

## **Chapter 125**

### **ZONING**

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Pelham 10-24-1989, Art. 7. Amendments noted when applicable.<sup>1</sup>]

#### GENERAL REFERENCES

Driveways — See Ch. 23.

Earth removal — See Ch. 29.

House numbers — See Ch. 45.

Wetlands protection — See Ch. 119.

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## ARTICLE I

### Authority and Purpose

#### § 125-1. Authority.

The Town of Pelham Zoning Bylaw is hereby adopted pursuant to the Zoning Act, Chapter 40A, of the Massachusetts General Laws. The construction, alteration, location, use and extent of use of lands within the Town of Pelham are hereby regulated as provided in this chapter.

#### § 125-2. Purpose.

The purpose of this chapter is to provide for the Town of Pelham all the protection authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40a, the Zoning Act, and any amendments thereof. It is further the purpose of this chapter to encourage and foster growth and development in the community which would promote the health, safety, convenience, morals and general welfare of its inhabitants as well as to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; provide adequate light and air; prevent overcrowding of the land; avoid undue concentration of population; encourage housing for persons of all income levels; facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of any master or comprehensive plans adopted by the Town or regional planning agency; and preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

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<sup>1</sup> Editor's Note: Article 12 from the 5-11-2019 ATM amended this chapter to make any codification changes necessary to incorporate amendments to this chapter resulting from action taken at the Town Meeting held 5-11-2019, including, but not limited to, adding entries to the scheme, renumbering pages, as needed, rearranging the order of rows in § 125-5, Table 1, Schedule of Use Regulations, and rearranging the order of items in § 125-34. Definitions.

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ARTICLE II

**Zoning Districts**

**§ 125-3. Types of districts. [Amended 10-25-2006 STM, Art. 11; 5-12-2018 ATM, Art. 44]**

A. For the purposes of this chapter of the Town of Pelham is hereby divided into the following types of use districts:

R	Residential
LB	Limited Business
WSP	Water Supply Protection Overlay

**Village Center Districts**

VC-MU	Village Center Mixed-Use
VC-N	Village Center Neighborhood
VC-RE	Village Center Rural Edge

B. Purpose of districts:

(1) Residential District (R). The purpose of this district is to promote agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses by encouraging such activities and siting development in a manner that preserves large tracts of contiguous open space and protects the Town's watersheds, natural resources, and wildlife habitat (including BioMap Core Habitat and Priority and Estimated Habitat of Rare Wildlife designated by the Commonwealth of Massachusetts).

(2) Limited Business District (LB). The purpose of this district is to allow major home occupation in locations that are compatible with that use while minimizing negative impacts of the use on adjacent properties.

(3) Water Supply Protection Overlay District (WSPO). The purpose of the Water Supply Protection Overlay District is to promote the health, safety and welfare of the community by protecting, preserving and maintaining the surface and groundwater resources of the Town and the region from any use of land or buildings which may pollute or otherwise adversely affect the quality and quantity of its water resources.

(4) Village Center Mixed-Use District (VC-MU). The purpose of the Village Center Mixed-Use District is foster the development of a village center that features a mix of civic, commercial, institutional, residential, and open space uses within close proximity to each other, while ensuring that development reflects patterns of development characteristic of traditional New England village centers, including the design of buildings, sites, streets, and public spaces.

(5) Village Center Neighborhood District (VC-N). The purpose of the Village Center Neighborhood District is to support and enhance the residential neighborhood adjacent to the Village Center by providing opportunities for diverse and innovative housing options, providing opportunities for home occupations and small-scale commercial and institutional uses, and improving the walkability of the district, while ensuring that development reflects patterns of development characteristic of residential neighborhoods surrounding the centers of traditional New England villages, including the design of building, sites, streets, open spaces, and pedestrian accommodations. A further purpose of this district is to support the economic viability of the Village Center and allow the gradual expansion of the Village Center.

(6) Village Center Rural Edge District (VC-RE). The purpose of this district to is preserve rural character and protect watersheds, recreational land, natural resources, and wildlife habitat (including BioMap Core Habitat designated by the Commonwealth of Massachusetts), while fostering innovative neighborhood design that provides diverse housing options, supports low-impact nonresidential uses, and provides access to high-quality open spaces.

**§ 125-4. Zoning Map; boundary measurement.**

A. The locations and boundaries of districts shall be within and bounded by the boundary lines for the Town of Pelham, as shown on a map entitled "Zoning Map, Town of Pelham, Hampshire County Massachusetts" dated January 15, 1969, as amended from time to time by a vote of the Town Meeting, and on file in the Office of the Town Clerk. The Zoning maps are hereby deemed to be a part of this chapter.

B. Boundary measurement.

(1) For ease of drafting the Zoning Map, where boundaries are indicated in the right-of-way of streets, such boundaries shall be the edge of the right-of-way. Where boundaries are indicated in watercourses, such boundaries shall be the center line.

(2) Where boundaries approximately follow property lines and are not more than 25 feet therefrom, the property line shall be the district boundary.

(3) Where boundaries are established at a distance parallel to a street or road and fixed by dimensions on the Zoning Map, such a distance shall be measured from the edge of the right-of-way.

(4) Where distances are not specified on the Zoning Map nor otherwise determined from the above provisions, the scale of the Zoning Map shall be used to determine the location of the district boundary.

(5) Where the location of a boundary line is uncertain, the Building Inspector shall determine its position in accordance with the distance in feet from other lines as given or as measured from the scale of the map.

ARTICLE III

**Principal Use Regulations**

**§ 125-5. Schedule of use regulations.**

A. Except as provided elsewhere in this chapter, no building or structure shall be erected or altered, and no building, structure or land shall be used for any purpose other than as provided for in this section. The restrictions and controls intended to regulate development in each district are set forth in Table 1, Schedule of Use Regulations. The following notations apply to the Schedule of Use Regulations: [Amended 5-9-1998 ATM, Art. 28; 10-25-2006 STM, Art. 11; 5-5-2012 ATM, Art. 37 5-12-2018 ATM, Arts. 44, 45; 10-15-2018 STM, Art. 1; 5-11-2019 ATM by Arts. 8, 9, 10, 11; 10-24-2020 STM by Art. 7]

Y Yes – use permitted

N No – use prohibited

SPA/PB Use permitted by-right, subject to site plan approval from Planning

Board

- SPA/ZBA Use permitted by-right, subject to site plan approval from Zoning Board of Appeals
- SP/PB Use allowed by special permit from the Planning Board
- SP/ZBA Use allowed by special permit from Zoning Board of Appeals
- SP/SPA/PB Use allowed by special permit from Planning Board with site plan approval
- SP/SPA/ZBA Use allowed by special permit from Zoning Board of Appeals with site plan approval

Table 1 Schedule of Use Regulations						
Land Use Classification	Zoning District					Standards and Conditions
	Residential	Limited Business	Village Center Mixed-Use	Village Center Neighborhood	Village Center Rural Edge	
<b>General Uses</b>						
Agriculture (crops only), horticulture, viticulture (including the display and sale of natural products raised)	Y	Y	Y	Y	Y	
Livestock, dairy, poultry farm	Y	Y	Y	Y	Y	Parcels of more than 5 acres
Commercial boarding stable, riding academy (The Attorney General has ruled that this section applies to riding academies of 5 acres or less.)	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	See § 125-14
Commercial recreation, hunting, fishing	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	
Wireless communications tower	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	See § 125-18.1
Large-scale ground-mounted solar electric installations	SP/PB	N	N	N	N	In Solar Districts only; see § 125-18.2
Small-scale ground-mounted solar electric installations	SP/ZBA	N	N	N	SP/PB	See § 125-18.2
Small-scale ground-mounted solar electric installations which are accessory to an existing residential or nonresidential use which generate electricity principally (no less than 50% of generated power) used by such residential or nonresidential use	SPA/ZBA	SPA/ZBA	SPA/ZBA	SPA/ZBA	SPA/ZBA	See § 125-18.2
Building-mounted solar electric installations	Y	Y	Y	Y	Y	See § 125-18.2
Common access driveway	SP/SPA/PB	SP/SPA/PB	SPA/PB	SPA/PB	SPA/PB	See § 125-13
<b>Residential Uses</b>						
Single-family detached dwelling	Y	Y	Y	Y	Y	
Attached accessory apartment	SP/SPA/ZBA	SP/SPA/ZBA	Y	Y	Y	See § 125-9.1
Detached accessory apartment	N	N	SPA/PB	SPA/PB	SPA/PB	See § 125-9.1
Bed-and-breakfast	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/PB	SP/PB	See definitions, § 125-34
Two-family dwelling	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SPA/PB	SPA/PB	See § 125-9.2
Multifamily dwelling	N	N	SP/SPA/PB	SP/SPA/PB	SP/SPA/PB	See § 125-9.2
More than one dwelling on a parcel	N	N	SP/SPA/PB	SP/SPA/PB	SP/SPA/PB	See § 125-9.3
Elderly congregate housing	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	See § 125-9.4
Open space design	N	N	SPA/PB	SPA/PB	SPA/PB	See § 125-18.3
Community residence	Y	Y	SPA/PB	SPA/PB	SPA/PB	
Home occupation	SP/SPA/ZBA	SP/SPA/ZBA	Y	Y	Y	See § 125-12

**Table 1 Schedule of Use Regulations**

Land Use Classification	Zoning District					
	Residential	Limited Business	Village Center Mixed-Use	Village Center Neighborhood	Village Center Rural Edge	Standards and Conditions
Major home occupation	Prohibited	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	See § 125-12.1
<b>Governmental and Public Service Uses</b>						
Town of Pelham Municipal Building	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SPA/PB	SPA/PB	
<b>Institutional Uses</b>						
Public or nonprofit educational institution	Y	Y	Y	Y	Y	
Church, parish house or other place of worship	Y	Y	Y	Y	Y	
Private library, museum, craft center	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	
Municipal park, playground, recreational area or conservation area	Y	Y	Y	Y	Y	
Clubhouse, headquarters of fraternal organization	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	Not conducted as gainful business
Community center facility for the elderly	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	
Child-care facility	SPA/ZBA	SPA/ZBA	SPA/PB	SPA/PB	SPA/PB	Subject to limitations in MGL c. 40A, § 3
Family child-care home, large family child-care home	SPA/ZBA	SPA/ZBA	Y	Y	Y	
Other educational or child-care use not subject to the limitations on municipal regulation in MGL c. 40A, § 3	SP/SPA/ZBA	SP/SPA/ZBA	SPA/PB	SP/SPA/PB	SP/SPA/PB	
Cemetery	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	SP/SPA/ZBA	
<b>Commercial Uses</b>						
Convenience store	N	N	N	N	N	§ 125-18.6
Retail with building footprint less than 2,500 square feet	N	N	SPA/PB	SP/SPA/PB	N	
Retail with building footprint greater than 2,000 square feet	N	N	SP/SPA/PB	N	N	
Medical office with building footprint less than 2,500 square feet	N	N	SPA/PB	SP/SPA/PB	N	
Medical office with building footprint greater than 2,500 square feet	N	N	N	N	N	
Office with building footprint less than 2,500 square feet	N	N	SPA/PB	SP/SPA/PB	N	
Office with building footprint greater than 2,500 square feet	N	N	SP/SPA/PB	N	N	
Professional service with building footprint less than 2,500 square feet	N	N	SPA/PB	SP/SPA/PB	N	
Professional service with building footprint greater than 2,500 square feet	N	N	SP/SPA/PB	N	N	
Personal service with building footprint less than 2,500 square feet	N	N	SP/SPA/PB	SP/SPA/PB	N	
Personal service with building footprint greater than 2,500 square feet	N	N	SP/SPA/PB	N	N	
Restaurant with building footprint less than 2,500 square feet	N	N	SPA/PB	SP/SPA/PB	N	
Restaurant with building footprint greater than 2,500	N	N	SP/SPA/PB	N	N	

Table 1 Schedule of Use Regulations						
Land Use Classification	Zoning District					Standards and Conditions
	Residential	Limited Business	Village Center Mixed-Use	Village Center Neighborhood	Village Center Rural Edge	
square feet						
Bar	N	N	N	N	N	
Stand-alone entertainment	N	N	N	N	N	
Entertainment accessory to a commercial use	N	N	SP/SPA/PB	N	N	See § 125-18.5
Adult entertainment facility with building footprint less than 2,500 square feet	N	N	SP/SPA/PB	N	N	See § 125-18.4
Adult entertainment facility with building footprint greater than 2,500 square feet	N	N	N	N	N	
Hotels/motels	N	N	N	N	N	
Vehicle-oriented uses	N	N	N	N	N	See definitions, § 125-34
Drive-through facilities	N	N	N	N	N	

B. Uses permitted and uses allowed by special permit or by site plan approval shall be in conformity with all density and dimensional regulations and any other pertinent requirements of this chapter.

C. Prohibited uses.

(1) No use is permitted which would be detrimental or offensive or tend to reduce property values by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, excessive vibration, noise, objectionable effluent or electrical interference. No building or structure shall be constructed, and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district or set forth as permissible by special permit. Use variances are not permitted.

(2) Any use not specifically or generally listed herein or otherwise permitted in a district shall be deemed as prohibited. The following uses shall be prohibited in all districts: trailers, junkyards, auto graveyards and all open storage of junk.

#### § 125-6. Dimensional and density regulations.

A. All permitted uses and uses allowed by site plan approval and uses allowed by special permit shall be in conformity with the dimensional and density regulations set forth in the Table 2A and Table 2B, hereafter known collectively as the "Table of Dimensional and Density Regulations." Table 2A applies to uses in the Residential District and the Limited Business District. Table 2B applies to uses in the Village Center Mixed-Use District, the Village Center Neighborhood District, and the Village Center Rural Edge District. A "lot, building or buildable," is any lot that conforms to all state and local requirements (e.g., Zoning Bylaw, Wetlands Act/Bylaw,<sup>2</sup> Health Codes, Subdivision Control Law<sup>3</sup>) for the purposes of construction or development on said lot. **[Amended**

<sup>2</sup> Editor's Note: See MGL c. 131, § 40, and Ch. 119, Wetlands, of this Code.

<sup>3</sup> Editor's Note: See MGL c. 41, §§ 81K through 81GG.



5-11-1996 ATM, Art. 22; 5-9-1998 ATM, Art. 29; 5-5-2012 ATM, Art. 37; 5-12-2018 ATM, Art. 44]

**Table 2A Table of Dimensional and Density Regulations for Residential District and Limited Business District (See Definitions in § 125-34.)<sup>1</sup>**

	<b>Cemeteries, Town of Pelham Municipal Parks and Recreation Areas</b>	<b>All Other Governmental/ Public Service and Institutional Uses</b>	<b>All Other Uses<sup>2</sup></b>
Minimum building lot size (square feet)	None	88,000	88,000 <sup>3</sup>
Minimum frontage/building lot width (feet)	None	200	200
Front (feet)	50	50	50
Side (feet)	50	75	30
Rear (feet)	50	75	30
Maximum building height (feet)	18	35	35
Maximum building coverage	1%	10%	5%
Minimum open space	95%	80%	90%

**NOTES:**

<sup>1</sup> See definitions in § 125-34.

<sup>2</sup> For dimensional and density regulations particularly applicable to solar electric installations, see § 125-18.2.

<sup>3</sup> Bed-and-breakfast facilities containing up to two bed-and-breakfast units shall have at least the minimum lot size required in the district. Each additional bed-and-breakfast unit shall require an additional 5,000 square feet of lot area in the Residential and Limited Business Districts.

**Table 2B Table of Dimensional and Density Regulations for the Village Center Mixed-Use District, the Village Center Neighborhood District, and the Village Center Rural Edge District<sup>1,2</sup>**

	<b>VC-MU<sup>3</sup></b>	<b>VC-N<sup>3</sup></b>	<b>VC-RE<sup>3</sup></b>	<b>Standards and Conditions</b>
Minimum building lot size (square feet)	10,000	30,000 <sup>4</sup>	88,000	
Minimum frontage (feet)	80	125	125	
Front setback (feet)	Minimum: 10 Maximum: 30	Minimum: 30 <sup>5</sup> Maximum: N/A	Minimum: 30 <sup>5</sup> Maximum: N/A	
Minimum side setback (feet)	15	15	20	

**Table 2B Table of Dimensional and Density Regulations for the Village Center Mixed-Use District, the Village Center Neighborhood District, and the Village Center Rural Edge District<sup>1,2</sup>**

	VC-MU <sup>3</sup>	VC-N <sup>3</sup>	VC-RE <sup>3</sup>	Standards and Conditions
Minimum rear setback (feet)	15	15	20	
Maximum building height	35 <sup>6</sup>	35	35	
Maximum impervious surface coverage	80%	30%	10%	

**NOTES:**

<sup>1</sup> See definitions in § 125-34.

<sup>2</sup> For dimensional and density regulations particularly applicable to solar electric installations, see § 125-18.2. The dimensional and density regulations specified in § 125-18.2 supersede those in Table 2B.

<sup>3</sup> The Planning Board may allow deviation from the dimensions shown on this table for development under the provisions of § 125-18.3.

<sup>4</sup> The minimum lot size established by this zoning bylaw does not override other applicable regulations, including, but not limited to, Title 5 of the State Environmental Code, 310 Code of Massachusetts Regulations (CMR) 15.00, or local regulations of the Pelham Board of Health.

<sup>5</sup> The Planning Board may grant a special permit to reduce the required minimum front setback in the VC-N and VC-RE Districts when it finds that a smaller minimum front setback will not be less than the smallest front setback of a structures within 600 feet of the subject property along the same block face. The Planning Board may grant a special permit to reduce the required minimum front setback or increase the maximum front setback in the VC-MU district when it finds that, due to unique characteristics of the lot and use, a greater or lesser front setback will better fulfill the intent of bylaw and any relevant sections thereof.

<sup>6</sup> The Planning Board may grant a special permit to exceed the maximum building height for uses in the Village Center Mixed-Use District when the following conditions apply: 1) the building takes advantage of an existing slope to provide not more than one additional story that is below grade at the front of a building but above grade at the rear of a building; 2) the additional height shall not be visible from any street or public way. If an application for a special permit to exceed the maximum building height is related to another special permit application or site plan approval application, consideration of the special permit shall be incorporated into that application and reviewed by its permit granting authority.

(1) Lot layout. In addition to the minimum lot area, depth, width and frontage requirements,

lots shall be laid out in such a manner so that a square, with sides equal to the minimum frontage requirement for the zoning district in which it is located, can be placed within the lot with at least one point of the square lying on the front lot line with no portion of the square extending beyond the boundaries of the lot. This requirement does not apply to lots in the VC-MU District or to lots in the VC-N District or to lots permitted through the provisions of § 125-18.3, Open space design in the Village Center Districts.

(2) Antennas. Antennas shall not exceed a height of 10 feet above the peak of a roof or a maximum height of 40 feet from the ground without a special permit from the Zoning Board of Appeals. Furthermore, the height of any antenna shall not exceed the distance from the antenna to the closest property line.

(3) Satellite dishes used for television reception. Satellite dishes larger than 30 inches in diameter, must be mounted on the ground so that their overall height will not exceed 12 feet above existing grade. Such dishes must be of wire mesh construction and black or dark green in color. Such dishes must be totally screened from view at ground level from any adjacent lot or street. Satellite dishes 30 inches or smaller in diameter may be attached to existing structures and are not subject to the foregoing restrictions.

B. Frontage shall be measured along the public right-of-way line on which the lot abuts, except that on corner lots where the included angle is less than 135°, either way may be considered as the frontage, but not both together.

C. The lot or yard areas required for any new building or use may not include any part of a lot that is required by any other building or use to comply with any provisions of this chapter, nor may these areas include any property of which ownership has been transferred subsequent to the effective date of this chapter if such property was a part of the area required for compliance with the dimensional regulations applicable to the lot from which such transfer was made. No lot, whether it complies with the provisions of this chapter or not, may be divided so as not to conform with a provision of this chapter. No group of lots in common ownership may be separated or the ownership of one or more lot changed (other than the entire group when sold as a single parcel) so as not to be in conformity with a provision of this chapter.

D. All accessory structures and uses must conform to the same dimensional and density regulations as principal structures and uses, provided that in the aggregate with the principal structure(s) and use(s) they do not represent a more intensive use of land than would be allowed by the Table of Dimensional and Density Regulations.

E. In the case of all residential uses, no more than one principal structure may be built on any single lot, except as specified in § 125-9.3 (More than one dwelling on a parcel). In all other cases, more than one principal structure may occupy the same lot, provided that in the aggregate they do not represent a more intensive use of land than would be allowed if all uses were contained within a single structure. **[Amended 5-12-2018 ATM, Art. 44]**

F. The following are permitted to project into the required minimum setback areas:

(1) balcony or bay windows may project into said areas up to two feet, provided that its total length is less than 1/2 the length of the building.

(2) Open terraces, steps and stoops less than four feet in height may project into a maximum of 1/2 of the required setback area.

(3) Steps and stoops over four feet in height, windowsills, chimneys, roof eaves, fire escapes, awnings, storm enclosures or similar architectural features may project not more than five feet

into said areas.

G. The provisions of this chapter governing the height of buildings shall not apply to the following structures, provided that such structures are approved by the FAA and MAA if located within the flight paths of an airport or heliport as defined by FAA regulations and are set back from all property lines the distance required in the Table of Dimensional and Density Regulations, or a distance equal to the height of the structure, whichever is greater:

- (1) Chimneys, cooling towers, elevator bulkheads, elevator shafts, skylights, ventilators and other necessary appurtenances usually carried above the roof.
- (2) Domes, towers, stacks or spires, if not used for human occupancy and if not occupying more than 20% of the ground floor area of the building.
- (3) Ornamental towers, observation towers and other like structures, which do not occupy more than 1% of the lot area.
- (4) Churches or public, municipal, agricultural or institutional buildings or buildings for public/nonprofit educational uses that are primarily used for school (not residential) purposes.

H. Swimming pools are considered to be accessory structures. All swimming pools in ground and above ground (but less than four feet above the ground level) containing more than 12 inches of water shall be enclosed. Such enclosure, including gates, shall be secured against unauthorized entry, and the top of said enclosure must not be less than four feet in height from the ground (six feet for public or semipublic pools). No enclosure shall be constructed in such a manner so as to render it easy to climb.

I. No fence may exceed a height of 6 1/2 feet within 10 feet of the side and back lot lines. Fences may be placed on a lot line, but no fence or hedge may be placed on a lot so as to interfere or obstruct the visibility and movement of traffic on the street or onto and off of the lot.

J. Vehicular egress/access to a building lot. Vehicular egress/access to a building lot must be across a front lot line with a contiguous distance of at least 60 feet, except where:

- (1) In particular instances, the Planning Board may issue a special permit permitting vehicular egress/access to a lot over a front lot line having less than the 60 feet of frontage, or over any side lot line or rear lot line, or
- (2) A special permit for a common access driveway has been obtained.

#### **§ 125-7. Preexisting nonconforming uses, structures and lots.**

A. The lawful use of any structures or land legally existing at the time of the amendment or subsequent amendment of this chapter may be continued although such structure or use does not conform with provisions of the chapter.

B. Restoration. A nonconforming building, structure or use existing upon the effective date of this chapter may be continued, rebuilt or resumed within two years if damaged or destroyed by fire or other natural causes.

C. Usage termination. A nonconforming use which has been abandoned or discontinued for a period of two years shall not be reestablished, and any future use shall conform with this chapter.

D. Changes. Once changed to a conforming use, no structure or land shall revert to a

nonconforming use, and no nonconforming use shall be changed to another nonconforming use except upon finding by the Board of Appeals that such change shall result in a use more in keeping with the character of surrounding properties.

E.Changes, extensions or alterations of preexisting nonconforming structures or uses.

(1) Preexisting nonconforming structures may be changed, extended or altered, provided that:

(a) Where said change, extension or alteration involves the specific preexisting nonconformity of the structure and creates no additional nonconformities, it must first receive a finding from the Zoning Board of Appeals that such change, extension or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

(b) Where said change, extension or alteration will create a new violation of the present zoning requirements, appropriate variances must be received.

(c) Where all aspects of said change, extension or alteration conform, in all respects, to the present zoning requirements, no variance or finding is required.

(d) Where said change, extension or alteration involves any combination of the above, then each particular variance or finding must be received.

(2) Preexisting nonconforming uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Unless such change, extension or alteration results in all uses fully complying with the current zoning requirements, such finding is required.

(3) Conforming use on preexisting nonconforming lot.

(a) When a conforming use on a preexisting nonconforming lot is changed, extended or altered to a use which requires a larger minimum lot area, minimum lot width or frontage and/or minimum lot depth than is required for the present use, then a variance must be received with regard to the preexisting nonconformity of the lot.

(b) When a conforming use on a preexisting nonconforming lot is changed, extended or altered to a conforming use that requires the same or less minimum lot area, minimum lot width or frontage and/or minimum lot depth (and said lot still does not fully conform to the present zoning requirements for the proposed use) than is required for the present use, then a finding would be required.

(c) When a conforming use on a preexisting nonconforming lot is changed, extended or altered to a conforming use which requires the same or less minimum lot area, minimum lot width or frontage and/or minimum lot depth (and said lot now fully conforms to the present zoning requirements for the proposed use) than is required for the present use, then neither a variance nor a finding [as stated in Subsection E(1)(c)] is required.

(4) Preexisting nonconforming use on a preexisting nonconforming lot. Preexisting nonconforming uses on preexisting nonconforming lots may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more

detrimental than the existing nonconforming use to the neighborhood.

(5) Preexisting nonconforming structure – change in use. A use in a preexisting nonconforming structure may be changed, extended, or altered only if there is a finding by the Zoning Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing use to the neighborhood.

F. Single-lot exemption for single-family use. Any increase in area, frontage, width, yard or depth requirements of this chapter shall not apply to a vacant lot for single-family residential use, which:

- (1) Has at least 5,000 square feet of area and 50 feet of frontage.
- (2) Is in an area zoned for single-family use.
- (3) Conformed to existing zoning requirements when the lot was legally created, if any.
- (4) Is in separate ownership prior to the Town Meeting vote which made the lot nonconforming and has maintained its separate identity.

G. Change, extension or alteration to a preexisting nonconforming lot. A preexisting nonconforming lot may only be changed, altered or extended as a matter of right, provided that:

- (1) Such change, extension or alteration brings the lot into total conformance with the zoning requirements in existence at the time of such change, extension or alteration, or
- (2) Such change, alteration or extension only adds to the preexisting nonconforming lot and does not delete anything (area, frontage, width, depth) from the original lot, or
- (3) Such change, extension or alteration deducts land from the preexisting nonconforming lot but in such a manner that such reduction does not reduce the lot area, lot frontage, lot width, lot depth, building setbacks, percent of building coverage or percent of open space below that which already exists on the preexisting nonconforming lot or that which is required by the current Zoning Bylaw, whichever is the lesser, and the Zoning Board of Appeals finds that such change, extension or alteration is not substantially more detrimental to the neighborhood than the original preexisting nonconforming lot.

H. Dimensional and density regulations for lots located in more than one zoning district. Where a lot is located in more than one zoning district, the following dimensional and density regulations shall apply:

- (1) Frontage. The frontage requirement for the district in which a majority of the frontage is located shall apply. In cases where the frontage is of equal length in all districts, then the most restrictive shall apply.
- (2) Lot area. The lot area requirement for the district in which most of the lot area is located shall apply. In cases where the minimum lot area is of equal size in all districts, then the most restrictive shall apply.
- (3) All other dimensional and density regulations. Those dimensions and density regulations required in a particular district shall apply to that portion of the lot or structure located in that district.

## ARTICLE IV

### **District Regulations**

**§ 125-8. (Reserved)<sup>4</sup>**

**§ 125-8.1. Water Supply Protection Overlay District. [Amended 10-27-1993 STM, Art. 24; 5-12-2018 ATM, Art. 44]**

A. Purpose. The purpose of the Water Supply Protection Overlay District is to promote the health, safety and welfare of the community by protecting, preserving and maintaining the surface and groundwater resources of the Town and the region from any use of land or buildings which may pollute or otherwise adversely affect the quality and quantity of its water resources.

B. Scope of authority. The Water Supply Protection Overlay District is an overlay district and shall be superimposed on the other districts established by this chapter. All uses, dimensional requirements and other provisions of this chapter applicable to such underlying districts shall remain in force and effect, except that where the Water Supply Protection Overlay District imposes greater or additional restrictions and requirements, such restrictions or requirements shall prevail. Any uses not permitted in underlying districts shall remain prohibited.

C. District delineation. A Water Supply Protection Overlay District is herein established to include all lands within the Town of Pelham.

(1) The intent of the Water Supply Protection Overlay District is to include lands within the watersheds of surface water supplies and lands lying within the recharge areas of groundwater aquifers, including lands which recharge public and private wells. The map entitled "Surface and Groundwater Resources in the Town of Pelham," on file with the Office of the Town Clerk, illustrates that these lands encompass the entire Town.

(2) Where the boundaries delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should be properly located. At the request of the owner(s), the Town may engage a professional hydrologist to determine more accurately the location and extent of an aquifer or primary recharge area and may charge the owner(s) for all or part of the cost of the investigation.

D. Prohibited uses. The following uses as well as all others not specifically permitted are prohibited as principal or accessory uses in the Water Supply Protection Overlay District:

(1) Business and industrial uses, not agricultural, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair that generate, treat, process, store or dispose of hazardous wastes, except for the following:

(a) Very small quantity generators of hazardous waste, as defined by 310 CMR 30.00, that generate less than 20 kilograms or six gallons of hazardous waste per month may be allowed by special permit from the Zoning Board of Appeals, in accordance with § 125-25 of this chapter;

(b) Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;

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<sup>4</sup> Editor's Note: Pursuant to 5-12-2018 ATM, Art. 44, former § 125-8, Water Supply Protection District, was renumbered as § 125-8.1 and retitled "Water Supply Protection Overlay District." Said Article 44 also changed the title of this Art. IV from "Overlay District Regulations" to its current title.

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- (c) Waste oil retention facilities required by MGL c. 21, § 52A, and;
- (d) Treatment works approved by the Massachusetts Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground- or surface waters.

(2) Business or industrial uses, not agricultural, which dispose of process wastewaters on site.

(3) Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops, commercial fuel oil storage and sales.

(4) Solid waste landfills, dumps, auto recycling, auto graveyards, junk- and salvage yards, landfilling or storage of sludge and septage, with the exception of the disposal of brush and stumps, and composting of organic plant and vegetable matter.

(5) Storage of liquid petroleum products, not including liquefied petroleum gas, except for the following:

(a) Storage which is incidental to:

- [1] Normal household, commercial, agricultural or Town of Pelham municipal use, including the maintenance or the heating of a structure;
- [2] Waste oil retention facilities required by MGL c. 21, § 52A;
- [3] Emergency generators required by statute, rule or regulation, or:
- [4] Treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground- or surface waters, provided that storage, listed in Subsection D(5)(a)[1] and [2] above, shall be in a freestanding aboveground container within a structure or within the basement of a structure, and new structures shall include at a minimum a foundation with a poured cement slab floor or a concrete reservoir of sufficient volume to contain a spill the size of the container's total storage capacity. The storage tank and piping must comply with all applicable provisions of 527 CMR 9.00, Massachusetts Board of Fire Prevention regulations.

(b) Replacement of storage tanks or systems for the dispensing or storing of gasoline, which existed at the time of adoption of this chapter, provided that:

- [1] All such replacement storage tanks or systems shall be located underground as required by Massachusetts Board of Fire Prevention regulations, 527 CMR 14.
- [2] All such storage systems shall be protected by one of the secondary containment systems specified in Massachusetts Board of Fire Prevention regulations, 527 CMR 9.08(3).
- [3] The head of the Fire Department may deny an application for tank replacement, or approve it subject to conditions if he or she determines, in consultation with the Board of Health, that it constitutes a danger to public or private water supplies in accordance with 527 CMR 9.26(4)(d).
- [4] Any storage tank which is removed and not replaced must have the tank



fill pipe removed at the same time. Replacement of all other storage tanks for liquid petroleum products other than gasoline must be above ground in accordance with Subsection D(5)(a) above.

