

ARTICLE III

GENERAL REGULATIONS

§ 198-21. Nonconforming uses.

The lawful use of any structure or land existing at the time of the enactment of this chapter may be continued although such structure or use does not conform with provisions of this chapter subject to the following conditions and exceptions.

- A. Abandonment. A nonconforming use which has been abandoned or discontinued for a period of two (2) years shall not be reestablished and any further use shall conform with this chapter, except in cases of land used for agriculture, horticulture or floriculture where such nonuse shall have existed for a period of five (5) years.
- B. Alterations. A nonconforming structure may not in any one (1) year be altered except as ordered by the Building Commissioner to make it safe, or repaired in any ten-year period to the extent that the cost of such alterations exceeds fifty percent (50%) of the market value of the structure determined by the Building Commissioner at the time of the change.
- C. Extension. No increase in the area or extent of the nonconforming use of a structure or land may be made.
- D. Restoration. No nonconforming structure damaged by fire, storm or other causes to the extent of seventy-five percent (75%) of its replacement value as determined by the Building Commissioner shall be repaired or rebuilt except in conformity with this chapter, and further provided that such restoring shall be complete within two (2) years after such catastrophe.
- E. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. On special permit from the Zoning Board of Appeals, the use of the premises may be changed from one nonconforming use to another which is no more objectionable to the neighborhood.
- F. The construction of a building or operation of land use under a building permit or special permit shall conform to any subsequent amendment to the chapter adopted after the issuance of the permit unless such construction or operation commences within a six month period beginning with issuance of the building permit or special permit.

§ 198-22 Accessory buildings and uses.

Buildings and uses, which are customarily incidental and subordinate to the uses allowed as permitted uses in any zone are allowed as accessory buildings and uses, except as expressly restricted or prohibited in this by-law. Accessory buildings and uses are subject to the provisions of this section. **[Amended 3-23-1968 ATM by Art. 58; 12-10-1992 STM by Art. 1; amended 2-11-2004 STM by Art. 16]**

- A. Accessory buildings and uses must comply with the following provisions:
 - (1) No accessory building or use shall have more than 700 square feet of floor area;
 - (2) No accessory building or use shall exceed 20 feet in height, or be higher than the principle building, whichever is lower;
 - (3) No accessory building or use shall be allowed in a required front yard or in the area between two lines drawn from the principle structure at its widest point to the lot frontage, and perpendicular to the frontage line of the lot, except that permitted signs or roadside stands may be located within a required front yard area;
 - (4) No accessory building or use shall be closer than five (5) feet to any lot line and shall not be built over an easement;
 - (5) Accessory buildings shall be built in accordance with building codes;
 - (6) These provisions regarding accessory buildings shall not apply to barns or other agricultural structures that are used for agricultural purposes exempt under MGL c. 40A, §3;

- B. **[Added 5-7-1988 STM by Art. 7]** Structures for the keeping of animals. A structure, including an open pen or other enclosure designed, intended or used for the shelter or enclosure of one (1) or more animals, except where such structure is an allowed principal building, shall not be allowed except as follows:
- (1) It shall be located only in a rear yard and shall be no closer to any boundary line constituting frontage than the most distant point of the principal building from that boundary line.
 - (2) It shall be located no closer than five (5) feet from any property line and twenty (20) feet from any dwelling or occupied structure.
 - (3) It shall be constructed only upon application for a permit showing receipt of any necessary permission for the keeping of such animals from all applicable regulatory agencies.
- C. Activities necessary in connection with scientific, research, scientific development or related production shall be permitted as an accessory use by special permit in any district, provided that the special permit granting authority finds it does not substantially derogate from the public good **[Added 2-9-1978 ATM by Art. 2; Amended 2-11-2004 STM by Art. 16]**
- D. **Swimming Pools. [Added 4-3-1971 ATM by Art. 80; Amended 2-11-2004 STM by Art. 16]**
- (1) Swimming pools are a permitted accessory use. If having a depth of four (4) feet or more and a capacity of four hundred (400) cubic feet or more, they are considered structures and must comply with regulations of the Board of Health regarding minimum standards for residential swimming pools.⁵
 - (2) Every outdoor swimming pool considered to be a structure whether or not filled with water shall be completed surrounded at all times by a fence or wall not less than four (4) feet in height above grade, which wall may be pool wall itself.
 - (3) Every such fence or wall shall be so constructed as to not have openings, holes or gaps larger than four (4) inches in any diameter, except for doors, gates and picket fences; in the latter case, however, the gaps between pickets shall not exceed four (4) inches. All primary enclosures shall be constructed of either a four-inch chain link fence or a solid stockade fence. **[Amended 5-9-1989 ATM by Art. 19]**
 - (4) All gates or doors opening through such enclosures shall be of not less than four (4) feet in height and shall be equipped with a self closing and self latching device located at least four (4) feet above the underlying ground and inaccessible from the outside to small children. Every such gate or door shall be kept latched at all times when the swimming pool is not in use and any ladders removed.
 - (5) All swimming pools erected after adoption of these provisions must comply with them at the time of erection, and all existing swimming pools must comply not later than July 1, 1972, § 198-21 notwithstanding.

§ 198-23. Home Occupations. [Amended 3-25-1967 ATM by Art. 55; 3-28-1970 ATM by Art. 57]

- A. Home occupations are permitted only if conforming to the following conditions:
- (1) The home occupation shall be accommodated within an existing structure without extension thereof.
 - (2) No more than twenty-five percent (25%) of the floor area of the residence shall be used for the purpose of the home occupation.
 - (3) Not more than one (1) person not a member of the household shall be employed on the premises in the home occupation.
 - (4) There shall be no exterior display, no exterior storage of materials, no outside parking of commercial vehicles and no other exterior indication of the home occupation or other variation from the residential character of the principal building other than an unlighted sign not to exceed one (1) square foot area.
 - (5) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced. (See § 198-24).

⁵ Editors Note: See Ch. 475, Swimming Pools.

- (6) Traffic generated shall not exceed volumes normally expected in a residential neighborhood.
 - (7) The parking generated shall be accommodated off street, but not more than two (2) parking spaces shall be located within a required front yard.
- B. **[Amended 12-10-1992 STM by Art. 1]** The following occupations are permitted as home occupations only on a special permit from the Zoning Board of Appeals:
- (1) Barbershop.
 - (2) Beauty parlor.
 - (3) Dancing instruction.
 - (4) Building trades.
 - (5) Appliance and electronic repairs.
 - (6) Bed and Breakfast Home. An allowed use with a special permit, where required (see § 198-16) and shall be owner occupied. These types of establishments shall be limited to three (3) guest rooms per dwelling and shall also be subject to § 198-27B in regard to parking. **[Added 5-4-1991 ATM by Art. 26]**
- C. Occupations permitted as home occupations without necessity of a special permit include fine art studios, dressmaking, millinery, teaching of not more than four (4) pupils simultaneously (or in the case of musical instructor, of not more than a single pupil at a time), professional offices of a physician, dentist, lawyer, engineer, architect or accountant, public stenography, arts and crafts, telephone sales, office for telephone and correspondence of business otherwise conducted elsewhere, real estate office, photo studio or similar occupations. **[Amended 12-10-1992 STM by Art. 1]**
- D. The following occupations are not allowed as home occupations: tourist home, commercial stables or kennels, sale of articles not produced on the premises. Any occupation not covered under Subsections B and C is not to be considered a home occupation. **[Amended 12-10-1992 STM by Art. 1]**

§ 198-24 Noise, Litter and Smoke Standards

No activity shall be permitted in any district unless it can be demonstrated its operation will be conducted that the following standards will be met:

- A. No noise, sound from public address or other amplification systems, vibration, odor or flashing shall be normally perceptible more than four hundred (400) feet from the premises if in an industrial district, more than one hundred (100) feet from the premises if in a business district and more than twenty (20) feet from the premises if in another district.
- B. Interferences originating in an industrial district shall not normally be perceptible more than one hundred fifty (150) feet within a business district, nor more than one hundred (100) feet within a residential district.

§ 198-25 Location of Automobile Services [Amended 5-13-1978 ATM by Art. 55]

- A. No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery, service station or gasoline filling station, or any of their appurtenances or accessory uses, shall hereafter be placed within fifty (50) feet of any residence district. No driveway to such premises shall be in any part within fifty (50) feet of any residential district. No such premises shall have any driveway entrance or exit for motor vehicles within three hundred (300) feet of the property used by any public or private school, public library, church, playground or institution for the sick or dependent or for children under sixteen (16) years of age.
- B. Every filling station shall hereafter be located not less than fifteen (15) feet inside the building line, and no filling shall be done except into cars standing on the property of the filling station.
- C. A yard, building or other facility for the storage, display dismantling, junking or similar disposal or use of overage or wrecked motor vehicles shall be classed as an industrial use. Automobile services permitted as a

commercial use shall include gasoline filling stations supplying fuel, oil and automobile accessories to motor vehicles, lubrication and minor repair services.

- D. Repairs requiring removal of motors transmissions differentials or similar major elements are permitted if within the building interior. Body work and painting are not allowed uses, nor external storage of more than six vehicles requiring repair. The exterior storage of any parts including tires, and used automotive parts is not a permitted use.

§ 198-26 Sign Regulations [Added 3-25-1967 ATM by Art. 56; Amended 3-16-1974 by Art. 91, Replaced 5-2-1998 STM Art. 29]

- A. Authority. This section is adopted pursuant to the authority conferred upon the town by MGL c. 40A, MGL c. 93, § 29, and MGL c. 143, § 3. Nothing in this chapter shall be construed to abrogate the town's control under MGL c. 87, § 9, governing signs placed on shade trees enforceable by the Tree Warden or the town's control under MGL c. 85, § 8, governing signs placed within a public way enforceable by the Selectmen or under the Building Code.
- B. Purpose. The sign regulations section is designed to provide standards for the installation of signs so as to reduce traffic safety hazards, protect property values, promote economic development and encourage the creation of an aesthetic appearance along the street frontages in the Town of Fairhaven. The sign regulations, as set forth in this section, are designed to be both logical and equitable for the various uses and identification needs. These sign standards and regulations help to effectuate an aesthetic and safe street environment. Restrictions on type, location and size of signs protect the public from hazardous and distracting devices.

C General Regulations

- (1) Regulations. No sign permit or license shall be required for the signs listed in subsection C(2) of this section, provided that:
 - (a) The sign is permitted in the zoning district in which the sign is placed;
 - (b) The requirements for each sign listed in Subsection C(2) of this section are satisfied; and
 - (c) The sign does not violate the provisions of Subsection C(3) of this section.
- (2) Signs exempt from permit and license requirements.
 - (a) Balloons less than 24 inches in diameter.
 - (b) Building markers and historic or commemorative plaques are exempt from obtaining a permit and license.
 - (c) Construction signs. One temporary freestanding construction sign or wall sign per project construction site is exempt from obtaining a permit and license on each street frontage of the project, subject to the following conditions:
 - [1] The construction sign shall not exceed 32 square feet.
 - [2] The construction sign shall be a maximum of six feet in height for residential districts or 15 feet in height for other districts.
 - (d) Flags, noncommercial.
 - (e) Garage sale signs.
 - (f) Home improvement/home construction/home remodeling signs are exempt from obtaining a permit and license, provided that:
 - [1] There shall be only one such sign not exceeding 32 square feet in total surface area and four feet in height for each lot.
 - (g) Interior signs.
 - (h) Murals.

(i) Official signs and notices.

(j) Political campaign signs.

[1] Such signs shall be removed within 10 days following an election.

(j) Political signs.

(k) Public utility signs.

(m) Real estate signs are exempt from obtaining a permit and license, provided that:

[1] Real Estate Signs for single- or two-family residential dwellings or lots.

[a] There shall be one sign per street frontage up to a maximum of two signs per lot.

[b] Such sign shall be located on the lot for sale or lease.

[c] Such sign shall not exceed six square feet

(2) Real estate signs for all other uses.

[a] General Provision. The real estate sign shall be located on the site for sale or for lease.

[b] The site may elect one of the following options, subject to provisions of the clear view triangle area as defined in § 198.26G(1).

(i) Incorporate the real estate sign into the permanent identification sign; or

(ii) One real estate sign, not exceeding six square feet, shall be permitted per street frontage up to a maximum of two signs per site. The maximum height shall be six feet.

[c] Real estate signs shall be included as part of the square footage calculations for permanent signs.

(n) Residential name plates are exempt from obtaining a permit.

(o) Window Signs. Signs within a retail display window or attached thereto, provided they do not exceed a maximum of 25% percent of any retail display window.

3. Signs Prohibited in all districts.

(a) Signs which interfere with official signs and traffic control devices prohibited.

[1] No person shall be permitted to place a sign which prevents the driver of a vehicle from having a clear and unobstructed view, from an adequate and safe distance, of any official sign or approaching or merging traffic.

[2] No sign or sign structure shall be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with or obstructs the view of, or can be confused with, imitates, or resembles any official traffic sign, signal, or device.

[3] No rotating beam, moving letter signs in which the letters change more often than once per hour, except for time or temperature, beacon or flashing illumination resembling any emergency light shall be used in connection with any sign display, unless the sign is a traffic control sign, a public utility sign or a public notice.

(b) Interference with intersections prohibited. No sign or sign structure shall be located in such a manner as to materially impede the view of any street or highway intersection. (See § 198.26G(1), Clear view triangle.)

(c) Signs on natural features and utility poles prohibited. No sign shall be permitted to be painted on, attached to or maintained upon utility poles, trees, shrubs, rocks or other natural features, except that historical or commemorative plaques may be mounted in rocks, and that "No Trespassing", "No Hunting" "Property Boundary" or "Ownership" signs may be mounted on trees, rocks, shrubs or other natural features.

- (d) Portable billboard not allowed except for grand openings and not to exceed seven calendar days.
 - (e) Flashing Signs Prohibited. Flashing signs shall be prohibited.
 - (f) Shimmering Signs Prohibited. Shimmering signs shall be prohibited.
 - (g) Any sign emitting sound shall be prohibited.
 - (h) Any off-site identification sign or advertising sign unless otherwise herein provided shall be prohibited.
 - (i) Signs that exceed the requirements listed in the below.
 - (j) Signs to which MGL c. 93 § 30, applies, displaying commercial messages, are prohibited
 - (k) Signs not listed as permitted are prohibited. Any sign not identified as a permitted sign in § 198.26D of this Code is prohibited.
- (4) Free-standing signs, building identification signs, sign structures, poles and other related equipment that have been abandoned for more than two years shall be removed.
- (5) Illumination of signs.
- (a) Interference with traffic. No lighting shall be permitted to be used in any way in connection with a sign unless it is effectively shielded so as to illuminate the sign surface only and to prevent beams or rays of light from being directed at any portion of the main-traveled way of the public roadway or onto any residential property, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any drivers operation of a motor vehicle.
 - (b) Underground electrical service. All illuminated freestanding identification signs shall have underground electrical service unless evidence is provided that the local electric utility will not permit such underground service.
 - (c) Any sign which is externally illuminated shall be a minimum distances of 100 feet between the leading edge of the illuminated sign and an adjoining residential property line.
 - (d) In locations where the stated set back requirements from residential uses or districts cannot be met, then illumination of signs must be turned off between the hours of 11 p.m. and 6 a.m.

D. Design regulations for signs requiring a sign permit.

- (1) Residential, Agricultural and Park Zoning Districts (RA, RB, RC, A, P).
- (a) Regulations for freestanding identification signs. All freestanding identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.
 - [1] Where permitted.
 - [a] Residential uses. Freestanding signs shall be permitted only for neighborhood identification signs.
 - [b] Nonresidential uses. Freestanding signs shall be permitted.
 - [2] Maximum sign height.
 - [a] No part of the sign face or the sign support structure of a freestanding sign shall be more than eight feet above the average grade of the site.
 - [3] Maximum sign area and number of signs.
 - [a] Residential uses (neighborhood identification): Two freestanding signs shall be permitted with a maximum allowable size of 40 square feet each per neighborhood.
 - [b] Nonresidential uses.

