



# ZONING

## Chapter 181

Of the  
Code of the  
City of Fitchburg, Massachusetts

**As adopted on December 12, 2024**

# Fitchburg Zoning Ordinance

## Table of Contents

SECTION 181.1 PURPOSE AND AUTHORITY .....	1
181.11 PURPOSE.....	1
181.12 AUTHORITY. ....	1
181.13 SCOPE. ....	1
181.14 APPLICABILITY.....	1
181.15 AMENDMENTS.....	2
181.16 SEVERABILITY.....	2
SECTION 181.2 DISTRICTS .....	3
181.21 ESTABLISHMENT.....	3
181.211 GENERAL. ....	3
181.22 OVERLAY DISTRICTS. ....	4
181.23 MAP. ....	5
181.231 Rules for Interpretation of Zoning District Boundaries. ....	5
SECTION 181.3 USE REGULATIONS .....	6
181.31 PRINCIPAL USES. ....	6
181.311 Symbols. ....	6
181.312 Applicability.....	6
181.313 Table of Principal Use Regulations.....	7
181.32 ACCESSORY USES. ....	13
181.321 Residential Uses Permitted in Residential Districts.....	13
181.322 Institutional Uses Permitted in Institutional Districts. ....	15
181.323 Business Districts.....	15
181.324 Industrial Districts. ....	16
181.325 Nonresidential Accessory Uses.....	16
181.326 Miscellaneous Accessory Uses. ....	17
181.33 NONCONFORMING USES AND STRUCTURES. ....	18
181.331 Applicability.....	18
181.332 Nonconforming Uses.....	18
181.333 Nonconforming Structures. ....	19
181.334 Variance Required. ....	19
181.335 Nonconforming Single and Two Family Residential Structures.....	19
181.336 Abandonment or Non-Use. ....	20
181.337 Reconstruction after Catastrophe or Demolition. ....	22
181.338 Reversion to Nonconformity. ....	22
SECTION 181.4 DIMENSIONAL REGULATIONS.....	23
181.41 STANDARD DIMENSIONAL PROVISIONS. ....	23
181.411 General.....	23
181.412 Methods for Calculating Dimensional Requirements.....	23
181.413 Height of Structures. ....	25
181.414 Corner Lot Clearance.....	26
181.415 One Structure per Lot.....	26
181.416 Table of Dimensional Requirements. ....	26
181.42 SPECIAL PROVISIONS AND EXCEPTIONS. ....	27

181.421 Yard Exceptions in Residential Districts.....	27
181.422 Frontage Exceptions for Cul-de-sac Lots. ....	27
181.423 Multiple Principal Structures.....	28
181.424 Split Lots.....	28
181.425 Infill Lots.....	28
181.426 Height Exception in Commercial (C), Adaptive Industrial (AI), and Industrial (I) Districts.....	29
181.427 Height and Dimensional Exceptions in the FSU and CR Districts.....	29
181.428 Minimum Lot Size for Motor Vehicle and Equipment Sales. ....	29
SECTION 181.5 GENERAL REGULATIONS .....	30
181.51 OFF-STREET PARKING. ....	30
181.511 General Requirements.....	30
181.512 Table of Off-Street Parking Requirements. ....	31
181.513 Special Permit and Site Plan Review. ....	38
181.514 Design Standards. ....	38
181.515 Common or Shared Parking Areas. ....	40
181.516 Landscaping Requirements for Parking Areas. ....	40
181.517 Drive-Through Facility Standards.....	41
181.52 OFF-STREET LOADING.....	42
181.521 General.....	42
181.522 Retail Stores and Services. ....	42
181.523 Office Buildings. ....	42
181.524 Manufacturing, Industrial Uses or Warehousing.....	42
181.525 Screening.....	42
181.526 Size. ....	42
181.527 On-Premises. ....	42
181.528 Waiver.....	42
181.53 SIGNS AND ADVERTISING DEVICES. ....	43
181.531 General Regulations.....	43
181.532 Sign Permits. ....	43
181.533 Signs Not Requiring Permits.....	43
181.534 Signs for Residential Uses. ....	45
181.535 Signs for Non-Residential Uses.....	45
181.536 Prohibited Signs in All Districts.....	47
181.537 Maintenance of signs.....	48
181.538 Compliance with other regulations.....	48
181.54 GENERAL LANDSCAPING REQUIREMENTS.....	48
181.541 Purpose. ....	48
181.542 Applicability.....	49
181.543 Landscaping Requirements for Property Lines.....	49
181.544 Landscaping Requirements for Street Frontage of Nonresidential Uses.....	49
181.545 Planted Area Requirements. ....	49
181.546 Coordination with Site Plan Approval. ....	50
181.547 Maintenance of Landscaped Areas.....	50
181.55 ENVIRONMENTAL PERFORMANCE STANDARDS.....	50
181.551 General.....	50
181.552 Noise. ....	50
181.553 Solid Waste Storage.....	50
181.554 Miscellaneous Standards. ....	51
181.555 Stormwater Management and Erosion Control.....	51
181.556 Illumination.....	51

181.56 MOBILE FOOD OPERATION .....	52
181.561 Residential Districts.....	52
181.562 Non-Residential Districts.....	52
SECTION 181.6 SPECIAL REGULATIONS .....	53
181.61 SEXUALLY ORIENTED BUSINESSES. ....	53
181.611 Purpose. ....	53
181.612 Special Permit Requirement.....	53
181.613 Location.....	53
181.614 Conditions. ....	54
181.62 WIRELESS COMMUNICATIONS FACILITIES. ....	54
181.621 Purpose. ....	54
181.622 Approval Process.....	55
181.623 Special Permit Thresholds. ....	55
181.624 General Requirements.....	56
181.625 Submission Requirements. ....	57
181.626 Application Requirements. ....	58
181.627 Design Guidelines. ....	60
181.628 Waivers. ....	63
181.629 Conditions. ....	63
181.63 SMALL WIND ENERGY SYSTEMS.....	64
181.631 Purpose. ....	64
181.632 Findings. ....	64
181.633 Definitions. ....	64
181.634 Permitted Use. ....	64
181.635 Application requirements.....	65
181.636 General Siting Standards.....	65
181.637 Waiver of Setbacks.....	66
181.638 Design Standards. ....	66
181.639 Additional Provisions.....	67
181.64 MARIJUANA ESTABLISHMENTS. ....	69
181.641 Regulation.....	69
181.642 Purpose. ....	69
181.643 Definitions. ....	69
181.644 Prohibitions and Limitations. ....	71
181.645 Application.....	72
181.646 Special Permit Criteria and Findings. ....	75
181.647 Site Plan Review/Special Permit Conditions.....	76
181.648 Termination and Modification. ....	79
181.65 ARTISAN MANUFACTURING AND FOOD AND BEVERAGE .....	80
181.651 Purpose. ....	80
181.652 Standards. ....	80
181.66 LARGE SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC FACILITIES.....	80
181.661 Purpose. ....	80
181.662 Applicability.....	80
181.663 General Requirements.....	80
181.664 Application Requirements. ....	81
181.665 Waivers. ....	82
181.666 Dimension and Density Requirements. ....	82
181.667 Project Requirements. ....	83
181.668 Action by Planning Board.....	85

181.67 ADAPTIVE INDUSTRIAL DISTRICT (AI).....	85
181.671 Purpose. ....	85
181.672 Intended Scope.....	86
181.673 Definitions. ....	86
181.674 Adaptive Industrial District. ....	86
181.675 Special Permit Required. ....	86
181.676 Special Permit Granting Authority. ....	86
181.677 Standards. ....	87
181.678 Number of Dwelling Units. ....	87
181.679 Action by the Planning Board.....	88
181.68 FARMERS' MARKETS. ....	88
181.681 Purpose. ....	88
181.682 Standards. ....	88
181.69 EARTH REMOVAL. ....	90
181.691 Applicability.....	90
181.692 Conditions. ....	90
181.693 Removal. ....	90
181.694 Restoration.....	91
SECTION 181.7 SPECIAL RESIDENTIAL REGULATIONS.....	92
181.71 FLEXIBLE DEVELOPMENT. ....	92
181.711 Purpose. ....	92
181.712 Applicability.....	92
181.713 Procedures. ....	92
181.714 Design Process. ....	92
181.715 Modification of Lot Requirements.....	93
181.716 Number of Dwelling Units. ....	93
181.717 Standards. ....	94
181.718 Decision. ....	95
181.72 PLANNED UNIT DEVELOPMENT. ....	95
181.721 Purpose. ....	95
181.722 Procedures. ....	96
181.723 Use Provisions by District. ....	96
181.724 Open Space. ....	97
181.725 Planning Board Approval. ....	97
181.726 Additional Conditions. ....	98
181.73 ASSISTED AND INDEPENDENT LIVING FACILITIES.....	98
181.731 Purpose. ....	98
181.732 Definitions. ....	98
181.733 Use Restrictions.....	98
181.734 Procedures. ....	99
181.735 Standards. ....	99
181.736 Design and Architectural Character. ....	101
181.737 Conversion of Structures. ....	102
181.738 Action by Planning Board.....	102
181.74 MULTI-FAMILY DEVELOPMENTS.....	102
181.741 Purpose. ....	102
181.742 Procedures. ....	103
181.743 Standards. ....	103
181.744 Other Uses.....	104
181.745 Design Standards. ....	104

181.75 REAR LOTS. ....	104
181.751 General.....	104
181.752 Conditions. ....	104
181.76 RESIDENTIAL DRIVEWAY REGULATIONS. ....	106
181.761 General.....	106
181.762 Common Driveways. ....	106
181.77 LODGING AND BOARDING HOUSES. ....	108
181.771 Special Permit Criteria.....	108
181.78 HOME OCCUPATIONS. ....	108
181.781 Home Occupation – As of Right. ....	108
181.782 Home Occupation – By Special Permit. ....	109
181.783 Prohibited Home Occupations: ....	109
181.79 RESIDENTIAL USES IN THE INTOWN BUSINESS (IB) DISTRICT. ....	109
SECTION 181.8 OVERLAY DISTRICTS .....	110
181.81 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD).....	110
181.811 Purpose. ....	110
181.812 Definitions. ....	110
181.813 Establishment of District .....	111
181.814 Use Regulations. ....	111
181.815 Special Permit Procedures.....	113
181.816 Special Permit Decision. ....	113
181.817 Dimensional Regulation. ....	114
181.82 PLANNED DEVELOPMENT DISTRICT (PDD).....	114
181.821 Purpose. ....	114
181.822 Permissible Uses and Requirements. ....	114
181.823 Procedures. ....	114
181.824 PDD Special Permit Requirements. ....	117
181.83 PRIORITY DEVELOPMENT SITE OVERLAY DISTRICT (PDS).....	118
181.831 Purpose. ....	118
181.832 Location.....	118
181.833 Procedures. ....	119
181.84 SMART GROWTH ZONING DISTRICTS (SGZD).....	122
181.841 General Regulations that apply to all Smart Growth Zoning Districts. ....	122
181.842 Plan Approval Procedures. ....	132
181.843 Decision of the Planning Board. ....	134
181.844 Establishment and Delineation of the Smart Growth Zoning Districts.....	136
181.85 FLOODPLAIN PROTECTION OVERLAY DISTRICT (FPOD).....	139
181.851 Purpose. ....	139
181.852 General.....	140
181.853 Overlay District.....	140
181.854 Definitions. ....	140
181.855 Changes in Base Flood Elevation.....	142
181.856 Development Regulations. ....	143
181.857 Floodplain District Variance. ....	145
181.858 Variance Conditions. ....	145
181.859 Abrogation & Severability. ....	145
SECTION 181.9 ADMINISTRATION AND PROCEDURES .....	146
181.91 ADMINISTRATION.....	146

181.911 Permits. ....	146
181.912 Enforcement.....	146
181.913 Penalties.....	147
181.92 BOARD OF APPEALS. ....	147
181.921 Establishment.....	147
181.922 Powers.....	147
181.923 Conditions. ....	147
181.924 Regulations. ....	148
181.925 Fees. ....	148
181.93 VARIANCES. ....	148
181.931 General.....	148
181.932 Use variance.....	149
181.94 SPECIAL PERMITS. ....	149
181.941 Special Permit Granting Authority. ....	149
181.942 Criteria. ....	149
181.943 Procedures. ....	150
181.944 Plans and Other Submittals.....	150
181.945 Conditions. ....	152
181.946 Lapse. ....	152
181.947 Regulations. ....	152
181.948 Fees. ....	152
181.95 SITE PLAN REVIEW. ....	153
181.951 Applicability.....	153
181.952 Exemptions from Site Plan Review. ....	153
181.953 Procedures. ....	153
181.954 Preparation of Plans.....	154
181.955 Waiver of Compliance; Minor and Major Site Plans. ....	154
181.956 Approval.....	155
181.957 Lapse. ....	155
181.958 Regulations; Fees. ....	155
181.959 Appeal. ....	157
181.96 PLANNING BOARD ASSOCIATE MEMBERS. ....	157
181.961 General.....	157
SECTION 181.10 DEFINITIONS .....	158

## **CHAPTER 181 ZONING ORDINANCE**

### **SECTION 181.1 PURPOSE AND AUTHORITY**

#### ***181.11 PURPOSE.***

This Zoning Ordinance is enacted for the purpose of promoting the health, safety, convenience and general welfare of the present and future inhabitants of the City of Fitchburg and to:

1. Lessen congestion in the streets.
2. Secure safety from fire, flood, panic and other dangers.
3. Provide adequate light and air.
4. Prevent overcrowding of land.
5. Avoid undue concentration of population.
6. Encourage housing for persons of all income levels.
7. Facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
8. Conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
9. Encourage the most appropriate use of land throughout the city.
10. Preserve and increase amenities by the promulgation of regulations to fulfill said objectives.
11. Facilitate the safe, convenient and meaningful provision of adequate vehicular and utility access to all lots intended for building purposes in the City.

#### ***181.12 AUTHORITY.***

This Zoning Ordinance is authorized by, but not limited to, the provisions of the Zoning Act, MGL C. 40A, as amended, Section 2A of 1975 Mass. Acts 808, the Charter of the City of Fitchburg, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

#### ***181.13 SCOPE.***

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the City are regulated as hereinafter provided.

#### ***181.14 APPLICABILITY.***

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the City, shall be in conformity with the provisions of the Zoning Ordinance. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this Ordinance



imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Ordinance shall control.

#### ***181.15 AMENDMENTS.***

This Ordinance may from time to time be changed by amendment, addition, or repeal by the City Council in the manner provided in MGL C. 40A, S. 5, and any amendments thereto. The Director of Planning and Community Development may, with a two-thirds approval of the Planning Board, update figures and photos; correct scrivener's errors, table and figure numbers, capitalization of defined words, correct cross references; and add or correct street names or districts labels subject to the following expedited procedure for City Council approval:

The Planning Board shall transmit to the Council a report of any such clerical changes made. Such report shall be accepted without debate at the following Council meeting, unless any Councilor shall make a motion to contest the changes. If such motion is made and seconded, it shall be voted without debate, and if it passes, the matter shall be placed on the agenda for the next following meeting, when it shall be considered without the need for referral to any committee, though such referral may be made by motion or by unanimous consent.

#### ***181.16 SEVERABILITY.***

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision herein.

## **SECTION 181.2 DISTRICTS**

### **181.21 ESTABLISHMENT.**

#### **181.211 GENERAL.**

For the purposes of this Ordinance, the City of Fitchburg is hereby divided into the following districts:

##### **181.2111. Residential Districts:**

Rural Residential RR

*Purpose.* To establish and preserve quiet rural neighborhoods of one-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.

Residential A RA

*Purpose.* To establish and preserve quiet suburban neighborhoods of one-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.

Residential B RB

*Purpose.* To establish and preserve medium density neighborhoods of one-, two- and three-family homes, multi-family uses, and other uses which are both compatible with and convenient to the residents of such districts.

Residential C RC

*Purpose.* To establish and preserve medium density neighborhoods of one-, two- and three-family homes, multi-family uses, and other uses which are both compatible with and convenient to the residents of such districts.

##### **181.2112. Business Districts:**

Downtown Business DB

*Purpose.* To establish and preserve the downtown area for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale. A primary goal for the district is to provide an environment that is safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses.

Intown Business IB

*Purpose.* To establish and preserve the Intown area for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale. A primary goal for the district is to provide an environment that is safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses. Intown Business District includes special flexibility to support the development of housing.

Neighborhood Business

NB

*Purpose.* To establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which have uses compatible with the surrounding residential areas.

Commercial

C

*Purpose.* To establish and preserve business areas bordering main thoroughfares that are attractive to a wide range of uses, including retail business and services, government, professional and medical offices, and places of amusement. While it is anticipated that most users will arrive by motor vehicle, it is intended that the area should be safe for and conducive to pedestrian traffic.

Commercial Recreation

CR

*Purpose.* To promote the development of facilities which support and facilitate team sports and other large-scale recreational activities, and supporting and complementary uses and activities, especially those which are suitable to attracting tourism.

181.2113. Industrial Districts:

Adaptive Industrial

AI

*Purpose.* To create a district to promote the adaptive reuse of Fitchburg's historic mills, warehouses, brownfields and previously developed properties while preserving the character of the property and nearby residential and commercial neighborhoods

Industrial

I

*Purpose.* To establish and preserve areas for necessary industrial and related uses of such a nature that they require isolation from other types of land uses, and to make provision for commercial uses which are necessary to service the immediate needs of establishments in these areas.

181.2114. Institutional Districts:

Medical Services

MS

*Purpose.* To establish and preserve areas primarily for medical institutions and facilities.

University District

FSU

*Purpose.* To establish and preserve areas primarily for university uses.

**181.22 OVERLAY DISTRICTS.**

In addition, the following overlay districts are also hereby established:

Water Resource Protection District	WRPOD	<a href="#">Section 181.81</a>
Planned Development District	PDD	<a href="#">Section 181.82</a>
Priority Development Site Overlay District	PDS	<a href="#">Section 181.83</a>
Smart Growth Zoning Districts	SGZD	<a href="#">Section 181.84</a>
Floodplain Protection Overlay District	FPOD	<a href="#">Section 181.85</a>

### **181.23 MAP.**

These districts are shown, defined and bounded on the map accompanying this Ordinance entitled "[City of Fitchburg Zoning Map Adopted June 23, 2022](#)," as amended. This map, including overlays, shall be on file in the City Clerk's office. Said Zoning Map and amendments thereto as shall be duly adopted shall be considered an integral part of this Ordinance.

### **181.231 Rules for Interpretation of Zoning District Boundaries.**

Where uncertainties exist as to the boundaries of districts as shown on the official zoning maps the following shall apply:

181.2311. Where the boundary lines as shown upon said map as approximately following the street lines, of public and private ways or railways, the centerlines of such ways shall be the boundary lines.

181.2312. Where the boundary lines are shown approximately on the location of property lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.

181.2313. Boundary lines located outside of street lines and shown approximately parallel thereto shall be regarded as parallel to such street lines, and dimensions shown in figures placed upon said map between such boundary lines and street lines are the distance in feet of such boundary lines from such street lines; such distances being measured at right angles to such street lines unless otherwise indicated.

181.2314. In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of the map.

181.2315. Where the district boundary line follows a stream, lake or other body of water, said boundary line shall be constructed to be at the thread or channel of the stream; or at the limit of the jurisdiction of the City, unless otherwise indicated.

181.2316. Where physical or cultural features existing on the ground are at variance with those shown on the official map, or in other circumstances not covered by the above subsections, the Building Commissioner shall interpret the district boundaries.

## **SECTION 181.3 USE REGULATIONS**

### ***181.31 PRINCIPAL USES.***

No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations (Section 181.313), including the notes to the Schedule, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited. More than one principal use shall be allowed on any lot if the use is otherwise permitted in accordance with Section 181.313 (Schedule of Use Regulations), except as otherwise may be provided herein.

#### **181.311 Symbols.**

Symbols employed in the Table of Use Regulations shall mean the following:

Y     A permitted use.

N     An excluded or prohibited use.

CC    A use authorized under special permit from the City Council as provided under Section [181.94](#).

PB    A use authorized under special permit from the Planning Board as provided under Section [181.94](#).

BA    A use authorized under special permit from the Board of Appeals as provided under Section [181.94](#).