- (6) Outdoor storage of salt, deicing materials, pesticides or herbicides.
- (7) Dumping or disposal on the ground, in water bodies or in residential septic systems of any toxic chemical, including but not limited to septic system cleaners which contain toxic chemicals, such as methylene chloride and 1-1-1 trichlorethane or other household hazardous wastes. (See list of prohibited chemicals at Board of Health or Town Clerk's office.)
- (8) Stockpiling and bulk disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection Overlay District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- (9) Wastewater treatment works subject to 314 CMR 5.00 (any treatment works which discharge contaminants to the ground, except sanitary discharges less than 15,000 gallons per day which are in compliance with Title V), except the following:
  - (a) The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
  - (b) The replacement of an existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s); and
  - (c) Treatment works designed for the treatment of contaminated ground- or surface waters.

E.Restricted uses. The following are restricted in the Water Supply Protection Overlay District:

- (1) Excavation for removal of earth, loam, sand, gravel and other soils or mineral substances shall not extend closer than five feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, whichever is higher). Monitoring wells shall be installed by the property owner in advance of excavation to verify groundwater elevations. This section shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal or to excavation sites less than five acres in size. On sites greater than five acres, in order to verify the changes in elevation and direction of flow through triangulation, three monitoring wells shall be installed. The Select Board shall have the option to require additional monitoring wells, as appropriate to the site. The number and location of monitoring wells shall be based upon the slope of the terrain and the size of the parcel to be developed. This provision shall be applied in conjunction with Chapter 29, Earth Removal, Chapter 119, Wetlands Protection, other Town bylaws and the Massachusetts Wetlands Protection Act (MGL c. 131, § 40). **[Amended 5-14-2022 ATM by Art. 17]**
  - (a) Access road(s) to excavation operation sites shall include a gate or other secure mechanism to restrict public access to the site.
  - (b) Upon completion of earth removal operations, all altered areas shall be stabilized and graded consistent with site conditions prior to initiation of work on the site, using

topsoil and vegetative plantings suitable to control erosion on the site.

(2) Sodium chloride for ice control shall be used at the minimum salt-to-sand ratio that is consistent with the public highway safety requirements, and its use shall be eliminated on roads which are closed to the public in winter.

(3) The storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads shall be covered and located on a paved surface with berms, or within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

(4) Fertilizers, pesticides, herbicides, lawn care chemicals or other leachable materials shall be used in accordance with the Lawn Care Regulations of the Massachusetts Pesticide Board, 333 CMR 10.03 (30, 31), as amended, with manufacturer's label instructions and all other necessary precautions to minimize adverse impacts on surface and ground water. The application of herbicides, pesticides or fertilizers, other than amounts associated with normal household or agricultural use, shall require written permission from the Board of Health.

(5) In cases where soil percolation rates are faster than two minutes per inch, additional measures, such as appropriate fill materials, may be imposed by the Board of Health to slow the percolation rate for on-site sewage disposal systems. (See Chapter 130, Board of Health Regulations).

(6) The storage of fertilizers and soil conditioners for commercial use shall be within structures designed to prevent the generation and escape of contaminated runoff or leachate.

(7) All new permanent animal manure storage areas shall be within a concrete manure storage pit or other suitable structure that is covered and/or contained to prevent nutrient loading due to the escape of runoff or leachate.

(8) All liquid hazardous materials, as defined in MGL c. 21E, must be stored either in a freestanding container within a building or in a freestanding container above ground level with protection to contain a spill the size of the container's total storage capacity.

F. Drainage. For commercial, institutional and industrial uses that require a special permit, runoff from impervious surfaces shall be diverted to a system for groundwater recharge that does not degrade water quality. Such system may include extended-time detention basins, artificial wetlands or other similar areas covered with vegetation to enhance infiltration of the runoff into the ground. Such runoff shall not be discharged directly to rivers, streams or other surface water bodies. Dry wells are permitted only where other methods are infeasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. All recharge areas shall be permanently maintained in full working order by the owner(s).

G. Licensing and inspection of petroleum storage tanks.

(1) The installation of any tank for storage of petroleum products not exclusively devoted to heating the principal structure shall require a license from the Select Board, in accordance with Massachusetts Fire Prevention regulations, MGL c. 14B and 527 CMB 9.00. **[Amended 5-14-2022 ATM by Art. 17]**

(2) All existing underground storage tanks may be subject to periodic inspections under regulations promulgated by the Board of Health. The purpose of such inspections shall be to determine whether liquids are escaping to the surrounding soil or groundwater, thereby creating a public nuisance.

(3) No existing storage tank shall be continued if it is determined by the Board of Health that the contents are leaking into the soil or groundwater.

H. Nonconforming uses.

(1) Nonconforming uses which were lawfully existing, begun or in receipt of a building or special permit prior to the first publication of notice of public hearing for this chapter may be continued. Such nonconforming uses may be extended or altered, as specified in MGL c. 40a, § 6, provided that there is a finding by the Board of Appeals that such change does not increase the danger of surface or ground water pollution from such use.

(2) Replacement of existing nonconforming storage tanks for liquid petroleum products, located within a structure or basement of a structure, shall be permitted. Installation of a concrete foundation or reservoir around such a replacement tank is recommended, but not required.

**§ 125-8.2. Village Center Districts Regulations. [Added 5-12-2018 ATM, Art. 44]**

A. Applicability. The regulations contained in this § 125-8.2 apply to all uses, unless otherwise specified, in the following zoning districts: Village Center Mixed-Use (VC-MU); Village Center Neighborhood (VC-N); Village Center Rural Edge (VC-RE). Hereafter, these districts are collectively referred to as the "Village Center Districts."

B. Intent. The intent of the Village Center Districts is to foster well-planned business and residential development in a compact village center in West Pelham, in keeping with the character of traditional New England villages, in order to create a place with a unique and positive local identity, and provide opportunities for development to expand the Town's economic and residential diversity and vitality.

Development within the Village Center Districts should provide commercial, civic, residential uses and public open space within easy, safe walking distance of each other. Vehicular circulation should be safe and well organized, with the use and visual impact of cars minimized. There should be tree-lined streets, sidewalks or paths for pedestrians, well-designed architecture, and public spaces. Property developers are encouraged to provide amenities such as protected open space, high-quality landscaping, street furniture, public spaces, and greater integration of mixed uses.

C. Purpose. The purposes of this bylaw are to encourage mixed-use development projects and uses in the Village Center Districts that:

(1) Provide for the location of a mix of low- or moderate-intensity residential, office, retail commercial, civic and institutional uses, including a mixture of uses in the same building. The commercial uses serve village residents and those in the vicinity. Commercial and institutional development in Pelham is directed to these districts, so that environmental and natural resources are protected and preserved elsewhere in the Town.

(2) Exhibit the design features of traditional villages and small towns in New England.

(3) Facilitate more efficient provision and maintenance of public services and infrastructure.

(4) Blend well with the existing landscape and help preserve sensitive environmental features.

(5) Provide an activity center for the Town where residents and others can gather, work, shop, entertain and reside.

- (6) Enhance the overall character of the Village Center.
- (7) Promote a pedestrian-friendly environment in the Village Center.
- (8) Encourage the growth of the local economy and jobs, including development of flexible space for small and emerging businesses.
- (9) Encourage the development of open spaces and parks within the Village Center to accommodate workers, residents, pedestrians and shoppers.
- (10) Provide for a range of commercial uses and services to meet the everyday needs of residents, to provide employment opportunities for residents and to provide goods and services for travelers and tourists to the area.
- (11) Provide for limited development in scale with the desired character of the neighborhood. The Village Center Districts' growth shall be consistent with historic patterns of modest scale village centers.
- (12) Create and sustain a distinctive character and community identity in the Village Center Districts through careful planned development. Every effort should be made to meet the design standards to ensure that new development is compatible with the unique characteristics and sense of place within the Village Center Districts. The scale and density of new development should conform to the character of a traditional New England village.

D. Conflicting provisions. This section applies to all land parcels within the Village Center Districts as established in Article II and shown on the official Zoning Map (available at the Town of Pelham Town Hall and on the Town website). Wherever there appears to be a conflict between this section and other requirements of the Zoning Bylaw, the requirements specifically set forth in this section shall prevail. Standards found in other sections of the Zoning Bylaw that do not conflict with standards in this section shall apply, unless this section states that they do not. The invalidity of any provision of this section shall not invalidate any other section or provisions thereof.

E. Use standards.

- (1) Permitted uses are shown in § 125-5, Schedule of use regulations.
- (2) The seasonal use of outdoor dining, seating, and/or display of products is permitted as a by-right accessory use to a similar principal use contained within a completely enclosed building and may encroach into the front setback up to the front lot line, except where such encroachment would limit the free and safe passage of pedestrians, bicyclists or motor vehicles.
- (3) The following uses require a special permit and site plan review from the Planning Board:
  - (a) Uses, except single-family uses or exempt uses per MGL c. 40A, § 3, with a building footprint greater than 2,500 square feet.

F. Building design standards. Design standards promote a building and landscape character that is complementary to the traditional design characteristics found in Pelham. The following design standards apply to all uses except: exempt uses as specified in MGL c. 40A, § 3, and single-family dwellings. As used in this § 125-8.2F, the word "shall" is mandatory and the words "should," "may," and "encouraged" are recommended but optional.

- (1) Civic building design. Civic buildings and spaces, including public buildings, houses of

worship, schools, and similar, should be designed to physically express their prominence and community orientation. In order to provide greater flexibility in building types and to allow more distinctive architectural expression, civic buildings may vary from building design standards.

(2) Changes to existing buildings. Retention and reuse of existing buildings meeting design standards is encouraged. Alterations or additions to older buildings should be compatible with the massing, size, scale, rooflines, and architectural features of the original building. Alterations should not cover, remove, or damage viable original architectural elements visible from the street. Replacement of damaged original architectural elements is strongly encouraged.

(3) Building types. New construction and major renovations of existing buildings should produce buildings that resemble building types common to Pelham's Town centers and/or common to traditional New England village centers. Uses that require site plan review shall demonstrate how the proposed building meets this standard by means of photographs, illustrations, and/or drawings. The following building types are strongly encouraged:

(a) Cottage. Cottages are small- to mid-sized residential buildings, usually single-family.

[1] Massing and orientation: Rectangular, sometimes with ell(s). The short side of a building is typically oriented towards the street, or long side if Cape-style.

[2] Height and roof: 1 1/2 to 2 1/2 stories (see maximum building height in Table 2B, Table of Dimensional and Density Regulations). Gable-roofed. Gable end typically faces the street, unless building is Cape-style. Dormers with single or paired windows often used to provide light and space for uppermost floor.

[3] Facade elements: Gable-fronted styles often have two or three bays (entrance in left or right bay), or an otherwise balanced vertical alignment with entrance off to one side. Cape Cod styles are usually symmetrical with three or five bays and a central entrance. Paired and bay windows are common. An open-sided porch with roof is typically located at the front entrance.

[4] Site elements: stone walls, low picket fences, iron fences are often used to separate front yards from public areas; driveway is typically located beside building; a garage, when present, is typically detached and located behind the building, or attached to the rear or side of the building via breezeway.

[5] Illustrative examples of cottage building type:



(b) Rambling farmhouse. These are larger residential buildings that appear to have accrued additions over time following traditional building practices.

[1] Massing: Primary mass is rectangular with secondary masses smaller and lower than the primary masses. Masses usually arranged linearly or as ells on the primary mass, sometimes enclosing courtyards or creating complex shapes. Primary mass should orient towards the street.

[2] Height and roof: Primary mass is often two to 2 1/2 stories (see maximum building height in Table 2B, Table of Dimensional and Density Regulations). Secondary masses have lower roofs than the primary mass, though when there are multiple masses some may be higher than the primary mass. Orientation of gable ends and rooflines may vary, though a linear or perpendicular progression of secondary masses from the primary mass is most common. Dormers may be used, especially on secondary masses.

[3] Facade elements: Street-facing front entrance with symmetrical facades of stacked bays. Gable-fronted styles often have three bays (entrance in left or right bay), otherwise five bays with centered entrance. Secondary masses have looser facade arrangements. Open-sided porches are often used over the front entrance or across the entire front facade, as well as on secondary mass entrances.

[4] Site elements: stone walls, low picket fences, iron fences are often used to separate front yards from public areas; driveway is typically located beside building; a garage, when present, is typically detached and located behind the building, or attached to the rear or side of the building via breezeway.

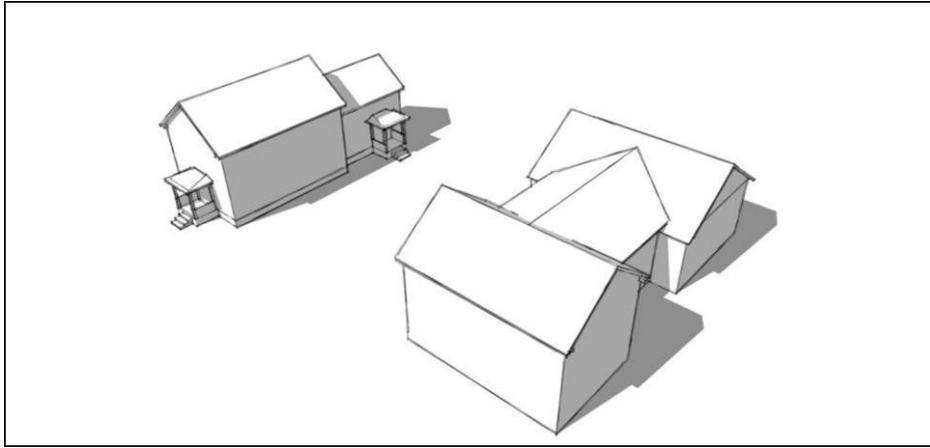
[5] Illustrative examples of the rambling farmhouse building type:





[6] Illustration showing some of the additive massing techniques employed in the rambling farmhouse building type:





(c) Barn. These are larger buildings, easily recognizable as reflecting traditional New England agricultural structures.

[1] Massing: The primary mass is typically rectangular and often reflects traditional timber-framed structural techniques with overall proportions that are multiples of standard sized bays. Secondary masses are typically smaller and lower than the primary masses. Masses are usually arranged linearly or as ells on the primary mass, sometimes enclosing courtyards or creating complex shapes. The primary mass should orient towards the street with either the long side or the short side of the floor plan perpendicular to the street.

[2] Height and roof: The primary mass is often one to 2 1/2 stories (see maximum building height in Table 2B, Table of Dimensional and Density Regulations). The roof on the primary mass is typically either a simple gable or gambrel with the peak of the roof running parallel to the long side of the rectangular floor plan. Secondary masses have lower roofs than the primary mass. Orientation of gable ends and rooflines on secondary masses may vary, though a linear or perpendicular progression of secondary masses from the primary mass is most common. Dormers may be used, especially on secondary masses. Cupolas may or may not be present.

[3] Facade elements: When being used for uses other than agriculture, barn type buildings typically have a street-facing front entrance with a symmetrical facade of evenly spaced stacked windows. The number of bays depends on the size of the structure. In timber-framed barns and buildings referencing that style there is typically at least one window or door opening per floor for each structural bay in the building. Secondary masses have looser facade arrangements. Open porches are often used over the front entrance, as well as on secondary mass entrances.

[4] Site elements: stone walls, low picket fences, iron fences are often used to separate front yards from public areas; driveway is typically located beside building; a garage, when present, is typically detached and located behind the building, or attached to the rear or side of the building via breezeway.

[5] Illustrative examples of the barn building type:



(d) Mansion: A large building with a residential character. Mansions typically have more than five bedrooms or 3,000 square feet gross floor area.

[1] Mansions use a variety of techniques to signal quality, including: use of a limited set of durable materials such as brick, stone, and/or wood; carefully designed elevations that include consideration of massing, balance, order, detailing, and fenestration; stylistic integrity through sensitive use of architectural precedents; projections that are integral to the building structure and function such as porches, turrets, dormers, and/or bay windows.

[2] Height and roof: A mansion is typically two stories or greater (see

maximum building height in Table 2B, Table of Dimensional and Density Regulations). The roof complements the overall design of an elevation. The roof typically avoids excess planes, exceptionally steep pitches (greater than 10:12), or mixing multiple styles of roof on one building (e.g. gambrel, mansard, hip, gable).

[3] Site elements: stone walls, low picket fences, iron fences are often used to separate front yards from public areas; a driveway is typically located beside the building; a garage, when present, is typically detached and located behind the building, or attached to the rear or side of the building via a breezeway; sites employ high-quality materials, such as stone or brick walkways and patios; plantings are generous and thoughtfully designed, buildings are designed to accentuate the site's natural features, not dominate it.

[4] Applicants wishing to employ a mansion style of building shall provide diagrammatic drawings that illustrate the underlying order of the building design. Such diagrams shall demonstrate relevant local or regional precedents for the design.

[5] Illustrative examples of the mansion building type:





(e) General store. The general store building type is common in rural village centers in the upper Pioneer Valley. This building type has traditionally been used for commercial use on the first floor with residential use above. It is a small to medium sized building with following characteristics:

[1] Massing and orientation: Rectangular floorplan, sometimes with secondary masses to sides of primary mass. The short side of the primary mass is typically oriented towards the street.

[2] Height and roof: One and one-half to 2 1/2 stories (see maximum building height in Table 2B, Table of Dimensional and Density Regulations); gable-roofed; gable end typically faces the street.

[3] Facade elements: The front facade of the primary mass typically has the following characteristics: it is gable-fronted; it has three bays with the primary entrance typically in the center bay; windows on the ground floor are typically larger than windows on upper stories and may include large display windows; an open-sided porch with roof stretches across the front facade of the primary mass and is typically deep enough to accommodate seating at cafe-style tables or benches; a covered, open-sided porch may be stacked above the first floor porch. A flat wall sign is typically located above the entrance. The entrance for an upper story use or a use in the secondary mass is typically located on the front or side of the building and is typically less prominent than the entrance to primary use on the ground floor.

[4] Site elements: The building is located close to the front lot line. The front yard, when present, should include a pedestrian path at least five feet wide that connects the adjacent public way to the primary building entrance. The front yard may include open lawn or garden and may include outdoor seating, sculpture, or pedestrian-scale lighting. Parking should not be located in the front yard of a general store building type, unless the building was in existence before the date of adoption of this zoning and unusual site constraints make locating parking behind or to the side of the building infeasible.

[5] Illustrative examples of general store building type:





(4) Building height and roof pitch.

(a) Maximum building heights are shown in § 125-6, Table 2B, Table of Dimensional and Density Regulations. A half story (0.5) denotes a habitable attic or other under-roof floor.

(b) Roof pitches for all buildings shall be at least 4:12. Mixed-use and commercial buildings may have partial flat roofs if the flat roof is hidden from the street by a cornice.

(5) Building facades and projections.

(a) Generally, facade design, where visible from the street, should reflect the surrounding buildings' contextual patterns and provide visual interest.

(b) Long, uninterrupted stretches of flat or blank facades shall be avoided. Setbacks, bays, storefronts, entrances, windows, columns, and other facade articulation should be used in approximately fifteen- to thirty-foot increments to "break up" the building facade.

(c) Cornice lines, string courses, and other architectural elements should create a recognizable base, middle, and top to buildings.

[1] Illustration showing a building facade with base, middle and top:



(d) Open-sided street-facing porches and covered balconies are encouraged on residential and commercial buildings. Balconies shall project no more than six feet from the facade or within six feet of a common lot line. An open-sided front porch or balcony may encroach into the minimum front setback up to six feet. When a porch or balcony encroaches into the minimum front setback, it shall be roofed and shall not be otherwise enclosed above a height of 42 inches, except for enclosure by posts and balustrades (railings) and/or customary wire or mesh screening that is permeable to the movement of air. It is encouraged that front porches be at least six feet deep so that they can accommodate seating.

(e) Overhanging eaves, awnings, canopies, marquees, and entry steps/stoops are permitted within the front setback, provided they are not in conflict with walkways, parking, travel lanes, street trees, or other streetscape furnishings. Eaves, awnings, and canopies overhanging a public right-of-way must be approved by the Department of Public Works.

(f) Vinyl, plastic materials are very strongly discouraged. Awnings and overhangs shall not be internally illuminated.

[1] Illustration showing awnings. The image on left shows an awning that is very strongly discouraged due to its materials and shape and internal illumination. The image on the right shows an awning that is permitted.



(6) Fenestration (the amount of window, door, and similar openings in a facade).

(a) A minimum of 50% of the ground floor street-facing facade for a nonresidential

use shall be fenestrated with transparent doors and windows.

(b) A minimum of 15% of all other facades for a nonresidential use shall be fenestrated with doors and windows, except where the applicant demonstrates that percentage of fenestration would compromise the energy efficiency of the structure.

(c) A functional entry door shall be provided along the street-facing facade. Opaque, heavily tinted, or mirrored windows shall not be used on street-facing facades. Windows and doors of nonresidential ground floor facades shall provide visibility to at least four feet of depth inside the building interior at pedestrian eye level (between four feet and eight feet in height above grade).

G. Lighting.

(1) Applicability. The requirements of this § 125-8.2G shall apply to all outdoor lighting on all lots and parcels in the Village Center Districts. When existing outdoor lighting equipment is being modified, extended, expanded, or replaced, it shall be subject to the requirements of this section. The following outdoor lighting equipment shall be exempt from the specific requirements of this bylaw but any such lighting equipment shall, nevertheless, be placed and directed so as to minimize light trespass, light pollution, and the detrimental effects of glare on motorists, pedestrians and abutting lots:

- (a) Outdoor temporary holiday lighting, provided it is illuminated only during traditional holiday periods;
- (b) Traffic lights;
- (c) Warning and alarm lights that alert to a malfunction or emergency situation.

(2) Lighting equipment shall be designed, constructed and installed to:

- (a) Control glare and prevent light trespass onto adjacent properties or public ways, curtail degradation of dark skies at night, and conserve energy resources while maintaining safety, visibility and security of individuals and property;
- (b) Direct light only where it is needed at the minimum intensity necessary to serve the intended purposes;
- (c) Prevent measurable light at the property lines and minimize glare at any location on or off the property.

(3) Flashing, blinking, running, scrolling, traveling, animated, or intermittent lighting shall not be visible from the exterior of any building unless associated with a temporary holiday display.

(4) Lighting shall use sensor technologies, timers or other means to activate lighting only during times when it will be needed. All nonresidential site lighting shall be kept extinguished outside of business hours, except for lighting determined by the Planning Board to be necessary for site security and safety.

(5) The maximum mounting height of a luminaire shall be 16 feet. Greater heights may be allowed with site plan approval from the Planning Board.

(6) Illumination levels. Lighting levels shall be limited to that needed for good visibility.

- (a) The total installed initial luminaire lumens of all outdoor lighting for all



commercial, mixed-use, and multifamily uses shall not exceed the total initial site lumen limit found in Table 3.

[1] The total installed initial luminaire lumens is calculated as the sum of the initial luminaire lumens for all luminaires and shall not exceed the sum of the base allowance and not more than three additional initial lumen allowances per site.

[2] For sites with existing lighting, existing lighting shall be included in the calculation of total installed lumens.

[3] Table 3, Allowed Total Initial Site Lumens.

	VC-N and VC-RE	VC-MU
<b>Base allowance</b>		
Allowed lumens per square foot of hardscape area <sup>5</sup>	0.5	1.25
<b>Additional initial lumen allowances</b>		
A maximum of 3 additional allowances are permitted per site. These allowances are "use it or lose it."		
Building Entrances or Exits. This allowance is per door. Luminaires must be located within 20 feet of the door	400 lumens	1,000 lumens
Sales or Non-sales Canopies. This allowance is lumens per unit area for the total area within the drip line of the canopy. In order to qualify for this allowance, luminaires must be located under the canopy.	0	3 per square foot
Outdoor Dining. This allowance is lumens per unit area for the total illuminated hardscape of outdoor dining. In order to use this allowance, luminaires must be within 2 mounting heights of the hardscape area of outdoor dining	0	1 per square foot

(b) For residential properties, all outdoor lighting shall not exceed the following allowed luminaire lumens (luminaire lumens equals initial lamp lumens for a lamp, multiplied by the number of lamps in the luminaire):

[1] VC-N and VC-RE Districts: 630 lumens.

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<sup>5</sup> Editor's Note: To provide for intersection lighting, when a site contains a driveway that intersects a public street or road, a total of 600 square feet for each intersection may be added to the actual site hardscape square feet for the purpose of calculating the base allowance of total site lumens.

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[2] VC-MU District: 1,260 lumens.

(7) Color.

- (a) All luminaires in all districts must have light sources with a color temperature or correlated color temperature (CCT) of 2,700 Kelvin or less.
- (b) The color rendering index of all luminaires in all districts must be 65 or higher.

(8) Backlight, uplight, glare (BUG) rating.

- (a) All luminaires must be rated and installed according to the standards in Table 4. Table 4 identifies the maximum allowed backlight (B), uplight (U), and glare (G) rating for luminaires in the Village Center Zoning Districts. It is the responsibility of the applicant to provide information sufficient for the permit granting authority to evaluate compliance with Table 4, such as the manufacturer's photometric specification data for a luminaire.
- (b) BUG rating limits are based on the internal and external design of a luminaire, its aiming, and the initial lumens. The BUG ratings permitted by Table 4 differ based on the distance the luminaire is installed from the property line, expressed in multiples of the mounting height of the luminaire.
- (c) Luminaires equipped with adjustable mounting devices permitting alteration of luminaire aiming are prohibited.
- (d) Table 4, Maximum Backlight, Uplight, and Glare (BUG) Ratings.

	VC-N and VC-RE	VC-MU
<b>Backlight Rating<sup>1</sup></b>		
Greater than 2 mounting heights from property line	B1	B3
1 to less than 2 mounting heights from property line <sup>2</sup> and ideally oriented	B1	B2
0.5 to 1 mounting heights from property line <sup>2</sup> and ideally oriented	B0	B1
Less than 0.5 mounting height to property line and properly oriented <sup>2</sup>	B0	B0
<b>Uplight Rating</b>	U0	U1
Allowed % light emission above 90% from street or area lighting	0%	0%
<b>Glare Rating</b>	G0	G1
Any luminaire not ideally oriented <sup>3</sup> with 1 to less than 2 mounting heights to any property line of concern	G0	G0
Any luminaire not ideally oriented <sup>3</sup> with 0.5	G0	G0

	VC-N and VC-RE	VC-MU
to 1 mounting heights to any property line of concern		
Any luminaire not ideally oriented <sup>3</sup> with less than 0.5 mounting heights to any property line of concern	G0	G0

**NOTES:**

<sup>1</sup> An "ideally oriented" luminaire must be mounted with its backlight portion of the light output oriented perpendicular and towards the property line of concern.

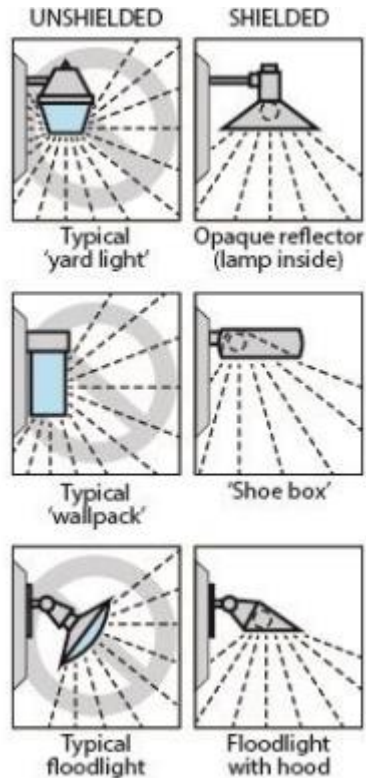
<sup>2</sup> An additional five feet may be added to this calculation for any property line that abuts a public walkway, bikeway, or parking lot. Any property line abutting a thoroughfare may be considered to be located at the center line of the thoroughfare for the purpose of determining compliance with maximum BUG ratings.

<sup>3</sup> Any luminaire that cannot be mounted with its backlight perpendicular to any property line within two times the mounting heights of the luminaire location shall meet the reduced allowed glare rating in Table C-3.

(9) Luminaires that are accessory to a single-family detached dwelling or a two-family dwelling are exempt from § 125-8.2G(8) above because BUG-rated residential luminaires are not readily available. Nevertheless, use of BUG-rated luminaires and compliance with the standards in § 125-8.2G(8) is strongly encouraged for single-family and two-family uses.

(10) Luminaires that are accessory to a single- or two-family use shall be fully shielded so that no light emitted by the luminaire is projected above a horizontal plane (see definition of "fully shielded luminaire" in § 125-34). Lamps shall not be visible from any street right-of-way or abutting property.

(a) Illustrations showing unshielded and shielded luminaires:



H. Site design and landscaping.

(1) Exterior mechanicals and trash equipment.

(a) Exterior mechanical equipment, utility buildings, air compressors, transformers, meters or boxes, garbage cans, dumpsters, outdoor storage, loading areas, and similar shall be screened from view from streets, parking areas, and adjacent residential lots.

(b) Shared use and storage of garbage dumpsters is encouraged.

(2) Walls and fences. Walls and fences located closer to the street than the front plane of a building shall meet the following standards:

(a) Walls and fences may not be taller than 40 inches.

(b) Fences shall be at least 50% transparent.

(c) Walls and fences shall use materials and designs typical of traditional New England villages. Wood picket fences and fieldstone walls are preferred. Chain-link fences are not permitted.

(3) Sidewalks requirements for the Village Center Mixed-Use District:

(a) A minimum five-foot-wide sidewalk and/or side path shall be built along the full width of all parcels in the Village Center Mixed-Use District. Sidewalk designs shall meet or exceed any sidewalk standards adopted by the Town Highway Department. Sidewalks shall be constructed within the road right-of-way where possible.

(b) A tree belt that is at least six feet wide shall be provided between a sidewalk and the street edge.

(c) Street trees. Street trees shall be planted at regular intervals within the street right-of-way parallel to the street along all streets. When possible, street trees shall be planted in the tree belt. Street trees shall have a minimum caliper of 2.5 inches (measured at a height of 4.5 feet from ground level) at the time of planting. Spacing of street trees shall be determined by the species chosen, with the intent that street trees will form a complete canopy upon maturity.

#### I. Parking standards.

(1) Intent. The Town finds that large and highly visible parking areas represent one of the most objectionable aspects of development. Such parking lots damage the historic layout and architectural fabric of village centers and rural areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However, the Town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The Town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking, and to avoid the negative impacts of excessive parking lot construction. This section sets standards to minimize the harmful impacts of parking while it also provides flexibility for applicants to work with permit granting authorities to arrive at innovative parking solutions that further the intent of the Village Center Districts.

(2) Off-street parking shall adhere to the regulations of § 125-18, with the following additional provisions.

(3) Location of parking:

(a) Parking shall not be located between the front plane of a building and a street or a public way.

[1] The permit granting authority may allow parking between the front plane of a single-family dwelling and a street or public way if the applicant demonstrates that site constraints make all other locations infeasible. Site constraints that may be considered include, but are not limited to, slopes, significant trees, stone walls or other historic structures, or environmental features.

(b) A parking lot with more than five single-loaded spaces or eight double-loaded spaces shall be located behind the principal structure.

