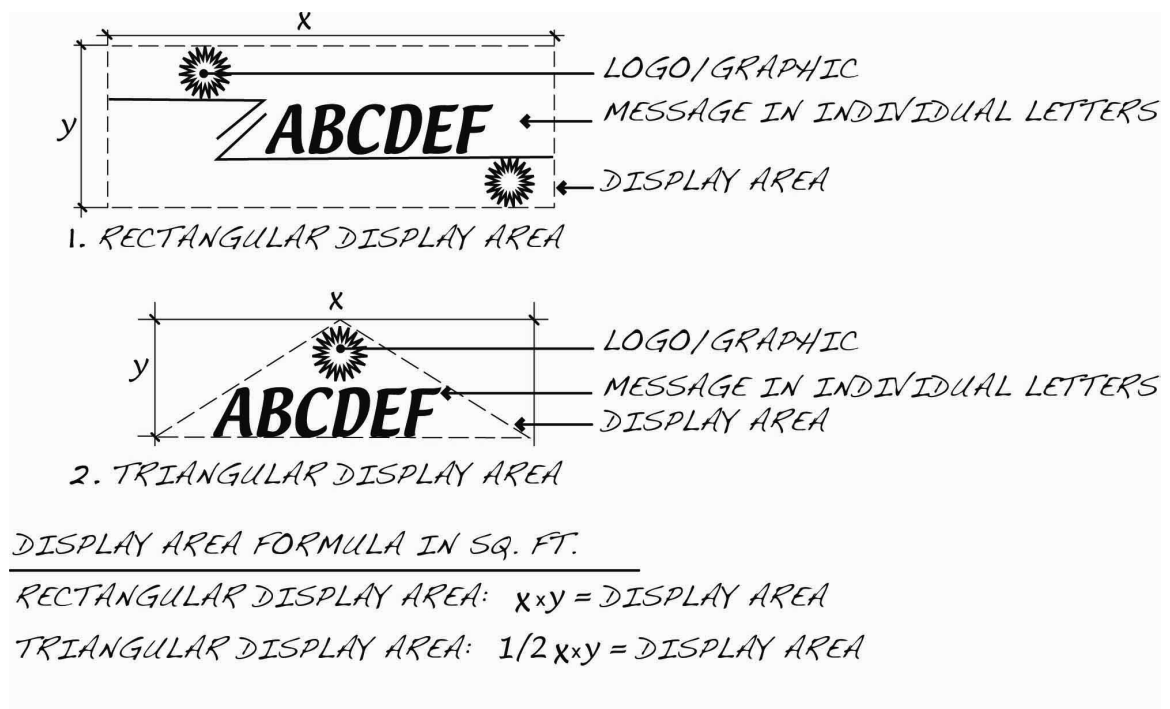
- (n) Window signs. Signs printed or placed on the outside surface of a window, other than a neon sign, provided that their aggregate display area covers no more than 20% of the window in which they are erected. Such sign shall not be illuminated. Window signs promoting a public service or charitable event shall not be calculated in the allowable 20%. There shall be not more than one such sign allowed per principal use.
  - (o) Neon window signs. Neon window signs provided that the display area shall not exceed 10 square feet or cover more than 20% of the window in which they are erected, whichever is less. There shall be not more than one such sign allowed per principal use. As with any other sign, a neon window sign shall not be illuminated longer than 30 minutes before opening or after closing of the store or business.
  - (p) Tag sale and similar event signs. One sign, which may be a movable sign, on the lot where the sale occurs, displaying only the words "tag sale" or similar words specific to the event together with the date of the event. Such sign shall not exceed six square feet in display area and shall not be illuminated. Such sign shall not be erected sooner than three days before the sale, and it shall be removed not later than one day after the sale. In no case shall such a sign be erected on a lot for more than five days per calendar year.
- (3) Prohibited signs. All signs not conforming to the provisions of this section are specifically prohibited, and include, but are not limited to, the following sign types.
- (a) Billboards, movable signs, projecting signs and roof signs are not permitted.
  - (b) Streamers, pennants, ribbons, balloons and other inflatable objects, objects through which air is blown, spinners or other similar devices shall not be constructed, posted or erected. Exceptions include flags and buntings exhibited to commemorate national patriotic holidays, and temporary banners announcing charitable or civic events.
  - (c) Moving, flashing or animated signs, including signs containing reflective elements which sparkle in the sunlight, are not permitted. Electronic variable message signs are not permitted except that such signs indicating only the current time and/or temperature are allowed, provided they meet all other provisions of this section.
  - (d) No sign shall be designed in shape, color, placement or display characteristics to resemble traffic signals or traffic control signs nor otherwise impair or cause confusion of vehicular or pedestrian traffic.

- (e) Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises is not permitted and shall be removed.
  - (f) Off-premises signs per § 145-22C. No sign shall be located off the premises to which it applies, except that directional, informational, or identification signs may be allowed by special permit by the Zoning Board of Appeals where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design. Individual off-premises signs shall be unlit and shall not be over four square feet in area. Where appropriate, and subject to design review, off-premises signs shall be grouped together at strategic locations, and may be externally lit. (See § 145-22F.)
  - (g) No sign shall be erected or maintained in such a manner as to create a hazard or disturbance to the health, safety and welfare of the general public.
  - (h) No sign shall obstruct or impair traffic visibility for the motorist at a street corner, intersection or driveway entrance or exit.
  - (i) No sign shall be placed on Town property or within the right-of-way of the Town without approval from the Board of Selectmen.
  - (j) Any sign designed to be transported by means of wheels and signs attached to or painted on vehicles parked and visible from a street or a right-of-way customarily used by the general public, unless said vehicle is registered and used, as a vehicle, in the normal day-to-day operations of the business.
  - (k) Any sign projecting above the lowest point of the eaves of a building or beyond a building corner.
  - (l) No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise or other implements, items or advertising depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31 shall be displayed in the windows of, or on the building of, any adult entertainment establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.
- (4) Protection of First Amendment rights. Any sign authorized with or without a permit under this section may, in lieu of any specified copy, contain any lawful, noncommercial message that does not direct attention to a business or to a property, service or commodity for sale.

E. Sign dimensions/height.

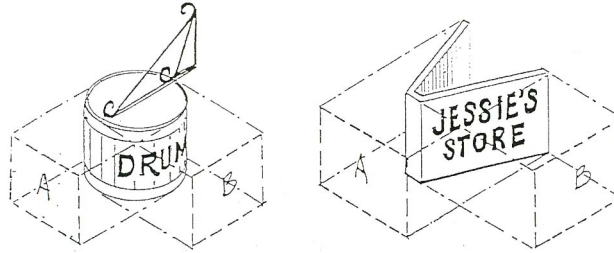
- (1) Display area: The combined and total square foot area of a sign or signs, either on or off the premises, shall be measured as defined below and in accordance with Table E-1.
  - (a) The display area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any cutouts or extensions, but shall not include any supporting structure or bracing.
  - (b) The display area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall, canopy or window, shall be the smallest rectangle or triangle which encompasses all of the letters and symbols. See Figure E-1 below.

**Figure E-1**



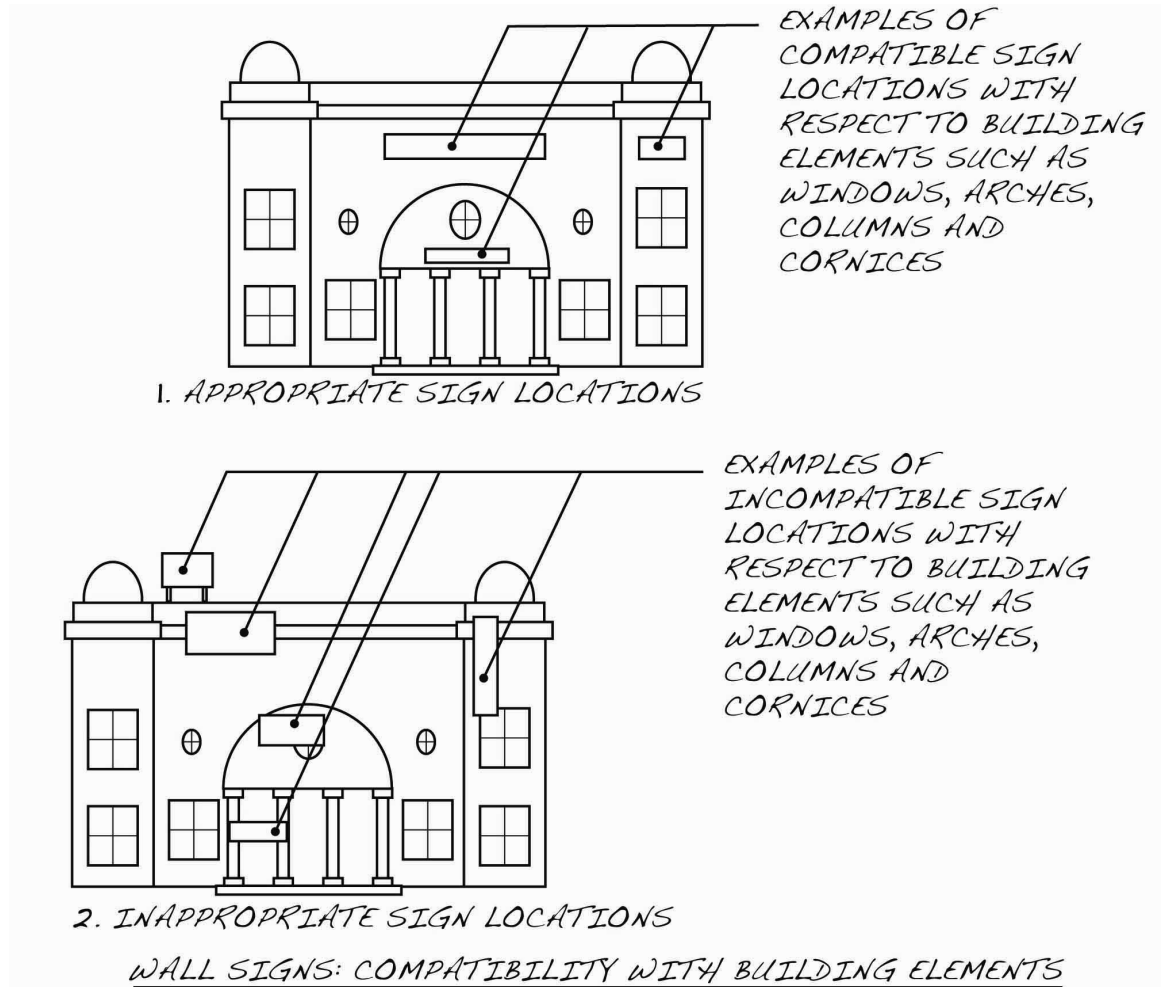
- (c) For three-dimensional signs, double-faced signs greater than four inches thick, objects used as signs, and V-shaped signs: the area shall be determined by the largest of either the front (A) or side (B) projected view of the sign. See Figure E-2 below.

**Figure  
E-2**



- (d) In computing the area of signs with two faces placed back-to-back, the area shall be taken as the area of either face, or if the faces are unequal, the larger shall determine the area, except as in Subsection E(1)(c) above.
- (e) Any support structure or bracing incidental to the sign shall not project more than one foot, in any direction, from the display area.
- (f) The display area of a wall sign or freestanding sign may not exceed 10% of the area of the front face square footage (FFSF), as computed by the length times the width of the building facade to which such sign is attached. In no case shall the sign be larger than the maximum sign display area for the district in which the building is located.
- (g) A wall sign shall not be placed such that it covers architectural elements such as cornices, columns, arches, details, or other such building features or ornamentation, and, if the architectural detail of the building necessitates, the sign may be broken up into two pieces, provided that the pieces are oriented in the same manner relative to the wall, parallel to each other, and the total area of the two signs does not exceed the maximum allowable of 10% of the wall face. See Figure E-3 below.

**Figure E-3**



(h) In no case shall any sign exceed the maximum indicated in Table E-1, below.

**Table E-1**

<b>District</b>	<b>Maximum Display Area Per Sign</b>	<b>Maximum Total Display Area<sup>1</sup></b>	<b>Height (in feet)</b>
	<b>(in square feet)</b>	<b>(in square feet)</b>	
Agricultural A (AG-A)	6	12	6
Agricultural B (AG-B)	6	8	6
Village Residential (VR)	6	8	6

**Table E-1**

<b>District</b>	<b>Maximum Display Area Per Sign (in square feet)</b>	<b>Maximum Total Display Area<sup>1</sup> (in square feet)</b>	<b>Height (in feet)</b>
Lakes Residential (LR)	6	8	6
Multiple-Dwelling Residential (MDR)	40	40	6
Mobile Home Park	40	40	6
Limited Business (B-1)	20	40	12
General Business (B-2)	80	100	18
Light Industrial (LI)	40	80	18
Industrial (I)	40	80	18

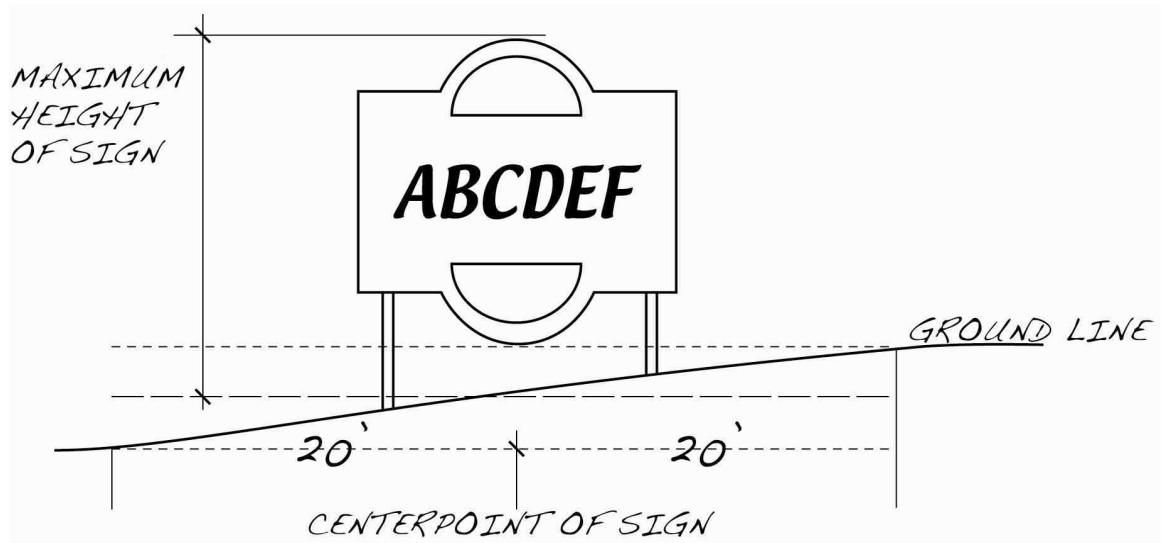
Notes:

<sup>1</sup>Per business for commercial uses and per land use on a lot.

(2) Height:

- (a) The top of the display area of freestanding signs permitted under this section shall not exceed height standards listed in Table E-1 above the average grade as measured within a twenty-foot radius of the center, laterally, of the sign, in any district. No filling, berming, mounding, or excavating may be done solely for the purpose of altering the allowed height of the sign. The Building Commissioner or Zoning Enforcement Officer may permit a sign in height greater than the standards listed in Table E-1 where the physical characteristics of the lot prevent adequate setback from public ways and a lower sign would create a potential traffic hazard. See Figure E-4 below.

**Figure  
E-4**



- (b) The top of the display area of a wall sign shall be placed no higher than whichever of the following is lowest: 25 feet above grade; bottom of the sills of the first level of windows above the first story; or one foot below the height of the building line.
  - (c) Signs on adjacent storefronts should be coordinated in height, type and proportion. The use of a continuous sign band for adjacent shops within the same building is encouraged, as a unifying element.
- F. Illumination standards. The following standards apply to all signs illuminated internally or externally by electric power.
- (1) Lighting shall be nonflashing, nonblinking and shall not be designed to attract attention by a change in intensity or by repeated motion.
  - (2) Signs shall also be nonmoving and nonanimated, shall not interfere with traffic visibility and shall not protrude over any lot line.
  - (3) Any illumination provided shall be of one color only, for example, only white, or only red, but not both.
  - (4) Any sign illuminated by an external light source shall have the light source projected downward from above and shall be shielded from view off the premises so that no direct light extends above ground level beyond the property lines on which the sign is located.
  - (5) No sign shall constitute a hazard to pedestrian or vehicular traffic because of the intensity or direction of illumination.



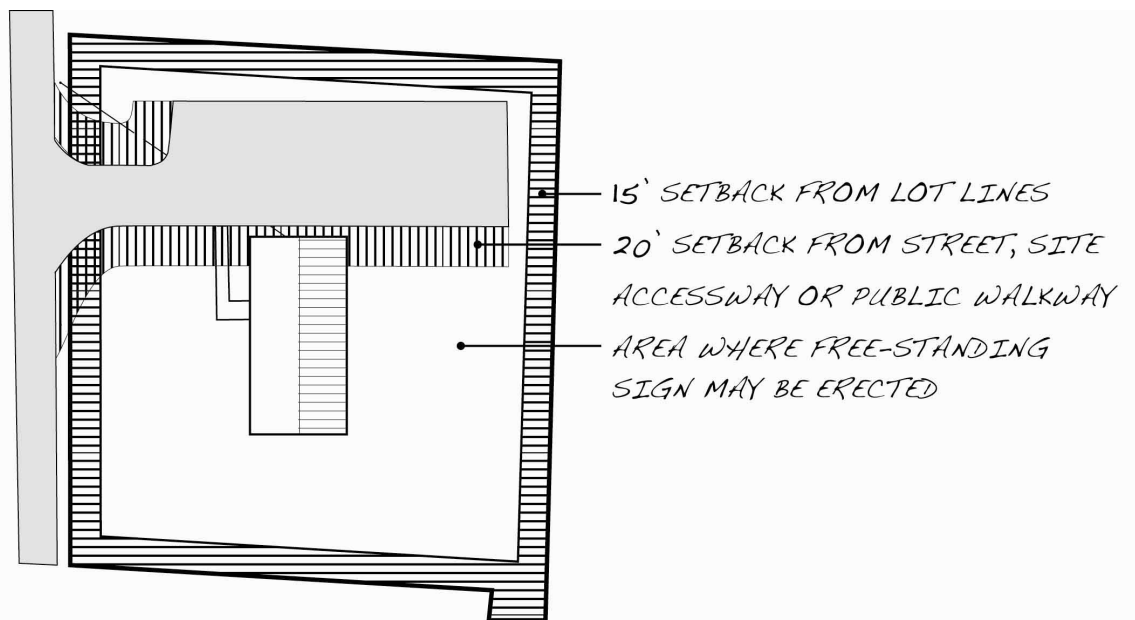
- (6) No sign shall be illuminated longer than 30 minutes before opening or after closing of any store or business.
- (7) The display area of an illuminated sign shall neither emit nor reflect light with an average intensity greater than 50 footcandles measured directly on the surface of the sign or signs shall neither emit nor reflect light with an average intensity greater than 50 footcandles at 100 feet from the sign.
- (8) Light fixtures, including bulbs or tubes, used for sign illumination should be selected and positioned to achieve the desired brightness of the sign with the minimum possible wattage while ensuring compliance with all applicable requirements of this section. Where possible, the fixtures used for sign illumination should classify as "energy efficient," as defined by the power utility company serving the lot.
- (9) The following types of signs with internal or quasi-internal illumination shall be permitted, provided that they comply with all applicable standards of this section. The word "opaque," as used in the following subsections, shall mean that the opaque object shall appear black when the sign is lit at night.
  - (a) Neon signs, erected on a lot in place of a sign otherwise permitted, provided it features an individualized, custom made design showing only a drawing, logo, symbol or illustration, but not letters. A neon sign hereunder shall comply with all applicable dimensional standards. It shall be composed of primarily single-strand glass tubing with a maximum one-inch diameter.
  - (b) Opaque individual letter signs or symbols, back-lit with a white and concealed light source, thereby creating an effect by which the letters or symbols are silhouetted against a wall illuminated by said light source.
  - (c) Signs featuring individual letters or symbols which are cut out from an opaque facing and back-lit with a white and concealed light source, thereby creating an effect by which the facing, from which the letters or symbols are cut out, is silhouetted against a wall illuminated by said light source.
  - (d) Back-lit awning signs with the light source internal or concealed from public view. Such signs shall not be permitted in the Historic District.
  - (e) Individual letter signs with translucent letter faces, internally illuminated with a soft-glow light source; or signs with an opaque sign face with cutout translucent letter surfaces which are internally illuminated with a soft-glow light source. Such signs shall not be permitted in the Historic District.