#### **181.312 Applicability.**

When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

**181.313 Table of Principal Use Regulations.**  
 [SEE [SECTION 181.10](#), FOR DEFINITIONS OF USES]

**SYMBOLS:**

*Y = Permitted Use*

*BA = Special Permit from Board of Appeals*

*CC = Special Permit from City Council*

*NA = Not Applicable*

*N = Prohibited Use*

*PB = Special Permit from Planning Board*

## DISTRICTS

\*\* Uses in Overlay districts are not set forth in Table 181,313\*\*

PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>A. RESIDENTIAL USES</b>													
1. Dwelling, Single-Family	Y	Y	Y	Y	PB	Y	PB	PB	N	N	PB	N	Y
2. Dwelling, Two-Family	N	N	Y	Y	PB	Y	PB	PB	N	N	PB	N	Y
3. Dwelling, Three-Family	N	N	PB	PB	PB	Y	PB	PB	N	N	PB	N	Y
4A. Multi-Family Development, 4-6 Units	N	N	PB	PB	PB	Y	PB	PB	N	N	PB	N	Y
4B. Multi-Family Development, 7 or More Units	N	N	PB	PB	PB	PB	PB	PB	N	N	PB	N	Y
5. Lodging or Boarding house	N	N	N	BA	N	N	N	N	N	N	N	N	BA
6. Bed and Breakfast	BA	BA	BA	BA	BA	BA	BA	BA	N	BA	PB	BA	BA
7. Assisted or Independent Living Facility	PB	PB	PB	PB	PB	PB	PB	PB	N	PB	PB	PB	PB
8. Flexible Development	PB	PB	PB	PB	PB	PB	PB	PB	N	PB	PB	PB	PB
9. Planned Unit Development	PB	PB	PB	PB	PB	PB	PB	PB	N	PB	PB	PB	PB
10. Artist Live/Work Space	N	N	PB	PB	PB	PB	PB	PB	N	N	PB	N	N
<b>B. EXEMPT USES</b>													
1. Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.

PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>B. EXEMPT USES</b>													
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3. Family Day Care Home, Small	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Child Care Facility	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5. Agricultural Use, Exempt (per MGL C. 40A, S.3)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>C. INSTITUTIONAL USES</b>													
1. Adult Day Care Facility	BA	BA	BA	BA	BA	BA	BA	BA	N	BA	PB	BA	BA
2. Cemetery	PB	PB	PB	PB	N	N	N	N	N	N	N	N	N
3. Municipal facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	PB	Y	Y
4. Airport	PB	N	N	N	N	N	N	N	N	PB	N	N	N
5. Hospital	N	N	N	BA	BA	BA	BA	N	N	N	N	Y	BA
6. Essential Services	BA	BA	BA	BA	BA	BA	BA	BA	N	BA	PB	BA	BA
7. Family Day Care Home, Large	BA	BA	BA	BA	BA	BA	BA	BA	N	N	N	BA	Y
<b>D. COMMERCIAL USES</b>													
1. Agricultural Use, Nonexempt	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	PB	BA	BA
1A. Container Farming, Nonexempt	N	N	N	N	BA	BA	BA	BA	BA	BA	PB	BA	BA
2. Farm Stand, Nonexempt - farm stand for wholesale or retail sale of products including but not limited to dairy, wine, produce, meats, poultry, and fish	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	PB	BA	BA
3. Educational Use, Nonexempt	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	PB	BA	BA
4. Veterinary Care	BA	N	N	N	N	N	Y	Y	N	N	PB	N	N

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.

PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>D. COMMERCIAL USES</b>													
5. Commercial Kennel	N	N	N	N	BA	BA	BA	BA	N	BA	PB	N	N
6. Lodge or Club	N	N	N	N	Y	Y	Y	Y	PB	N	PB	N	Y
7. Nursing Home	PB	N	PB	PB	PB	PB	PB	PB	N	PB	PB	PB	PB
8. Funeral Home	N	N	PB	PB	Y	Y	Y	Y	N	N	PB	N	PB
9. Hotel, Inn or Motel	N	N	N	N	Y	Y	N	Y	PB	PB	PB	N	Y
10. Retail stores and services not elsewhere set forth	N	N	BA	BA	Y	Y	Y	Y	PB	N	PB	N	BA
10A. Garden Center, florist or commercial greenhouse with or without open-air display of products	N	N	Y	Y	Y	Y	Y	Y	N	Y	PB	N	PB
10B. Other open-air retail sales	N	N	BA	BA	BA	BA	N	BA	N	N	PB	N	BA
11. Motor Vehicle and Equipment Sales and/or lease including off site vehicle storage and/or display of vehicles, equipment for sale or lease on a lot	N	N	N	N	N	N	N	Y	N	N	PB	N	N
12. Motor Vehicle Repair or Body Shop	N	N	N	N	BA	BA	BA	Y	N	BA	PB	N	N
13. Motor Vehicle Service Station or Car Wash	N	N	N	N	BA	BA	BA	Y	N	BA	PB	N	N
13A. Motor Vehicle Fuel Dispensing Station	N	N	N	N	BA	BA	BA	Y	N	BA	PB	N	N
14. Restaurant	N	N	BA	BA	Y	Y	Y	Y	PB	BA	PB	N	BA
15. Restaurant, Fast Food	N	N	N	N	PB	PB	PB	Y	N	PB	PB	N	PB
15A. Artisan Food and Beverage up to 7,500 square feet gross floor area	N	N	N	PB	Y	Y	Y	Y	PB	Y	PB	N	PB
15B. Artisan Food and Beverage over 7,500 square feet gross floor area	N	N	N	N	PB	PB	PB	PB	PB	Y	PB	N	PB
16A. Artisan Manufacturing up to 7,500 square feet gross floor area	N	N	N	N	Y	Y	PB	Y	PB	Y	PB	N	Y
16B. Artisan Manufacturing over 7,500 square feet gross floor area	N	N	N	N	PB	PB	PB	PB	N	Y	PB	N	PB
17. Business or Professional Office	N	N	BA	BA	Y	Y	Y	Y	N	Y	PB	BA	Y

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.



PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>D. COMMERCIAL USES</b>													
17A. Medical Office	N	N	BA	BA	Y	Y	Y	Y	N	Y	PB	BA	Y
17B. Medical Treatment Center/Facility/Clinic	N	N	N	N	N	N	N	BA	N	BA	N	BA	N
18. Bank, Financial Agency	N	N	BA	BA	Y	Y	Y	Y	Y	Y	Y	N	Y
19. Amusement Facility	N	N	N	BA	Y	Y	Y	Y	N	Y	PB	N	Y
20. Commercial Indoor Recreation	N	N	N	N	Y	Y	Y	Y	PB	PB	PB	N	PB
21. Commercial Outdoor Recreation	PB	N	N	N	Y	Y	Y	PB	PB	PB	PB	N	PB
22. Golf Course	PB	N	N	N	N	N	N	N	PB	PB	PB	N	N
23. Personal Service Facility	N	N	N	N	Y	Y	Y	Y	N	N	PB	PB	PB
24. General Service Establishment	N	N	N	N	Y	Y	Y	Y	N	BA	PB	N	BA
25. Adult Use	N	N	N	N	N	N	N	CC	N	CC	N	N	N
26. Wireless Communications Facility (*See <a href="#">181.62</a> )	*	*	*	*	*	*	*	*	*	*	*	*	*
26A. Wireless Communications Facility, with accessory building (*See <a href="#">181.62</a> )	PB	PB	PB	PB	*	*	PB	*	*	*	*	*	PB
26B. Wireless Communications Facility, concealed (*See <a href="#">181.62</a> )	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	*	Y	Y
27. Building Trade Shop	N	N	N	N	Y	Y	Y	Y	N	Y	PB	N	N
28. Commercial Parking Facility	N	N	PB	PB	Y	Y	Y	Y	PB	PB	PB	N	Y
29. Mobile Food Operations	PB	PB	PB	PB	Y	Y	Y	Y	Y	Y	PB	Y	Y
30. Farmers' Market	PB	PB	PB	PB	Y	Y	Y	Y	Y	Y	PB	N	PB
31. Artist Studio Space	N	N	PB	PB	Y	Y	Y	Y	N	N	PB	N	PB
<b>E. INDUSTRIAL USES</b>													
1. Earth Removal	N	N	N	N	PB	PB	PB	PB	N	PB	N	N	N

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.

PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>E. INDUSTRIAL USES</b>													
1A. Timber Harvesting	BA	BA	BA	BA	BA	BA	BA	BA	N	BA	N	BA	BA
2. Light Manufacturing	N	N	N	N	PB	PB	PB	PB	N	Y	PB	N	N
3. Wholesale, Warehouse, Self-Storage, Mini-Warehouse, or Distribution Facility	N	N	N	N	N	N	N	PB	N	Y	PB	N	N
4. Manufacturing	N	N	N	N	N	N	N	PB	N	Y	PB	N	N
5. Contractor's Yard	N	N	N	N	N	N	N	BA	N	BA	N	N	N
6. Vehicle Salvage Yard	N	N	N	N	N	N	N	BA	N	BA	N	N	N
7. Transportation Terminal	N	N	N	N	N	N	N	Y	N	BA	PB	Y	N
8. Lumberyard	N	N	N	N	N	N	N	Y	N	Y	PB	N	N
9. Research and Testing	N	N	N	N	PB	PB	PB	PB	N	Y	PB	Y	N
10. Publishing and Printing	N	N	N	N	Y	Y	Y	Y	N	Y	PB	N	BA
11. Antenna Transmission	PB	PB	PB	PB	PB	PB	PB	PB	N	PB	PB	PB	PB
12. All Marijuana Establishments (ME), except for Marijuana Retailers (MR) , Marijuana Delivery Couriers and Marijuana Delivery Operators	N	N	N	N	N	N	N	N	N	PB	PB	N	N
13. Marijuana Retailers (MR) (Added Jan. 11, 2016)	N	N	N	N	N	N	PB	PB	N	PB	PB	N	N
14. Independent Marijuana Testing Laboratory	N	N	N	N	PB	PB	PB	PB	N	PB	PB	N	N
15. Marijuana Delivery Courier and Marijuana Delivery Operator	N	N	N	N	N	N	N	PB	N	N	N	N	N
16. Large Scale Ground-Mounted Solar Photovoltaic Facilities	PB	N	N	N	N	N	N	PB	N	PB	PB	N	PB
<b>F. OTHER USES</b>													
1. Open air storage	N	N	N	N	N	N	N	BA	N	Y	N	N	N
2. Open-air storage of junk, including inoperable motor vehicles, except in an approved auto salvage yard	N	N	N	N	N	N	N	N	N	N	N	N	N

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.

PRINCIPAL USE:	RR	RA	RB	RC	DB	IB	NB	C	CR	I	AI <sup>1</sup>	MS	FSU
<b>F. OTHER USES</b>													
3. Dumping of residential, commercial or industrial waste	N	N	N	N	N	N	N	N	N	N	N	N	N
4. Access through more restricted district to reach portion of same lot located in less restricted district	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
5. Mobile Homes unless legally existing at the time of adoption of this chapter or exempt under MGL C.40A, S. 3	N	N	N	N	N	N	N	N	N	N	N	N	N
6. Renewable or alternative energy, renewable or alternative fuels research, development or manufacturing facilities	N	N	N	N	N	N	N	N	N	PB	PB	N	N
7. Storage of bona fide antique vehicles if such storage is not visible from abutting properties or public ways	N	N	N	N	BA	BA	BA	BA	BA	BA	BA	BA	BA

<sup>1</sup> **Properties in the AI district** The owner of a property within the Adaptive Industrial (AI) District may elect to have the property governed by the provisions of the Industrial (I) District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section.

### **181.32 ACCESSORY USES.**

Accessory uses shall be permitted as follows in all districts on the same lot with the principal use, subject to the following sections.

#### **181.321 Residential Uses Permitted in Residential Districts**

The following regulations govern accessory uses for lawful residential uses in all districts, provided that such facilities are used only for residents and their guests:

##### **181.3211.**

- A. *Private Garage.* A private garage or carport for not more than four (4) motor vehicles per unit.
- B. Greenhouse, tool shed, barn, patio, garden, swimming pool or tennis court.

##### **181.3212. Accessory Dwelling Units**

- A. Purpose. The purpose of this section is to:
  - 1. Provide small additional dwelling units to rent without adding to the number of buildings in the City, or substantially altering the appearance of the City;
  - 2. Provide alternative housing options for elder residents; and
  - 3. Enable owners of single family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership.
- B. Procedures.
  - 1. Accessory apartments may be allowed by right in the RR and RA districts and by Special Permit from the Board of Appeals in the RB district.
  - 2. All Accessory Dwelling Units shall comply with the provisions of this section prior to the issuance of a Certificate of Occupancy by the Building Commissioner.
  - 3. Said Certificate of Occupancy may be revoked by the Building Commissioner if it is determined the Accessory Dwelling Unit no longer complies with the provisions of this section and/or the conditions of a special permit issued by the Board of Appeals.
  - 4. Failure to discontinue the use of the Accessory Dwelling Unit for which the occupancy permit has been revoked shall be considered a violation of this ordinance and shall be subject to the provisions of Section [181.913](#).
  - 5. Should said violation from the provisions of a special permit issued by the Zoning Board of Appeals be corrected to comply with the provisions of this section within 60 days from the date of the revocation, the Building Commissioner may reinstate the occupancy permit for the Accessory Dwelling Unit subject to the provisions of the special permit authorizing the Accessory Dwelling Unit.
  - 6. The Building Commissioner shall be authorized to renew or extend duration limits, as placed by the Board of Appeals, on Special Permits for Accessory Dwelling Units.

C. Conditions.

1. A plot plan, prepared by a Registered Land Surveyor, of the existing dwelling unit and proposed accessory apartment shall be submitted to the Building Commissioner, or as applicable, the Board of Appeals, showing the location of the building on the lot, proposed accessory apartment, location of any septic system and required parking. A mortgage inspection survey, properly adapted by a surveyor, shall be sufficient to meet this requirement.
2. Certification by affidavit shall be provided that one of the two dwelling units shall be occupied by the owner of the property, except for bona fide temporary absence.
3. Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 800 sq. ft. in habitable floor area and shall be located in the principal residential structure on the premises.
4. The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:
  - a. Any addition to the existing structure to create an accessory apartment shall not create more than a 15% increase in the gross floor area of the existing structure.
  - b. Any stairways or access and egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.
  - c. Sufficient and appropriate space for at least one (1) additional parking space above the number required for the principal dwelling; and if it cannot be accommodated within the existing parking area it shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.
5. Decision. Special permits for an accessory apartment may be issued by the Board of Appeals upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section [181.94](#) of this Zoning Ordinance, governing special permits.

181.3213. *Home Occupation.* See Section [181.78](#)

181.3214. *Renting of Rooms.* The renting of rooms for not more than two (2) persons that may include a private or common bath but no kitchen or cooking facilities.

181.3215. *Small Family Day Care.* Family child-care home for six (6) or fewer children if licensed by the Commonwealth of Massachusetts Office for Children.

181.3216. *Large Family Day Care.* A child-care center of more than six (6) children may be authorized by a special permit from the Zoning Board of Appeals.

181.3217. *Prohibited Residential Accessory Uses.* The following accessory uses are prohibited:

- A. Contractor's Yard.
- B. Landscaping Business.
- C. Motor Vehicle Repair or Service.

### **181.322 Institutional Uses Permitted in Institutional Districts.**

The following regulations shall govern accessory uses for lawful institutional uses in all districts.

181.3221. *Parking.* Parking for employers, employees, customers and other users of the institution, pursuant to applicable requirements under Section [181.51](#)

181.3222. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that the trucks or trailers are necessary for the conduct of the use.

181.3223. *Employee Facility.* Restaurant, cafeteria, recreational facility, or similar facility for the convenience of, and use by, the employees or users of the institution.

181.3224. *Gift Shop.* Gift shop for use by the general public.

181.3225. *Medical Laboratory.* A medical laboratory or facility for testing, analytical, diagnostic evaluation, pharmaceutical or other health care support services, equipment or procedures, whether or not owned by or affiliated with a hospital.

181.3226. *Medical Offices.* Medical offices of one or more providers of medical, dental, surgical, mental health, rehabilitation or other medical services or health care support services, equipment or procedures, whether or not owned by or affiliated with a hospital.

181.3227. *Out-Patient Clinic.* Out-patient clinic for the provision of ambulatory health care, licensed for the provision of such services by an appropriate governmental authority if and to the extent required by applicable law, including the sale, servicing or repair of medical devices and equipment to the general public whether or not owned by or affiliated with a Hospital, Out-Patient Clinic or Nursing or Convalescent Home.

181.3228. *Pharmacy.* A pharmacy for the sale of prescription and/or non-prescription drugs, medications, and medical supplies.

181.3229. Any accessory use listed in Section 181.323 below.

### **181.323 Business Districts.**

Accessory uses permitted in the business districts shall be as follows:

181.3231. *Parking.* Parking for employers, employees, customers and other users of the business, pursuant to applicable requirements under Section [181.51](#)

181.3232. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that trucks or trailers are necessary for the conduct of the principal use.

181.3233. *Drive-up and Walk-up Facilities.* Drive-up and walk-up facilities for banks, restaurants and other businesses may be authorized after site plan review pursuant to Section [181.95](#).

181.3234. *Seasonal Outdoor Dining.* Seasonal outdoor dining, such as a sidewalk cafe, if an accessory use to a lunchroom, restaurant, cafeteria or similar place, provided that if situated upon publicly owned land, evidence of a lease and/or license must be provided to the Building Commissioner

181.3235. *Commercial Recreation Accessory Uses.* Accessory uses such as dining for users of the commercial recreation facility, parking, gift shop, pro shop, medical offices, day care, solar or wind power generation for the primary use of the Commercial Recreation facility, and any other use that is compatible with the permitted commercial recreational use.

### **181.324 Industrial Districts.**

Accessory uses permitted in the industrial districts shall be as follows:

181.3241. *Parking.* Parking for employers, employees, customers and other users of the business, pursuant to applicable requirements under Section [181.51](#)

181.3242. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that trucks or trailers are necessary for the conduct of the principal use.

181.3243. *Employee Facility.* Restaurant, cafeteria, recreational facility, or similar facility for the convenience of, and use by, the employees or users of the institution.

181.3244. *Salesroom.* A salesroom for selling at retail to the general public of any goods assembled, packaged, finished, processed or otherwise manufactured on the premises.

181.3245. *Drive-up and Walk-up Facilities.* Drive-up and walk-up facilities for banks, restaurants and other businesses may be authorized after site plan review pursuant to Section [181.95](#).

181.3246. *Seasonal Outdoor Dining.* Seasonal outdoor dining, such as a sidewalk cafe, if an accessory use to a lunchroom, restaurant, cafeteria or similar place, provided that if situated upon publicly owned land, evidence of a lease and/or license must be provided to the Building Commissioner.

### **181.325 Nonresidential Accessory Uses.**

Except as otherwise set forth herein, any use permitted as a principal use is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land; any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land; any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section [181.95](#), shall also require site plan review and approval.

## **181.326 Miscellaneous Accessory Uses.**

181.3261. *Accessory Scientific Uses.* Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.

181.3262. *Major Recreational Vehicle, Trailer or Boat.* No major recreational vehicle, trailer, or boat shall be used for living or housekeeping purposes when stored on a residential lot, or in any location not approved for such use, unless exempt under MGL C. 40A, S. 3.

181.3263. *Adult Day Care.* Adult day care facilities are allowed as an accessory use by special permit from the Board of Appeals in all districts.

181.3264. *Commercial Motor Vehicle Parking.* No commercial vehicle having more than 12,500 pounds manufacturer's GVW rating may be parked on any residential premises except in an enclosed garage or building. The Board of Appeals may grant a special permit to vary this requirement.

181.3265. *Small Wind Energy System.* Small Wind Energy Systems, also referred to as "SWES" are permitted as an accessory use in any zoning district by Special Permit in accordance with Section [181.63](#).

181.3266. *Roof Mounted and Small Scale Solar Energy Systems.* Accessory to a principal use are allowed in all zoning districts subject to all local and other government requirements.

### **181.3267. Temporary Portable Storage Containers**

#### **A. Residential Districts.**

1. Only one temporary portable storage container shall be permitted per parcel in all residential zoning districts where a residential unit is located, or a building permit has been issued for construction of a residential unit. No portable storage unit will be permitted on a vacant parcel.
2. Temporary portable storage containers shall be allowed in the required front yard only on an approved driveway or in a side or rear yard for a period not to exceed ninety (90) days in any twelve-month period. No temporary portable storage container shall be placed or located in a circulation aisle/lane, fire access lane, public utility easement or public right-of-way, including streets and sidewalks and park strips.
3. If a building permit has been issued for the construction or remodeling of a residence, then the container is allowed during said construction and/or remodeling and must be removed within 30 days of the final inspection or expiration of building permit.
4. Pre-existing non-conforming business, industrial and institutional uses shall be subject to 181.3267.B and Minor Site Plan Review, Section [181.9551](#).