[1] The SPGA may grant an exception from this requirement, where parking behind the principal structure is not feasible due to unusual site constraints such as steep slopes or wetlands, and provided that parking is not located within the maximum front setback or between the front plane of a building and a street or public way, and there is a minimum ten-foot-wide buffer strip between the parking lot and any required sidewalk or the public way. The buffer strip shall be planted with trees, shrubs, and ground cover sufficient to fully screen the parking from the public way. A fence or garden wall no taller than 40 feet high and/or a berm may be used to increase the screening function of the buffer strip. This buffer strip requirement is in addition to any sidewalk and/or tree belt requirements specified elsewhere by this bylaw.

(4) Parking areas with:

- (a) Five to nine spaces shall provide effective screening of the parking area from adjacent streets or properties.
- (b) Ten to 24 spaces shall provide effective screening of the parking area from adjacent streets or properties and shall provide trees sufficient to create a complete tree canopy over all parking spaces upon expected maturity of trees.
- (c) Twenty-five or more spaces shall: provide effective screening of the parking area from adjacent streets or properties; provide trees sufficient to create a complete tree canopy over all parking spaces upon expected maturity of trees; provide an interior network of pedestrian pathways that separate pedestrians from motor vehicle traffic with safe crossings across parking lanes; and break up parking spaces into bays of no more than 10 cars each by providing landscaped areas of a minimum width of four feet; and use low-impact design stormwater management techniques, where possible.
- (d) The Planning Board may waive or permit a reduction in these standards where they find that such reduction would result in a better project and be consistent with the intent of both the Village Center Districts and the parking standards.

(5) Parking screening. Parking screening, when required by this chapter, may consist of elements including, but not limited to, buildings, building wall extensions, plantings, berms, fences, or freestanding walls.

- (a) Planted areas shall contain a mix of trees, shrubs, herbaceous perennials, and groundcover plants with an emphasis on low-maintenance species native to western Massachusetts and tolerant of the conditions present on the site. All landscaping shall be maintained, irrigated, and replaced as necessary.
- (b) Screening must be maintained in good condition.
- (c) No advertising shall be placed within screening.
- (d) Screening shall not impair vehicle, pedestrian and bicyclist sight lines at entrances to or exits from sites, or at street intersections.
- (e) Illustrative example of parking screening:



(6) Off-site parking.

(a) Off-site parking may be permitted to substitute for some or all of the required on-site parking spaces, provided that the permit granting authority finds the off-site parking meets the following criteria:

[1] The off-site parking is within 500 feet of the site in question;

[2] The off-site parking has adequate paving, landscaping, screening, lighting, drainage, curbing or wheel stops, and provides for safe vehicular, pedestrian, and bicycle circulation on the site and at all entrances and exits to abutting streets;

[3] The applicant has submitted sufficient legal documentation (approved by the permit granting authority and included as an enforceable condition on any building permit, site plan approval, or special permit) guaranteeing access to, use of, and management of the designated off-site parking spaces.

(b) Any uses dependent upon off-site parking shall terminate upon termination of any legal agreements permitting the use of said off-site parking.

(7) Shared parking.

(a) The permit granting authority may permit the use of parking spaces for more than one use on the same parcel, when the permit granting authority finds that the applicant has submitted an adequate Parking Management Plan (including supportive documentation) showing that:

[1] The peak parking demand generated by the uses occurs at different times; and

[2] There will be adequate parking for the combined uses at all times.

(b) Shared parking may be provided off-site in accordance with the standards in § 125-8.2I(6).

(8) Shared driveways/curb cuts. Abutting property owners are encouraged to coordinate access to their lots, including utilizing common curb cuts and driveways under reciprocal easements. The permit granting authority may permit shared driveways and/or shared curb cuts and may waive setback and related requirements if the applicant demonstrates that the proposed design improves on-site or off-site circulation. All modes of transportation, including pedestrians, bicyclists, and motor vehicles, shall be considered when the permit granting authority weighs the merits of the proposed design.

(9) Combined parking lots. Abutting property owners are encouraged to coordinate parking layouts, including combining and connecting, with adjacent parking lots. The Planning Board may permit the combining of parking lots and can waive setback and related requirements to achieve this if the applicant demonstrates that the proposed design improves on-site or off-site circulation, and/or results in a smaller parking area. All modes of transportation, including pedestrians, bicyclists, and motor vehicles, shall be considered when the permit granting authority weighs the merits of the proposed design.

(10) Reduction of required parking.

(a) The permit granting authority may permit a reduction in the number of required parking spaces in § 125-18 if the applicant provides a Parking Management Plan demonstrating that a reduction is warranted as a result of the utilization of transportation demand management measures to reduce automobile use, which may include:

[1] The subject property lies within walking distance from shopping, employment, restaurants, housing, schools, and other trip destinations.

[2] The provision of bicycle storage facilities to encourage bicycling.

[3] The applicant demonstrating the need for fewer parking spaces due to the uniqueness of the use, shared parking, combined parking lots, availability of public parking, or other means.

(b) Set-aside for future parking. The Planning Board may, as a condition of reducing parking standards, require an applicant to set aside land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being developed for parking in the future.

(11) Parking Management Plans. If a Parking Management Plan is required (including supportive documentation) it shall be prepared by a registered land surveyor, engineer, landscape architect, architect or transportation planner licensed (where required) to practice in Massachusetts. The permit granting authority may waive this requirement in cases where it finds that because of the size or nature of the project the above level of expertise is not required.

#### J. Signage.

(1) The provisions of § 125-10 shall apply in the Village Center Districts except that one ground sign is permitted per lot by right as an accessory use to governmental and public service uses, or institutional uses, or commercial uses. A ground sign permitted by right in the



Village Center Districts must meet the following requirements:

- (a) The type, size, scale, location, and design of the sign must be consistent with traditional New England village centers and the intent of the Village Center Districts. Wood signs that are built using traditional sign making techniques are encouraged;
- (b) The ground sign shall be located in the same lot as the structure or establishment being advertised;
- (c) Where a single lot is occupied by more than one business, whether in the same structure or not, there shall not be more than one ground sign per lot frontage;
- (d) No ground sign shall advertise a product or service that is not regularly produced or available on the premises where the sign is located;
- (e) The ground sign shall not exceed a height of six feet, including support structures, nor have a surface area greater than six square feet;
- (f) The ground sign may not have more than two faces, and such faces must be configured back to back. The size of the larger of the two faces shall be used to ensure compliance with the maximum allowed surface area of a sign;
- (g) The ground sign may not interfere with sight distances or present a safety hazard;
- (h) The ground sign may not be internally illuminated.

K. Stormwater management.

(1) The following activities shall comply with the standards in the Massachusetts Stormwater Handbook (Mass. Department of Environmental Protection) as may be currently in effect, including the stormwater report requirements and checklist as provided in Volume 3:

- (a) All uses that are specified as requiring a special permit in Table 1, Schedule of Use Regulations;
- (b) Development of five or more dwelling units or lots (whether via multifamily development, subdivision, or § 125-18.3, Open space design in the Village Center Districts);
- (c) Construction activities that result in the disturbance of land area equal to or greater than one acre;
- (d) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together results in the disturbance of land area equal to or greater than acre.

## ARTICLE V

### Special Use Regulations and Performance Standards

#### § 125-9. (Reserved)<sup>6</sup>

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<sup>6</sup> Editor's Note: Pursuant to 5-12-2018 ATM, Art. 44, former § 125-9, Accessory apartments, was renumbered as § 125-9.1.

**§ 125-9.1. Accessory apartments.**

A. Definitions. **[Amended 5-12-2018 ATM, Art. 44]**

ACCESSORY APARTMENT — A second dwelling unit, complete with its own means of egress, sleeping, cooking and sanitary facilities, that is accessory to a single-family dwelling. An owner of the single-family dwelling shall occupy either the single-family dwelling or the accessory apartment as his or her primary residence.

ACCESSORY APARTMENT, ATTACHED — An accessory apartment that is substantially contained within the structure of a single-family dwelling.

ACCESSORY APARTMENT, DETACHED — An accessory apartment that is located on the same lot as a single-family dwelling and that is located in a detached accessory structure.

B. Purpose. The purposes of this accessory apartment section are to:

- (1) Encourage a more balanced and diverse population and income mix.
- (2) Provide older homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.
- (3) Make housing units available to moderate-income households that might otherwise have difficulty finding homes within the Town. **[Amended 5-12-2018 ATM, Art. 44]**
- (4) Protect stability, property values and the single-family residential character of a neighborhood.

C. The permit granting authority may authorize an attached accessory apartment or a detached accessory apartment in accordance with the provisions of § 125-5, Schedule of use regulations, provided that the following standards and criteria are met: **[Amended 5-12-2018 ATM, Art. 44]**

- (1) The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the original unit, and has its own means of egress.
- (2) Only one accessory apartment will be created on any lot.
- (3) No more than three persons shall occupy the accessory apartment.
- (4) The owner(s) of the single-family house with which the accessory apartment is associated shall occupy at least one of the dwelling units on their premises. The owner must occupy the structure full time for a minimum of 18 months over a twenty-four-month period. When the owner(s) are not present, the unit they occupy must remain vacant.
- (5) The attached accessory apartment shall be designed so that the appearance of the building remains that of a one-family residence. In general, any new entrances to the accessory apartment shall be located on the side or rear of the building. **[Amended 10-15-2018 STM, Art. 2]**
- (6) The accessory apartment shall be clearly subordinate to the single-family dwelling. It shall be no greater than 800 square feet nor have more than two bedrooms. An addition to the original building is permitted, provided that the addition does not increase the floor area or volume of the original building by more than one-third (33%) of the existing total residential

space (excluding unfinished attic and basement, garage, porch, and patio). These same dimensional criteria shall apply to an accessory apartment constructed in an existing detached dwelling (such as a garage, barn, or carriage house), or to an accessory apartment constructed as part of a new detached dwelling.

(7) At least three permanent off-street parking spaces shall be available for use by the owner-occupant(s) and tenant(s). These parking spaces shall be screened from ways and adjacent or abutting properties. Screening may consist of dense, hardy evergreen plantings, earthen berms, wall or tight fence, complemented by evergreen plantings or other decorative elements.

(8) The construction of any accessory apartment must be in conformity with State Building Code requirements.

(9) Before a special building permit can be obtained for an accessory apartment, the owner must obtain a disposal works construction permit from the Board of Health to ensure that the well and existing sewage disposal system are adequate for the proposed alteration to the existing dwelling.

(10) In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the Zoning Board of Appeals may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

D. Application procedure. The procedure for the submission and approval of a site plan and/or special permit for an accessory apartment shall be the same as prescribed in the site plan section of this bylaw (§ 125-26) and/or the special permit section of the bylaw (§ 125-25). A special permit application, site plan application, or building permit application for an accessory apartment shall include a notarized letter of application from the owner(s) stating that he/she/they will occupy one of the dwelling units on the premises. **[Amended 5-12-2018 ATM, Art. 44]**

E. Transfer of ownership of a dwelling with an accessory apartment. When a structure which has received approval for an accessory apartment is sold, the new owner, if he/she/they wish to continue to exercise the use, must, within 30 days of the sale, submit a notarized letter to the Building Inspector stating that he/she/they will occupy one of the dwelling units in the structure as his/her/their permanent/primary residence and shall conform to all of the criteria and conditions for accessory apartments and the approved site plan and/or special permit. (The foregoing sentence shall appear as a condition on any site plan and/or special permit that is issued under this chapter.) **[Amended 5-12-2018 ATM, Art. 44]**

## **§ 125-9.2. Two-family dwellings and multifamily dwellings. [Added 5-12-2018 ATM, Art. 44]**

A. Purpose. The purposes of this section are to:

(1) Provide greater diversity of housing unit types to accommodate a more balanced and diverse population in the Town of Pelham.

(2) Better utilize existing Town services and infrastructure by permitting a limited increase in the allowed density of housing in Pelham in appropriate circumstances.

(3) Minimize disturbance of Pelham's unique environmental and scenic qualities while allowing maintenance or growth of the Town's population by allowing more than one housing unit to share site access, parking areas, and other aspects of site development.

- (4) Allow residents of Pelham to take advantage of the reduction in building energy consumption that is possible when dwellings contain more than one unit.
- (5) Provide homeowners with a means of obtaining rental income, companionship, security and services.
- (6) Make housing units available to low- and moderate-income households who might otherwise have difficulty finding homes within the Town.
- (7) Protect stability, property values and the existing residential character of a neighborhood.

B. The permit granting authority may authorize a two-family or multifamily dwelling in accordance with the requirements of § 125-5, Schedule of use regulations. In all cases, the following standards and criteria shall be met:

- (1) Each dwelling unit shall be a complete, separate housekeeping unit that functions independently. Dwelling units may have their own means of egress or can share egress as allowed by the relevant building code provisions.
- (2) Multifamily dwellings may not contain more than six dwelling units.
- (3) A two-family dwelling or a multifamily dwelling shall be designed so that the appearance of the building respects vernacular building styles of Pelham. Units in two-family or multifamily dwellings may be arranged side-by-side, stacked vertically, or arranged in a mixed vertical and horizontal configuration.
  - (a) Two-family and multifamily dwellings shall conform to the building design standards in § 125-8.2F.
  - (b) Appropriate building types include:
    - [1] Existing dwellings with or without additions.
    - [2] Building types described in § 125-8.2F.
  - (c) Building types that are inappropriate and shall not be allowed include:
    - [1] Horizontally symmetrical side-by-side duplexes shall not be allowed unless the applicant can demonstrate that the structure reflects massing, proportions, placement of entrances, fenestration, and roof styles characteristic of traditional styles of housing in Pelham and the surrounding region. Traditional styles of housing include, but are not limited to, Colonial, Federal, Farmhouse, Greek Revival, Craftsman, and American Foursquare. In general, horizontally symmetrical side-by-side duplexes shall limit visual signaling of the two units within the dwelling by utilizing a simple unified roofline, and clustering doors in the center of the building, preferably with a functional front entry porch (minimum six-foot depth). Applicants wishing to employ a horizontally symmetrical side-by-side duplex building type shall provide diagrammatic drawings that illustrate how the combination of building massing, placement of entrances, patterns of fenestration, and rooflines reflect local or regional precedents characteristic of traditional New England villages.
    - [2] Snout houses. Snout houses shall be defined as "dwellings in which an attached garage projects from the structure such that the facade of the garage is closer to the front property line than the principal facade of the structure."

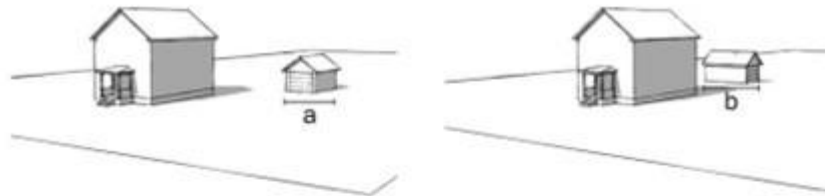
Two-family or multifamily snout houses shall not be allowed in Pelham.

(d) Garages.

[1] When garages are provided for two-family or multifamily dwellings, it is preferred that the garages are detached and located behind the principal structure.

[2] Attached garages shall be located behind the front plane of the dwelling by at least 1/3 of the depth of the structure. Projecting porches, eaves, decks, and overhangs, shall not be considered the front plane.

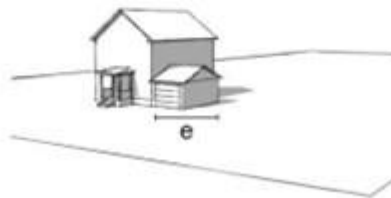
[3] Two or more attached garages that are arranged on a two-family dwelling such that more than one garage door is visible from a public way shall not be allowed.



Preferred location for garage: detached to side (a) or behind dwelling (b)



Acceptable location for garage: attached to dwelling; garage is set back behind the front plane of the dwelling at least 1/3 of the depth of the dwelling (c, d).



Unacceptable location for garage: attached to dwelling; garage is not set back behind the front plane of the dwelling at least 1/3 of the depth of the dwelling (e).

Figure 125-9.1-4: Examples of acceptable and unacceptable locations for garages for two-family or multifamily dwellings

(e) Entrances: If visible from a street or public way, a two-family or multifamily dwelling shall have an entrance that faces the street or public way. Two primary entrance doors facing a street on the same facade of a structure are discouraged, unless they are side-by-side. Applicants proposing a structure with two primary entrance doors on the front facade shall demonstrate via photographs, drawings, or illustrations that the

design fits one of the allowed building types and reflects local or regional precedents characteristic of traditional New England villages.

(4) Parking must conform to the standards set forth in § 125-18 and § 125-8.2I(4), (5), (10), and (11).

(a) In case of a conflicting requirements between § 125-18 and § 125-8.2I, the requirements in § 125-8.2I shall prevail.

(b) Notwithstanding provisions elsewhere in this bylaw, parking screening requirements for two-family and multifamily dwellings do not apply to backing or maneuvering space associated with parking spaces, or to access driveways.

(5) Lighting must conform to the standards in § 125-8.2G and other applicable provisions of this bylaw.

(6) Site design and landscaping must conform to the standards in § 125-8.2H(1) and (2) and other applicable provisions of this bylaw.

(a) The front entrance to a multifamily building shall open onto sidewalks and streets or common public spaces and not onto parking lots. Multifamily buildings and developments shall create shared open spaces along a street or common green. Said open spaces may be, but shall not be required to be, open to the general public. Rear entrances and entrances for services and delivery may be from parking areas.

(7) The construction of any two-family or multifamily dwelling must conform with State Building Code requirements.

(8) Before a building permit, special permit, or site plan approval can be obtained for a two-family or multifamily dwelling, the owner must obtain a disposal works construction permit from the Board of Health to ensure that a new or existing sewage disposal system is adequate for the proposed two-family dwelling.

(9) If a two-family or multifamily dwelling is served by new or existing on-site water and waste disposal systems, the special permit or site plan application shall include a septic system design, or as-built plans, prepared by a certified engineer and approved by the Board of Health. The submitted septic system design, or as-built plans, shall demonstrate that the existing or proposed septic system has adequate capacity for the proposed use. The special permit application shall also include a plan illustrating the location of water supply wells.

(10) For dwellings to be served by on-site waste disposal systems, approval shall be allowed only upon demonstration by the applicant that the groundwater quality at the boundaries of the lot will not fall below the standards established by the Massachusetts Department of Environmental Protection in Drinking Water Standards of Massachusetts, or by the United States Environmental Protection Agency in National Interim Primary Drinking Water Regulations, or, where groundwater quality is already below these standards, upon determination that the activity will result in no further degradation. Where compliance is in doubt, the Board of Health may hire a professional engineer to analyze and certify groundwater quality impacts and may charge the applicant for the cost of such analyses.

(11) In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the Planning Board may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

(12) In all other respects, the layout and relationship of buildings to each other and to streets, public spaces, and parking areas shall be as provided in other applicable sections of this bylaw as well as any design standards or guidelines adopted by the Planning Board.

C. Application procedure. The procedure for the submission and approval of a special permit and/or site plan for a two-family dwelling or a multifamily dwelling is described in the special permit and/or site plan approval sections of this bylaw (see § 125-25 and/or § 125-26). Additional application submittal requirements, as needed, are described above.

**§ 125-9.3. More than one dwelling on a parcel. [Added 5-12-2018 ATM, Art. 44]**

A. Only as allowed by § 125-5, Schedule of use regulations, a parcel may contain more than one primary dwelling, provided that the parcel has sufficient acreage to comply with applicable density limitations. Such developments must be approved under § 125-18.3, Open space design in the Village Center Districts, and the density of such developments shall not exceed that allowed under § 125-18.3. Such a parcel may not be later subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed. The requirements of this § 125-9.3 do not apply to accessory apartments permitted under § 125-9.1, Accessory apartments.

**§ 125-9.4. Elderly congregate housing. [Added 5-12-2018 ATM, Art. 44]**

A. Elderly congregate housing shall be permitted in the Residential District only from issuance of a special permit with site plan approval from the Zoning Board of Appeals and in accordance with the additional requirements specified herein.

B. Purposes. The purposes of elderly congregate housing are to:

- (1) Encourage housing to ensure that elderly residents of Pelham are afforded every opportunity to remain active members of the community.
- (2) Encourage careful placement of housing to meet elderly residents' needs throughout Pelham.

C. General requirements. The following standards shall be used as additional requirements to the special permit/site plan approval process for all elderly congregate units:

- (1) Elderly congregate structures shall have access on roads having sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic generated by the site.
- (2) The maximum number of occupants per structure shall not exceed six.
- (3) No building shall be floodlit. Drives and parking areas shall be illuminated only by shielded lights.

D. Additional utility requirements.

(1) For dwellings to be served by on-site water and waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the special permit application.

(2) For dwellings to be served by on-site waste disposal systems, approval shall be allowed

only upon demonstration by the applicant that the groundwater quality of the boundaries of the lot will not fall below the standards established by the Massachusetts Department of Environmental Protection in Drinking Water Standards of Massachusetts, or by the United States Environmental Protection Agency in National Interim Primary Drinking Water Regulations, or, where groundwater quality is already below these standards, upon determination that the activity will result in no further degradation. Where compliance is in doubt, the Board of Health may hire a professional engineer to analyze and certify groundwater quality impacts and may charge the applicant for the cost of such analyses.

#### **§ 125-10. Signs.**

Any exterior sign, lettered surface or other display used to identify or advertise shall, except as expressly provided, conform to the following restrictions:

A. General restrictions.

- (1) No sign or advertising device shall project over or into any pedestrian or vehicular way customarily used by the public.
- (2) No sign or advertising device shall incorporate, or be lighted by, flashing or blinking lights or be designed to attract attention by a change in light intensity or by movement.
- (3) No sign or advertising device shall constitute a nuisance or hazard to pedestrian or vehicular traffic because of intensity or direction of illumination or placement.
- (4) In the case of dwelling or use accessory thereto, one sign not over two square feet in area is permitted for each family residing on the premises, indicating the name of the owner or occupant or pertaining to the accessory use.
- (5) The top of a sign, together with any supporting framework, shall not be situated higher than the roof line. In the case of a building with a pitched roof, the eaves line of the building shall be considered the roofline.
- (6) The supporting members for any sign shall be in acceptable proportion to the size of the sign.
- (7) No sign shall be erected so as to obstruct any door, window or fire escape on a building.
- (8) At each boundary line of the Town and within a street right-of-way, a single sign not exceeding 25 square feet in area indicating the meetings of all Pelham civic organizations may be erected.
- (9) No sign, except for a traffic regulatory or informational sign, shall be erected which uses the words "stop," "caution" or "danger," or other similar words in such a manner as to present or imply the need or requirement of stopping or caution or the existence of danger, or which, for any reason, in the opinion of the Chief of Police, is likely to be confused with any traffic regulatory or informational sign.
- (10) If lighting is provided, the source of light shall be either from within the sign or shall be exterior to the sign and shielded so as to prevent direct glare from the light source onto any public street or onto any adjacent property.
- (11) One unlighted temporary sign offering premises for sale or lease shall be permitted for each parcel, provided that it not exceed six square feet in surface area, be placed on the parcel



offered for sale or lease and be set back at least 10 feet from the street lot line or 1/2 of the building setback distance, whichever is less.

(12) One unlighted temporary sign of an architect, engineer or contractor, erected during the period such person is performing work on the premises on which such sign is erected, shall be permitted, provided that it not exceed four square feet in surface area and be set back at least 10 feet from the street lot line or 1/2 of the building setback distance, whichever is less.

(13) The Building Inspector is authorized to order the repair or removal of any sign and its supporting structure which, in his or her judgment, is dangerous, in disrepair or which is erected or maintained contrary to this chapter.

(14) All signs, except for those authorized under Subsection B(2) of this section (political sign), shall be removed within 30 days of the date from which they no longer serve their intended function (i.e., the service, establishment or product being advertised no longer exists).

**B. Permitted signs.**

(1) Any traffic, informational or directional sign owned and installed by a governmental agency shall be permitted, provided that the size, location and height be approved by the Pelham Select Board. **[Amended 5-14-2022 ATM by Art. 17]**

(2) Temporary freestanding ground signs advocating any candidacy or cause that is under consideration at a particular election (not to exceed one sign per candidate or cause per lot) shall be permitted, provided that such signs:

- (a) Shall not exceed a size of six square feet.
- (b) Shall not be any closer than 10 feet to any lot line.
- (c) Shall not be any higher (the top) than four feet from the ground.
- (d) Shall not be displayed on a building or structure.
- (e) Shall not be displayed more than three months prior to the election date.
- (f) Shall be taken down within three days following the election.

(3) The limitations as to the number of signs permitted do not apply to directional signs that are necessary for the safety and direction of residents, employees, customers and visitors (whether in a vehicle or on foot) of the business, industry or residence. Directional signs may not exceed a size of six square feet, may not be any higher (top of sign) than four feet from the ground and, if lighted, shall be illuminated internally or by indirect method with white light only. Only one directional sign shall be permitted per curb cut. Directional signs may carry the name of the business or project, provided that the name is clearly secondary in nature to the primary directional function of the sign and that the name occupies no greater than 1/2 the area of the directional message.

(4) Wall signs. A single wall sign is permitted for each nonresidential use, provided that:

- (a) It shall be attached and parallel to the front façade of the portion of the building housing the use. **[Amended 5-12-2018 ATM, Art. 44]**
- (b) It shall not project horizontally more than 12 inches therefrom.

- (c) Its surface area shall not be greater than six square feet.
- (d) If lighted, it shall be illuminated internally or by indirect method with white light only.

(5) Ground signs. The Zoning Board of Appeals may issue a special permit for one ground sign, in addition to the permitted wall sign(s), per lot for each lot frontage for nonresidential establishments or home occupation, provided that:

- (a) There must be unique features to the structure, the orientation of the structure, the location or setback of the structure, or the location of establishments in the structure, especially affecting such structures or establishment, but not generally affecting the zoning district in which it is located, which restrict the visibility of wall sign(s) otherwise allowed by this chapter.
- (b) Said ground sign shall be located in the same lot as the structure or establishment being advertised.
- (c) Said ground sign shall not exceed a height of six feet, including support structures, nor have a surface area greater than six square feet, though the Zoning Board of Appeals may require a lesser height or size. **[Amended 5-12-2018 ATM, Art. 44]**
- (d) Said ground sign may not interfere with sight distances or present a safety hazard. **[Added 5-12-2018 ATM by Art. 44<sup>7</sup>]**
- (e) Where a single lot is occupied by more than one business, whether in the same structure or not, there shall not be more than one ground sign per lot frontage.
- (f) No billboard or sign on which the principal product or service advertised is not regularly produced or available on the premises where the sign is located shall be erected.

(6) Nonconforming and temporary signs.

- (a) Signs legally existing at the time this chapter is adopted may continue as nonconforming structures.
- (b) The Pelham Select Board may issue a special permit allowing for the display and placement of temporary signs for public interest, not-for-profit, nonprofit or Pelham governmental purposes. **[Amended 5-14-2022 ATM by Art. 17]**
- (c) In the case of a permitted or authorized use other than a dwelling or use accessory thereto, or in the case of sale or lease of the premises, two signs pertaining to such use, sale or lease, provided that the total area of such signs clearly visible from any point not on the premises shall exceed 12 square feet, shall be permitted only by special permit by the Board of Appeals.

(7) Residential signs. One identification sign is permitted for each dwelling unit, provided that such sign shall not exceed two square feet in surface area. The sign shall not be used for any purpose other than identifying the occupant(s).

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<sup>7</sup> Editor's Note: This article also redesignated former Subsection B(5)(d) and (e) as Subsection B(5)(e) and (f), respectively.

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**§ 125-11. Trailers and mobile homes.**

A. The use of trailers or mobile homes for residential purposes is not permitted in the Town of Pelham. The Zoning Board of Appeals may issue a special permit for the residential use of a mobile home, provided that all of the following are met:

- (1) The structure shall be affixed to a permanent foundation, and the exterior walls of the structure shall rest upon said foundation;
- (2) The structure shall meet the Mobile Home Construction and Safety Standards of the United States Department of Housing and Urban Development as well as all appropriate Massachusetts building codes in existence at the time of application and shall be so certified by the manufacturer;
- (3) The minimum width of the main body of the mobile home as assembled on the site shall not be less than 24 feet as measured across the narrowest portion;
- (4) The pitch of the main roof shall be not less than one foot rise for each four feet of horizontal run, and the minimum distance from eaves to ridge shall be 12 feet and;
- (5) Any materials that are generally acceptable for housing built on the site may be used for exterior finish or roofing on a mobile home; provided, however, that reflection from such exterior shall not be greater than from siding coated with white gloss exterior enamel paint.

B. Trailers may be used for temporary residential purposes by the owner and occupier of a residence (on the same parcel) which has been destroyed by fire or other natural disaster for a period not to exceed 12 months while the residence is being rebuilt.

**§ 125-12. Home occupations. [Amended 5-7-2016 ATM, Art. 45]**

A. In the Residential District (R) and Limited Business District (LB), home occupations shall be permitted only upon issuance of a special permit from the Zoning Board of Appeals. In the Village Center Mixed Use District (VC-MU), Village Center Neighborhood District (VC-N) and Village Center Rural Edge District (VC-RE), home occupation shall be permitted by right subject to the requirements in this § 125-12 and any other applicable provisions of the Zoning Bylaw. **[Amended 5-12-2018 ATM, Art. 44]**

B. Home occupations as accessory to a residential use shall be permitted subject to the following requirements:

- (1) The home occupation shall be conducted by members of the family<sup>8</sup> living on the premises and/or by up to, but not more than, the equivalent of two full-time nonresident employees;
- (2) The area devoted to the conduct of the home occupation shall not exceed 30% of the habitable floor area of the dwelling unit. However, a home occupation may be permitted in an existing detached accessory structure such as a barn, garage, shed or the like, subject to

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<sup>8</sup> Note: In the Pelham Code, a family is defined as either (a) an individual or group of persons related by marriage, blood and/or adoption residing together in one dwelling unit; or (b) a group of unrelated individuals, not to exceed four, residing cooperatively in one dwelling unit. (§ 125-34)

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regulations and site limitations noted by the Planning Board, Board of Health or Conservation Commission, as applicable;

(3) There shall be no visible change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation except:

(a) One non-illuminated sign, not exceeding four square feet of face area, either: mounted flat against the wall of the principal building; or mounted on the ground in accordance with § 125-10B(5) if the ZBA finds the sign, its height off the ground, and its proposed location to be in keeping with the character of the area;

(b) Exterior lighting to support the home occupation, if permitted, shall be consistent with local law and shall be limited to that required for safety and operational purposes; reasonably shielded from abutting properties; and in keeping with the rural character of the Town. If located in the VC-MU, VC-N, or VC-RE District, exterior lighting associated with a home occupation shall comply with § 125-8.2G; **[Amended 5-12-2018 ATM, Art. 44]**

(c) In the R and LB Districts, the ZBA may allow, at its discretion, positive changes to the appearance of the property such as landscaping for screening purposes of parking or additions in compliance with other bylaw provisions or state regulations, laws and codes. See § 125-18G for guidance on parking; **[Amended 5-12-2018 ATM, Art. 44]**

(d) In the VC-MU, VC-N, and VC-RE Districts, site and building alterations associated with a home occupation shall be allowed by right subject to the site plan review by the Planning Board. **[Added 5-12-2018 ATM, Art. 44]**

(4) No home occupation shall be permitted that is more detrimental or offensive than other uses allowed by right in the zone as a result of on-site characteristics or off-site impacts including, but not limited to, air or waterborne substances, vibrations, noise, light or glare, odors, erosion, or electrical interference;

(5) A special permit for a home occupation shall initially be granted for a one-year period. The applicant may apply for renewal of the special permit no more than 90 days and no fewer than 60 days before expiration of the one-year period. The review by the Zoning Board of Appeals shall be based on the following two-part test:

(a) Does the permit holder reside on the property?