G. Additional standards.

(1) Freestanding signs.

- (a) No part of a freestanding sign is to be located closer than 15 feet from any lot line and a minimum of 20 feet from any public walkway, site accessway or street, and no portion of a freestanding sign shall be located within the airspace above this setback. See Figure G-1 below.

**Figure G-1**



- (b) The dimensions of a freestanding sign shall conform to the requirements of § 145-22E above.
- (c) Not more than one freestanding sign may be erected on any lot, regardless of the number of tenants or occupants of the property, provided that the Planning Board acting as special permit granting authority may grant a special permit for one additional freestanding sign if such additional sign is determined necessary due to the specific combination of uses on the lot.
- (d) Freestanding signs may be lighted on both sides. Any illumination provided for signs shall conform to the requirements of § 145-22F above.
- (e) A freestanding sign shall be integrated into the landscape design of the lot or parcel. It shall be centered within a

landscaped area located on the lot or parcel with a minimum area in square feet to be equal to the overall height of the sign multiplied by two, by the power of two. (Example: sign height = six feet: six feet x two feet = 12 feet.; 12 feet x 12 feet = 144 square feet = minimum landscaped area) Such landscaped area shall be planted and maintained with suitable vegetation, including shrubs and flowering perennials surrounding the base of the freestanding sign. The landscaped area required under this section may be provided as part of a landscaped area required under any other section of this section.

- (f) Menu boards shall be a maximum of 30 square feet, with a maximum height of six feet, and shall face away from the street. Menu boards shall be screened from view from the public street.

(2) Multiple signs.

- (a) Where more than one sign is desired, several signs may be used, provided that their total combined area does not exceed the amounts shown in the schedule (Table E-1). The combined area of all signs, whether on or off the premises, shall not exceed the amounts allowed in this schedule.
  - (b) When several businesses are located on one lot, these standards shall apply to each business.
  - (c) One directory sign, not to exceed an area of 12 inches by 18 inches for each additional occupant of the premises and not in excess of 100 square feet, may be permitted by the Board of Appeals within General Business, Industrial and Light Industrial Zones when several businesses are located within one property, as in a shopping center or industrial park.
- (3) Compatibility. Proposed signs will be considered in relation to the character of the neighborhood and the architecture, colors and material of the building and should be compatible in terms of the appropriateness of the size, color, shape, material and design. Signs should be informative, legible and designed to improve the quality of the street scene.
- (4) Discontinuance of sign-related use. All signs erected for a permitted use, use by a special permit or a special event, including a sign advertising the sale or rental of premises, shall be promptly removed within 48 hours when the circumstances leading to their erection no longer apply.

H. Enforcement.

- (1) Maintenance and removal. Every sign shall be maintained in good structural conditions at all times. All signs shall be kept neatly painted, including all metal parts and supports thereof that are not

galvanized or of rust resistant material. The Building Commissioner or the Zoning Enforcement Officer shall inspect and shall have the authority to order the painting, repair, alteration or removal of a sign which shall constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence.

- (2) Abandoned signs. Except as otherwise provided in this article, any sign that is located on property which becomes vacant and is unoccupied for a period of three months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned, unless the property remains vacant for a period of six months or more. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.
- (3) Dangerous or defective signs. No person shall maintain or permit to be maintained on any premises owned or controlled by him any sign which is in a dangerous or defective condition. Any such sign shall be removed or repaired by the owner of the sign or the owner of the premises.
- (4) Removal of signs by the Building Commissioner or Zoning Enforcement Officer.
  - (a) The Building Commissioner or Zoning Enforcement Officer shall cause to be removed any sign that endangers the public safety, such as an abandoned, dangerous, or materially, electrically, or structurally defective sign, or a sign for which no permit has been issued.
  - (b) The Building Commissioner or Zoning Enforcement Officer shall prepare a notice which shall describe the sign and specify the violation involved and which shall state that, if the sign is not removed or the violation is not corrected within 20 days, the sign shall be removed in accordance with the provisions of this section.
  - (c) All such notices shall either be hand-delivered or sent by certified mail. Any time periods provided in this section shall be deemed to commence on the date of the receipt of the certified mail. For all other signs, the notice shall be mailed to the owner of the property on which the sign is located as shown on the last equalized assessment roll. If known, or with reasonable care should be known, the notice shall be mailed to or delivered to the owner of the sign and the occupant of the property.
- (5) Appeals. Any person having an interest in the sign or the property may appeal the determination of the Building Commissioner or

Zoning Enforcement Officer ordering removal or compliance by filing a written notice with the Town Clerk within 30 days from the date of the determination as provided in MGL c. 40A, § 15.

- (6) Nonconforming signs. Any nonconforming sign lawfully existing at the time of adoption of this section or subsequent amendment of this section although such does not conform to the provisions of this section, subject to the following:
  - (a) Nonconforming signs accessory to a use or uses shall be removed or replaced concurrently with any expansion of such use or uses. Such nonconforming signs shall be replaced with a conforming sign or signs prior to the issuance of an occupancy permit for any building into which the use or uses are to be expanded.
  - (b) Any sign replacing a nonconforming sign shall conform with the provisions of this section, and the nonconforming sign will no longer be displayed.
  - (c) Nothing herein shall be deemed to prevent orderly, regular and timely maintenance, repair and repainting with the same original colors of a nonconforming sign.
- (7) Penalties. A violation of any provision of this section shall be subject to a fine of not more than \$100 per offense. Each day of violation shall constitute a separate offense.

I. Miscellaneous provisions.

- (1) Conflict with other laws. In the event of a conflict between this section and any such laws and regulations, the provisions of this section shall control, provided that they are consistent with state and federal law.
- (2) Severability. If any section or provision of this section is found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other section or provision of this section.

**§ 145-23. Parking and loading areas.**

- A. For handicapped parking regulations, refer to Chapter 129, Vehicles and Traffic, Article II, Handicapped Parking, of the Code of the Town of Belchertown.
- B. Schedule of Off-Street Parking Requirements. In all districts there shall be provided and maintained off-street parking in conjunction with the construction, conversion and/or expansion of any structure, as well as upon the expansion or change in use, located on the lot, or on a lot under the same ownership within 300 feet of the structure, in at least the following minimum amounts for the following uses:

<b>Type of Use</b>	<b>Number of Spaces</b>
<b>Residential Uses</b>	
Single-dwelling unit	2 per unit
Multi- or attached dwelling unit	2 per unit, plus 1 for visitor parking per 10 spaces of required resident parking
Boardinghouse, lodging house, guest house or other group accommodations	1 per bedroom, in addition to the parking required of the dwelling unit
Mobile home park	3 per unit (at least 2 must be situated on the individual mobile home site)
Home occupation	1 for between 0 and 300 square feet of floor area and 1 additional for that which exceeds the initial 300 square feet, in addition to the requirement for the use permitted by right
<b>Government, Institutional and Public Service Uses</b>	
Community residence and apartments exclusively for the elderly and handicapped	1 for each living unit or 1 for each 3 beds, whichever is greater; for facilities with more than 6 beds, add 1 space per employee
Hospital or nursing home	1 for each 3 beds, plus 1 for each 2 employees based on the numerically largest shift
Place of public assembly, including a theater, auditorium and funeral parlor	1 for each 3 seats or, if seats are not fixed, 1 for each 20 square feet of floor area visible for seating and 1 for each 100 square feet of gross floor area
Public and private school (grades 1 to 12, inclusive)	1 for each 4 seats or 8 linear feet of bench or 1 for each 20 square feet of floor area visible for seating where seating is not provided
<b>Business Uses</b>	
Retail store and service establishment	1 for each 150 square feet of gross floor area and outdoor sales space, exclusive of storage space

<b>Type of Use</b>	<b>Number of Spaces</b>
Eating and drinking establishment	1 for each 3 seats, plus 1 for each employee, provided that drive-in establishments shall provide 1 space for each 50 square feet of gross floor area plus 1 space for each employee
Business office or bank	1 for each 200 square feet of gross floor area
Medical or dental office	1 for each 150 square feet of gross floor area, plus 1 for each employee
Bowling alley	4 per lane
Laundromat	1 for each 4 machines
Roller- or ice-skating rink	1 for each 3 persons, maximum capacity
Tennis, handball and racquetball court (except where a single court is an accessory structure to a residential dwelling)	2 for each court, plus 1 additional for every 5 spaces
Automobile service station	3 for each service bay, plus 1 for each employee
Health fitness, multi-use or similar recreational facility	1 for each 200 square feet of gross area
Hotel or motel	1 per bedroom
<b>Industrial Uses</b>	
Wholesale establishment, manufacturing and industrial use or research operation	1 for each person employed on the largest shift, plus 1 for each company-owned vehicle

C. General. For cases not specifically enumerated herein, adequate parking areas shall be provided off the traveled way. All uses shall have adequate off-street parking to accommodate customers, patrons and employees. Parking on a public or private street or way adjacent to the premises shall be considered evidence of the inadequacy of the off-street parking space provided for both new uses and a conversion or expansion of existing uses.

D. Design standards.

(1) Size. Off-street parking spaces shall be not less than nine feet wide by 18 feet long each and shall be clearly delineated within the lot, for all uses except multiple-dwelling units.

- (2) Parking aisles. Parking aisles shall be a minimum of 18 feet wide for angle parking and 24 feet wide for perpendicular parking, for all uses except single-dwelling units.
- (3) Location. Parking areas shall be constructed so that vehicles do not have to back into a public way or across a sidewalk.
- (4) Landscaping and screening.
  - (a) Parking areas that abut public ways or residentially zoned property must be separated from the public way or property line by a minimum ten-foot-wide landscaped strip, for all uses except single-dwelling units. Screening within this strip shall be provided except where the parking area is already screened from the residential premises or the public way by a natural terrain feature. Such screening shall be a solid wall or fence, not less than five feet in height. In lieu of such a fence, a compact evergreen hedge of not less than three feet in height at the time of original planting may be used. The fence, wall and/or hedge shall be maintained in good condition, and no advertising shall be placed thereon. The screening shall be designed so that vehicle sight distance shall not be affected at entrances and exits and at street intersections.
  - (b) Large parking areas providing more than 75 parking spaces shall be subdivided with landscaped islands such that no paved surface shall extend more than 80 feet in width. At least one tree (minimum two-inch caliper at chest height) per 35 spaces shall be provided.
- (5) Lighting. All lighting shall be shielded from adjacent premises and public ways.
- (6) Drainage. Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises or in a manner which will not impact abutting property.

E. Loading area requirements.

- (1) General. All new business and industrial buildings and all enlargement of existing buildings requiring the delivery of goods as a substantial part of their function must be provided with necessary space for off-street loading as hereinafter set forth. No application for a permit for the erection of such new buildings shall be approved unless it includes a plan for off-street loading facilities in accordance with regulations set forth in this chapter.
- (2) Loading spaces. A business, industrial, community facility (school, church, Town building, recreation, etc.) or public utility establishment with over 5,000 square feet of floor space shall be provided not less than the number of loading spaces indicated in the following table:



<b>Floor Area of Building or Structure (square feet)</b>	<b>Minimum Number of Loading Spaces</b>
5,000 to 49,000	1
50,000 to 99,000	2
100,000 to 149,000	3
150,000 to 300,000	4
Each additional 100,000 beyond 300,000	1 additional

- (3) Location. Every part of said loading area shall be located completely off the street or public way and shall be located in the side or rear yard.
- (4) Size. Each loading bay shall have a minimum dimension of not less than 15 feet in width by 25 feet in length, with 14 feet of height clearance.
- (5) Loading and unloading areas shall be located and designed such that the vehicles intended to use them can maneuver safely and conveniently to and from a public right-of-way and complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.
- (6) No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

**§ 145-24. Breeding, raising or keeping of animals. [Amended 5-12-2008 ATM by Arts. 18, 19]**

The breeding, raising and/or keeping of animals is permitted in Belchertown as a matter of right, subject to the following health and safety regulations. "Furbearing animals" is defined as animals raised to be killed for their pelts, such as mink or sable.

- A. Goats, sheep, horses, swine, cows, poultry and similar livestock shall be kept on a lot:
  - (1) With structures set back in conformance with the front, rear and side yard requirements as defined in Article V of this chapter for a principal building of the zone in which they are located.
  - (2) With indoor and outdoor areas well drained and reasonably free of excess odor, dust, noise and mud, so as not to create a nuisance or health hazard to the surrounding property owners.

- (3) With adequate fencing to contain the animals within the property boundaries.
    - (a) Animal fencing must not obstruct the view of traffic per § 145-21A.
    - (b) Animal fencing does not need to meet § 145-21B if it is installed for domestic livestock.
  - (4) In conformance with all regulations of the Belchertown Board of Health.
  - (5) On a lot whose size is a minimum of 40,000 square feet.
- B. The raising of furbearing animals and swine shall be carried out in compliance with regulations of the Board of Health, Town of Belchertown, and in no case shall this activity be carried out within 500 feet of any property line.
- C. Nothing in this section is intended to regulate the keeping, raising or breeding of animals as part of an agricultural enterprise, on five or more acres of land.

ARTICLE VII  
**Special Use Regulations**

**§ 145-25. Home occupations.**

- A. Intent. It is the intent of this section to allow home occupations which are and will continue to be clearly incidental and secondary to the principal use of the dwelling unit or the permitted accessory structure. The essential component of a home occupation is that it does not detract from the character of the existing land use.
- B. Purpose. The purpose of this section is to allow as a permitted use, upon the issuance of a zoning permit, home occupations which comply with the standards set forth below. The purposes of these standards are to assist in ensuring the residential characteristics of the neighborhoods in which home occupations are located.
- C. Procedure.
- (1) Home occupations are permitted by a zoning permit issued upon application to the Zoning Enforcement Officer.
  - (2) The Zoning Enforcement Officer shall issue a zoning permit only after making a determination that the application conforms to the standards in Subsection D.
  - (3) Home occupation applications that exceed the standards may be permitted by the Board of Appeals in accordance with § 145-69 and in accordance with Subsection E.
- D. Standards.
- (1) The home occupation's operator must live on the premises.
  - (2) The occupation shall only be conducted within the enclosed area of a dwelling unit or a permitted accessory structure.
  - (3) No storage of materials, goods, supplies or equipment related to the occupation shall be visible from the outside of any structure of the premises.
  - (4) Signs shall comply with § 145-22.
  - (5) No use shall alter the appearance of structures which would cause the premises to differ from its residential character.
  - (6) Only residents of the premises may be employed.
  - (7) Parking shall comply with § 145-23.
  - (8) No space within the dwelling unit or accessory structure larger than 300 square feet shall be used for home occupations.

- (9) No occupation which would necessitate a fire rating of the structure to be greater than one hour shall be permitted.
- E. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in § 145-69 of this chapter:
- (1) In Village Residential, Lakes Residential and Agricultural-B Districts, clerical help on a part-time basis, no more than a total of 20 hours per week.
  - (2) In the Agricultural-A District, no more than one full-time nonresident employee.

**§ 145-26. Estate lots.<sup>5</sup>**

- A. The purpose of this regulation is to allow for the creation of lots for single-dwelling units by right and two-, three- and four-dwelling units by special permit with less than the required frontage in exchange for increased square footage, for the purposes of preservation of open space and decreasing density in given areas.
- B. No dwelling unit shall be erected on a lot unless a circle 50 feet in diameter can be passed along a continuous line from the frontage of the lot to any point of the proposed dwelling on the lot without the circumference intersecting any side lot lines.
- C. No more than two consecutive estate lots shall be located on a public way.
- D. The estate lot entrance/driveway shall be clearly designated with a house number sign, not to exceed six square feet. Mailboxes shall not suffice. The sign permit shall be issued with the building permit.
- E. Front yard setback refers to the minimum required distance between the dwelling unit and the public way. Secondary front yard setback refers to the minimum required distance between the dwelling unit and the rearmost property line of the lot between the estate lot and the public way.
- F. Estate lots are permitted in the following districts: Village Residential, Lakes Residential, Agricultural-A and Agricultural-B.

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5. Editor's Note: See the Estate Lot Diagram included at the end of this section.

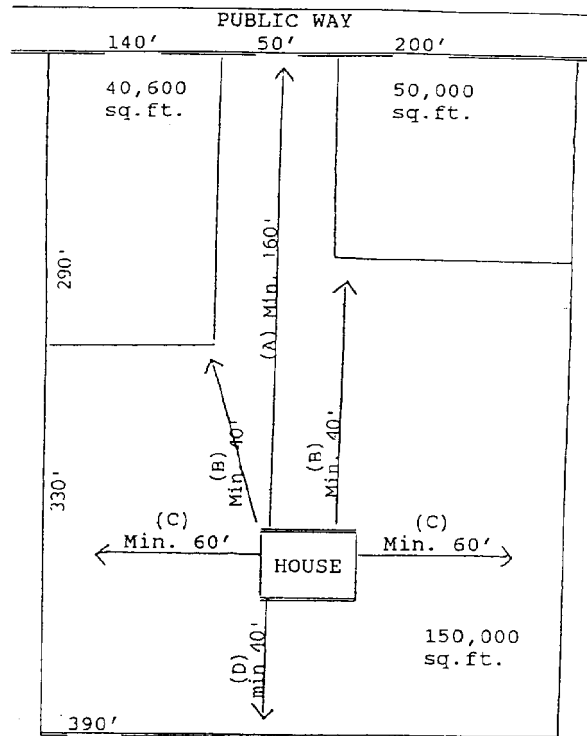
**Estate Lot Diagram**

A = Front yard setback: 160 feet.