#### **B. Business/Industrial/Institutional Districts.**

The use of temporary portable storage containers in Business or Industrial districts is prohibited, except for the following uses:



1. Pre-existing non-conforming residential uses shall be subject to Section 181.3267. A. above;
2. Shipping and receiving merchandise and goods, provided that the temporary portable storage container does not remain stationary for more than thirty (30) days;
3. Storing merchandise or goods, including long-term storage, provided that the temporary portable storage container is not kept in the front setback area, designated parking areas, fire access lanes, public rights-of-way, landscaping, in an area visible from the property's primary street or on parcels that are adjacent to a residential zone;
4. Storage for construction or remodeling purposes, so long as the period of that use does not exceed one hundred eighty (180) days. The Building Commissioner may extend the 180-day requirement when a project is ongoing and a building permit remains valid.

C. All Districts

1. Vertical stacking of portable storage containers and stacking of any other materials on top of or around any portable storage container shall be prohibited in all zones. An exception may be approved by the Building Inspector for those commercial businesses that have a valid business license to sell portable storage containers.
2. In all zones, temporary portable storage containers must be kept in good repair, be secured against unauthorized entry, comply with health regulations, and be stored on a hard surface. A temporary portable storage container is not in a state of good repair when it is incapable of being moved intact, holes in the container exist due to damage or rust or it has been infested with vermin or other pests.
3. Temporary portable storage containers may not be used as a dwelling or living quarters, nor for camping, cooking or recreation purposes for any amount of time in any zone.
4. Temporary portable storage containers shall comply with all applicable setback requirements except as otherwise provided herein.

### ***181.33 NONCONFORMING USES AND STRUCTURES.***

#### **181.331 Applicability.**

This Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by MGL C. 40A, S. 5 at which this Zoning Ordinance, or any relevant part thereof, was adopted. The installation or replacement of accessory solar energy systems that do not increase existing non-conformity or have satisfied Section 181.333 Nonconforming Structures are allowed. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

#### **181.332 Nonconforming Uses.**

The Board of Appeals may issue a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- 181.3321. Change or substantial extension of the use;

181.3322. Change from one nonconforming use to another, less detrimental, nonconforming use.

### **181.333 Nonconforming Structures.**

The Board of Appeals may issue a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

181.3331. Reconstructed, extended or structurally changed;

181.3332. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

### **181.334 Variance Required.**

The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals; provided, however, that this provision shall not apply to nonconforming single and two family residential structures, which shall be governed by Section 181.335, below.

### **181.335 Nonconforming Single and Two Family Residential Structures.**

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon the issuance of a building permit after a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

181.3351. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient area, where the alteration will also comply with all of said current requirements.

181.3352. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements.

181.3353. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

181.3354. alteration to the side or face of a structure which encroaches upon a required yard or setback area, where the alteration will not encroach upon such area to a distance greater than the existing structure; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

181.3355. alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded.

### **181.336 Abandonment or Non-Use.**

A nonconforming use or structure which has not been used for a period of two years or more shall be considered abandoned, absent evidence to the contrary, and is defined and regulated under 181.336 et seq., provided however, that a finding of abandonment shall not be contingent upon non-use but can arise from any willful act consistent with an intent to abandon such as an absence of maintenance.

#### *181.3361. Loss of Protected Status.*

Any Nonconforming Structure or Use that has been abandoned or not used for a period of two or more years, shall lose its protected status and be subject to all of the provisions of this Zoning Ordinance except for Exempt Uses and Structures which are defined below. An Exempt Structure or Use may continue unless and until the use or structure is abandoned or not used for two (2) years and then fails to qualify as an Exempt Structure or Use.

181.3362. *Definitions.* The following definitions shall apply to this section:

Legal Nonconforming Structure or Use – A prior, lawfully preexisting nonconforming structure or use lawfully in existence or lawfully begun, or a building or special permit issued before the first publication of notice of the public hearing required by MGL C. 40A, S. 5 at which this Zoning Ordinance, or any relevant part thereof, was adopted, as defined in Section 181.331 above, or a structure which has become lawfully nonconforming by operation of law, as set forth in MGL C. 40A, S. 7, prior to abandonment or prior to the beginning of a period of nonuse which extends for two continuous years or more.

Exempt Structure or Use - Any Legal Nonconforming Structure or Use that 1) has been abandoned, or 2) which has not been used for two years or more and is one of the following:

A. Single Family Dwelling or Two Family Dwelling structures or uses where:

1. The property is located in a zoning district which permits any residential use as of right pursuant to Section [181.313](#) above, the Downtown Business District, Intown Business District or Neighborhood Business Districts.
2. The proposed residential use or structure may reduce but will not increase any existing nonconformity including but not limited to use, dimension and parking.
3. The Building Commissioner determines in accordance with all applicable building, health, fire, and all applicable codes the structure is safe or can be made safe pursuant to a plan submitted by the applicant and approved by the Building Commissioner.

B. Single Family Dwelling, Two Family Dwelling, Three Family Dwelling and Multi-Family Housing structures or uses where:

1. The structure and use meet the requirements of A. (1) and (3) above;
2. The owner submits a plan, approved by the Building Commissioner, for rehabilitation of the nonconforming structure which rehabilitates the façade and at least fifty (50%)

percent of the square footage of the gross living area of the structure, and the proposed modification either reduces or does not increase any existing nonconformity; and

3. The structure or use meets the zoning requirements for the number of off-street parking spaces in Section [181.51](#)

Boarding Houses and Lodging Houses are specifically excluded from the definition of Exempt Structures and Uses.

181.3363. *Procedure.* The Building Commissioner may require such additional information, plans or documents as he or she may reasonably need to determine the foregoing. The Commissioner may consult with any other department head or personnel.

181.3364. *Decision.* The decision of the Building Commissioner regarding the exempt or non-conforming status of a structure may be appealed to the Board of Appeals. On appeal, the Board may exercise its authority under MGL C. 40A, S. 8 and affirm, reverse or modify the decision of the Building Commissioner. Nothing in this ordinance will prevent application to the Board of Appeals for a Special Permit.

181.3365. *Mixed Use.* Where a Nonconforming Structure or Use could be assigned to more than one use, the entire Nonconforming Structure and the Use thereof shall be treated as the most restricted use as listed in the Table of Principal Use Regulations itemization in Section [181.313](#).

181.3366. *Special Permit.* Notwithstanding any of the foregoing, the Board of Appeals may grant a special permit authorizing the reconstruction, alteration, rehabilitation, occupancy and use of any Structure or Use that has been determined by the Building Commissioner to have been abandoned or not used for two years or more, upon a demonstration by the applicant that all of the following criteria have been met:

- A. The structure or use is a Legally Nonconforming Structure or Use.
- B. The premises are determined to have adequate parking to serve the structure and use in conformity with the provisions of Section [181.512](#) or Section [181.513](#).
- C. The Special Permit Criteria and Procedure set forth in Section [181.94](#) are satisfied.
- D. The Board of Appeals may consider and may equitably depart from the above criteria if it finds that despite a discontinuance of use for two years or more the owner has made and provides evidence and documentation demonstrating good faith effort to restore the non-conforming use or has been unable due to illness, or military service. Payment of property taxes on the property shall not constitute a good faith effort.
- E. The Board of Appeals may impose such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as it may deem necessary to serve the purposes of this ordinance, as set forth in Section [181.945](#).

**181.337 Reconstruction after Catastrophe or Demolition.**

A nonconforming structure may be reconstructed after a catastrophe or after demolition, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two years after such catastrophe or demolition, and provided that the building(s) as reconstructed shall have no greater violation of setback, yards lots coverage or height as existed on the lot prior to demolition, provided further that in any event the new side yard setbacks shall not be less than five feet. In the event that the proposed reconstruction would cause the structure to exceed these limits, a special permit shall be required from the Board of Appeals.

**181.338 Reversion to Nonconformity.**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use unless a variance is obtained from the Zoning Board of Appeals.

## SECTION 181.4 DIMENSIONAL REGULATIONS

### 181.41 STANDARD DIMENSIONAL PROVISIONS.

#### 181.411 General.

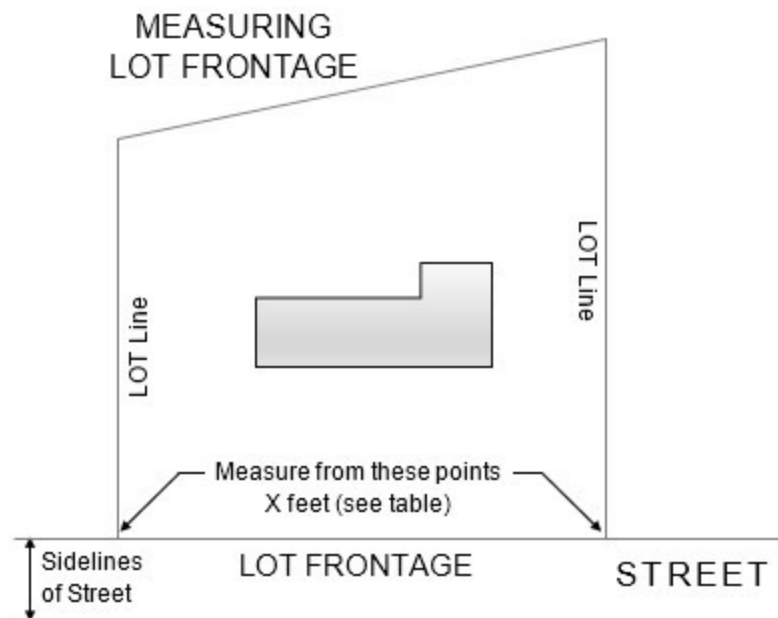
No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless exempted by this Ordinance or by statute.

#### 181.412 Methods for Calculating Dimensional Requirements.

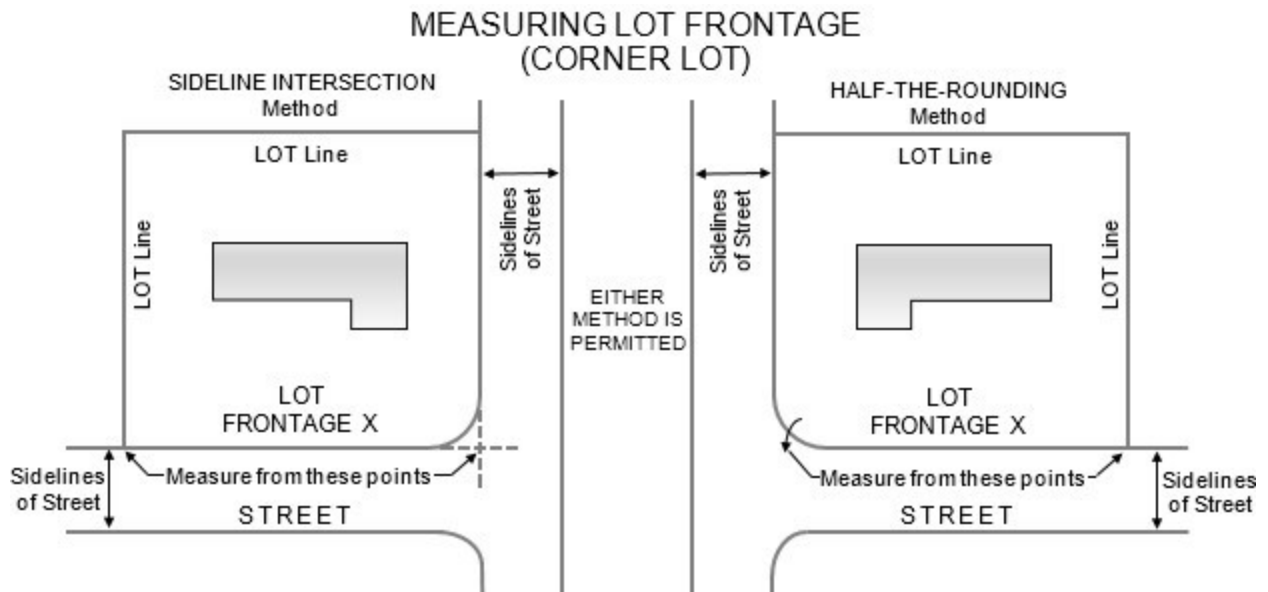
The following shall apply when calculating dimensional requirements:

181.4121. *Lot area.* Lot area shall be determined by calculating the area within a lot, including any area within the lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area.

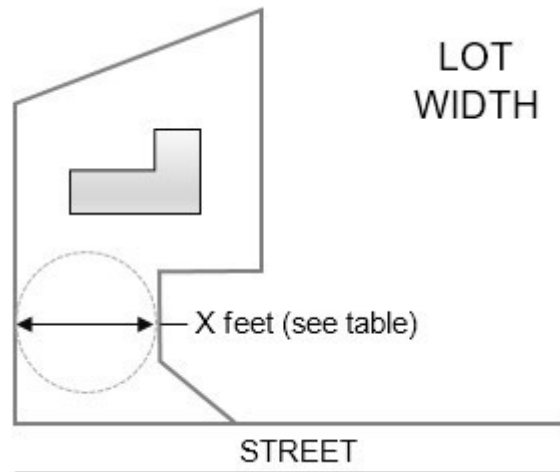
181.4122. *Frontage.* Frontage shall be measured in a continuous line along the side line of a street between the points of intersection of the side lot lines with the street.



- A. Frontage for a corner lot may be measured either to the point of intersection of the extension of the side line of the rights-of-way or to the middle of the curve connecting the side line of the intersecting streets.
- B. If a lot has frontage on more than one (1) street, the frontage on one (1) street only may be used to satisfy the minimum lot frontage.



181.4123. *Lot width.* Lot width shall be determined by measuring the diameter of the largest circle which can be located at all points along a continuous but not necessarily straight line from the lot frontage to the principal structure on the lot (or the front yard setback if there is no structure) without the circumference intersecting the side lot lines.



181.4124. *Corner clearance.* On a corner lot in any district, in order that visibility is unobstructed at intersections, no sign fence, wall, tree, hedge, or other vegetation between three (3) and eight (8) feet above the established street grades shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line adjoining such street lines at points which are twenty (20) feet distance from the point of intersection measured along such street lines.

181.4125. *Lot Shape.* No lot in a residential zoning district shall be created to be so irregularly shaped or extended that it has a "Lot Shape Factor" less than ".40". In determining the Lot Shape Factor for Rear Lots, the formula shall not include the perimeter or area of the access strip. The access strip shall be defined as that section of a lot which connects the buildable area of a rear lot

with its frontage. For the purposes of determining a Lot Shape Factor, access strips shall be measured from where the side lot lines meet the frontage line and end where the side lot lines widen to the minimum required frontage width of the zoning district in which the lot is located.

The lot shape factor is defined as the lot area multiplied by 16 and divided by the square of the lot perimeter.

Lot Shape Factor Formula: P = lot perimeter and A = lot area.

$$\text{Lot Shape Factor} = 16(A) / P^2$$

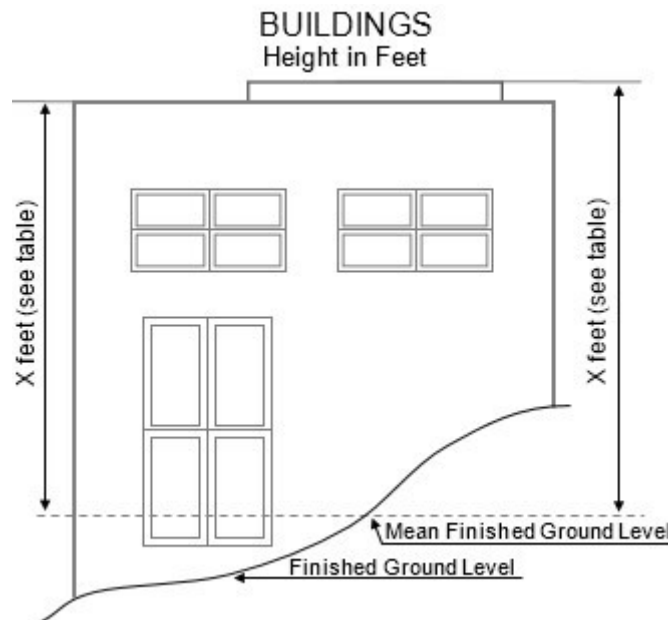
181.4126. *Front yards.* Front yards shall be the distance, measured in a straight line, between the lot frontage and the nearest point of the principal building or any structure attached to the principal building, including garages. A lot having frontage on two (2) or more streets shall have two (2) or more front yards, each of which shall comply with the requirements of the front yard provisions. In no case shall any building or structure be located closer to the sideline of a street than the minimum required front yard.

181.4127. *Side and rear yards.* Side and rear yards shall be the distance, measured in a straight line, from the nearest point of any principal building or structure to each side or rear lot line.

181.4128. *Merging of Non-Conforming Lots.* Non-conforming lots held in common ownership with contiguous lots shall be considered merged for zoning purposes

### 181.413 Height of Structures.

181.4131. Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire structure to the highest extension of any part of the structure.





181.4132. Structures such as smokestacks, chimneys, flagpoles, silos and other similar structures; the architectural elements of a building such as cupolas, steeples; wind energy systems authorized under this ordinance, and temporary testing towers for the purpose of testing the wind speeds to determine the potential for wind energy turbines, are exempt from the height restrictions of this ordinance, except that testing towers shall be-allowed for a period not to exceed two (2) years from its installation, except as this time may be extended by Special Permit from the Planning Board.

#### **181.414 Corner Lot Clearance.**

On a corner lot in any district, in order that visibility is unobstructed at intersections, no sign fence, wall, tree, hedge, or other vegetation between three (3) and eight (8) feet above the established street grades shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line adjoining such street lines at points which are twenty (20) feet distance from the point of intersection measured along such street lines.

#### **181.415 One Structure per Lot.**

Except as otherwise provided herein, not more than one principal structure may be placed on any lot.

#### **181.416 Table of Dimensional Requirements.**

DISTRICT (see 181.211)	MIN. LOT AREA w/o MUNICIPAL SEWER (SQ. FT.)**	MIN. LOT AREA (SQ. FT.)**	MIN. LOT FRONTAGE (FT.)**	MIN. FRONT YARD (FT.)	MIN. SIDE YARD (FT.)	MIN. REAR YARD (FT.)	MAX. HEIGHT (FT.)
RR	65,000	30,000	175	40	25	50	36
RA	65,000	12,500	100	30	15	35	36
RB	65,000	10,000	80	25	15	30	40
RC NON SINGLE-FAMILY	65,000	7,500	50	20	10	20	40
RC SINGLE-FAMILY	65,000	5,000	50	15	10	10	36
NB	65,000	NONE	20	NONE	NONE	NONE	36
DB	65,000	NONE	20	NONE	NONE	NONE	NONE
IB	65,000	NONE	20	NONE	NONE	NONE	NONE
C	65,000	NONE	20	NONE	NONE	NONE	50*
CR***	65,000	30,000	175	40	25	50	50
I OR AI	65,000	NONE	20	20	25	20	75*
MS	65,000	15,000	125	40	50	50	65
FSU***	65,000	4,250	50	20	10	20	55

\*A greater height may be authorized by Special Permit. See Section [181.426](#)

\*\* Note increased Lot Size & Lot Frontage requirements in Water Resource Protection Overlay District. See Section [181.817](#).

\*\*\* See Section [181.427](#) Height and Dimensional Exceptions in FSU and CR Districts.

## **181.42 SPECIAL PROVISIONS AND EXCEPTIONS.**

### **181.421 Yard Exceptions in Residential Districts.**

181.4211. Tool sheds, patios, small scale ground mounted solar energy systems and similar facilities and structures not exceeding one hundred twenty (120) square feet may be located in any portion of a rear yard, provided that they are set back three (3) feet from the side or rear lot line and, further, provided that not more than twenty five percent (25%) of the total side or rear area is covered by buildings. Vegetation or other visual screening shall be provided to screen solar energy systems. Tool sheds, patios, gardens, small scale ground mounted solar energy systems, and similar facilities and structures greater than 120 square feet must comply with Section [181.416](#) Table of Dimensional Requirements.

181.4212. Uncovered steps, walkways, ramps or terraces, bulkheads, chimneys, eaves, roof overhangs, cornices, signposts, and pedestrian lighting shall be exempt from the setback requirements.

181.4213. Swimming pools, associated uncovered decks, and freestanding decks or patios shall be set back at least six (6) feet from any front, side or rear lot line, and not within the front yard setback.