(b) Has a violation of a related zoning bylaw and/or of one or more conditions of the special permit been documented by the Zoning Enforcement Officer or raised at the public review hearing?

If the one-year renewal review by the Zoning Board of Appeals finds that Subsection B(5)(a) is in the affirmative, and Subsection B(5)(b) is negative, then the special permit shall be renewed indefinitely, subject to the provisions above and any reasonable conditions previously imposed by the Zoning Board of Appeals, and Subsection B(6), (7), and (8) below. If the review finds that Subsection B(5)(a) is in the negative, the special permit shall not be renewed.

If Subsection B(5)(b) is found to be in the affirmative, and the Zoning Enforcement Officer notifies the Chair of the Zoning Board of Appeals that the permit holder has failed to satisfactorily address the violation, the Zoning Board of Appeals will schedule a public hearing to decide whether the special permit should be renewed. The permit

holder will pay the costs of conducting the hearing, including obtaining an up-to-date list of abutters, advertising the hearing, and mailing out the required two sets of notices.

(6) A holder of a special permit for a home occupation may at any point file an application to alter the conditions for the special permit, which will require a public hearing to review the application.

(7) A home occupation special permit shall lapse when the owner(s) no longer occupies the property as a principal residence.

(8) No home occupation shall violate any other provision of this chapter.

**§ 125-12.1. Major home occupations. [Added 10-25-2006 STM, Art. 11; amended 5-12-2018 ATM, Art. 44]**

A. The purpose of this section is to permit moderately sized professional, retail and service uses, secondary to the principal residential use of the lot, which the granting authority determines are of a size, scale, character and use and which are compatible to and harmonious with the existing neighborhood.

B. A major home occupation shall comply with all of the following conditions:

(1) The major home occupation must be a secondary use to the principal residential use on the same lot;

(2) The major home occupation must be conducted by an owner-occupant of the residence on the lot;

(3) There may be no more than seven full-time equivalent employees; unpaid volunteers and members of the owner's family are not counted as employees;

(4) The major home occupation does not have to be conducted within the principal residence on the lot;

(5) The granting authority may require screening, including screening of any loading/parking area, from the view of abutting residential lots;

(6) Any exterior new construction or any addition or alteration to the existing structure(s) on the lot shall be consistent in style and design with the existing residential and accessory structures, if any, on the lot;

(7) One freestanding double-sided sign, not to exceed 10 square feet on each side and not to exceed a height of four feet from the ground, shall be allowed.

(8) Any special permit/site plan approval for a major home occupation shall be personal to the applicant and shall not be transferable to any other person or entity and shall not run with the land;

(9) The major home occupation shall comply with all other provisions of the Town of Pelham Zoning Code.

**§ 125-13. Common access driveways.**

A. Definition. As used in this chapter, the following terms shall have the meanings

indicated:

**COMMON ACCESS DRIVEWAY or COMMON ACCESS DRIVE** — A driveway/curb cut shared by not more than three lots, such that each lot has approved frontage on an existing public way, and has access obtained through the common use of a private driveway designed according to the standards for construction of shared driveways in Pelham. [**Amended 5-11-1996 ATM, Art. 23; 5-13-2023 ATM, Art. 25**]

B. Authority. The Pelham Planning Board shall be the special permit granting authority and/or site plan granting authority for all purposes under this section and shall adopt rules and regulations with respect to the administration of applications or special permits under this section, subject to the conditions set forth below. [**Amended 5-12-2018 ATM, Art. 44**]

C. Standards. Proposed common access driveways to be shared by not more than three lots shall require a special permit from the Planning Board. For each such proposal the Superintendent of Public Works, Fire Chief, Board of Health, Conservation Commission and Building Inspector may provide to the Planning Board written opinion or oral testimony at a public hearing regarding matters pertaining to their particular jurisdiction, together with any questions or considerations bearing on the adequacy of the plan. This opinion or testimony may include, but is not limited to, suggestions for road specifications, including permeable surfaces, runoff retention and appropriate drainage, sight lines, emergency access, wetland and open space protection and other criteria designed to promote the health, safety and welfare of the inhabitants of the Town of Pelham. In reaching its decision, the Planning Board shall consider the following factors: whether the proposed drive creates less adverse impact to wetlands located on the lots or otherwise diminishes environmental degradation; allows safer access to lots; results in the preservation of the rural quality of the area through the reduction in the number of accessways and maintenance of existing vegetative and topographical conditions; otherwise promotes the health, safety and welfare of the inhabitants of the Town of Pelham. This provision shall be applied in conjunction with the Subdivision Control Law (MGL c. 41., §§ 81K through 81GG) and the rules and regulations governing the subdivision of land in Pelham. [**Amended 5-12-2018 ATM, Art. 44; 5-13-2023 ATM, Art. 25**]

(1) Each lot must have adequate approved legal frontage on an existing public way, except for a lot in an open space design as specified in § 125-18.3. Frontage requirements for each lot shall be along a Town, county, state or approved subdivision road. Frontage along the length of private/common access driveways shall in no way be used to satisfy frontage requirements as specified in this chapter.

(2) The following shall accompany an application filed for a common driveway special permit:

(a) A site plan, developed by and carrying the seal of a certified professional engineer or a registered land surveyor, shall be submitted with the special permit application showing the layout for the common driveway, meeting the following specifications:

[1] A width of at least 16 feet and passing turnouts providing a total width of at least 20 feet along a distance of at least 25 feet, spaced with no more than 300 feet between turnouts, and with the first such passing turnout at the driveway connection to the street.

[2] A maximum grade of 8%; said driveway shall not exceed a grade of 2% within 30 feet of its intersection with the public way, or a grade of 5% within

30-50 feet of the driveway after the intersection. **[Amended 5-13-2023 ATM, Art. 25]**

[3] A minimum side setback of 25 feet from any property not served by the proposed driveway.

[4] No connection to any other way except the one from which it originates.

[5] Access from the same public way that serves as the frontage for the lots being serviced by the common driveway, unless unique circumstances presented to the Planning Board are such that the Board may grant permission to access the common driveway from another public way.

[6] All driveways shall be designed and constructed so as to reasonably minimize any drainage problem upon or adjacent to any street or lot.

(b) An easement plan suitable for recording at the Registry of Deeds.

(c) Easements, covenant and agreements for the subject lots containing restrictions prohibiting any additional vehicular access to said lots from other than the common driveway approved by this special permit, stating that said common driveway is a private driveway and not a Town way. The maintenance, operation, repair and reconstruction (including snow plowing and snow/ice removal) is the responsibility and liability of the property owners. All deed easements, easement plans, restrictions, covenants and agreements must be submitted to and approved by the Planning Board prior to their recording and prior to the issuance of any building permits.

(3) House numbers identifying all of the homes utilizing the common driveway shall be placed at its intersection with the Town road and at each subsequent turnoff from the common driveway sufficient for identification by emergency vehicles.

D. Certification. Prior to the issuance of any occupancy permits for any of the lots serviced by such common driveway, the applicant shall submit to the Planning Board, as-built plans, prepared and stamped by a registered professional engineer and a certified statement from a registered professional engineer that such common driveway was constructed in accordance with the approved plans.

E. Street acceptance. A common driveway designed and constructed in accordance with these requirements is not a street which may be accepted as a town way. In granting a special permit for a common driveway, the Planning Board shall impose a condition prohibiting the property owners from petitioning for acceptance of the common drive as a public way, unless property owners petition to the Town demonstrating that the common driveway conforms to the Rules and Regulations for the Subdivision of Land in the Town of Pelham, for the construction and laying of ways, including requirements pertaining to cul-de-sac or dead-end streets, and demonstrating that the lots served by the common driveway, with structures as built, conform with dimensional regulations applicable to the zoning district with respect to lot area, frontage, coverage, setbacks and lot width. A lot divided by the common drive right-of-way shall be considered as two separate lots for purposes of this demonstration, with new lot lines as created by the proposed new public way. **[Amended 5-13-2023 ATM, Art. 25]**

**§ 125-14. Riding stables or academies.<sup>9</sup>**

A. Riding stables or academies shall be permitted in the Residence District only upon issuance of a special permit from the Zoning Board of Appeals and in accordance with the additional requirements specified here.

B. Additional requirements. The following standards shall be used as additional requirements in the special permit approval process for all riding stables or academies:

- (1) All persons giving riding lessons or instructions have a valid state license.
- (2) All riding schools and stables where horses are kept for hire, whether or not instruction is given, have a valid state license.
- (3) The stable operator has on display a map showing the location of all riding trails and paths on properties of other landowners.
- (4) The stable operator has on file, for public use, written permission from other landowners for the traversing of horses and riders on said properties, with or without conditions and restrictions, and dated to identify the use period.
- (5) Licenses shall comply with all valid federal, state and Town regulations as to equine health protection.
- (6) The stables shall be open during reasonable hours for inspection of records and premises by duly authorized state agents or representatives and duly authorized Town inspectors, boards and commissions.
- (7) The Board of Appeals may impose such additional requirements and safeguards as will protect the public health and safety and welfare, with particular consideration to the impact of such uses and the traffic generated on other property in the area.
- (8) The minimum acreage required shall be a parcel or tract of land in accord with the following:
  - (a) Minimum acreage of one acre for one horse or pony and an additional 1/2 acre for each additional horse or pony.
  - (b) The required acreage shall be one contiguous parcel. This parcel may contain stables and barns but may not include the building lot area required for dwellings. The required acreage may not include any and all wetlands contained within the parcel nor any land with a slope exceeding 20%.
- (9) The conduct of horse shows shall be expressly addressed in the special permit for these operations.
- (10) The area to be used for the keeping of horses and/or ponies shall have adequate fencing to contain the animal(s) within the property boundaries.
- (11) Sufficient off-street parking facilities should be provided to accommodate all users and visitors to the property, as determined by the Board of Appeals.
- (12) Stables, barns, corrals and yards shall be properly drained and free from excessive odor,

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<sup>9</sup> Editor's Note: The Attorney General has determined that this section shall only apply to parcels of five acres or less.



dust and mud, so as not to create a nuisance or health hazard to the community or to surrounding property owners.

**§ 125-15. Noncommercial keeping of animals.**

A. The keeping of horses and/or ponies and a private stable, for personal use of the land owner, are permitted as accessory uses in accordance with the following conditions:

(1) The minimum acreage required for not more than one horse, pony or stable shall be a contiguous parcel of not less than 60,000 square feet. One additional horse or pony, not to exceed a total of three animals, shall be permitted for each 15,000 square feet over the minimum. Foals under six months are not to be counted. The land area may include that devoted to the required building lot, but may not include any and all wetlands as well as land whose slope exceeds a 20% grade.

(2) The area to be used for the keeping of horses and/or ponies shall have adequate fencing to contain the animal(s) within the property boundaries.

(3) Stables, barns, corals and yards shall be properly drained and free from excessive odor, dust and mud, so as not to create a nuisance or health hazard to the community or to surrounding property owners.

(4) Maintenance of the stable and property used in the keeping of horses and/or ponies shall conform to all regulations of the Board of Health and state health authorities.

B. The keeping of nonfarm animals on a property occupied by a dwelling shall be allowed as an accessory use when the keeping of such animals is for noncommercial purposes and when the keeping of such animals conforms with all regulations of the Board of Health and state health authorities.

C. As used in this section, the following terms shall have the meanings indicated:

**FARM ANIMALS** — All horses, ponies, mules, donkeys, cattle, swine, sheep, goats and poultry of any age or sex.

**NONFARM ANIMALS** — Those animals commonly known as "household pets," including dogs, cats, fish and birds (parrots, parakeets, etc.) and may also include rabbits, ducks, geese or chickens, provided that these do not create health, safety or noise concerns in the neighborhood.

**§ 125-16. Unregistered motor vehicles.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**MOTOR VEHICLE** — Any vehicle, self-propelled by an internal combustion engine, which is permitted and requires a valid registration legally issued by a governmental authority in order to be operated on a public way. For the purposes of this chapter, a motor vehicle shall include but not be limited to automobiles, trucks, buses, motor homes, motorized campers, motorcycles, motor scooters and tractors.

**MOTOR VEHICLE ACCESSORIES** — Any part or parts of any motor vehicle.

**PERSON** — Any individual, firm, partnership and/or corporation.

PRIVATE PROPERTY — Any real property not owned by the federal, state, county, Town government or other public subdivision.

REMOVAL — The physical relocation of a motor vehicle and/or motor vehicle accessories to an authorized location.

UNREGISTERED MOTOR VEHICLE — Any motor vehicle that does not have a valid registration legally issued by a governmental authority.

B. No more than two unregistered motor vehicles, and no motor vehicle accessories which are not parts of said two vehicles, may be parked, stored or otherwise placed on a parcel of land without a special permit from the Select Board. **[Amended 5-14-2022 ATM by Art. 17]**

C. The Select Board members may issue a special permit to a person for the storage of more than two unregistered motor vehicles and motor vehicle accessories. **[Amended 5-14-2022 ATM, Art. 17]**

D. Any unregistered motor vehicles and/or motor vehicle accessories permitted in Subsections B and C above shall be screened from the view of the public, from abutting public ways and from abutting properties by being enclosed within a structure or fencing.

E. This chapter shall not apply to the parking, storage or otherwise placing of unregistered motor vehicles and/or motor vehicle accessories where such parking, storage or placement is in connection with a legally established business selling new and/or used automobiles and trucks, or automotive repair or automobile service stations. This chapter shall also not apply to trucks and tractors which are in use for bona fide agricultural purposes.

#### **§ 125-17. Public ways.**

A. No construction, digging, installation or placement of objects or structures shall be allowed within the right-of-way lines of the public ways, except by written permission from the Select Board. **[Amended 5-14-2022 ATM, Art. 17]**

B. A plan indicating the location for each driveway shall be submitted to and approved by the Highway Superintendent prior to the issuance of a building permit. Each driveway shall conform to standards set forth by the Superintendent of Public Works.

#### **§ 125-18. Parking and driveway regulations. [Amended 5-4-1991 ATM, Art. 19]**

A. General requirements.

(1) Off-street parking shall be provided in conjunction with and during the construction, conversion and/or expansion of any structure, as well as upon the implementation. change or expansion of a use, and shall be located on the lot.

(2) In granting a special permit for any use, the SPGA may require off-street parking spaces, standards or conditions in excess to those set forth in this section, if it deems it necessary for the use. **[Amended 5-12-2018 ATM, Art. 44]**

(3) Any specific, more stringent provision in any other section of this chapter relating to parking shall prevail over provisions in this section.

B. Parking area and driveway design, location and requirements. All new structures and uses

and any additions, changes, extensions or expansions to existing structures and uses shall be provided with off-street parking spaces in accordance with the following specifications:

(1) Location. Parking facilities shall be located on the same lot with the principal use they are required to serve. Parking areas shall not be located within a required front, side or rear setback as specified in Table 2A and Table 2B, Table of Dimensional and Density Regulations. All structures and uses requiring over five parking spaces shall locate said spaces behind the principal structure. **[Amended 5-12-2018 ATM, Art. 44]**

(2) No lot may have more than one driveway or curb cut unless a special permit has been granted by the Planning Board.

(3) Standards.

(a) Each parking space should be at least nine feet by 16 feet in size excluding the portion of the driveway to such space, and all parking areas should have adequate access and maneuvering areas.

(b) Drainage facilities for each parking area should be designed and constructed to contain stormwater runoff on the premises.

(c) Parking shall be so arranged as to prevent backing of vehicles onto any street.

(d) The layout of the parking area shall allow sufficient space for the storage of plowed snow unless snow removal by some other means is provided.

(e) Any portion of any entrance or exit driveway shall not be closer than 50 feet to the curbline, or functional equivalent on roads without curbs, of any intersecting street nor closer than 50 feet to any portion of an existing driveway. A driveway in the Village Center Districts for residential uses is exempt from the preceding requirement, which sets a minimum distance from an existing driveway. A driveway for a commercial uses in the Village Center Districts shall not be closer than 15 feet to any portion of an existing driveway **[Amended 5-12-2018 ATM, Art. 44]**

(f) Any two driveways leading to or from the same street and from the same lot shall not be within 50 feet of each other at their intersections with the front lot line.

(g) Any entrance or exit driveway shall not exceed 18 feet in width at its intersection with the front lot line, except as provided in § 125-13C.

(h) Except on a farm, only one commercial vehicle (excluding pickup trucks, vans) shall be garaged or in any way stored on any lot in any R District. Said vehicle shall not exceed 18,000 pounds gross vehicle weight.

(i) No driveway shall be closer than 5 feet to a side or rear lot line.

(j) Driveways shall not exceed a grade of 2% within 30 feet of their intersection with the public way.

(k) All driveways shall be designed and constructed so as to reasonably minimize any drainage problem upon or adjacent to an street or lot. **[Added 5-12-2018 ATM, Art. 44]**

(4) Additional standards for all commercial parking and lots of over five vehicles:

(a) Screening. Any parking for nonresidential use of property shall be screened from

the roads and from residential uses on abutting properties. Screening may consist of decorative elements, such as building wall extensions, plantings, berms or other innovative means, must be maintained in good condition, and no advertising shall be placed thereon. The screening shall be designed so that vehicle sight distances shall not be affected at entrances, exits or at street intersections.

(b) Lighting. If lighted, drives and parking areas shall be illuminated in such a way that there shall be no glare for motorists, pedestrians or neighborhood districts or properties.

(c) The area and access driveways thereto shall be graded and drained so as to dispose of all surface water accumulation in accordance with acceptable engineering practices.

(d) A substantial bumper of masonry, steel or heavy timber, or a concrete curb or berm curb which is backed, shall be placed at the edge of surfaced areas, except driveways, in order to protect abutting structures, properties, sidewalks and screening materials.

(e) The Planning Board may grant a special permit to allow the reduction of the parking space requirements to 80% of that required in the Table of Off-Street Parking Regulations where conditions unique to the use will reasonably justify such a reduction, provided that a reduction in excess of 80% may be allowed where joint use of the same spaces by two or more uses or establishments is justifiable by virtue of the fact that the uses or establishments generate peak demand at substantially different time periods. **[Amended 5-12-2018 ATM, Art. 44]**

(f) Fire lanes or emergency access points required for buildings or other structures shall be protected from unauthorized parking through the provision of curbs, mountable barriers, landscaped areas or such other improvements subject to the approval of the Fire Chief and Chief of Police.

C. Existing spaces. Parking or loading spaces being maintained in any district in connection with any existing use on the effective date of this chapter, or any spaces subsequently provided in accordance with this chapter, shall not be decreased or in any way removed from service to the use originally intended to be served so long as said use remains, unless a number of parking or loading spaces is constructed elsewhere, such that the total number of spaces conforms to the requirements of the table in this section. However, this regulation shall not require the maintenance of more parking or loading spaces than is required according to the table.

D. Computation of spaces. When the computation of required parking or loading spaces results in the requirement of a fractional space, any fraction greater than or equal to 1/2 shall require one space. **[Amended 5-12-2018 ATM, Art. 44]**

E. Continuance. Required off-street parking or loading spaces which, after development, are later designated as and accepted by the Town for off-street parking or loading purposes shall continue to serve the uses or structures to meet these requirements so long as said use or structure remains.

F. Location of loading spaces. All loading spaces shall be on the same lot as the use they are intended to serve. In no case shall loading spaces be part of the area used to satisfy the parking requirements of this chapter.

G. Off-street parking standards. In all districts, there shall be provided and maintained off-street automobile parking spaces in connection with the construction, conversion or increase by

units or dimensions of buildings, structures and use, in at least the following minimum amounts. All uses shall provide parking spaces adequate to accommodate under all normal conditions the vehicles of occupants, employees, members, customers, clients, residents and visitors to the premises, as determined by the Planning Board. The following guidelines may be used by the Planning Board when determining adequate parking: [Amended 5-12-2018 ATM, Art. 44]

**Table 5  
Parking Requirements**

<b>Use</b>	<b>Required Minimum Space</b>
<u>Residential uses</u>	
Single-family dwelling	2 per dwelling
With accessory apartment	1 additional
With home occupation	1 additional
Community residences	2 minimum, plus 1 1/2 for each employee
Two-family dwelling	1 per dwelling unit. If the dwelling unit contains more than 6 bedrooms, 1 additional parking space shall be provided for each bedroom in excess of 6 bedrooms.
Multifamily dwelling	1 per dwelling unit. If the dwelling unit contains more than 6 bedrooms, 1 additional parking space shall be provided for each bedroom in excess of 6 bedrooms.
Elderly congregate housing	1 1/2 for each sleeping room
<u>Government, institutional and public service uses</u>	
Places of public assembly and public recreation including libraries, museums, art galleries, craft centers, government buildings, recreations and community centers, membership clubs, churches	1 for each 4 legal occupants, or where benches are used, 1 for each 8 lineal feet of bench. Where no fixed seats are used (as in a museum) for each 80 square feet of public floor area, there shall be 1 parking space.
Child-care facility, family child-care home, large family child-care home, other educational or child-care use not subject to the limitations on municipal regulation in MGL c. 40A, § 3	1 per 2 employees, plus adequate space for pickup and drop off of children
Elementary school	1 for each teacher and employee, including space for the gymnasium or the auditorium, whichever has the larger capacity.
<u>Commercial uses</u>	
Bed-and-breakfast	1 per rental unit or guest, plus 2
Commercial boarding stable, riding academy, commercial recreation, hunting and fishing	To be determined by SPGA in the issuance of the special permit
Retail/office/personal service	3 per 1,000 square feet or as determined by SPGA or site plan granting authority
Restaurant/bar/entertainment	1 per 4 seats or as determined by SPGA or site plan granting authority

H. On-street parking. On-street parking is prohibited in the Town of Pelham, except in the Village Center Districts, where it may be allowed if the Town adopts a general bylaw that specifies where and when on-street parking is allowed. [Amended 5-3-1997 ATM, Art. 7; 5-12-2018 ATM, Art. 44

**§ 125-18.1. Wireless communication towers. [Added 5-9-1998 ATM, Art. 28]**

A. Standards. A wireless communication tower (including antennas and accessory structures, if any) may be erected upon the issuance of a special permit by the Zoning Board of Appeals, subject to site plan approval and subject to all of the following conditions:

- (1) To the extent feasible, all service providers shall collocate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) that are technically practicable.
- (2) New towers shall be considered only upon a finding by the special permit granting authority that preexisting structures or existing or approved towers cannot accommodate the wireless communication equipment planned for the proposed tower.
- (3) Tower height shall not exceed 100 feet above the existing terrain.
- (4) A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base. The special permit granting authority may also allow lesser setbacks necessary to permit the use of an existing structure.
- (5) No tower shall require guy wire supports.
- (6) No tower or other associated structure shall contain signs or other devices for the purpose of advertisement.
- (7) All towers shall minimize adverse visual effects on the environment. The special permit granting authority may impose reasonable conditions to ensure this result, including painting and lighting standards.
- (8) All building-mounted facilities shall be designed and located so as to appear to be an integral part of the existing architecture of the building.
- (9) All electronic and other related equipment necessary for the operation of any wireless communication facility shall, wherever possible, be located within a lawfully preexisting structure or be located completely below grade. When a new structure is required to house such equipment, the siting design and materials of the structure shall be harmonious with the surrounding natural features, buildings and structures.
- (10) Fencing shall be provided to control access to the site of the communication facility and shall be consistent with the character of abutting properties. Fencing is not required for antennas or other appurtenances mounted on a preexisting structure.
- (11) Landscape plans submitted with the application shall identify existing vegetation, shall indicate which vegetation is to be retained and shall show all proposed new vegetation and other landscape treatment. Existing on-site vegetation shall be preserved to the maximum extent practicable.

B. Nonuse or cessation of use. All structures associated with a wireless communication

tower shall be removed within one year of construction in the event that the facility is not used or within one year of the cessation of said use. Prior to the issuance of a building permit for a wireless communication tower, the applicant shall post and submit a bond or other financial surety acceptable to the Town of Pelham in an amount sufficient to cover the cost of demolishing and/or removing the facility in the event the Building Inspector deems the facility to have been abandoned or unused for more than one year. Said amount shall be certified by an engineer, architect or other qualified professional registered to practice in the Commonwealth of Massachusetts.

C. Modifications. The special permit granting authority may modify, by special exception, any provision of the standards and conditions prescribed in § 125-18.1 if it can be demonstrated that it is technically infeasible to meet these standards or conditions, or that the effect of these standards or conditions is to prohibit the proposed use throughout the Town, or if such modification will promote use of existing buildings or structures, collocation of wireless communication uses, improved safety or design or otherwise promote the purposes of this chapter.

**§ 125-18.2. Solar electric installations. [Added 5-5-2012 ATM, Art. 37; Amended 10-24-2020 STM, Art. 5; Amended 5-13-2023 ATM, Art. 28]**

A. Background. There is a pressing need to promote solar energy development in light of the global climate crisis. The Town of Pelham supports solar development in order to advance the Commonwealth's policy goals to transition to non-carbon-based energy production. It is understood that the Massachusetts statutes have established solar energy generation as a protected use that cannot be prohibited or unreasonably regulated "except where necessary to protect the public health, safety or welfare" of Pelham residents. For these reasons, the Town of Pelham's zoning is intended to support reasonable and appropriate solar installations. As noted however, certain solar related development should not occur if it is to the detriment of the public health, safety or welfare of residents. It is the responsibility of the Town of Pelham, through reasonable regulation and within the context of the local community that solar development occurs in a manner that protects its residents' health, safety and welfare. This bylaw seeks to establish the appropriate balance.

The June 2022 Massachusetts Clean Energy and Climate Plan for 2025 and 2030 (CECP) states that "Massachusetts' natural and working lands (NWL) provide many benefits to the residents of the Commonwealth, including clean air and water, wildlife habitat, carbon sequestration, recreational opportunities, food and wood production, and many other functions on which society and life depend. These benefits, often called ecosystem services, continually serve our society as long as NWL can remain functioning as NWL. Massachusetts NWL ecosystems currently store at least 0.6 gigatons of carbon, equivalent to over 2 gigatons of carbon dioxide or the past 25 years of greenhouse gas emissions in the Commonwealth. As NWL are an important local resource to help re-move carbon dioxide from the atmosphere, the Commonwealth will protect NWL from losses and degradation and will pursue new and ongoing actions to increase their capacity to sequester carbon."

The CECP states that "ensuring that our forests continue to provide the full range of ecosystem services in the face of ongoing climate change requires careful stewardship that considers forest ecosystem dynamics, protections against forest loss, and sustainable harvest and use of forest products. While carbon sequestration is among the most important forest ecosystem services in the context of this 2025/2030 CECP and the Commonwealth's ability to achieve net zero in 2050, forests must also continue to provide wildlife habitat, wood products, clean air and water, and recreation, necessitating tradeoffs in which ecosystem services are prioritized in forest management. These management decisions must be tailored to the particular ecological conditions,

land owners' objectives, and community values for specific forest areas.”

For purposes of this bylaw, it is understood that protection of public health, safety or welfare for Pelham residents includes the following:

- Since Pelham does not have an extensive public water system, most uses in the community rely upon drinking water wells for a clean potable water supply. Residents and the community at large, depend upon a functional, reliable, stable and resilient water supply. This requires that reasonable steps are taken 1) to protect the integrity of inter-connected water resources – above and below ground; and 2) to protect water from contamination and significant supply disruption. In acknowledgement of the key position Pelham holds in the region as watershed not only for its own private water supply but also for portions of the water supplies of Shutesbury, Amherst, Belchertown, Springfield and the Quabbin Reservoir, Pelham enacted a Water Supply Protection Overlay District Article IV Section 125-8.1 [Amended 10-27-1993 STM] “to promote the health, safety and welfare of the community by protecting, preserving and maintaining the sur-face and groundwater resources of the Town and the region from any use of land or buildings which may pollute or otherwise adversely affect the quality and quantity of its water resources.”
- Wetlands provide a unique element in local water systems as reflected in the Commonwealth’s Wetland Protection Act and the Pelham’s Local Wetland Bylaw and should therefore be protected from contamination and disruption. As noted by the U.S. EPA, wetlands naturally improve water quality, mitigate flooding and erosion, and support fish and wildlife.
- Roads are essential for the provision of emergency services, residents’ employment and education, and the reduction of isolation for climate vulnerable individuals. Pel-ham’s 6.5 miles of unpaved roads are susceptible to damage due to heavy or misappropriate use, more frequent weather variability and severe weather events from cli-mate change resulting in drought or flooding, and construction and development that can degrade the roadway surface or its drainage system. The protection of infrastructure integrity is important to the health, welfare and safety of residents and the environment.
- A resilient natural ecosystem is essential for the health and wellbeing of the populace, the water supply, and the local flora and fauna. Pelham is primarily forest land and it is recognized that unfragmented tracts of forest provide many ecological benefits that contribute to a vibrant natural ecosystem, and water supply, and by extension make Pelham a more resilient community.
- A forest and its trees are the only known terrestrial mechanism for removing carbon on a large scale from the atmosphere through carbon sequestration and storage. As recognized at the international, national, and state level, removing carbon from the atmosphere is an essential component of mitigating climate change. In its (CECP), the Commonwealth has committed to reduce Greenhouse Gases by 25% below 1990 level in 2030 on natural and working lands through enhanced carbon sequestration capacity and adoption of climate smart management practices. Pelham, through its forestland, contributes to the Commonwealth’s efforts to reduce greenhouse gases and removal of the forest land should be considered for any proposed use.
- As a community that is mostly forested land and with little infrastructure and mini-mal municipal water supply, the risk of forest fires should be minimized whenever possible. Increased instances of drought and the weakening health of local forests from invasive species and fragmentation, makes Pelham’s forests more susceptible.



- While Pelham has limited agricultural land, with climate change, the capacity to grow food locally is important, making agricultural soils a premium resource to be protected.
- As a small rural town, Pelham has a volunteer fire department led by a part-time chief and a small police department comprised of a full-time chief and primarily part-time officers. The emergency management team is primarily volunteers and town staff (fire chief, police chief, town administrator). Given this staffing level, the town has a very limited ability to respond to large scale or complex industrial accidents. Similarly, because Pelham is surrounded by other low-capacity towns in rural Franklin and Hampshire Counties, mutual aid may provide more personnel but not greater technical ability to respond to large or complex emergencies. Hosting industrial developments with potential for electrical and fire incidents may therefore pose a heightened public safety hazard.
- Preserving historical and cultural resources provides a sense of belonging and identity that is beneficial for the well-being of individuals and communities. The Massachusetts Historical Commission highlights the importance of historic and cultural preservation, stating that “the continuing presence of historic properties in Massachusetts immeasurably enhances the quality of our lives; they help to establish our sense of place and to define the very character of our communities.” The Massachusetts State Historic Preservation Plan 2018–2022 establishes the priorities for the Commonwealth, calling for (1) strengthening “the stewardship of historic and archaeological resources” - to “encourage and support state agencies, municipalities, and non-profit organizations to maintain their significant historic properties”; and (2) include diverse cultural and ethnic communities in historic preservation” - to “provide opportunities for historic preservation that can reflect a broader range of cultures, traditions, and ethnicity.” Pelham is home to many sites that are significant to Indigenous and Euro-American history and culture that, if preserved, will contribute to the promotion, protection and restoration of resident’s well-being.

Consistent with Massachusetts zoning law, this bylaw seeks to address the need to “conserve health; secure safety from fire, flood, panic and other dangers; facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements, to conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment.”