B = Secondary front yard setback: 40 feet.

C = Side yard setback: 60 feet.

D = Rear yard setback: 40 feet.



**§ 145-27. Site plan approval. [Amended 3-20-1995 STM by Art. 15; 5-13-1996 ATM by Art. 23; 5-13-2002 ATM by Art. 21; 5-9-2011 ATM by Art. 16]**

- A. Purpose. The purpose of site plan approval is to ensure that the design and layout of new developments comply with the purpose and intent of this chapter, result in attractive and viable growth, and are not detrimental to the neighborhood, environment or community.
- B. Project requiring site plan approval.
  - (1) No building permit shall be issued for any of the following uses unless a site plan has been endorsed by the Planning Board in accord with Subsection D(3)(a), after consultation with other boards, including but not limited to the following: Board of Selectmen, Board of Health, Conservation Commission, Department of Public Works, Town Consulting Engineer, Belchertown Water District (if applicable), other water or sewer

districts (if applicable), Historical Commission, Fire Department and Police Department: **[Amended 5-8-2017 ATM by Art. 21]**

- (a) New construction or exterior additions to a commercial structure;
  - (b) New construction or exterior additions to an industrial structure;
  - (c) New construction or exterior additions to a multiple-dwelling structure in a Multiple-Dwelling Residential District (MDR);
  - (d) Construction or expansion of a parking lot for a municipal, institutional, commercial, business, industrial or multifamily structure or use; or
  - (e) Any other use specified in §145-11, Schedule of Use Regulations, which indicates that site plan approval is required.
- (2) The Planning Board may waive any of the procedures in Subsection D or site plan contents in Subsection E as long as such action is in the public interest and not inconsistent with the purpose and intent of this chapter.
- C. Exemptions from site plan approval. Site plan approval shall not be required for:
- (1) The construction or enlargement of any single-family or two-family dwelling or building accessory to such dwelling;
  - (2) The construction or alteration of any building used exclusively for agriculture, horticulture or floriculture;
  - (3) Construction or alteration providing for not more than 200 square feet of total floor area after construction;
  - (4) Customary home occupations as described in § 145-25 of this chapter.
- D. Procedures for site plan approval.
- (1) A review fee shall be charged for each site plan approval application in order to cover expenses connected with processing, review and any public meeting costs associated with the review of the site plan. The fee charged shall be noted on a schedule of Planning Board fees available in the Planning office and the Town Clerk's office. The fee shall be sufficient to cover the costs of advertisement and mailings and outside professional consultants, including but not limited to engineering, planning, architectural and/or legal consultants, for each application proposing construction or alteration, or for each modification or alteration of an approved site plan. The full cost of any Town engineering or

planning consultant services shall be paid by the applicant before any site plan approval becomes effective.

- (2) Each application for site plan approval shall contain the current owner of record's signed permission and shall be accompanied by 10 copies of the site plan, 12 copies if review by a Water District is necessary. Failure of boards and officials to make recommendations to the Planning Board within 14 days of the application filing date shall be deemed to be a lack of opposition. Any board or official may waive the fourteen-day period by so indicating on the application.

- (3) Period of review.

- (a) All applications for site plan approval shall be reviewed and acted upon by the Planning Board. For site plan approval applications that coincide with a special permit to be decided by the Planning Board, the schedule and requirements of the special permit determination shall apply. A separate public hearing for a simultaneous site plan approval application is not required. When another board is the special permit granting authority, the Planning Board shall not require an additional separate public hearing. For site plan applications that do not require a special permit, the Planning Board shall, within 35 days of the application filing date, take final action in accordance with Subsection G or make a determination pursuant to Subsection D(3)(b) that a public hearing is necessary. If a public hearing is determined to be necessary, the schedule and requirements of a special permit shall apply.

- (b) The Planning Board may determine that a public hearing for a site plan is necessary when the proposed use or uses would:

- [1] Affect traffic circulation adversely.

- [2] Affect environmental resources, such as surfacewater or groundwaters.

- [3] Result in extensive earth removal and change of grades.

- [4] Affect significantly the capacity of public infrastructure, such as sewer or water service provision.

E. Required site plan contents.

- (1) All site plans shall be prepared by an architect, landscape architect or professional engineer licensed in Massachusetts on standard twenty-four-inch by thirty-six-inch sheets, unless these requirements are waived by the Planning Board. Site plans shall be prepared at a sufficient scale to show:

- (a) The location and boundaries of the lot, adjacent streets and ways and the location and owners' names of all adjacent properties.

- (b) Existing and proposed topography, including contours, the location of wetlands, streams, water bodies, drainage swales, areas subject to flooding and unique natural features.
  - (c) Existing and proposed structures, including dimensions and elevations, and a set of architectural renderings and materials lists for proposed construction consistent with § 145-41 (Commercial development and architectural design).  
**[Amended 5-12-2014 ATM by Art. 20]**
  - (d) The location of parking and loading areas, driveways, walkways and access and egress points.
  - (e) The location and description of all proposed septic systems, water supply, storm drainage systems, utilities and other waste disposal and storage methods.
  - (f) Existing and proposed stormwater runoff calculations and control plan.
  - (g) Proposed landscape features, including the location and description of screening, fencing and plantings.
  - (h) The location, dimensions, height and characteristics of proposed signs.
  - (i) The location and a description of proposed open or recreation areas.
- (2) The plan shall describe estimated daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site. A detailed traffic generation statement is required for uses that would add 40 or more peak-hour trips.
  - (3) A plan for the control of erosion, dust, and silt, both during and after construction sequencing, temporary and permanent erosion control, and protection of water bodies.
  - (4) The Planning Board may require additional information to adequately evaluate the proposed site plan.

F. Site plan approval criteria guidelines.

- (1) The following guidelines shall be used as criteria by the aforementioned boards and officials noted in Subsection B(1) in the review and evaluation of a site plan, consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district in which it is located:



- (a) If the proposal requires a special permit, it must conform to the special permit requirements as listed in § 145-69 of this chapter.
- (b) The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. Building sites shall, to the extent feasible:
  - [1] Minimize use of wetlands, steep slopes, floodplains and hilltops;
  - [2] Minimize obstruction of scenic views from publicly accessible locations;
  - [3] Preserve unique natural or historic features;
  - [4] Minimize tree, vegetation and soil removal and grade changes;
  - [5] Maximize open space retention; and
  - [6] Screen objectionable features, such as lighting, utility structures, outdoor storage or other such features, from neighboring properties and roadways.
- (c) The development shall be served with adequate water supply and waste disposal systems. "Adequate" means the development shall not place an excessive demand on public infrastructure and resources.
- (d) The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways. Sidewalks must be shown along the applicant's frontage adjacent to public ways, and shall meet, at a minimum, current ADA standards. **[Amended 5-8-2017 ATM by Art. 22]**
- (e) The site plan shall show adequate measures to prevent pollution of surface water or groundwater, to minimize erosion and sedimentation and to prevent changes in groundwater levels, increased runoff and potential for flooding. Drainage shall be designed so that runoff shall not be increased, groundwater recharge is maximized and neighboring properties will not be adversely affected.
- (f) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened to protect the neighbors from these objectionable features.
- (g) In all cases, setback and dimensions as described in Article V of the Zoning Bylaw must be honored and cannot be waived.

The site plan shall comply with all zoning requirements for parking, loading and environmental performance standards and all provisions of this chapter. However, strict compliance with any zoning bylaw governing any individual aspect of a site plan, other than setbacks and dimensions, may be waived by the Planning Board where such action is in not detrimental to the public good. In such cases, any waiver on a site plan with approval from the Planning Board supersedes the individual bylaw governing the waiver. If the applicant requests a waiver, it is incumbent upon the applicant to demonstrate the viability of the proposed waiver. The Planning Board reserves the right to request a waiver when the Board deems it appropriate, even if the applicant does not request a waiver.

(h) The site plan shall demonstrate compliance with § 145-41 (Commercial development and architectural design). **[Added 5-12-2014 ATM by Art. 20]**

(2) Before approval of a site plan, the Planning Board may request the applicant to make modifications in the proposed design of the project to ensure that the above criteria are met.

G. Final action.

(1) The Planning Board's final action shall consist of either:

(a) A determination that the proposed project meets the criteria of Subsection F for site plan approval, stating the specific manner and criteria in which the proposed project conforms to this chapter;

(b) A written denial of the application stating the reasons by which the submitted application and site plan are incomplete for sufficient review by the Planning Board and/or its agents; or

(c) Approval subject to any conditions, modifications and restrictions as the Planning Board may deem necessary.

(2) The Planning Board's decision shall be sent by certified mail to the applicant and shall be filed with the Town Clerk within seven days of the date of the final determination by the Planning Board pertaining to any such plan approval. A copy shall also be sent to the Building Inspector/Zoning Enforcement Officer.

H. Enforcement.

(1) Security for incomplete work. The Planning Board may require the posting of a performance guaranty, in the form of a deposit of money made out to the Town of Belchertown or a bond, in an amount determined by the Planning Board to be sufficient to cover the costs of all or any part of the improvements required per the approved site plan and outstanding conditions affecting

public facilities, such as roads or drainage, or public health, safety or general welfare. The Planning Board, through the action of the Zoning Enforcement Officer, may suspend any license or permit when work is not performed as required. The security or guaranty is to ensure that the incomplete work is completed within a reasonable time. The Planning Board shall establish a deadline for completion of not more than one year from the posting of the security. This allowance is subject to the review by the Planning Board by a site inspection to ensure the safety and health for those who occupy the structure and use the site. If the Planning Board requires a performance guaranty, the guaranty must be posted before the site plan may be approved.

Each site plan must include a total construction estimate with an inflation factor added to it. Security is to be provided to cover all work involving public property, all drainage and stormwater structures, and additional amounts to cover any health and safety hazards resulting from incomplete work on the site.

The Planning Board must sign a certificate of completion for any security or guaranty to be released.

- (2) Certificate of occupancy. No occupancy permit shall be issued for any building or structure, or portion thereof, until the Building Inspector receives certification from a registered architect, landscape architect, engineer or land surveyor, that all construction (including utilities) has been done in accordance with the approved site plan (not required for site plans for structures less than 5,000 square feet). The Building Inspector may issue a conditional certificate of occupancy to allow a tenant to operate before full site completion, but this is issued at the tenant's and property owner's risk of rescission in the event that the site work is incomplete by the required date. The Building Inspector and Planning Board shall require a performance guaranty to cover any unfinished site items shown on the approved site plan during the conditional occupancy.

I. Modification of an approved site plan.

- (1) In the event that the applicant desires to alter, modify or correct an approved site plan, the applicant shall provide the Planning Board with:
  - (a) A written statement, signed by the applicant and property owner, requesting such changes;
  - (b) Seven prints of the original approved site plan with the changes drawn on said plan in red; and
  - (c) Other documentation deemed necessary by the Board for its review of the proposed modification.

- (2) Minor amendments to an approved site plan may be granted by the Planning Board, upon application and for good cause shown, and shall be acted upon under the procedures applicable to initial approval of a site plan. The Board may require a public hearing in accordance with the provisions of Subsection D(3) if it considers the proposed modification to be potentially detrimental to the neighborhood, community or environment.
- (3) The Planning Board shall file its decision on the alteration, modification or corrections to an approved site plan with the Town Clerk and send a copy by certified mail to the applicant. The Planning Board shall notify the Building Inspector/Zoning Enforcement Officer of its site plan amendment decision.

J. Appeals and expiration.

- (1) Decisions on site plan applications reviewed by the Planning Board may be appealed to the Zoning Board of Appeals in accordance with § 145-68A of this chapter and with MGL c. 40A, §§ 8 and 15. Decisions on site plans reviewed by a special permit granting authority as part of a special permit application may be appealed to the appropriate Massachusetts trial court in accordance with MGL c. 40A, § 17.
- (2) Site plan approval issued under this section shall expire within two years if a substantial use thereof is not commenced, except for good cause.

**§ 145-28. Commercial solar photovoltaic installations.<sup>6</sup> [Added 5-14-2012 ATM by Art. 26]**

- A. Purpose. This section is to encourage the use of solar energy systems and protect solar access consistent with MGL 40A, § 9B, and with the Green Communities Act in MGL c. 25A, § 10, to increase our local renewable energy production, to decrease our reliance on fossil fuels to produce electricity, and to improve local air quality.

This promotion of commercial solar photovoltaic installations is to be accomplished pursuant to the standards set forth herein for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, scenic, natural and historic resources and provide adequate financial assurance for the eventual decommissioning of such installations.

- B. Applicability. This section applies to large-scale (minimum 250 kW rated nameplate capacity) solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. The

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6. Editor's Note: Former § 145-28, Site plan review, as amended, was repealed 5-9-2011 ATM by Art. 16.

requirements of this section shall apply to a commercial solar photovoltaic installation regardless of whether it is the primary use of property or an accessory use.

(1) As-of-right: **[Amended 5-8-2017 ATM by Art. 26]**

- (a) A commercial solar photovoltaic installation, as defined herein, is allowed as-of-right with site plan review in all zoning districts except as set forth below.
- (b) Any such installation to be installed on buildings, groups of buildings and in parking lots with canopies or other freestanding structures that do not impede traffic flow or safety within the parking lot.

(2) Special permit: Under the following conditions, a commercial solar photovoltaic installation may be permitted by special permit from the Planning Board:

- (a) Any such installation proposed in the VR, MDR, MHP and LR Zones.
- (b) Any such installation requiring land clearing of two acres or more.
- (c) Any such installation with generation of three mW or more.
- (d) A commercial solar photovoltaic installation proposed for sites without street frontage. Sites with no frontage must demonstrate deeded rights-of-way to the site and utility access for the duration of the site's use for solar energy production. Lack of legal and physical access via a legal right-of-way or easement shall be cause for denial of a special permit.

For all special permit applications, site plan approval as described below is required, but shall not require a second public hearing, per § 145-27D(3)(a).

C. Definitions.

COMMERCIAL SOLAR PHOTOVOLTAIC INSTALLATION (CSPI) — Any solar photovoltaic installation with 250 kW or greater rated nameplate capacity, even if its primary generation is not intended for supplying the grid.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the commercial solar photovoltaic installation in direct current (DC).

SITE PLAN APPROVAL AUTHORITY — The site plan approval authority as designated by the Zoning Bylaw.

SOLAR PHOTOVOLTAIC ARRAY — An arrangement of solar photovoltaic panels.

## D. Requirements.

- (1) Site plan approval. The construction, installation or modification of a CSPI, whether as-of-right or by special permit, shall be subject to site plan approval in accordance with the zoning bylaws. Together with the requirements of § 145-27, the site plan approval authority shall consider and apply the requirements set forth in this section in reviewing and deciding an application for site plan approval.
  - (a) General. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.
  - (b) Required documents. The project proponent shall provide the following documents:
    - [1] A site plan showing:
      - [a] Property lines and physical features, including roads, for the project site;
      - [b] Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
      - [c] Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
      - [d] One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
      - [e] Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
      - [f] Name, address, and contact information for proposed system installer;
      - [g] Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
      - [h] The name, contact information and signature of any agents representing the project proponent; and
    - [2] Documentation of actual or prospective access and control of the project site [Subsection D(2) below];

- [3] An operation and maintenance plan [Subsection D(3) below];
- [4] Proof of liability insurance; and
- [5] Description of financial surety that satisfies Subsection D(9)(b).

The site plan approval authority may waive documentary requirements as it deems appropriate.

- (2) Site control. The project proponent shall submit documentation of actual or committed prospective access and control of the project site sufficient to allow for construction and operation of the proposed CSPI.
- (3) Operation and maintenance plan. The project proponent shall submit a plan for the operation and maintenance of the CSPI. This plan shall include measures to maintain safe access to the installation, stormwater controls, and general procedures for operational maintenance of the installation. The development is subject to the Belchertown Stormwater Bylaw and regulations.
- (4) Utility notification. No CSPI shall be constructed until evidence has been given to the site plan approval authority that the utility company operating the electrical grid the installation is to be connected to has been informed of the CSPI owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- (5) Dimension and density requirements.
  - (a) Setbacks. For all CSPI, front, side and rear yard setbacks shall be as follows:
    - [1] The front yard depth shall be at least 75 feet;
    - [2] The side yard depth shall be at least 75 feet;
    - [3] The rear yard depth shall be at least 75 feet;
  - (b) Appurtenant structures. All appurtenant structures to a CSPI shall be subject to the requirements of the Zoning Bylaw concerning the bulk and height of structures, lot area, setbacks, open space, 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. Whenever reasonable, structures should be shaded from view by vegetation.
- (6) Design standards.

- (a) Lighting. Lighting of CSPIs shall be limited to night time maintenance and inspections by authorized personnel, and shall comply with Dark Sky standards.
  - (b) Signage. A sign shall be erected identifying the owner and providing a twenty-four-hour emergency contact phone number. CSPIs shall not display any advertising. Any sign must comply with § 145-22.
  - (c) Utility connections. Reasonable efforts shall be made to place all utility connections from the CSPI underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be aboveground if required by the utility provider.
- (7) Safety and environmental standards.
- (a) Emergency services. The CSPI owner or operator shall provide a copy of the project summary, electrical schematic, and an approved site plan to the local fire department and the Building Inspector. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have immediate, twenty-four-hour access to the facility. All means of shutting down the CSPI shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation, and shall provide a mailing address and twenty-four-hour telephone number for such person(s).
  - (b) Land clearing, soil erosion, and wildlife habitat. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of the CSPI or otherwise prescribed by applicable laws, regulations, and bylaws. For any CSPI requiring land clearing of two acres or more, a special permit is required. [See Subsection B(2)(b).]
- (8) Monitoring and maintenance.
- (a) Maintenance. The CSPI owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local emergency services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and all access roads that are not public ways.
  - (b) Modifications. All material modifications to a CSPI made after issuance of the required building permit shall require approval by the site plan approval authority.