- [i] One freestanding sign shall be permitted with a maximum allowable size of 40 square feet; or
 - [ii] If the non-residential use has two public street frontages, one freestanding sign shall be permitted per street frontage with a maximum size of 24 square feet per sign.
- [4] Illumination. Only external illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- (b) Regulations for building identification signs. All building identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.
 - [1] Wall signs.
 - [a] Where permitted.
 - (i) Residential uses. Wall signs shall be permitted for residential nameplates only.
 - (ii) Nonresidential uses.
 - [A] Wall signs shall be permitted.
 - [B] Projecting/hanging or suspended signs. One projecting/hanging or suspended signs shall be permitted not to exceed 10 square feet per sign. A minimum clearance of 10 feet above the sidewalk shall be required for pedestrians.
 - [C] Awning signs. Awning signs shall be permitted provided that no awning shall extend above the roof line and no awning sign shall be allowed above the first floor of the building.
 - [D] Canopy signs. Canopy signs shall be permitted provided that the sign shall be located on the facades of the canopy fronting on a public street.
 - [b] Maximum size and number of signs.
 - [i] In addition to the permitted freestanding sign for a public street frontage, a non-residential use in a residential district may elect to have a wall sign oriented towards that public street frontage. The maximum allowable sign surface area for the wall sign shall not exceed 10% of the area of the elevation.
 - [c] Distance from side or rear lot line. A wall sign is allowed only on a wall facing a public street. A wall entrance sign is not required to face a public street.
 - [d] Illumination. Only external illumination shall be permitted. Halo effect lighting shall be permitted. See § 198.26C(5) for additional provisions on illumination.
 - [2] Marquee signs. Marquee signs shall not be permitted.
 - [3] Suspended signs. Suspended signs shall not be permitted.
 - [4] Message centers. Message centers shall not be permitted.
- (c) Other signs. All other signs shall be located on the site of the use.
- (d) Prohibited signs. See § 198.26C(3).
- (e) Temporary signs. See § 198.26E
- (2) Business and Industrial Zoning Districts.
 - (a) Regulations for freestanding identification signs. All freestanding identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G Sign location and basic design elements for specific building identification signs.

- [1] For buildings, shopping centers, or planned developments with a gross floor area of greater than 15,000 square feet.
 - [a] Freestanding signs shall be permitted. Message centers shall be permitted as part of freestanding signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.
 - [b] Maximum sign height. No part of the sign face or the sign support structure shall be more than 22 feet above the average grade of the site.
 - [c] Maximum sign area and number of signs.
 - (i) One freestanding identification sign shall be allowed per site per public street frontage.
 - (ii) The maximum sign surface area for a freestanding sign shall be 100 square feet.
 - [d] Illumination. Illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- [2] For buildings, shopping centers, or planned developments with a gross floor area of 15,000 square feet or less.
 - [a] Freestanding signs shall be permitted. Message centers shall be allowed as part of freestanding signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.
 - [b] Maximum sign height. No part of the sign face or the sign support structure shall be more than 16 feet above the average grade of the site.
 - [c] Maximum sign area and number of signs. One freestanding identification sign shall be allowed per site per public street frontage. The maximum sign surface area shall be 60 square feet.
 - [d] Illumination. Illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- (b) Regulations for building identification signs. All building identification signs shall be located on the site of the use.
 - [1] The following regulations apply to single tenant buildings or to tenant spaces in multiple tenant buildings.
 - [a] Any combination or number of building identification signs may be utilized, so long as the total surface area of signs on a particular building facade does not exceed the percentages noted below, and subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.
 - [b] Building identification signs are allowed only on facades serving as the primary public entrance to a building.
 - [c] Building Identification signs shall include:
 - [i] Wall signs: Shall be permitted.
 - [ii] Projecting or suspended signs. One wall, projecting or suspended sign, not to exceed 10 square feet per sign, shall be permitted for each separated business unit in the development. A minimum clearance of 10 feet above the sidewalk shall be required for pedestrians. Exception: For buildings, shopping centers or planned developments with a gross floor area of less than 15,000 feet, in lieu of a free-standing sign, one projecting sign not to exceed 60 square feet shall be allowed.
 - [iii] Awning signs, provided that no awning shall extend above the roof line and that no awning sign shall be allowed above the first floor of the building.

- [iv] Canopy signs, provided that the sign shall be located on the facades of the canopy fronting on a public street.
 - [v] Marquee signs. One theater marquee shall be allowed on the premises or entrance to the premises of a theater or group of theaters sharing a premises. Changeable letter or symbols shall not exceed six inches in height. A minimum clearance of 10 feet above the sidewalk level shall be required for pedestrians.
 - [vi] Roof signs and roof integral signs shall be permitted, provided that the sign shall be located facing a public street and that no portion of the sign shall extend above the highest portion of the roof line.
 - [vii] Message centers shall be permitted as a part of building identification signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.
- [d] Maximum size and number of signs.
- [i] The maximum sign surface area for building identification signs shall not exceed 10% of the area of the elevation.
 - [ii] In addition to above, the linear measurement of the sign shall not exceed 80% of the linear frontage of the applicable facade of the structure or tenant space.
 - [iii] Illumination, illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- (c) Additional regulations for gasoline service stations. In addition to the regulations in Subsection D(2)(b) above
- [1] Service area canopy sign: maximum size and number of signs. Service area canopy signs are considered wall signs. Sign size shall be computed as above.
 - [2] Spandrel sign: maximum size and number of signs. The maximum sign surface area shall not exceed two square feet per dispensing station regardless of the number of hoses. The signage allowed per dispensing station may be combined into one sign on the spandrel. Signage is permitted on only two sides of the spandrel.
 - [3] Pump island signs. In lieu of the spandrel sign, the gasoline service station may elect pump island signs or pump toppers. Pump island signs of two square feet or less are allowed without permits. Pump island signs greater than two square feet are not allowed. Signage is permitted on only two sides of the pump island sign.
 - [4] No pennants or other similar attracting or advertising devices shall be permitted except as noted in § 198.26E, Temporary signs.
 - [5] Signs on perimeter poles. Signs placed on perimeter poles or other structures or that are not expressly permitted in this section shall be strictly prohibited.
 - [6] Operator identification. Operator identification signs shall be located on the building only with a maximum dimension of six square feet.
- (d) Other signs. All other signs shall be located on the site of the use unless specified otherwise.
- (e) Prohibited Signs. See § 198.26C(3).
- (f) Temporary Signs. See § 198.26E.
- E Design regulations for temporary signs requiring a sign permit.
- 1. On-site temporary signs.
 - (a) Temporary signs shall include, but not be limited to, banners, commercial flags, balloons, stringers, movable sandwich boards and similar devices.

- (b) Maximum size and number. One banner shall be allowed per street frontage and shall be oriented towards that street frontage. The maximum size per banner shall be 100 square feet.
- (c) Maximum height and minimum setbacks. Any temporary signs shall maintain a minimum setback of 20 feet from any street line. No temporary sign shall be placed above the highest outside wall.
- (d) Design. Stringers and balloons may be used with the banner for business promotions. No balloon may be elevated higher than the sign height restrictions applicable to the district within which it is to be used.
- (e) Time period for signage. Temporary signs may be used for a maximum of 15 days per permit; only one permit shall be issued per business per year.
- (f) Window signs meeting the requirements of § 198-26C(2)(n) shall not be considered temporary signs.

2. Off-site temporary signs. Off-site temporary signs shall not be permitted.

F. Computations.⁵

- (1) Computation of sign surface area of individual cabinet or panel signs. To compute the area for a sign face: compute by means of the smallest, rectangle, that will encompass the extreme limits of the copy, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, including supporting framework, but not including any poles, bracing or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
- (2) Computation of sign surface area of individual signs of individually mounted letters or symbols. When a sign is composed of individually mounted letters or symbols, the sign surface area shall be determined by means of the total of the smallest rectangle that will encompass all letters, representation, emblems or other display, including the wall area behind said letters, representations, emblems or other displays
- (3) Computation of sign surface area of multifaceted signs. The sign surface area for a sign with more than one face shall be computed by adding together the sign surface area of all sign faces visible from any one point. When two identical sign faces are placed back-to-back, or at no greater than fifteen 15° from one another, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign surface area shall be computed by the measurement of one of the faces.

G Sign location and basic design elements for specific building identification signs.⁶

- (1) Clear view triangle area.
 - (a) No sign or sign structures shall be located within a clear view triangle area.
 - (b) On a corner lot, the clear view triangle area is formed by the street right-of-way lines and the line connecting points 20 feet from the intersection of such street right-of-way lines extended.
 - (c) On a lot which has a driveway or is next to a lot which has a driveway, the two clear view triangle areas are formed by the street right-of-way line, both sides of the surface edge of the driveway, and the line connecting points 20 feet from the intersection of the street right-of-way line and driveway.
- (2) Orientation of signs on corner lots or through lots. When more than one sign is permitted due to multiple frontages, each permitted sign must be oriented toward its respective frontage and set at least 100 feet distant from signs located on additional frontages, unless specified otherwise. It is the intent to prohibit lots with multiple frontages from combining sign rights so as to erect larger signs or additional signs that are oriented to only one frontage.

⁵ Editor's Note: This subsection also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

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- (3) Free standing signs setbacks.
 - (a) Front yard setbacks. The minimum setback for all freestanding signs shall be 14 feet from the public street line except that no sign shall be located in the public street right-of-way.
 - (b) Side and rear yard setbacks: No freestanding identification sign shall be located closer than five feet to a side or rear property line.
- (4) Wall sign; location on building.
 - (a) A wall sign shall not extend outward more than 16 inches from the building or structure wall.
 - (b) A wall sign shall not extend above the roof or parapet line.

H. Maintenance of signs.

- (1) Maintenance required. All signs and sign structures shall be kept in good repair and in a proper state of maintenance.
- (2) Activities considered to be maintenance. Maintenance shall include activities such as cleaning, replacing lamps, replacing ballast in freestanding signs, replacing transformers in building identification signs, painting the pole of freestanding signs and the cabinet of freestanding or building identification signs, replacing or repairing H-bars and retainers behind the face, replacing trim, and replacement of sign fasteners, anchor bolts and repairs to electric utilities. A maintained sign structure shall have a sign face.
- (3) Items not considered maintenance. The following items are not considered maintenance and shall require that the sign be brought into conformance with all requirements with this section.
 - (a) Said maintenance shall not include any changes made to the size, height, light intensity or bulk of the sign or the temporary or permanent removal of the sign for the repair or replacement of the cabinet or any part thereof.
 - (b) Said maintenance shall not include changes in, poles, structural supports, bases or shrouds, footings or anchor bolts that are not in-kind; moving the sign for any reason; and change of the interior and/or exterior cabinet frame (excluding trim) and removal of any part of the signs for maintenance. For building signs, maintenance shall not include change in the size of channel letters or any change of returns or housing except for the sign face and trim. For single face cabinet signs, maintenance shall not include changes or replacement of the interior and/or exterior cabinets nor the cabinet support structures.
- (4) Temporary removal for new face. Temporary removal of the sign cabinet for the installation of a new sign face is not permitted and will require that the sign be brought into conformance with all requirements of this section.
- (5) Maintenance and repair of nonconforming signs. The legal nonconforming sign is subject to all requirements of this code regarding safety, maintenance, and repair. However, if the sign suffers more than \$3,000 appraised damage or deterioration; it must be brought into compliance with this code or be removed. If a premises changes ownership, the nonconforming signs located on the premises must be brought into compliance with this chapter. The replacement of a non-conforming wall sign due to the change in tenancy shall require that the new tenant sign conform to the requirements of this chapter as they relate to the size of the facade leased. The in-kind replacement of panels in non-conforming directory signs due to changes in tenancy shall be allowed unless such change affects more than \$3,000 appraised value of the sign, at which point the sign must be brought into compliance with this code or be removed.

I. Sign permits; fees.

- (1) It shall be unlawful for any person to erect, install, and/or replace any sign which requires a sign permit within the Town without first applying for and obtaining a sign permit from the issuing authority.
- (2) A sign permit does not include electrical work; however, this exemption shall not be deemed to grant authorization for any work to be done in violation of the provisions of any other laws or ordinances.

J. Sign permits; requirements.

- (1) A person is prohibited from obtaining a sign permit, except for a temporary sign, while a nonconforming sign remains on the property unless the permit also includes bringing the nonconforming sign into compliance, except as allowed for in § 198.26H(5).
- (2) A person may obtain a sign permit subject to the above if such person:
 - (a) Completes an application form provided by the issuing authority.
 - (b) Files a plan to scale with accurate measurements of distances showing the intended location conforming with this chapter and showing all proposed and existing signs and from that location the:
 - [1] Distance to the front, side and rear lot lines;
 - [2] Distance to the nearest edge of pavement of all adjacent roads;
 - [3] Distance to the nearest edge of pavement of all adjacent intersections of two or more streets and/or the intersection of all site driveways and public streets;
 - [4] Distance to the nearest edge of adjacent permanent signs;
 - [5] Distance to the nearest edge of adjacent portable signs;
 - [6] Distance to the nearest edge of all traffic light standards and directional signs; and
 - [7] Distance to the nearest edge of all sidewalks.
 - (c) Files complete drawings and specifications drawn to scale covering the size of the sign.

K Variances. Variances shall not be granted for any sign, as ample provisions have been made for premise identification within this chapter, and because true hardship as defined by state law cannot be demonstrated in signage situations.

§ 198-27 Parking, loading, and landscaping requirements [Added 3-22-1969 ATM by Art. 56; Amended 4-3-1971 ATM by Art. 82; 4-16-1975 ATM by Art. 59]

A. Parking requirements.

- (1) It is the intent of this section that adequate off street parking must be provided within reasonable distance to service all parking demand created by new construction, whether through new structures or through additions to existing ones or by change of use creating higher parking demand.
- (2) Building, structures and land use in existence on the effective date of these provisions are not subject to these off-street parking requirements and may be rebuilt, altered or repaired, but not enlarged or changed in use, without becoming subject to these requirements.
- (3) In applying for building or occupancy permits, the applicant(s) must demonstrate via a site plan drawn to scale that minimum parking requirements set forth in Subsection B will be met. In the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU), or Industrial (I) Districts, a special permit from the Planning Board pursuant to Section 198-29 will be necessary for the following: **[Amended 12-10-1992 STM by Art. 1; Amended 6-8-2002 ATM by Art. 6; Amended 2-11-2004 STM by Art. 15]**
 - (a) New construction that would require a total of five (5) or more parking spaces counting existing and new demand;
 - (b) Addition(s) or enlargement(s) that would require a total of five (5) or more parking spaces counting existing and new demand;
 - (c) A change of use(s) or renovation(s) that would require the addition of new parking space(s). If the existing parking spaces can meet the new demand based on the change of use(s) or renovation(s) then no special permit is required;
 - (d) Re-stripping of a parking lot of five (5) or more spaces that changes the existing site circulation, and/or number of parking spaces.

- (4) **[Amended 5-2-1998 STM by Art. 27]** The minimums of Subsection B may be reduced on special permit for an exception from the Planning Board, upon their determination that special circumstances render a lesser provision adequate for all parking needs. Examples of special circumstances include:
- (a) Use of a common parking lot for separate uses having peak demands occurring at different times.
 - (b) Age or other characteristic of occupants which reduce their auto usage;
 - (c) Peculiarities of the use which render usual measures of demand invalid.¹
 - (d) Characteristics of the structure, lot and proposed use.

B. Parking Schedule.

(1) Residential

- (a) Dwelling units having two or more bedrooms: two spaces.
- (b) Dwelling units having fewer than two bedrooms - one space.
- (c) Guesthouse, lodging house, other group accommodation: one space per two occupants.
- (d) Hotel, motel: one space per guest unit. **[Amended 1-17-1980 STM by Art.12].**

(2) Nonresidential buildings. [Amended 6-8-2002 ATM by Art. 7]

- (a) Industrial buildings: one space per 500 square feet gross floor area.
- (b) Retailing: one space per 250 square feet of gross leasable floor area.
- (c) Shopping Malls and Shopping Centers.
 - [1] Under 100,000 square feet of gross floor area: one space per 250 square feet of gross floor area.
 - [2] Over 100,000 square feet of gross floor area: 400 spaces plus one space for every 400 square feet of gross floor area above 100,000 square feet.
- (d) Office, banks: one space per 300 square feet of gross floor area
- (e) Medical, dental clinics: one space per 200 square feet of gross floor area.
- (f) Restaurant, theater, assembly hall: one space per 2.5 fixed seats; if seats are not fixed, one space per 2.5 occupants as calculated under the Building Code for maximum occupancy.
- (g) Recreation facility: 0.8 spaces per occupant as calculated under the Building Code for maximum occupancy.
- (h) Preschool facilities: one space per 200 square feet of gross floor area.

(3) (Reserved)²

(4) [Amended 12-10-1992 STM by Art. 1] Other facilities. The parking requirements for uses not listed in this section shall be determined by the Planning Board upon review of each individual application. That determination shall take into account:

- (a) Accepted industry standards, if any for that particular use.
- (b) The requirement of this section for similar use.
- (c) The anticipated needs of the use of that particular property.
- (d) The intent of this section as stated in Subsection A(1) above.