B. Purpose. The purpose of this bylaw is to provide reasonable regulation that strikes a balance between allowing needed solar development while also protecting the public health, safety or welfare of Pelham residents as detailed herein. Reasonable regulation shall be achieved in this bylaw by: (1) providing standards for the approval, placement, design, construction, operation, monitoring, modification and removal of such Installations in order to protect and preserve Town infrastructure (including roads), prevent public nuisance, promote public safety, maintain existing residential property values, minimize and mitigate possible impacts on environmental, scenic, and historic resources, and protect the town from financial harms; (2) providing adequate financial assurance for the eventual decommissioning of such Installations; and (3) protecting large contiguous blocks of forest back-land based on the understanding that large unfragmented tracts provide many ecological benefits including improved water and air quality, sequestration of carbon, reduced movement of invasive species, provision of wildlife habitat and the land base for greater biodiversity; as well as maintaining commercial forestry as a viable agricultural activity and providing many recreational opportunities for town residents.

C. Applicability

(1) This Section § 125-18.2 applies to Large- Scale and Small-Scale Ground-Mounted Solar Electric Installations, as noted (hereinafter, Installations). Small-Scale Installations which are accessory to an existing residential or non-residential use, which generate electricity principally (no less than 50% of generated power) used by such residential or non-residential use, are permitted as of right, do not need to comply with this section, but will require site plan review from the Zoning Board of Appeals, a building permit, and must comply with all other applicable provisions of the Town of Pelham Zoning Bylaw and non-zoning bylaws and regulations. Building-mounted solar electric installations are permitted by right following issuance of a building permit. Large-Scale Installations are permitted only within Solar Districts.

(2) This Section § 125-18.2 also pertains to physical modifications that materially alter the type, configuration, or size of Installations or related equipment.

(3) This Section § 125-18.2 shall not apply to an Installation for which a zoning permit was issued and was still in effect as of the first publication of notice of the April 12, 2023 Planning Board public hearing, but the record owner of the land shall have the right to waive this exemption, in which case the Section § 125-18.2 shall apply.

(4) Upon written request by the applicant, the Planning Board may waive or re-duce any special permit requirement of this Section § 125-18.2 by the same majority vote required for the permit itself upon written findings included in the permit of:

(a) special circumstances of the site, its surroundings, or the proposal that negate the need for imposition of the requirement, or the objectives of this section may be met in alternative manner; and

(b) that such a waiver or reduction will not derogate from the public purposes and intent of this zoning bylaw.

(c) In the case of a special permit, such waiver or reduction requests must be made by the applicant no later than the close of the public hearing. An affirmative or negative vote under this paragraph shall not be construed as an approval or disapproval of the permit sought.

#### D. Requirements

(1) Compliance with Laws, Bylaws, and Regulations: The construction and operation of all Installations 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 thereof shall be constructed in accordance with the Massachusetts State Building Code. Siting of all Installations shall be consistent with all applicable local, state and federal requirements, including but not be limited to:

- (a) Mass. Endangered Species Act (MESA)
- (b) Mass. Wetlands Protection Act (WPA)
- (c) Mass. Environmental Policy Act (MEPA)
- (d) Mass. Forest Cutting Practices Regulations
- (e) Pelham Local Wetlands Bylaw

- (f) U.S. Endangered Species Act
- (g) National Historic Preservation Protection Act (NHPA)

Installations shall not go into construction until all local, state and federal requirements have been met and all required approvals issued.

(2) Dimensional Requirements

(a) Frontage: Lots for Installations shall have the required frontage on a public way stated in Section § 125-6 and defined in this zoning bylaw.

(b) Access driveways for Installations shall be no longer than 1,000 feet to the beginning of the use.

(c) Lot Size:

(i) Large-Scale Installation shall mean an Installation which occupies more than one and one-half (1.5) acres of land and no greater than fifteen (15) acres of land.

(ii) Small-Scale Installation shall mean an Installation which occupies one and one-half (1.5) acres or less of land.

(d) Minimum setbacks for all Large-Scale Installations shall be:

- Front street setback: 500 feet
- Property line setback: 100 feet

(e) Minimum setbacks for all Small-Scale Installations shall be:

- Front street setback: 100 feet
- Property line setback: 50 feet

(f) Required setback areas shall not be counted toward a facility's total acreage.

(g) If an ESS is included in the Installation, it shall be located no more than 100 feet from the outer perimeter of the solar panels, and to mitigate possible damage resulting from a fire, the ESS shall maintain a buffer of at least 100 feet from forested land.

(3) Mitigation for Loss of Carbon Sequestration and Forest Habitat:<sup>10</sup>

~~If forestland is proposed to be converted to an Installation the plans shall designate thereon an area of unprotected (meaning, not subject to MGL c. 184, §§ 31-33 or other binding restrictions upon development at time of application) land on the same lot and of a size equal to four times (4X) the total area of such Installation. Such designated land shall remain in substantially its natural condition without alteration, including a prohibition of commercial forestry/tree cutting not related to the maintenance of the Installation, until such time as the Installation is decommissioned; except in response to a natural occurrence, invasive species or disease that impacts the trees and requires cutting to preserve the health of the forest.~~

(4) Mitigation for Loss of Forest Habitat within the Installation:

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<sup>10</sup> Editor's Note: The Attorney General has disapproved this provision as unreasonable regulation of solar uses.

If forestland is proposed to be converted to an Installation, a plan shall be submitted to establish mitigation measures to preserve and support the health and ecological services: minimize erosion, promote the growth of native plants and prevent invasive species. The site shall be regularly reseeded and annually monitored until 80% of the land is vegetated by native plants (excluding invasive species). A planting maintenance plan shall be submitted with the special permit. An annual monitoring report shall be submitted for the first five years after construction and later if the 80% vegetation threshold is not met.

(5) Mitigation for Installation of Perimeter Fencing:

Any perimeter fencing within winter sight of a public roadway, driveway, or dwelling existing at the time of the special permit application shall be entirely black in color. Fences shall be raised to an appropriate distance above the ground to facilitate the passage of small animals.

(6) Mitigation for Disruption of Trail Networks:

If existing trail networks, old Town roads, or woods or cart roads are disrupted by the location of the Installation, the plans shall show alternative alignments to be marked and made passable by the applicant. No rights of public access may be established hereunder.

(7) Mitigation for Disruption of Historic Resources and Properties:

Historic resources and properties, such as cellar holes, farmsteads, stone corrals, marked graves, water wells, or pre-Columbian features, including those listed on the Massachusetts Register of Historic Places or as defined by the National Historic Preservation Act, shall be excluded from the areas proposed to be developed, including clearing for shade management. A written assessment of the project's effects on each identified historic resource or property and ways to avoid, minimize or mitigate any adverse effects shall be submitted as part of the Special Permit. A suitable buffer area shall be established on all sides of each historic resource.

(8) All plans and maps shall be prepared, stamped and signed by a Professional Civil Engineer licensed to practice in the Commonwealth of Massachusetts.

(9) Mitigation for Road Integrity:

Construction access shall be from paved (bituminous or chip-sealed) Town roads. In the alternative, an applicant may propose, at their expense, to Town specifications, and based on the Town's cost estimate, to fund the paving and improvement of drainage facilities to those portions of the Town road required to meet the intent of this section as determined by the Planning Board. The applicant may also propose posting a bond sufficient to fund the maintenance, repair, and restoration to the satisfaction of the Highway Department and the Select Board, of an unpaved Town road and associated drainage facilities used for construction access. The Planning Board, after consultation with the Pelham Highway Department and only following written Select Board approval of an alternative proposal, may accept or deny such alternative proposals.

(10) Mitigation for Forest Block Fragmentation:<sup>11</sup>

~~In order to preserve the ecological integrity of Pelham's large blocks of undeveloped~~

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<sup>11</sup> Editor's Note: The Attorney General has disapproved this provision based on violations of solar protection in G.L. c. 40A, §3 and uniformity principle in G.L. c. 40A, §4.

~~forestland as stated in § 125-18.2 B. herein, no more than the number indicated of Large Scale Installations shall be permitted within the bounds of any set of public ways and/or Town borders as depicted on the 2020 Zoning Map of the Town of Pelham in the district entitled Large Scale Installation Districts, and incorporated into this zoning bylaw.~~

#### E. Design and Performance Standards

(1) Except for emergency response or repairs, there shall be no permanently-affixed exterior lighting, including during construction and operation.

(2) Signage :

(a) Sufficient signage shall be provided to identify the owner of the Installation and provide a 24-hour emergency contact phone number.

(b) Signage at the perimeter warning pedestrians is allowable.

(c) Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of such installation.

(3) Control of Vegetation:<sup>12</sup> ~~Herbicides or pesticides may not be used to control vegetation or wildlife.~~

(4) Visual Impacts:

(a) Installations shall be designed to minimize visual impacts including pre-serving natural vegetation to the maximum extent possible, blending in equipment with the surroundings, and adding vegetative buffers to provide an effective visual barrier from adjacent roads and driveways, and to screen abutting residential dwellings.

(b) When possible, a diversity of plant species shall be used, with a preference for species native to New England.

(c) Use of exotic plants, as identified by the most recent copy of the “Massachusetts Prohibited Plant List” maintained by the Massachusetts Department of Agricultural Resources, is prohibited.

(d) If deemed necessary by the Planning Board, the depth of the vegetative screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained.

(e) The owner/operator shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the Installation.

(f) Landscaping shall be maintained and replaced as necessary by the own-er/operator of the Installation.

(5) Utility Connections: Electrical transformers, wires, or other utility interconnections shall be constructed as required by the utility provider and may be above ground if necessary; provided, however, that every reasonable effort shall be made to place all utility connections underground, depending on appropriate soil conditions and topography of the site and any requirements of the utility provider.

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<sup>12</sup> Editor's Note: The Attorney General has disapproved this provision as preempted by the Massachusetts Pesticide Control Act.

(6) All electric power generated at an Installation shall be from solar energy.

(7) Access driveways shall be constructed to minimize finished width, grading, removal of stone walls or roadside trees, incompatible appearance from the roadway, and impacts to environmental or historic resources.

#### F. Safety and Environmental Standards

##### (1) Emergency Services

(a) The Installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Pelham Fire Chief.

(b) The owner or operator shall cooperate with local emergency services to develop a written emergency response plan that is provided to Pelham police and fire departments.

(c) All means of shutting down the Installation shall be clearly marked.

(d) The owner or operator shall identify a responsible person for public and governmental inquiries throughout the life of the Installation. Updated contact information shall be provided to the Town Administrator, Fire Chief, Police Chief, and the Emergency Management Director annually, no later than 30 days after the beginning of the fiscal year or within 14 days of any contact personnel or information changes. Contact information shall include the contact's name, role in relation to the Installation, email and work phone number. At least one 24 hour/7 day phone number shall be provided for emergencies.

##### (2) Land Clearing, Soil Erosion and Land Impacts

(a) The Installation shall be designed to minimize impacts to open agricultural land and fields, even if not in production. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Installation. Grading that substantially disturbs the existing soil profile and structure is prohibited; sites shall be selected where construction may be accomplished without such earth work.

(b) Prior to any site disturbance and construction, the limits of the work shown on the approved site plan shall be surveyed and clearly marked by a Professional Land Surveyor. Upon completion of the survey, the Professional Land Surveyor shall verify to the Planning Board, in writing, that the limit of work, as shown on the approved site plans, has been established on site.

(c) The design shall minimize the use of concrete and other impervious materials to the maximum extent possible. Installation shall be installed on water permeable surfaces.

(d) Installations, including access driveways and any associated drainage infrastructure on original, predevelopment grades in excess of 10% is prohibited. This requirement does not apply to areas used exclusively for shade management provided all stumps from cut trees shall remain in place.

(e) An environmental monitor may be designated by the Planning Board, at the

applicant's or owner's expense, to inspect the site during construction and after significant weather events; the monitor shall provide timely reports to the operator and Planning Board regarding erosion and stormwater impacts.

(3) Habitat Impacts:

(a) Installations shall not be located on permanently protected land under MGL. c. 184, §§ 31-33.

(b) Land designated as Core Habitat and Critical Natural Landscapes (CNLs) by the Natural Heritage and Endangered Species Program BioMap 2 and when available, as designated by its successor BioMap 3. Core Habitats identified in Pelham include three Forest Cores, three Aquatic Cores, and seven Species of Conservation Concern Cores, all of which "ensure the long-term persistence of species of conservation concern, exemplary natural communities, and intact ecosystems" CNLs identified in Pelham include three Land-scape Blocks, one Wetland Core, and three Aquatic Cores - "larger landscape areas that are better able to support ecological processes, disturbances, and wide-ranging species." These designations establish that the need for protection is a stated interest of the Commonwealth and meets the need for public welfare as established in the 2010 BioMap 2 report, the Commonwealth's 2022 Clean Energy and Climate Plan for 2025 and 2030, and the 2020 SMART regulations, as amended or updated.

(c) Habitat of Potential Regional and Statewide Importance located on Massachusetts Ecological Integrity Maps by the Dept. of Environmental Protection. The need for protection meets the needs of public welfare and the interest of the Commonwealth as noted by DEP "Massachusetts Ecological Integrity Maps" representing human-induced stressors on the environment and resiliency."

(d) Priority Habitat as codified by Massachusetts Endangered Species Act that includes all state listed species of both plants and animals. The need for protection meets the needs of public welfare and the interest of the Commonwealth.

(4) Wetlands

(a) The applicant will prepare MA DEP/WPA Form 4a. Abbreviated Notice of Resource Area Delineation (ANRAD) that includes a wetland evaluation and map of the site. The ANRAD shall also be submitted to the Conservation Commission.

(b) In order to provide an adequate intervening land area for the infiltration of stormwater runoff from an Installation, ground alterations such as stump removal, excavation, filling, grading, or the installation of drainage facilities or solar panels are prohibited within 100 feet of any wetlands or hydrologic features subject to the jurisdiction of the Pelham Conservation Commission.

(c) The Planning Board may impose conditions to contain and control stormwater runoff that might negatively impact identified wetlands or other hydrologic features even if the proposed work area is outside the jurisdiction of the Conservation Commission, including the local wetlands bylaw.

(5) Energy Storage Systems (ESS)

(a)<sup>13</sup> ~~If an energy storage system (ESS) is installed as part of the Installation, the ESS shall be designed and sized to store only the energy generated on site. The Installation shall not be designed nor operated to receive and subsequently transfer off site generated energy. An ESS must meet the standards put forth in the National Fire Protection Association's NFPA 855 Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition, as amended and updated and comply with Massachusetts Fire Code 527 CMR 1.00 and the State Electrical Code 527 CMR 12.00.~~

(b)<sup>14</sup> ~~To ensure that local first responders are prepared for emergencies related to the ESS, the owner or operator shall arrange for and pay all the expenses for training as needed of Pelham fire, police, and emergency management personnel, as designated by the town to respond to an ESS- related emergency. Payment, in an amount approved by the Fire Chief, Police Chief, and Emergency Management Director, to cover all expenses of training above shall be due to the town by July 1; unspent funds will be credited to the following training.~~

(c) In the case of an emergency related to the ESS, the operator shall provide the Town of Pelham with an emergency response team, at the operator's expense, that has the necessary capacity, equipment and training to undertake the requirements of the emergency response plan.

(d) All means of shutting down the ESS shall be clearly marked.

(e) Spacing of energy storage units and other fire prevention installation measures for the ESS shall be designed and documented to follow current safety-related best practices to mitigate thermal runaway among energy storage units.

(f) Onsite water storage shall be available for firefighting adequate to the needs to mitigate thermal runaway at the ESS as indicated in the hazard mitigation analysis.

(g) An ESS shall be designed so that in the instance of fire, noxious gases resulting from combustion will be contained or filtered, to the maximum extent practicable, mitigating the direct venting into the environment from containers or storage units associated with the ESS.

(h) Contaminated water runoff from firefighting and heat reduction efforts related to an ESS shall be contained onsite to prevent, to the maximum extent practicable, water infiltration into the soil to protect underlying or adjacent water systems.

(i) To mitigate the risk of water contamination in the case of emergency and in particular risks to public and private water supplies, the ESS shall comply with § 125-25 D. 5 of the Pelham Zoning Bylaw. Unless waived by the Planning Board, the ESS shall be sited no less than 400 feet from the nearest water well.

(j) Use of per-and polyfluoroalkyl substances (PFAS) for fire suppression with the ESS is prohibited given the federally and state recognized high risk of contamination of groundwater.

#### G. Required Application Materials

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<sup>13</sup> Editor's Note: The Attorney General has disapproved in part this provision as it conflicts with G.L. c. 40A, §3.

<sup>14</sup> Editor's Note: The Attorney General has disapproved in part this provision as it is inconsistent with state law.



The project applicant shall provide the following documents.

(1) Required Pre-Submission Documents

(a) Project Notifications for Historic and Cultural Mitigation. The purpose of the project notifications is to provide a reasonable opportunity for knowledgeable parties to: comment on the project, inform the Phase I Cultural Re-source Survey Report, or participate in the development of the Cultural Re-source Management Plan. Notifications shall at a minimum include: the project name, a narrative description of the project; contact information for the applicant; most recent U.S. Geological Survey (USGS) map section (7.5 minute quadrangle) showing actual project location, a site map showing the Area of Potential Effect as defined by the National Historic Preservation Act, and a narrative including relevant historical or cultural information about the site.

(b) Project notifications shall be sent to the following parties: Massachusetts State Historical Commission; Pelham Historical Commission; the Tribal Historic Preservation Officers (THPOs) for tribes in Massachusetts, Connecticut, Rhode Island, Vermont, New York, and New Hampshire listed by the U.S Department of the Interior and the National Conference of State Legislatures. If a tribal government or organization has no THPO, project notifications shall be sent to the appropriate tribal representative for that given tribal government. At a minimum, project notifications shall be sent to the following Tribal governments or their successors: Wampanoag Tribe of Gay Head-Aquinnah, Mashpee Wampanoag Tribe, Stockbridge-Munsee Band of Mohican Indians, Nipmuc Nation, Nipmuck Tribal Council of Chaubunagungamaug, Chappaquiddick Wampanoag Tribe, Herring Pond Wampanoag Tribe, Mashantucket Western Pequot Tribal Nation, Mohegan Tribe of Indians of Connecticut, Narragansett Indian Tribe, Schaghticoke Tribal Nation, Elnu Abenaki Tribe of Vermont, Golden Hill Paugussett Indian Nation, East-ern Pequot Tribal Nation, Saint Regis Mohawk Tribe, and Seneca Nation of Indians. Applicants are encouraged to contact the Massachusetts' Commission on Indian Affairs or the Massachusetts Historical Commission so that the applicant can notify additional tribes that have historical ties to the Algonquian-speaking Indigenous people of Western Massachusetts.

Project notifications shall be written with a requirement to respond within 45 days from date of receipt. A failure of parties to respond within 45 days from date of receipt shall allow the applicant to submit the special permit application under this § 125-18.2. Late responses shall be provided to the Planning Board.

(c) Phase I Cultural Resource Survey Report. The primary objective of a Phase 1 Cultural Resources Survey is to identify and record all cultural resources within a project area. This shall include locations of all known, mapped or suspected historic properties, Indigenous archaeological sites, or sites of Indigenous ceremonial activity, as well as documentation demonstrating the required Project Notifications in G.(1)(a-b) and any received writ-ten responses to the notification. Identification of such sites shall be based upon all of the following: i) a determination of the Area of Potential Effects as defined by the National Historic Preservation Act - the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties; ii) cultural resource sur-vey; iii) field work; iv) review of available records of historic or cultural properties; and v) review of information about suspected historic properties, including those of religious and cultural significance to an Indigenous com-munity, and historic properties suggested by noticed parties.

The Planning Board strongly encourages the owner or applicant to allow appropriate site access to parties noticed in accordance with G.(1)(a-b) to determine the presence of historical resources and properties and to assess possible impacts. In the instance that the noticed parties are unable to gain access to the site and are therefore unable to submit comments based upon direct knowledge to the Planning Board, the lack of this documentation shall not be deemed to establish that there are no historical resources or properties present or that possible disruptions might not occur.

To protect the cultural resources, any reports deemed, by either the Massachusetts Historical Commission or the Pelham Historical Commission, to contain sensitive information about sites and specimens, as defined in section 26B of MGL Chapter 9, shall not be a public record. Any such reports shall be available only to the permitting authorities, the Pelham Historical Commission, the Massachusetts Historical Commission, any consulting Tribes, and the project applicant.

## (2) Required Documents for Special Permit Submission

### (a) A Site Plan additionally showing:

- (i) Locations of wetlands and surface water resources including hydro-geological modeling of groundwater systems.
- (ii) Location of BioMap 2, and when available BioMap 3, Core Habitats and Critical Natural Landscapes as designated by the Natural Heritage and Endangered Species Program (NHESP).
- (iii) Location of Habitat of Potential Regional and Statewide Importance located on Massachusetts Ecological Integrity Maps as mapped by the Dept. of Environmental Protection.
- (iv) Location of Priority Habitat as codified by MA Endangered Species Act (MESA)
- (v) Locations of local or National Historic Districts
- (vi) Locations of vegetative plantings
- (vii) Locations of stormwater management elements

(b) A full report of all materials to be used, including but not limited to the use of cleaning products, paints or coatings, hydro-seeding, fertilizers, and soil additives. When available, Material Safety Data Sheets will be provided.

(c) Blueprints: Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing: the proposed layout of the system and any potential shading from nearby structures and; one- or three-line electrical diagram detailing the Installation, associated components, and electrical interconnection methods, with all Massachusetts and National Electrical Code compliant disconnects and overcurrent devices.

(d) General Documentation: The following information shall also be provided:

- (i) Name, address, and contact information for proposed system installer.
- (ii) The name, contact information and signature of any agents representing the project applicant.

(iii) A list of any state or federally listed hazardous or known carcino-genic materials proposed to be located on the site in excess of house-hold quantities and a plan to prevent their release to the environment as appropriate. In addition, if an ESS is included in the Installation, a list of materials that are flammable or toxic when burned shall be provided.

(e) Site Control: The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed Installation.

(f) Operation and Maintenance Plan: The project applicant shall submit a plan for the operation and maintenance of the Installation, which shall in-clude measures for maintaining safe access to the Installation, stormwater management (consistent with DEP's and, where appropriate, Pelham's stormwater regulations and vegetation controls), as well as general proce-dures for operational maintenance of the installation. Plans for vegetative controls and stormwater management shall include regular annual inspection and maintenance. If an ESS is installed, operation and maintenance plans shall be provided for regular inspection, servicing, repair and renovation of the ESS.

(g) Financial Surety: Applicants for Installations shall provide a form of sure-ty, either through an escrow account, bond or otherwise, accessible to the Town of Pelham to cover the cost of removal in the event the Town must re-move the Installation and remediate the site to its natural preexisting condi-tion, 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 compli-ance with the additional requirements set forth herein. The project 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 calculating increased removal costs due to inflation.

(h) Utility Notification: Installations shall not be constructed, nor a building permit issued until evidence has been provided to the Planning Board that the utility company that operates the electrical grid where the Installation is to be located has approved the Installation owner or operator's intent to in-stall an interconnected customer-owned generator and that the utility has ap-proved connection of the proposed generator into their power grid. Off-grid systems shall be exempt from this requirement. A signed copy of the inter-connection service agreement with the utility company shall be submitted be-fore the Installation may go into operation.

(i) Proof of Liability Insurance. If the Installation includes an ESS, proof of additional liability insurance shall be provided, adequate to address costs associated with possible fires, explosions or water contamination, as identified in the Hazard Mitigation Analysis.

(j) Proof of Compliance. The applicant shall submit to the Planning Board evidence of compliance with local, state and federal permitting and procedures, as applicable. Proof of compliance shall be submitted regarding compliance with Section 106 of the National Historic Preservation Act, Mass. Wetlands Protection Act, Mass. Endangered Species Act, Mass. Environmental Protection Act, Mass. Forest Cutting Practices regulations, and the Pelham Local Wetlands Bylaw. Submission of evidence for compliance or exemption, as relevant, will be required before construction of the Installation may begin.

(k) Noise Assessment. The applicant and owner shall submit a noise assessment by a

qualified professional of the noise levels projected to be generated during construction and operation of the Installation, including for an ESS; a noise mitigation plan for construction and operation consistent with Massachusetts DEP Noise Control Regulation, 310 CMR 7.10; and a noise monitoring plan as it relates to residents and wildlife consistent with state or national best practices.

(l) A report by a qualified professional with demonstrated knowledge in hydrogeology that provides an estimate of how and to the extent construction and operation of the Installation may affect water volume, water storage, and drinking water well recharge within 400 feet of property lines for the Installation.

(m) If appropriate for the site, a Cultural Resource Management Plan (CRMP) or a Historic Properties Management Plan (HPMP) written by a professional with generally recognized credentials. The Planning Board encourages good faith engagement with interested parties to resolve adverse effects including development and evaluation of alternatives or modifications that could avoid, minimize, or mitigate adverse effects. The applicant shall submit the CRMP or HPMP to the Planning Board and all parties noticed in G.(1)(a-b).

(n) Energy Storage System Plans and Documentation: For installations that include an ESS, the following documents shall be submitted:

(i) A site-specific Hazard Mitigation Analysis conducted, at the applicant's expense.

(ii) A written emergency response plan to be provided to Planning Board that is consistent with the findings and recommendations of the Hazard Mitigation Analysis and is approved by the Fire Chief, Police Chief, and the Emergency Management Director. The emergency response plan shall include the sequence of operations relative to the ESS shutdown and emergency response intervention.

(iii) Material Safety Data Sheets for batteries and electrical components, and for fire suppression chemicals that would be used in the case of a fire at the ESS.

(iv) A copy of the project summary, electrical schematic, and site plan for the ESS which shall be provided to the Pelham Fire Chief, Police Chief, and the Emergency Management Director in addition to the Planning Board.

(v) Fire and explosion prevention and mitigation information including venting system operation; location of detectors and types of detectors/sensors including manufacturer and model, accuracy, and sensitivity; suppression system design, including type of agent, system layout, application rate, and source.

(vi) Design specifications for: energy storage units including cells, mod-ules, and rack systems including manufacturer and model and unit levels of storage cells; pertinent UL test data; energy storage containers including but not limited to the general physical layout relative to doors, access panels, vents; interior layout of cabinets, racks, ductwork, compartmentation; ventilation system; construction materials; and exterior of containers including spacing between containers and the specifications of structural supports/foundations for the containers.

### (3) Monitoring, Maintenance and Reporting

(a) Required Conditions :

(i) The Installation owner or operator shall maintain the facility in good condition.

(ii) Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.

(iii) Site access shall be maintained to a level acceptable to the Pelham Fire Chief and Emergency Management Director.

(iv) The owner or operator shall be responsible for the cost of maintaining the Installation and any access driveways.

(b) Annual Reporting:

(i) The owner or operator of an Installation shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan, the requirements of this Section § 125-18.2 and the approved special permit, including but not limited to continued management and maintenance of vegetation, compliance with the approved plans and any special permit conditions, continuation of liability insurance, adequacy of road access, and the amount of electricity generated by the Installation. The annual report shall also provide information on maintenance completed during the course of the calendar year including maintenance of the physical site, vegetative controls, stormwater, electronic systems, fire prevention if appropriate, and ESS. If an ESS is part of the Installation, the annual report shall include information about the amount of electricity stored and transferred by the ESS during the period reported.

(ii) The report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Commissioner, Board of Health and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.

(c) Discontinued Operations

(i) Any Installation which has reached the end of its useful life, has been abandoned, or taken off line shall be physically removed no later than 150 days after the date of discontinued operations.

(ii) The owner or operator shall notify the Special Permit Granting Authority by certified mail, of the proposed date of discontinued operations and plans for removal.

(iii) Removal shall consist of physical removal of all components of the Installation, including but not limited to structures, foundations, equipment, security barriers, and on-site above-ground transmission lines. Associated off-site utility interconnections shall also be removed if no longer needed. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations. Restoration of the site to its natural preexisting condition, including stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner or operator to leave landscaping or designated below-grade foundations and electric lines in order to minimize erosion and disruption to vegetation.

(iv) Removal by the Town: If the owner or operator of an Installation fails to remove it in accordance with the requirements of this Section § 125-18.2 within

150 days of discontinued operations or abandonment, the Town, upon receiving a court order, may enter the property and physically remove the installation at the owner's expense, drawing from the escrow account or upon the bond or other financial surety provided by the applicant.

H. Lapse of Approval: Any special permit shall automatically lapse if the Large-or Small-Scale Installation is not installed and functioning within two (2) years of the grant of the special permit or if the Installation shall be considered abandoned.

I. Enforcement: A violation of this Bylaw shall be subject to the enforcement provisions of the Town of Pelham Zoning Bylaw, Article VII and any adopted non-criminal disposition provisions.

**§ 125-18.3. Open space design in the Village Center Districts. [Added 5-12-2018 ATM, Art. 44]**

A. Purpose and applicability.

(1) Purpose. The purposes of this bylaw are to:

- (a) Enable the growth of a compact village center in West Pelham while preserving the Town's rural character.
- (b) Preserve open space resources in Pelham for farming, forestry, recreation, wildlife habitat, and protection of the Town's unique water resources and environmental assets.
- (c) Foster compact development using flexible regulations for density and lot dimensions.

(2) Applicability.

(a) Open space design is allowed by right, subject to site plan approval by the Planning Board, in the Village Center Districts (VC-MU, VC-N, VC-RE). Open space design is subject to the requirements of this § 125-18.3. Open space design may be employed in one of the following circumstances:<sup>15</sup>

[1] An applicant may apply for open space design to create two or more lots, from one or more contiguous parcels under common ownership

in the Town of Pelham, when the creation of a new subdivision road is not required.<sup>16</sup>

[2] Any application for development of more than one dwelling on a parcel shall comply with the open space design provisions of this § 125-18.3.

[3] A subdivision in the VC-MU and VC-N Districts may apply for open space design.

[4] All subdivisions in the VC-RE Districts shall comply with the open space design provisions of this § 125-18.3, unless the Planning Board allows a

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<sup>15</sup> Note: As used in this Subsection A(2), the word "shall" is mandatory, and the words "should" and "may" are recommended but optional.

<sup>16</sup> Note: For example, Approval Not Required (ANR) development, or development with more than one lot served by a common driveway.

development that deviates from the requirements of § 125-18.3 by special permit. Such deviations may be approved if the applicant demonstrates that the proposed alternative development configuration provides adequate protection of the site's environmental resources and fulfills the purposes of this article as well as or better than an open space design.

(b) Section 125-18.3A(2)(a)[3] and [4] apply only to subdivisions of land as defined in MGL c. 41, § 81L, and not to construction of homes or businesses on individual lots that existed prior to April 23, 2018, or to lots created through the "Approval Not Required" process with frontage on public ways existing as such as of April 23, 2018, described in the Regulations for the Subdivision of Land (the "Subdivision Regulations"). However, if subdivision approval is not required because a new roadway is not proposed, an applicant may nevertheless apply for an open space design under this § 125-18.3.

(c) Subsequent approval of such portions of an open space design as constitute a subdivision shall be required, as set forth in the Subdivision Control Law, including approval of the streets and utility system. A favorable action by the Planning Board on a site plan application for open space design shall not, therefore, constitute subdivision approval under the Subdivision Control Law or the Rules and Regulations Governing the Subdivision of Land, nor imply that subdivision approval will be granted.

(d) If the proposed open space design also involves one or more common driveways, density bonuses, and/or any other use that requires a special permit and/or site plan review, the proceedings for all such special permits and/or the site plan review, including for the lot configuration, shall occur in one consolidated special permit proceeding before the Planning Board.

B. Development impact statement and conservation analysis. In order to enable the Planning Board to determine whether or not a proposed open space design (or development by special permit that deviates from the requirements for open space design) satisfies the purposes and standards of this article, an applicant must present sufficient information on the environmental and open space resources for the Board to make such determination. The required information shall be provided in the form of a development impact statement, including a "conservation analysis" as described in the Subdivision Regulations. In the case of an open space design that is not a subdivision, and that is presented as a site plan review application, the applicant shall not be required to submit a full development impact statement. However, the Planning Board may require the submission of all or part of a conservation analysis as described in the Subdivision Regulations.