181.4214. Driveway setbacks shall comply with Section [181.76](#) of this Ordinance as well as applicable regulations under City Code.

181.4215. Walls or fences are permitted, provided that no wall or fence shall exceed six (6) feet in height in a front yard; stockade-type fences shall not exceed six (6) feet in height and chain-link-type fences shall not exceed eight (8) feet in height; provided, however, that exceptions to this Section may be authorized by Special Permit from the Board of Appeals.

181.4216. Front yard exception. In the RB and RC districts, the Board of Appeals may authorize by Special Permit a front setback less than that required in Section [181.416](#), where at least 50% of the existing buildings fronting on the same street on the same block and within a distance of one hundred fifty (150) feet of the applicant's lot have less than the required front yard depth. The Board of Appeals may authorize the average front yard depth in this area, but in no case shall a structure be set back less than 10 feet. The burden of showing that a lesser setback is justified under this section shall be on the applicant.

### **181.422 Frontage Exceptions for Cul-de-sac Lots.**

The minimum lot frontage for a lot may be reduced to fifty (50) feet per lot, provided that each lot front is entirely on a cul-de-sac with a right of way layout radius of sixty-seven and five-tenths (67.5) feet or greater and, further, provided that no more than five (5) such reduced-frontage lots shall have frontage on a cul-de-sac and, further, provided that each such lot shall have twice the lot area required. (See also Section [181.75](#), "Rear Lots").

### **181.423 Multiple Principal Structures.**

When permitted, herein, more than one principal structure may be erected on a lot, subject to the following conditions:

181.4231. No principal structure shall be located in relation to another principal structure on the same lot, or on an adjacent lot, so as to cause danger from fire;

181.4232. All principal buildings on the lot shall be served by access ways suitable for fire, police, and emergency vehicles;

181.4233. All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

### **181.424 Split Lots.**

Where a district boundary line divides any lot existing at the time such line is adopted, the regulations of any district in which the lot has frontage on a street may be extended by special permit from the board of appeals not more than thirty (30) feet into the other district; provided, however, that residential uses may be extended as of right into the other district not more than thirty (30) feet.

### **181.425 Infill Lots.**

181.4251. *Purpose.* The purpose of the infill lot provision is to facilitate the reuse of vacant, condemned, or substandard property within existing urban or blighted areas as single-family dwelling units; to reduce vagrancy, litter, abandoned or substandard structures; to lessen density and promote single-family owner-occupied homeownership in urban areas, and to improve the neighborhood character.

181.4252. *Applicability.* In the RB District, pursuant to special permit and site plan review from the Planning Board, an existing lot with at least 5,000 square feet may serve as the location for a single-family dwelling. Any of the dimensional requirements of this Ordinance, including but not limited to, lot frontage, width, and building setbacks, may also be reduced or eliminated by this Special Permit, provided that the Planning Board makes a determination that the proposed dwellings are consistent in scale and setbacks with abutting structures, and those in the immediate neighborhood. The Planning Board may impose conditions for the use of such infill lots, including, but not limited to, landscaping and maximum lot coverage.

181.4253. *Eligibility Requirements.*

- A. Infill lots must have frontage on an existing approved way and which the Planning Board determines to provide suitable access to the buildable portion of the lot. Approved ways include a public way or a way which the City Clerk certifies is maintained and used as a public way, or a way shown on a plan thereto approved and endorsed in accordance with the Subdivision Control Law (SCL). A paper street is not an approved way.
- B. The subdivision of a parcel that was existing at the time of the adoption of this section (April 21<sup>st</sup>, 2021) in order to create an infill lot is not permitted.
- C. Infill lots shall be served by both public sewer and public water in all districts.

- D. The approval of an infill lot Special Permit does not preclude or supersede existing deed restrictions, easements, rights of access etc. It is the responsibility of the property owner and/or applicant to prepare and ensure that a site plan complies with said conditions.

**181.426 Height Exception in Commercial (C), Adaptive Industrial (AI), and Industrial (I) Districts.**

Notwithstanding the provisions of Section [181.416](#) (Table of Dimensional Requirements), structures in the C, AI, and I Districts may exceed the stated maximum height with the issuance of a Special Permit from the applicable Special Permit Granting Authority (SPGA) provided the SPGA makes a finding that additional height is necessary to accomplish the intended purpose of the structure and is not injurious to the surrounding uses.

**181.427 Height and Dimensional Exceptions in the FSU and CR Districts.**

The Planning Board may grant a Special Permit allowing the exceptions from the provisions of the Zoning Ordinance described in Sections 181.4271 through 181.4273 for principal and accessory uses and structures proposed on lots in the Commercial Recreation District (CR) and the University District (FSU) if such lots have an area of greater than 40,000 square feet. The Planning Board may grant the Special Permit upon written findings, in its decision, that the lot and the exceptions applied for meet the criteria for issuance of a Special Permit described in Section 181.94. In granting the Special Permit, the Planning Board may impose conditions on building and on site design in order to ensure that the site and the building, on completion of the proposed project, is compatible with the architectural and landscape design of properties in the surrounding neighborhood and consistent with the improvement of the CR or FSU District.

181.4271. Notwithstanding the provisions of Section [181.31](#), Principal Uses, the Planning Board may permit more than one principal use including residential use on a single lot and more than one principal use in a single structure.

181.4272. Notwithstanding the provisions of Section [181.415](#), One Structure per Lot, the Planning Board may permit more than one principal structure on a single lot.

181.4273. Notwithstanding the provisions of Section [181.416](#), Table of Dimensional Requirements, the Planning Board may permit structures with a front setback of less than 15 feet and a height no greater than 100 feet.

**181.428 Minimum Lot Size for Motor Vehicle and Equipment Sales.**

Notwithstanding the provisions of Section [181.416](#) (Table of Dimensional Requirements), Motor Vehicle and Equipment Sales shall be located on a lot with at least 10,000 square feet in area.

## **SECTION 181.5 GENERAL REGULATIONS**

### ***181.51 OFF-STREET PARKING.***

#### **181.511 General Requirements.**

There shall be provided and maintained off-street automobile parking spaces in connection with existing and changes of uses and the new construction, expansion or increase, by units or dimensions, of buildings, structures and use, in accordance with the Table of Off-Street Parking Requirements, Section 181.512.

181.5111. Off-street parking spaces required herein shall be provided either on the lot with the principal use or on any other associated premises within eight hundred (800) feet.

181.5112. Off-street parking shall be provided and maintained in connection with the use, substantial change in uses, conversion, or increase in intensity of use of buildings and structures.

181.5113. In computing required spaces, any fraction thereto shall be rounded to the nearest whole number.

181.5114. With the exception of those projects that require a Special Permit from the Board of Zoning Appeals but do not require a Site Plan Review, the Planning Board shall serve as the Special Permit Granting Authority that determines Off-Street Parking Requirements pursuant to Section 181.512.

181.5115. In the RC District, the off-street parking requirement may be satisfied if the property is located within an on-street resident parking permit district established by the City.

181.5116. In the IB and DB Districts off-street parking spaces need not be provided for any retail business or service use or any commercial or industrial use which is located within the Districts.

181.5117. In the IB District, off-street parking spaces need not be provided for any residential use of 6 units or less.

**181.512 Table of Off-Street Parking Requirements.**

**TABLE OF OFF-STREET PARKING REQUIREMENTS**

<b>A. RESIDENTIAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Dwelling, Single-Family	Two parking spaces for each dwelling unit. In the Intown District, there is no requirement for off-street parking.
2. Dwelling, Two-Family	Two parking spaces for each dwelling unit. In the Intown District, there is no requirement for off-street parking.
3. Dwelling, Three-Family	Two parking spaces for each dwelling units. In the Intown District, there is no requirement for off-street parking.
4A. Multi-Family Development, 4-6 Units	One (1) space for each one (1) bedroom dwelling unit. One and a half (1.5) spaces for each two (2) bedroom dwelling unit. Two (2) spaces for dwelling units of three (3) or more bedrooms. In the Intown District, there is no requirement for off-street parking.
4B. Multi-Family Development, 7 or More Units	One (1) space for each one (1) bedroom dwelling unit. One and a half (1.5) spaces for each two (2) bedroom dwelling unit. Two (2) spaces for dwelling units of three (3) or more bedrooms
5. Lodging or boarding house	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
6. Bed and Breakfast	One (1) space per guest room or suite, plus required spaces for dwelling unit(s).
7. Assisted or Independent Living Facility	As set forth in Section <a href="#">181.73</a>
8. Flexible development	As set forth in Section <a href="#">181.71</a>
9. Planned Unit Development	As set forth in Section <a href="#">181.72</a>
10. Artist Live/Work Space	As Determined by the Planning Board

<b>B. EXEMPT USES</b>	<b>PARKING REQUIREMENT</b>
1. Use of land or structures for religious purposes	One (1) parking space for each five (5) seats or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each hundred (100) square feet of public floor area, there shall be one (1) parking space
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	One (1) parking space for each five (5) seats or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each hundred (100) square feet of public floor area, there shall be one (1) parking space
3. Family Day Care Home, Small	One space per each non-resident employee, plus one space per each four children, plus spaces required for dwelling unit(s)
4. Child Care Facility	One space per each non-resident employee, plus one space per each six children, plus spaces required for dwelling unit(s)
5. Agricultural Use, Exempt (per MGL C. 40A, S.3)	Not applicable
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	As determined by the Special Permit Granting Authority
<b>C. INSTITUTIONAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Adult day care facility	One space per each non-resident employee, plus one space per each six clients, plus spaces required for dwelling unit(s)
2. Cemetery	Not applicable
3. Municipal facilities	Not applicable
4. Airport	As determined by the Planning Board
5. Hospital	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
6. Essential services	As determined by the Special Permit Granting Authority
7. Family Day Care Home, Large	One space per each non-resident employee, plus one space per each four children, plus spaces required for dwelling unit(s)

<b>D. COMMERCIAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Agriculture Use, Nonexempt	As determined by the Special Permit Granting Authority
1A. Container Farming, Nonexempt	As determined by the Special Permit Granting Authority
2. Farm Stand, Nonexempt for wholesale or retail sale of products	As determined by the Special Permit Granting Authority.
3. Educational Use, Nonexempt	One (1) parking space for each five (5) seats or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each hundred (100) square feet of public floor area, there shall be one (1) parking space
4. Veterinary Care	One (1) parking space per 400 square feet of gross floor area.
5. Commercial Kennel	One (1) parking space per 500 square feet of gross floor area.
6. Lodge or Club	One (1) parking space for each five (5) seats or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each hundred (100) square feet of public floor area, there shall be one (1) parking space
7. Nursing Home	One (1) parking space per employee during max daily shift plus one (1) space per four (4) beds
8. Funeral Home	For each two hundred fifty (250) square feet of public floor area, there shall be one (1) parking space
9. Hotel, Inn or Motel	One (1) space per guest room or suite, plus 1 per 4 seats in the largest assembly area, plus 1 per 500 square feet of meeting, banquet, or restaurant area
10. Retail stores and services not elsewhere set forth	One (1) parking space per 500 square feet of gross floor area
10A. Garden Center, florist or commercial greenhouse with or without open-air display of products	One (1) parking space per 500 square feet of gross floor area
10B. Other open-air retail sales	One (1) parking space per 500 square feet of gross floor area
11. Motor Vehicle and Equipment Sales and/or Lease including off site vehicle storage and/or display of vehicles/equipment for sale or lease	One (1) parking space per 500 square feet of gross floor area or one (1) parking space per 15 sale cars allowed by license (whichever is greater)
12. Motor Vehicle Repair or Body Shop	Two (2) spaces per service bay or as otherwise determined by the Special Permit Granting Authority
13. Motor vehicle service station or car wash	Two (2) spaces per service bay, plus car wash queue for five (5) cars or as otherwise determined by the Special Permit Granting Authority



D. COMMERCIAL USES	PARKING REQUIREMENT
13A. Motor Vehicle Fuel Dispensing Station	One space per pump plus one space per employee, plus two spaces per service bay, plus one space per 50 square feet of gross floor area
14. Restaurant	One (1) space per four (4) seats, or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each one hundred (100) square feet of public floor area, there shall be one (1) parking space
15. Restaurant, Fast-Food	One (1) space per four (4) seats, or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each one hundred (100) square feet of public floor area, there shall be one (1) parking space
15A. Artisan Food and Beverage	Adequate parking spaces to accommodate under normal conditions, the motor vehicles of occupants, employees, clients, and visitors to the premises as may be determined by the Planning Board
15B. Artisan Food and Beverage over 7,500 square feet gross floor area	Adequate parking spaces to accommodate under normal conditions, the motor vehicles of occupants, employees, clients, and visitors to the premises as may be determined by the Planning Board
16A. Artisan Manufacturing up to 7,500 square feet gross floor area	One Space per 1000 square feet of gross floor area or as otherwise determined by the Planning Board
16B. Artisan Manufacturing over 7,500 square feet gross floor area	One Space per 1000 square feet of gross floor area or as otherwise determined by the Planning Board
17. Business or Professional Office (not including Medical)	One (1) parking space per 400 square feet of gross floor area
17A. Medical Office	One (1) parking space per 400 square feet of gross floor area
17B. Medical Treatment Center, Facility, or Clinic	One (1) parking space per 400 square feet of gross floor area
18. Bank, Financial Agency	One (1) parking space per 400 square feet of gross floor area
19. Amusement Facility	One (1) parking space for each five (5) seats or, where benches are used, one (1) space for each ten (10) linear feet of bench. Where no fixed seats are used (as in a museum), for each hundred (100) square feet of public floor area, there shall be one (1) parking space
20. Commercial Indoor Recreation	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board

D. COMMERCIAL USES	PARKING REQUIREMENT
21. Commercial Outdoor Recreation	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
22. Golf Course	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
23. Personal Service Facility	One (1) parking space per 300 square feet of gross floor area
24. General service establishment	One (1) parking space per 300 square feet of gross floor area
25. Adult-Use	As set forth in Section 181.61
26A. Wireless Communications Facility, with accessory building	One space
26B. Wireless Communications Facility, concealed	One space
27. Building trade shop	One Space per 1000 square feet of gross floor area or as otherwise determined by the Planning Board
28. Commercial Parking Facility	Not applicable
29. Mobile Food Operations	As set forth in Section 181.56 (per principal use of the site or as otherwise determined by the Planning Board)
30. Farmers Market	As set forth in Section 181.68 (per principal use of the site or as otherwise determined by the Planning Board)
31. Artist Studio Space	As determined by the Planning Board

<b>E. INDUSTRIAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Earth removal or timber harvesting	As determined by the Special Permit Granting Authority
1A. Timber Harvesting	As determined by the Special Permit Granting Authority
2. Light Manufacturing	One (1) parking space per 1000 square feet of gross floor area, or as otherwise determined by the Planning Board
3. Wholesale, Warehouse, Self-Storage, Mini-Warehouse, or Distribution Facility	One (1) parking space per 1000 square feet of gross floor area, or as otherwise determined by the Planning Board
4. Manufacturing	One (1) parking space per 1000 square feet of gross floor area, or as otherwise determined by the Planning Board
5. Contractor's Yard	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Special Permit Granting Authority
6. Vehicle Salvage Yard	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Special Permit Granting Authority
7. Transportation terminal	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Special Permit Granting Authority
8. Lumberyard	One space per employee
9. Research and testing	One (1) parking space per 400 square feet of gross floor area
10. Publishing and printing	One (1) parking space per 400 square feet of gross floor area
11. Antenna transmission	Not applicable
12. All Marijuana Establishments (ME), except for Marijuana Retailers (MR)	Adequate parking spaces to accommodate under normal circumstances the motor vehicles of the employees and visitors to the premises as may be determined by the Planning Board
13. Marijuana Retailers (MR)	Adequate parking spaces to accommodate under normal circumstances the motor vehicles of the employees and visitors to the premises as may be determined by the Planning Board
14. Independent Marijuana Testing Laboratory	Adequate parking spaces to accommodate under normal circumstances the motor vehicles of the employees and visitors to the premises as may be determined by the Planning Board
15. Large Scale Ground-Mounted Solar Photovoltaic Facilities	One Space

F. OTHER USES	PARKING REQUIREMENT
1. Open air storage	Not applicable
2. Open-air storage of junk, including inoperable motor vehicles, except in an approved auto salvage yard, except that the Zoning Board of Appeals may issue a special permit for the storage of bona fide antique vehicles if such storage is not visible from abutting properties or public ways	Not applicable
3. Dumping of residential, commercial or industrial waste	Not applicable
4. Access through more restricted district to reach portion of same lot located in less restricted district	Not applicable
5. Mobile Homes unless legally existing at the time of adoption of this chapter or exempt under MGL C.40A, S. 3	Not applicable
6. Renewable or alternative energy, renewable or alternative fuels research, development or manufacturing facilities	Adequate parking spaces to accommodate under normal circumstances the motor vehicles of the employees and visitors to the premises as may be determined by the Planning Board
7. Storage of bona fide antique vehicles if such storage is not visible from abutting properties or public ways	Not applicable

### **181.513 Special Permit and Site Plan Review.**

Any parking requirement set forth herein in Section 181.51 may be reduced or waived with the issuance of a special permit by the Special Permit Granting Authority or a condition of Site Plan Approval upon a finding that the reduction is not deleterious with public health and safety, or that the reduction promotes a public benefit. Such cases might include:

181.5131. Use of a common or shared parking lot for separate uses having off-setting peak hour demands;

181.5132. Age or other characteristics of occupants of the facility requiring parking which reduces auto usage;

181.5133. Peculiarities of the use which make usual measures of demand invalid;

181.5134. Availability of on-street parking or parking at nearby municipally or publicly owned facilities including, without limitation, the parking facilities owned by the Montachusett Regional Transit Authority (MART) although located nearby in an abutting district.

181.5135. Where a special permit is granted, a reserve area, to be maintained indefinitely as landscaped open space, may be required sufficient to accommodate the difference between the spaces otherwise required and the spaces reduced by special permit. The parking/site plan shall show (in dotted outline) how the reserve area would be laid out in to provide the otherwise required number of spaces.

### **181.514 Design Standards.**

181.5141. Parking areas shall be clearly delineated and shall be graded, surfaced with tar, asphalt, concrete, or other non-dusting paving, provided with adequate drainage and suitably maintained to the extent necessary to avoid the nuisances of dust, erosion or excessive water flow onto public ways or adjoining property.

181.5142. All parking stalls shall be standard dimension and shall be laid out and striped in compliance with the following minimum provisions.

ANGLE OF PARKING (in degrees)	WIDTH OF PARKING STALL (feet)	PARKING STALL LENGTH OF LINE (feet)	WIDTH OF MANEUVERING AISLE (feet)
90° (2-way)	9.0	18.0	24.0
60° (1-way)	10.4	22.0	18.0
45° (1-way)	12.7	25.0	14.0
Parallel (1-way)	8.0	22.0	14.0
Parallel (2-way)	8.0	22.0	18.0

181.5143. Each off-street lot shall have an access driveway of at least eight (8) feet but no more than thirty-six (36) feet. Residential driveways shall also comply with [181.76](#) regulations.

181.5144. Off-street parking shall be set back at least three (3) feet from any property line, building and sidewalk.

181.5145. Backing directly onto a street shall be prohibited except for single, two, and three family residences.

181.5146. General Requirements.

All driveways shall comply with applicable standards of the City of Fitchburg Ordinances, building code, fire code, Department of Public Works, and any other standards or regulations that may apply. See Curb Cuts and Street Entrances [Chapter 157, Article IV](#).

- A. Adequate ingress and egress to the parking facilities by means of clearly limited and defined drives shall be provided for all vehicles. Said access should be limited to well- defined locations away from street intersections, and in no case shall there be unrestricted access along the length of a street.
- B. Parking and loading areas shall be arranged for convenient access, egress and safety to pedestrians and vehicles. All lighting used to illuminate any off-street parking or loading facility shall be installed so that direct rays from such lighting shall not cause a public nuisance to adjacent property. All off-street parking and loading facilities shall be maintained by the owner or operator in good repair, neat orderly in appearance and free from refuse and debris. Storage of snow in parking or loading facilities shall be arranged so as not to unduly reduce sight distances and visibility at entrances and exits and aisle intersections.
- C. When applicable, specially-designated parking spaces for the persons with disabilities must be provided in accordance with the current edition of the Rules and Regulations promulgated by the Massachusetts Architectural Access Board.
- D. Off-street parking requirements for single-family and two family residential buildings may be satisfied by stacking spaces behind one another in a driveway. In no other circumstance may all or part of the minimum parking requirements be satisfied in such a manner as to require moving a car parked in any one space to enable a car parking in any other space to enter or exit that space. When a common driveway is shared by two or more property owners or when stacked spaces are used at a two-family property, no parking requirements may be satisfied in such a manner as to require moving a car owned or used by the owner or occupant of one property to enable a car owned or used by the owner or occupant of another unit to enter or exit the parking area
- E. Some or all of the parking requirements for residential dwellings may be satisfied within enclosed residential garages. Required parking spaces located within residential garages must include a clear area at least 11'-0" in width and 21'-0" in length and conform to all applicable provisions of the State Building Code.
- F. All off-street parking facilities and other impervious surfaces must conform to all applicable provisions of the Massachusetts Department of Environmental Protection [Stormwater Management Policy Handbook: Volume I & Stormwater Technical Handbook Volume II](#), and all other applicable stormwater regulations. Site drainage designs must be approved by the City Engineer.