¹ Editor's Note: Original Section 3.7.1(e), which immediately following this subsection, as added 1-22-1997 STM by Art. 7 and amended 10-7-1982 by Art. 14, was deleted 12-10-1992 STM by Art. 1.

² Editor's Note: Former Subsection B(3), Shopping Mall parking requirements, added 12-10-1992 STM by Art. 1, was repealed 6-8-2002 ATM by Art. 7. For current provisions, see Subsection B(2)(c).

- (4) In the Mixed Use District a lot on which there was an existing building before January 1, 1998, shall be required to meet the minimum parking requirements of this section, or the parking available on that lot on January 1, 1998, whichever is less, regardless of use. **[Added 5-2-1998 STM by Art. 26]**

C. Parking area designation and location

- (1) No off-street parking area for five or more cars shall be located within the required front, side or rear yard setback areas. If no side or rear yard setback is required the minimum parking setback shall be six feet from the property line, except in the case(s) where there is a joint access or a shared parking area. **[Amended 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**
- (2) All required parking areas, except those serving single-family residences, shall be paved, unless exempted by a special permit from the Special Permit Granting Authority (SPGA) having jurisdiction, for cases such as, but not limited to, seasonal or periodic use, where unpaved surfaces will not cause dust, erosion, or unsightly conditions. **[Amended 6-8-2002 ATM by Art. 9]**
- (3) Parking areas for five or more cars shall not require backing onto a public way.
- (4) **[Amended 5-5-2001 ATM by Art. 13]** Perimeter landscaping requirements. Parking lots for five or more cars shall include the following:
 - (a) A landscaped buffer strip shall be provided adjacent to any public road to visually separate parking and other uses from the road, where feasible and without interfering with vehicular or pedestrian safety. The buffer strip shall be equal to the front yard setback for the zoning district within which the property lies, and planted with a combination of grass, medium-height shrubs [approximately two to eight feet tall], low decumbent creeping shrubs [shrubs less than 18 inches tall] and shade trees (planted at least every 40 feet or less along the road frontage) except at site driveways where the spacing may need to be larger to accommodate safe site distance. Trees and shrubs shall be set back at street and driveway entrances, exits or intersections to allow adequate sight distance and ensure vehicular and pedestrian safety while entering or exiting the site; these site triangle areas shall be planted with grasses and low decumbent shrubs. These trees do not count towards the required parking lot trees.
 - (b) A landscaped buffer strip shall be provided adjacent to any adjoining uses, excluding areas providing shared access and parking to visually separate parking and other uses from the adjoining properties. The buffer strip shall be equal to the side and rear yard setbacks for the zoning district within which the property lies. If no side or rear yard setback is required the minimum buffer width shall be six feet. The buffer strip shall be planted with a combination of grass, medium-height shrubs [approximately two to eight feet tall, evergreen varieties preferred] and shade trees (planted at least every 20 feet along the property line). These trees do not count towards the required parking lot trees. Plantings shall include the incorporation of evergreen and deciduous plantings and shall be developed in consultation with planting arrangements approved by the Planning Board. **[Amended 6-8-2002 ATM by Art. 8]**
 - (c) Plantings shall include the incorporation of evergreen and deciduous plantings and shall be developed in consultation with planting arrangements approved by the Planning Board.
- (5) Parking lots for 20 or more cars shall be interrupted with landscaped islands such that no parking surface exceeds 100 feet in width, including the area(s) used for parking aisles/stalls. A protective landscaped island shall be provided per 10 parking spaces and shall contain one shade tree with the remaining area to be planted with shrubs or groundcover. The landscape island shall be the width and depth of a parking space. The SPGA having jurisdiction may grant a waiver to the landscape island size requirement if it is demonstrated that an alternate design will still accommodate a shade tree. **[Amended 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**
- (6) Exposed storage areas, machinery, service areas, truck-loading areas, utility buildings, trash enclosures, structures and other unsightly uses shall be screened from view from neighboring properties and streets using plantings, a wall or tight fence complemented with plantings or through some other means deemed acceptable to the permit granting authority. **[Added 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**

- (7) All landscaped areas shall be maintained. Shrubs and trees which die shall be replaced within one growing season. **[Added 5-5-2001 ATM by Art. 13]**
 - (8) Old, well-established specimen trees shall, at the discretion of the Planning Board, be protected by siting buildings and parking around or within the existing landscape. **[Added 5-5-2001 ATM by Art. 13]**
 - (9) The use of bituminous paving shall be minimized. **[Added 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 5]**
 - (10) No fill shall be placed around trees that are intolerant of fill (dogwoods, birches, conifers, oaks and sugar maples). Stockpiling of soil shall not occur within the setback areas. Soil should remain undisturbed in a ten-foot radius around any tree to be preserved. **[Added 5-5-2001 ATM by Art. 13]**
 - (11) Wherever possible, all utilities shall be provided through underground connections. **[Added 5-5-2001 ATM by Art. 13]**
 - (12) Parking spaces more than 300 feet from the building entrance they serve may not be counted toward fulfillment of parking requirements unless by a special permit from the SPGA having jurisdiction, determines that circumstances justify a greater separation of parking from the use(s). **[Added 6-8-2002 ATM by Art. 9]**
- D. Loading requirements. Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back on to or off a public way, or to be parked on a public way while loading, unloading or waiting to do so.
- E. New car dealerships. Areas for customers and employees parking shall conform to regulations determined for retail business facilities. Areas for storage of dealers stock (vehicles for sale) shall be determined by design capacity of property used for that purpose as shall be outlined by site plan review. These shall be based on prudent practice and shall take into account for fire equipment and servicing as may be determined by the site plan review. Variations in sizes and types of vehicles (cars, trucks, etc.) make a numerical count of vehicles allowed not feasible for this purpose. **[Added 1-31-1991 STM by Art. 9]**
- F. Used car dealerships. Number of vehicles and area to be occupied by same shall be determined by the Board of Selectmen/Building Commissioner when licenses are issued for the operation of this type of facility. **[Added 1-31-1991 STM by Art. 9]**

§ 198-28 Floodplain and Nasketucket River Basin Districts. [Added 4-3-1971 ATM by Art. 83; amended 3-30-1972 ATM by Art 79; 5-18-1976 ATM by Art. 73; 1-22-1977 STM by Art. 4; 5-13-1978 ATM by Art. 54; 10-7-1982 STM by Art. 14; 5-4-1985 ATM by Art. 19; 5-4-1985 ATM by Art. 27; 1-22-1988 STM by Art. 4; 5-7-1988 ATM by Art. 12; 5-3-1997 STM by Art. 15; 5-2-2009 ATM by Art. 12; 5-3-2014 STM ART. 7]

- A. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Fairhaven designated as Zone A, AE, AH, AO, A99, V, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The Map panels of the Bristol County FIRM that are wholly or partially within the Town of Fairhaven are panel numbers 25005C0391F, 25005C0392F, 25005C0393F, 25005C0394F, 25005C0411F, 25005C0413F, 25005C0425F, 25005C0482F, 25005C0501F, 25005C0502F, 25005C0503F, and 25005C0504F dated July 07, 2009; and 25005C0391G, 25005C0393G, 25005C0394G and 25005C0482G dated July 16, 2014. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Bristol County Flood Insurance Study (FIS) report date July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.
- B. The purposes of the Floodplain District are to:
- (1) Ensure public safety through reducing the threats to life and personal injury.
 - (2) Eliminate new hazards to emergency response officials.

- (3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.
 - (4) Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
 - (5) Eliminate costs associated with the response and clean up of flooding conditions.
 - (6) Reduce damage to public and private property resulting from flooding waters.
- C. The Floodplain District is established as an overlay district to all other districts.
- (1) All development in the district, 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 following:
 - (a) Massachusetts State Building Code sections on floodplain and coastal high-hazard areas (currently 780 CMR).
 - (b) Wetlands protection regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
 - (c) Inland wetlands restriction, DEP (currently 310 CMR 13.00)
 - (d) Coastal wetlands restriction, DEP (currently 310 CMR 12.00)
 - (e) Minimum requirements for the subsurface disposal of sanitary sewage, DEP (currently 310 CMR 15, Title 5)
 - (f) Fairhaven Wetlands Bylaw (currently Chapter 192 of the Code of the Town of Fairhaven).
 - (2) Any variance from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.
- D. An Order of Conditions from the Conservation Commission is required before building permit shall be issued for construction or expansion by 500 square feet or more of a principal building on land less than the specified elevations above mean sea level (MSL) as provided in the Bristol County Flood Insurance Rate Maps as supplied for the Town of Fairhaven, MA, by the U.S. Corps of Engineers or on any barrier beach or sand dune within 300 feet horizontally of the mean high water line.
- E. Without limiting the generality of the forgoing, failure or inability to comply with the following shall be presumed hazardous to health and safety.
- F. For all new structures or for proposed improvements which equals or exceeds 50% of market value of the unimproved structure, or for any proposed improvements the cost of which together with the cost of improvements made in the previous five calendar years equals or exceeds 50% of the market value of the structure before such improvements, the lowest floor level, including that of the basement, if provided, and structural members supporting the lowest floor must be elevated not less than the specified elevations above mean sea level (MSL) as provided in the Flood Insurance Rate Maps as supplied for the Town of Fairhaven, Massachusetts effective July 7, 2009 and July 16, 2014.
- (1) Structural requirements for construction in flood zones are as provided in the Massachusetts State Building Code, which code requirements are not waived nor superseded by the provisions of this Zoning Bylaw. In addition to those code requirements, the following requirements shall also apply within the designated flood zones for the Town of Fairhaven:
 - (a) Structures for all other uses other than dwelling units must also conform to Subsection C(1)(a).
 - (b) All new construction or substantial improvements for any use shall be located landward of the reach of mean high tide.
 - (2) Individual sewage disposal systems shall not be subject to inundation in the event of coastal flooding to six-foot elevation above mean sea level.

- (3) Water supplies shall not be subject to more than temporary interruption or contamination, in the opinion of the Board of Health or its agents, in the event of coastal flooding to six-foot elevation above mean sea level.
- (4) Unless protected by sea walls, pilings or other foundations shall extend not less than six feet below grade in sand and not less than four feet below grade in other materials or to such greater depth as the Building Commissioner may require to prevent scouring beneath foundations.
- (5) Foundations shall be designed by a registered civil engineer or architect to withstand hydraulic pressure, and shall be of reinforced concrete, or if of masonry units, shall have a poured cap tied with reinforcing rods to the footings.
- (6) No vegetation on the ocean side of the crest of any primary dune (a hill or ridge of sand piled up by the wind with no other dune between it and the ocean front) shall be destroyed, nor the crest height of such dune be lowered. All disturbed dune areas shall be stabilized with beach grasses or other means.
- (7) Man-made alteration of sand dunes within Zone VE which would increase potential flood damage are prohibited.
- (8) The placement of mobile homes for year round or seasonal use is prohibited in the Floodplain overlay district.
- (9) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (10) In a riverine situation, the Building Commissioner shall notify the following of any alteration or relocation of a watercourse:
 - (a) Adjacent Communities,
 - (b) NFIP State Coordinator, Massachusetts Department of Conservation and Recreation
 - (c) NFIP Program Specialist, Federal Emergency Management Agency, Region I
- (11) All subdivision proposals must be designed to assure that:
 - (a) such proposals minimize flood damage;
 - (b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) adequate drainage is provided to reduce exposure to flood hazards.

G Nasketucket River Basin District (NRB)

- (1) The purpose of the Nasketucket River Basin District is to preserve, protect and maintain the quantity and especially the quality of the surface water and groundwater of this district which waters comprise and/or contribute to the existing and potential sources of water supply of the Town of Fairhaven and also to protect the public health, safety and general welfare of the Town residents and to conserve the natural resources of the town. The interpretations, orders, decisions, permits, judgments and findings of all parties, Town boards and departments, agents and officials in respect to all matters pertaining to this district, shall be consistent with and in accord with the spirit and intent of the above-stated purpose of this district. No facilities or activities hereafter listed in this section as restricted or prohibited shall be permitted within the Nasketucket River Basin District except by special permit from the Zoning Board of Appeals, upon demonstration by the applicant that the economic use of the property is infeasible under this rule and that water supply contamination will not result from the proposed facility or activity.
- (2) List of restricted facilities or activities:
 - (a) Fuel or combustible hydrocarbon storage.

- [1] Underground storage prohibited.
 - [2] Aboveground storage over 55 gallons prohibited. (An exception to this restriction is the storage of heating oil inside the building to be heated)
 - (b) Commercial laundries and cleaners.
 - (c) Road salt storage and application.
 - (d) Commercial parking lots.
 - (e) Gasoline stations and commercial garages (e.g. for motor vehicle sales, repair or service).
 - (f) Pesticide applications, storage or use for commercial purposes.
 - (g) Fertilizer applications, storage or for commercial purposes.
 - (h) Leaching fields, cesspools or surface or subsurface discharges of leachable wastes; (an exception to this restriction shall permit these facilities or activities within 300 feet westerly of New Boston Road, provided that all applicable wetlands, Board of Health and building permits have been previously obtained).
 - (i) Storage or stockpiling manure.
 - (j) Storage or disposal of hazardous materials or wastes as defined by EPA or OSHA regulations.
 - (k) Gravel pits or other excavations of sand, soil, rock or ledge for sale or commercial purposes (excepting normal excavations incidental to building construction, farming operations, water conservation, water retaining ponds, public utilities, installation and maintenance, and highway construction).
 - (l) Junk and salvage yards, dumps, disposal sites or landfills for solid or liquid wastes.
 - (3) The preceding enumerated items [Subsection D(2)(a), fuel storage, subsection D(2)(d), commercial parking lots, Subsection D(2)(e), gasoline stations and commercial garages, Subsection D(2)(g), fertilizer applications, and Subsection D(2)(i) storage and stockpiling of manure] existing on the passage of this chapter may be continued, repaired, or maintained but without enlargement, nor addition to the existing facility, nor without changing the function of the existing structure to a function more hazardous or contaminating (in amount or type) to the basin aquifer or water supply.
- H. No person shall remove, fill, dredge or build upon any bank, marsh, swamp or flat bordering on coastal or inland water or any other land subject to tidal action or coastal flooding without a Special Permit from the Zoning Board of Appeals. Such a permit shall be issued upon confirmation that the requirements of the Wetland's Act (MGL c 131 §§ 40 & 40A) will be met and granting of the same will not be hazardous to health or safety and not harmful to the shellfish and aquatic resources of the town.³

§ 198-29 Special permits for certain intensive nonresidential and multifamily site developments [Added 3-15-1973 ATM by Art. 78; amended 1-17-1980 STM by Art. 13; 5-9-1989 ATM by Art. 21; 5-4-1991 ATM by Art. 24]

- A. Planning Board (SPGA). The Fairhaven Planning Board is hereby designated as the special permit granting authority (SPGA), for the development of all sites in the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU), or Industrial (I) Districts, which propose the following to be provided for under the requirements of § 198-27 Parking, loading, and landscaping: [Amended 12-10-1992 STM by Art. 1; 5-2-1998 STM by Art. 26; 6-8-2002 ATM by Art. 6; Amended 2-11-2004 STM by Art. 15]
 - (1) New construction that would require a total of five (5) or more parking spaces counting existing and new demand;

³ Editor's note: Former Section 3.8.5, which immediately followed this subsection, as added 4-16-1975 ATM by Art. 60, was renumbered as Section 3.8.3.2 10-7-1982 STM by art. 14 and then deleted 5-4-1985 ATM by Art. 27.

- (2) Addition(s) or enlargement(s) that would require a total of five (5) or more parking spaces counting existing and new demand;
- (3) A change of use(s) or renovation(s) that would require the addition of new parking space(s). If the existing parking spaces can meet the new demand based on the change of use(s) or renovation(s) then no special permit is required;
- (4) Re-striping of a parking lot of five (5) or more spaces that changes the existing site circulation, and/or number of parking spaces.

And in the Mixed Use (MU) District any addition of gross floor area, or any reduction in the number of available parking spaces on the site shall be subject to a special permit under this section if the proposed parking does not meet the numerical minimum required by § 198-27B.

B. Submittal Application for Special Permit shall require the filling of one copy of a special permit application and 10 prints of the site plan drawn to an adequate scale. Such plans shall contain the following.