## (9) Discontinuance and removal.

- (a) Removal requirements. Any CSPI, or any substantial part thereof, not used for a period of one continuous year or more without written permission from the site plan approval authority, or that has reached the end of its useful life, shall be considered discontinued and shall be removed. Upon written request from the Building Inspector addressed to the contact address provided and maintained by the owner or operator as required above, the owner or operator shall provide evidence to the Building Inspector demonstrating continued use of the CSPI. Failure to provide such evidence within 30 days of such written request shall be conclusive evidence that the installation has been discontinued. Anyone intending to decommission and/or remove such an installation shall notify the site plan approval authority and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. Removal shall consist of:

- [1] Physical removal of all parts of and appurtenances to the CSPI, including structures, equipment, security barriers and transmission lines;
- [2] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- [3] Stabilization or re-vegetation of the site as necessary to minimize erosion. The site plan approval authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

If the owner or operator of the CSPI fails to remove the installation in accordance with the requirements of this section, the Town shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and physically remove the installation at the expense of the owner of the installation and the owner(s) of the site on which the facility is located. The Town may use the financial surety as stipulated in Subsection D(9)(b), below for this purpose.

- (b) Financial surety. Proponents seeking to construct and operate a CSPI shall provide to the Town, prior to construction, a form of surety, either through an escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the CSPI and remediate the landscape. The amount and form

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

**§ 145-28.1. Small wind energy systems. [Added 5-9-2016 ATM by Art. 31]**

A. Purpose and intent. This bylaw is to promote safe, effective and efficient use of small wind energy systems for individual property owners to reduce on-site consumption of utility-supplied electricity, while avoiding undue negative effects on surrounding properties.

B. Applicability.

(1) Small wind energy systems, as defined herein, shall be allowed by special permit issued in accordance with this bylaw in all zoning districts in the Town.

(2) The Planning Board is the special permit granting authority for small wind energy systems.

(3) This section applies to small wind systems no greater than 100 kilowatts of rated nameplate capacity proposed to be constructed after the effective date of this section.

(4) Towers are limited to one tower per parcel.

(5) Small wind energy systems mounted on buildings shall extend or protrude no more than five feet higher than the highest point of the building.

(6) Small wind energy systems that are used primarily for agriculture, as defined in § 145-2 of this chapter, also pursuant to MGL c. 40A, § 3, are exempt from this bylaw.

C. Definitions.

**HEIGHT** — The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height. This measure is also commonly referred to as the maximum tip height (MTH).

**OFF-GRID** — A standalone generating system not connected to or in any way dependent on the public utility grid.

**RATED NAMEPLATE CAPACITY** — The maximum rated output of electric power specified by an equipment manufacturer on the nameplate of a piece of equipment or wind turbine system.

**SMALL WIND ENERGY SYSTEM** — A wind energy conversion system consisting of a wind turbine and associated control or conversion electronics that has a rated capacity of not more than 100 kW and which is intended to provide power primarily for on-site uses, although excess generation may be supplied to the commercial power grid. The distinction between this small wind energy system and a commercial system is that this is intended to provide an alternative to the public utility grid, whereas a commercial system is intended to provide to the public utility grid for pay.

**TOWER** — A freestanding structure on which the wind turbine is mounted.

**WIND MONITORING OR METEOROLOGICAL TOWER** — A temporary tower used to gather wind data necessary for site evaluation and development of a wind energy project. In addition, a meteorological tower may be equipped to record temperature, solar radiation and air pressure if necessary, but is not used for the purpose of generating electricity.

**WIND TURBINE** — A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

- D. Submission requirements. The applicant shall provide 10 copies of each of the following to the Planning Board as part of the special permit application:
- (1) A completed application form with a review fee.
  - (2) Existing conditions site plan drawn to scale and in sufficient detail to show the following:
    - (a) Property lines, dimensions and area, subject property's owners, and abutters within 300 feet of the subject property.
    - (b) Location and dimensions of all existing buildings, accessory structures and uses, public and private roads, driveways, easements, stone walls, and fence lines within 300 feet of the system.
    - (c) Height of any structures over 35 feet, and the location and average height of trees on the subject property and adjacent properties, within 300 feet of the proposed small wind turbine.
  - (3) Proposed conditions site plan drawn to scale and in sufficient detail to show the following:
    - (a) The location of the proposed tower and any appurtenances and equipment. Indicate property boundaries and distances to the base of the wind tower and to the nearest corners of each of the appurtenant structures and equipment.

- (b) Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration.
  - (c) Plans to control erosion and sedimentation both during construction and as a permanent measure.
  - (d) Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, exterior lighting or signs.
  - (e) Plans of the proposed access driveway at the subject site, whether temporary or permanent; include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface material.
  - (f) Location of access easements or rights-of-way, if any, needed for access to the wind tower from a street.
- (4) Standard drawings of the structural components of the small wind energy system, including structures, tower, base and footings. Drawings and any necessary calculations shall be certified by a registered engineer. The system must comply with the Massachusetts building and electrical codes.
- (5) A technical report from a qualified individual that the site is feasible for wind power, that documents wind speed at the proposed site, that anticipates energy that will be created from the small wind energy system, and that estimates the amount of energy necessary to serve the on-site uses.
- (6) Post-construction simulation views of the site from at least four locations where the tower and blades would be visible as through means of sketches or computer simulations.
- (7) A proposed maintenance schedule for the small wind energy system and related equipment.
- (8) Emergency services: The applicant shall provide a copy of the project summary and electrical schematic. All means of disconnecting the small wind energy system shall be clearly marked. This shall be forwarded to the Fire Department for review and approval.
- E. Design and siting requirements.
- (1) Unauthorized access: Small wind energy systems shall be designed to prevent unauthorized access.
- (2) Land clearing, soil erosion and wildlife habitat: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and bylaws.

- (3) Setbacks: A wind turbine tower may not be sited within:
- (a) A distance equal to 1.5 times the maximum tip height (MTH) of the wind turbine from buildings, the nearest property line, critical infrastructure — including critical electric infrastructure and above-ground natural gas distribution infrastructure — or private or public ways that are not part of the wind energy facility;
  - (b) A distance equal to three times the maximum tip height (MTH) from the nearest occupied residential or commercial structure.
- (4) Height: The small wind energy system's maximum tip height shall not exceed 120 feet in height, and must comply with Federal Aviation Administration (FAA) Regulations.
- (5) 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 source of sound 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 sound; 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 three decibels or more.
- These criteria are measured both at the property line and at the nearest inhabited structure. Ambient sound is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient sound 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, if required by the Planning Board. 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) Lighting: Small wind energy systems shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
- (7) Signage and advertising: Signs shall be restricted to reasonable identification of the manufacturer or operator of the small wind

energy facility and shall defer to the requirements of the Town of Belchertown sign regulations. No advertising shall be allowed.

- (8) Visibility: The wind generation equipment shall have a non-reflective finish of an unobtrusive color.
  - (a) Electromagnetic interference: The small wind energy system shall cause no electromagnetic interference. If it is determined that the system causes interference, the operator shall take the necessary corrective action to eliminate this interference, subject to the approval of the Building Commissioner.
- F. Approval. The Planning Board shall proceed in accordance with the procedures and timelines for special permits in MGL c. 40A, § 9, and § 145-69 of this bylaw. The Planning Board may hire professional consultants at the expense of the applicant to assist it in evaluating the proposed small wind turbine and the impacts on the community. The special permit will run with the property and shall not be specific to a particular owner unless otherwise noted.
- G. Maintenance requirements.
  - (1) The Building Commissioner reserves the right to inspect the small wind energy system and its appurtenances at any time.
  - (2) At all times the applicant and/or successive owners shall maintain the small wind turbine and related equipment in good working condition and perform regular maintenance in accordance with the approved maintenance schedule. A record shall be kept of all maintenance performed, and said record must be provided to the Building Commissioner whenever requested to verify maintenance.
  - (3) The owner's contact information and the manufacturer's contact information must be on file with the Building Commissioner and Fire Department in cases of emergencies.
  - (4) Should the turbine fall into disrepair and/or experience a situation where it is producing unusual noise or other emissions, the system owner shall have no more than 24 hours to implement actions to correct the situation.
  - (5) Failure to properly maintain the small wind turbine or correct other issues may result in revocation of the special permit.
  - (6) The Town retains the right, after the receipt of an appropriate court order to enter and remove an abandoned or hazardous small wind turbine, and its related equipment, that is not removed by the property owner within 90 days from the date the Building Commissioner issues written determination that the system is abandoned or hazardous. All associated costs of removal and securing the site for an abandoned or hazardous small wind turbine and related equipment will be charged to the property owner in

accordance with the provisions of MGL c. 139, § 3A, as a tax lien on the property.

- H. Term of special permit for a small wind energy system. A special permit issued for the construction or operation of any small wind energy system shall be valid for 25 years, unless extended or renewed. Upon request, the Planning Board may extend the time period or renew the special permit, if there has been satisfactory operation of the facility. Any special permit issued under this bylaw shall lapse within one year from the grant thereof if construction has not sooner commenced except for good cause. In such a case, a new application process must be undertaken before the small wind energy system can proceed. Upon expiration or termination of the special permit, the small wind energy system shall be removed by the applicant.
- I. Change of owner. Once a special permit for a residential small wind energy system has been approved, the applicant shall duly record a copy of the special permit with the Hampshire Registry of Deeds. All conditions under which the special permit was originally granted shall be binding on all successive owners of the property.
- J. Removal requirements.
  - (1) A small wind energy system that is not used for 180 days shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the small wind energy system owner. Removal of the system shall include the structure, foundation, transmission equipment, fencing and other appurtenances. The site shall be revegetated to prevent erosion.
  - (2) Any small wind energy system which has reached the end of its useful life or has been abandoned shall be removed. The owner/operator shall physically remove the small wind energy system no more than 90 days after the date of discontinued operations. "Physically remove" shall include, but not be limited to:
    - (a) Removal of all wind turbines, structures, shelters, machinery, equipment, fencing, security barriers, transmission lines and other appurtenances from the site;
    - (b) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations; and
    - (c) Restoration of the location of the small wind energy system to its natural condition.
- K. Waiver provisions. The Board may waive strict compliance with any provision of this bylaw if it deems it in the public interest and determines that the intent of the bylaw has been maintained. Such waivers must be referenced in the written site plan approval decision, including the reasons for them.

**§ 145-29. Earth removal. [Amended 11-17-1997 STM by Art. 19]**

- A. General. The removal from the premises and processing of soil, loam, sand, gravel, clay, sod, quarried stone, or other mineral deposits is allowed in the Town of Belchertown in those districts as stated in Article III of this chapter upon the obtainment of a special permit for earth removal from the Planning Board. Operation hours shall be between 7:00 a.m. and 5:00 p.m. on weekdays. Operation is not permitted on weekends and holidays. There shall be no exception beyond these hours. However, the Planning Board may further limit hours of operation if, after weighing factors, including traffic flow and safety, it determines the public good will be served. Trucks may enter and leave the premises only within such hours. All loaded vehicles shall be covered to prevent dust and contents from spilling and blowing from the load. The operator shall be responsible for cleaning spillage on public ways. **[Amended 5-10-1999 ATM by Art. 18; 5-13-2002 ATM by Art. 23]**
- B. Exception. Notwithstanding the provisions thereof, no special permit shall be required for: **[Amended 5-13-2002 ATM by Art. 23]**
- (1) Building permit. Removal by building permit when such removal is at the site of, incidental to, and in connection with the excavation and grading necessary for constructing a principal or accessory use permitted by this chapter, provided that the quantity of materials removed does not exceed that actually displaced by the portion of the principal or accessory use below finished grade or 500 cubic yards. Any site work involving the removal of more than 500 cubic yards requires a special permit.
  - (2) Transfer of materials. Removal of earth products within the limits of a lot or contiguous lots in the same ownership, provided that no such moving shall take place across or within a street and the amount to be moved does not exceed 500 cubic yards.
  - (3) Cemetery. Removal of earth products as part of normal cemetery operations.
  - (4) Subdivision. Removal of earth products in relation to the construction of an approved subdivision road under the Subdivision Control Law<sup>7</sup> where such removal is in compliance with all requirements and conditions of an approved subdivision plan and is necessary to construct the same. The volume of earth to be removed will be shown on the definitive subdivision plan. Any amount to be removed beyond that necessary to construct the improvements according to the endorsed definitive plan requires a special permit. The volume of earth to be removed from individual building lots within the subdivision is governed by § 145-29B(1),

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7. Editor's Note: See MGL c. 41, §§ 81K through 81GG.



and such volume shall be demonstrated to the Building Inspector prior to a certificate of occupancy.

- C. Special permit granting authority. The Planning Board shall be the special permit granting authority as authorized under this section and § 145-69 of this chapter and MGL c. 40A, §§ 9 and 11.
- D. Submission requirements. Any person who desires to remove or process earth products subject to the provisions of this section shall submit a written application for a special permit to the Planning Board. Each such application shall be accompanied by plans and specifications prepared by a registered professional engineer or registered land surveyor as follows: **[Amended 5-13-2002 ATM by Art. 23]**
- (1) A plan of the area from which removal is proposed and a strip 150 feet wide surrounding said area, showing all man-made features, lot lines, zoning boundaries, vegetation cover, soil characteristics and existing topography;
  - (2) A plan of the area showing the finished grade and treatment of the site after the proposed completion of the excavation;
  - (3) An analysis and evaluation of the impact of the proposed earth removal on existing site features;
  - (4) An analysis and evaluation of the impact of the proposed earth removal on the groundwater, particularly elevation and significance;
  - (5) An analysis and evaluation of the impact of the proposed earth removal on surface waters, wetlands and vegetative cover;
  - (6) The estimated quantity of materials to be removed and topsoil to be stripped and replaced;
  - (7) The treatment of the site during operations to reduce dust and sand;
  - (8) A detailed statement of the hours and days of operation and the trucking route and type of vehicle to be used on any street for the removal of the earth;
  - (9) The proposed form of performance guaranty; and
  - (10) Such additional information as the Planning Board may require.
- E. Review and approval process.
- (1) After notice and public hearing in accordance with Section 9 of the Zoning Act (MGL c. 40A, § 9), the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission, Board of Health and Town Engineer, grant a special permit, provided that the conditions and standards of this section have been adequately met.

- (2) A special permit for any earth product removal may be issued for a period not exceeding two years in duration. Upon reapplication for a permit, the Planning Board, at its discretion, may grant one or more extensions of said permit, each of which shall not exceed two years' duration.

F. Standards and conditions.

- (1) In granting a special permit under this chapter, the Planning Board shall impose reasonable conditions to protect the neighborhood and the town. These conditions shall be written upon and shall constitute part of the written permit, including but not limited to: **[Amended 5-13-2002 ATM by Art. 23]**

- (a) Method of removal;
- (b) Type and location of temporary structures;
- (c) Fencing;
- (d) Hours of operation;
- (e) Routes for transporting the material through town;
- (f) The duration of the removal operations;
- (g) The area and depth of excavation;
- (h) The reestablishment of ground levels and grades;
- (i) The steepness of slopes excavated;
- (j) Provisions for temporary and permanent structures;
- (k) Disposition of boulders and tree stumps;
- (l) Grading of slopes and replacement of loam over the area of removal;
- (m) Planting of the area to suitable cover, including trees, necessary to restore the area to usable condition; and
- (n) Distance from excavation to street and lot line.

- (2) Excavation.

- (a) No excavation shall be permitted below the grade of a way open to public use, whether public or private, bounding the property at any point nearer than 200 feet to the center line of such way.
- (b) No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary.

- (c) Excavation for removal of earth, sand, gravel, and other soils shall not extend closer than six feet above the annual high groundwater table. A monitoring well shall be installed by the property owner to verify groundwater elevations. This subsection shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal. **[Amended 5-13-2002 ATM by Art. 23]**
- (d) No area shall be excavated or filled so as to cause the accumulation of freestanding water unless the Planning Board shall permit the creation of a pond, and upon the approval of the Conservation Commission.
- (3) The active operation area shall not exceed a total of three acres at any one time for excavation, nor six acres at any one time for excavation and processing. Natural vegetation shall be left and maintained on undisturbed land for screening and noise-reduction. **[Amended 5-13-2002 ATM by Art. 23]**
- (4) Access roads shall be treated with a suitable material to reduce dust and mud for a distance of 150 feet back from such a way. Access road entrances shall include a gate or other secure mechanisms to restrict public access to the site.
- (5) Guard fencing of at least four feet in height shall be required around vertical slopes steeper than a grade of four feet horizontal distance to one foot of vertical rise (4:1) for public safety.
- (6) Operation hours shall be between 7:00 a.m. and 5:00 p.m. on weekdays. No weekend or holiday hours are permitted. However, the Planning Board may further limit hours of operation if, after weighing factors, including traffic flow and safety, it determines the public good will be served. Trucks may enter and leave the premises only within such hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load. **[Amended 5-13-2002 ATM by Art. 23]**
- (7) A permit issued hereunder is not transferable and no work under such permit shall be performed except by the holder of the permit. **[Amended 5-13-2002 ATM by Art. 23]**
- (8) The Planning Board may recommend conditions, not specifically provided for herein, on any special permit relating to earth removal.
- (9) Restoration. The Planning Board shall regulate the conversion of the abandoned excavation site and its reuse according to, but not limited to, the following conditions:

- (a) Restoration shall be carried on simultaneously with excavation so that, for excavation only, when any three-acre operation area has been excavated, at least two of those acres must be restored before work commences on the next two contiguous acres; and for excavation with processing, when any six operation acres have been excavated at least five of those acres must be restored before work commences on the next five contiguous acres. Final restoration work shall be completed at least 90 days prior to the expiration of the performance guaranty. **[Amended 5-13-2002 ATM by Art. 23]**
  - (b) Subsoil and topsoil shall be spread over the disturbed area to a minimum depth of four inches and seeded with grass of legume mixture for erosion control.
  - (c) No slope shall be steeper than a grade of four feet of horizontal distance to one foot of vertical distance (4:1). The Planning Board may modify the required slope where the stability of material, or ledge rock, makes steeper slopes practical. **[Amended 5-13-2002 ATM by Art. 23]**
  - (d) Unless the permit conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points and so that the total discharge at peak flow as well as the area of drainage to any one point is not increased.
- G. Performance guaranty. An irrevocable performance guaranty, in an amount determined by the Town Engineer, shall be posted with the Town Treasurer-Collector to ensure the satisfactory compliance with this section. The guaranty shall not be released until the applicant has certified, in writing, and the Planning Board has determined that the restoration has been completed in compliance with the permit and plan.
- H. Existing operations. Earth removal activities in lawful operation at the time this section is adopted may continue under the terms of existing permits until the expiration thereof, and thereafter application shall be made under the terms of this section. All existing earth removal activities are subject to MGL c. 40A, §§ 6 and 9 as to continued schedule of operation.
- I. Fees. The Planning Board shall establish such fees for the issuance of permits as it shall find necessary for the administration of this section, taking into consideration the costs of clerical, civil engineering consultants, legal and inspection expenses.