- G. Driveways shall be located so as to minimize conflict with traffic on public streets and be located to the best advantage with regard to street alignment, profile, visibility and sight distance conditions to observe approaching pedestrian and vehicular traffic.
- H. In all districts, no person shall begin to construct, reconstruct, repair, alter or grade any sidewalk, curb, curb cut, driveway or street abutting public ways in the City of Fitchburg without first obtaining a permit from the Commissioner of Public Works.

#### **181.515 Common or Shared Parking Areas.**

Common parking areas may be permitted for the purpose of servicing two (2) or more principal uses on the same or separate lots, provided that:

181.5151. Evidence is submitted that parking is available within eight hundred (800) feet of the premises, which satisfies the requirements of this ordinance and has excess capacity during all or part of the day, which excess capacity shall be demonstrated by competent parking survey conducted by a traffic engineer registered in the Commonwealth of Massachusetts.

181.5152. A contract, agreement, or suitable legal instrument acceptable to legal counsel, shall be filed with the application for building permit, occupancy permit, or special permit for exception which shall specify the location of all spaces to be jointly used, the number of such spaces, the hours during the day that such parking shall be available, and the duration or limit, if any on such parking.

181.5153. Any reduction in area required for parking because of these joint use provisions may be required as reserved landscaped open space; such area shall be computed at the rate of four hundred (400) square feet per parking space.

181.5154. Nothing in this section shall relieve the owner from providing parking facilities in accordance with this ordinance if subsequently the joint use of parking facilities shall terminate.

181.5155. Developments that share parking with multiple principal uses on the same lot or provide service drives between properties may be permitted a ten (10) percent reduction in the required number of parking spaces. If information can be provided to show that peak demand periods of development with shared parking or a service drive connection are not simultaneous, the number of required parking spaces may be reduced by twenty (20) percent.

#### **181.516 Landscaping Requirements for Parking Areas.**

181.5161. Parking areas with more than ten (10) spaces shall contain 150 square feet of planted areas for every 1,000 square feet of parking proposed, including aisles, appropriately situated within the interior of the parking area. Such planted area shall contain an appropriate mix of shade trees and other plants.

181.5162. Parking lots loading areas, and service areas shall be screened from view, to the extent feasible, from all adjacent residentially zoned properties, by the use of planted areas, berms, natural contours or natural vegetation, fences or a combination of the above.

181.5163. Buffer strips between any parking lot serving a multi-family or nonresidential use and the rear or side lot lines of property in a Residential District shall meet the following specifications:

Number Of Spaces In Lot	Depth Of Buffer Strip
Up to 10	10 feet
11-24	10 feet plus one foot for each space in excess of 10 spaces
25 or more	25 feet

#### **181.517 Drive-Through Facility Standards.**

181.5171. All buildings and uses that provide drive-through service shall provide at least one escape lane adjacent to the drive-through service lane(s). The escape lane shall be designed to allow vehicles to exit and bypass the drive through service lane(s). The length of the escape lane must be no less than the length of the adjacent drive-through service lane. The length of a drive through service lane shall be determined by measuring the linear distance from the point of the lane's beginning to the point of service.

181.5172. Drive-through and escape lanes shall have a minimum width of ten (10) feet for their entire length. Notwithstanding the foregoing, the Special Permit Granting Authority (if a Special Permit is required), or the Planning Board in reviewing a site plan or parking plan, as the case may be, may require drive-through and escape lanes to have a width of up to twelve (12) feet along curved sections.

181.5173. Drive-through and escape lanes shall comply with the following minimum length requirements to assure sufficient vehicle stacking:

Use	Drive-Through Service Lane & Escape Lane Minimum Length
Fast Food /Restaurant / Coffee Shop	Two Hundred Forty linear feet (240)
Bank /Credit Union / ATM	One Hundred Eighty linear feet (180)
Pharmacy / Convenience Store	One Hundred Twenty linear feet (120)
Dry Cleaner / Laundry	Eighty linear feet (80)
Other	As determined by the Planning Board



**181.52 OFF-STREET LOADING.****181.521 General.**

All buildings requiring the delivery of goods, supplies, or materials, or shipments of the same, shall have bays and suitable maneuvering space for off-street loading of vehicles in accordance with the following regulations.

**181.522 Retail Stores and Services.**

For each establishment with a net floor area from five thousand (5,000) to eight thousand (8,000) square feet, at least one (1) berth. Additional space is required at the rate of one (1) berth per eight thousand (8,000) square feet or nearest multiple thereof. Where two (2) or more such establishments are connected by a common wall such as in a shopping center, common berths may be permitted for the use of all establishments at the rate of one (1) berth space per eight thousand (8,000) square feet in the entire shopping center.

**181.523 Office Buildings.**

For each office building with net area of four thousand (4,000) square feet or more, at least one (1) berth shall be provided.

**181.524 Manufacturing, Industrial Uses or Warehousing.**

For manufacturing, industrial uses or warehousing and similar uses up to eight thousand (8,000) square feet of net floor area, at least one (1) berth shall be provided. For larger floor areas, additional berths shall be provided as required by the inspector of buildings adequate for off-street loading and unloading.

**181.525 Screening.**

Loading areas shall provide screening in accordance with Section [181.54](#).

**181.526 Size.**

Loading bays shall not be less than twelve (12) feet in width, sixty-five (65) feet in length, and fourteen (14) feet in height, exclusive of driveway and maneuvering space. Required off-street loading bays and maneuvering spaces shall be located entirely on the same lot as the building being served.

**181.527 On-Premises.**

No loading facility shall be designed to require trucks to queue on a public way while awaiting off-loading. No loading facility shall be designed to require vehicles to back onto a public way; all turning maneuvers shall be accommodated on the premises.

**181.528 Waiver.**

Any loading requirement set forth herein in Section 181.52, with the exception of 181.527, may be reduced upon the issuance of a special permit by the Special Permit Granting Authority or Site Plan Approval by the Planning Board if there is a finding that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit.

## **181.53 SIGNS AND ADVERTISING DEVICES.**

### **181.531 General Regulations.**

The following regulations shall apply in all districts.

181.5311. No exterior sign or advertising device shall be erected, except as provided herein.

181.5312. No sign which requires a sign permit shall be erected, except in the exact location and manner described in the permit.

181.5313. No sign shall be posted upon any tree, bridge, guidepost or utility pole.

181.5314. Any sign which advertises or identifies products, businesses, services or activities which are no longer sold, located or carried on at the premises (or has already been held) shall be considered to be violation of the Zoning Ordinance and shall be removed by the permit holder or property owner within six (6) days after notice by the Building Commissioner. Failure to do so shall result in an enforcement action pursuant to Section [181.9122](#).

181.5315. *Special Permit.* Notwithstanding the provisions set forth in this Section 181.53, the Planning Board may authorize larger signs or a greater number of signs by the grant of a special permit, where site conditions warrant such relief, and where such relief will not be detrimental.

### **181.532 Sign Permits.**

181.5321. *Applicability.* No sign shall be erected, altered, or relocated without a sign permit issued by the Building Commissioner except as provided in Section 181.533.

181.5322. *Application.* All applications for signs requiring sign permits shall be obtained from the Building Commissioner and shall include at least:

- the location, by street number, of the proposed sign;
- the name and address of the sign owner and the owner of the premises, or his or her agent, where the sign is to be located, if other than the sign owner;
- a scale drawing showing the proposed construction, method of installation or support, colors, dimensions, location of the sign on the site and method of illumination; and
- such other pertinent information as the Building Commissioner may require to ensure compliance with the chapter and any other applicable law.

The application must be signed by the owner of the sign and the owner of the premises, or his or her agent, where the sign is to be located. The Building Commissioner shall have the authority to reject any sign permit application that is not complete when submitted.

181.5323. *Fees.* The City Council shall establish and from time to time review a sign permit fee which shall be paid as part of the sign permit application.

### **181.533 Signs Not Requiring Permits.**

181.5331. *Resident identification sign.* For single and two-family residential uses in any district, one (1) identification sign upon a lot identifying the occupants of the dwelling or one (1) sign

identifying an authorized home occupation shall not require a sign permit. In the residential districts, one (1) sign identifying any other use which is conducted on the premises and is permitted in the residential districts shall not require a sign permit. All such signs shall not exceed eight (8) square feet of display area and, if lighted, shall use indirect white light only. For single-family residential uses, unlit metal or high-quality synthetic lettering, not more than 3" in height nor protruding more than ½" from the exterior wall and mounted flush to said wall in a location above one main entrance or adjacent to the lintel thereof, and denoting the surname of the occupants shall not require a permit.

181.5332. *Governmental signs.* Signs erected and maintained by the City of Fitchburg, the Commonwealth of Massachusetts, or the federal government on any land, building or structure used by such agencies and any other signs at any location required by such agencies for public health or safety purposes shall not require sign permits.

181.5334. *Fuel pump signs.* Fuel pump signs on service station fuel pumps identifying the name or type of fuel and price thereof shall not require sign permits.

181.5335. *Window signs.* Window signs in the business or industrial districts shall not require permits and shall not be included in calculating the total allowable signage.

- A. *Maximum Area:* Window sign shall not cover any more than 50% of the window area (including glass doors) and shall be installed on the inside of the window.
- B. *Time:* Any window sign which advertises or identifies products, businesses, services or activities which are no longer sold, located or carried on at the premises shall be considered to be violation of the Zoning Ordinance and shall be removed by the permit holder or property owner within six (6) days after notice by the Building Commissioner. Failure to do so shall result in an enforcement action pursuant to Section [181.9122](#).

181.5336. *Real estate signs.* Real estate signs pertaining to the sale of a real-estate or the lease of a premises shall not require sign permits, provided that such signs are six (6) square feet or less in districts in which single family residential use is permitted by right and thirty-two (32) square feet in all other districts. Real estate signs shall be removed within 30 days after the sale or rental date of the property. In no case shall a permanent sign be affixed to the land or structure advertising 'building for sale', 'apartment for rent' 'student housing', 'rooms for rent', or similar offers be included in this exemption.

181.5337. *Lawn Signs.* Lawn sign shall be maintained in good repair and may be placed on any property in any district. Said lawn sign shall not be lighted. Said lawn sign shall not be permanently affixed to the property.

181.5338. *Historical Markers. Decorative Plaques.* One (1) decorative plaque of durable material, not greater than one and a half (1.5) square feet in area, mounted flush to the exterior of the building, issued by a governmental agency, indicating the building's history or its status as a registered landmark shall not require a permit.

181.5339. *Standing signs.* One standing sign ("sandwich board"), announcement board, or public information sign, not exceeding 12 square feet, shall be allowed for notices and announcements. Such signs must be located within the required front yard. No sign authorized by this subsection shall be located on publicly owned land, sidewalks, parking areas or traveled ways unless a license

or other form of written permission is granted by the City of Fitchburg Public Works Commissioner and does not impede public access, accessibility, and circulation. Said signs shall be removed daily and not left on public land overnight.

#### **181.534 Signs for Residential Uses.**

Any permitted residential use may erect a sign or signs, subject to the following:

181.5341. One (1) sign not exceeding six (6) square feet is allowed in connection with a lawfully maintained nonconforming residential use.

181.5342. No sign or other advertising device shall be of the exposed neon-tube type or exposed gas-illuminated-tube type; and any lighting of a sign or other advertising device shall be continuous, indirect light, installed in a manner that will prevent light from directly shining onto any street or adjacent property.

181.5343. Pennant, banner or feather flag style signs are prohibited in connection with any permitted residential use.

#### **181.535 Signs for Non-Residential Uses.**

Any permitted non-residential principal use may erect a sign or signs, subject to the following:

181.5351. *Height regulations.* The top of any freestanding sign shall not exceed twenty-four (24) feet nor, for any sign within two hundred (200) feet of the center lines of intersecting streets, shall the bottom be less than eight (8) feet above the nearest adjacent street elevation.

181.5352. In districts that allow residential uses by right, one (1) bulletin or announcement board or identification sign for a lawfully maintained nonconforming nonresidential building or use, not exceeding thirty-two (32) square feet in area, is permitted within the required front yard setback, but no closer to the front lot line than one-half ( $\frac{1}{2}$ ) the depth of said required front yard setback.

181.5353. *Number of signs.*

- A. One (1) freestanding sign shall be allowed for each two hundred (200) feet of street frontage under single ownership.
- B. The number of attached signs on the premises is not restricted; however, the total area of all such signs shall conform to appropriate area requirements below.

181.5354. *Location requirements.*

- A. No freestanding sign shall be located nearer to the street line than one-half ( $\frac{1}{2}$ ) the distance of the required front yard setback and shall in no instance be closer than ten (10) feet from the street sideline.
- B. No sign shall be located within the required side or rear yard Setback.
- C. No attached sign shall project more than twelve (12) inches out from the wall to which it is attached, except in the Downtown Business and Intown Business Districts where such signs may be authorized after site plan review. No part of any such overhanging sign shall be less than ten (10) feet from the ground.

- D. No sign shall be posted directly on the exterior surface of any wall, but rather shall be affixed to a substantial intermediary removable surface securely affixed to the structure.

181.5355. *Area requirements.*

- A. The area of a freestanding sign shall consist of the sum total of the area of all sides, except in the case of parallel back-to-back signs, where the area shall be computed as that of one (1) side.
- B. Freestanding signs shall not exceed one hundred (100) square feet in area.
- C. Attached signs mounted parallel to the face of the building are permitted, provided that they shall not exceed twenty percent (20%) of the building face they are viewed upon.
- D. The aggregate area of all signs, either attached or freestanding, shall not exceed two and one-half (2½) square feet for each linear foot of building face parallel or substantially parallel to and visible from a public way. Where a building face fronts on and is visible from more than one (1) public way, the aggregate sign area facing each street frontage shall be computed separately. For open-lot uses, where a calculation of aggregate sign area based on building face dimensions would result in inequitable deprivation of identification, the Board of Appeals, by special permit, may authorize an aggregate sign area up to but not more than one (1) square foot for each one and one-half (1½) linear feet of street lot line.

181.5356. *Temporary pennant, banner, or feather flag style signs.* Temporary, pennant, banner or feather flag style signs pertaining to sales or promotion shall be allowed in the business, institutional and industrial zoning districts subject to the following provisions:

- A. Definitions

*Pennant, Banner or Feather Flag Sign.* Any sign with or without characters, letters, illustrations, or ornamentations applied to cloth, paper, flexible plastic, or lightweight fabric or similar non-rigid material, of any kind with only such material for backing that is mounted to a pole, staff, or a building by a string, rope, wire, or frame at one or more edges. All pennants, banners and feather flags are temporary signs.

*Temporary Sign.* A sign that is not permanently affixed to a structure, or permanently embedded in the ground, and is designed to be displayed for a short period of time.

- B. Duration

Temporary means a period not exceeding two consecutive months, unless the Building Commissioner permits an extension of the two-month period. No temporary sign may be displayed longer than five (5) months.

- C. Permit filing requirement

A temporary sign permit must be obtained from the Building Commissioner prior to installation if the pennant, banner, or feather flag is to be displayed more than 60 days.

- D. Size and quantity

The maximum size for any one pennant, banner or feather flag is twenty (20) square feet. No more than one (1) pennant, banner or feather flag may be displayed at any one time along or facing any one fifty (50) foot length or less of street frontage abutting the parcel of land on which the establishment is located.

E. Location

Temporary banners, pennants, and feather flags may only be located on the lot of the business or property being advertised. They shall not extend above the roofline of the building, and shall be placed no closer than ten (10) feet from the pavement of a public or private street.

1. The display must not obstruct the view of vehicular traffic, nor be erected or maintained so as in any way to create a traffic hazard or so as to obscure or make difficult the reading of signs or signals designed to regulate and control traffic.
2. Banners, pennants and feather flags must be adequately secured to either a structure or the ground. Vehicle display or attachment is prohibited. For safety reasons, they must not be located in the public right-of-way. In addition, the display cannot cause an unreasonable annoyance or inconvenience to users of neighboring properties.

F. Maintenance

The banner, pennant or feather flag shall be maintained in a state of good repair, and pennants, banners or feather flags that are frayed, torn or otherwise in disrepair are prohibited. All deteriorated or hazardous temporary signs are deemed a public nuisance, a threat to the public health and safety, and/or a source of aesthetic blight and shall be immediately removed or replaced. Temporary signs must be removed on or before 60 days or the applicable permit expiration date.

181.5357. Directional Signage.

One (1) Directional Sign may be placed at each parking entrance or exit and/or at one location to direct customers to a drive through or other vehicular access point. Directional Signs may be located in the required yard setbacks however the location and height of a Directional Sign is subject to approval for safety by the Building Commissioner, who shall consult with the Police Department and DPW on this matter. No such sign shall exceed three (3) square feet in area nor three (3) feet in height, inclusive of any mount or frame. Business logos and branding are permitted on the sign provided that their use is incidental to the directions on the sign and limited to businesses on premises.

181.5358. *Temporary off-premise signs.* Temporary off-premise signs require a permit from the Building Commissioner, subject to the following minimum requirements. Such signs shall not be illuminated nor in excess of thirty-two (32) square feet. Such signs may only be erected for twenty-one (21) days (14). Such signs may be placed on premise in a location visible and legible from a public way. The applicant for such temporary off-premise signs must secure in writing the permission of the property owner(s) on which the signs are proposed to be located.

**181.536 Prohibited Signs in All Districts.**

The following signs, permanent or temporary, accessory or non-accessory, are prohibited in all districts:

181.5361. All signs consisting of ribbons, streamers, spinners, strings of lights (unless associated with a specific holiday), revolving beacons, searchlights or animated signs.

181.5362. Signs which flash, rotate, make noise, move, or give the illusion of moving, except for indicators of time and temperature or barber poles.

181.5363. Off-premises signs except as provided in Section [181.5337](#).

181.5364. Abandoned signs.

181.5365. Signs that contain tri-vision (multi-vision) displays.

181.5366. Temporary signs with digital or electric components.

181.5367. Signs illuminated by, producing, or containing sparks or open flames.

181.5368. Signs that imitate or resemble official traffic lights, signs, or signals, or which interfere with the effectiveness of any official traffic light, sign, or signal.

181.5369. Signs placed on or otherwise attached to:

- A. Trees, shrubbery, or other natural features.
- B. Dumpsters and dumpster enclosures.
- C. Publicly owned and maintained street furniture, the surface of public sidewalks, utility poles, utility boxes, and bollards.
- D. Windows, doors, fire escapes, or any opening required for ventilation or egress, when placed in such a way as to fully cover said features or prevent access or adequate ventilation.
- E. Fences, provided that this prohibition shall apply only to temporary signs

#### **181.537 Maintenance of signs.**

All signs shall be maintained by the owner of the property on which the sign is located in a safe, clean, sanitary and inoffensive condition, and all freestanding signs shall be kept free and clear of all obnoxious substances, rubbish and weeds. All signs requiring permanent insurance shall be inspected every two (2) years to assure their structural integrity. The owner of the property on which any sign is located shall cause this inspection by a sign installer and shall submit the results of such inspection to the Building Commissioner.

#### **181.538 Compliance with other regulations.**

All signs shall comply with applicable requirement of the Building Code, the provisions of MGL C. 93, S. 29 through 33, inclusive, and to MGL C. 93D, S. 42-132 and 42-133 of this chapter and the rules and regulations of the Superintendent of Wires, in accordance with Article 600 of the Massachusetts Electrical Code. Whenever the requirements of such regulations differ from those prescribed in this chapter, those requirements which impose the greater restriction or higher standard shall govern.