(1) Conservation analysis and findings.

(a) Prior to filing an application, an applicant is encouraged to meet with the Planning Board and the Conservation Commission, in joint session if possible, to discuss the conservation resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve and where development may be most appropriately located.

(b) In the case of a proposed subdivision plan that deviates from the requirements of this section, if the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of an open space design plan, the Planning Board shall deny the special permit for the deviation and require that the applicant submit a plan that complies with the requirements for an open space design.

(c) The Planning Board, in consultation with the Conservation Commission and Open Space Committee, if any, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the "conservation findings"). The Planning Board shall deny any application that does not include sufficient information to make conservation findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the conservation analysis and findings.

(d) The Planning Board's conservation findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The conservation findings shall show land to be permanently preserved by a conservation restriction, as well as recommended conservation uses, ownership, and management guidelines for such land. The conservation findings shall also indicate preferred locations for development if the plan is denied based upon such findings.

(2) Minimum preserved open space. The Plan shall show that at least the percentages of the total acreage listed below will be preserved by conservation restriction, based upon the conservation findings:

VC-MU District: minimum of 10%

VC-N District: minimum of 50%

VC-RE District: minimum of 65%

C. Allowable residential lots or units. The maximum number of residential lots or units in an open space design is calculated by a formula based upon the net acreage of the property. This formula is intended to take into account site-specific development limitations that make some land less developable than other land. This calculation involves the following steps:

(1) Buildable area calculation. The factors named below are included in this subsection for buildable acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this Zoning Bylaw. To determine buildable acreage, subtract (a) and (b) following from the total (gross) acreage of the site:

(a) Half of the acreage of land with slopes of 20% or greater (2,000 square feet or more of contiguous sloped area at least 10 feet in width); and

(b) 75% of the total acreage of lakes, ponds, land subject to easements or restrictions prohibiting development, FEMA 100-year floodplains, and all freshwater wetlands and other resources, as defined in Chapter 131, Section 40, of the General Laws and/or the Town of Pelham Wetlands Protection Bylaw. Said land shall be delineated by an accredited wetlands specialist and approved by the Pelham Conservation Commission.

[1] Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook, "Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act" (1995) (the "handbook") or its successors. The complete form shall be submitted, including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form. If detailed vegetative assessments are not required by the handbook for a particular site, the reasons must be noted on the Field Data Form. At the



Planning Board's discretion, any of the information described above may be taken from current geographic information systems data available from the Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources, including delineations registered by the use of global positioning systems.

(2) Net parcel area calculation. Subtract 8% of the buildable acreage from the buildable acreage to account for roadways, parking and utilities. The resulting number is the net parcel area.

(3) Lot and unit count calculation. To determine the base maximum number of allowable lots on the subject parcel(s), divide the net parcel area by the minimum lot area required by the applicable zoning district(s). Fractional lots or fractional units of less than 0.5 shall be rounded down, and fractional lots or fractional units of 0.5 or more shall be rounded up.

(a) Where open space design is used to allow more than one dwelling on a parcel (no new parcels will be created), multiply the resulting base maximum number of allowable lots by two to determine the base maximum dwelling unit count. In order to encourage smaller and more affordable housing units, for purposes of applying the base number of dwelling units [and any allowed density bonuses pursuant to § 125-18.3C(4) below], the following types of dwelling units shall be treated as fractional units:

[1] Studio apartment or one-room cottage not exceeding 600 square feet: 0.6 unit.

[2] One-bedroom apartment or one-bedroom cottage not exceeding 850 square feet: 0.75 unit.

[3] Two-bedroom apartment not exceeding 1,000 square feet: 0.9 unit.

(4) Density bonuses. The lot or unit count determined in § 125-18.3C(3) above may be increased through density bonuses designed to advance the goals of the Town of Pelham as articulated in various plans adopted by the Town, including, but not limited to, the Housing Plan, Master Plan, and Open Space and Recreation Plan. Density bonuses are given by special permit at the discretion of the Planning Board based upon the expected public benefit. They are calculated using the following standards:

(a) If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as access to an important natural area or a trail system): a maximum bonus of 10%.

(b) If the applicant permanently restricts ownership and occupancy of units allowed by open space design as affordable housing (as defined in this bylaw), and makes a binding commitment to construct such affordable residences: a maximum of 25%. For every unit included in the allowable unit count under § 125-18.3C(3) that is built and dedicated as an affordable unit, two bonus market rate units may be permitted, up to the maximum of 25% of the allowable unit count.

(c) If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% density bonus per additional 5% of the parcel preserved as open space.

(d) Maximum density bonus. The density bonuses allowed in § 125-18.3C(4) above

may be combined to result in a total unit count increase not exceeding 25% of that established in § 125-18.3C(3) above. Density bonuses may only be used if the resulting development has adequate wastewater disposal capacity, including, where applicable, compliance with Title 5 of the State Environmental Code as determined by the Board of Health.

(5) Lots in more than one district. For lots in more than one district, the allowable unit count (excluding bonuses or transfers) and required open space for each district shall be computed separately first. These totals shall be added together and the allowable maximum density bonus for the entire development shall be calculated based upon this combined total number of units. The permitted location of the units and protected open space shall be wherever the Planning Board determines best fits the characteristics of the land, based upon the conservation analysis and findings.

D. Types of residential development. The allowable residential units may be developed as single-family, two-family, or multifamily dwellings, provided that applicable special permit or site plan review requirements for the land use district are satisfied and that the number of dwelling units does not exceed the allowable unit count in § 125-18.3C above. The subdivision approval and special permit/site plan requirements shall be fulfilled concurrently in one proceeding to the extent practical. Any open space design application involving two-family or multifamily dwellings shall include a site plan that shows the location, layout, height, and setbacks of such dwellings. Attached accessory apartments and detached accessory apartments shall be permitted in open space designs and shall not be counted toward the total allowable unit count. Such apartments shall comply with the requirements of § 125-9.1, except that the requirements of § 125-9.1C(2), which sets a limit of only one accessory dwelling unit per lot, shall not apply to open space developments approved for "more than one dwelling per parcel."

E. Dimensional and design requirements.

(1) Minimum lot sizes in open space designs. The limiting factor on lot size in open space designs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size for zoning purposes. This does not affect the powers of the Board of Health to require areas on a lot for the disposal of sewage and the protection of water supply.

(2) Setbacks, road frontage, and road requirements. The minimum setback shall be 10 feet from any property line. There shall be no numerical requirements for road frontage in an open space design, provided that each lot has legally and practically adequate vehicular access to a public way or a way approved under the Regulations Governing the Subdivision of Land across its own frontage or via a shared driveway approved under § 125-13. All dwellings must comply with applicable Board of Health requirements. The Planning Board may modify the applicable road construction requirements for new roads within an open space design as provided in the Regulations Governing the Subdivision of Land, if it finds that such modifications will be consistent with the purposes of this section and plans adopted by the Town of Pelham.

(3) Arrangement of dwellings and/or lots.

(a) Dwellings and/or lots shall be located and arranged in a manner that contributes to the intended character of the West Pelham Village Center as described in § 125-8.2 and/or protects: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources, while facilitating pedestrian circulation. The

Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of dwellings and/or lots.

(b) Generally, development shall be located the minimum feasible distance from existing public roadways. Development that is visible from existing roadways shall reflect the character and patterns of development of traditional New England village centers as described in § 125-8.2.

(c) Development that is not visible from roadways may be allowed to deviate from maximum front setbacks and other aspects of § 125-8.2 as deemed appropriate by the Planning Board. Such development should employ the following rural siting principles with regard to lot, roadway, and driveway layouts, land alterations, and placement of structures:

[1] Wherever feasible, retain and reuse existing old farm/woods roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls or where an existing road is aligned in a way that disrupts drainage or accelerates erosion.)

[2] Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.

[3] Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.

[4] Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner that furthers the intent of the Village Center Districts. If vegetative buffers are used, a minimum depth of 50 feet of mixed ground covers, shrubs, and trees should be provided. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.

[5] Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.

[6] Site buildings so that they do not protrude above treetops and crestlines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

[7] Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

[8] Where feasible, site buildings and other areas to be developed in a manner that does not block trails or paths that have traditionally provided access to back land. This provision shall not be construed to create any public access rights that do not otherwise exist.

(d) Development shall, where feasible, comply with any design guidelines for open space design that may be adopted by the Planning Board.

F. Permanent open space. Open space set aside in an open space design or as a condition of any special permit or site plan approval shall be permanently preserved from development as required by this § 125-18.3F. The Planning Board may not require such open space land to be accessible to the public, unless a density bonus is allowed under § 125-18.3C(3)(a). Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land, based upon the conservation findings of the Planning Board following consultation with the Conservation Commission.

(1) Permanent preservation of open space land. All land required to be set aside as open space in connection with any open space design shall be so noted on any approved plans and shall be protected by a permanent conservation restriction, as defined in § 125-34, to be held by the Town of Pelham, the Commonwealth of Massachusetts, or a nonprofit conservation organization qualified to hold conservation restrictions under MGL Chapter 184, Section 31, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. The restriction shall specify the permitted uses of the restricted land. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected open space land.

(a) Ownership of open space land.

[1] Protected open space land may be held in private ownership, owned in common by a homeowners' association (HOA), dedicated to the Town or state governments with their consent, transferred to a nonprofit organization acceptable to the Planning Board, or held in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.

[2] If the land is owned in common by an HOA, such HOA shall be established in accordance with § 125-18.3H and the following:

[a] The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes. **[Amended 5-14-2022 ATM by Art. 17]**

[b] Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

[c] Town Counsel shall find that the HOA documents presented satisfy the conditions in Subsection F(1)(a)[2][a] and [b] above, and such

other conditions as the Planning Board shall deem necessary.

(b) Maintenance standards.

[1] Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.

[2] If the Select Board or Zoning Enforcement Officer finds that the provisions of Subsection F(1)(b)[1] immediately above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties. **[Amended 5-14-2022 ATM, Art. 17]**

(2) The Planning Board may, by special permit, waive the requirement in § 125-18.3F(1) above that specifies that open space be protected by a permanent conservation restriction, when the applicant demonstrates that:

(a) After a good faith effort, the applicant is not able to obtain a commitment to hold the conservation restriction from the Town of Pelham, the Commonwealth of Massachusetts or qualified nonprofit conservation organization qualified to hold conservation restrictions under MGL Chapter 184, Section 31, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code.

(b) The required open space will be sufficiently protected by a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for agriculture, horticulture, forestry, watershed protection, habitat protection, educational purposes, or recreational purposes and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

(c) The project will better fulfill the purpose of §§ 125-18.3 and 125-8.2 than development that would occur without the use of open space design.

G. Utility requirements.

(1) On-site sewage disposal. The following standards shall apply to developments requiring on-site sewage disposal:

(a) The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the application.

(b) All open space developments must meet the minimum state Environmental Code (Title V) requirements for minimum setbacks between private water supply wells and septic tanks or soil absorption systems (310 CMR 15.211).

(c) All open space developments must meet the minimum state Environmental Code (Title V) requirements for nitrogen loading limitations (310 CMR 15.214 through

15.217). For open space developments with individual lot sizes less than 40,000 square feet, applicants must meet the following standards:

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

$(40,000 \text{ square feet} \times \text{number of open space development lots}) - (\text{total square feet in proposed open space development lots}) = \text{square feet of required nitrogen credit land in common conservation lands}$

[2] Nitrogen credit land must meet DEP qualifications contained in "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading 310 CMR 15.216."

[3] All designated nitrogen credit land must be permanently restricted from further development under a "Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land."

[4] After approval of the open space development plan, applicants must apply to the Board of Health and the Mass. Department of Environmental Protection (DEP) for an aggregate determination of nitrogen loading under 310 CMR 15.216.

[5] Septic tanks must be installed on individually owned lots. Nitrogen credit land must be at least 100 feet from all private wells.

(2) Water supply. In order to meet state Title V requirements for separation distances between drinking water wells and septic systems, private drinking water supply wells may be located in the common open space for an open space development, provided that the provisions of § 125-18.3H for a homeowners' association are met.

H. Homeowners' association (HOA).

(1) When a homeowners' association (HOA) is required by this bylaw or as a condition of a special permit or site plan approval, a homeowners' association agreement or covenant shall be submitted with the open space development application and shall comply with the following standards:

(a) The articles of formation of the HOA shall be prepared by a licensed attorney. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board, and must comply with all applicable provisions of this bylaw and state law. The Planning Board may commission further legal review of any documents submitted, the cost of which shall be borne by the applicant.

(b) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(c) The HOA must be responsible for liability insurance, property taxes, the maintenance of all commonly owned amenities, including, but not limited to, open space land, recreational and other facilities, private roads, and any shared driveways.

(d) Property owners must pay their pro rata share of the costs in Subsection H(1)(c) immediately above, and the assessment levied by the HOA must be able to become a lien on the property.

(e) The HOA must be able to adjust the assessment to meet changed needs.

(f) Town Counsel shall find that the HOA documents presented satisfy the conditions in Subsection H(1)(a) through (e) above, and such other conditions as the Planning Board shall deem necessary.

(2) When an HOA is required by this bylaw or as a condition of a special permit or site plan approval, the HOA must be legally established prior to the conveyance of any lot or any dwelling unit in an open space development. The articles of formation of the HOA shall be recorded in the Hampshire County Registry of Deeds.

I. Illustrative examples of open space design:





**§ 125-19. Adult entertainment. [Added 5-11-2019 ATM, Art. 11]**

**A. Purpose and applicability.**

(1) Purpose. This bylaw is enacted pursuant to MGL c. 40A, § 9A, in order to provide for a special permitting process for the location of adult entertainment facilities within the Town. The special permitting process shall address and mitigate the secondary effects of adult entertainment facilities. Secondary effects of adult entertainment facilities have been associated with increased crime, adverse impact on public health, adverse impact on business climate, adverse impact on the property values of residential and business property, and adverse impacts on the quality of life.

(a) It is not the purpose or intent of this bylaw to impose a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials, that are protected by the Constitutions of the United States or of the Commonwealth of Massachusetts.

(b) Adult entertainment facilities in the Town shall comply with all applicable state and federal laws and regulations. It is not the purpose or intent of this bylaw to legalize the sale, rental, distribution, or exhibition of pornographic, obscene or other illegal materials or activities.

(2) Applicability.

(a) This bylaw applies to any facility offering any adult entertainment ("adult entertainment facility"), including but not limited to adult bookstores, adult motion picture theaters, adult video stores, adult paraphernalia stores, and establishments which display live nudity for patrons.

**B. Requirements. In all cases, the following standards and criteria shall be met:**

(1) No building or premises shall be used, and no building shall be erected or altered, which is arranged, intended or designed to be used for an adult entertainment facility if any part of such building or premises is situated on any part of a lot within a 750-foot radius in any direction of any lot used for, or upon which is located any building used for a religious institution, school, library, park, facility attended by persons under the age of 18 (including but not limited to school programs, camps, and athletic leagues, municipal facilities, child-care facility, or day-care center), or another adult establishment.

(2) All buildings and parking areas shall be set back a minimum of 100 feet from side and rear lot lines.

(3) Noise impacts:



(a) All parking areas shall have reasonable sound barriers from any adjacent parcel, such that conversation carried out at a normal volume in parking areas shall not be intelligible off the premises.

(b) An adult entertainment facility may not have a speaker or other sound system equipment mounted outside the interior walls of the building.

(c) Sound generated from within an adult entertainment facility shall not be audible at any point outside of the facility. A special permit application for an adult entertainment facility shall include specifications for all sound system components, specifications of measures used to contain sound within the building, and certification by an acoustical engineer licensed in the State of Massachusetts that no sound that emanates from a sound system or from a human being within the building will be audible beyond the exterior walls of the building.

(4) No picture, publication, videotape, movie, cover, live entertainment, or other implement, item, or advertising, that is distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31, shall be displayed in the windows of, or on the building of any adult entertainment facility.

(5) No picture, publication, videotape, movie, cover, live entertainment, or other implement, item, or advertising, that is distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31, shall be displayed within an adult entertainment facility such that it is visible outside of the facility.

(6) Hours of operation. Adult entertainment facilities shall not operate before noon and shall cease operations not later than 9:00 p.m. The special permit granting authority may further limit days and times of operation to avoid conflict with any other noncompatible land uses.

C. Procedures. Any person seeking to operate or construct an adult entertainment facility shall first obtain a special permit with site plan approval from the Planning Board acting as the special permit granting authority pursuant to MGL c. 40A, § 9, MGL c. 40A, § 9A, and § 125-25, § 125-26, § 125-5, Schedule of Use Regulations, and any other applicable sections of the Zoning Bylaw of the Town of Pelham. The Planning Board shall review the application and plan and shall request comments from the Select Board, the Fire Chief, the Chief of Police, the Board of Health, the Building Inspector, and Town Highway. The Planning Board may request comments from other Town boards or staff. In addition to requirements specified elsewhere in this bylaw: **[Amended 5-14-2022 ATM, Art. 17]**

(1) An application for a special permit shall contain information sufficient to determine compliance with the requirements of Subsection B of this § 125-18.4, including a management plan specifying interior and exterior security procedures, including management of patrons outdoors on the property with particular attention paid to noise generated by patrons.

(2) An application for a special permit shall include the name and address of the legal owner of the adult entertainment facility, together with the names and addresses of all persons having any direct or indirect ownership or security interest in the facility. In the event that the petitioner is a corporation, partnership, trust, or other corporate entity, the name and address of any person who has a direct or indirect ownership or beneficial interest in the entity shall be included.

(3) An application for a special permit shall include the name and address of the operator of

the adult entertainment facility.

(4) No special permit shall be issued to any person, or to any corporate entity associated with any person, who has been convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28, or to any other person or entity prohibited by MGL c. 40A, § 9A, from receiving a special permit.

(5) The Planning Board may impose reasonable conditions to ensure that the location and operation of the proposed adult entertainment facility is consistent with the purpose of the applicable district and the Zoning Bylaw of the Town.

(6) A special permit shall be valid for two years and may be extended on written request with a public hearing for successive two-year periods upon a determination by the Planning Board that the operation of the adult entertainment facility has been conducted in accordance with the special permit.

(7) A special permit shall terminate if there has been no operation of the adult entertainment facility for six months, if there is a change in the operator of the adult entertainment facility, or if the adult entertainment facility or land on which the adult entertainment facility is located is sold.

(8) There shall be no material deviations from approved plans without written approval from the Planning Board which may require a public hearing.

(9) A special permit shall remain exclusively with the petitioner and shall not run with the land. Any new owner or operator of an adult entertainment facility must obtain a special permit before commencing or continuing operations.

(10) Adult entertainment facilities shall comply with all other provisions of the Zoning Bylaws of the Town. To the extent that the provisions of this § 125-18.4 may conflict with other provisions of the Zoning Bylaws of the Town, the provisions of this § 125-18.4 shall apply.

(11) The Building Inspector shall enforce this bylaw and any special permit issued or extended pursuant to this bylaw.

**§ 125-19.5. Accessory entertainment. [Added 5-11-2019 ATM, Art. 11]**

A. Purpose and applicability.

(1) Purpose. The Town of Pelham finds that stand-alone entertainment use is not consistent with the intent of the Village Center Districts. When stand-alone entertainment is frequently operated, it can result in regular pulsed traffic volumes and noise which can negatively impact property values and quality of life. On the other hand, when a stand-alone entertainment use is only infrequently operated, its facility sits vacant much of the time detracting from the vibrancy of the area, reducing interest for pedestrians, and reducing the ability of Pelham's Village Center to generate a regular, moderate level of activity that is consistent with the Village Center's intent. Nonetheless, the Town of Pelham finds that occasional entertainment which is accessory to another commercial use is desirable within the Village Center Districts because it can support a moderate level of activity in the district, can support other uses that are consistent with the intent of the district, and can avoid the negative impacts of a stand-alone entertainment use described above. For the purposes of this section, "frequent" shall generally mean occurring on four or more days per week, while "infrequent" or

"occasional" shall mean occurring on three or fewer days per week.

(2) Applicability. This section applies to entertainment as an accessory use to a commercial use. The permit granting authority may authorize accessory entertainment in accordance with the provisions of § 125-5, Schedule of Use Regulations, requirements of this section, and any other applicable sections of this bylaw.

B. Requirements. In all cases, the following standards and criteria shall be met for accessory entertainment:

(1) There shall be adequate parking for the use. When § 125-18, Table 5, Parking Requirements, calculates parking requirements for the primary use on a square-foot basis, the required number of parking spaces for the entertainment shall be calculated on a per-seat basis with a minimum of one parking space required per four seats, or, if no seating is provided, one parking space per four patrons.

(2) Noise impacts:

(a) A facility for accessory entertainment may not have a speaker or other sound system equipment mounted outside the interior walls of a building.

(b) Sound generated from within a building for accessory entertainment shall not be audible at any point off the premises. A special permit application for accessory entertainment shall include specifications for all sound system components, specifications of measures used to contain sound on the premises, and certification by an architect, or engineer licensed in the State of Massachusetts that no sound that emanates from a sound system or from a human being within the building will be audible beyond the property lines of the premises.

(3) Hours of operation. Accessory entertainment shall not operate before 9:00 a.m. and shall cease operations not later than 9:00 p.m. The special permit granting authority may further limit days and times of operation to avoid conflict with any other noncompatible land uses.

C. Procedures. Any person seeking to operate entertainment that is accessory to a commercial use shall first obtain a special permit with site plan approval from the special permit granting authority pursuant to MGL c. 40A, § 9, MGL c. 40A, § 9A, and § 125-25, § 125-26, § 125-5, Schedule of Use Regulations, and any other applicable sections of the Zoning Bylaw of the Town of Pelham. The special permit granting authority shall review the application and site plan and shall request comments from the Select Board, the Fire Chief, the Chief of Police, the Board of Health, the Building Inspector, and Town Highway. The Planning Board may request comments from other Town boards or staff. In addition to requirements specified elsewhere in this bylaw: **[Amended 5-14-2022 ATM, Art. 17]**

(1) An application for a special permit for accessory entertainment shall contain information sufficient to determine compliance with the requirements of Subsection B of this § 125-18.5, including a management plan specifying interior and exterior security procedures, including management of patrons outdoors on the property with particular attention paid to noise generated by patrons.

(2) The special permit granting authority may impose reasonable conditions to ensure that the location and operation of the proposed accessory entertainment is consistent with the purpose of the applicable district and the Zoning Bylaw of the Town. This includes increasing or decreasing the allowed hours of operation from those specified in Subsection B above.

(3) A special permit shall be valid for two years and may be extended on written request without a public hearing for successive two-year periods upon a determination by the special permit granting authority that the operation of the accessory entertainment has been conducted in accordance with the special permit. The special permit granting authority may require a public hearing for an extension request, at its discretion.

(4) There shall be no material deviations from approved plans without written approval from the special permit granting authority. Modification of an approved plan may require a public hearing.

**§ 125-19.6. Convenience stores. [Added 5-11-2019 ATM, Art. 9]**

A. Purpose. The Town of Pelham finds that convenience stores are contrary to the purpose of the Town's Zoning Bylaw as outlined in § 125-2, which states "It is further the purpose of this chapter to encourage and foster growth and development in the community which would promote the health, safety, convenience, morals and general welfare of its inhabitants as well as to lessen congestion in the streets; . . . encourage the most appropriate use of land throughout the Town. . ." Convenience stores as defined by Pelham's Zoning Bylaw have several unique characteristics that are contrary to promoting public health, safety, and lessening congestion in the streets, and encouraging the most appropriate use of land through the Town. Specifically, the Town of Pelham finds that convenience stores, as defined, promote and sell products which are well-known to negatively impact public health by increasing the risk of cardiovascular disease, hypertension, diabetes, and obesity. Further, they do so without sufficiently balancing those offerings with products which would support public health, specifically: fresh and/or frozen lean meats, seafood, poultry; fresh and/or frozen fruits and/or vegetables; low-fat dairy; legumes; or whole grains; and bakery products. In addition, the Town finds that convenience stores, as defined, depend on a high volume of short duration vehicular trips when compared with other allowed uses in Pelham. The high volumes of vehicles frequently entering and exiting the roadways of Pelham that would be generated by a convenience store would increase the risk of traffic collisions to an unacceptable level when compared with any benefits to the community resulting from the use.

B. Definition. Convenience Store — A type of retail establishment where: 1. the business depends on a high volume of short duration visits by customers (typically less than five minutes); 2. product sales are primarily comprised of tobacco-related products and prepackaged individual servings of high-sodium and/or high-sugar snacks, confectioneries, and drinks, and; 3. less than 35% of selling area is dedicated to the retail sale of fresh and/or frozen lean meats, seafood, poultry; fresh and/or frozen fruits and/or vegetables; low-fat dairy; legumes; and whole grains

C. Convenience store shall not be an allowed use in the Town of Pelham.

ARTICLE VI

**Miscellaneous**

**§ 125-20. Filling of any water or wetland.**

A special permit must be received from the Zoning Board of Appeals for the filling of any pond, lake, swamp or other existing body of water or wetland and where such filling requires an amount of fill equivalent to 100 cubic yards or more, or where the area to be filled in exceeds 10,000 square feet. Any filling of any water or wetland requires approval of the Conservation Commission.

- A. A site plan shall be submitted as required in § 125-26D, and shall include the following additional information:
- (1) The premises and surrounding area within one hundred feet showing.
  - (2) Existing and proposed contour lines at intervals of not more than two feet resulting from the proposed filling, in relation to the topography of the premises.
  - (3) A tie-in to the nearest road intersection.
  - (4) A plan for lighting if night operation is contemplated.
- B. Provision shall be made for temporary and permanent drainage of the site.
- C. Fills shall be limited to terrace fills which are not to exceed 10 feet at any one time nor be within 10 feet of an adjacent property line or any cut.
- D. Regrading of all or parts of the slopes resulting from such fill shall be carried out.
- E. At least six inches of topsoil shall be replaced over all filled or otherwise disturbed surfaces with seeding with a perennial cover crop, reseeded as necessary to assure uniform growth and soil surface stabilization.
- F. Where any fill will have a depth of 10 feet or more and create a slope of more than one vertical in two horizontal, there shall be a substantial fence enclosing the fill at least six feet in height with suitable gates. Such fence shall be located 10 feet or more from the edge of the fill.

#### **§ 125-21. Filling of land other than water or wetland.**

No filling of any land area shall proceed without first securing a special permit from the Zoning Board of Appeals, subject to the additional provisions contained below:

- A. Exceptions. The following filling operations shall be exempt from the provisions of this section:
- (1) A filling operation which does not exceed a total of 100 cubic yards of material.
  - (2) A filling operation which does not exceed a total area of 10,000 square feet on any lot, land parcel or subdivision thereof.
  - (3) A filling operation which is associated with acceptable agricultural land management practices, including, but not limited to, plowing and construction of agricultural structures; nursery operations, such as the removal and/or transplanting of cultivated sod, shrubs and trees; and logging operations.
  - (4) Filling operations necessary in connection with lawful construction of a building, structure, street, driveway, sidewalk, path or other appurtenance or filling, as a maintenance measure, or for landscaping purposes on existing developed lots or parcels. The aggregate of area(s) affected must not exceed 10,000 square feet; the grade change must not exceed 12 inches at any point and must not alter the drainage patterns, and the filling must not involve a quantity of materials in excess of 100 cubic yards.
- B. Permit procedures. The procedure for granting a special permit shall be as set forth for all special permits, except that special permits granted under this section shall be for a period not to exceed one year. For a continuation of an operation beyond a period designated in the initial permit,

a new application must be made and a new special permit must be granted in the same manner as for the initial permit, except that the Board may waive requirements for submittal of materials required by this section. The waiver must be granted in writing by the Board to the applicant. All other provisions relating to operational standards and permit procedures shall apply. A separate permit shall be required for each separate noncontinuous site, as for any expansion on the same site.

C. Required site plan. A site plan shall be included with the special permit application for any land that is to be filled and is not exempted under these provisions. Site plans for fill areas shall be prepared by a registered professional engineer or a registered land surveyor and reviewed according to the provisions of § 125-26D. Submission of site plans shall include, in addition to the material required in § 125-26D, the following:

- (1) The premises and surrounding area within 100 feet showing the area to be filled in, property lines within which the filling is proposed and tie-in to the nearest road intersection, existing and proposed contour lines at intervals of not more than two feet resulting from the proposed filling, in relation to the topography of the premises.
- (2) The location of any buildings, structures, utilities, sewers, water and storm drains within 100 feet of the site.
- (3) A certification of the quantity of fill involved.
- (4) Detailed plans of all temporary and permanent drainage provisions, retaining walls, cribbing, vegetative practices, erosion and sedimentation control measures and all other protective measures and devices utilized or constructed in connection with the area to be filled.
- (5) A timing schedule and sequence indicating the anticipated starting and completion dates.
- (6) A plan for lighting if night operation is contemplated.
- (7) Other plans, drawings or materials as may be required by the Board of Appeals.

D. Conditions. For the filling of any land area subject to the provision of this section, the following conditions shall govern:

- (1) Provision shall be made for adequate temporary and permanent drainage of the site.
- (2) Fills shall be limited to terrace fills which are not to exceed 10 feet at any one time nor be within 10 feet of an adjacent property line or cut.
- (3) Regrading of all or parts of the slopes resulting from such fill shall be carried out.
- (4) At least six inches of topsoil shall be replaced over all filled or otherwise disturbed surfaces, seeded or sodded with a perennial cover crop, reseeded or resodded as necessary to assure uniform growth and soil surface stabilization.
- (5) Where any fill will have a depth of 10 feet or more and create a slope of more than one vertical in two horizontal, there shall be a substantial fence enclosing the fill at least six feet in height with suitable gates. Such fence shall be located 10 feet or more from the edge of the fill.
- (6) The planned filling of any land area shall be consistent with any recreation, conservation and open space plan as prepared by the Planning Board.
- (7) Documentation shall be submitted as to the effect of such filling activities on drainage,

both within the immediate area and sufficiently far downstream, as required by the Building Inspector and/or the Board of Appeals.

(8) Provisions shall be made such that the filling of any land area shall not impair surface drainage, constitute an erosion hazard nor act as a source of sedimentation to any adjacent land or watercourse.

(9) Provisions shall be made such that the filling of any land area does not impair the safe and efficient operation of any on-site sewage disposal or drainage facilities nor those located on adjacent properties.

(10) Provisions shall be made to reduce the area and duration of exposure of fill material(s) and to reduce the velocity of runoff, both during and after the completion of the filling activity in order to minimize the potential of soil erosion and siltation problems.

(11) Provisions shall be made for the adequate control of dust during filling operations.

(12) All disturbed fill areas shall be promptly seeded or sodded with a suitable ground cover and supplemented with other suitable plantings as soon as the season permits.

(13) No final slopes shall exceed a slope of more than one foot vertical in two feet horizontal.

(14) No filling of land shall cause or permit any soil, earth, sand, gravel, rock, stone loam or other fill material, or water or liquid to be deposited upon or to roll, flow or work upon or over the premises of another without the express consent of the owner of such premises so affected; nor shall any filling of land cause or permit any soil, earth, sand, gravel, rock, stone loam or other fill material or water or liquid to be deposited or to roll, flow or wash upon or over any public street, street improvement, road, sewer, storm drain, water course, right-of-way or public property.

(15) Such other conditions as may be deemed necessary and reasonable shall be imposed by the Board of Appeals in order to prevent damage to public or private property or any sewer, storm drain or watercourse, or to prevent the filling of land from being conducted in a manner hazardous to life or property, or in a manner likely to create a nuisance.