**§ 145-29.1. Accessory apartments. [Added 5-12-2014 ATM by Art. 21]**

- A. General objectives. The provision of accessory apartments is intended to:
- (1) Provide housing options for residents who cannot afford, or who do not desire, a single-unit house with land, for example, young adults and senior citizens; and
  - (2) Provide older owners with a means of obtaining rental income, companionship, security and services, and thereby enable them to stay more comfortably in houses and neighborhoods they might otherwise be forced to leave;
  - (3) Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's residential neighborhoods;
  - (4) Protect the stability, property values, and the single-unit residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and are properly permitted and inspected;
  - (5) Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate-income households who might otherwise have difficulty finding housing;
  - (6) Provide housing units for persons with disabilities.
- B. Procedure. The Planning Board may issue a special permit for one apartment accessory to the use of a single-unit dwelling, provided each of the following conditions is met:
- (1) There shall be no more than one accessory apartment on an individual parcel of land, regardless of the parcel's area;
  - (2) The owner of the residence in which the accessory unit is created must continue to occupy at least one of the dwelling units as his or her primary residence. The special permit for the accessory apartment may be revoked by the Planning Board if the owner no longer occupies one of the dwelling units;
  - (3) Up to 33% of the gross floor area of the dwelling, not to exceed 600 square feet maximum gross floor area, may be permitted for the accessory apartment; to provide for development of housing units for disabled individuals, the Planning Board may allow reasonable deviation from the stated conditions when necessary to install features that facilitate access and mobility for disabled persons.
  - (4) The accessory apartment shall have only one bedroom;
  - (5) There is no outward evidence that the premises are being used for more than one residential unit. That is:

- (a) All stairways to apartments should be enclosed within the exterior walls of the dwelling. Otherwise, they must not be apparent from the street.
  - (b) Any new entrance shall be located on the side or in the rear of the dwelling.
  - (c) Where there are two or more existing entrances on the front facade of a dwelling, if modifications are made to any entrance, the result shall be that one entrance appears more prominent than the others.
  - (d) The accessory apartment must use the same driveway as the main dwelling unit;
- (6) The accessory apartment must have the same street address as the main dwelling unit, but with the designation "A" for the apartment, for example, if the house is No. 123, the accessory apartment would be No. 123A.
  - (7) Accessory apartments are allowed only in the AG-A, AG-B, LR, and VR Zones, and only with a special permit from the Planning Board.
  - (8) Special permits issued under this section shall specify that the owner must occupy one of the dwelling units. Prior to the occupancy of the accessory apartment, the special permit must be recorded in the Hampshire Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Inspector/Zoning Enforcement Officer.
  - (9) When there is a transfer of ownership of a property with a permitted accessory apartment, the new owner may apply for transfer of the special permit for an accessory apartment by submitting a notarized letter of application stating that the new owner shall occupy one of the dwelling units on the premises. In extenuating circumstances of transfer, such as, but not limited to, inheritance, bankruptcy, or foreclosure, the owner may request the Planning Board modify the owner-occupancy requirement to allow reasonable time to establish occupancy. The period of owner non-residency will normally not exceed one year. During the non-residency period, the owner shall not be allowed to rent both units.
  - (10) Prior to issuance of an accessory apartment special permit, a floor plan must be submitted showing the building, including proposed interior and exterior changes to the building.
- C. Apartments created before the adoption of this bylaw. To ensure that accessory apartments in existence before the adoption of this bylaw comply with the Massachusetts Building Code:

- (1) Apartments that lawfully existed before the adoption of this bylaw, but do not strictly conform to the terms of this bylaw, are exempt from the terms of this bylaw for the life of the current special permit.
- (2) The Planning Board may authorize, under a special permit and in conjunction with the building inspector, an accessory apartment in an owner-occupied single-unit dwelling. The Board shall review each existing apartment on its individual merits to determine if the dwelling conforms to the Massachusetts Building Code. The applicant must follow the same procedure described in this bylaw, including the submission of a notarized letter declaring owner-occupancy.





ARTICLE VIII  
**Industrial Regulations**

**§ 145-30. Purpose.**

The purpose of this article is to specify additional criteria which shall be used by the Board of Appeals in the special permit and by the Planning Board in the site plan approval and review processes so as to ensure that the proposed industrial uses are compatible with the intent and purpose of the particular industrial district.

**§ 145-31. Prohibited uses.**

The following noxious or hazardous uses are prohibited in any district:

- A. Acetylene gas, cyanide compound or oxygen manufacture.
- B. Asphalt manufacture or refining.
- C. Chlorine or bleaching powder manufacture.
- D. Creosote manufacture.
- E. Acid manufacture.
- F. Distillation of coal or wood.
- G. Explosive, fireworks or ammunition manufacture.
- H. Inorganic fertilizer manufacture.
- I. Fumigation plant.
- J. Glue or size manufacture.
- K. Gypsum, cement, lime, plaster or plaster of paris manufacture.
- L. Incineration or reduction or dumping of offal, garbage or refuse on a commercial basis (except where controlled by the town).
- M. Junkyard, junk storage, scrapping of autos and parts and the salvage thereof, unless licensed under MGL c. 140, as amended.
- N. Linoleum manufacture.
- O. Match manufacture.
- P. Paint and lacquer manufacture.
- Q. Petroleum refining and the bulk storage of petroleum products.
- R. Proxylin plastic manufacture.
- S. Rubber, natural or synthetic, or gutta-percha manufactured from crude or scrap material.

- T. Incineration or reduction of garbage, offal or dead animals.
- U. Smelting of zinc, copper, tin, iron ores or heavy metals.
- V. Open-lot storage of secondhand lumber or other used building material.
- W. Open-lot storage of junk, scrap, paper, rags, unrepaired or unclean containers or other salvage articles, unless a part of a recycling or salvage operation as licensed under MGL c. 140, as amended.
- X. Transportation/trucking terminal.
- Y. Sewage disposal plant (except where controlled by the town).
- Z. Soap, tallow, grease or lard manufacture.
- AA. Slaughterhouse or stockyard.
- BB. Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
- CC. Tannery.
- DD. Tar or asphalt roofing manufacture.
- EE. Tar products manufacture.
- FF. Tire recapping or retreading.
- GG. Pesticide manufacture.
- HH. All other enterprises or uses commonly regarded as hazardous or offensive.

**§ 145-32. Performance standards.**

- A. General. Any industrial use permitted by right, by special permit or by site plan approval in any district shall not be conducted in a manner as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactivity or other hazard; noise or vibration; smoke, dust, odor or other form of environmental pollution; electrical or other disturbances; glare; liquid or solid refuse or wastes; condition conducive to the breeding of insects or rodents; or other substances, conditions or elements in an amount as to affect adversely the surrounding environment.
- B. Standards.
  - (1) Lighting. No direct or sky-reflected glare, whether from floodlighting or high-temperature processes such as welding, shall be hazardous or noxious. No outdoor lighting fixture shall produce a strong, direct light beyond property boundaries of the facility which the lighting fixture is servicing.
  - (2) Noise.

- (a) The maximum permissible sound-pressure level of any continuous, regular or frequent source of sound produced by any use or activity shall not exceed the following limits at the property line or the sound source:

**Level Limits Measured in dBAs**

<b>Time</b>	<b>Source Pressure dBA Levels</b>
7:00 a.m. to 10:00 p.m.	70
10:00 p.m. to 7:00 a.m.	60

- (b) Sound pressure shall be measured at all major lot lines at a height of at least four feet above the ground surface. Noise shall be measured with a sound-level meter meeting the standards of the American Standard Institute, ANSI SI.y-1961, American Standard Specification for General Purpose Sound Level Meters. The instrument shall be set on the A-weighted response scale. Measurements shall be conducted in accordance with ANSI SI 51.2-1962, American Standard Meter for the Physical Measurement of Sound.
- (c) Sound levels specified shall not be exceeded for more than 15 minutes in any one day, except for temporary construction or maintenance work, agricultural activity, timber harvesting, church bells, emergency working devices or other similar special circumstance.
- (d) An intermittent, irregular or infrequent source of sound shall be considered in violation of this chapter if the source:
  - [1] Increases the broadband sound level by more than 10 dBAs above ambient;
  - [2] Produces a "puretone" condition. A "puretone" condition exists when any octave band center frequency sound-pressure level exceeds the two adjacent center frequency sound-pressure levels by three decibels or more; or
  - [3] Occurs between the hours of 10:00 p.m. and 7:00 a.m., except in emergency situations.
- (3) Stormwater runoff. The rate of surface water runoff from a site shall not be increased after construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention or retention ponds. Dry wells shall be used only where other methods are infeasible and shall require oil, grease and sediment traps to facilitate removal of contaminants. Stormwater runoff mitigation shall comply with § 270-29 of Chapter 270, Subdivision of Land, as amended.

- (4) Water quality. All outdoor storage facilities for fuel, hazardous materials or wastes and potentially harmful raw materials shall be located within an impervious diked containment area adequate to hold the total volume of liquid kept within the storage area.
- (5) Explosive material.
  - (a) No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located in enclosed tanks at least 75 feet from any lot line, Town way or interior roadway or 40 feet from any lot line for underground tanks, plus all relevant state and federal requirements shall be met. Propane gas tanks in one-hundred-pound cylinders (or smaller) shall be exempt from these safety regulations.
  - (b) All activities and all storage of flammable and explosive materials at any point shall be provided with adequate fire-fighting and fire-suppression devices and equipment.
- (6) Screening and buffer zones. Exposed storage areas, exposed machinery installation, sand and gravel extraction operations and areas used for the storage or collection of discarded automobiles, auto parts, metal or any other articles of salvage or refuse shall have sufficient setbacks and screening to provide a visual buffer sufficient to minimize their adverse impact on surrounding properties (e.g., dense evergreen hedge six feet or more in height). All such planting shall be maintained as an effective visual screen; plants which die shall be replaced within one growing season. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition. A seventy-five-foot buffer zone shall be provided along side and rear lot lines abutting any residential or commercial property.
- (7) Emissions.
  - (a) Emissions shall be completely and effectively confined within the building or so regulated as to prevent any nuisance, hazard or other disturbance from being perceptible (without the use of instruments) at any lot line of the premises on which the use is located.
  - (b) No emission which can cause any damage or irritation to the health of persons, animals or vegetation or which can cause excessive soiling, at any point, shall be permitted.
  - (c) No emission of odorous gases or odoriferous matter in such quantities as to be offensive shall be permitted.
  - (d) Activities that emit dangerous radioactivity at any point shall be controlled in accordance with all regulations of the Atomic Energy Commission.

- (e) No electrical disturbance adversely affecting the operation, at any point, of any equipment, other than that of the creator of such disturbance, shall be permitted.
- (f) No discharge, at any point, into a private sewerage system, stream or the ground of any material in such a way or of such a nature or temperature as may contaminate any running stream or water supply or otherwise cause the emission of dangerous or objectionable elements and accumulation of wastes conducive to the breeding of rodents or insects shall be permitted.

**§ 145-33. Enforcement.**

The Building Inspector/Zoning Enforcement Officer shall utilize specific standards and technical specifications and shall be authorized to seek professional technical expertise from the appropriate local, regional, state or federal agencies or individuals having knowledge or an interest in the proposed use or potential impact or disturbance.



ARTICLE IX  
**Business Regulations**

**§ 145-34. Purpose.**

The purpose of this article is to:

- A. Promote and coordinate commercial growth in town.
- B. Promote highway traffic safety and protect the capability of state and local roads to conduct traffic smoothly and efficiently.
- C. Protect the rural character, visual aesthetic qualities and property values of neighboring properties and the town.
- D. Discourage unlimited commercial strip developments and minimize curb cuts along Belchertown's highways and encourage commercial growth in planned clusters.
- E. Provide local protection from those particular nuisances which are not adequately governed by state law or regulations.

**§ 145-35. Commercial developments.**

Commercial developments shall be permitted in accord with § 145-11, Schedule of Use Regulations, Article VI, General Regulations, § 145-27, Site Plan Approval, and with the additional requirements specified herein.

**§ 145-36. Access.**

- A. The number of curb cuts shall be minimized. To the extent feasible, access to businesses shall be provided via one of the following:
  - (1) Access via a shared driveway serving adjacent lots or premises.
  - (2) Access via an existing side street.
  - (3) Access via a cul-de-sac or loop road shared by adjacent lots or premises.
- B. One driveway per business shall be permitted as a matter of right. Where deemed necessary by the Planning Board, two driveways may be permitted as part of the site plan approval process. These two driveways shall be clearly marked "entrance" and "exit."
- C. Curb cuts shall be limited to the minimum width for safe entering and exiting and shall in no case exceed 24 feet in width.
- D. All driveways shall be designed to afford motorists exiting onto highways a safe sight distance. It is recommended that a minimum sight distance of 300 feet be provided.
- E. The proposed development shall assure safe interior circulation within its site by separating pedestrian and vehicular traffic.

- F. Pedestrian movement shall be provided for within the site and to adjacent commercial properties to the satisfaction of the Planning Board. Sidewalks must be shown along the applicant's frontage adjacent to public ways, and shall meet, at a minimum, current ADA standards. **[Amended 5-8-2017 ATM by Art. 23]**

**§ 145-37. Landscaping and screening.**

- A. A landscaped buffer strip at least 10 feet wide, continuous except for approved driveways, shall be established adjacent to any public road. The buffer strip shall be mulched or planted with ground cover, medium height shrubs and shade trees (minimum two-inch caliper, planted at least every 50 feet along the road frontage). At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard.
- B. Large parking areas providing more than 75 parking spaces shall be subdivided with landscaped islands such that no paved surface shall extend more than 80 feet in width. At least one tree (minimum two-inch caliper at chest height) per 35 spaces shall be provided. **[Amended 5-10-1999 ATM by Art. 17]**
- C. Any commercial use shall be screened from view from any neighboring residence in a residential district by dense, hardy evergreen plantings or by earthen berms, wall or tight fence, complemented by evergreen plantings. Natural wooded stands on the subject property shall be incorporated into the screening and landscaping.
- D. Any outdoor area for storage or utilities shall be screened from view from neighboring properties and streets using materials described in Subsection C. Where there exists any potential safety hazard to children, physical screening shall prevent children from entering the premises.
- E. All landscaped areas shall be properly maintained. Shrubs or trees which die shall be replaced within one growing season.

**§ 145-38. Parking and loading areas; pedestrian walkways.**

- A. To the extent feasible, parking layout and design shall be coordinated with adjacent businesses. Parking shall adhere to the requirements of § 145-23 of this chapter.
- B. Loading areas shall be separate from the parking areas and screened from view, with minimum dimensions of 10 feet by 25 feet, with 14 feet of clearance, and shall not block access to parking.
- C. Clearly marked pedestrian walkways shall be provided.

**§ 145-39. Lighting.**



- A. No outdoor lighting fixture shall produce a strong, direct light beyond the property boundaries of the facility which the lighting fixture is servicing.
- B. Lampposts shall not exceed 25 feet in height.
- C. Utilities shall be underground whenever possible.

**§ 145-40. Stormwater runoff.**

The rate of surface water runoff from a site shall not be increased after construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention or retention ponds. Stormwater runoff mitigation shall comply with § 270-29 of Chapter 270, Subdivision of Land, as amended. Oil, grease and sediment traps shall be used to facilitate removal of contaminants. Dry wells shall be used only where other methods are infeasible.

**§ 145-41. Commercial development and architectural design.  
[Amended 5-12-2014 ATM by Art. 20]**

Architectural design shall be compatible with the rural/historic character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variations in detail, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other, with adequate light, air, circulation and separation between buildings. Commercial development must also adhere to Commercial Development and Architectural Design Guidelines.



## ARTICLE X

**Common Drive Development**

**[Amended 5-13-1996 ATM by Art. 23; 5-12-2003 ATM by Art. 27;  
12-5-2005 STM by Art. 10]**

**§ 145-42. Definitions; intent.**

- A. Definitions. Refer to § 145-2 of this chapter.
- B. Intent. This article is meant to allow for a minor residential development alternative to conventional subdivision development. The purpose of a common drive development is to result in less environmental damage than a conventional subdivision or separate curb cuts for each lot would cause.
- C. Minor common drive. A minor drive that serves only two lots and is less than 600 feet long may be approved by the Department of Public Works upon submittal of an owners' maintenance agreement, a plan showing the right-of-way, and a grade and stormwater plan meeting the standards of the town's curb-cut bylaw, and does not require a special permit. The owners' maintenance agreement and right-of-way must be recorded with the deeds of each property.
- D. Special permit common driveway. A two-lot drive longer than 600 feet, and any common drive serving up to six lots, is subject to a common drive development special permit from the Planning Board under this article.

**§ 145-43. Special permit granting authority; waivers.**

- A. The Belchertown Planning Board shall be the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications or special permits under this article, subject to the conditions set forth below and in accordance with the provisions of § 145-69 of this chapter and MGL c. 40A, §§ 9 and 11, as amended.
- B. Waiver of compliance. The Belchertown Planning Board, acting as the special permit granting authority under this article, in appropriate cases, may waive strict compliance with such requirements of this article as provided in MGL c. 40A, § 9, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this chapter. The applicant shall submit waiver requests in writing. Waivers granted by the Planning Board under this subsection may be limited by conditions which shall be endorsed on the plan to which said conditions relate or set forth in a separate instrument attached to the plan.

**§ 145-44. Standards.**

The driveway of a common drive development shall be constructed to minimum standards as described in this article. The following regulations shall apply to a common drive development:

- A. The common drive:
- (1) Shall not be extended and shall not be an extension of an existing common drive;
  - (2) Shall not be connected to any other way except the way from which it originates;
  - (3) Shall serve no more than six lots. A common drive longer than 600 feet shall serve no more than three lots. For purposes of this paragraph, the length of the common drive shall be measured from its intersection with the public way from which it originates to the most distant point serving more than one lot; and
  - (4) Shall enter from the same public way which serves as frontage for the lots in the common drive development, unless unique circumstances are such that the Planning Board may permit access from a public way not fronting every lot in the common drive development.
- B. A lot may be served by the common drive only if the ownership of that lot provides mandatory membership in an owners' association responsible for annual and long-term maintenance, including, but not limited to, removal of ice and snow from the common drive. See § 145-45B(14).<sup>8</sup>
- C. A common drive development shall only be allowed for single-dwelling or duplex residential use.
- D. Each lot shall have legal frontage on a public way meeting the requirements of the zoning bylaw in effect with regard to the district in which the lot is located at the time of the application. All other dimensional requirements, as defined in § 145-16 of the Zoning Bylaw, for lots served by a common driveway, including but not limited to lot area, coverage, width, and setback of front, side and rear yards, as measured in relation to the street serving as the legal frontage for the lots, shall be the same as would be required for those lots had they not shared a common driveway. A lot in more than one zone shall be governed by the requirements for the zone in which the majority (more than 50%) of the lot is located.
- E. Each lot shall front on the common drive right-of-way for a minimum distance of twenty feet or for such distance as the Planning Board

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**8. Editor's Note: See now § 145-45C(13).**

deems necessary to provide adequate access to the interior of the lot from said right-of-way.