### ***181.54 GENERAL LANDSCAPING REQUIREMENTS.***

#### **181.541 Purpose.**

This section is designed to accomplish the following objectives: to provide a suitable boundary or buffer between residential uses and districts and nearby nonresidential uses; to define the street edge and provide visual connection between nonresidential uses of different architectural styles; to separate different and otherwise incompatible land uses from each other in order to partially or completely reduce potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, intrusion from artificial light (including ambient glare), or view of signs, unsightly buildings or parking lots; to provide

visual relief and a source of shade in parking lots and other areas, and protection from wind in open areas; to preserve or improve the visual and environmental character of the city, as generally viewed from residential or publicly accessible locations; and to offer property owners protection against diminution of property values due to adjacent nonresidential use.

#### **181.542 Applicability.**

The requirements of this section shall apply to any nonresidential use, multi-family dwellings and lodging and boarding houses:

181.5421. *Special Permit.* The Planning Board may vary any requirement of this Section 181.54 upon the grant of a special permit, after a finding that such variation will not result in substantial detriment to the area.

#### **181.543 Landscaping Requirements for Property Lines.**

Residential districts shall be screened from nonresidential uses by means of plantings or maintenance of trees of a species hardy to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property used for nonresidential purposes. The buffer area may contain walks, sewerage, and wells, but no part of any building structure, or paved space intended for or used a parking area may be located within the buffer area. Planted buffer areas along property lines with residential districts shall be of the following minimum depth in each district, which may be reduced by special permit issued by the Planning Board upon a finding that such reduction will not detract from the objectives of this Section:

DISTRICT	DB	IB	NB	C	I/AI	MS
Buffer Width (feet)	10	10	10	10	20	20

#### **181.544 Landscaping Requirements for Street Frontage of Nonresidential Uses.**

A landscaped buffer area, except for approved access ways, at least twenty feet in width as measured from the layout of the roadway providing frontage, shall be established. The buffer area shall be planted with grass, medium height shrubs, and shade trees. Shade trees shall be planted at least every 35 feet along the road frontage.

#### **181.545 Planted Area Requirements.**

Planted Areas shall contain an appropriate mix of the following types of plants. Plant species shall be appropriate to proposed use, siting, soils, and other environmental conditions. Where the Planning Board determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.

181.5451. Shrubs and hedges shall be at least 2½ feet in height at the time of planting, and have a spread of at least 18 inches.

181.5452. Grass is preferable to mulch where practical.



181.5453. Existing trees with a caliper of six inches (6") or more shall be preserved wherever feasible.

181.5454. Deciduous trees shall be at least two inches (2") in caliper as measured six inches (6") above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within ten years after planting. Evergreens shall be a minimum of eight feet (8') in height at the time of planting.

#### **181.546 Coordination with Site Plan Approval.**

The Planning Board may require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at a scale sufficient to determine compliance with the specifications set forth in this Section.

#### **181.547 Maintenance of Landscaped Areas.**

The owner of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section. All plant materials required by this chapter shall be maintained in a healthful condition. Dead limbs, refuse and debris shall be promptly removed. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Bark mulch and non-plant ground surface materials shall be maintained so as to control weed growth.

### ***181.55 ENVIRONMENTAL PERFORMANCE STANDARDS.***

#### **181.551 General.**

No activity shall be permitted in any district unless it shall be in conformity with the standards for environmental protection included herein. The Building Commissioner may require an applicant for a building or occupancy permit to supply, at his expense, such technical evidence as is necessary in support of the application, and may, in connection therewith, and at the applicant's expense, obtain expert advice as necessary to review the plans and proposals of the applicant. After a permit is issued in accordance with this section, continuing compliance is required. When the Building Commissioner suspects a subsequent violation he may, as necessary obtain expert advice, which if the violation is established, shall be paid for by the violator, otherwise, by the city. The following standards are hereby established.

#### **181.552 Noise.**

No use shall be permitted within the City which, by reason of excessive noise generated therefrom, would cause nuisance or hazard to persons or property, as set forth in 310 CMR 7.01.

#### **181.553 Solid Waste Storage.**

Any accessory receptacle or structure with holding capacity of at least one hundred (100) cubic feet for temporary storage of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be screened from all adjacent premises, lot lines and streets in accordance with Section [181.54](#) of this ordinance. No such accessory receptacle or structure shall be placed on a sidewalk without written authorization from the Department of Public Works.

#### **181.554 Miscellaneous Standards.**

181.5541. No vibration, odor, light overspill, glare, or flashing shall be detectable without instruments at any lot line of a residential or institutional use.

181.5542. Cinders, dust, fumes, gases, odors, smoke, radiation, refuse or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state, federal, and city laws and regulations.

181.5543. No process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in excess of ten (10) percent in line voltage off the premises.

181.5544. All activities involving, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against hazards from fire and explosion, and with adequate firefighting and fire suppression equipment standard in this industry. Burning of waste materials in the open contrary to state law is prohibited.

181.5545. All materials which may be edible by or attractive to rodents or insects shall, when stored in or outdoors, be stored in tightly closed containers.

#### **181.555 Stormwater Management and Erosion Control.**

Stormwater management and erosion control shall be conducted in a manner consistent with the requirements of Chapter 154 of the Code of the City of Fitchburg.

#### **181.556 Illumination.**

181.5561. Overspill. Illuminated signs, parking lot lighting, building floodlighting, or other exterior lighting shall be so designed and arranged that their collective result does not create so much light overspill onto adjacent premises that it casts observable shadows, and so that it does not create glare from unshielded light sources.

181.5562. Unless all the following are met, it will be presumed that the above performance requirements are not satisfied. The Planning Board may grant a special permit for lighting which does not comply with these specifications if it determines that the performance standards of Section 181.5561 will still be met, and if the applicant documents that brightness of any sign or building element will not exceed twenty (20) foot lamberts in residence districts or fifty (50) foot lamberts in other districts. Lighting shall be "dark sky" compliant

- A. Internally illuminated signs on the premises collectively total not more than two hundred (200) watts unless not exceeding fifteen thousand (15,000) lumens.
- B. Externally illuminated signs employ only shielded lights fixed within three (3) feet of the surface they illuminate.
- C. Building floodlighting totals not more than two thousand (2,000) watts unless not exceeding fifty thousand (50,000) lumens.
- D. Exterior lighting fixtures other than signs are mounted not more than twenty (20) feet high.

E. Lighting shall be Dark Sky Compliant and not have a temperature of more than 3000 Kelvins

### **181.56 MOBILE FOOD OPERATION.**

#### **181.561 Residential Districts.**

181.5611. Mobile Food Operations, as defined in Chapter 181.10, are permitted to operate in all Residential Districts by Special Permit of the Planning Board per the requirements of the Zoning Ordinance, and licenses under applicable law.

181.5612. Special Permit from the Planning Board is not required for Mobile Food Operations permitted to operate in City of Fitchburg Park property. Mobile Food Operations are permitted to operate in City of Fitchburg Parks with a permit granted by the City of Fitchburg Board of Parks Commissioners or their designee, and licenses under applicable law.

181.5613. Mobile Food Operations may operate for one day in Residential Districts without a Special Permit from the Planning Board, with licenses under applicable law.

#### **181.562 Non-Residential Districts.**

181.5621. Mobile Food Operations are permitted to operate in all other non-residential zoning districts, as of right, by the requirements as specified in the Zoning-Ordinance, [181.313](#) Table of Principal Use Regulations, and licenses under applicable law, subject to the ability to maintain compliance with parking, safety and accessibility requirements of the principal uses on the site. Residences located in Non-Residential Districts shall comply with 181.561 Mobile Food Operation in Residential Districts.

181.5622. Mobile Food Operations are permitted to operate on privately owned land if evidence of ownership, lease, or special permission from the property owner is provided to the Office of the Building Commissioner,

181.5623. Mobile Food Operations are permitted to operate in City of Fitchburg Parks with a permit granted by the City of Fitchburg Board of Parks Commissioners or their designee, and license under applicable law.

181.5624. Mobile Food Operations may be authorized to operate on all other publicly owned land by permission of the Office of the Building Commissioner and licenses under applicable law.

## **SECTION 181.6 SPECIAL REGULATIONS**

### ***181.61 SEXUALLY ORIENTED BUSINESSES.***

#### **181.611 Purpose.**

It is the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the City of Fitchburg; to promote the health, safety and general welfare of the citizens of the City of Fitchburg; and, to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses. This Section has neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

#### **181.612 Special Permit Requirement.**

Sexually oriented businesses shall be permitted only by special permit granted by the City Council in accordance with the provisions of MGL C. 40A, S. 9 and all of the provisions of Zoning Ordinance and shall be subject to the restrictions, regulations, and standards set forth herein. No Use Variance shall be granted for a Sexually Oriented Business.

181.6121. Anyone wishing to obtain a special permit to operate a sexually oriented business shall follow the procedures set forth in this Chapter at Section [181.94](#); and all rules, regulations and procedures applicable to the granting or denying of special permits or for imposing conditions upon special permits generally shall be applicable to the granting or denying of a special permit for sexually oriented business.

#### **181.613 Location.**

Sexually oriented businesses shall be subject to the following restrictions as to their location:

181.6131. Sexually oriented businesses may only be located in Industrial and Commercial Districts. Sexually oriented businesses shall comply with all of the regulations, requirements and restrictions for the zoning district in which the sexually oriented business is to be located.

181.6132. No sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business or one for which a building permit has been applied.

181.6133. A sexually oriented business cannot be operated in the same building, structure or portion thereof of, as another sexually oriented business.

181.6134. No sexually oriented business shall be permitted within 750 feet of any residential zone or the property line of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten or city boundary.

181.6135. Measurement. The measure of distance for purposes of subsections 181.6132 and 181.6134 shall be in a straight line without regard to intervening structures from the property line

of the sexually oriented business to the property line of another sexually oriented business or to the property line of one of the structures described in subsection 181.6132 and 181.6134.

181.6136. *Lawful Preexisting Uses.* A sexually oriented business lawfully operating is not rendered a nonconforming use by the new location of a residential zone, church, place of worship, parish house, convent, public, parochial or private school, kindergarten, or a city boundary.

#### **181.614 Conditions.**

In addition to the requirements generally applicable to special permits, special permits for sexually oriented businesses shall be subject to the following restrictions, standards and conditions.

181.6141. The premises of all sexually oriented businesses shall be constructed so as to include an anteroom, foyer, partition or the physical barrier on all customer entrances that will ensure that the interior of the premises is not observable from the exterior of the building.

181.6142. Exterior overhead lighting shall be provided with sufficient intensity to illuminate every place to which customers are permitted at an illumination of not less than one foot-candle as measured at floor level. This lighting must be maintained at all times during which any customer or patron is present in, or on, the premises. The exterior lighting sources shall be indirect, diffused, or with shielded fixtures, installed to reduce glare and the consequent interference with adjacent properties and streets.

181.6143. Any signs or advertisements placed around or on the building shall not visually depict or describe specified anatomical areas or specified sexual activities as defined herein, or nudity as defined by MGL C. 272, S. 31.

181.6144. The City Council may impose reasonable restrictions and conditions as described in this zoning ordinance in Section [181.945](#) and as permitted by MGL C. 40A, and in addition may impose restrictions or conditions regulating buffering, outdoor lighting, signage, parking, adequate ingress and egress from the site and to and from public roads and/or pedestrian movement. It may impose reasonable conditions to require appropriate landscaping and building aesthetics and it may impose reasonable conditions so as to avoid a site development layout which would result in negative environmental impacts or in a design incompatible with surrounding uses.

### **181.62 WIRELESS COMMUNICATIONS FACILITIES.**

#### **181.621 Purpose.**

The purposes of these regulations include:

- A. Minimizing adverse impacts of radio communications facilities, satellite dishes, antennas, and their support structures to abutting properties and traveled ways;
- B. Ensure that the wireless communication facilities are designed to minimize the adverse aesthetic impact by encouraging providers to utilize careful design, siting, screening, and camouflaging techniques; and
- C. Minimizing the overall number and height of such facilities by encouraging the co-location of wireless communication facilities and the use of existing towers and structures for placement of facilities and equipment.

A successful wireless communication facility will achieve the following:

1. Protection of the City of Fitchburg's resources;
2. A predictable outcome for wireless communication facilities applicants;
3. Equal evaluation and review for all applicants; and
4. The development of standards to be used as findings for decisions on personal wireless communication facilities applications.

#### **181.622 Approval Process.**

- A. Wireless communication facilities may be permitted as conditional uses in all zoning districts. All proposed wireless communication facilities, except those exemptions identified in Section [181.6281](#) below, whether new co-located or not co-located, must be reviewed by the Planning Board as a conditional use under requirements of this section and under the Fitchburg Zoning Ordinance.
- B. Wireless communication facilities require Site Plan approval by the Planning Board.
- C. All wireless communication facilities are deemed to be a structure as the term structure is defined and used in the City of Fitchburg Zoning Ordinance.
- D. An applicant for a proposed facility must be a licensed wireless communication provider or must provide a copy of its executed contract to provide land or facilities to an existing provider to the Planning Board at the time that an application is submitted. A permit shall not be granted for a wireless communication facility to be built on speculation. In addition, the record owner(s) of the property on which the facility is located must sign and join in the permit application, and the permit will run to and be binding on the owner, including successors and assigns.

#### **181.623 Special Permit Thresholds.**

All Wireless Communications Facilities which exceed the following limits are required to obtain a Special Permit from the Planning Board:

181.6231. For a Building Mounted Antenna Support Structure, any support structure and/or attached Antenna, including satellite dishes:

1. That protrudes more than five (5) feet vertically from the roof where it is mounted, or, in the case of a flat roof, protrudes more than five (5) feet vertically from the horizontal plane of the top surface of the roof parapet; or
2. That is set back from a roof edge or structural edge such that the vertical distance from the edge to the top of the antenna support structure, with antenna, is less than two-thirds (2/3) the horizontal distance from the edge to the support structure or antenna; or
3. That protrudes horizontally from any surface or edge, except that antenna support structures and antennas mounted on building surfaces set back from roof edges, such as elevator house walls, are exempt from this condition if they comply with the two previous conditions with respect to the roof above which the antennas are mounted.

181.6232. For new Free-Standing Antenna Support Structures, any new structure with attached Antennas, including satellite dishes, that protrudes more than five (5) feet above ground.

181.6233. Any attachments to a Free-Standing Antenna Support Structure existing at the time of adoption of this ordinance that protrude more than five (5) feet from the top of the structure (excluding existing antennas), or protrude more than eighteen (18) inches from the side of the structure.

181.6234. In any case, any Wireless Communications Facility which includes a Wireless Communications Accessory Building located in a Residential Zoning District requires Special Permit.

#### **181.624 General Requirements.**

181.6241. Concealed Wireless Communications Facilities shall be allowed by right in all zoning districts.

181.6242. New Free-Standing Antenna Support Structures issued Special Permits under this ordinance may have special conditions applied that provide the structure owner with more or less flexibility to add antennas in the future, depending on the structure's purpose, design, location, and appearance. In the absence of such condition on a Special Permit for a Free-Standing Antenna Support Structure, any attachment to a Free-Standing Antenna Support Structure constructed after adoption of this ordinance may protrude no more than five (5) feet from the top of the structure (excluding existing antennas) nor eighteen (18) inches from the side of the structure.

181.6243. A Wireless Communications Facility may be sited on a lot which already accommodates a lawful principal use.

181.6244. The granting of a Special Permit, or the designation of certain uses as allowed by right in this section, does not absolve the owner or applicant from the responsibility for acquiring any other permits, including but not limited to building permits, certification from the Board of Health, or Federal Aviation Administration permits.

181.6245. Unless waived by the Planning Board under Section [181.628](#), only freestanding monopoles, with associated antenna and/or panels, shall be allowed.

181.6246. At the time that a Special Permit holder plans to abandon or discontinue operation of a Wireless Communications Facility, such holder will notify the City of Fitchburg by Certified U.S. mail of the proposed date of abandonment or discontinuance of operations. Within six months from the date of abandonment or discontinuance of use of a permitted Wireless Communications Facility, the Special Permit holder shall physically remove the facility.

181.6247. A Freestanding Antenna Support Structure that is constructed primarily for supporting Wireless Communications Facilities shall be removed if it has not supported any active Wireless Communications Facilities for one year. The Planning Board may also require a reduction in height if upper elevations of a Freestanding Antenna Support Structure are not used by a Wireless Communications Facility for one year. The Planning Board may determine that the primary purpose of a Freestanding Antenna Support Structure is to support the operation of specific Wireless Communications Facilities. Upon removal of these specific facilities, the Planning Board may require the owner of the support structure to reduce or remove the structure, regardless of whether any other Wireless Communications Facilities are using the structure. In the event that these elements are not removed within the time period specified by this ordinance, the City of

Fitchburg (in addition to other remedies) may remove the antenna, structure, and associated facilities and assess the costs of removal against the property.

181.6248. At the discretion of the Planning Board, holders of Special Permits for Wireless Communications Facilities and/or Antenna Support Structures of any type may be required to provide to the Building Commissioner annual certification demonstrating continuing compliance with applicable standards regarding structural integrity, air traffic safety, radio emissions safety, or other issues of importance to the purposes of this regulation.

### **181.625 Submission Requirements.**

181.6251. The following information shall be prepared by a professional registered engineer or other qualified representative and submitted along with the Special Permit application:

1. A written statement demonstrating that the proposed facility will comply with, or is exempt from, regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), and the Massachusetts Department of Public Health.
2. A description of the Wireless Communications Facility, including technical, economic, and other reasons for the proposed location, height, and design.
3. A description of the Antenna Support Structure including:
  - a. Plans.
  - b. Elevation views with proposed antennas, and with an anticipated full load of antennas.
  - c. Photographs of the site from nearby public ways with accurate simulations of the proposed installation.
  - d. A Visual Impact Map showing where on public lands and ways any part of the structure or antennas will be visible (mapped by a human observer during a balloon or crane test).
  - e. The number and type of antennas that it can accommodate and the basis for these calculations.
4. A description and plans for the placement of the transmit/receive equipment, antenna cables and related equipment. If a Wireless Communications Accessory Building is proposed, include detailed design drawings of the building and its locus.

181.6252. When considering an application for a Wireless Communications Facility or Freestanding Antenna Support Structure the Planning Board shall place great emphasis on the proximity of the facility to abutting properties and streets and its visual impact on the same.

181.6253. New Freestanding Antenna Support Structures shall only be considered after a finding by the Board that an existing Freestanding Antenna Support Structure cannot accommodate the proposed additional facility. Licensed carriers shall share Freestanding Antenna Support Structures where feasible and appropriate, thereby reducing the number of Freestanding Antenna Support Structures. All applicants for a Special Permit shall demonstrate a good faith effort to co-locate on other facilities in circumstances where the visual impact of co-location is equal to or better than that of the alternative. Such good faith effort includes:

1. A survey of all existing structures, including Building-Mounted and Freestanding Antenna Support Structures, buildings, and other structures that may be feasible for co-locating



Wireless Communications Facilities, including sites that are outside but near the applicants specified search area;

2. Contact with relevant owners of Wireless Communications Facilities operating in the City; and
3. Sharing information necessary to determine if co-location is feasible.

In the event that the applicant claims that co-location is not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Board may retain a technical expert in the field of RF engineering to verify if co-location at a nearby site is or is not feasible, or to otherwise review the application. The cost for such a technical expert will be at the expense of the applicant. The Board may deny a Special Permit to any applicant that has not demonstrated a good faith effort to provide for co-location.

In the event that co-location is not feasible and the applicant is proposing a new Freestanding Antenna Support Structure, the applicant must demonstrate that no existing buildings or other structures can provide a substantial portion of the coverage desired by the applicant. The City may retain a technical expert at the expense of the applicant in the field of RF engineering to verify if existing alternatives have been reasonably eliminated.

#### **181.626 Application Requirements.**

In addition to the site plan submission requirements, an application shall include the following supplemental information:

- A. The names and addresses of the neighboring Planning Board(s) and the Regional Planning Commission if the proposed facility might be visible from parcels in a neighboring community.
- B. The name(s) and address(es), fax/telephone numbers and email address(es) of the persons to be contacted who are authorized to act in the event of an emergency regarding the structure or safety of the facility. Both the licensed wireless communication provider and the record owner(s) of the property on which the facility is located must sign and join in the Planning Board application.
- C. A vicinity map on the most recent United States Geological Survey Quadrangle map, showing the area within a three-mile radius of the proposed facility site, including the location of the facility and indicate the property lines of the proposed facility site, including the location of the facility, and indicate the property lines of the proposed facility parcel and all easements or rights-of-way needed for access from a public right-of-way to the facility.
- D. Site plan of the entire development, including all proposed improvements including landscaping, utility lines, guy wires, screening, and roads. The site plan shall be at a scale no smaller than one (1) inch equals fifty (50) feet.
- E. Elevations showing all facades and indicating all exterior materials and colors of the tower, buildings, and associated facilities.
- F. In the case of a ground mounted facility, the approximate average height of the existing vegetation within one-hundred fifty (150') feet of the base of the facility.
- G. A report prepared by qualified radio frequency engineer and a licensed structural engineer that:
  1. Describes the height, design, and elevation of the proposed facility.
  2. Documents the height above grade for all proposed mounting positions for antennas to be co-located on a wireless communications facility and the minimum separation distances between antennas.
  3. Describe the facility's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the facility to accommodate.