## **§ 125-22. Environmental performance standards.**

The purpose of environmental performance standards is to ensure that any use allowed by right or special permit in any district is conducted in a manner which does not adversely affect the surrounding natural or human environment by creating a dangerous, injurious or objectionable condition. The following environmental controls shall be enforced by the Building Inspector and shall apply throughout the life of the use or structure:

### **A. Lighting. [Amended 5-13-2023 ATM, Art. 27]**

(1) **Applicability.** The requirements of this section shall apply to all outdoor lighting on all lots and parcels in any district in the Town of Pelham. When existing outdoor lighting equipment is being modified, extended, expanded or replaced, it shall be subject to the requirements of this section. Exemptions from this section are identified on §125-8.2.(G)(1).

(2) Lighting equipment shall be designed, constructed and installed to:

- (a) control glare and prevent light trespass onto adjacent properties or public ways, curtail degradation of dark skies at night, and conserve energy resources while

maintaining safety, visibility and security of individuals and property;

(b) direct light only where it is needed at the minimum intensity and duration necessary to serve the intended purposes and any sensor technologies, timers or other means to activate lighting shall be used only during times when it will be needed;

(c) prevent measurable light at the property lines and minimize glare at any location on or off the property.

(3) Flashing, blinking, running, scrolling, traveling, animated, or intermittent lighting shall not be visible from the exterior of any building unless associated with exempted lighting types in §125-8.2.(G)(1).

(4) Illumination levels. Any use, except for single-family residential properties, shall comply with site lumen limit found in §125-8.2.(G)(6)(a)[3] under the VC-N and VC-RE districts as applicable.

(a) For all other uses, including single family uses, all outdoor lighting shall not exceed the following allowed luminaire lumens of 630 lumens.

(5) Color

(a) All luminaires in all districts must have light sources with a color temperature or correlated color temperature (CCT) of 2700 Kelvin or less.

(b) The color rendering index of all luminaires in all districts must be sixty- five (65) or higher.

(6) Backlight, Uplight, Glare (BUG) Rating. All luminaires in all districts except for those in the Village Center districts, shall be rated and installed in accordance with the following standards.

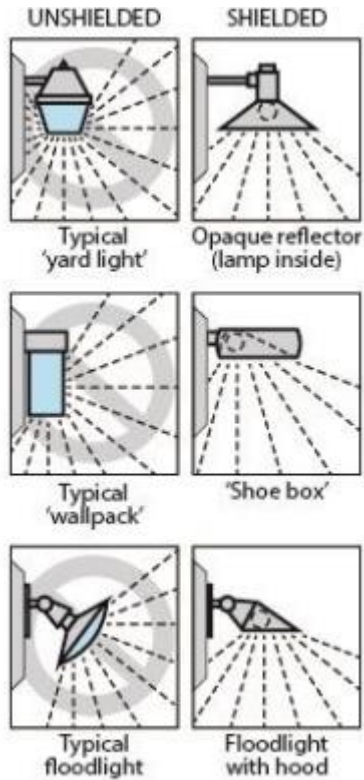
<u>Maximum Backlight, Uplight, and Glare (BUG) Ratings</u>	
<b><u>Backlight Rating</u></b>	
<u>Greater than 2 mounting heights from property line</u>	<u>B1</u>
<u>One (1) to less than two (2) mounting heights from property line<sup>11</sup> and ideally oriented.</u>	<u>B1</u>
<u>0.5 to 1 mounting heights from property line<sup>11</sup> and ideally oriented.</u>	<u>B0</u>
<u>Less than 0.5 mounting height to property line and properly oriented</u>	<u>B0</u>



<b>Uplight Rating</b>	<u>U0</u>
<u>Allowed % light emission above 90 degrees from street or area lighting</u>	<u>0%</u>
<b>Glare Rating</b>	<u>G0</u>
<u>Any luminaire not ideally oriented with 1 to less than 2 mounting heights to any property line of concern</u>	<u>G0</u>
<u>Any luminaire not ideally oriented with 0.5 to 1 mounting heights to any property line of concern</u>	<u>G0</u>
<u>Any luminaire not ideally oriented with less than 0.5 mounting heights to any property line of concern</u>	<u>G0</u>

(7) Luminaires that are accessory to a single or two-family use shall be fully shielded so that no light emitted by the luminaire is projected above a horizontal plane (see definition of “fully shielded luminaire” in §125-34).

(a) Illustrations showing unshielded and shielded luminaires:



(8) Any motion activated lighting using sensor technologies, timers or other means shall remain off unless motion is detected.

B. Noise.

(1) Excessive noise, objectionable with respect to volume, frequency, shrillness or intermittency, is prohibited.

(2) No person shall engage in or cause noisy construction activities on a site abutting residential use between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day.

C. Water runoff. The rate and quantity of surface water runoff from a site shall not be increased as a consequence of construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention ponds. Dry wells shall be used only where other methods are infeasible and shall employ oil, grease and sediment traps to facilitate removal of contaminants.

D. Control of erosion. Erosion of soil and sedimentation of streams and bodies of water shall be minimized by using the following erosion control practices:

(1) Exposed or disturbed areas due to stripping of vegetation, soil removal and regrading shall be permanently stabilized within six months of occupancy of a structure.

(2) During construction, temporary vegetation and/or mulching shall be used to protect exposed areas from erosion. Until a disturbed area is permanently stabilized, sediment in runoff water shall be trapped by using staked hay bales or sedimentation traps.

(3) Permanent erosion control and vegetative measures shall be in accordance with the

erosion/sedimentation/vegetative practices recommended by the Soil Conservation Service.

(4) All slopes exceeding 15% resulting from site grading shall be either covered with four inches of topsoil and planted with a vegetative cover sufficient to prevent erosion or be stabilized by a retaining wall.

(5) Dust control shall be used during grading operations if the grading is to occur within 200 feet of an occupied residence or place of business. Dust control methods may consist of grading fine soils on calm days only or dampening the ground with water.

**§ 125-23. (Reserved)**<sup>17</sup>

ARTICLE VII

**Administration and Enforcement**

**§ 125-24. Board of Appeals.**

A. There shall be a Board of Appeals consisting of five members and three associate members appointed by the Select Board members. The term of each member shall end at the date of the Annual Town Meeting of the year in which his or her term expires, or whenever his or her successor qualifies, whichever event occurs last. [Amended 5-14-2022 ATM by Art. 17]

B. The Board of Appeals shall have and exercise all the powers granted to it by MGL c. 40A and by this chapter, including to hear and decide on an appeal taken by:

(1) Any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 10A of the Massachusetts General Laws,

(2) The Pioneer Valley Planning Commission or

(3) Any person, including an officer or board of the Town, or an abutting city or town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of this chapter or Chapter 40A of the Massachusetts General Laws.

**§ 125-25. Enforcement officials; certificates, permits and orders.**

A. The Zoning Enforcement Officer shall be the officer responsible for enforcing the provisions of this chapter. The Select Board and the Police Department shall assist the Zoning Enforcement Officer when necessary and appropriate. [Amended 5-14-2022 ATM by Art. 17]

B. No building shall be constructed or changed, or the use changed, until a permit has been issued by the Building Inspector. No permit shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the Town's laws and bylaws. Any new building or structure shall

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<sup>17</sup> Editor's Note: Pursuant to 5-12-2018 ATM, Art. 44, the provisions of former § 125-22, Elderly congregate housing, now appear in § 125-9.4.

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conform with all adopted state and Town laws, bylaws, codes and regulations. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector where required.

C. The Building Inspector shall refuse to issue any permit which would result in a violation of any provision of this chapter or in a violation of the conditions or terms of any special permit, site plan approval, or variance granted by the Planning Board, Board of Appeals, Select Board, or their agents. **[Amended 5-12-2018 ATM, Art. 44; 5-14-2022 ATM by Art. 17]**

D. The Building Inspector shall issue a cease and desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of this chapter.

E. Construction or use according to a building permit or special permit shall conform to any subsequent amendment of this chapter unless the construction or use is begun within a period of not more than six months after the issuance of a permit granted before the effective date of the amendment. To qualify for this exemption, construction must be completed in a continuous and expeditious manner.

#### **§ 125-26. Special permits.**

A. Special permits may be requested for certain uses, structures or conditions as specified in § 125-5, Schedule of use regulations, and other sections of this chapter. **[Amended 5-12-2018 ATM, Art. 44]**

B. Purpose. Special permits are intended to provide detailed review of certain uses and structures which may have substantial impact upon traffic, the environment, health and safety, property values, utility systems and the character of the Town, among other things. The special permit review process is intended to ensure a harmonious relationship between proposed development and its surroundings and to ensure that the proposals are consistent with the purpose and intent of this chapter.

C. Special permit granting authorities. The special permit granting authorities shall be the Zoning Board of Appeals, the Planning Board or the Select Board, as specified in the relevant sections of this chapter. Where the special permit granting authority for a use is not specified elsewhere in this chapter, the Zoning Board of Appeals shall be the special permit granting authority in the Residential District and Limited Business District, and the Planning Board shall be the special permit granting authority in the Village Center Mixed Use District, the Village Center Neighborhood District, and the Village Center Rural Edge District. **[Amended 5-12-2018 ATM, Art. 44; 5-14-2022 ATM by Art. 17]**

D. Special permit procedures. Special permits may be issued by special permit granting authorities (SPGAs) in accordance with MGL c. 40A, § 9, and with the following provisions and any regulations adopted by the special permit granting authority:

(1) Public hearing. SPGAs may establish fees to cover costs of the special permit process. These costs may include, but not be limited to, inspections, consultants and public hearing notices.

(2) Application procedures.

(a) All applications for special permits shall be made in writing on forms furnished by the Town Clerk and located in the Town Clerk's office and shall be accompanied by a site plan when required in accordance with § 125-5, Schedule of use regulations, or elsewhere in this chapter, and/or a plan indicating: **[Amended 5-12-2018 ATM by**

**Art. 44]**

[1] Location of premises showing dimensions, abutting properties with name and address of owners, abutting and nearby streets and ways and the zoning of all properties shown.

[2] Location and dimension of all proposed structures, including other advertising devices.

[3] Location and number of parking spaces.

[4] A lighting plan which shall show the location and height of all proposed outdoor lighting, the manufacturers' specification data for fixtures, including lumen output, color temperature, color rendering index (CRI), and BUG rating; and a photometric plan showing the intensity of illumination at ground level expressed in footcandles, including cross-section drawings where necessary to show impact of lighting on adjacent properties. **[Amended 5-12-2018 ATM, Art. 44]**

[5] Where appropriate, the location and type of material proposed for buffers or screening and topographical features, including elevations and significant site features to enable complete understanding of the project. **[Amended 5-12-2018 ATM, Art. 44]**

(b) Misrepresentation of any of the required plan items shall be cause to revoke a special permit.

(c) No special permit may be authorized for use or activity not generally permitted in the district in which the land or structure is located.

(d) Twelve completed copies shall be filed with Town Clerk who shall forthwith submit 11 copies to the SPGA.

(e) When a site plan is required as part of a special permit application, it shall be reviewed by the SPGA as an integral part of the special permit review and following the procedures specified in this section. The site plan contents shall be as specified in § 125-25D. The site plan review criteria shall be as specified in § 125-25F. Where applicable, major development performance standards in § 125-25G shall apply. The SPGA may, at their discretion, waive specific plan contents required by § 125-25D and/or specific review criteria in § 125-25F, if the SPGA determines the requirements to be irrelevant to the particular application. The SPGA may, at their discretion, waive the requirement to submit a site plan when a subdivision plan is submitted that contains the required site plan information. **[Added 5-12-2018 ATM, Art. 44]**

(f) When more than one special permit and/or site plan review is required for a project, the special permits and/or site plan reviews shall be consolidated into one application and review process, where feasible. The procedures that apply to the most restricted use shall prevail. Standards and review criteria for all underlying uses shall apply. **[Added 5-12-2018 ATM, Art. 44]**

(3) Expiration. A special permit shall lapse if the special permit use ceases for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the special permit within 24 months of its issuance, or if the special permit is subject to a time limit which expires without

renewal. **[Amended 5-12-2018 ATM, Art. 44]**

(4) Review procedures. The special permit granting authority shall submit one copy of said application and plan to all relevant Town officials, boards, and committees for their review. Relevant officials, boards, and committees may include, but are not limited to, the Zoning Board of Appeals, the Planning Board, the Board of Health, Historical Commission, the Select Board, the Department of Public Works, the Fire Department, the Police Department and the Conservation Commission. These bodies shall within 35 days make recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant in accordance with MGL c. 40A, § 11. Town officials, boards, and committees are strongly encouraged to jointly review the application and consolidate their recommendations, when possible. Failure by a Town official, board, or committee to return written comments within 35 days shall be considered that person's or entity's lack of opposition to the application. **[Amended 5-12-2018 ATM, Art. 44; 5-14-2022 ATM by Art. 17]**

(5) Criteria. Where a special permit may be authorized by the special permit granting authority under this chapter, said authority may grant, upon written application, such special permit if it finds all of the following:

- (a) That the proposed use would be suitably located in the neighborhood in which it is proposed and/or the total Town.
- (b) That the use will be reasonably compatible with the character and scale of other uses permitted as of right in the same district.
- (c) That the use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories.
- (d) That adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation.
- (e) The proposed project shall comply with the environmental performance standards specified in § 125-21 of this chapter.
- (f) The proposed project shall comply with any and all additional special permit criteria or special use regulations imposed on individual uses in other sections of this chapter.
- (g) The proposed project shall not create traffic congestion or impair pedestrian safety. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets, property or improvements.
- (h) The proposed project shall not create a significant adverse impact on the quality of surface water or groundwater during and after construction, and provision shall be made for maximizing groundwater recharge.
- (i) The design of the project shall provide for adequate methods of disposal and recycling of sewage, refuse or other wastes generated by the proposed use.<sup>18</sup>
- (j) The design of the project shall minimize the visibility of visually degrading

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<sup>18</sup> Editor's Note: See also Ch. 91, Solid Waste, Art. II, Recycling.

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elements and protect the neighboring properties from potentially detrimental or offensive uses through the use of screening or vegetated buffer zones.

(k) In reviewing site plans submitted with a special permit application, the special permit granting authority shall consider the site plan submittal and approval requirements of § 125-26 and/or relevant site plan submittal and approval requirements specified elsewhere in this chapter. **[Amended 5-12-2018 ATM, Art. 44]**

(l) The project shall not unduly impair the integrity of character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare. The project shall be in harmony with the general purpose and intent of this chapter.

(6) Conditions, safeguards and limitations. In granting a special permit, the special permit granting authority may, in accordance with MGL c. 40A, impose conditions, safeguards and limitations. Such conditions, safeguards and limitations shall be in writing and may include but are not limited to the following:

- (a) Front, side and rear yard setbacks greater or lesser than the minimum or maximum required in this chapter. **[Amended 5-12-2018 ATM, Art. 44]**
- (b) Screening by the use of walls, fences, plantings or other such devices.
- (c) Limitations of size, number of occupants, method or time of operation or extent of facilities.
- (d) Modification of the exterior design or appearance of buildings, structures, signs or landscape materials.
- (e) Additional or fewer parking, loading or traffic requirements beyond the minimum or maximum required in this chapter. **[Amended 5-12-2018 ATM, Art. 44]**
- (f) Measures to protect against environmental pollution.
- (g) Performance bond or other security to ensure that the project meets the conditions specified in the special permit.

(7) Changes, alterations or expansion. Any extensions, modifications or renewals of a special permit or variance shall follow the same statutory procedures as are required for the original granting of a special permit or variance.

(8) Discontinuance/abandonment. **[Amended 5-12-2018 ATM, Art. 44]**

- (a) A special permit shall lapse if the special permit use ceases for more than 24 consecutive months for any reason.
- (b) A special permit shall lapse if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the special permit within 24 months of its issuance.
- (c) A special permit shall lapse if the special permit is subject to a time limit, which expires without renewal.

**§ 125-27. Site plan approval. Amended 5-4-1991 ATM, Art. 18; 5-12-2018 ATM, Art. 44**

A. Projects requiring site plan approval shall be as follows:

- (1) The construction or exterior alteration of a commercial structure.
- (2) The construction or exterior alteration of an industrial structure.
- (3) The construction or exterior alteration of a two-family or multifamily dwelling.
- (4) Any other use specified in § 125-5, Schedule of use regulations, and/or elsewhere in this chapter, which indicates site plan approval is required.
- (5) Establishment or alteration of any area for parking, loading or vehicular service, including driveways giving access thereto, for commercial and industrial uses, and all other uses requiring site plan approval.

B. Purpose. The purpose of site plan approval is to further the purposes of this chapter and to ensure that new development is designed in a manner which reasonably protects visual and environmental qualities and property values of the Town, and to assure adequate drainage of surface water and safe vehicular access.

C. Application.

(1) The special permit granting authority shall have jurisdiction over all site plan approval associated with special permits. The Zoning Board of Appeals shall have jurisdiction over site plan approval associated with variances and findings. Site plan approval that is not associated with a special permit, variance, or finding—hereafter called "standalone site plan review"—shall be subject to the jurisdiction of the granting authority specified in § 125-5, Schedule of use regulations, or elsewhere in this chapter. Where the granting authority for a standalone site plan review is not specified elsewhere in this chapter, the Zoning Board of Appeals shall be the granting authority in the Residential District and Limited Business District and the Planning Board shall be the granting authority in the Village Center Mixed Use District, Village Center Neighborhood District, and Village Center Rural Edge District. Each application for site plan approval shall be submitted to the granting authority by the current owner of record, accompanied by 12 copies of the site plan. The granting authority shall, within 15 days, transmit one copy each to the Building Inspector, Board of Health, Conservation Commission, Historical Commission, Select Board, Highway Department, Fire Department and Police Department, who shall review the application and submit their recommendations and comments to the granting authority concerning: **[Amended 10-15-2018 STM, Art. 3; 5-14-2022 ATM by Art. 17]**

- (a) The adequacy of the data and methodology used by the applicant to determine the impacts of the proposed development;
- (b) The effects of the projected impacts of the proposed development; and
- (c) Recommended conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development.

Failure to make comments or recommendations within 35 days of the referral of the application shall be deemed to be lack of opposition by that board, commission, department, or individual.

(2) The granting authority shall obtain, with each submission, a deposit sufficient to cover any expenses connected with a public hearing and review of plans, including but not limited to the costs of any consultant services necessary for review purposes. The granting authority shall set the fee on a case-by-case basis. In addition, the granting authority may charge additional fees as it deems necessary for review purposes.

D. Required site plan contents. All site plans shall be prepared by a registered architect,



registered landscape architect or registered professional engineer unless this requirement is waived by the permit granting authority because of unusually simple circumstances. The granting authority may waive any information requirements it judges to be unnecessary to the review of a particular plan. All site plans shall be on standard twenty-four-inch by thirty-six-inch sheets and shall be prepared at a sufficient scale to show:

- (1) The location and boundaries of the lot, adjacent streets or ways, and the location and owner's names of all adjacent properties.
- (2) Existing and proposed topography, including contours and location of wetlands, streams, bodies of water, drainage swales, areas subject to flooding and unique natural land features.
- (3) Existing and proposed structures, including dimensions and drawings of elevations.
- (4) The location of parking and loading areas, driveways, walkways, access and egress points.
- (5) The location and a description of all proposed and existing septic systems, wells or other water supply, storm drainage systems, foundation drains, utilities and refuse, recycling and other waste disposal methods, for both the lot in question and for all adjacent lots. Location of structures on adjacent lots shall also be shown.
- (6) Proposed landscape features, including the location and a description of screening, fencing and plantings.
- (7) The location, dimensions, height and characteristics of proposed signs.
- (8) The location and a description of proposed open space or recreation areas.
- (9) The location and height of all proposed outdoor lighting, the manufacturers' specification data for fixtures, including lumen output, color temperature, color rendering index (CRI), and BUG rating; and a photometric plan showing the intensity of illumination at ground level expressed in footcandles, including cross-section drawings where necessary to show impact of lighting on adjacent properties.
- (10) The granting authority may request any additional information it judges to be necessary or convenient for the review of a particular plan.

E. Procedures for site plan review. The rules and regulations in this section do not supersede those of any other Town board. The applicant shall still be responsible for submitting the required forms to the Board of Health and Conservation Commission. The process of site plan review in no way replaces that of the Subdivision Control Law.<sup>19</sup> The applicant shall follow the procedures specified in MGL c. 40A, § 9.

F. Site plan review criteria. The following criteria shall be considered by the granting authority in the review and evaluation of a site plan, consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district in which it is located. Before approval of a site plan, the reviewing board may request the applicant to make modifications in the proposed design of the project to ensure that the criteria are met.

- (1) If the proposal requires a special permit, it must conform to the special permit

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<sup>19</sup> Editor's Note: See MGL c. 41., §§ 81K through 81GG.

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requirements as listed in § 125-25 and/or elsewhere in this chapter.

(2) The development shall be integrated into the existing terrain and surrounding landscape, and shall be designed to protect abutting properties and community amenities. Building sites shall, to the extent feasible:

- (a) Avoid use of wetlands, steep slopes, floodplains, hilltops.
- (b) Minimize obstruction of scenic views from publicly accessible locations.
- (c) Preserve unique natural or historical features.
- (d) Minimize street, vegetation and soil removal and grade changes.
- (e) Maximize open space retention and be screened from neighboring properties and roadways.

(3) Architectural style shall be compatible with the rural/historic character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof- and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

(4) The development shall be served with adequate water supply and waste disposal systems. For structures to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health.

(5) The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site.

(6) The site plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation and to prevent changes in groundwater levels, increased runoff and potential for flooding. Drainage shall be designed so that runoff shall not be increased, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

(7) The development will not place excessive demands on Town services and infrastructure.

(8) Electric, telephone, cable television and other such utilities shall be underground where physically and environmentally feasible.

(9) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened to protect the neighbors from objectionable features.

(10) The site plan shall comply with any zoning requirements for parking, loading, dimensions, environmental performance standards and all other provisions of this chapter.

G. Major development performance standards. In order to receive site plan approval, all commercial uses, mixed-use uses, multifamily uses, or uses with more than four dwellings units that are subject to § 125-9.3 (More than one dwelling on a parcel) must demonstrate compliance with

the development standards herein.

(1) Access standards.

(a) Applicants must demonstrate that the project will minimize traffic and safety impacts on adjacent roads. The number of curb cuts on state and local roads shall be minimized. To the extent feasible, access to businesses shall be provided via one of the following:

[1] Access via a common driveway serving adjacent lots or premises;

[2] Access via a loop road shared by adjacent lots or premises.

(b) Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 24 feet in width.

(c) All driveways shall be designed to afford motorists exiting to roads with safe sight distance.

(d) The proposed development shall assure safe interior circulation within its site by separating pedestrian, bicycle and vehicular traffic, unless very low anticipated traffic volumes do not warrant such separation.

(2) Traffic impact statement. A traffic impact statement shall be submitted which shall contain:

(a) Traffic flow patterns at the site, including entrances and egresses, loading and unloading areas, and curb cuts on site and within 100 feet of the site.

(b) An assessment of the traffic safety impacts of the proposed project or use on the carrying capacity of any adjacent highway or road, including the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak hour traffic levels, road capacities, and impacts on intersections.

(c) A plan to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, or other appropriate means.

(d) An interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems.

(e) Adequate pedestrian and bicycle access shall be provided. Sidewalks shall be provided to provide access to adjacent properties and between individual businesses within a development.

(3) Appearance/architectural design.

(a) Architectural design shall be compatible with the rural/historic character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting should be used to provide visual interest and avoid monotony. Proposed buildings should relate harmoniously to each other with adequate light, air, circulation, and separation between buildings. In making its decision, the Planning Board may consider whether the building design is compatible with building standards set forth in this bylaw and the following design guidelines:

[1] Exterior facades are faced with traditional building materials, including, but not limited to, clapboards, shingles, stone or brick;

[2] Exterior facade treatment is compatible on all four sides;

[3] Rooflines are peaked.

(b) The Planning Board may adopt such regulations as may be necessary to further specify design standards.

(4) Explosive materials.

(a) No highly flammable or explosive liquids, solids, or gases shall be stored in bulk above ground, unless they are located in anchored tanks at least 75 feet from any lot line, Town way, or interior roadway plus all relevant federal and state regulations shall also be met. Underground storage tanks are prohibited.

(b) Propane gas tanks in 100-pound cylinders (or smaller) shall be exempt from these safety regulations.

(5) Lighting.

(a) Lighting shall comply with § 125-8.2G.

(6) Vibration.

(a) No vibration shall be transmitted outside the property where it originates.

H. Waiver. The granting authority may waive any information requirements in § 125-26(D) and § 125-26(G) if it judges it to be unnecessary to the review of a particular plan.

I. Final action. The granting authority's final action shall consist of one of the following:

(1) A determination that the proposed project will constitute a suitable development and is in compliance with the criteria set forth in this chapter.

(2) Approval subject to any conditions, modifications and restrictions as the granting authority may deem necessary within the guidelines established by this chapter.

(3) Denial of the application stating the reason for such denial, which may include either that:

(a) The plan fails to provide adequate information for the granting authority to make a determination of whether the development satisfies decisional criteria set forth in this section; or

(b) After a good faith effort, the granting authority was unable to devise adequate conditions, modifications, or restrictions that would enable the project to meet the applicable site plan review criteria set forth in this bylaw.

For a standalone site plan review, the Planning Board shall file its decision with the Town Clerk within 90 days from the close of the public hearing. Failure to do so shall constitute an approval by default.

J. Enforcement.

(1) The granting authority may require the posting of a bond to assure compliance with the plan and conditions and may suspend any permit or license when work is not performed as

required.

(2) Any special permit with site plan approval issued under this section shall lapse within two years if a substantial use thereof has not commenced sooner, except for good cause.

(3) The granting authority may periodically adopt and amend additional rules and regulations relating to the procedures and administration of this section.

K. Appeal process. If an aggrieved person wishes to appeal the decision of the granting authority for a standalone site plan review, the procedures in Massachusetts General Laws, Chapter 40A, Section 17, shall apply.

### **§ 125-28. Variances.**

The Board of Appeals is empowered to authorize upon appeal or petition with respect to particular land or structures a variance from the terms of this chapter. Such a variance shall be granted only if all the conditions specified by Chapter 40A of the Massachusetts General Laws have been met.

A. All applications for variances shall be made in writing on forms furnished by the Board of Appeals and located in the Town Clerk's office and shall be accompanied by a site plan as defined in § 125-26 or, at the discretion of the Zoning Board of Appeals, shall be accompanied by a plan indicating the following:

(1) Location of premises showing dimensions, abutting properties with owner's name and address, abutting and nearby streets and ways and the zoning of all properties shown.

(2) Location and dimension of all proposed structures.

B. If the rights authorized by the variance are not exercised within one year from the date such variance was granted, they shall lapse and may be reestablished only according to Chapter 40A of the Massachusetts General Laws.

C. Variances shall only be issued following a public hearing held in accordance with MGL c. 40A, §§ 10 and 11.

### **§ 125-29. Amendment.**

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

### **§ 125-30. Validity.**

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

### **§ 125-31. Previous bylaws.**

Any existing Zoning Bylaws or any parts thereof inconsistent with this chapter are hereby repealed.

### **§ 125-32. Violations and penalties.**

Any person and/or business entity violating this chapter shall be subject to a fine of no more than \$300 for each offense. Each day that such violation(s) continues shall constitute a separate offense.

**§ 125-33. Subdivision limitation.**<sup>20</sup>

The provisions of this chapter or subsequent amendments thereto shall not affect any lot shown on a definitive subdivision plan for residences which shall have been approved by the Planning Board after 1976, until a period of five years from the date of submission of said plan shall have elapsed. On plans approved prior to 1976 the limitation shall be seven years.

ARTICLE VIII

**Definitions and Word Usage**

**§ 125-34. Word usage.**

Where appropriate, the singular shall include the plural and the plural the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended" or "offered," to be used or occupied; the words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof;" and the words not defined herein but defined in the Subdivision Control Law<sup>21</sup> shall have the meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster's Unabridged Dictionary.

**§ 125-35. Definitions.**

For the purpose of this chapter, the following words shall have the meaning given hereinafter:

ACCESSORY APARTMENT — A second dwelling unit, complete with its own means of egress, sleeping, cooking and sanitary facilities, that is accessory to a single-family dwelling. An owner of the single-family dwelling shall occupy either the single-family dwelling or the accessory apartment as his or her primary residence. **[Amended 5-12-2018 ATM, Art. 44]**

ACCESSORY APARTMENT, ATTACHED — An accessory apartment that is substantially contained within the structure of a single-family dwelling. **[Added 5-12-2018 ATM, Art. 44]**

ACCESSORY APARTMENT, DETACHED — An accessory apartment that is located on the same lot as a single-family dwelling and that is located in a detached accessory structure. **[Added 5-12-2018 ATM, Art. 44]**

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

ACCESSORY ENTERTAINMENT — See "entertainment, accessory." **[Added 5-11-2019 ATM by Art. 11]**

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<sup>20</sup> Editor's Note: Disapproved by the Attorney General with reference to MGL c. 40, § 6, as amended by St. 1982, Ch. 185.

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<sup>21</sup> Editor's Note: See MGL c. 41, § 81L.

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**ACCESSORY USE** — The use of a building or premises which is customarily incidental to a principal permitted use. No system or facility to be used for treating, neutralizing, stabilizing or disposing of wastewater from homes, public buildings, commercial or industrial buildings, or any type of establishment, with the exception of private on-site septic systems, may be considered an accessory use. An accessory use shall not comprise more than 33% of the total structure(s) or lot area on which it is located. A use that is not permitted in this chapter shall not be permitted as an accessory use. A use which requires a special permit in this chapter shall require a special permit as an accessory use.

**ADULT ENTERTAINMENT FACILITY** — Any premises with any of the following establishments: adult bookstore, adult motion picture theater, adult paraphernalia store, adult video store, establishment which displays live nudity for its patrons. **[Added 5-11-2019 ATM by Art. 11]**

A. The definition of the previously listed establishments shall be as established by M.G.L Chapter 40A, Section 9A. The definitions from state law, as of the time of printing, are included here for the convenience of the reader. The definitions below in no way supersede the definitions encoded in state law:

"Adult bookstore," an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section thirty-one of chapter two hundred and seventy-two.<sup>22</sup>

"Adult motion picture theatre," an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in section thirty-one of chapter two hundred and seventy-two.<sup>23</sup>

"Adult paraphernalia store," an establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section thirty-one of chapter two hundred and seventy-two.<sup>24</sup>

"Adult video store," an establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in said section thirty-one of said chapter two hundred and seventy-two.<sup>25</sup>

"Establishment which displays live nudity for its patrons," any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in section thirty-one of chapter two hundred and seventy-two.<sup>26</sup>

B. For the purpose of defining adult entertainment, "substantial or significant portion" shall mean one or more of the following:

- (1) Retail sales accounting for at least 25% of gross sales; or

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<sup>22</sup> Editor's Note: See MGL c. 272, § 31.

<sup>23</sup> Editor's Note: See MGL c. 272, § 31.

<sup>24</sup> Editor's Note: See MGL c. 272, § 31.

<sup>25</sup> Editor's Note: See MGL c. 272, § 31.

<sup>26</sup> Editor's Note: See MGL c. 272, § 31.

- (2) Merchandise accounting for at least 25% of total merchandise available for sales; or
- (3) Shelf space and display space which when combined is in excess of 80 square feet.

C. For the purpose of defining "adult entertainment" for this bylaw, "adult motion picture theater," as defined by MGL Chapter 40A, Section 9A, shall include any portion of any commercial use that is 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.