- (1) Such Plans shall contain the following.
 - (a) Actual dimensions of the lot.
 - (b) All easements existing or proposed.
 - (c) Location and size of existing and proposed structures including any existing structures within 100 feet of the site.
 - (d) Name, width and condition of all abutting streets.
 - (e) All parking and driveway areas including curbing and planted islands.
 - (f) Existing and proposed topography at two-foot minimum contours.
 - (g) Existing and proposed water, sanitary and storm drainage facilities.
 - (h) Landscaping including sizes, types and numbers of planting and details. All site plans involving 20 or more parking spaces shall be required to have the site plan, or a separate landscaping plan, signed by a registered landscape architect. Existing trees and other unique land features shall be preserved where feasible.
 - (i) An elevation plan of all proposed buildings indicating the type of architecture to be used and how it will conform to area appearances.
 - (j) The stamps and seal of the professional land surveyor responsible for surveying the property. **[Amended 5-6-1998 ATM by Art. 20]**
 - (k) The stamp and signature of the professional engineer responsible for drawing the plan. **[Amended 5-6-1998 ATM by Art. 20]**
 - (l) The location of all wetlands on the site and within 100 feet of the site. **[Amended 5-6-1998 ATM by Art. 20]**
 - (m) The location of the River Protection Act Riverfront Resource Protection Area. **[Amended 5-6-1998 ATM by Art. 20]**
 - (n). For new construction, and for additions or renovations which increase the impervious area of a property, 10 copies of a stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. As described in § 198-31.1 Stormwater Management. **[Added 5-1-1999 ATM by Art. 9]**
- (2) Review by other departments. A copy of the above required plans shall also be transmitted by the Planning Board, to the following town departments for review and comment: Department of Public Works, Fire Department and Board of Health. If no comment is made by such boards within 30 days of receipt, their

approval shall be assumed. Comments by other Departments is for the purpose of guidance to the Planning Board.

- C. Public hearing. The Planning Board will hold a public hearing on all proposed site plans/special permits within 65 days after submission to the board and a decision will be rendered by the Planning Board within 90 days following the date of the hearing. All procedural requirements for special permits will be subject to Massachusetts General Laws, Chapter 40A.
- D. Issuance of special permit
 - (1) No building permit shall be issued under this Article except by a two-thirds vote of the Planning Board and only upon determination by the Board that the proposed use is in harmony with the general purpose and intent of the chapter, and that the following standards are met by the use as designed:
 - (a) The design assures safety with respect to internal circulation and egress of traffic.
 - (b) The design provides adequate access to each structure for fire and service equipment.
 - (c) The design provides adequate utility services and drainage facilities consistent with the performance standards of the Subdivision Regulations of the Planning Board.⁹
 - (d) Landscape design shall conform to § 198-27C of this chapter.
 - (e) If a reduction in the number of available parking spaces on the site is proposed below the minimum required in the Mixed Use District, the Planning Board may require landscaping improvements, including the planting of trees of two-inch caliper. [Added 5-2-1998 STM by Art. 26]
 - (2) Any Special Permit issued pursuant to this § 198-29 may also impose conditions and safeguards, including a requirement that the development of the site thereunder shall be in strict compliance with the plan submitted to the Planning Board pursuant to Subsection B and any amendments to that plan which may have been approved by the Board.
- E. Issuance of building permit. No building permit shall be issued by the Fairhaven Building Commissioner pending action by the Fairhaven Planning Board or until 90 days have elapsed from the date of the public hearing. If no action has been taken by the Fairhaven Planning Board at expiration of 90 days, it shall be deemed a grant of the special permit. All building permits shall be in conformity with conditions established by the special permit.
- F. Multifamily zone areas.
 - (1) Site plan within apartment/multifamily (RC) zoned area which require a special permit shall conform to the following:
 - (a) There shall not be more than 20 dwelling in a single structure.
 - (b) No building shall be closer than its own height to a principle building.
 - (c) Parking areas shall not be located within a required front yard or within 10 feet of a lot line which ever is greater.
 - (d) No building shall be floodlighted. Drives and parking areas shall be illuminated only by shielded lights not higher than 15 feet.
 - (2) Special permit to modify multifamily zoning standards. The Fairhaven Planning Board may modify, by special permit, only the zoning standards prescribed in Subsection F(1) when the proposed plans show that the requirements are impractical for an existing structure to be modified for multi-family housing under such standards.

§ 198.29.1 Communications services [Added 11-6-1997 STM by Art. 20]

- A. Purpose:

⁹ Editor's Note: See Ch. 322, Subdivision of Land

- (1) The purpose of this section is to regulate wireless communications services so that these services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless Communications Services Zoning has been created to protect the general public from potential hazards associated with the structure of wireless communications facilities and minimize the visual impacts of wireless communications facilities on residential districts within Fairhaven. This section does not apply to satellite dishes and antennas for residential use.
 - (2) Applicants for a special permit to construct wireless communications service facilities are encouraged to explore alternative types of systems other than systems on newly constructed towers. Wireless communications antennas (including panels) may be mounted on or attached to existing structures (including, without limitations water towers and church steeples) by special permit provided that they conform to applicable design requirements as set forth in § 198-29.1(B).
- B. Design Standards for allowed uses. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein
- (1) Antennas may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower, church steeple, clock tower or water tower provided that the facility complies with the following:
 - (a) Facade-Mount Antennas must not extend above the top of the building wall or parapet; not detract, based upon a written finding from the Massachusetts Historical Commission, from the historic significance of a structure on, or eligible for listing on, the National or Massachusetts Registers of Historic Places; and be painted so as to blend in with the existing structure as much as possible.
 - (b) Roof mounted antennas must not extend more than 15 feet above the highest point of the building; not detract, based upon a written finding from the Massachusetts Historical Commission, from the historic significance of a structure on or eligible for listing on the National Register of Historic Places; and be painted so as to blend in with the existing structure as much as possible.
 - (c) Wireless communication facilities placed on existing buildings, and any equipment associated with the facility, shall be camouflaged or screened and designed to be harmonious and architecturally compatible with the building.
 - (2) The following information must be submitted for an application to be considered complete:
 - (a) A locus plan at a scale of one inch equals 200 feet which shall show all property lines, the exact location of the proposed structure(s), street landscape features, dwellings and other structures within 100 feet of the property line.
 - (b) A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed location is required. A rendition shall also be prepared illustrating a view of the tower, dish or antenna from the nearest street or streets.
 - (c) The following information must be prepared and signed by a registered professional engineer:
 - [1] A description of the facility and the technical, economic and other reasons for the proposed location, height and design.
 - [2] Confirmation that the facility complies with all applicable federal and state standards.
 - [3] A description of the capacity of the facility including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
 - [4] If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
 - [5] The applicable review and advertising fees as noted in the Zoning Bylaw.

- (3) Accessory structures housing support equipment shall be screened from the view of persons not on the lot.
- (4) There shall be no signs, except for announcement signs, “no trespassing” signs and a required sign giving a phone number where the owner can be reached on a twenty-four hour basis.
- (5) Additional parking shall not be required for roof-mounted antennas, facade-mounted antennas or for the addition of antennas or panels to a tower.
- (6) All network connections from the communications site shall be via underground land lines except to the extent of underground land lines are not feasible in the reasonable determination of the Planning Board.
- (7) Clearing of natural vegetation should be limited to that which is necessary for the construction, operation and maintenance of the tower.
- (8) Night lighting shall be prohibited unless required by state or federal law and shall be the minimum necessary.
- (9) Towers shall be set back from the lot lines a distance equal to the height of the tower except that a tower shall be no closer to the nearest lot line of a residentially zoned lot or a lot in residential use (other than the lot on which the tower is proposed) than a distance determined by the following formula:

$$(\text{height of the tower in feet})^2/40 \text{ feet}$$

- (10) One tower shall be permitted per lot.
- (11) No tower shall be more than 150 feet above the natural grade.
- (12) There shall be a minimum of one parking space for each new facility, to be used in connection with the maintenance of the facility and the site and not to be used for the permanent storage of vehicles.
- (13) Towers and facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment.

C. Design standards for special permits. A special permit shall be granted by the Planning Board in accordance with MGL c 40A, § 9. All of the requirements of Subsection B above apply except, by special permit the SPGA may:

- (1) Allow towers nearer to the property line than the height of the tower, but no tower shall be nearer to a property line than a distance equal to ½ the height of the tower and no tower may be closer to the nearest lot line of a residentially zoned lot or a lot in residential use (other than the lot on which the tower is proposed) than a distance determined by the following formula:

$$(\text{height of the tower in feet})^2/40 \text{ feet}$$

- (2) Determine that a location is favorable to the clustering of facilities and may allow more than one facility on a lot in that location.
- (3) Require the maintenance of all improvements to the site including structures, fencing, plantings, and required signs; plumb and tension tests shall be available on site to enforcement authorities; that a facility must be removed within 90 days following failure to obtain suitable test specifications, loss of FCC license, or removal of communications devices coupled with disconnection of utilities and that the applicant shall be responsible for the costs to remove any tower.

D. Criteria for review and approval.

- (1) Review of applications; approvals or denials.
 - (a) The SPGA shall review all special permit applications for wireless communication facilities, roof mounted antennas or facade mounted antennas and shall issue a special permit if it finds:
 - [1] That the location of the tower or device is suitable and that the size, height, and design is the minimum necessary for that purpose;
 - [2] That any façade- or roof-mounted antenna or panel located on a structure that is listed on or eligible for listing on the National or Massachusetts Registers of Historic Places shall not

materially alter the character-defining features, distinctive construction methods or original historic materials of the building. Any alteration made to a structure that is listed on or eligible for listing on the National or Massachusetts Registers of Historic Places to accommodate a facade or roof mounted antenna shall be fully reversible;

- [3] That the applicant for a special permit has demonstrated a good faith effort to co-locate with other carriers or to façade- or roof-mount the wireless communication facility including in such good faith effort a survey of all existing structures that may be feasible sites for mounting or collocation; and contact with all other licensed carriers for operating in the contiguous communities and the SPGA finds no technically or economically equal collocation is available; and
 - [4] That the proposed tower or device is in compliance with federal and state requirements regarding aviation safety.
- (b) The findings, including the basis for such findings, of the Board shall be stated in the written description of approval, conditional approval or denial of the application for special permit.
- (2) The Board shall also impose, in addition to any applicable conditions specified in the chapter, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this chapter, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use, or other requirements. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other surety for compliance with said conditions in any amount satisfactory to the Board.
 - (3) The special permit is granted for a period of two years and shall lapse if substantial use or construction has not commenced by such a date, except for good cause shown (including but not limited to, appeals of the grant of the special permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
 - (4) The board shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at full build-out.
 - (5) The board may require the proponent to provide or pay for engineering services to evaluate proposals submitted; determining flexibility of geographic location, loading capacities of structures and architectural review of camouflage techniques.

§ 198.29.2. Assisted Living Communities Overlay District [Added 5-6-1998 ATM by Art. 19]

- A. Purpose. The purpose of this section is to promote the availability of assisted living residences in the town of Fairhaven; to provide services for the elderly or elderly disabled persons; to encourage residential settings that promote the dignity, individuality, privacy and decision-making of such persons. For the purpose of this section an assisted living residence is a building or buildings that provide living assistance in a residential setting for people 55 years of age or older. These facilities shall provide or arrange for the provision of the services required in MGL c. 19D, § 10.¹⁰

¹⁰ Note:

- a. Opportunities for socializing and access to community resources.
- b. For all residents whose service plans so specify, such services, supervision of and assistance with activities of daily living including services such as, assistance with bathing, dressing, medication reminders and ambulation.
- c. Up to three meals daily.
- d. Housekeeping.
- e. For all residents whose service plans so specify, self-administered medication management by personnel meeting standards for professional qualifications and training set forth in the state assisted living act regulations.
- f. Ability to provide timely assistance to residents and to respond to urgent or emergency needs, by the presence of twenty-four hour per day on-site staff capability, by the provision of personal emergency response devices for all residents or similar means for the purpose of signaling such staff, and by such other means as the department may deem necessary for each assisted living residence, taking into account the service plans of its residents.

- B. Special permit granting authority. The special permit granting authority for this section shall be the Fairhaven Planning Board.
- C. Requirements.
- (1) All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.
 - (2) The minimum size of the lot for such use in Residential Districts, the Business and Mixed Use District shall be five acres. **[Amended 11-23-1998 STM by Art. 23]**
 - (3) Each dwelling shall require 5,000 square feet of lot area in the RR, RA and RB zones and 3,500 square feet of lot area in RC, B and MU Zones.
 - (4) A maximum of 60 dwelling units in any one building will be allowed.
 - (5) A maximum of three buildings will be allowed on any site.
 - (6) Assisted Living Residences shall comply with the following dimensional requirements: front setback 50 feet; side setback 25 feet; rear setback 50 feet. Frontage, lot coverage and maximum building height shall conform to the requirements of the district where such use is located.
 - (7) Assisted Living Residences shall be served by municipal water and sewer.
 - (8) A properly screened area must be provided for storage of trash and recyclable materials. Outside storage areas or enclosures shall be kept clean and shall be large enough to accommodate the storage of all garbage and refuse containers. Garbage and refuse containers, dumpsters, and compactor systems shall be stored on or above a smooth surface of nonabsorbent material such as concrete or asphalt. The property owner shall be financially and contractually responsible for waste and recyclable material removal.
 - (9) Assisted Living Residences may have as accessory uses within the residential building such commercial sales and services enterprises as may be desirable for the convenience of the residents including, without limitation, barbers/hairdressers, retail sales, restaurants, snack bars, gift shops, laundry services, banking and financial services, business and professional offices (the "Accessory Uses") subject to the following conditions:
 - (a) Accessory Uses shall be primarily for the use and convenience of the residents and staff of an Assisted Living Residence;
 - (b) Accessory Uses shall not exceed 10% of the total floor area of the residence;
 - (c) No Accessory Use, other than a restaurant or a comprehensive outpatient rehabilitation facility may occupy more than 1,000 square feet of floor area;
 - (d) Capacity of a restaurant shall not exceed 60 seats; and
 - (e) Accessory uses shall be wholly within a residential structure and shall have no exterior advertising display.
 - (10) Parking requirements for assisted living residences shall include a minimum of one parking space for every two units.
 - (11) Assisted living residences shall provide a passenger drop-off/pick-up area for every residential building.
 - (12) Assisted living residences shall provide one off-street delivery space for every residential building. No portion of the off-street parking area shall be considered as an off-street delivery area.

§ 198.29.3. Sexually oriented business [Added 11-23-1998 STM by Art. 25]

- A. Purpose and intent. It is the purpose of this article to promote the public health, safety and general welfare and to prevent problems of blight and deterioration which accompany and are brought about by the concentration of

g. Laundry service at a fee if necessary.

sexually oriented businesses. It is intended that the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

- B. Special permit granting authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) under this section in accordance with MGL c. 40A, §§ 9 and 9A
- C. Definitions of sexually oriented businesses. A sexually oriented business is any place of business at which any of the following activities is conducted:

ADULT BOOKSTORE - An establishment having as a substantial or significant portion of its business sales, inventory or 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.

ADULT PARAPHERNALIA STORE - An establishment having as a substantial or significant portion of its business sales, inventory or stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual intercourse, sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT VIDEO STORE - An establishment having as a substantial or significant portion of its business sales, inventory or 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 MGL c. 272, § 31.

ADULT MOTION PICTURE THEATER - An enclosed theater 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.

ADULT MOTION PICTURE ARCADE - Any place to which the public is permitted or invited where electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT CABARET - A nightclub, bar, restaurant or similar establishment which during a substantial portion of the total presentation time features live performances which are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

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

ADULT THEATER - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

NUDE MODEL STUDIO - A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay any form of consideration; and such display is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

OBSCENE ENTERTAINMENT - All entertainment which is obscene within the meaning of that term as defined by MGL c. 272, § 31, and final adjudication of a court of competent jurisdiction.

SEXUAL ENCOUNTER CENTER - A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

SUBSTANTIAL OR SIGNIFICANT PORTION shall mean that any one of the following apply 33% or more of the business inventory or stock of merchandise for sale, rental, distribution or exhibition during any period of time; or 33% or more of the annual number of gross sales, rentals, or other business transactions; or 33% or more of the annual gross business revenue; or 33% or more of the hours during which the establishment is open.