4. Describes potential changes and cost to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provide a map that describes coverage of the existing and proposed facilities.
  5. Describes existing coverage. In the case of a new wireless communication facility proposal, the applicant shall demonstrate to the satisfaction of the Planning Board that the new wireless communication facility cannot be accommodated on an existing or approved facility or structure within a five (5) mile radius of the proposed site. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the Planning Board or independent reviewer to verify that other locations will not be suitable.
  6. Describes the output frequency, number of channels, sector orientation and power output per channel, as appropriate for each proposed antenna.
  7. Includes a written explanation for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs, if applicable, as well as plans for additional development and coverage within Fitchburg.
  8. Demonstrates that the tower and related equipment are structurally able.
  9. Demonstrates the wireless communication facility's compliance with the zoning district setback and the fall zone setback for facility and support structures.
  10. Provides assurance that at the proposed site, the applicant will establish and maintain compliance with all FCC rules and regulations particularly with respect to radio frequency radiation (RFR). The City may hire independent engineers to perform evaluations of compliance with FCC regulations, standards, and requirements on an annual basis at unannounced times.
  11. Includes other information required by the Planning Board that is necessary to evaluate the request.
  12. For structural engineers, include an engineer's stamp and registration number. For radio frequency engineers, provide a list of credentials.
- H. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of these Regulations.
  - I. For a wireless communication facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Building Commissioner or Planning Board at the time an application is submitted)
  - J. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
  - K. Construction sequence and time schedule for completion of each phase of the entire project.
  - L. Information detailing the contents of the equipment shelters servicing the proposed wireless communication facility. The information shall include the type and quantity of oil, gasoline, batteries, propane, natural gas, or any other fuel stored within the shelter. Information shall be submitted which demonstrates that any hazardous materials stored on site shall be housed to minimize the potential for any adverse impact an abutting property.
  - M. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way from which it may be visible. Each photo shall be labeled with the line of sight, elevation

and with the date taken imprinted on the photograph. The photos shall show the color of the facility and the method of screening.

- N. Balloon Test: The applicant shall fly or raise a five (5) foot diameter balloon (painted black or dark blue) at the maximum height of the proposed facility at a location within fifty (50) horizontal feet of the center of the proposed facility. The applicant shall provide at least seven (7) days written notice to the Building Commissioner or Planning Board of the date and time of the test. The sole purpose of this test is to identify the location and height of the proposed facility and not its visual impact.
- O. A written visual analysis with supporting illustrations demonstrating the visual impact of the proposed facility, including photographs of the balloon test and elevation views of the facility from each of the five (5) vantage points previously designated by the Building Commissioner or Planning Board.
- P. A plan for removal and restoration of the site following abandonment of the facility. This plan shall be binding upon the provider and the property owner, including their successors and assigns, and therefore construction of the facility will constitute consent from the owner, including successors and assigns, for the City or its agents to enter upon the property, if necessary, to complete removal of an abandoned facility.
- Q. A landscape easement on an adjoining site, if this is needed to satisfy the requirements of camouflaging ground mounted facilities
- R. Any additional information requested by the Planning Board.

#### **181.627 Design Guidelines.**

The following guidelines shall be used for the siting and construction of all wireless communication facilities:

181.6271. All new Freestanding Antenna Support Structures shall be designed to be constructed to the minimum height necessary to accommodate the anticipated and future use of the structure, but in no case shall the height exceed 175 feet as measured from ground level at the base of the structure, except for facilities used by a federally licensed amateur radio operator antenna. No Antenna Support Structure used by an amateur radio operator shall be used to co-locate any facility other than another Residential Communications Facility. Section [181.416](#), "Table of Dimensional Requirements", shall not apply to Freestanding Antenna Support Structures with regard to the maximum allowable height of a structure.

181.6272. In order to protect public safety, the minimum distance from the base of any Freestanding Antenna Support Structure to any property line or road shall be 50% of the height of the structure, including any Antennas or other appurtenances. This setback is considered a "fall zone." The minimum distance from the base of any Building Mounted Antenna Support Structure to any lot line, measured horizontally, shall be at least that required in the zoning district by the zoning ordinance, and in no case, shall be less than the height of the antenna above the roof.

181.6273. Building Mounted Antenna Support Structures shall not exceed fifteen (15) feet in height above the roof line of the structure. The Planning Board may grant special exceptions in circumstances where irregular roof lines or the configuration of other rooftop structures may be utilized without compromising the intent of this section.

181.6274. All Antenna Support Structures and Antennas, unless roof-mounted, shall be located in the side or rear yard or building mounted in such a manner that the view of the facility from abutting properties and streets shall be as limited as possible. Antenna Support Structures and

Antennas shall be camouflaged in a manner appropriate to the application. Where appropriate, vegetative, or mechanical screening shall be employed to hide Antennas from public view.

181.6275. Fencing which is compatible with the characteristics of the neighborhood may be required to be provided to control access to Wireless Communications Facilities and Antenna Support Structures. No razor wire shall be permitted.

181.6276. Unless otherwise permitted by this Ordinance or specified in a Special Permit, there shall be no signs posted at Wireless Communications Facilities except for warning signs, no trespassing signs, a sign identifying the facility, the owner and operator and an emergency telephone number, and any required hazard or information sign normally mounted at a Wireless Communications Facility. No sign shall be greater than eight square feet in size and six feet in elevation.

181.6277. Lighting of Antenna Support Structures and Antennas shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA. Lighting on the grounds of a Freestanding Antenna Support Structure or a Wireless Communications Accessory Building shall be kept to the minimum necessary to assure security and shall follow City lighting regulations.

181.6278. Unless the Wireless Communications Facility is to be located at a building or site with ample parking, a minimum of one (1) dedicated parking space for an Antenna Support Structure. The space shall not be used for the permanent storage of vehicles or other equipment or materials. The Planning Board shall evaluate the application in terms of the number of potential wireless co-locators and determine the minimum parking area to accommodate them at the site.

181.6279. Bulk, Height, Glare. All wireless communication facilities shall be designed in such a manner as to minimize the visual impact of height, mass, and guy wire supports for the intended use. Materials utilized for the exterior of any structure shall be of a type, style, and location so as to minimize glare and not result in an adverse visual impact on any public vantage point or from abutting properties.

181.62710. Noise. The sustained (for a period of one hour) sound pressure level of any wireless telecommunications facility equipment shall not exceed the 70 dbA decibel level at the property line between the hours of 7:00 AM and 7:00 PM, and shall not exceed the 60 dbA decibel level at the property line between the hours of 7:00 PM and 7:00 AM. If the noise is impulsive (i.e. hammering), intermittent (i.e. machine sounds) or periodic (i.e. hums or screeches), the maximum sound pressure levels described above shall be reduced by 5 dbA. Furthermore, the applicant shall demonstrate that the sound pressure level of the proposed facility is as quiet as reasonably possible (i.e. if it is reasonably possible to have a dbA level less than cited above, the lower level shall be required).

181.62711. Co-location. New wireless communication facilities shall be designed structurally, electrically and in all respects to accommodate both the applicant's antenna, additional antennas, and the rearrangement of antennas when the overall permitted height allows. The owner of an approved facility shall allow other providers to co-locate on the facility subject to reasonable terms and conditions (this includes communication equipment for municipal emergency services when the new wireless communication facility is proposed in an area where the municipal emergency services have a communication dead zone). Notwithstanding, there shall be no

affirmative obligation on the owner to increase the height or width of the facility in order to accommodate the equipment or facilities of another user. The applicant must demonstrate to the satisfaction of the Planning Board that the new wireless communication facility cannot be accommodated on an existing or approved facility or structure due to one of the following reasons:

1. Structural or Spatial Capacity: The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved facility, as documented by a structural engineer licensed to practice in the State of Massachusetts. Additionally, the existing or approved wireless communication facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
2. Radio Frequency Interference: The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create radio frequency interference (RFI) in violation of federal standards or requirements as documented by a qualified radio frequency engineer.
3. Radio Frequency Radiation: The proposed antennas and equipment, alone or together with existing facilities, equipment, or antennas, would create radio frequency radiation (RFR) in violation of federal standards or requirements without unreasonable modification or mitigation measures as documented by a qualified radio frequency engineer.
4. Existing Facilities: Existing wireless communication facilities cannot accommodate, or be reasonably modified to accommodate, the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified radio frequency engineer.
5. Aesthetics: Aesthetic reasons make it unreasonable to locate the planned equipment upon an existing or approved wireless communication facility.
6. Coverage: There are no existing or approved wireless communication facilities in the area in which coverage is sought.
7. Other: Other specific unforeseen reasons make it unreasonable to locate the planned equipment upon an existing or approved wireless communication facility.

181.62712. Determination of Visual Impact: The facility will not have an undue adverse aesthetic impact. In determining whether a facility has an undue aesthetic impact, the Planning Board shall consider the following factors:

1. The results of the balloon test and photo simulations.
2. The extent to which the proposed towers and equipment have been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
3. The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
4. The duration and frequency with which the Facility will be viewed on a public highway or from public property.
5. The degree to which existing vegetation, topography, or existing structures will screen the Facility.

6. Background features in the line of sight to the Facility that obscure or make the Facility more conspicuous.
7. The distance of the Facility from the point of view and the proportion of the Facility that is above the skyline.

181.62713. Camouflaging Facilities: New ground mounted wireless communication facilities shall not be located within open areas. All wireless communication facilities shall be designed to blend into the surrounding environment through the use of existing vegetation, landscaping and screening, the use of compatible materials and colors, or other camouflaging techniques.

181.62714. Wireless communication facilities shall be designed to provide adequate access for emergency and service equipment, and shall provide adequate facilities for utilities and stormwater management consistent with the function requirements of the Planning Board Subdivision Rules and Regulations and as set forth in Section [181.945](#) of the Zoning Ordinance hereunder.

### **181.628 Waivers.**

The Planning Board may waive strict adherence to the requirements of this section (with the exception of the height limit and exclusion zones) if it finds the safety and wellbeing of the public will not be adversely affected by such a waiver.

181.6281. Exemptions. The provisions of this section shall not apply to the following:

1. Facilities used by a federally-licensed amateur radio operator ("ham radio"), as referred to in MGL C. 40A, S. 3; and
2. Any Residential Communications Facility.

### **181.629 Conditions.**

The Planning Board shall have the authority to impose conditions consistent with the purposes of the Zoning Ordinance in approving a proposed plan for the development of a wireless communication facility. It shall be the obligation of the permittees and subsequent assigns to remain in compliance with all conditions.

- A. Maintenance: The owner of the facility shall maintain the wireless communication facility in good condition at all times. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, accessibility to the facility, maintenance of the buffer areas and landscaping, and also maintaining proper access to the facility.
- B. Radio Frequency Radiation Monitoring: Upon receiving a zoning permit, the permittee shall annually demonstrate compliance with all FCC standards and requirements regarding Radio Frequency Radiation (RFR) and provide the basis for representations to the Building Commissioner or Planning Board. A survey by another permittee on the same site, since it will demonstrate compliance of all emitters, may be submitted provided there is annual demonstration of site compliance.

Consistency with Federal Law:

These Regulations have been drafted to be consistent with Section 704 of the 1996 Telecommunications Act. Accordingly, the Regulations shall not prohibit or have the effect of prohibiting the provision of personal wireless communications services; shall not unreasonably discriminate among providers of functionally equivalent services; and shall not regulate personal wireless services based on the

environmental effects of radio frequency emissions to the extent that these facilities comply with the Federal Communications Commission Regulations concerning such emissions.

### **181.63 SMALL WIND ENERGY SYSTEMS.**

#### **181.631 Purpose.**

The purpose of this section is to promote the safe, effective and efficient use of small wind energy systems which are installed to reduce the on-site consumption of utility supplied electricity, subject to reasonable conditions that will protect the public health, safety and welfare.

#### **181.632 Findings.**

The City of Fitchburg finds that wind energy is an abundant, renewable and non-polluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands and help diversify the state's energy supply portfolio.

#### **181.633 Definitions.**

'Small Wind Energy System, also referred to as SWES', shall mean: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which is intended to primarily reduce on-site consumption of utility power.

'Turbine Height' shall mean: The distance from the surface of the tower foundation to the highest point of the turbine rotor plane.

'Occupied Building' shall mean: A residence, or a church, hospital, library, school, or other building used for public gathering that is either actually occupied, in use or held or available for use at the time when the special permit application is submitted.

#### **181.634 Permitted Use.**

No SWES shall be erected, constructed, installed or modified without first obtaining a Special Permit from the Planning Board. A SWES may be permitted in any zoning district as an Accessory Use, subject to the issuance of a Special Permit and further provided that the use is maintained and complies with all requirements set forth herein and as described in the Special Permit. No Special Permit shall be granted unless the Board determines that all such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No Special Permit shall be granted unless the Planning Board finds, in writing, that the proposed SWES complies with the Special Permit criteria under Section [181.942](#) and:

- A. the specific site is an appropriate location for such use;
- B. the use will not adversely affect the neighborhood;
- C. no nuisance will be created by the use;
- D. adequate and appropriate facilities will be provided for the proper operation of the use; and
- E. the application information submitted is adequate, complete and containing sufficient information for the Planning Board to consider approving the special permit request.

If the Board finds that the information is not adequate or complete, it may continue the hearing on the application to allow the applicant to submit additional information which may be needed for a decision.

181.6341. A Special Permit issued for a SWES may impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate reasonably foreseeable adverse impacts of the wind facility.

#### **181.635 Application requirements.**

- A. The applicant and landowner's name and contact information.
- B. The map, block and lot identifier for the parcel, existing use and acreage of the site parcel.
- C. Standard engineered drawings of the wind turbine structure, including the tower, base and footings, drawings of access roads, and including an engineering analysis and certification of the tower, showing compliance with the State Building Code.
- D. Data pertaining to the tower's safety and stability, including safety results from test facilities prepared and stamped by an engineer.
- E. Site plan. A site plan must be submitted, prepared to scale by a registered land surveyor or civil engineer showing the proposed SWES location, property lines for the site parcel, outline and distances of existing and proposed structures within the allowed tower setbacks including purpose (i.e. residence, garage, etc.), public and private ways, drives, access easements, trails, above ground utility lines and other significant features, as well as any proposal for landscaping and screening.
- F. If deemed necessary by the Planning Board, the applicant shall provide a report estimating current ambient sound at appropriate locations and maximum projected sound from the proposed SWES. Manufacturer's specifications may be accepted when, in the opinion of the Planning Board, the information provided satisfies the above requirements.
- G. The certification by the applicant's engineer that the SWES complies with applicable regulations of the Federal Aviation Administration (FAA).

181.6351. Waivers. Any portion of the requirements in Section [181.635](#) may be waived if in the opinion of the Planning Board the materials submitted are sufficient for the Board to make a decision under the criteria for a Special Permit under this section.

#### **181.636 General Siting Standards.**

181.6361. Turbine Height. For property sizes between ½ acre and one acre the turbine height shall be limited to 80 feet. For property sizes of one acre or more, there is no limitation on turbine height, except as may be imposed by the Federal Aviation Administration (FAA) regulations, other applicable law and this ordinance.

181.6362. Setbacks. Each SWES structure shall be set back from the property line a distance no less than 1.5 times its total turbine height, unless appropriate easements are secured from adjacent property owners, as described in Section 181.637 below.

181.6363. Guy wires associated with a SWES shall be set back at least ten (10) feet from a property line. Guy wires shall not be secured to trees but shall be secured to stationary anchors and located away from trees or other structures that may interfere with the safe operation of the SWES.



181.6364. Where wind characteristics permit, wind towers shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast from any public access.

### **181.637 Waiver of Setbacks.**

The Planning Board may waive the setback requirements in Section 181.6362 or 181.6363 if they determine that such waiver does not derogate from the intent of this section, and is in the public interest. In order for the Planning Board to grant such a waiver the applicant must present evidence that the risk is minimal and will not affect public safety or that they have secured a permanent “fall zone easement” from the affected property owner(s) for the setback area referred to in Section 181.6362. The area of the easement shall be shown on all applicable plans submitted to the Board. The terms of the easement shall prohibit the development of occupied buildings within the “fall zone” and advise all subsequent purchasers of the burdened property that the easement shall run with the land and may forever burden the subject property. In addition, the Planning Board may waive the setback requirement in Section 181.6362 for setbacks from a public or private way for good cause, or if adjacent publicly owned land or dedicated open space is determined by the board to be appropriate for use as a setback area.

### **181.638 Design Standards.**

181.6381. Support Towers. SWES shall be of a simple design with smallest overall profile. Monopole towers are the recommended type of support.

181.6382. The minimum distance between the ground and any part of a rotor, or turbine blade, shall be thirty (30) feet.

181.6383. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

181.6384. Color. Colors and surface treatment of the installation shall minimize visual disruption, for example, by painting non-reflective muted colors darker against land, lighter colors against sky, without graphics or other decoration). However, visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.

181.6385. Compliance with FAA Regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

181.6386. No SWES shall be visibly lit, except to the extent required by the FAA, or other governmental authority that regulates air traffic.

181.6387. Small Wind Energy Systems shall not be used for displaying any advertising.

181.6388. Appropriate landscaping shall be provided to screen accessory structures from roads and adjacent residences.

181.6389. Noise. The SWES and associated equipment shall conform with the provisions of the Department of Environmental Protection’s (Mass DEP) Division of Air Quality Noise Regulations (310 CMR 7.10).

181.63810. Prevention of Access. All related components of the SWES shall be designed and protected to prevent unauthorized access. Fencing serving this purpose but compatible with the characteristics of the neighborhood may be required to control access to the SWES. No razor wire shall be permitted.

181.63811. Facility Conditions. SWES owners and operators shall maintain the SWES in good condition and provide for the ongoing maintenance in accordance with the conditions of the Special Permit, manufacturer's specifications and governmental regulations for all structural, electrical and mechanical operations to ensure safe operation of the SWES.

### **181.639 Additional Provisions.**

181.6391. Safety Determination. Any SWES found to be unsafe by the Zoning Enforcement Officer or the Building Inspector shall be repaired or removed pursuant to his or her direction.

181.6392. No SWES that is interconnected with the electric system may be put in operation prior to execution of an Interconnection Agreement with the local electric utility.

181.6393. If any wind energy system is substantially not operated for a continuous period of 12 months, the Zoning Enforcement Officer may determine the facility to be abandoned.

181.6394. If the SWES owner or operator fails to remove the SWES in accordance with the requirements of this section, the City of Fitchburg shall have all the remedies available under Massachusetts General Laws.

181.6395. If the Zoning Enforcement officer or the board of health or its agent determines that the noises emanating from an SWES creates an unreasonable interference with abutters in the immediate vicinity or that it may be interfering with electromagnetic communication unreasonably, the SWES owner or operator shall be required, at its expense, to have prepared by an independent professional engineer with expertise in the subject matter, a study that measures and demonstrates compliance with the standards in this ordinance.

181.6396. At the discretion of the Planning Board and if required by the Special Permit, the owner of an SWES, or other responsible appropriate person, may be required to provide to the building commissioner annual certification demonstrating continuing compliance with applicable standards regarding noise, shadow flicker, structural integrity, air traffic safety, radio emissions safety, or other issues of importance to the purposes of this regulation.

181.6397. The Planning Board may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a review will be at the expense of the applicant pursuant to MGL C. 44, S. 53G as may from time to time be amended.

181.6398. Expiration. A permit issued pursuant to this ordinance shall expire if: (a) the SWES is not installed and functioning within 24-months from the date the permit is issued; (b) the SWES is abandoned; or (c) the term stated in the Special Permit expires without renewal or extension; or (d) the holder of the Special Permit or the owner of the SWES is found to have violated the requirements of this ordinance, the conditions of the Special Permit or the enforcement orders of the Zoning Enforcement Officer after hearing on notice to interested persons.

181.6399. Violations. It is unlawful for any person to construct, install, modify or operate a SWES that is not in compliance with this ordinance or with any condition contained in a special permit decision or building permit issued pursuant to this ordinance. SWES installed prior to the adoption of this ordinance are exempt.