**AFFORDABLE HOUSING** — Housing units that are eligible for inclusion in the Town's "subsidized housing inventory" for purposes of MGL Chapter 40B. [Added 5-12-2018 ATM, Art. 44]

**APARTMENT** — A dwelling unit in a two-family dwelling, in a multifamily dwelling or in a mixed-use building. [Added 5-12-2018 ATM, Art. 44]

**APPROVED FRONTAGE** — Frontage which meets the criteria of the Planning Board for access to the lot in question.

**AQUIFER** — Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water.

**ATTIC** — The space between the ceiling of the top story of a building and its roof and not used for living, sleeping or eating quarters. [Added 5-12-2018 ATM, Art. 44]

**BACKLIGHT** — For an exterior luminaire, lumens emitted in the quarter sphere below horizontal and in the opposite direction of the intended orientation of the luminaire. For luminaires with symmetric distribution, backlight will be the same as front light. [Added 5-12-2018 ATM, Art. 44]

**BAR** — A food and drink establishment or a part of such an establishment devoted primarily to the service and consumption of alcoholic beverages on the premises, and in which the service of food is only incidental. [Added 5-12-2018 ATM, Art. 44]

**BED-AND-BREAKFAST** — An owner-occupied, single-family dwelling which may rent up to a maximum of four rooming units for transient occupancy, not to exceed a total of eight renters (without individual kitchen facilities and with an individual or shared bath/toilet facility, with at least one toilet, one bath/shower and one wash basin, separate from those required for the single-family dwelling), which share a common entrance with the single-family dwelling. The use of that portion of the dwelling devoted to transient occupancy shall be secondary to the use of the dwelling as a single-family residence and shall not change the character thereof.

**BOUNDARY OF A WAY** — Where no legal boundary has been established, the boundary shall be determined by lines parallel with the center line of the traveled way and at a distance of 1/2 the right-of-way width on both sides, and where no right-of-way has been established, the right-of-way shall be considered 40 feet wide.

**BUG RATING** — A luminaire classification system that classifies backlight (B), uplight (U) and glare(G). [Added 5-12-2018 ATM, Art. 44]

**BUILDING** — A combination of any materials forming a roofed enclosure intended for the shelter of persons, animals or property, including any part of a building and porches and accessory buildings attached thereto.

**BUILDING COVERAGE** — The total combined area of the lot covered by buildings, expressed as a percentage of the total lot area.

**BUILDING HEIGHT** — The vertical distance from the average finished grade at the front of the building



to the highest point of the structure, excluding chimneys, antennas or other accessory attachments.

**BUILDING TYPE, BARN** — A large structure, which is easily recognizable as reflecting design and building techniques employed by traditional Pioneer Valley agricultural structures. The main body of a barn is typically rectangular and features a simple gabled or gambrel roof. **[Added 5-12-2018 ATM, Art. 44]**

**BUILDING TYPE, HORIZONTALLY SYMMETRICAL SIDE-BY-SIDE DUPLEX** — A two-family dwelling in which dwelling units share a vertical wall or walls, or central stairway and in which the front elevation is largely identical on either side of the vertical center line of the structure. **[Added 5-12-2018 ATM, Art. 44]**

**BUILDING TYPE, MANSION** — A large house, greater than five bedrooms or 3,000 square feet of gross floor area, that conveys pride of ownership through refined design, high-quality materials, and generous detailing. **[Added 5-12-2018 ATM, Art. 44]**

**BUILDING TYPE, RAMBLING FARM HOUSE** — A house with obviously recognizable massing that appears as if a primary structure has been added onto over time following traditional practices of building addition, including varied sized additions and varied roof lines. **[Added 5-12-2018 ATM, Art. 44]**

**BUILDING TYPE, SNOUT HOUSE** — Dwellings in which an attached garage projects from the structure such that the facade of the garage is closer to the front property line than the principal facade of the structure. **[Added 5-12-2018 ATM, Art. 44]**

**CHILD-CARE FACILITY** — A child-care center or a school-aged child care program, as defined in MGL c. 15D, § 1A, or its successor. These uses are subject to the limitations on municipal regulations in MGL c. 40A, § 3. The definition, as of printing, from MGL c. 15D § 1A, is included for the convenience of the reader.<sup>27</sup> The definition below in no way supersedes the definition encoded in state law: **[Added 5-12-2018 ATM, Art. 44]**

"a facility operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under seven years of age, or under 16 years of age if those children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of that system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization in which children are cared for during short periods of time while persons responsible for the children are attending religious services; a family child care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation."

**CLUB** — A bona fide membership organization established under provisions of the General Law.

**COMMON ACCESS DRIVEWAY or SHARED ACCESS DRIVEWAY** — A driveway/curb cut shared by not more than five lots, such that each lot has approved frontage on an existing public way, and has access obtained through the common use of a private way designed according to the standards for

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<sup>27</sup> Editor's Note: The definition provided herein is the definition of "child care center" in MGL c. 15D, § 1A.

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construction of shared driveways in Pelham. **[Amended 5-12-2018 ATM, Art. 44]**

**COMMUNITY RESIDENCE** — A building containing sleeping rooms, common rooms, dining rooms and accessory facilities intended exclusively for the use of participants of a program of rehabilitation of individuals prior to their complete reentry into normal society, operated by a program that is formally recognized by an appropriate agency of the commonwealth. One or more individuals responsible for the operation of a community residence may be resident therein, and facilities for such resident director and his/her family shall be provided.

**CONDOMINIUM** — A system of ownership of real estate, including commercial, industrial, and attached and detached residential dwelling units, established pursuant to the Condominium Act of the Commonwealth of Massachusetts, Chapter 183A of the Massachusetts General Laws, in which the apartments or dwelling units are individually owned and the land and common areas are owned in common. A condominium is not a use or a building type; rather it is a form of ownership that can apply to any use or building type. **[Added 5-12-2018 ATM, Art. 44]**

**CONGREGATE ELDERLY HOUSING** — A building arranged or used for the residence of persons aged 55 years or older, as defined in Chapter 121B of the Massachusetts General Laws, with some shared facilities and services.

**CONSERVATION RESTRICTION** — A permanent restriction in the title to land of the type described in MGL C. 184 §§ 31 through 33. As used in this bylaw, "conservation restriction" also includes an agricultural preservation restriction, a watershed preservation restriction, or a preservation restriction as defined in MGL c. 184, § 31. **[Added 5-12-2018 ATM, Art. 44]**

**CONVENIENCE STORE** — A type of retail establishment where: 1. the business depends on a high volume of short duration visits by customers (typically less than five minutes); 2. product sales are primarily comprised of tobacco-related products and prepackaged individual servings of high-sodium and/or high-sugar snacks, confectioneries, and drinks, and; 3. less than 35% of selling area is dedicated to the retail sale of fresh and/or frozen meat, seafood, poultry; fresh and/or frozen fruits and/or vegetables; low-fat dairy; legumes; or whole grains; and bakery products. **[Added 5-11-2019 ATM by Art. 9]**

**DAY-CARE CENTER** — Any facility operated on a regular basis whether as a day nursery, nursery school, child play school or under any other name which receives seven or more children during the course of any one day.

**DENSITY** — The number of dwelling units per acre of land. **[Added 5-12-2018 ATM, Art. 44]**

**DISTRICT** — A specified portion of the Town, delineated on the Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of the bylaw. **[Added 5-12-2018 ATM, Art. 44]**

**DRIVEWAYS** — Privately owned and maintained roadway providing access from a Town road to a lot.

**DWELLING** — A building occupied as a residence, including manufactured or modular housing that is certified as such by the State Building Inspector. Mobile homes and trailers are not considered to be dwellings except as specified under § 125-11.

**DWELLING, MULTIFAMILY** — A building containing three, four, five, or six dwelling units, regardless of the form of ownership (condominium, fee simple, rental). Multifamily dwellings use a variety of building types, including large houses, apartment buildings, and townhouses. **[Added 5-12-2018 ATM, Art. 44]**

**DWELLING, SINGLE-FAMILY** — A detached building containing one dwelling unit. **[Added 5-12-2018 ATM, Art. 44]**

DWELLING, TWO-FAMILY — A detached building containing two dwelling units. **[Added 5-12-2018 ATM, Art. 44]**

DWELLING UNIT — A structure, or portion thereof, providing complete living facilities for one family.  
FAMILY:

A. An individual or group of persons related by marriage, blood and/or adoption residing together in one dwelling unit; or

B. A group of unrelated individuals, not to exceed 4, residing cooperatively in one dwelling unit.

ENERGY STORAGE SYSTEM (ESS) – Any mechanical, thermal, electrical, chemical, electrochemical or other device that is operated to store energy for use by the utility grid or a backup system. **[Added 5-13-2023 ATM, Art. 29]**

ENTERTAINMENT, ACCESSORY — Recreational services or events which are incidental to and in support of another permitted commercial use. Accessory entertainment includes, but is not limited to: performances, including, but not limited to, music, dance, theater, comedy; film showings; lectures; exhibitions; participatory performances including open mics and jam sessions. A fee may be charged for accessory entertainment. Whether an entertainment use is accessory or primary shall not be determined based on percentage of area used (as specified in the definition of "accessory use" in this bylaw). Rather it shall be determined based on the operational characteristics of the entertainment use and any other use of the premises. Considerations may include frequency of operation, and/or percent of total sales generated. **[Added 5-11-2019 ATM by Art. 11]**

ENTERTAINMENT, STAND-ALONE — A business which, for compensation, offers recreational services or events, including, but not limited to, performance spaces, music venues, movie theaters, and other places of public or private entertainment for which a fee is charged. **[Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 11]**

FAMILY CHILD-CARE HOME — As defined by MGL c. 15D, § 1A, or its successor. The definition, as of printing, from MGL c. 15D, § 1A, is included for the convenience of the reader. The definition below in no way supersedes the definition encoded in state law: **[Added 5-12-2018 ATM, Art. 44]**

"a private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the board. The total number of children under 16 in a family child care home shall not exceed six, including participating children living in the residence. Family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation."

FENCE — A barrier intended to prevent escape or intrusion or to mark a boundary or to screen another area from sight.

FOOTCANDLE — The unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot. **[Added 5-12-2018 ATM, Art. 44]**

FRONTAGE — Shall mean the continuous and unbroken distance between the sidelines of a lot measured along the street line (where the lot meets the right-of-way of the street). **[Added 10-24-2020 STM by Art. 6]**

FRONT PLANE — The building facade that is most nearly parallel with the frontage of the lot on which

the building sits. If a building is served by a common driveway, or a lot contains multiple buildings, then the front plane shall be the building facade that is most nearly parallel with the primary accessway to the dwelling. Projecting porches, eaves, decks, and overhangs, shall not be considered the building facade. **[Added 5-12-2018 ATM, Art. 44]**

**FULLY SHIELDED LUMINAIRE [or FULLY SHIELDED FIXTURE]** — A luminaire constructed and installed in such a manner that all light emitted by the luminaire, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane through the luminaire's lowest light-emitting part. **[Added 5-12-2018 ATM, Art. 44]**

**GARAGE, PRIVATE** — A building or part thereof used for the storage of motor vehicles.

**GLARE** — Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility. **[Added 5-12-2018 ATM, Art. 44]**

**GROUND-MOUNTED SOLAR ELECTRIC INSTALLATION** — Shall mean a solar electric system that is affixed to the ground (not roof-mounted) and all appurtenant fencing, access driveways, drainage infrastructure, electronics, and any surrounding shade management areas. **[Added 10-24-2020 STM by Art. 6]**

**GROUNDWATER** — All the water found beneath the surface of the ground.

**HABITABLE AREA** — The floor area of the living space for the exclusive use of a single-family in a dwelling or in a dwelling unit. Living space shall not include porches, breezeways, garages, basements and any unfinished or community areas, and shall be measured as net area or as gross area less 12% for partitions and walls.

**HAZARDOUS WASTE** — A waste which is hazardous to human health or the environment. Hazardous wastes have been designated by the United States Environmental Protection Agency under 40 CFR 250 and the Regulations of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C.

**HEIGHT** — The vertical distance between the highest point of the roof of a building and the average finished grade of land on which the building is located. For purposes of this bylaw, the term "height" shall not apply to chimneys, steeples, flag or radiopoles, antennas, aerators, required bulkheads, elevator penthouses, or other equipment appurtenances necessitated by the permitted use to which a building is put. In addition, the term, "height" shall not apply to solar energy collectors and equipment used for the mounting or operation of such collectors; provided, however, that such collectors or equipment shall not impair solar access of other building or other solar installations. **[Added 5-12-2018 ATM, Art. 44]**

**HOME OCCUPATION** — Any business, profession, occupation or trade (a) conducted within a building; (b) is accessory and subordinate to the use of the property as a primary residence; (c) does not change the essential residential character of the property; and (d) is subject to § 125-12 of the bylaw. **[Added 5-7-2016 ATM, Art. 45]**

**IMPERVIOUS SURFACE COVERAGE** — The percentage of the area of a lot that is impervious to water, including, but not limited to, areas covered by structures and paving, including swimming pools and paved recreational surfaces. Permeable paving shall not be considered an impervious surface. **[Added 5-12-2018 ATM, Art. 44]**

**IMPERVIOUS SURFACES** — Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil. **[Added 10-27-1993 STM, Art. 24]**

**LAMP** — A generic term for a source of optical radiation (i.e. "light"), often called a "bulb" or "tube."

Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays. **[Added 5-12-2018 ATM, Art. 44]**

**LARGE FAMILY CHILD-CARE HOME** — As defined by MGL c. 15D, § 1A, or its successor. The definition, as of printing, from MGL c. 15D, § 1A, is included for the convenience of the reader. The definition below in no way supersedes the definition encoded in state law: **[Added 5-12-2018 ATM, Art. 44]**

"a private residence which, on a regular basis, receives for temporary custody and care during part, or all of the day, children under seven years of age, or children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations promulgated by the board, but the number of children under the age of 16 in a large family child care home shall not exceed 10, including participating children living in the residence. A large family child care home shall have at least 1 approved assistant when the total number of children participating in child care exceeds 6. Large family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation."

**LARGE-SCALE GROUND-MOUNTED SOLAR ELECTRIC INSTALLATION** — Shall mean a ground-mounted solar electric installation which occupies more than 1.5 acres of land and no greater than 15 acres of land. **[Added 10-24-2020 STM by Art. 6]**

**LEACHABLE WASTES** — Waste materials, including solid wastes, sludge, pesticide and fertilizer wastes capable of releasing waterborne contaminants to the environment.

**LIGHT FIXTURE** — The assembly that houses a lamp or lamps, and which may include a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor, lens, or diffuser lens. **[Added 5-12-2018 ATM, Art. 44]**

**LIGHT POLLUTION** — Any adverse effect of artificial light, including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety and security, and impacts on the nocturnal environment. **[Added 5-12-2018 ATM, Art. 44]**

**LIGHT TRESPASS** — Light that falls beyond the property it is intended to illuminate. **[Added 5-12-2018 ATM, Art. 44]**

**LIGHTING EQUIPMENT** — Equipment specifically intended to provide gas or electric illumination, including but not limited to, lamp(s), luminaire(s), ballast(s), poles, posts, lens(es) and related structures, electrical wiring, and other necessary or auxiliary components. **[Added 5-12-2018 ATM, Art. 44]**

**LOT** — An area or parcel of land, or any part thereof, in common ownership, designated on a plan filed with the Building Inspector by its owner or owners as a separate lot and having boundaries identical with those recorded in the Hampshire County Registry of Deeds. Two or more contiguous lots in common ownership may be treated as one lot for the purposes of this chapter, provided that the combined lots are used as a single lot would customarily be used, and further provided that the lots are not later subdivided or separated in a manner such that a lot, or any structure(s) or uses thereon, would not conform to any provisions of this chapter. When lots are combined and treated as one lot, all regulations shall be applied as though they were a single lot. The following shall not be counted toward land within the minimum lot area: land within public ways; land within private ways and rights-of-ways where the general public has the right of access by automotive vehicles; streams and bodies of water, as defined by the Massachusetts Wetland Protection Act Regulations 310 CMR 10.00 and Chapter 119, Wetlands Protection.

**LOT, BUILDING OR BUILDABLE** — Any lot that conforms to all state and local requirements (e.g.

Zoning Bylaw, Wetlands Act/Bylaw, Health Codes, Subdivision Control Law) for the purposes of construction or development on said lot.

LOT, CORNER — A lot at the point of intersection of and abutting on two or more intersecting streets, the interior angle of intersection of the street lot lines, or extended lot lines in case of a curved street, being not more than 135°. For purposes of this chapter, the yard adjacent to each street shall be considered a front yard; however, this will not affect designation of the front line. (See Diagram 2.)<sup>28</sup>

LOT, INTERIOR — Any lot other than a corner lot or a through lot.

LOT, THROUGH — A lot which abuts two streets, but not at their intersection. (See Diagram 3)<sup>29</sup>

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

LOT FRONTAGE — The uninterrupted length of the front lot line, as defined herein, whether straight or not.

LOT LAYOUT — In addition to the minimum lot area, depth, width and frontage requirements, lots shall be laid out in such a manner so that a square, with sides equal to the minimum frontage requirement for the zoning district in which it is located, can be placed within the lot with at least one point of the square lying on the front lot line with no portion of the square extending beyond the boundaries of the lot.

LOT LINE, FRONT — The property line dividing a lot from a single district right-of-way. In the case of a corner lot or a through lot, at least one front lot line shall conform to the minimum lot frontage requirements. (See Diagrams 1 and 2.)<sup>30</sup>

LOT LINE, REAR — The lot line most nearly opposite from the front lot line. (See Diagrams 1 and 2.)

LOT LINE, SIDE — Any lot line that is not a front or rear lot line. (See Diagrams 1 and 2.)

LOT WIDTH — The horizontal distance (measure parallel to the front lot line) between the side lot lines. At no point, between the front lot line and the rear of the principal structure (said rear being the furthest point of the structure from the front lot line) located on the lot, shall the lot have a width less than the minimum lot frontage required.

LUMEN — The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from "watt," a measure of power consumption). **[Added 5-12-2018 ATM, Art. 44]**

LUMINAIRE — The complete lighting unit (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply. **[Added 5-12-2018 ATM, Art. 44]**

MEDICAL OFFICE — A medical, dental, psychiatric, mental health, chiropractic, massage, acupuncture, veterinary or similar practice offering medical or dental services on an outpatient basis and including a

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<sup>28</sup> Editor's Note: Diagram 2 is included at the end of this chapter.

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<sup>29</sup> Editor's Note: Diagram 3 is included at the end of this chapter.

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<sup>30</sup> Editor's Note: Diagrams 1 and 2 are included at the end of this chapter.

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total of no more than the full-time equivalent of three principal health care providers and two other medical or dental professionals, exclusive of administrative or clerical staff, providing services on the premises. A medical or dental office may also contain associated in-house ancillary services such as in-house diagnostic testing facilities, medical counseling services, and similar services. **[Added 5-11-2019 ATM by Art. 10]**

**MIXED-USE BUILDING** — A building containing a combination of residential and nonresidential uses. **[Added 5-12-2018 ATM, Art. 44]**

**MIXED-USE DEVELOPMENT** — Any combination of residential, commercial, and/or industrial uses on the same lot at the time of initial approval. **[Added 5-12-2018 ATM, Art. 44]**

**MOBILE HOME** — A structure designed as a dwelling unit for location on a permanent foundation, and containing sleeping accommodations and sanitary and kitchen facilities, with plumbing and electrical connections, which is designed to be transported after fabrication to a site for use, and which is certified by the State Building Inspector as being a mobile home.

**MOUNTING HEIGHT** — The height of the photometric center of a luminaire above grade level. **[Added 5-12-2018 ATM, Art. 44]**

**OFFICE** — A workplace used for the transaction of business or nonprofit functions, excluding as principal uses manufacturing, retail construction, and warehousing and including but not limited to professional offices and offices that support or manage off-site manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated as part of another primary use on the use table shall be considered accessory to that primary use and not a separate use. **[Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 10]**

**OPEN SPACE** — The space on a lot unobstructed to the sky by man-made objects other than walks; unoccupied by buildings or structures, swimming pools and terraced areas; not devoted to streets, driveways, off-street parking or loading spaces; and expressed as a percentage of total lot area.

**OPEN SPACE DESIGN** — A development that results in the permanent preservation of a significant portion of a parcel as open space, in which otherwise required minimum lot sizes and other dimensional requirements do not apply. See § 125-18.3. **[Added 5-12-2018 ATM, Art. 44]**

**OUTDOOR LIGHTING** — Lighting equipment installed within the property line and outside the building envelopes, whether attached to poles, building structures, the earth, or any other location; and any associated lighting control equipment. **[Added 5-12-2018 ATM, Art. 44]**

**PARKING AREA** — Any open space used for parking motor vehicles.

**PERSONAL SERVICE ESTABLISHMENT** — Any building wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Personal service establishments shall include, but not be limited to: barbershops; beauty shops; pet grooming establishments; tailors; dressmaking shops; shoe cleaning or repair shops; eyeglass shops; health clubs; and other similar places of business, but not including offices of physicians, dentists and veterinarians, or any other recognized professional. **[Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 10]**

**PREEXISTING NONCONFORMING LOT** — A lot that, when originally created, conformed to all zoning requirements with respect to minimum lot area, minimum lot width and frontage and/or minimum lot depth that were then in effect but were subsequently amended so that the lot would no longer conform to the requirements.

**PREEXISTING NONCONFORMING STRUCTURE** — A structure or addition that, when originally constructed, was lawfully in existence or lawfully begun and conformed to any zoning requirements with respect to minimum setbacks, maximum floor area ratio or other dimensional and area requirements that were then in effect but were subsequently amended so that the structure or addition would no longer conform to the requirements.

**PREEXISTING NONCONFORMING USE** — A use that, when originally created, conformed to all zoning requirements that were then in effect but were subsequently amended so that the use would no longer conform to the requirements.

**PRIMARY AQUIFER RECHARGE AREA** — Areas which are underlain by surficial geologic deposits, including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward the area of influence of water supply wells. **[Added 10-27-1993, by Art. 24]**

**PRIVATE STABLES** — A building or part of a building in which one or more horses or ponies are kept for the private use of the owner, and in which no horses or ponies are kept for sale, rent, hire, breeding or for commercial cartage, trucking or other business purposes.

**PROCESS WASTE WATERS** — Waste waters from any industrial, business or manufacturing process, not including human wastes, which are discharged to a sewage disposal facility. **[Added 10-27-1993 STM, Art. 24]**

**PROFESSIONAL SERVICE** — Establishment primarily engaged in rendering services by professional persons on a fee or contract basis, including, but not limited to the following: accounting, auditing, and bookkeeping; planning, engineering and architectural; education and science; attorneys and notary publics; finance, insurance and real estate (FIRE); travel agencies; etc. Visits to the premises by clients or customers shall be predominantly by appointment. For the purposes of this definition "predominantly by appointment" shall mean that a majority of customers or clients who are provided services in person on the premises during any extended period of operation (monthly, quarterly, or annually) shall do so through prior appointment. Exceptions shall be discretionary follow-up visits by customers or clients regarding services already provided, visits by affiliated professionals or consultants, salespersons, service contractors (delivery, maintenance, etc.), and the like. Establishments shall advertise their on-premises services as being available to the general public only by appointment. **[Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 10]**

**PROTECTED OPEN SPACE** — Land that is permanently protected from development by a conservation restriction, dedication as parkland, or equivalent form of perpetual legal restriction on development. **[Added 5-12-2018 ATM, Art. 44]**

**PROTECTION ACT AND THE PELHAM WETLANDS PROTECTION BYLAW** — Regulations relative to the protection of wetland areas under which a landowner may ask for a determination from the Pelham Conservation Commission.

**RECHARGE AREA** — Areas composed of permeable stratified sand and gravel or till and the wetlands within them which collect precipitation or surface water and allow it to percolate down to the water table and flow into aquifers or other water bodies.

**RESTAURANT** — A commercial establishment in which the primary activity consists of the preparation and serving of food for consumption on the premises or as take-out. Any such establishment shall be considered a restaurant if the service of food is its primary activity and the service of alcoholic beverages, if any, is incidental to the sale, service and consumption of food and nonalcoholic beverages. This use does include catering businesses but does not include retail uses that sell prepared food. **[Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 11]**



RETAIL/RETAIL SALES — An establishment selling goods directly to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store and variety store, excluding a restaurant. [Added 5-12-2018 ATM, Art. 44; amended 5-11-2019 ATM by Art. 9]

SECONDARY AQUIFER RECHARGE AREA — Areas which are underlain by surficial geologic deposits, including till or bedrock, and in which the prevailing direction of surface water flow is toward public water supply wells or potential sites for such wells. [Added 10-27-1993 STM, Art. 24]

SELLING AREA — The combined shelf space of a retail establishment that is dedicated to the display of products for sale. [Added 5-11-2019 ATM by Art. 9]

SETBACK — The minimum or maximum distance from a lot line to a building placed thereon, or feature thereof as is required in this chapter. Said setback shall be measured perpendicular to the lot line. At no point shall any structure on the lot be any closer to or further from any street line, whether said street line directly abuts the lot or not, than the minimum front yard setback requirement for that zoning district. [Amended 5-12-2018 ATM, Art. 44]

SIGN — Any object constructed of any material that is intended or designed to advertise or call the attention of the public to the premises, to a product made, displayed or sold and to services rendered thereon, or to identify the building or the occupants thereof, or any privately owned permanent or temporary device, billboard, placard, painting, drawing, poster, letter, word, banner, pennant, insignia, trade flag or representation used as, or which is in the nature of, an advertisement, announcement or direction which is on a public way or on private property within public view of a public way, public park or reservation.

SIGN, ACCESSORY — Any sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter.

SIGN, AREA OF — Includes all lettering, wording and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any cutouts or extensions, but shall not include any supporting structure or bracing. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object. In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be included.

SIGN, NONACCESSORY — Any sign not an accessory sign.

SIGN, TEMPORARY — Any sign, including its supporting structure, intended to be maintained for a continuous period of not more than 100 days in any calendar year.

SIGN, FREESTANDING — Any accessory sign that is not attached to a building.

SMALL-SCALE GROUND-MOUNTED SOLAR ELECTRIC INSTALLATION — Shall mean a ground-mounted solar electric installation which occupies 1.5 acres or less of land. [Added 10-24-2020 STM by Art. 6]

SOLAR DISTRICTS — Shall be those areas shown on the Zoning Map as "Solar Districts." [Added 10-24-2020 STM by Art. 6]

SOLAR ELECTRIC SYSTEM — Shall mean a group of solar photovoltaic arrays for the generation of electricity. [Added 10-24-2020 STM by Art. 6]

SOLAR ENERGY — Shall mean radiant energy received from the sun that can be collected in the form of heat or light by a solar collector. **[Added 10-24-2020 STM by Art. 6]**

SOLAR PHOTOVOLTAIC ARRAY — Shall mean an active solar energy collection device that converts solar energy directly into electricity whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means. **[Added 10-24-2020 STM by Art. 6]**

SPGA — Shall mean special permit granting authority. **[Added 10-24-2020 STM by Art. 6]**

STAND-ALONE ENTERTAINMENT — See "entertainment, stand-alone." **[Added 5-11-2019 ATM by Art. 11]**

STORY — The horizontal portion through a building between floor and ceiling. The word "story" shall not include the portion of the basement or cellar of a building above grade, provided that such portion is not more than 1/2 of the floor-to-ceiling height of said basement or cellar. The word "story" shall not include "attic" as defined herein. **[Added 5-12-2018 ATM, Art. 44]**

STORY, HALF (or HALF-STORY) — A partial story located above a full story and underneath a sloping roof, where the roof planes intersect two opposite exterior walls at a height of no more than three feet above the half-story floor level. A half-story may have window dormers or other projections out from the roof plane. The floor area of habitable space in a half-story shall be less than the floor area of habitable space in the floor immediately below the half-story. **[Added 5-12-2018 ATM, Art. 44]**

STREET — A way, either public or private, giving access to private property and to which the public has access, but excluding an alley used for service access only. Street shall be deemed to include the entire right-of-way.

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

SUBDIVISION — Including resubdivision, shall be as defined in the Subdivision Control Law, Massachusetts General Laws, Chapter 41.

SURFACE WATER — All water found above ground which shall include but not be limited to the following: year-round, intermittent or seasonal streams; lakes, ponds, wetlands, ephemeral ponds, man-made or natural channels or water bodies.

TRAILER — Any vehicle or object on wheels, including devices commonly referred to as "camping trailers," "recreational vehicles" or "campers," that is so designed and constructed, reconstructed or added to by means of accessories that permit the use and occupancy thereof for human habitation, whether testing on wheels, jacks or other foundations.

TRUCKING TERMINAL — Business which services or repairs commercial trucks which are not owned by the business. **[Added 10-27-1993 STM, Art. 24]**

UPLIGHT — For an exterior luminaire, flux radiated in the hemisphere at or above the horizontal plane. **[Added 5-12-2018 ATM, Art. 44]**

USE — The purpose for which a structure or lot is arranged, designed or intended to be used, occupied or maintained.

VEHICLE-ORIENTED USES — Uses primarily concerned with the sale, rental, or servicing of motor vehicles, including, but not limited to, new or used motor vehicle sales; vehicle or trailer rentals; vehicle

repair, service, or detailing; fueling station; car wash; livery businesses; commercial parking. **[Added 5-12-2018 ATM, Art. 44]**

**WATERSHED** — Lands lying adjacent to watercourses and surface water bodies which create the catchment or drainage areas of such watercourses and bodies.

**WETLAND** — Those lands falling under the jurisdiction of the Massachusetts Wetlands Act and Chapter 119, Wetlands Protection, of the Code of the Town of Pelham.

**WIRELESS COMMUNICATIONS SERVICES** — Cellular telephone services, personal communication services and enhanced specialized mobile radio services. **[Added 5-9-1998 ATM, Art. 28]**

**WIRELESS COMMUNICATION TOWER** — A structure designed to support equipment used for the transmission or reception of electromagnetic radiation, including antennas, microwave dishes, wiring or other devices attached thereto. This definition does not include an antenna used by a federally licensed amateur radio operator or television antennas that are accessory to a residential use. **[Added 5-9-1998 ATM, Art. 28]**

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

**YARD, FRONT** — A yard extending between lot side lines across the front of a lot adjacent to each street the lot adjoins.

**YARD, REAR** — A yard adjacent to the rear lot line and extending between side lot lines.

**YARD, SIDE** — A yard adjacent to the side lot line and extending from the front yard to the rear yard.

Town of Pelham

Diagram 1

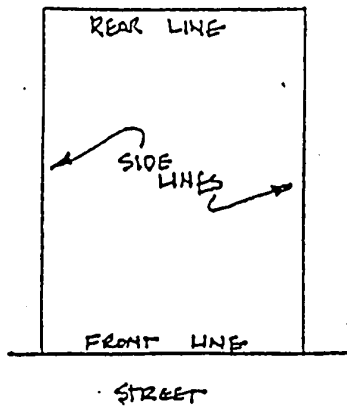


Diagram 2

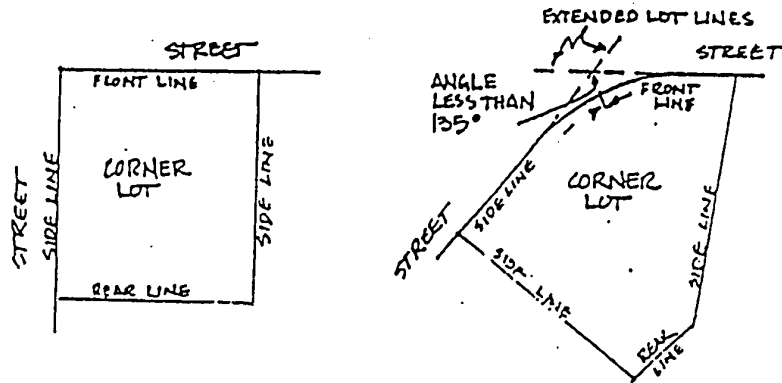


Diagram 3