- F. In accordance with § 145-69A(1) and § 145-42B, the Planning Board may issue a special permit for a common drive development if the applicant demonstrates to the Planning Board that the construction of the common drive will:
  - (1) Cause less environmental damage to the lots, specifically to wetland resource areas and slopes, than either separate driveways or a subdivision, while allowing vehicular access to each lot; and
  - (2) Preserve or enhance the prevalent character of the area by reducing curb cuts that would be otherwise allowed and by maintaining extant vegetation and topography.

**§ 145-45. Administration.**

- A. Special permit granting authority. After notice and public hearing in accordance with Section 9 of the Zoning Act (MGL c. 40A, § 9), the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission, Director of Public Works, and Town Engineer, grant such a special permit, provided that the conditions in § 145-44 and the requirements of § 145-45A and § 145-45B have been met.
- B. Requirements. The application for a special permit pursuant to this article shall be accompanied by a site plan showing all of the applicable information stipulated in this article. At the discretion of the Planning Board, an environmental analysis may be required. The common drive development shall comply with applicable stormwater runoff control standards established by the Mass. Department of Environmental Protection, or US Environmental Protection Agency. Drainage shall be designed and constructed to contain stormwater runoff on the premises or in a manner that will not have a detrimental effect on other properties.
- C. Common drive developments shall conform to the following design standards:

(1) Width. **[Amended 5-8-2017 ATM by Art. 24]**

<b>Item</b>	<b>Requirement (feet)</b>
Common drive right-of-way	40 <sup>1</sup>
Width of common drive plus shoulders	18
Width of gravel base	18 <sup>2</sup>
Width of finished surface	14 <sup>3</sup>

## NOTES:

<sup>1</sup>The center line of the common drive shall coincide with the center line of the common drive right-of-way, unless otherwise approved by the Planning Board.

<sup>2</sup>The minimum width of the common drive (gravel base) shall be 18 feet, except that where the common drive serves no more than two lots the width may be reduced to 12 feet.

<sup>3</sup>A gravel surface may be allowed if the common drive serves no more than two lots and/or complies with Subsection C(7)(b).

- (2) Grades. Maximum grade is 10% to allow for safe winter passage. Minimum grade is 1/2% to provide adequate drainage and avoid pooling of water.
- (3) Horizontal alignment. Horizontal alignment should minimize alteration of the land by avoiding steep slopes, ledge, and other natural features. Common drives serving three or more houses shall have adequate safety precautions for any sharp curves. Curve radii must be great enough to accommodate delivery vehicles and fire trucks.
- (4) Intersections.
  - (a) The common drive shall be laid out to intersect with the street as nearly as possible to a right angle. In no case shall street and way intersections be less than 75°.
  - (b) Intersection approaches shall have a slope of less than 2% for at least 50 feet measured from the edge of the pavement of the intersecting road.
- (5) Easements. Easements for utilities and drainage that cannot be contained in the common drive right-of-way shall be provided where necessary and shall be at least 20 feet wide. Wider easements may be required by the Board if necessary.
- (6) Site and earthwork. Development shall be designed and constructed for as little disturbance as possible to the natural landform. Development shall demonstrate appropriate terrain-adaptive design and construction techniques. Extensive grading shall be avoided. Alternate site design and construction measures are encouraged to mitigate the effects of development on steep slopes.
  - (a) Natural and cultural features. All natural and cultural features, such as large trees, watercourses, stone walls, scenic points, historic spots, and similar community assets, shall be preserved.

- (b) Setting lines and grades. The applicant shall employ a professional engineer or registered land surveyor to set all lines and grades in a manner satisfactory to the Planning Board, Director of Public Works and the Town Engineer.
- (c) Clearing the right-of-way. The area for six feet from the gravel base shall be cleared and grubbed of all stumps, brush, roots, and like material. The Planning Board may require a greater cleared area to accommodate drainage, to improve sight distances, and to accomplish other public purposes. The Planning Board will determine this upon advice from the Director of Public Works, the Conservation Commission, Town Engineer, or other consulting authority.
- (d) Erosion control and bank stabilization during construction. All cleared and excavated land must be secured to prevent erosion. An explanation of proposed erosion controls must be submitted as part of the plan and must satisfy the Planning Board, the Director of Public Works, the Town Engineer, and the Conservation Commission.
- (e) Unsuitable material. All unsuitable material for road construction, such as peat, topsoil, and highly organic silt or clay, or any other material that, in the opinion of the Director of Public Works, is considered to be detrimental to the subgrade, shall be removed and replaced with suitable gravel.
- (f) Subgrade. The subgrade shall be shaped to a true surface conforming to the lines and grades indicated in the approved plan (cross section and profile) and, where original ground, shall be compacted to a depth of six inches. A tolerance of 1/2 inch above or below finished subgrade will be permitted, provided that this difference is not maintained over 50 feet and the required crown (cross slope) is maintained.
- (g) Cutting and filling; limitations on cut and fill. The depth of any cut area or the height of any fill, as measured from natural grade shall not be greater than seven feet. The total combined depth of any cut area or height of any fill as a result of driveway grading or any subsequent grading shall not total more than seven feet, as measured from natural grade. Any cuts and fills for the common drive development must be quantified in the plan.
- (h) Fill areas. In fill areas, the embankment shall be ordinary borrow.
- (i) Removal of earth from the site. The removal of earth from the subdivision site is regulated by the Town of Belchertown Zoning Bylaw, Chapter 145, Zoning, of the Code of the Town of Belchertown, § 145-29. Site construction is to conform closely to the natural features. As a result, there should be a minimal

amount of earth to be removed. If the developer seeks to remove gravel, sand, or other earth beyond the amount necessary to construct the driveway according to the plan, the developer must apply for a special permit for earth removal.

- (7) Pavement structure.
- (a) The common drive surface may have a gravel finish if its slope is between the permitted minimum and 8%, inclusive, except where it is the opinion of the Planning Board that the terrain and design results in water being carried along the drive surface (rather than sheeting off at right angles to it), in which case the surface shall be sealed or paved as the Planning Board requires. The drive may have a sealed surface for grades up to 8%, inclusive, except where soil and potential erosion conditions are such that it is the opinion of the Planning Board that a heavier-wear surface is needed. Grades over 8% and others as required by the Planning Board shall be paved.
  - (b) Gravel finish shall be at least four inches thick, compacted measure. It shall be of a composition suitable, in the opinion of the Planning Board, for the actual drainage conditions and shall contain no stones larger than 1 1/2 inches in size. Where the subbase is firm, well-drained gravel, the Planning Board may permit the substitution of a four-inch layer of finish gravel for the upper four inches of the gravel base. In no event will the total gravel thickness be less than 12 inches. If it is the opinion of the Planning Board that a gravel surface or sealed surface is inadequate due to soil and potential erosion conditions, then a heavier-wear surface will be required.
  - (c) A common drive that is to be sealed shall be scraped and shaped and the gravel base upgraded as required by the Planning Board and Director of Public Works. The sealed surface shall consist of a layer of three-eighths-inch stone, two penetration coats of oil at 1/2 gallon per square yard and one sealer coat at 1/3 gallon per square yard.
- (8) Monuments and markers. Monuments shall be installed along the right-of-way at critical points as shown in the plan where, as determined by the Planning Board upon recommendation from the Director of Public Works or the Town Engineer, permanent monuments are necessary for certain location of the right-of-way boundary. Monuments shall be installed under the direction of a Massachusetts registered land surveyor.
- (9) Drainage. The drainage design shall consist of an open drainage system consisting of grassed swales and waterways or overland sheet flow, if appropriate, or a closed drainage system meeting Mass. DEP stormwater standards. Vegetation shall be retained to assist in water absorption and soil retention. When vegetation



must be cleared for construction, the soil must be revegetated immediately with native species per approval by the conservation commission. Outlets from the drainage swales should be properly engineered and avoid damage to wetland resource areas. Stormwater shall not be permitted to cross over the common drive.

- (a) Construction. Trees, brush, stumps, and other material in objectionable amounts are to be disposed of so as not to interfere with construction or proper functioning. The channel section is to be free of bank projections or other irregularities, which prevent normal flow. The waterway or outlet shall be excavated or shaped to line, grade and cross section as required to meet the criteria specified herein, free of bank projections or the irregularities that will impede normal flow. Earth removed and not needed in construction is to be spread or disposed of so as not to interfere with the functioning of the waterway. Fills are to be compacted as needed to prevent unequal settlement that will cause damage in the completed waterway.
  - (b) Vegetation. Waterways and outlets shall be protected against erosion by vegetation as soon after construction as is practicable and before diversions or other channels are directed into them. Consideration should be given to jute matting, excelsior matting, or sodding of the channel to provide erosion protection as soon after construction as possible.
- (10) Maintenance. The common drive is established as private property. Maintenance after formal completion is the responsibility of the mandatory owners' association that must be created under § 145-44B. The Town shall not under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common drive.
- (11) Name. Common drives shall not be given a name.
- (12) Signs. A permanent marker not to exceed six square feet, per § 145-22 of this chapter, shall be placed at the intersection of the common drive and the public way. The sign or marker shall include the designation "private way" as well as house numbers off the public way. A similar marker shall be placed where the common drive meets each individual lot. Should the common drive split, a permanent marker must also be placed at each intersection indicating which houses are located on either side of the split.
- (13) Restrictions. The site plan shall identify as such all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements

that are required for common drive development by these rules. It shall incorporate by reference the document(s), satisfactory to the Planning Board, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common drive. Such document(s) must include but are not limited to the following:

- (a) Specific standards for the maintenance of all structures designed to the requirements of a common drive special permit, including but not limited to the travel way, drainage system and signage.
  - (b) Provisions for allocating responsibility for snow removal and for maintenance, repair, or reconstruction of the common driveway, drainage system, and signage.
  - (c) Text of proposed easements including the metes and bounds description.
  - (d) A procedure for the resolution of disagreements. Said document(s) shall be recorded along with the site plan and public utility and drainage easements in the Hampshire Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the common drive.
- (14) Fees. Refer to the Planning Board fee schedule as kept by the Town Clerk and Planning Board office. All engineering and legal review costs by the Town's consulting engineer or legal counsel shall be paid by the applicant.

#### **§ 145-46. Inspections.**

- A. The common drive shall be inspected prior to each construction step by the Director of Public Works, the Town's consulting engineer, or by other duly appointed representatives of the Planning Board.
- B. In lieu of Subsection A, the developer's engineer shall certify, in writing, after each construction step that construction of the road is in substantial accordance with the approved plan and typical cross section.

#### **§ 145-47. Acceptance as a public way.**

A common drive designed and constructed in accordance with these requirements is not a street which may be accepted as a public way. In granting a special permit for a common drive, the Planning Board shall impose a condition prohibiting the lot owners from petitioning for acceptance of the common drive as a public way, unless the mandatory owners' association presents a petition to the Town demonstrating that the common drive conforms to Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown, for the construction and laying of ways, including requirements pertaining to cul-de-sac or dead-end streets, and

demonstrating that the lots served by the common drive, with structures as built, conform with dimensional regulations (§ 145-16) applicable to the zoning district with respect to lot area, frontage, coverage, setbacks and lot width. A lot divided by the common drive right-of-way shall be considered as two separate lots for purposes of this demonstration, with new lot lines as created by the proposed new public way.

**§ 145-48. Lapse of special permit.**

A special permit granted under this article shall lapse after 24 months if substantial construction has not begun by such date, except for good cause shown and approved by the Planning Board.

**§ 145-49. Submission of as-built plans.**

- A. Prior to any house served by the common drive receiving a certificate of occupancy, a revised, recordable Mylar of the original submittal showing the actual existing as-built conditions and six paper copies shall be submitted to the Planning Board upon completion of the common drive. A copy shall be submitted in a digital (electronic) format consistent with the town's geographic information system, or GIS. The applicant shall submit the digital copy on 3 1/2 inch diskettes, Iomega zip disc, or CD-ROM. The electronic plan will be reviewed for its content and ability to meet the Town's GIS standards. Failure to submit these data in electronic format or to meet the standards below will delay the Planning Board's endorsement of the certificate of completion until acceptable digital plans are provided.
- B. Specific standards required include:
- (1) All digital mapping data must be delivered in a standard geographic coordinate system. The coordinate system employed by the town's GIS is Massachusetts Mainland Zone horizontal datum of NAD83 (state plane units feet), and a vertical datum of NGVD88.
  - (2) All digital data must be delivered in one of the following formats: AutoCAD dwg format, AutoCAD dxf format, ArcView shapefile format, or Arc/Info e00 format.
  - (3) All data must be topologically clean, meaning that polygons are closed and lines connect at nodes. Features that naturally connect (i.e. driveways to roads, parcel lines to roads and water features, etc.) must connect seamlessly. If the digital information provided is tiled across multiple sheets, the abutting edges of each sheet must precisely match along the join lines.
  - (4) All digital line work must be developed as continuous lines and rendered using line types/styles (i.e. dashed lines, etc). Continuous lines that have been broken to appear dashed are not acceptable.

- (5) All text in the AutoCAD files must appear on top of other features and stored in separate layers. In the digital file, those features under the text should not be erased in order to make text clearer.
- (6) All features must be thematically organized in the CADD or GIS data structure. Having all features in a single CADD layer or GIS file is not acceptable.
- (7) Documentation of the data format must be provided and a complete list of all layer names with descriptions. If multiple files are delivered, each must be documented with a complete description of its purpose. All documentation must be provided in Microsoft(?) Word format or ASCII text format, and shall be included on the electronic media containing the electronic plan data. Documentation must be provided on the method used to gather the data, an estimation of the horizontal and vertical accuracy, and the date of data capture.

**§ 145-50. Enforcement; appeals; violations and penalties.**

- A. The Building Inspector shall not issue a building permit for a lot in a common drive development until the necessary special permit is granted and recorded and the appeal period has expired.
- B. The Building Inspector shall not issue a certificate of occupancy permit until all work has been completed as approved and the as-built plan has been submitted in corrected form in accordance with § 145-49.
- C. Decisions of the Planning Board regarding special permit approval may be appealed as set forth in the Zoning Act, MGL c. 40A, as amended.
- D. Violations of the approved special permit for a common drive or any conditions of approval shall be subject to the provisions of § 145-67 of this chapter, as amended.
- E. The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this article.

## ARTICLE XI

**Open Space Community Development**  
**[Amended 5-12-2003 ATM by Art. 26; 5-12-2008 ATM by Art. 20]****§ 145-51. Development method; where permitted.**

- A. Open space community developments are allowed by right as a type of subdivision in designated zones. To ensure development that is compatible with the purposes and intent of this chapter, this development method must conform to the standards and comply with all appropriate criteria described in this article.
- B. This development method applies only to residential development and shall be allowed as of right, but only in the Agricultural-A, Agricultural-B, and Village Residential Zones.
- C. The development allowed under this article shall conform to Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown.

**§ 145-52. Purpose.**

- A. The objectives of the open space community development (OSCD) are:
  - (1) To set aside and preserve large tracts of land as open space as specified in this section and §§ 145-55 and 145-56 of this article.
  - (2) To allow the relatively intensive use of land in an alternative pattern of development while maintaining existing character and by which the benefits and objectives described in Subsection B are likely to be attained.
  - (3) To provide a variety of housing opportunities for Belchertown residents of all income levels and social groups; specifically, to provide opportunities for smaller households, older residents, and first-time owners.
  - (4) To provide for such housing in ways that are most fiscally beneficial to the Town's municipal operations.
  - (5) To maintain and preserve a landscape that is biologically diverse and ecologically stable through creating and/or maintaining wildlife corridors and critical habitat.
- B. Advantages of OSCD subdivisions:
  - (1) Provision of a diversity of housing stock in Belchertown.
  - (2) Economical and efficient street, utility and public facility installation, construction, and maintenance through creative design.

- (3) Development that will permit the Town to continue to provide the quality of municipal service without imposing an increased burden on the citizens of Belchertown.
- (4) Efficient use of land in harmony with its natural features.
- (5) Preservation of water bodies and supplies, wetlands, woodlands, agricultural lands, wildlife habitat, sites and structures of historical importance, and areas of scenic beauty.
- (6) Preservation of open spaces for active and passive recreational use, including the provision of neighborhood parks and playgrounds.
- (7) Preservation of productive farmland and woodland.
- (8) Preservation of open space areas for agricultural, forest management, and active and passive recreational use.
- (9) Preservation of habitat for plant and animal species.

### **§ 145-53. Definitions.**

Refer to § 145-2 of this chapter; also:

CHAPTER 270, SUBDIVISION OF LAND — The rules and regulations adopted by the Planning Board under MGL c. 41, § 81Q as of May 20, 2001, or as may have been amended or adopted as of the date of the submission of the application for OSCD definitive subdivision approval.

OPEN SPACE — Property within a subdivision designated to be deeded by the developer to the Town or other approved organization or to be maintained by the developer or owner in an undeveloped state in a manner approved by the Planning Board. Such open space is to be used for passive or active recreation, agriculture, forestry, preservation of ecologically significant landscapes, wildlife habitat, natural or scenic vistas, unique natural or cultural features, or greenways. Such open space shall be retained in substantially a natural, wild or open condition or in a landscaped condition in such a manner as to allow to a significant extent the preservation of wildlife or other natural resources. Open space shall not include areas designated for sediment control, erosion control, or stormwater control; such areas are considered part of the subdivision infrastructure and are not intended for recreation, agriculture, or forestry. Open space shall include no more than 15% of wetlands, surface waters, floodplains, or areas with unaltered slopes greater than 25% provided, however, that the Planning Board may allow the applicant to include a greater percentage of wetlands, surface waters, floodplains, or areas with unaltered slopes greater than 25% in such open space upon a demonstration that such inclusion promotes the purposes of this bylaw.

YIELD PLAN — A conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots shall be determined by Title V regulations, 310 CMR 15.000, as well as the Belchertown Board of Health regulations. For

purposes of determining the number of OSCD dwelling units, each conceptual conventional lot must meet the requirements of a buildable lot for a single-family, or two-family, dwelling unit as defined in the zoning district in which the OSCD is located and meet all other applicable requirements of the Zoning Bylaw and Subdivision Regulations. In no case shall the number of OSCD dwelling units exceed the number of units that would be allowed under a conventional subdivision.