- D. Requirements regarding the allowed locations and location restrictions of sexually oriented businesses.
- (1) All obscene entertainment, including bookstores and motion picture theaters that make available obscene materials, are prohibited within the town.
 - (2) Sexually oriented businesses, as defined above, shall be permitted only in the Industrial and Business zones as provided for in § 198-16, provided that all other regulations, requirements and restrictions for the zone in which the sexually oriented business is to be located are met; and, no sexually oriented business shall be permitted within:
 - (a) Five hundred feet of another existing sexually oriented business or one for which a building permit has been applied for. The distance between any two sexually oriented business shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
 - (b) One thousand feet of any public, parochial or private school, kindergarten, or state-approved day-care center, this setback shall include the grounds on which said public, parochial or private school, kindergarten or state-approved day-care center is located on. The distance between any sexually oriented business and any public, parochial or private school, kindergarten or state-approved day care center shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
 - (c) One thousand feet from municipal and private park and recreational facilities existing as of November 11, 1998, including but not limited to Livesey Park, Fort Phoenix Park and State Reservation, the Fairhaven Bicycle Path, the Little Bay Conservation Area, Macomber Pimental Park, Bowlers Little League Field, Fairhaven Little League Field, Cushman Park, West Island Beach, Pease Park and West Island State Reservation. The distance between any sexually oriented business and park and recreational facility shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
 - (d) One hundred feet of a residential district. The distance between a residential district and a sexually oriented business shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the closest exterior structural wall or parking space associated with the sexually oriented business.
 - (e) Three hundred feet of Bridge Street between Route 6 and Mill Road;
 - (f) Two hundred feet of Route 240 between Interstate 195 and Route 6; and
 - (g) The bounds of Long Island.
- E. Site development standards. Pursuant to MGL c. 40A, § 9A, the following site improvements and amenities are required, in addition to the special permit requirements found in § 198-29, Special permits for certain intensive nonresidential and multifamily site developments, to protect public safety and neighboring property values. The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate

landscaping and building aesthetics as the special permit granting authority and to avoid site development layout which may result in negative environmental impacts.

- (1) Dimensional requirements: Any building or structure containing a sexually oriented business shall meet the setback requirements and other dimensional controls of the appropriate district as specified in this chapter. For any property proposed to contain a sexually oriented business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- (2) Parking and loading requirements. On-site parking and loading shall be provided in accordance with the requirements of § 198-27 of this chapter. For any property proposed to contain a sexually oriented business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- (3) Site screening: Rear and side property lines shall be screened from any neighboring uses or properties. Screening shall be by a solid stockade fence that is 3 ½ feet tall within 20 feet of the street and six feet tall elsewhere on the property consistent with § 198-19 of the Fairhaven Zoning Bylaw, plus a densely vegetated planting to include evergreens as well as deciduous tree varieties.
- (4) Site lighting shall be maintained at a minimum lumen as determined by the Fairhaven Police Department to ensure adequate visibility on the property to ensure public safety. Light standards may not exceed 35 feet in height.
- (5) No portion of the front, rear or side lines of a sexually oriented business, appurtenances or accessory uses, shall hereafter be placed within 100 feet of any residential district. No driveway to such premises shall be in any part within 100 feet of any residential district. No such premises shall have any driveway entrance or exit for motor vehicles within 300 feet of the property used by any public library or church.
- (6) Signs. All signs for any sexually oriented business must meet the requirements of § 198-26 of this chapter except that no advertising signs shall be located within 20 feet of a public or private way and must be set back a minimum of 20 feet from all property lines. In addition, no advertisement, display or other promotional material which contains sexually explicit graphics or sexually explicit text, as defined in MGL c. 272, § 31, shall be visible to the public from any public way, including but not limited to sidewalks, pedestrian walkways, highways or bicycle paths. Signage for sexually oriented businesses shall not contain any moving, flashing or animated lights, or visible moving or movable parts. No sexually oriented business may display flashing lights visible from outside the establishment.
- (7) Appearance of buildings for sexually oriented businesses shall be consistent with the appearance of buildings in similar (but not specifically adult) use in Fairhaven, not employing unusual color or building design which would attract attention to the premises.
- (8) If the sexually oriented business allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors or screens. All booths must be able to be clearly seen from the center of the establishment.
- (9) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by minors.
- (10) No sexually oriented business shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- (11) The applicant for permission to operate any sexually oriented business must file his application on a form approved by the special permit granting authority with the special permit granting authority and the Town Clerk. Such form shall contain information as set forth in the rules and regulations established by the special permit granting authority, but shall include as a minimum:
 - (a) Name and address of the legal owner of the sexually oriented business;
 - (b) Name and address of all persons having lawful, equity or security interests in the sexually oriented business;

- (c) Name and address of the manager;
 - (d) The number of proposed employees;
 - (e) Proposed security precautions; and
 - (f) Physical layout of the premises in a format established by the special permit granting authority.
- (12) No special permit for a sexually oriented business shall be issued to any person convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28, or are listed on the Sex Offender Registry.
- (13) Any sexually oriented business special permit issued under this by-law shall require that the owner of such business shall supply on a continuing basis to the Building Commissioner any change in the name of the record owner of address or any change in the name of the current manager; and that failure to comply with this provision shall result in the immediate revocation of such special permit. If anyone so identified is or has been convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28, or is listed on the Sex Offender Registry, such special permit shall be immediately null and void.
- (14) No sexually oriented business special permit shall be issued under this chapter, become valid or in full force and effect until and unless the owner of the property containing such sexually oriented business shall supply to the Planning Board a notarized statement agreeing to all terms and conditions of said sexually oriented business special permit.
- (15) Procedural requirements for special permits. Special permits shall only be issued following public hearings held within 65 days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the City or Town Clerk by the applicant.
- (16) Action within 90 days after hearing or special permit deemed granted. Special permit granting authorities shall act within 90 days following a public hearing for which notice has been given by publication or posting and by mailing to all parties in interest. Failure by a special permit granting authority to take final action upon an application for a special permit within said 90 days following the date of public hearing shall be deemed to be a grant of the permit applied for.
- (17) Lapse of special permit as permitted in MGL c. 40A, § 9A, special permit granted under this section shall lapse within two years, including such time required to pursue or await the determination of an appeal as referred to in MGL c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
- F. Severability. The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.

§ 198-29.4 Special permit for certain existing conditions in the Wetland Resource Protection District [Added 5-1-99 ATM by Art. 8]

- A. Purpose. The purpose of this section is to relieve the owner of a lot in the Wetland Resource Protection District from a hardship or potential for hardship where the uses designated for that district may prove impractical because of the nature of the property, which may include the existence of a structure or structures on the lot.
- B. Special permit granting authority. The special permit granting authority for this section shall be the Fairhaven Planning Board.
- C. Requirements.
 - (1) The Fairhaven Planning Board may issue a special permit allowing a lot in the Wetland Resource Protection District to be used in conformance with the provisions of the Zoning Bylaw as they relate to the Mixed Use District, if the Board determines that the limitations upon use imposed by the Wetland Resource Protection District would cause a hardship or potential for hardship because of the nature of the lot, which may include the existence of a structure or structures on the lot.

- (2) The condition to which the hardship or potential hardship relates must be a structure in existence on January 1, 1999, or a condition on the land which was in existence on January 1, 1999, and in either event the structure or condition must not have been substantially changed since January 1, 1999, unless the change was beyond the control of the property owner, or if within the owner's control, did not substantially add to the hardship or potential hardship. The property owner must document the hardship or potential hardship for the Planning Board; said documentation shall include a review of the allowed and permitted uses within the Wetland Resource Protection District and the nature of the conditions which were in existence on January 1, 1999, that preclude the use of the property for the allowed and permitted uses in the district. The presence of wetland resource areas shall not be considered grounds for a hardship related to the condition of the land under this section.
- (3) A special permit under this section may be allowed only when all procedural and substantive requirements for the proposed use under the provisions of the Mixed Use District and the requirements of § 198-8 have been met.
- (4) Where the use proposed under this section is a use authorized by special permit in the Mixed Use District, the application for special permits shall be merged under this section, and the Planning Board shall be the Special Permit Granting Authority for those permits.
- (5) A special permit under this section shall not be barred by the discontinuance or abandonment of a prior use on the lot.
- (6) The presence of the hardship or potential for hardship shall allow for the application of the uses in the Mixed Use District as found in § 198-16, Use Regulation Schedule. The intensity of use requirements for the Wetland Resource Protection District, as found in § 198-18, Intensity of Use Schedule, shall apply to all development in the district regardless of the presence of or potential for hardship.

§ 198-29.5 Wind Energy Facilities [Added 5-4-2013 ATM by Art. 19]

- A. Purpose. The purpose of this by-law is to encourage the use of wind energy and provide for the construction and operation of WEF and to provide standards for the placement, design, construction, monitoring, modification and removal of WEF that address public safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning. The provisions set forth in this section shall take precedence over all other sections when considering applications related to the construction, operation, and/or repair of WEF.
- B. Applicability. This section applies to all municipal and private Utility-Scale, On-Site WEF, and Small Wind Energy Systems, proposed to be constructed after the effective date of this section, but not to facilities fully constructed prior to the adoption of this bylaw. This section also includes Building Integrated WEF, and physical modifications to existing WEF that materially alter the type, configuration, location or size of such facilities or other equipment.
- C. Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) for WEF in all districts.
- D. Validity: The invalidity of any provision of this section shall not invalidate any other section or provision thereof.
- E. Application for Special Permit. The following information must be submitted for an application to be considered complete:
 - (1) A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed structure(s), street landscape features, dwellings and other structures within 500 feet of the wind turbine from the proposed tower location
 - (2) A color photograph or rendition of the WEF. A rendition shall also be prepared illustrating a view of the WEF from the nearest street or streets in all directions.
 - (3) The following information must be prepared and signed by a registered professional engineer licensed to practice in the Commonwealth of Massachusetts:

- (a) A description of the WEF and the technical, economic and other reasons for the proposed location, height and design.
 - (b) Confirmation that the WEF complies with all applicable Federal and State standards, including but not limited to US Fish and Wildlife Service, Massachusetts Environmental Policy Act (MEPA) and Environmental Notification Form (ENF) by Massachusetts Executive Office of Environmental Affairs, Access Approval by Massachusetts Highway Department and Massachusetts Historic Commission.
 - (c) If applicable, a written statement that the proposed WEF complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
 - (d) Fairhaven Conservation Commission. The applicant must file a Notice of Intent if within the wetland resource areas or if within 100 feet buffer zone.
 - (e) An analysis of the shadow flicker of the WEF shall be provided.
 - (f) A statement listing existing and maximum projected sound levels from the WEF.
 - (g) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
 - (h) Manufactures specifications for sound and documentation for compliance with Section L below.
 - (i) Abutter notice additional requirements. The applicant shall notify all abutting property owners whose property falls within three hundred feet (300 feet) of the outermost setback area, but in no case less than 300 feet of the applicant's property line to the nearest property owner.
- (4) Proof of Liability Insurance. The applicant shall be required to provide evidence of liability insurance in an amount, and for the duration, sufficient to cover loss or damage to persons and property occasioned by the failure of the facility.
- (5) Utility Notification. No Special Permit and/or site plan for the installation of a WEF shall be approved until evidence has been given that the electric utility company has been informed of the customer's intent to install an interconnected customer-owned generator, and copies of site plans showing the proposed location have been submitted to the utility for review. An Interconnection Agreement pursuant to applicable tariff and consistent with the requirements for other generation must be executed with the utility prior to any construction. Off-grid systems shall be exempt from this requirement, unless they are proposed to be located within setback distance from the sideline of an existing utility Right-of-Way (ROW).
- (6) Meteorological Towers (MET's) shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted. Small anemometers installed directly on buildings shall not require a building or Special Permit. No site plan review shall be required for met towers. MET's shall not be located within setback distance from the sideline of any utility ROW.
- (7) Site Control. At the time of its application for a special or building permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation, or inconsistent or interfering use, within the setback areas.
- F. General Siting and Design Standards. Unless otherwise expressly provided by this section requirements of the underlying zoning district shall apply and in addition the following design standards shall apply:
- (1) Accessory structures housing support equipment shall be screened from the view of persons not on the parcel.
 - (2) Fencing shall be provided to control access to the site of the WEF and accessory structures.

- (3) Signs. There shall be no signs, except announcement signs, no trespassing signs or any signs required to warn of danger. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.
- (4) All utility connections from the WEF site shall be underground except to the extent that underground utilities are not feasible in the reasonable determination of the SPGA.
- (5) Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WEF.
- (6) Night lighting shall be prohibited unless required by state or federal law and shall be the minimum necessary.
- (7) There shall be a minimum of one parking space to be used in connection with the maintenance of the WEF and the site; however, it shall not to be used for the permanent storage of vehicles.
- (8) Wind facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment.
- (9) Removal. The owner, his successors in interest shall remove any WEF the use of which has been discontinued. At the time of removal, the WEF site shall be restored to its natural state or to any other legally authorized use. All wind turbines and appurtenant structures shall also be removed. The SPGA shall require that a bond, escrow account or other suitable surety be established to ensure adequate funds are available for removal. Municipal wind facilities shall be exempt from the surety requirement.

G. Criteria for Review and Approval.

- (1) A Special Permit shall be granted under this section if the SPGA finds in writing that each of the design standards set forth above have been met and that the location of the WEF is suitable and that the size, height and design are the minimum necessary for that purpose
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the Special Permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.

H. WEF - Utility-Scale. Requirements

- (1) Financial Surety. The SPGA may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal or failure to maintain in the event the town must remove or maintain the facility, of an amount and form determined to be reasonable by the Special Permit granting authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.
- (2) Size. The maximum nameplate rating shall not exceed 660kW.
- (3) The WEF shall be located on a parcel of land that contains a minimum of ten (10) acres. The SPGA may allow more than one wind turbine if a determination is made that the location is favorable to the clustering of wind turbines.

- (4) Height. The WEF shall have a maximum tip height (MTH) no greater than 265 feet above the current grade of the land.
- (5) Setbacks. The WEF shall, at all times while in operation, meet the three required setbacks as follows:
 - (a) a distance equal to one and one-tenth (1.1) times the (MTH) of the wind turbine from principal structures, critical infrastructure such as but not limited to power lines, natural gas or distribution infrastructure.
 - (b) a distance equal to four (4.0) times the (MTH) of the turbine from the nearest off site residential, commercial structure or public way.
 - (c) a distance equal to one and one-half (1.5) times the (MTH) of the turbine from the nearest non participating property line and private way(s) that are not part of the WEF.
- (6) Setback Waiver. The SPGA may allow non participating property within the minimum required setbacks, only if the SPGA agrees to the condition based on site-specific considerations and is provided evidence of written consent of the all the affected abutting property owner(s) who are in agreement.
 - (a) The SPGA, in its discretion, shall be authorized to waive the setback, sound and shadow flicker provisions of this Section to the extent these provisions affect a non-participating property, provided that the applicant submits the request in writing, accompanied by an affidavit signed by every non-participating property owner(s) inside the required setback area. The affidavit shall contain the non-participating property owner's acknowledgement of the setback, sound or shadow flicker requirements of this Section and what is proposed in lieu thereof, describe the impact on the non-participating property owner(s), and state the non-participating property owner's support for the applicant's waiver request. A non-participating property owner's affidavit shall be made a part of the Special Permit decision and shall be recorded separately with the Bristol County Registry of Deeds (Southern District) at the same time that the Special Permit decision is recorded to provide notice to all subsequent purchasers of the non-participating property of the waiver(s) granted.
- (7) Visualizations. The SPGA may select up to four sight lines, including from the nearest building with a view of the WEF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the proposed WEF. View representations shall have the following characteristics:
 - (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WEF (e.g. superimpositions of the WEF on to photographs of existing views).
 - (b) All view representations will include existing, proposed, buildings or tree coverage.
 - (c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).
 - (d) Site Balloon Test. The applicant shall arrange to fly a brightly colored, four foot balloon at the MTH and at the proposed tower location. The days and hours will be agreed to by the SPGA and the applicant beforehand. The dates and times of the test will be advertised in the local newspaper.
- (8) Location Map. The applicant shall submit, to the SPGA, a copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included, however a copy of a zoning map with the parcel identified is suitable.
- (9) Operation & Maintenance Plan. The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as detailed procedures for operational maintenance of the WEF that are in accordance with manufacturer's recommendations for the period of expected operation of such facility.
- (10) Annual Operations & Maintenance (O&M) Report. A report shall be filed annually with the Planning Board for the facilities permitted under this section. Required report to be delivered beginning at the end of the first twelve months facilities are placed into operation and thereafter every year on anniversary date that the

facilities are in operation. Copies of the Annual O&M Report Form are available at the Planning Board's Office.

- (11) Landscape Plan. A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.
- (12) Independent Consultants. Upon submission of an application for a Special Permit, the SPGA shall be authorized to hire outside consultants, paid for by the applicant.
- (13) A WEF requiring guy wires for support shall not be permitted.