**§ 145-54. OSCD development.**

A. Permitted uses and standards.

- (1) A detached single-unit dwelling, an attached single-unit dwelling, or a detached double-unit dwelling, any with an accessory building, may be constructed on certain lots in an OSCD development although such lots have less area, frontage and front, rear and side yard dimensions than required for standard single- and double-unit lots.
- (2) The open space community development dimensional standards as specified in § 145-55 of this chapter shall be met.
- (3) The Planning Board may allow no more than 20% of the total number of principal structures to be double-unit dwellings. These units shall be designated on the plan and in restrictions in the deeds of each separate property.
- (4) The development tract for which an OSCD development is proposed shall be in single ownership or control at the time of application and shall not be less than the minimum size as specified in § 145-55 of this chapter.
- (5) An OSCD development shall only be permitted on a tract of land which has access to and will be connected to a public sewer or where the percolation rates for the areas in which the on-site subsurface sewage disposal systems are to be located meet state Environmental Code (Title V, 310 CMR 15.211) and Belchertown Board of Health requirements.
- (6) In determining the allowed number of lots, fractions over 1/2 may be increased to the nearest whole unit, and fractions under 1/2 shall be decreased to the nearest whole unit.

- B. Density. The maximum number of dwelling units for an OSCD shall be determined by use of a yield plan, which is a conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots shall be determined by Title V regulations, 310 CMR 15.000, as well as the Belchertown Board of Health regulations. In no case shall the number of OSCD dwelling units exceed the number of units that would be allowed under a conventional subdivision. There shall be no further subdivision of an approved OSCD.

- (1) For any tract with access to public sewers, the minimum lot size for an OSCD development shall be 15,000 square feet per lot. The Planning Board may waive this requirement when it serves the purposes of this bylaw.
- (2) For any tract without access to public sewers, the minimum lot size for an OSCD development shall be 30,000 square feet per lot. The Planning Board may waive this requirement when it serves the purposes of this bylaw [refer to § 145-57C(3)].
- (3) For those OSCD developments that do not have access to public sewers, the following standards shall apply to developments requiring on-site sewage disposal:
  - (a) The applicant shall submit a conceptual design showing suitable area per lot for a septic system design prepared by a certified engineer and approved by the Board of Health as well as a plan illustrating the location of water supply wells with the application. Such conceptual plan must also demonstrate a reserve area for a backup well and a backup septic system.
  - (b) All OSCD developments must meet the minimum state Environmental Code (Title V) requirements for minimum setbacks between private water supply wells and septic tanks or soil absorption systems (310 CMR 15.211).
  - (c) All OSCD developments must meet the minimum state Environmental Code (Title V) requirements for nitrogen loading limitations (310 CMR 15.214-15.217). For OSCDs with individual lot sizes less than 40,000 square feet, applicants must meet the following standards:

[1] Applicants must designate, on a plan, specific areas as "nitrogen credit land," based on the following equation:

$(40,000 \text{ square feet} \times \text{number of OSCD lots}) - (\text{total square feet in proposed OSRD lots}) = \text{square feet of required nitrogen credit land}$

Basic example:  $(40,000 \times 15) - (15 \times 30,000) = 150,000$  square feet

**Unit example:**



	<b>Number of Units</b>	<b>Square Feet per Unit</b>	<b>Number of Bedrooms per Unit</b>	<b>Estimated Lot Size Required Per Bedroom for Septic Loading (square feet)</b>	<b>Estimated Lot Size Required for Septic Loading (square feet)</b>	<b>Estimated Total Lot Size (square feet)</b>	<b>Total Nitrogen Credit Land (square feet)</b>
Single	8	30,000	3	10,000	30,000	240,000	80,000
Duple	2	30,000	2	10,000	40,000	80,000	n/a
Total	10	300,000	2	n/a	n/a	320,000	80,000

**NOTE:**

<sup>1</sup> Actual septic requirements may vary according to site-specific details, including, but not limited to, soils and topography.

- [2] Nitrogen credit land must meet DEP qualifications contained in "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading 310CMR15.216," including, but not limited to, the following qualifications:
  - [a] Must be restricted to prohibit man-made sources of nitrogen, including sewage discharge, nitrogen-based fertilizer or raising and grazing of livestock;
  - [b] Must be restricted to prohibit artificially rendered imperviousness (i.e., paved streets, paved parking lots, buildings, structures, etc.);
  - [c] Not within a velocity zone or regulatory floodway identified by FEMA;
  - [d] Not under surface water;
  - [e] Not already being used as nitrogen credit land.
- [3] All designated nitrogen credit land must be permanently restricted from further development under a "Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land."
- [4] After approval of the OSCD development plans, applicants must apply to the Board of Health and the Massachusetts Department of Environmental Protection (DEP) for an aggregate determination of nitrogen loading under 310 CMR 15.216.

- (d) It is required that septic tanks be installed on individually owned lots. Nitrogen credit land must be at least 100 feet from all private wells.

### **§ 145-55. Dimensional standards.**

See the Table of Open Space Community Development Dimensional Standards.<sup>9</sup>

### **§ 145-56. Open space land.**

A. All open space land as required shall either:

- (1) Be conveyed to the Town of Belchertown and be accepted by it for open space; or
- (2) Be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space and related activities; or
- (3) Be conveyed to an organization owned or controlled, or to be owned or controlled, by the owners of lots or residential units within the development. If such a corporation or trust is designated, as indicated herein, ownership shall pass with conveyance of the lots or residential units.

Further subdivision of open space land or its use other than for recreation, conservation, forest or agriculture, except for easements for underground utilities or drinking water supply wells, shall be prohibited. A deed restriction to this effect, approved by the Planning Board, shall be recorded prior to sale or development of any lots within the OSCD.

- B. Under the second or third ownership alternatives listed above, a restriction enforceable by the Town of Belchertown shall be recorded, providing that such land shall be kept in an open or natural state, including recreational, agricultural, or forestry uses, and not be built upon for residential uses or developed for accessory uses, such as parking or roadway.
- C. The location, size, and shape of open space shall be subject to the approval of the Planning Board. However, the minimum open space requirement for an OSCD shall be 35% of the total tract area.
- D. The Planning Board will make the final determination of the composition of the common usable open space; this common usable open space may include wetlands, floodplain land, and slopes greater than 25%. However, no more than 15% of the required open space shall be composed of wetlands, surface waters, floodplains, or areas with unaltered slopes greater than 25%. The applicant has the burden

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**9. Editor's Note: The Table of Open Space Community Development Dimensional Standards is included at the end of this chapter.**

of demonstrating that the composition of the proposed open space and its location further the purposes of the open space community development. At its discretion, the Planning Board may allow a higher percentage of the required open space to be composed of no greater than 50% wetlands, surface waters, floodplains, or areas with unaltered slopes greater than 25%.

- E. Notwithstanding § 145-55 of this chapter (Dimensional standards), the Planning Board may permit the following to occur within the designated open space land:
- (1) Subject to approval of the Board of Health, as otherwise required by law, the Planning Board may permit the open space land to be used for subsurface waste disposal where the Planning Board finds that such use will not be detrimental to the character, quality or use of the open space land, such use to be recorded in the deeds of the lots affected.
  - (2) Up to 10% of the open space may be set apart and designated as such to allow for the construction of structures and facilities accessory thereto designed for agricultural, forestry, or recreational purposes.

**§ 145-57. Administration.**

- A. Relation to Subdivision Control Law. To facilitate timely processing, promote better communication, and avoid misunderstanding, applicants are encouraged to submit a preliminary subdivision plan. This plan should include alternative OSCD designs; a yield plan must be included.
- B. Submission requirements.
- (1) Each OSCD application and plan shall be prepared in accordance with the requirements for described in the Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown.
  - (2) Each OSCD application and plan shall provide the following additional information:
    - (a) The location and acreage of areas to be devoted to specific uses.
    - (b) The proposed location of parks, open spaces, and other public and community use.
    - (c) Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Belchertown Department of Public Works.
    - (d) On-site septic development: a sanitary sewage feasibility report certified by a registered professional civil engineer licensed in Massachusetts. The purpose of the report is to

evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water table, natural drainage patterns and other observations by the engineer.

[1] The report shall take into consideration the following factors: location of deep holes, to be shown on an appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption qualities, maximum groundwater elevations and distances to bedrock; and locations and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.

[2] The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Belchertown Board of Health has final jurisdiction over all on-site septic systems.

- (e) The organization the applicant proposes to own and maintain the open space land.
- (f) Draft copies of all proposed covenants, agreements, and other restrictions that the applicant proposes.
- (g) Proposed gross density of entire development tract, amount of open space required, and amount of open space retained.
- (h) A yield plan shall also be provided showing the number of potential lots that could be created and built upon for residential purposes via a conventional residential subdivision.
- (i) Any and all other information from the definitive subdivision regulations of the Town of Belchertown that the Planning Board may require to assist in determining whether the proposed OSCD meets the objectives and standards as set forth in this article.

#### C. Waivers.

- (1) The Planning Board may grant a waiver of roadway and dimensional standards as provided for in the Town of Belchertown's Subdivision Regulations.<sup>10</sup>
- (2) The Planning Board may grant waivers from side, front and rear yard setbacks when it is necessary to promote maximum design flexibility for the purposes of this article.

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**10. Editor's Note: See Ch. 270, Subdivision of Land.**

- (3) The Planning Board may grant waivers from minimum lot size requirements established in § 145-54B(1), provided there is a corresponding increase in the amount of preserved open space over and above the thirty-five-percent threshold established in this bylaw.
  - (4) The Planning Board may grant a waiver to permit a community septic system or community well, provided that the final design complies with Title V regulations and is approved by the Board of Health.
- D. Design flexibility.
- (1) At its discretion, the Planning Board may allow a higher percentage of the required open space to be composed of no greater than 50% wetlands, surface waters, floodplains, or areas with unaltered slopes greater than 25%.
  - (2) At its discretion, the Planning Board may allow up to 50% of the total parcel to be preserved as open space, provided it is in keeping with the purposes of this bylaw.
- E. Review and approval process. After notice and public hearing in accordance with MGL c. 41, § 81T, as amended, the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission, Board of Health and Town Engineer, and other reviewing offices, grant OSCD subdivision approval, provided that the conditions and standards of this article have been adequately met.
- F. Fees.
- (1) The fees are the same as any other subdivision.
  - (2) The applicant shall pay for such outside consultant review as the Planning Board may deem necessary or appropriate, including but not limited to engineering review and legal review, and the public hearing advertisement.

**§ 145-58. Amendments; recording of plan; covenant.**

Prior to the development or sale of any lot within an OSCD, a covenant or other instrument satisfactory to the Planning Board shall have been executed assuring the open space land or the recreational use of lands so designated in the application.

**§ 145-59. Severability.**

Determination that any specific portion of this Article XI is invalid shall not render any other part thereof invalid.



## ARTICLE XII

**Wireless Communications Facilities  
[Added 11-17-1997 STM by Art. 21]****§ 145-60. Definitions; intent.**

- A. Definitions. Refer to § 145-2 of this chapter.
- B. Intent. This article contains specific requirements to guide the special permit process for wireless communications facilities. These guidelines are intended to provide maximum wireless communication coverage, as mandated by Section 704 of the Federal Telecommunications Act of 1996, while protecting the general welfare and aesthetic integrity of the Town of Belchertown.

**§ 145-61. Special permit granting authority; waivers.**

- A. The Belchertown Planning Board shall be the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications or special permits under this article, subject to the conditions set forth below and in accordance with the provisions of § 145-62 of this article and MGL c. 40A, §§ 9 and 11, as amended.
- B. Waiver of compliance.
  - (1) The Belchertown Planning Board, acting as the special permit granting authority under this article, in appropriate cases, may waive strict compliance with such requirements of this article, as provided in MGL c. 40A, § 9, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act.<sup>11</sup>
  - (2) Waiver requests shall be submitted in writing with the application for a wireless communication facility. Waivers granted by the Planning Board under this subsection may be limited by conditions which shall be endorsed on the plan to which said conditions relate or set forth in a separate instrument attached to the plan.

**§ 145-62. Use restrictions.**

- A. Wireless communications facility other than a tower. A wireless communications facility other than a wireless communications tower may be erected upon the issuance of a special permit by the Planning Board, subject to all of the following conditions:
  - (1) Installations on existing buildings shall be camouflaged or screened and designed to be harmonious and architecturally consistent with the building. Any equipment associated with the

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**11. Editor's Note: See MGL c. 40A.**

facility shall be located within the building or otherwise so hidden as to be invisible.

- (2) No facility shall project more than 10 feet above the existing roofline of the building or more than 10 feet above the top of the existing structure upon which it is mounted or more than five feet out from the plane of the existing wall or facade to which it is attached, provided that such projections do not otherwise violate existing yard dimensions or setback requirements.
  - (3) Any proposed addition of cells, antennas or panels or replacement of a facility shall be the subject of a new application for an amendment to the special permit.
  - (4) All building-mounted facilities shall be designed and located so as to appear as an integral part of the existing architecture of the building.
  - (5) All wireless communication facilities shall be protected against unauthorized access by the public.
- B. Wireless communications facility tower. A wireless communications tower, including antennas and accessory structures, may be erected upon the issuance of a special permit by the Planning Board and is subject to all of the following conditions:
- (1) To the extent feasible, all service providers shall co-locate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users technically practicable within a ten-year period.
  - (2) New towers shall be considered only upon a finding by the Planning Board that existing or approved towers cannot accommodate the wireless communication equipment planned for the proposed tower.
  - (3) No tower shall be located closer than two miles to any other such tower.
  - (4) Tower height shall not exceed 150 feet above the existing terrain.
  - (5) The base of a tower shall be a distance of at least equal to two times the tower's height from the property line or existing dwelling unit. **[Amended 5-9-2016 ATM by Art. 32]**
  - (6) One tower only is permitted on any lot.
  - (7) The size of accessory structures housing support equipment for towers shall be determined individually under each special permit application. **[Amended 5-11-2009 ATM by Art. 15]**
  - (8) Existing vegetation shall be preserved as much as possible.



- (9) The Planning Board may impose conditions to ensure that wireless communications facilities are as visually unobtrusive as possible from all perspectives. These conditions may include structural design, painting, lighting and landscaping standards.
- (10) Any proposed extension in the height, addition of cells, antennas or panels, construction of a new facility or replacement of a facility shall require a new application for an amendment of the special permit.
- (11) No tower or other facility structure shall contain any signs or other devices for advertising.
- (12) Announcement signs, "no trespassing" signs and a sign with the owner's telephone number are required. The area of these signs will conform to § 145-22 of this chapter.
- (13) Except as required by the Federal Aviation Administration, towers shall not be artificially lighted.
- (14) The tower's height may not be greater than the distance from the tower's base to the boundary of the tower owner's legal lease or ownership area. **[Added 5-8-2017 ATM by Art. 28]**

#### **§ 145-63. Cessation of use; bond; demolition and removal.**

All unused towers or parts thereof, or accessory facilities and structures which have not been used for one year, shall be dismantled and removed at the owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town Treasurer-Collector a bond or other form of financial security acceptable to the Town Treasurer-Collector in an amount set by the Building Inspector. The amount shall be suitable to cover demolition, removal and disposal of the tower and its accessories in the event that the Building Inspector condemns the tower, parts of the tower or any part of the tower's accessories or deems it unused for more than one year. The Building Inspector shall give the tower's owner 45 days' written notice by registered mail before demolition commences. All demolition and removal costs will be billed to the tower's owner, and any unpaid amounts will become an encumbrance on the property.

#### **§ 145-64. Grant of special permit.**

After notice and public hearing in accordance with Section 9 of the Zoning Act (MGL c. 40A, § 9), the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission, Town Engineer and Building Inspector, grant such a special permit, provided that the conditions in this Article XII and any special conditions placed by the Planning Board have been adequately met.

**§ 145-65. Submission requirements; administration; application review. [Amended 5-8-2017 ATM by Art. 28]**

- A. All requirements of § 145-69 of this chapter apply.
- B. The Planning Board may retain an engineer and/or other professional consultant for guidance at the expense of the applicant.
- C. The applicant shall submit an operation and maintenance plan and shall annually submit a report, starting 12 months from the date of receiving a certificate of use or certificate of occupancy, demonstrating compliance to the operation and maintenance plan. Any change to the operation and maintenance plan must be approved by the Planning Board.

**§ 145-66. Rules and regulations.**

The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this article.

ARTICLE XIII  
**Administration**

**§ 145-67. Enforcement; violations and penalties.**

- A. The Building Inspector/Zoning Enforcement Officer (ZEO) shall be responsible for the interpretation of this chapter.
- B. The Building Inspector/ZEO shall be the officer responsible for enforcing the provisions of this chapter. The Board of Selectmen, the Police Department and the Fire Department shall assist the Building Inspector/ZEO in such enforcement where necessary and appropriate.
- C. No structure shall be constructed or changed, or changed in use, until a permit has been issued by the Building Inspector. No structure shall be occupied until a certificate of occupancy has been issued by the Building Inspector where required.
- D. The Building Inspector/ZEO shall refuse to issue any permit which would result in a violation of any provision of this chapter or a violation of the conditions or terms of any special permit or variance granted by the special permit granting authority.
- E. The Building Inspector/ZEO shall issue a cease and desist order on any work in progress or on the use of any premises, either of which is in violation of this chapter.
- F. Construction or operations under a building or special permit or zoning permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within a period of not more than six months after the issuance of the permit.
- G. Any person or party who believes a violation of the provisions of this chapter is occurring may notify the Building Inspector/ZEO with a written signed complaint. The correspondence must specify the location and nature of the alleged violation.
  - (1) The Building Inspector/ZEO shall, within 14 days:
    - (a) Ascertain whether a violation exists;
    - (b) Notify the party requesting enforcement of any actions or refusal to act and reasons therefor; and
    - (c) Forward a copy of his correspondence to the Board of Selectmen.
  - (2) If the Building Inspector/ZEO determines that a violation exists, he/she shall issue a cease and desist order as described above.
- H. Any person aggrieved by a decision of the Building Inspector/ZEO may appeal to the Board of Appeals as explained in § 145-68 of this chapter.