I. WEF - On-Site. Requirements.

- (1) Size. The maximum nameplate rating shall not exceed 200kW.
- (2) Height. The WEF shall have a MTH no greater than 165 feet above the current grade of the land.
- (3) Setbacks. The WEF shall, at all times while in operation, meet the three required setbacks as follows:
 - (a) A distance no closer than 2.0 times the MTH, from the nearest property line.
 - (b) A setback area, computed as a circle with the tower at its center and a radius equal to the MTH, shall be required from building or buildings which are on the same parcel(s) and which are served by the WEF.
 - (c) A setback equal to 3.0 times the MTH from the nearest residential structure.
- (4) Setback Waiver. The SPGA may allow non participating property within the minimum required setbacks, only if the SPGA agrees to the condition based on site-specific considerations and is provided evidence of written consent of the all the affected abutting property owner(s) who are in agreement.
 - (a) The SPGA, in its discretion, shall be authorized to waive the setback, sound and shadow flicker provisions of this Section to the extent these provisions affect a non-participating property, provided that the applicant submits the request in writing, accompanied by an affidavit signed by every non-participating property owner(s) inside the required setback area. The affidavit shall contain the non-participating property owner's acknowledgement of the setback, sound or shadow flicker requirements of this Section and what is proposed in lieu thereof, describe the impact on the non-participating property owner(s), and state the non-participating property owner's support for the applicant's waiver request. A non-participating property owner's affidavit shall be made a part of the Special Permit decision and shall be recorded separately with the Bristol County Registry of Deeds (Southern District) at the same time that the Special Permit decision is recorded to provide notice to all subsequent purchasers of the non-participating property of the waiver(s) granted.
- (5) Site Plan. Shall be a plan of the proposed WEF site, with existing and proposed topography at two-foot minimum contours, at an appropriate scale showing the following:
 - (a) Property lines for the site parcel and adjacent parcels within 500 feet.
 - (b) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the WEF to each building shown.
 - (c) Location of all roads, public and private on the site parcel and adjacent parcels within the setback distance of 1.2 times the blade tip height, and proposed roads or driveways, either temporary or permanent.
 - (d) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within the setback distance of 3.0 times the MTH.
 - (e) Proposed location and design of WEF, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.

- (6) Visualizations. The SPGA may select up to three sight lines, including from the nearest building with a view of the WEF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the proposed WEF. View representations shall have the following characteristics:
 - (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WEF (e.g. superimpositions of the WEF onto photographs of existing views).
 - (b) All view representations will include existing, or proposed, buildings or tree coverage.
 - (c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).
 - (d) Site Balloon Test. The applicant shall arrange to fly a brightly colored, four foot balloon at the MTH and at the proposed tower location. The days and hours will be agreed to by the SPGA and the applicant beforehand. The dates and times of the test will be advertised in the local newspaper.
- (7) Compliance Documents. The applicant shall provide the following:
 - (a) Description of financial surety,
 - (b) Proof of liability insurance
 - (c) Certification of height approval from the FAA,
 - (d) Manufactures specifications for sound and documentation for compliance with Section L below.
- (8) Landscape Plan. A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.
- (9) Independent Consultants. Upon submission of an application for a Special Permit, the SPGA shall be authorized to hire outside consultants, paid for by the applicant.
- (10) A WEF requiring guy wires for support shall not be permitted.
- (11) Annual Operations & Maintenance Report. A report shall be filed annually with the Planning Board for the facilities permitted under this section. Required report to be delivered beginning at the end of the first twelve months facilities are placed into operation and thereafter every year on anniversary date that the facilities are in operation. Copies of the Annual O&M Report Form are available at the Planning Board's Office.

J. WEF - Small Wind Energy System. Requirements.

- (1) WEF shall have a MTH no greater than seventy-five (75) feet and may exceed the MTH by Special Permit issued by the Zoning Board of Appeals upon a finding that the height of the proposed structure does not derogate from the purpose of this section as set forth in A. Purpose, above.
- (2) WEF shall be located no closer than the MTH, from the nearest non-accessory structure; provided that no setback shall be required from building or buildings which are on the same parcel and which are served by the WEF.
- (3) One or more wind facilities, which shall have a total rated nameplate capacity not to exceed 10kW.

K. WEF - Building Integrated WEF (BIWF). Requirements.

- (1) No BIWF shall be erected, constructed, installed or modified without first obtaining a Special Permit from the SPGA. The construction of a BIWF shall be allowed subject to the issuance of a Special Permit and provided that the use complies with all requirements of this Section and Section E above. All such wind facilities shall, where economically feasible, be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts

- (2) Required Supporting Documentation for BIWF. The Special Permit application must at a minimum, include:
 - (a) Analysis and design documents, completed by a structural engineer registered to practice in the Commonwealth of Massachusetts, demonstrating that the proposed building is structurally sufficient to support the permanent installation of the proposed BIWF. At a minimum, the analysis should address vibration, wind load, and ice load.
 - (b) Elevation drawings of BIWF installed, viewed from north, south, east, and west.
 - (c) Building schematic detailing point(s) of connection and associated supports for the BIWF.
 - (d) Schematic of attachment method for connecting the BIWF to the building.
 - (e) Specification sheets for wind turbine and all related components (inverters, controllers, disconnects, etc.)
 - (f) One or three line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnect and over current devices.

L. Safety and Environmental Standards. Wind Facilities operations shall be required to adhere to all requirements of this section at all times the wind facilities are in operation unless waived by the SPGA in its written decision.

- (1) Emergency Services. The applicant shall provide a copy of the project summary, electrical schematic, and site plan to the local town emergency services, as designated by the permit granting authority, as well as the local electrical utility company. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the WEF shall be clearly marked and accessible.
 - (a) The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
- (2) Fire Protection System. The nacelle of a Utility-Scale WEF shall be protected by an automatic fire suppression system. Fairhaven fire officials will observe the system in place immediately prior to the erection of the nacelle to the tower.
- (3) Unauthorized Access. Wind turbines or other structures part of a WEF shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or other climbing means readily accessible to the public for a minimum height of 8 feet above the ground. Electrical equipment shall be locked where possible.
- (4) Shadow/Flicker. Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.
- (5) Noise. The WEF and associated equipment shall conform with the provisions of the Department of Environmental Protection's (DEP), Division of Air Quality Noise Regulations (currently 310 CMR 7.10), unless the DEP and the SPGA 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, or
 - (b) Produces a pure tone condition when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line and at the nearest inhabited structure. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards, if required by the permit granting authority.
 1. The SPGA, in consultation with the DEP shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence. The WEF owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.

2. Upon receipt of a complaint to the Fairhaven Board of Health (BOH) regarding sound from an existing facility, the BOH will investigate the complaint. The BOH will follow its established complaint procedure to monitor and analyze the sources of complaints. If the BOH determines the complaint to be reasonable, the owner or operator shall be required, at its expense, to have prepared, by an independent professional acoustical engineer approved by the town, an acoustical study that measures sound levels and demonstrates compliance with the sound standards in this Section.
- (c) Sound Assessment. The applicant shall provide a report estimating current ambient sound at appropriate locations and maximum projected sound from the proposed facility, measured in dB(A) (decibels A-weighted), including but not limited to the following:
1. An estimation or measurement of the existing ambient background sound levels.
 2. Identification of a model for sound propagation (sound modeling software will include a propagation model).
 3. A prediction or measurement of sound levels from the facility at the nearest non-participating landowner's occupied building(s), at all participating landowner's occupied building(s), and the nearest property line. Inputs to the model must include specifications and expected sound data from the actual manufacturer and model number of the equipment proposed for the site.
 4. A comparison of calculated sound pressure levels from the facility with background sound pressure levels at the locations of concern.
 5. An estimate of the maximum total sound in the environment after the facility is operational. A listing of all inputs used in the Sound assessment, and all sound data, manufacturers data, power curves and sound curves used as inputs in the sound assessment must be provided to the board before the assessment is considered complete
- (d) Operational Noise Analysis. The applicant shall conduct with the BOH, an operational analysis of noise during the first ninety (90) days of operation. The WEF Facility shall not be allowed to operate between the hours of 7PM and 7AM, except during periods when a live attendant is present and is actively conducting a sound assessment in accordance with approved protocol. This restriction shall remain in place until the applicant has proven the system has operated in compliance for at least ninety (90) consecutive calendar days. The applicant will need to observe weather forecasts and plan to attend highest wind days in order to keep the system running through increasing wind periods. The BOH shall have access to all Power and Noise data recorded by the applicants monitoring system and shall produce reports upon written request of the BOH. The analysis will be coordinated with the BOH and shall contain sufficient information for a determination of whether the facility meets Massachusetts 310 CMR 7.10, and this bylaw, as required above.
- (e) The applicant shall provide, at their own expense, two (2) permanently mounted sound meters, with data loggers, for the purpose of recording sound levels at the property line of the two abutters forecast to be impacted the most by sound from sound emissions from the WEF. A written report explaining how the location of the meters was determined shall be submitted to the BOH for review prior to installation. This equipment shall be used to establish a baseline for sound at the location observed during commissioning / compliance testing and will allow the BOH to determine when a significant change in sound power has been experienced at the site (for any reason, such as wear and tear, poor maintenance, change in topography from storms, etc.). Metering equipment shall be calibrated annually at the applicants' expense and no WEF shall remain in operation without an operational sound meter in place. Once the compliance testing is complete, the two data loggers shall record sound levels continuously and at intervals of 1/8 of a second per sample maximum and summary reports shall be made available on a monthly basis (or upon request) to the BOH.
- (6) Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WEF and is otherwise prescribed by applicable laws, regulations, and ordinances, and subject to existing easements, restrictions and conditions of record.

- (7) Avian study and bat studies. The applicant shall submit the results of an avian and bat species analysis to the SPGA. The applicant shall continually monitor the injuries and fatalities and to assess compliance of the site with the recommendations as proposed in the studies, if any.
- (8) Facility Conditions. The applicant shall maintain the WEF in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, emergency braking (stopping) and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief. The project owner shall be responsible for the cost of maintaining the WEF and any access road(s), unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.
- (9) Modifications. All material modifications to a WEF made after issuance of the Special Permit shall require approval by the SPGA as provided in this section.
- (10) The WEF shall be equipped with controls to detect imbalance that could occur for any reason, including ice and snow build-up. These sensors shall shut down the turbine automatically in the event of snow and ice build-up and shall not allow the equipment to restart until a safe operating condition has been restored. The Town Public Safety Officials shall have access to records showing date and time of imbalance shutdown. Calibration of the sensors shall be certified every year, on or before October 1st.

M. Criteria for review and approval.

- (1) A Special Permit shall be granted under this section if the SPGA finds in writing that each WEF meets its designated tower requirements listed above, and that the design, safety and environmental standards, set forth above, have been met.
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, hours of operation, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the Special Permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- (4) The SPGA will require the applicant to pay for outside, independent professional services to evaluate the proposal's compliance with this section and to determine the flexibility of geographic location, to analyze the loading capacities of the proposed structures, and to review camouflage and screening techniques.
- (5) The final decision of the SPGA shall contain a condition when mitigation, turbine shutdown or removal would be imposed if a WEF is found to become non-compliant with this section.

§ 198-29.6 - Solar Photovoltaic Energy Facilities (SPEF). [Added 5-4-2013 STM by Art. 8]

- A. Purpose. The purpose of this by-law is to encourage the use of Solar Photovoltaic Energy and provide for the construction and operation of Ground-Mounted SPEF and to provide standards for the placement, design, construction, monitoring, modification and removal of Ground-Mounted SPEF that address public safety, minimize impacts on scenic, natural and historic resources of the Town and provide adequate financial assurance for decommissioning. The provisions set forth in this section shall take precedence over all other sections when considering applications related to the construction, operation, and/or repair of Ground-Mounted SPEF.
- B. Applicability. This section applies to all ground-mounted 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. Roof mounted SPEF are not governed under this section and are permitted in all districts when connected behind the meter.

- C. Compliance with Laws, Ordinances and Regulations: The construction and operation of all SPEF shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a SPEF shall be constructed in accordance with the State Building Code.
- D. Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) for all SPEF as defined in this bylaw.
- E. Validity: The invalidity of any provision of this section shall not invalidate any other section or provision thereof.
- F. Application for Special Permit Review. Submittal Application for Special Permit Review shall require the filling of one copy of a site plan review application and 10 prints of the site plan drawn to an adequate scale to convey all required information. Such plan(s) shall contain the following for an application to be considered complete.
 - (1) Actual dimensions of the lot.
 - (2) All easements existing or proposed.
 - (3) Location and size of existing and proposed structures including any existing structures within 100 feet of the site.
 - (4) Name, width and condition of all abutting streets.
 - (5) Existing and proposed topography at two-foot minimum contours.
 - (6) Existing and proposed water, sanitary and storm drainage facilities.
 - (7) Landscape plan. Landscaping including sizes, types and numbers of plantings and details. Existing vegetation and other unique land features shall be preserved where feasible.
 - (8) Blueprints or drawings of the SPEF 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
 - (9) The stamps and seal of the professional land surveyor responsible for surveying the property.
 - (10) The stamp and signature of the professional engineer responsible for drawing the plan.
 - (11) The location of all wetlands on the site and within 100 feet of the site.
 - (12) The location of the River Protection Act Riverfront Resource Protection Area.
 - (13) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - (14) A stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. As described in § 198-31.1 Stormwater Management.
 - (15) A description of the solar photovoltaic facility and the technical, economic and other reasons for the proposed location and design shall be prepared and signed by a registered professional engineer.
 - (16) Confirmation prepared and signed by a registered professional engineer that the SPEF complies with all applicable Federal and State standards.
 - (17) 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 over current devices.
 - (18) Documentation of the major system components to be used, including the PV panels, mounting system, inverters.

- (19) Documentation of the sound generated by equipment used in the production of electrical energy, including any proprietary documentation. A Sound study will be required by the SPGA to determine the impact of noise on abutting residences.
 - (20) Documentation of actual or prospective access and control of the project
 - (21) An operation and maintenance plan (see also Section 198.29.6.G.13 below)
- G. General Design Review Standards. Unless otherwise expressly provided by this section of the bylaw all requirements of the underlying zoning district shall apply and in addition the following standards shall apply.
- (1) Large-scale, ground-mounted SPEF shall:
 - (a) Be located on a parcel of land that contains a minimum of ten (10) acres when in the RR, B, I AG or WRP districts.
 - (b) Be setback 75 feet for the front, 50 for side and rear yards from abutting RA, RB, RC, RR, AG, MU, WRP and P Districts.
 - (c) Be setback 50 feet from front yard in the B and I Districts, but 10 feet from side and rear yards when abutting the B and I Districts.
 - (2) On-Site SPEF shall:
 - (a) Be sized by electrical load according to the building they serve and must be connected to the customer side, behind the electrical service metering equipment.
 - (b) Be setback, at a minimum, to the district setbacks they fall in.
 - (c) Not cast glare to abutting uses by providing screening methods.
 - (d) Not permit the equipment to create excessive noise to abutters by installing inverters as far from abutting structures as feasible.
 - (e) Provide fencing to prevent unauthorized access to arrays.
 - (3) All appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be screened from the view of persons not on the parcel, public rights-of-ways and all residential districts.
 - (4) Lighting of SPEF shall be consistent with state and federal law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
 - (5) Signs. There shall be no signs, except announcement signs, no trespassing signs or any signs required to warn of danger. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.
 - (6) All utility connections from the SPEF site shall be underground except to the extent that underground utilities are not feasible in the reasonable determination of the SPGA.
 - (7) Inverters shall be sited so as to minimize sound impact to abutting residences.
 - (8) Clear cutting of trees and natural vegetation, within 5 years, shall be prohibited for the construction, operation and maintenance of the solar photovoltaic facility.
 - (9) There shall be a minimum of one parking space to be used in connection with the maintenance of the SPEF and the site; however, it shall not to be used for the permanent storage of vehicles.
 - (10) Setbacks shall provide for adequate screening of noise and glare from abutting uses and structures. Techniques such as dense natural vegetated plantings, earthen berms or increased setbacks will be required, depending upon site specific conditions. Setbacks shall not be disturbed by access roads, except where allowed by the SPGA for access to the site. Setbacks shall not be used for any purpose other than

natural vegetation or other screening required by the SPGA. Setbacks from property lines shall be as provided above for type of SPEF.

- (11) All ground-mounted SPEF shall be fenced for security. Fencing that is visible from right-of-way or residence shall be vinyl coated or another decorative type of fence acceptable to the SPGA. All fencing shall be designed to blend into the landscape.
 - (12) The project proponent shall submit a plan for the operation and maintenance of the ground-mounted SPEF, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
 - (13) The SPEF owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the SPEF shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
 - (14) No ground-mounted SPEF shall be approved or constructed until evidence has been given to the SPGA that the utility company that operates the electrical grid where the installation is to be located has been informed of the SPEF owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
 - (15) No ground-mounted SPEF shall be constructed, installed or modified as provided in this section without first obtaining a building permit
 - (16) The ground-mounted SPEF 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 Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the SPEF and any access road(s), unless accepted as a public way.
- H. Abandonment or Decommissioning: The owner, operator, his successors in interest shall remove any ground-mounted SPEF which has reached the end of its useful life or has been abandoned. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal.
- (1) Decommissioning shall consist of:
 - a) Physical removal of all ground-mounted SPEF, structures, equipment, security barriers and transmission lines from the site.
 - b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
 - (2) Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the SPEF shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the ground-mounted SPEF fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.
 - (3) Financial Surety: Proponents of ground-mounted SPEF shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such 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.

I. Criteria for Site Plan review and approval.

- (1) A Special Permit may be granted under this section if the SPGA finds in writing that each of the design review standards set forth above have been met and that the location of the ground-mounted SPEF is suitable and that the size and design are the minimum necessary for that purpose
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood, public or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, noise, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the site plan or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- (4) The SPGA may require the proponent to provide or pay for professional services to evaluate the proposal.
- (5) Fairhaven Conservation Commission. The applicant must file a Notice of Intent if within the wetland resource areas or if within 100 feet buffer zone.

§ 198-29.7 –Medical Marijuana Facilities. [Added 2-12-2014 STM by Art. 8]

A. Purposes

- (1) To provide for the establishment of Medical Marijuana Facilities in appropriate places and under strict conditions in accordance with the provisions of M.G.L. c. 94C, as amended from time to time.
- (2) To minimize the adverse impacts of Medical Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said Facilities.
- (3) To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of Medical Marijuana Facilities.

B. Applicability

- (1) The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use is prohibited unless permitted as a Medical Marijuana Facility under this Chapter.
- (2) No Medical Marijuana Facility shall be established except in compliance with the provisions of this Chapter.
- (3) Nothing in this Bylaw shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.
- (4) If any provision of this Chapter or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Chapter are severable.

- (5) Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) for all Medical Marijuana Facilities.

C. Eligible Locations for Medical Marijuana Facilities

- (1) Medical Marijuana Facilities may be allowed by Special Permit from the Planning Board only in the Medical Marijuana Overlay District provided the facility meets the requirements of this Chapter.
- (2) Medical Marijuana Overlay District shall be comprised of the following Map and Lot numbers: Map 24: Lots 16, 16A, 18; Map 26: Lots 62, 62A, 63, 71, 71A, 72; Map 30A: Lots 86A, 86C, 86D, 86H; Map 36: Lots 13, 14, 14A, 14B, 14C, 14D, 14E, 14F, 14K, 14N, 15, 15A, 15B, 15C, 15D, 15F, 15G, 15J. A map of the overlay district is also on file at the Town Clerk's Office and the Planning Board's Office.

D. General Requirements and Conditions for all Medical Marijuana Facilities

- (1) All Medical Marijuana Facilities shall be contained within a building or structure.
- (2) A Medical Marijuana Facility shall comply with Department of Public Health Regulations (currently 105 CMR 725)
- (3) A Medical Marijuana Facility shall not be located in buildings that contain any medical doctor's offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
- (4) The hours of operation of Medical Marijuana Facilities shall be set by the Special Permit Granting Authority, but in no event shall said Facilities be open and/or operating between the hours of 8:00 PM and 8:00 AM.
- (5) No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a Medical Marijuana Facility.
- (6) No Medical Marijuana Facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.
- (7) Signage for the Medical Marijuana Facility shall include the following language: "Registration card issued by the MA Department of Public Health required." The required text shall be a minimum of two inches in height.
- (8) Medical Marijuana Facilities shall provide the Police Department, Building Commissioner, Board of Health and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and keyholders to whom one can provide notice if there are operating problems associated with the establishment.

E. Special Permit Requirements

- (1) A Medical Marijuana Facility shall only be allowed by special permit from the Fairhaven Planning Board in accordance with M.G.L. c. 40A, §9, subject to the following statements, regulations, requirements, conditions and limitations.
- (2) A special permit for a Medical Marijuana Facility shall be limited to one or more of the following uses that shall be prescribed by the Special Permit Granting Authority:
 - (a) cultivation of Marijuana for Medical Use;
 - (b) processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
 - (c) retail sale or distribution of Marijuana for Medical Use to Qualifying Patients;

- (3) In addition to the application requirements set forth above, a special permit application for a Medical Marijuana Facility shall include the following:
 - (a) the name and address of each owner of the facility;
 - (b) copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the Facility;
 - (c) evidence of the Applicant's right to use the site for the Facility, such as a deed, or lease;
 - (d) if the Applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
 - (e) Proposed security measures for the Medical Marijuana Facility in compliance with the Department of Public Health Regulations (currently 105 CMR 725), including lighting, fencing, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft.

F. **Mandatory Findings.** The Special Permit Authority shall not issue a special permit for a Medical Marijuana Facility unless it finds that:

- (1) the Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, §11;
- (2) the Facility demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations; and
- (3) the applicant has satisfied all of the conditions and requirements of this Chapter;

G. **Annual Reporting.** Each Medical Marijuana Facility permitted under this Bylaw shall as a condition of its special permit file an annual report to and appear before the Special Permit Granting Authority and the Town Clerk no later than January 31st, providing a copy of all current applicable State Licenses for the Facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit and State Regulations. If there is a notice of deficiencies or violations said notice shall be included with the Annual Report.

H. A special permit granted under this Chapter shall have a term limited to the duration of the applicant's ownership and/or lease of the premises as a Medical Marijuana Facility. A special permit may be transferred to a new owner only with the approval of the Special Permit Granting Authority in the form of an amendment to the special permit with all information required in this Chapter.

J. **Abandonment or Discontinuance of Use**

- (1) A Medical Marijuana Facility shall be required to remove all materials, plants, equipment and other paraphernalia:
 - (a) prior to surrendering its state issued licenses or permits; or
 - (b) within six months of ceasing operations; whichever comes first.

§ 198-30 Filling. [Added 3-16-1973 ATM by Art. 74]

Not more than 200 cubic yards of fill from off the premises shall be placed on any parcel without written authorization from the Building Commissioner, which shall be granted only upon demonstration that the

requirements of § 198-28 are not being violated and that reasonable care is being taken to avoid harmful diversion of water onto adjoining properties.

§ 198-31 Earth removal regulations. [Added 3-16-1974 ATM by Art. 90]

A. Applicability [Amended 5-6-1989 by Art. 6]

- (1) The removal from a subdivision of more than 50 cubic yards of sand, gravel, rock, topsoil, sod, loam, peat, humus, clay or similar material within any 12 month period shall be allowed only on a special permit from the Zoning Board of Appeals in accordance with § 198-8.
- (2) Loam shall not be removed from any lot area of a subdivision or any other area of a subdivision, that is not outlined on the plan as a roadway until specific building permits are issued for the lots involved. The soil removal shall be under the supervision of the Building Commissioner.

B. Permit from the Zoning Board of Appeals. Written application for a special permit must be made to the Zoning Board of Appeals for a new removal operation, or for the extension of existing ones to parcels other than those so used as of July 1, 1974. Special Permits shall expire two years from the date of issuance, unless an extension for another two years is granted by the Zoning Board of Appeals, following a public hearing. The following shall be conditions for such issuance:

- (1) The application shall be accompanied by a plan describing the premises and the proposed operation. If involving more than two acres or 2,000 cubic yards the plan shall be prepared by a registered land surveyor and shall show property lines; names and addresses of all abutters, including those across any street or way; existing grades in the area from which the material is to be removed and in surrounding areas; grades below which no excavation shall take place; and the proposed cover vegetation and trees.
- (2) A performance bond in the amount determined by the Zoning Board of Appeals shall be posted in the name of the town assuring satisfactory performance in the fulfillment of the requirements of this chapter and such other conditions to the issuance of its permit as the Board may impose.
- (3) Before granting a permit, the Zoning Board of Appeals shall give due consideration to the location of proposed earth removal, to the general character of the neighborhood surrounding such location and to the general safety of the public ways in the vicinity.

C. Operation standards.

- (1) No excavation shall be less than 200 feet from an existing public way unless specifically permitted by the Zoning Board of Appeals, and no excavation shall be less than 50 feet from any other perimeter lot line. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes, and surge piles and overburden piles shall be located for similar purposes.
- (2) All trucking routes and methods will be subject to approval by the Chief of Police.
- (3) All roads leading from the earth removal area to public ways shall be treated with oil, stone or other suitable material to reduce dust and mud for a distance of 200 feet from said public way. Roads leading from earth removal areas to public ways shall be constructed at an angle to the public way or constructed with a curve so as to help screen operation from public view.
- (4) No gravel shall be removed within six feet of spring high water table. This elevation shall be established from a test pit and the level related to a permanent monument of the property. This information shall show on the topographic plan.

D. Restoration. Forthwith following expiration or withdrawal of a permit or upon voluntary cessation of operations all land shall be graded leaving no slopes in excess of one foot vertical to two feet horizontal, providing for surface drainage. Boulders and stumps shall be buried or disposed of and the entire area shall be covered with not less than four inches of topsoil, planted with cover vegetation, which shall have been established prior to release of the bond.

- E Stockpiling. Topsoil stripped and stockpiled in preparation for construction or for earth removal shall be restored to its original location within 36 months of such stripping, unless a valid building permit or earth removal permit is in force.

§ 198-31.1 Stormwater management. [Added 5-1-1999 ATM by Art. 9]

This section shall apply to all new special permits subject to Section 198-29 for additions or renovations which increase the impervious area of property applied for after January 12, 1999, as provided for in MGL c. 40A § 6. Further this section shall also apply to such special permits granted prior to January 12, 1999, as provided for in MGL c. 40A § 6, if the building permits authorized under such special permit are not issued prior to November 1, 1999. No lot created after May 1, 1999, may be built upon without compliance with this section. The requirements of this section may be met for lots created after May 1, 1999, by approval of a subdivision plan that includes a stormwater management plan as described herein, by the Fairhaven Planning Board.

A. Standards.

- (1) Stormwater management for each development shall accomplish the following:

- (a) Flooding. The design and construction of each subdivision or special permit project shall be done in a manner such that post-development runoff will not exacerbate or create flooding conditions, or alter surface water flow paths, resulting in impacts to adjacent properties to the site during the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm events.
 - [1] No increase will be allowed in the peak rate of runoff off of the site for any of the above design storms.
 - [2] No increase will be allowed in the volume of runoff off of the site up to the ten-year, twenty-four-hour design storm.
- (b) Water quality. The first flush of stormwater runoff shall be treated prior to discharge off of the site. The treatment system(s) shall be designed to accommodate the first flush from the entire development site.
 - [1] Treatment shall be provided to achieve a minimum 80% removal of total suspended solids (TSS) from the first flush.
 - [2] Any development in Nasketucket River Basin Zoning Overlay District shall incorporate physical treatment processes to remove nitrogen at an efficiency rate of 30% or greater and remove phosphorous at a design rate of 50% or greater.
- (c) Reproduce, as nearly as possible, the hydrologic conditions in the ground and surface waters prior to the development.
- (d) Reduce stormwater pollution to the maximum extent possible using best management practices (BMPs).
- (e) Have a long-term maintenance plan.
- (f) The Planning Board is authorized to vary from these standards due to topographic features of the lot.

B Submittal requirements.

- (1) It shall be the responsibility of the applicant for all subdivisions greater than three lots and for all special permits for new construction, and for special permits for additions or renovations which increase the impervious area of a property requiring approval of the Planning Board to submit 10 copies of a stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site, and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. The SMP shall contain sufficient information for the Planning Board to evaluate the effectiveness and acceptability of those measures proposed by the applicant for controlling flooding and pollution from stormwater runoff. The SMP shall contain maps, charts, graphs, tables, photographs, narrative descriptions, calculations, plans showing construction details of all systems and structures, and citations to supporting references, as appropriate, to communicate the information as required by this section.

(2) The submittal of a stormwater management plan shall include an order of conditions or a determination of nonapplicability from the Fairhaven Conservation Commission issued under the Fairhaven Wetlands Bylaw.

(a) Site characteristic information to be included in the stormwater management plan (SMP).

[1] Pre-development conditions shall include:

- [a] The existing watersheds on the property, as well as upgradient areas contributing runoff to the property;
- [b] Location of all surface waters and wetlands on the site or on lots adjacent to the site;
- [c] The delineation of the one-hundred-year flood elevation as indicated on the Federal Emergency Management Act (FEMA) maps. If FEMA maps do not exist or if the waterbody or watercourse one-hundred-year flood elevation is not indicated on the map, the elevation shall be calculated utilizing an appropriate methodology such as NRCS TR-55 or TR-20 or HEC2. [Note: The floodplain location determined by the FEMA maps are approximate. When a specific elevation is given, the location of the floodplain shall correspond to that elevation.];
- [d] The principal vegetation types sufficient to determine an appropriate curve number;
- [e] The topography described at one-foot intervals; areas of steep slopes over 15% shall be highlighted;
- [f] The soil types on the site and the hydrological soil groups based the most current Natural Resource Conservation Service soils map of the site (available at the NRCS office in Wareham);
- [g] The location of any public or private water supplies within 150 feet of the property as well as on the property;
- [h] Soil logs signed by a DEP Certified Soil Evaluator for each proposed stormwater control system site (Documentation should be for a minimum of four feet below the bottom of the stormwater system and be submitted for both flood control stormwater systems and pollution reduction stormwater systems).
- [i] Maximum groundwater levels as observed in the soil at the proposed stormwater control system locations;
- [j] The flow path(s), design points for each watershed; and
- [k] Areas of ponding or swamping.

[2] Postdevelopment conditions shall include:

- [a] Changes in topography at one-foot intervals;
- [b] Areas where vegetation will be cleared or otherwise altered (For residential development assume 90% of all area excepting buildings to be managed turf.);
- [c] The proposed watersheds on the property, as well as upgradient areas contributing runoff to the property;
- [d] The proposed development layout including: locations of roadways, common parking areas, and undisturbed lands; and locations of drainage systems and stormwater treatment facilities;
- [e] Areas to be utilized in overland flow, i.e. grass swales and filter strips, showing: proposed vegetation; the soil susceptibility to erosion (using the NRCS classification);
- [f] The flow path(s) for two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event; and
- [g] Design points for each watershed.

(b) Water quantity/duration/quality information to be submitted in the SMP.

- [1] Predevelopment conditions in narrative form or calculations shall include: peak discharge rate, based on the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event using NRCS TR-55 or TR-20; and volume of the surface runoff for ten-year twenty-four-hour storm event using NRCS TR-55 or TR-20.
 - [2] Post development conditions in narrative form or calculations shall include: peak discharge rate, based on the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event using NRCS TR-55 or TR-20; volume of the surface runoff for the ten-year twenty-four-hour storm event using NRCS TR-55 or TR-20; design point(s) for each watershed; detention/retention time, discharge rate, and approximate time of concentration through the BMP for the water quality storm; a description of and calculations for the proposed outlet structure(s); both the principle outlet and emergency spillway; and a discussion regarding whether the proposed stormwater system meet or exceed the established performance standards as well as an evaluation of the pollutant removal efficiency of each proposed treatment facility or group of facilities:
- C. Design standards. The design, construction, and maintenance of the stormwater system, and the submittal of information to evaluate the system, shall be consistent with the standards and specifications set out below.
- (1) Performance standards and design specifications.
 - (a) Control of stormwater runoff shall meet the design criteria for both flood (volume and peak discharge) control and nonpoint source pollution reduction as indicated in Subsection A above. All assumptions, methodologies, and procedures used to design stormwater systems shall accompany the design.
 - (b) Stormwater design methodology considerations for stormwater management.
 - [1] Runoff calculations for flood control shall be provided utilizing the rational formula, the NRCS TR-20 or TR-55, as appropriate for the site. The appropriate methodology shall be determined from the restrictions on each method described in Basic Hydrological Calculations for Conservation Commissioners Runoff, Land Subject to Flooding, and Flow in Pipes and Channels, (1987). The Rational Method cannot be used to determine volume.
 - [2] The appropriate pre- and post-development worksheets as shown in Basic Hydrological Calculations for Conservation Commissioners Runoff, Land Subject to Flooding, and Flow in Pipes and Channels, (1987), shall be submitted with the subdivision plan or special permit application.
 - [3] The flow length for pre-development sheet flow to determine the time of concentration (Tc) or travel time (Tt) shall not exceed 50 feet.
 - [4] Design points.
 - [a] The design points shall be at the:
 - [i] Edge of wetlands;
 - [ii] Property line; or
 - [iii] Existing storm drain system.
 - [b] For each pre-development design point there shall be a corresponding postdevelopment design point.
 - (2) General standards and specifications. The design, construction, and maintenance of stormwater systems shall be consistent with the following:
 - (a) Discharging runoff without treatment directly into rivers, streams, watercourses, or wetlands is prohibited.
 - (b) Natural watercourses shall not be dredged, cleared of vegetation, deepened, widened, straightened, stabilized, or otherwise altered.
 - (c) Land outside the parcel subject to development review shall not be used in the stormwater management plan (i.e., the location of the detention pond) unless a recordable easement has been granted for such use and a copy of the easement has been submitted to the Planning Board as part of the SMP.