- I. Any violation of the provisions of this chapter, the conditions of a permit granted under this chapter or any decisions rendered by the Zoning Board of Appeals or the Planning Board under this chapter shall be liable to a fine of not more than \$100 for each violation. Each day that such a violation continues shall constitute a separate offense. Any such fines shall be enforceable through the Hampshire County Superior Court.
- J. In addition to the procedure for enforcement described above, the provisions of this chapter, the conditions of a permit granted under this chapter or any decisions recorded by the Zoning Board of Appeals or the Planning Board under this chapter may be enforced by the Building Inspector/ZEO by noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D, as amended. The fine for any violation disposed of through this procedure shall be \$100 for each offense. Each day such violation continues without evidence of compliance or appeal shall be a separate offense.<sup>12</sup>

### **§ 145-68. Board of Appeals.**

There is hereby established a Board of Appeals of three members and three associate members to be appointed by the Board of Selectmen, as provided by MGL c. 40A. The Board of Appeals shall have the following powers:

- A. Appeals. To hear and decide on an appeal taken by:
  - (1) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL c. 40A;
  - (2) The Pioneer Valley Planning Commission; or
  - (3) Any person, including an officer of the Board of the Town or abutting city or town, aggrieved by an order or decision of the Building Inspector/ZEO or other administrative official in violation of any provisions of this chapter or MGL c. 40A.
- B. Variances. To authorize upon appeal, upon petition with respect to particular land or structures, a variance from the terms of this chapter.
  - (1) Such a variance shall be granted only if all of the following conditions have been met:
    - (a) Circumstances exist which relate to the soil conditions, shape or topography of the land or structures and especially affect such land or structures but do not generally affect the zoning district in which they are located;
    - (b) Literal enforcement of this chapter will result in a substantial hardship, financial or otherwise; and

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**12. Editor's Note: See also Ch. 1, General Provisions, § 1-2, Noncriminal disposition.**

- (c) 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 chapter.
- (2) All applications for variances shall be made in writing on forms furnished by the Board of Appeals and located in the Town Clerk's office and shall be accompanied by a plan indicating the following:
  - (a) Location of premises, showing dimensions, abutting and nearby streets and ways and the zoning of all properties shown; and
  - (b) Location and dimensions of all proposed structures.
- (3) If the rights authorized by the variance are not exercised within one year from the date such variance was granted, they shall lapse and shall be reestablished in accordance with MGL c. 40A.
- (4) Variances shall only be issued following a public hearing held in accordance with MGL c. 40A, §§ 10 and 11.

#### **§ 145-69. Special permits.**

The Planning Board, the Board of Appeals or the Board of Selectmen, whichever this chapter designates as the special permit granting authority (SPGA) for a particular class of special permits, shall hear and decide applications thereof. If there is no designation as to the SPGA, then the Board of Appeals shall be the SPGA. Any application for a special permit shall be addressed to the designated authorizing board and shall be filed by the applicant with the Town Clerk, who shall record the date thereon and at once transmit a copy to the authorizing board.

- A. Special permits. The SPGA shall issue a special permit for an exception under the following conditions:
  - (1) The SPGA shall grant special permits which:
    - (a) Are found not to be detrimental to the established or future character of the Town and the neighborhood;
    - (b) Will not nullify or substantially derogate from the intent or purpose of the zoning district in which they are located; and
    - (c) Are in harmony with the general intent and purpose of this chapter. Conditions, safeguards and limitations on time or use may be imposed when deemed appropriate.
  - (2) All applications for a special permit shall be made in writing on forms furnished by the SPGA and located in the Town Clerk's office and shall be accompanied by the following and any other information as required elsewhere in this chapter:

- (a) Location of premises, showing dimensions; abutting properties, with name and address of owners; abutting and nearby streets and ways; and the zoning of all properties shown.
  - (b) Location and dimensions of all proposed structures, including signs and other proposed advertising devices.
  - (c) Location and number of parking spaces and loading accommodations.
  - (d) Location of all wetlands, streams and water bodies.
  - (e) Pedestrian and vehicular circulation, with particular attention given to their safety, convenience, ingress and egress.
  - (f) Potentially hazardous situations involving the effects of noise, odor, glare or vibrations on properties in the area.
  - (g) Type and location of all proposed outdoor lighting.
  - (h) Where appropriate, the location and type of material proposed for buffers and screening.
  - (i) Topography.
- (3) Misrepresentation of any of the required plan items shall be cause to revoke a special permit.
  - (4) In accord with MGL c. 40A, special permits issued by the SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.
  - (5) All special permits shall lapse within two years from the date the permit was granted, unless noted otherwise within this chapter and unless substantial use or construction has commenced in accord with MGL c. 40A, § 9, as amended.
  - (6) In the case of a lawful nonconforming use which exists on the effective date of this chapter in a district where such uses require a special permit, such use shall be deemed to have received its special permit. Such permit shall be without limitations, except for those requirements which may have been imposed on said use on the effective date hereafter.
  - (7) The SPGA shall submit one copy of said application and plan to all appropriate boards (Planning Board, Board of Selectmen, Board of Health and Conservation Commission) for their review. Said boards shall make recommendations as they deem appropriate and shall send copies thereof to the SPGA in accordance with MGL c. 40A.
  - (8) If the requested use is within the Wetlands Protection District or the Floodplain District, the applicant shall submit a determination

of applicability of the Wetlands Act (MGL c. 131, § 40). If the determination has been made by the Conservation Commission that the terms of the Massachusetts Wetlands Protection Act are applicable, the SPGA shall condition any special permit on the submission of the order of conditions, as described in that Act (MGL c. 131, § 40).

- (9) Special permits shall only be issued following a public hearing held in accordance with MGL c. 40A, §§ 9 and 11.
- (10) No special permits may be authorized for a use or activity not generally permitted in the district in which the land or structure is located.

B. Alternate voting member on special permit applications.

- (1) Where the Belchertown Planning Board has been designated as the special permit granting authority, in accord with MGL c. 40A, § 9, one associate member may be appointed as an alternate voting member authorized to hear and vote upon decisions on special permit applications.
- (2) The Planning Board Chairman shall designate the alternate to sit on the Planning Board only for purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest of a regular member or a vacancy on the Board.
- (3) The alternate voting member authorized to act on special permit applications to the Planning Board shall be selected in accord with the provisions of MGL c. 41, § 81A for filling a vacancy occurring in the Board by other than the expiration of a term by appointment of the Board of Selectmen and the members of the Planning Board.
- (4) The term of the alternate voting member of the Planning Board for special permit applications shall be for one year or, in the case of an unexpired term, until the Annual Town Meeting. The alternate voting member shall be reappointed or replaced in accord with Subsection B(3) of this section.

**§ 145-70. Amendments.**

This chapter may be amended at an Annual or Special Town Meeting in accordance with the provisions of MGL c. 40A, § 5.

**§ 145-71. Severability.**

The invalidity of any section of this chapter shall not invalidate any other section or provision thereof.





## ARTICLE XIV

**Business Neighborhood Center District**

**[Added 5-8-2000 ATM by Art. 18; amended 5-11-2009 ATM by Art. 13; 12-1-2014 STM by Art. 5]**

**§ 145-72. Purpose.**

The Business Neighborhood Center District is intended to result in a vibrant diverse neighborhood that is integrated with and central to the whole community. Its design is to provide aesthetic consistency with the surrounding neighborhoods while contributing to the community's economic vitality. It contains elements such as open space buffers, and lot dimensions that vary from those permitted in other districts as noted in Article V of this chapter. It is to include current development technologies in the areas of energy efficiency, stormwater management, transportation and building design and construction.

A. The purposes of the Business Neighborhood Center District are:

- (1) To provide flexibility for developers seeking to provide a community environment of mixed uses that includes businesses, certain residential opportunities and civic amenities;
- (2) To increase options for a vital mix of land uses;
- (3) To provide expeditious construction permitting;
- (4) To allow the relatively intensive use of land in an alternative pattern of development while maintaining existing character and by which the following benefits and objectives are likely to be attained, as described in Subsection B.

B. Benefits and objectives of the Business Neighborhood Center District:

- (1) Improved business, employment and residential opportunities in Belchertown.
- (2) Economical and efficient street, utility and public facility installation, construction and maintenance through creative design.
- (3) Provision of open and civic spaces.
- (4) Efficient use of land in harmony with its natural features.
- (5) A cohesive sense of community character achieved through mixed uses and design.
- (6) Continuation of Belchertown's leadership in implementing improved energy and infrastructure technologies.

**§ 145-73. Development method.**

- A. Site plan approval by the Planning Board is required for each development in the Business Neighborhood Center.
- B. The parts of a development allowed under this article that are to become part of the Town's infrastructure, such as roads, stormwater management, utilities, parking and civic amenities, may be subject to Chapter 270, Subdivision of Land, of the Code of the Town of Belchertown and other municipal laws and regulations, to be determined by the respective permitting authorities during reviews.

**§ 145-74. Administration.**

- A. To facilitate timely processing, promote better communication and avoid misunderstanding, applicants are encouraged to submit conceptual materials for informal review by the Planning Board prior to formal application for site plan approval.
- B. Site plan approval submission requirements. Each Business Neighborhood Center site plan approval application and plan shall provide the following information:
  - (1) The location and specific boundaries of the project parcel or parcels.
  - (2) Signatures of authorized representatives of each entity with ownership interest and each applicant or applicants' agent involved in the project.
  - (3) Written approval from the appropriate governing body certifying the potential to connect to a public sewage system and a public water supply.
  - (4) Copies of all proposed covenants, easements, agreements and other restrictions the applicant proposes, in draft guideline form, not in final legal form.
  - (5) Demonstration that the proposed development is consistent with this article.
  - (6) Any and all other information the Planning Board may require to assist in determining whether the project site plan meets the objectives and standards as set forth in this article.
- C. Review and approval process.
  - (1) The review, notice and public hearing process for site plan approval in the Business Neighborhood Center District shall be conducted in the same manner as a special permit. After notice and public hearing in accordance with MGL c. 40A, § 9, as amended, the Planning Board shall, after due consideration of the reports and recommendations of the Conservation Commission, Board of Health, Board of Selectmen, Director of Public Works, Town Engineer, and any other reviewing authority, approve a site plan,

provided that the conditions and standards of this article have been adequately met. The Planning Board may impose reasonable conditions on its approval to ensure compliance with the conditions and standards of this article.

- (2) Site plan approval granted under this article shall lapse within 24 months if construction has not begun or is not continuing to proceed, except for a good cause shown with an extension approved by the Planning Board. An extension must be applied for at least 90 days prior to the expiration of the site plan approval.
- (3) Strict compliance with any zoning bylaw governing any individual aspect of a site plan under this article, other than the residential percentage cap, may be waived by the Planning Board where such action is not detrimental to the public good. In such cases, any waiver on a site plan with approval from the Planning Board supersedes the individual bylaw governing the waiver. If the applicant requests a waiver, it is incumbent upon the applicant to demonstrate how the proposed waiver is not detrimental to the public good. The Planning Board reserves the right to request a waiver when the Board deems it appropriate, even if the applicant does not request a waiver.

D. Fees.

- (1) Same as the current site plan filing fee.
- (2) The applicant shall pay all costs incurred by the Planning Board and for all consultants utilized by the Planning Board in considering the application for site plan approval, including but not limited to engineering, design and legal services. The Planning Board may require payment of such costs pursuant to MGL c.44, § 53G. The failure or refusal of an applicant to make such payments shall constitute grounds for denial of the application.

**§ 145-75. Dimensional standards.**

Lots and buildings in a Business Neighborhood Center shall meet dimensional standards that are appropriate to establish the desired form, mass, public space, and service needs of the sites, notwithstanding the requirements of Article V of this chapter. Recommended standards to establish a design basis are the following:

- A. Minimum lot size: 20,000 square feet.
- B. Minimum frontage: 100 feet.
- C. Maximum lot coverage: 80%.
- D. Minimum front setback\*: 10 feet.
- E. Minimum rear setback\*: 20 feet.

- F. Minimum side setback\* : 15 feet.
- G. Minimum lot width: 100 feet.
- H. Maximum building height: 60 feet or three stories, with story defined in § 145-2.

Individual dimensional standards may be waived by the Planning Board upon the Planning Board's determination that lesser standards are consistent with the intent of this Business Neighborhood Center bylaw.

\* Setbacks may be as low as zero feet if the Planning Board deems such to be appropriate.

### **§ 145-76. Development design.**

- A. Permitted uses and standards.
  - (1) Buildings designed for business use, for residential use, for civic or non-profit use, or for mixed use may be constructed in a Business Neighborhood Center.
  - (2) Multiple buildings on one parcel are permissible if they are deemed consistent with the intent of this article.
- B. Overall district design requirements.
  - (1) Pedestrian accommodations shall take precedence over vehicular accommodations.
  - (2) Parking should be shared as much as possible to minimize curb cuts.
  - (3) Solar canopies should be considered for parking lots.
  - (4) Public transit accommodations, such as bus stops, must be integrated.
  - (5) Lighting must provide a safe pedestrian environment and minimize light trespass. Lights must be aimed downward and not have exposed light sources.
  - (6) Landscaping must use only plants native to this region. All reasonable attempts must be made to preserve healthy specimen trees.
- C. Building design requirements.
  - (1) Building design must be consistent with the Planning Board's Commercial Development Design Guidelines.
  - (2) Buildings should meet or exceed LEED or comparable "green" building standards for energy efficiency to the greatest extent possible and economically feasible.

- (3) Physical maintenance of uses and buildings must be assured through restricted covenants acceptable to the Planning Board.
- D. Residential requirements. (See Article II for definitions of dwelling units.) If any dwelling units are built, they must meet the following standards:
- (1) Residential development not affiliated with or ancillary to a continuing care retirement community, an assisted living, a memory care facility or live/work units is limited to 30% of a Business Neighborhood Center district's gross floor area as shown on a master plan for build out of the zone as approved by the Belchertown Economic Development and Industrial Corporation. This applies to the entire district, not the individual parcels.
  - (2) Ten percent of all dwelling units must be permanently affordable and eligible to be listed on the Belchertown subsidized housing inventory ("SHI") maintained by the Massachusetts Department of Housing and Community Development, unless waived by the Planning Board. The applicant shall provide all documentation and cooperation reasonably necessary for the Town to add such units to the SHI.
  - (3) No detached single-unit dwelling is permitted.
  - (4) Dwelling units in a variety of types, such as townhouses and apartments are permissible.
  - (5) Upper-story apartments over businesses are encouraged.
  - (6) Live/work units, in which the residents also work in the units, such as studios, are encouraged and shall not count toward the 30% standard in § 145-76D(1).

**§ 145-77. Use standards.**

Schedule of uses permitted by right within the Business Neighborhood Center District.

- A. Retail stores, boutiques.
- B. Convenience stores.
- C. Service businesses.
- D. Financial, medical and other professional offices.
- E. For-profit, non-profit or ancillary child care facilities.
- F. Clinics and health care facilities.
- G. Hospital.
- H. Nursing home, elderly day care.

- I. Continuing care retirement community.
- J. Assisted living.
- K. Memory care.
- L. Residential units ancillary to Subsections G through K.
- M. Multiple-unit dwelling.
- N. Live/work units.
- O. Inns and small lodging houses.
- P. Motels.
- Q. Hotels and conference centers.
- R. Restaurants.
- S. Brew pubs, micro-brewery or smaller brewery.
- T. Entertainment venues, bars, night clubs.
- U. Theatre, concert hall, cinema, except outdoor cinema.
- V. Indoor sport, fitness and recreation facilities.
- W. Meeting hall, place of assembly, for-profit club.
- X. Government offices.
- Y. Municipal uses.
- Z. Library.
- AA. Educational uses.
- BB. Art or craft center.
- CC. Museums, galleries, etc.
- DD. Parks and recreation facilities.
- EE. Public parking area or garage.
- FF. Private club, not for profit.
- GG. Religious uses.
- HH. Funeral establishment.
- II. Veterinary office/hospital (small animal).
- JJ. Laboratory, research facility.
- KK. Scientific research, development and manufacturing.

LL. Light manufacturing, fabrication and assembly.

MM. Commercial food processing.

NN. Wholesale business - roofed.

**§ 145-78. Other conditions.**

- A. Subdivision of land. If within the Business Neighborhood Center it is desired to create frontage for separate lots and infrastructure to be conveyed to the Town, a separate subdivision application to the Planning Board must be made.
- B. All individual lots in a Business Neighborhood Center must front on ways that are either public ways or approved subdivision ways.
- C. Signs.
- (1) Recognizing that signage needs are variable, sign size may vary by business or use in the district. The maximum allowed size for an individual sign in a Business Neighborhood Center is 80 square feet.
  - (2) Within a Business Neighborhood Center, intersection directional signs may be erected with arrows indicating the businesses reached via the cross street, with each business sign not exceeding six inches high by 36 inches long, including the arrow.
  - (3) Except as provided in § 145-78C(1) and (2), signs shall conform with Article VI, § 145-22, Signs, of this chapter.
- D. Parking.
- (1) Parking areas shared by uses are strongly encouraged. Such common parking areas may become municipal responsibilities. If a common parking area is to become the responsibility of the Town, it is to be accepted in the same manner as other infrastructure conveyances. Publicly owned parking may not be restricted to use or establishment. Privately held common parking may be restricted to designated users.
  - (2) On-street parking may be allowed in a Business Neighborhood Center with approval from the Police Department, the Fire Department, and the Board of Selectmen. When on-street parking is allowed, the number of off-street spaces required per parcel may be reduced. The amount of this reduction in off-street parking spaces is equal to the number of on-street spaces abutting the parcel's frontage. A Business Neighborhood Center is exempt from Article VI, § 145 23D(3) regarding vehicles backing onto a public way. Where one-way streets are permitted, angle on-street parking is permitted. All parking must meet ADA requirements.

- (3) Parking areas should include solar canopies and electric car charging stations when practicable.

**§ 145-79. Open space land.**

- A. Open space in a Business Neighborhood Center:
  - (1) Parcels on the district's external boundary must have a buffer of at least 30 feet wide on such external zone boundary.
  - (2) Open space buffers may be naturally forested. Invasive species shall not be permitted to remain.
  - (3) Buffers may be landscaped with native shrubs, trees and perennial plants.
- B. A developer in a Business Neighborhood Center may be required to incorporate additional recreational or open space beyond the required buffer as an amenity.
- C. The location, size and shape of open space shall be subject to the approval of the Planning Board after recommendations have been received from the Conservation Commission or the Recreation Department.
- D. The Planning Board may permit the following within the designated open space land:
  - (1) Drainage may be allowed in the open space only if approved by the Conservation Commission, Department of Public Works and Planning Board. Percolation of stormwater is strongly encouraged to purify the water and to recharge any aquifer.
  - (2) Recreational facilities.
- E. No more than 50% of the open space land, excluding the required thirty-foot buffer, shall constitute wetland. The term "wetland" shall be limited to the definition of wetland as specified under MGL c. 131, § 40, the Wetlands Protection Act, as amended. The Belchertown Conservation Commission shall determine where the wetlands, if any, are located on the site.

**§ 145-80. Amendments; recording of plan; covenant.**

- A. Minor amendments to site plan approval may be granted by the Planning Board upon application and for good cause shown but without necessity of a public hearing; provided, however, that any of the following shall be considered a major amendment and shall be acted upon under the procedures applicable to the initial site plan approval of:
  - (1) Any change in the amount of shared parking and/or the creation of infrastructure intended to be assumed by the Town;



- (2) Any alteration of building size of more than 400 square feet;
- (3) Any change in the general layout of the ways as provided in the approved site plan.

**§ 145-81. Severability.**

A determination that any specific portion of this Article XIV is invalid shall not render any other part thereof invalid.