- (d) The site shall be graded so that surface water shall be directed into the stormwater management system.
- (e) Intermittent watercourses such as swales shall be vegetated.
- (f) Prior to discharging any stormwater runoff into a stormwater system, the following conditions must also be met:
 - [1] The system shall be installed according to applicable standards and specifications of this section;
 - [2] All components of the system shall be stabilized; and
 - [3] All upland areas contributing stormwater runoff to the system shall be stabilized (nonerosive).
- (g) All basins/ponds designed for stormwater runoff control shall:
 - [1] Be designed in accordance with current NRCS standards and specifications unless otherwise indicated in Subsection C(4), Specific standards and specifications below;
 - [2] Have a two-stage design when pollution reduction and flood control are incorporated into one stormwater management system. The upper stage shall provide enough storage to control the post development peak discharge rates for the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm events to the pre-development levels, the lower stage shall provide enough storage to meet the pollution removal efficiencies as described Subsection C(4), Specific standards and specifications below;
 - [3] Have energy dissipaters at the outlets of all inflow and outflow pipes;
 - [4] Have outflow pipes designed to minimize clogging (i.e. through the use of trash racks);
 - [5] Have an emergency spillway to allow for the passage of water without damage to the water quality structure for storms greater than their largest design capacity;
 - [6] Have side slopes at a no steeper than a four horizontal to one vertical grade unless otherwise called for by the Fairhaven Conservation Commission to minimize a stormwater system's impact on wetland or bordering wetland resource areas [Side slopes must be stabilized and planted with vegetation to prevent erosion. A ten-foot wide bench at 0% slope shall surround any permanent pool.]; and
 - [7] Except for the sediment forebay, shall have no permanent pool depth in excess of 2½ feet.
- (h) All water quality stormwater systems shall be designed in accordance with the runoff volume indicated in Subsection A above. Runoff greater than this design criteria shall be controlled using the peak discharge/volume control criteria in Subsection A above.
- (j) Infiltration Basins using redundant sediment removal techniques (i.e. sediment forebay, grassed swale and filter fabric) may be designed and utilized to act as stormwater systems for both water quality and volume control, provided all other standards and specifications are met.
- (k) Volume control structures shall not be placed upgradient of any pollution stormwater system.
 - [1] Volume control shall be by infiltration;
 - [2] Infiltration areas designed and constructed to control the volume of runoff shall be located in areas with a NRCS hydrological soil group of A, B, or C;
 - [3] Infiltration for volume control shall be designed and constructed with the bottom of the infiltration area at or above the maximum high ground water elevation; and
 - [4] The calculations to determine the size of the volume control structure shall assume the surface of the structure to be impervious;
- (k) Forebays.
 - [1] All water quality basin/ponds shall have a sediment forebay. These forebays shall:
 - [a] Consist of a separate cell;

- [b] Be sized to contain 0.25 inches per impervious acre of contributing drainage;
 - [c] Be less than twelve-foot distance from the bank to the center of the forebay;
 - [d] Be four feet deep; and
 - [e] Have nonerosive exit velocities for the two-year design storm.
- [2] If the water quality basin is to be deeded to the town, the forebay shall be constructed to meet Board of Public Works requirements.
- [3] The forebays may have a headwall depending on the Board of Public Works recommendations.
- (l) Where stormwater basins are designed with a permanent pool depth, a post and rail fence with pressure treated or locust posts, with a backing of plastic coated wire fencing shall be used when the basin is in close proximity to residential units, and shall further inhibit access by a planting of thick shrubs such as rugosa rose (*Rosa rugosa*) surrounding the basin.
- (m) All water quality stormwater systems shall be designed to accept a return storm of 0.5 inches off the impervious area 11 days after the water quality storm.
- (n) Conveyance of stormwater:
- [1] The entire drainage system of storm drainage lines shall be capable of conveying the twenty-five-year storm, including catch basins, manholes and culverts.
 - [2] Water velocities in pipes and gutters shall be between two and 10 feet per second. Water velocities in non-paved areas (e.g. swales, ditches) shall not be more than published values for maximum permissible velocities based on surface cover type and soil types.
 - [3] Water velocities in catch basins shall not exceed 0.5 feet per second. Catch basins shall be designed (inlet capacity and spacing) such that the flow in the gutter during a twenty-five-year design storm is not more than three feet in width as calculated utilizing methodologies described in "Drainage of Highway Pavements, Hydraulic Engineering Circular No. 12" as published by the United States Department of Transportation, Federal Highway Administration. In any event, water shall not be allowed to run for more than 300 feet on paved surfaces.
 - [4] Catch basins shall be constructed of at least six inch precast reinforced concrete. Catch basin grates shall be in the gutter to facilitate snow removal.
 - [5] The standard depth of catch basins shall be a minimum 2.5 feet below the invert of the outlet. Manholes shall be constructed at each junction point of storm drain lines. Catch basins shall not serve as manholes.
 - [6] Storm drains shall be of at least 12 inches diameter inside, with at least 24 inches of cover, and shall be of reinforced concrete Class IV pipe if having less than 48 inches of cover within a street right of way. Aluminum pipe of at least comparable strength may be substituted in appropriate locations if approved by the Fairhaven Board of Public Works (BPW). All drain pipes except subdrains shall be reinforced concrete or ADS. Waivers from these standards shall be allowed upon recommendation of the Board of Public Works.
 - [7] Easements and provisions for vehicular access shall be provided along the entire length of storm drain lines.
- (o) Cross culverts.
- [1] Culverts and stormwater outlet structures shall have reinforced concrete headwalls designed in accordance with good practice.
 - [2] At cross culverts (where a roadway bisects a stream or manmade watercourse), drainage easements shall be established upgradient of the culvert and delineated on the definitive plan based on the projected one hundred-year headwater elevation.

- (3) Selecting a water quality BMP. Three designs for water quality BMPs, micropool extended detention basins, wet extended detention ponds, and infiltration basins are listed in Subsection C(4), Specific standards and specifications below. One of these BMPs may be appropriate for the site:
- (a) Micropool extended detention basins (EDB) with a forty-eight hour detention time will not adequately remove bacteria. No EDB proposed within 1,000 feet of a sensitive receptor for bacteria shall be approved. In Fairhaven, these areas are:
 - [1] All coastal waters excluding inner New Bedford Harbor.
 - [2] Zone 2 of public water supply wells at Mill Pond pumping station.
 - (b) Due to the high failure rate of conventional infiltration practices (including porous pavement), they are not an accepted method of stormwater management unless redundant pretreatment for sediment removal is utilized. No underground infiltration practices, such as leaching catch basins, shall be allowed.
 - (c) Oil/grit separators are not needed for the type of pollutants associated with subdivisions. They shall not be approved for residential subdivisions. Oil/grit separators may be required for special permits granted by the Planning Board.
 - (d) Other water quality BMPs may be approved, provided the pollutant removal rate meets or exceeds the requirements of Section 1 above.
- (4) Specific standards and specifications for water quality BMP's.
- (a) Micropool extended detention basin (EDB). In order to provide an estimated removal efficiency of 80% for suspended solids, 30% total phosphorus, and 15% total nitrogen, EDBs shall be designed in accordance with Subsection C(1), Performance standards and design specifications, plus the specific criteria stated below. The design of EDBs shall include:
 - [1] Minimum contributing watershed area of 10 acres;
 - [2] A minimum of forty-eight-hour detention time for the water quality storm;
 - [3] A sediment forebay at the inlet;
 - [4] A micropool located near the outlet structure to reduce resuspension of sediments;
 - [5] A minimum of 3:1 length to width ratio with the inlet structure placed a maximum distance from the outlet structure; and
 - [6] The establishment of, and the methodology with which to maintain, wetland vegetation on the bottom of the basin.
 - (b) Wet extended detention ponds/basins (WP). The minimum design criteria below plus Subsection C(1), Performance standards and design specifications, will provide an estimated removal efficiency of 80% for suspended solids, 65% total phosphorus, and 40% total nitrogen. The design of WPs shall include:
 - [1] A minimum contributing watershed of 25 acres, or measures to maintain a permanent pool of water;
 - [2] A permanent pool volume within the permanent pool equal to 40% of the water quality (first flush) volume;
 - [3] A sediment forebay volume of 13 % of the water quality (first flush) volume;
 - [4] An extended detention storage volume of 47% of the water quality (first flush) volume;
 - [5] A detention time for the water quality (first flush) volume of 48 hours;
 - [6] A maximum depth of 2.5 feet;
 - [7] A marsh component to be established along the pond edges;
 - [8] A minimum of 3:1 length to width ratio with the inlet structure placed at a maximum distance from the outlet structure.

- (c) Infiltration basin (IB). A design based on both the minimum design criteria for IBs listed below and the design criteria in Subsection C(1), Performance standards and design specifications, will provide an estimated removal efficiency of 80% for suspended solids and 90% for bacteria. The design of IBs shall include:
- [1] Three redundant pretreatment mechanisms (such as a sediment forebay or detention pond) adequate to remove and store 80% of the TSS.
 - [2] Adequate volume to infiltrate the first flush of runoff.
 - [3] Compliance with the specifications found in the State of Rhode Island Stormwater Design & Installation Manual, Sept. 1993, when not specified elsewhere in this Section;
 - [a] Section 6.3(a), (b)(1)(2)(4), Site Suitability, utilizing the Bristol County Soil Survey, or more recent unpublished updates available at the NRCS office in Wareham,
 - [b] Section 6.4 Infiltration Rates.
 - [c] Section 6.6 (a through i) Design Requirements.
 - [d] Section 6.7 (a)(1-11) Separation Distances.

D. Inspection and maintenance.

- (1) After the stormwater management system has been constructed and before the performance guarantee for the development has been released, the applicant shall submit an "as-built" plan detailing the actual stormwater management system as installed. The consulting engineer for the town shall inspect the system to confirm its as-built features. This engineer shall also evaluate the effectiveness of the system in an actual storm. If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the definitive plan, it shall be corrected before the performance guarantee is released. Examples of inadequacy shall be considered but not limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins. The cost of having the town's consulting engineer review and evaluate the as-built plans and the stormwater management system shall be borne by the developer.
- (2) All stormwater management systems shall be maintained in accordance with the following regulations.
 - (a) The applicant shall submit ten copies of a maintenance plan for stormwater management. Maintenance plans for each basin including: a maintenance schedule, an outline of responsible parties and owners, all pertinent agreements to be executed to insure proper maintenance and an estimate of future yearly maintenance costs.
 - (b) To facilitate maintenance each water quality basin/pond shall be constructed with:
 - [1] Direct maintenance access by heavy equipment to the forebay;
 - [2] A hardened bottom in the forebay made of stone or concrete to make sediment removal easier; and
 - [3] A fixed sediment depth marker installed in the forebay to measure sediment deposition over time.
 - (c) Routine maintenance and inspections shall conform to the following:
 - [1] Stormwater management systems shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility;
 - [2] Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken by the property owner to correct the problem within 14 days of written notice by the Planning Board;
 - [3] All actions required to maintain the stormwater management system for the purpose it was designed and constructed must be performed within 30 days following the maintenance inspection;
 - [4] Accumulated sediment shall be excavated as needed or at the request of Planning Board; and
 - [5] Any vegetation uprooted by sediment removal shall be replaced.
 - (d) To ensure future maintenance and avoid undue costs to the town:
 - [1] Each basin design shall have a design life of 20 years, as documented in a peer review publication, third party testing, or other independent means.
 - [2] The applicant shall provide cost estimates per year for future maintenance of the stormwater conveyance and detention/infiltration system. This cost estimate shall include semiannual sediment removal from all catch basins and street sweeping, and cleaning of sediment forebays and detention ponds when necessary. The Board of Public Works shall be required to approve all cost estimates prior to Planning Board approval.
 - [3] The applicant shall provide to the Planning Board assurances that there is in place a mechanism such as a bond, letter of credit, escrow account or similar security to ensure that the maintenance, inspection and repair of the stormwater system for a period of at least 20 years.

§ 198-32 Commercial camping. [Added 1-22-1977 STM by Art. 6]

- A. Commercial camping is allowed only on Special Permit from the Zoning Board of Appeals as provided in the Use Regulation Schedule, § 198-16, and following approval by the Board of Health, and shall conform to the following minimum requirements:
 - (1) Parcel minimum area shall be 10 acres, but not less than 2,500 square feet per rental plot.
 - (2) Campers shall not be placed within 200 feet of a street line or within 80 feet of any other lot line unless dense natural vegetation or topography provide effective screening, in which case a reduction to as little as half the above may be allowed.
- B. Accessory services. Including retailing and laundry services, may be authorized by special permit, provided that such services do not together total more than 50 square feet per campsite, and are located and oriented to principally serve occupants of the camping area.

§ 198-32.1 Accessory dwelling units [Added 5-2-1998 STM by Art. 28]

Purpose. For the purpose of promoting the development of affordable rental housing in dwelling conversions may be allowed by special permit of the Planning Board subject to the standards and conditions listed below:

- A. Dwelling conversions shall not be allowed unless the lot meets the minimum lot size in § 198-18 or 22,500 square feet, whichever is greater.
- B. Units created through dwelling conversions shall not be less than 1,000 square feet not including areas of the basement, attic or garage.
- C. The applicant shall illustrate to the Planning Board that the requirements of the state Building Code are met.
- D. Site requirements.
 - (1) No expansion to the existing structure.
 - (2) Parking shall be as provided for in § 198-27B(1).
 - (3) No portion of the basement, attic or garage may be used for dwelling purposes.
 - (4) Use of an existing on-site septic system to service proposed units shall be permitted only upon approval of the Board of Health.

§ 198-32.2 – Dock and Piers [Added 5-7-2005 ATM by Art. 20, amended 5-6-2006 ATM by Art. 9]

- A. **Purpose:** The purpose of this section is to protect the general public interest in, and access to, the public tidelands of the Commonwealth by creating a review process and standards for the construction of docks and piers.
- B. **Applicability:** Any application to construction a dock and/or pier shall comply with this section. The Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA) in the Rural Residence Districts (RR), Single Residence Districts (RA), General Residence (RB) and Agricultural (AG) Districts. The Planning Board shall be the SPGA in the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU) and Industrial Districts (I).
- C. **Requirements:**
 - (1) It shall be demonstrated that the placement of a dock and/or pier will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
 - (2) All proposed dock and/or piers shall be designed and stamped by a Registered Engineer.
 - (3) Dock and/or pier length:
 - (a) The maximum length of any dock and/or pier including floats outside of the U.S. Army Corps of Engineers hurricane barrier shall be seventy-five (75) feet as measured from mean high water (MHW) mark seaward.

- (b) The maximum length of any dock and/or pier including floats inside of the U.S. Army Corps of Engineers hurricane barrier shall be the minimum length necessary to have a minimum of two and one half feet of water at Mean Low Water (MLW) at the end of the dock and/or pier; however, the length shall not exceed one-hundred fifty (150) feet, which ever is less.
 - (4) No dock, pier, stairs or ramp shall exceed six (6) feet in width, measured outside the support structure (piling, posts or railing).
 - (5) Set back for any dock and/or pier, and associated floats shall be twenty-five (25) feet to side property lines as measured along the shoreline.
 - (6) Access - Lateral pedestrian passage shall be provided in the intertidal zone or along the shore for fishing and fowling purposes.
 - (7) Floating docks are permitted. The total area of any and all floats associated with a dock and/or pier shall not exceed three hundred (300) square feet.
 - (8) Two boats or vessels not over 30-feet in overall length shall be the maximum number permitted on any dock and/or pier.
 - (9) Depth of water - At MLW, there shall be minimum of two and one half feet of water or sufficient navigable water for the proposed vessel at the end of the dock, pier and/or float system.
 - (10) Shellfish on site of any proposed dock and/or pier shall be removed, replanted or replaced under supervision of the Shellfish Warden.
 - (11) Conservation Commission approvals shall be required for the construction of all docks and/or piers
 - (12) A Building Permit shall be required for the construction of a dock and/or pier.
 - (13) All necessary Federal and State permits shall be obtained prior to issuance of a building permit.
- D. Waiver of Compliance: The SPGA having jurisdiction may, in special and appropriate cases, grant a waiver to the above requirements when in their judgment such action is in the public interest and not inconsistent with the purpose and intent of the zoning bylaw.