## **181.64 MARIJUANA ESTABLISHMENTS.**

### **181.641 Regulation.**

MGL C. 94G and C. 94I authorize a system of state licensing for businesses engaging in the cultivation, testing, processing and manufacturing, and retail sales of non-medical and medical marijuana respectively, and collectively referred to as Marijuana Establishments (MEs). MGL C. 94G, S. 3 allows cities to adopt ordinances that impose reasonable safeguards on the operation of non-medical and medical marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with the law. The special permit and site plan review requirements set forth in this Section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

### **181.642 Purpose.**

The purpose of this ordinance is to allow state-licensed MEs to exist in the City of Fitchburg in accordance with applicable state laws and regulations and impose reasonable safeguards to govern the time, place and manner of ME operations and any business dealing in Marijuana Accessories in such a way as to ensure public health, safety, well-being, and reduce undue impacts on the natural environment subject to the provisions of this Zoning Ordinance, MGL C. 40A, MGL C. 94G, MGL C. 94I, and any other applicable law. Therefore, this ordinance may permit MEs in locations suitable for lawful MEs where there is access to regional roadways, where they may be readily monitored by law enforcement for health and public safety purposes, and to minimize adverse impacts on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, operation security, and removal of MEs.

### **181.643 Definitions.**

Where not expressly defined in the Zoning Ordinance, terms used in this Zoning Ordinance referring to marijuana shall be interpreted as defined in MGL C. 94G and 94I, as the same may be amended from time to time, and regulations issued by the Cannabis Control Commission (CCC). The following definitions, consistent with this expressed intent, shall apply in the interpretation and enforcement of this section:

1. "Marijuana Products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for non-medical use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
2. "Marijuana Establishment" (ME), a Marijuana Cultivator, Independent Testing laboratory, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Transporter, Marijuana Delivery Courier, Marijuana Delivery Operator or any other type of licensed non-medical and/or medical marijuana-related business.
3. "Marijuana Cultivator" (MC), an entity licensed to cultivate, process and package non-medical and/or medical marijuana, to deliver non-medical and/or medical marijuana to ME's and to transfer marijuana to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MC.

4. "Marijuana Product Manufacturer" (MPM), an entity licensed to obtain, manufacture, process and package non-medical and/or medical marijuana and marijuana products, to deliver non-medical marijuana and marijuana products to ME's and to transfer non-medical marijuana and/or medical marijuana products to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MPM.
5. "Marijuana Retailer" (MR), an entity licensed to purchase and deliver non-medical marijuana and/or medical marijuana products from ME's and to deliver, sell or otherwise transfer non-medical and/or medical marijuana products to ME's and to consumers.
6. "Independent testing laboratory", a laboratory that is licensed by the CCC and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the CCC; (ii) independent financially from any medical and/or non-medical marijuana treatment center or any licensee or ME for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the CCC pursuant to MGL C. 94G.
7. "Co-located Marijuana Operations" (CMO), an entity operating under both a Medical Marijuana Treatment Center (MMTC)) registration pursuant to 935 CMR 501.000: Medical Use of Marijuana, and under at least one Marijuana Establishment license pursuant to 935 CMR 500.000: Adult Use of Marijuana, on the same premise. Co-located marijuana operations pertain to cultivation, product manufacturing, and retail, but not any other adult-use license.
8. "Experienced Operator," any ME facilities, as defined by Section 181.643 of the Zoning Ordinance, having already received a special permit and site plan review approval by the City, prior to the passage of Section 181.64 of this Ordinance, which remain in good standing without violation of any ordinance, statute, or condition of their special permit.
9. "Moral Character" means the degree to which a person's history demonstrates honesty, fairness and respect for the rights of others and for conformance to the law, which may include consideration of whether an individual has:
  - a. Ever had a professional license denied, suspended or revoked;
  - b. Ever had a business license denied, suspended or revoked;
  - c. Ever had a marijuana-related business license denied, suspended, revoked, or placed on administrative hold, or was subjected to a fine for violation of a marijuana-related zoning ordinance;
  - d. Ever had a business temporarily or permanently closed for failure to comply with any tax, health, building, fire, zoning, or safety law;
  - e. Ever had an administrative, civil or criminal finding of delinquency for failure to file or failure to pay employment, sales, property or use taxes;
  - f. Ever been convicted of a felony, sex offense, or other offense involving violence, distribution of controlled substances, excluding marijuana-related possession offenses, or other moral turpitude;
  - g. Within the previous sixty months been convicted of a misdemeanor or other offense involving the distribution of controlled substances, or driving under the influence of alcohol or other substance (DUI, OUI) convictions.

10. "Marijuana Transporter" means an entity, not otherwise licensed by the Commission that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third-Party Transporter."
11. "Marijuana Delivery Courier", an entity licensed to deliver Finished Marijuana Products, Marijuana Accessories and Branded Goods directly to Consumers from a Marijuana Retailer, or directly to Registered Qualifying Patients or Caregivers from an MTC, but is not authorized to sell Marijuana or Marijuana Products directly to Consumers, Registered Qualifying Patients or Caregivers and is not authorized to Wholesale, Warehouse, Process, Repackage, or White-Label. All as further defined in 953 CMR 500.00 et seq. A Marijuana Courier is an additional license type under MGL C. 94G S. 4(b)(1) that allows for limited delivery of Marijuana or Marijuana Products to Consumers; and shall not be considered to be a Marijuana Retailer under 935 CMR 500.002 or 500.050 and shall be subject to 935 CMR 500.050 (1)(b).
12. "Marijuana Delivery Operator", an entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, Microbusinesses or Craft Marijuana Cooperative, and White-label, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license, all as further defined in 935 CMR 500.00 et seq. A delivery Operator is an additional license type under MGL C. 94G S. 4(b)(1) that allows for limited delivery of Marijuana or Marijuana Products to Consumers; and shall not be considered to be a Marijuana Retailer under 935 CMR 500.002 or 500.050 and shall be subject to 935 CMR 500.050 (1)(b).

#### **181.644 Prohibitions and Limitations.**

181.6441. It shall be unlawful for any person to operate a ME without obtaining a special permit and undergoing site plan approval pursuant to the requirements of this Ordinance, except as provided for an Experienced Operator.

181.6442. An Experienced Operator may operate a Non-Medical ME of the same type as the medical marijuana facility for which they have been granted a special permit and approved site plan review by the City without obtaining a new special permit, provided that the Experienced Operator must receive site plan approval for the new use as a ME, that the ME is located in the same facility for which the Experienced Operator received the prior special permit and site plan approval, and that the gross square footage of such facility is not increased by more than ten (10%) percent.

181.6443. A separate special permit is required for each different ME detailed in Section 181.643 above, or in the case of an Experienced Operator, a separate site plan review.

181.6444. The number of ME's shall be limited to the amount specified by City ordinance Section 56, as the same may be amended from time to time. No special permit may be granted for a ME which results in a violation of this limit.

181.6445. A ME may only be involved in the use permitted by its definition. MRs may only be located in buildings containing other retail, commercial, residential, industrial, or any other uses, including other types of MEs, if the MR is separated by full walls from any and all other uses.

181.6446. MEs are permissible only in zoning districts in accordance with [181.313](#) of the Table of Principal Uses and any further limitations specified in Section 181.64. Notwithstanding the provisions of Section [181.313](#) (Table of Principal Use Regulations), no special permit may be granted for any MR located in that portion of the Downtown Business and Intown District Zoning Districts that includes Main Street which lies to the north of the railroad track dissecting said specific zone and west of the intersection of Holt Street and Summer Street until the intersection of Main Street and Prospect Street. Social Consumption Establishments, so called, are prohibited as a use.

181.6447. An entity engaged in Co-located Marijuana Operations (CMOs) must comply with the provisions of this ordinance and the Massachusetts adult-use marijuana laws, St. 2017, C. 55; MGL C. 94G; MGL 94I; 935 CMR 500.000: Adult Use of Marijuana; 935 CMR 501.000: Medical Use of Marijuana and 935 CMR 502.000. In addition to 935 CMR 502.000, 935 CMR 500.000 and 935 CMR 501.000 control for CMOs.

181.6448. MEs shall be prohibited as an Accessory Use or Home Occupation in all zoning districts. No ME shall be permitted to have drive-up or walk-up facilities as described in Section [181.3245](#) of this Zoning Ordinance.

181.6449. No Marijuana or Marijuana Product shall be smoked, eaten, ingested, consumed or otherwise used within the premises of any ME.

181.64410. No ME may be operated in a mobile facility or outside of a fully enclosed building or structure, excepting deliveries to off-site MRs and/or and home deliveries to consumers permitted or licensed by applicable state and local regulations.

181.64411. No ME may be operated in such a manner as to cause or create a public nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

181.64412. The issuance of a special permit and site plan review pursuant to this chapter does not create an exception, defense, or immunity to any person or entity in regard to any potential criminal liability the person or entity may have for the production, distribution, or possession of marijuana.

181.64413. There shall be no use variances issued for any ME.

### **181.645 Application.**

In addition to the materials required under Section [181.94](#) (Special Permits) and Section [181.95](#) (Site Plan Review) of this Ordinance, the applicant shall submit the following:

1. The name and address of each owner of the ME facility/operation.
2. Proof of application to the CCC for the proposed ME including submittal of copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the proposed ME.

3. A notarized statement signed by the organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the applicant must disclose the identity of all such responsible individual persons.
4. Evidence that the Applicant has site control and right to use the site for a ME facility in the form of a deed or executed purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement.
5. The name, address, email address, and phone number of all designated Managers of the ME, together with a criminal background check of such Managers and other evidence of Moral Character.
6. Proof that the detailed security plan, operation and management plan, and emergency response plans have been submitted to the Fitchburg Police Department and the Department of Planning and Community Development for comment and review at the same time or prior to the submission of the application, and any comment or response received by the applicant.
7. Proof that the applicant provided notification in writing at the same time or prior to the submission of the application to all property owners and operators of the uses listed under [181.646\(5\)](#) within three hundred (300) feet of its proposed location and use, to provide them with the opportunity to comment to the Planning Board, as well as any and all comment or response received by the applicant.
8. Detailed site plans that include the following information:
  - a. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of this Ordinance.
  - b. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic.
  - c. Convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected be substantially affected by on-site changes.
  - d. Adequacy as to the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises, including designated parking for home delivery vehicle(s), as applicable.
  - e. Design and appearance of proposed buildings, structures, signage, trash receptacles, screening and landscaping, minimizing any adverse visual or economic impacts on abutters and other parties in interest.
  - f. Adequacy of water supply, surface and subsurface drainage and light.
  - g. A detailed floor plan of the premises identifying the square footage available and describes the functional areas of the ME, including areas for any preparation of marijuana products.
  - h. Details showing all exterior proposed security measures for the ME including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.
9. A description of the security measures, including employee security policies, consistent with the applicable provisions in CCC regulations 935 CMR 500.110 or 935 CMR 501.110 for the ME. An active security system shall be required for all locations and all security measures shall be approved by the Fire and Police Chiefs.



10. A traffic study to establish ME facility impacts at peak demand times.
11. A copy of each operating procedure consistent with the applicable provisions in 935 CMR 500.105(1) or 935 CMR 501.105(1), including any applicable additional CCC operational requirements for ME's.
12. A copy of the policies and procedures for individual, patient or personal caregiver home-delivery consistent with the applicable MDPH or CCC regulatory provisions for the ME.
13. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between MEs consistent with the applicable provisions in 935 CMR 501.120(13).
14. A copy of proposed waste disposal procedures consistent with the applicable provisions in 935 CMR 500.105(12) or 935 CMR 501.105(12).
15. A description of any waivers from CCC regulations issued for the ME.
16. Description of Activities. A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana products, on-site sales, off-site deliveries, distribution of educational materials, operating hours of ME and other programs or activities.
17. Service Area. A map and narrative describing the area proposed to be served by the ME and the anticipated number of clients that will be served within that area. This description shall indicate where any other MEs exist or have been proposed within the expected service area
18. Evidence demonstrating that the ME will be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located. This may include but shall not be limited to evidence of Moral Character.
19. Certificate of Tax Compliance for subject parcel(s), along with identification of any outstanding taxes, fees or fines for other properties either owned by the current property owner and/or applicant within the City.
20. Buffer Area Map. A map indicating the 300-foot radius surrounding the proposed ME (as measured from the nearest point of the structure of the ME to the nearest point of the property line of the protected use) as evidence that the facility is located at least 300 feet from uses identified under section 181.646(5.) Include street address and distance to each applicable property within 300 feet.
21. Proof that the ME is registered to do business in the Commonwealth as a domestic business corporation or another domestic business entity and the corporation or entity in good standing with the Secretary of the Commonwealth and DOR.
  - a. A certificate of good standing, issued within the previous 90 days from submission of an application, from the Corporations Division of the Secretary of the Commonwealth; and
  - b. A certificate of good standing or certificate of tax compliance issued within the previous 90 days from submission of an application, from the DOR.
22. Submission of a notarized "Moral Character" Disclosure Form for each ME owner and manager.
23. Submission of a notarized "Authorization for Release of Information" form (including any associated fees) authorizing the City of Fitchburg Police Department to conduct a detailed background check for all designated owners and/or managers of the ME.
24. Zoning determination from the Office of the Building Commissioner.

181.6451. Upon receipt of a completed application, the Planning Board shall refer copies of the application to the Building Department, Fire Department, Police Department, Board of Health, Conservation Commission, and the Engineering Division of the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 35 days of referral of the application shall be deemed lack of opposition.

181.6452. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other municipal boards and departments, the Planning Board may act upon the application for special permit and approval of site plan.

181.6453. In instances where any portion of a project involves a special permit application to or site plan review by the Planning Board for any ME, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.

#### **181.646 Special Permit Criteria and Findings.**

ME's may be permitted pursuant to a Special Permit and Site Plan Review granted by the Planning Board. In granting a special permit for a ME, in addition to the general criteria for a special permit in Section [181.94](#) of the Zoning Ordinance, the Planning Board must also make the following findings:

1. The property where the specific ME use is proposed is within a zoning district where such use is permissible in accordance with [181.313](#) of the Table of Principal Uses.
2. The applicant has demonstrated that the ME has or will meet all of the permitting requirements of all applicable agencies within the Commonwealth and is or will be in compliance with all applicable state laws and regulations, including, but not limited to MGL C. 94G, S. 12 General Marijuana Establishment Operation and C. 94I, if applicable.
3. The applicant has or will enter into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.
4. The grant of the special permit will not exceed the limitation on permitted MRs set forth in Section [181.6444](#).
5. The ME is located at least three hundred (300) feet distant of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, a vocational school, a public or private college, junior college, university or dormitory, a licensed child care facility, a library, a playground, a public park, a youth center, a public swimming pool, a video arcade facility, any facility in which minors commonly congregate, or any residence, including commercial residences such as hotels, motels, lodging houses, etc. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses to the nearest point of the structure of the proposed ME.
  - a. The distance requirement may be reduced by the Planning Board provided that the applicant demonstrates, by clear and convincing evidence, that 1) the ME will employ adequate measures to prevent product diversion to minors, and 2) the ME is adequately buffered, and 3) the Planning Board determines that a shorter distance will suffice to accomplish the objectives set forth under [181.642](#).

6. The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users, and adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility and its impact on neighboring uses.
7. The ME facility is compliant with requirements of the American Disabilities Act (ADA) Accessibility Guidelines.
8. The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required measures and restrictions on visibility into the building's interior.
9. The ME facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest.
10. Refuse and service areas are designed to be secure and shielded from abutting use.
11. A MR facility shall not have a gross floor area in excess of five thousand (5,000) square feet.
12. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance including dimensional regulations and any applicable city ordinances.
13. The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that storage and location of cultivation is adequately secured.
14. The facility will not place an undue burden on public safety services of the City as may be adequately established to the satisfaction of the Planning Board, which shall consider the facility's lighting, whether or not all of the facility is visible from a public way, whether or not the parking is contiguous with the facility or the parking arrangements are capable of being monitored by the applicant or the City, and whether or not the facility is or can be set up to promote the effective monitoring by Police Department patrols, as well as any other factors affecting public safety.
15. The applicant has demonstrated, by substantial evidence of Moral Character and other evidence, that it will operate the ME in conformity with all applicable municipal ordinances, state laws and regulations and that its policies and procedures are designed to prevent violation of such laws, particularly including but not limited to Section [181.644](#) above.
16. All aspects of ME facility operations will take place at a fixed location within a fully enclosed permanent building and shall not be visible from the exterior of the business.

#### **181.647 Site Plan Review/Special Permit Conditions.**

The Planning Board shall conduct site plan review and shall impose conditions reasonably appropriate to improve site design, traffic flow, and public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's ME, the following conditions shall be included in any site plan review or special permit granted under this Ordinance:

1. The ME hours of operation, including dispatch of home deliveries, shall be set forth within the special permit, and shall generally be consistent with those for package stores licensed under MGL C. 138; but in no event shall an ME facility be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
2. Any type of marijuana establishment may only be involved in the uses permitted by its definition and may not include other businesses or services.
3. No outside storage is permitted.
4. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.
5. All business signage shall be subject to the requirements to be promulgated by the CCC and the requirements of Section [181.53](#) of this Zoning Ordinance.
6. A medical MR facility shall have signage displayed on the exterior of the MR facility's entrance in plain sight of clients stating that "Registration Card issued by the MA Cannabis Control Commission required" in text two inches in height.
7. Temporary and promotional signage is prohibited for ME facilities.
8. The ME shall not violate any provision of the Zoning Ordinance, including but not limited to Section [181.644](#) above.
9. No use shall be allowed by the ME which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.
10. Display of marijuana, Marijuana Products and Marijuana Accessories shall be limited to an area which is accessible only by persons aged twenty-one (21) years or older, or persons holding a patient registration card or a caregiver, and the applicant shall establish such controls and monitoring as are necessary to ensure that this area is not accessed by persons under the age of twenty-one (21) years or persons not holding a patient registration card.
11. Ventilation – all facilities shall be ventilated in such a manner that no:
  - 1) Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
  - 2) No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.
12. The ME shall regularly verify to the City its efforts to ensure the health, safety, and well-being of the public, and to limit undue impacts on the natural environment, by the use of high efficiency equipment to limit energy and water usage demand, by the purchase of renewable energy credits, by the use of LED lighting equipment, by the prohibition or limitation of pesticides, insecticides and similar chemicals, and by any other methods designed to further this purpose.
  - a. The Planning Board may impose specific conditions relating to the preservation or improvement of public safety, including but not limited to lighting, visibility, surveillance, security cameras, parking arrangements, and accessibility for police patrol.
  - b. ME shall be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located.

13. The applicant will enter into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.
14. The marijuana establishment facility shall provide to the Building Commissioner, Board of Health and Police Department, the names, telephone numbers and electronic mail addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
15. The owner or manager of a marijuana establishment shall respond by phone or email within twenty-four (24) hours of contact by a city official concerning their ME at the phone number or email address provided to the City as the contact for the business.
16. A marijuana establishment facility and affiliated vehicles shall be open to inspection by the Fire Department, Police Department, Building Official and the Board of Health at any time with notice. Said Officials may enter upon any premises used by a ME for the purposes of his or her business, ascertain how he or she conducts his or her business and examine all articles stored in or upon said premises, and all books, surveillance and inventories shall be exhibited to any above named whenever a demand shall be made for such exhibition.
17. The permit holder shall notify the Building Commissioner, Board of Health, Police Department, Fire Department and City Council in writing within twelve (12) hours following a violation or potential violation of any law or criminal or potential criminal activities or attempts of violation of any law at the ME.
18. The permit holder of a ME shall file a copy of any Incident Report required under the applicable provisions in 935 CMR 500.110(9) or 935 CMR 501.110(9) with the Building Commissioner, Police Chief, and Board of Health within 24 hours of creation. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
19. The permit holder of a ME shall file a copy of any summary cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by the CCC or the Division of Administrative Law Appeals, as applicable, regarding the ME with the Building Commissioner, Police Chief, Board of Health, Planning Board, City Council and Mayor within 48 hours of receipt.
20. Records of a marijuana establishment must be available for inspection by the Fitchburg Police Chief, Fire Chief, Building Commissioner and Board of Health upon request. In addition to required records and procedures as provided by City of Fitchburg Ordinance, code, or regulation, the ME shall also produce written records that are subject to inspection as required in any applicable section of 935 CMR 500.105 or 935 CMR 501.105, including 935 CMR 500.105(8) or 935 CMR 501.105(8) inventory records of the preceding month (date of the inventory, a summary of the inventory findings, and the names, signature, and titles of the individuals who conducted the inventory), and additional information as may be determined by the Official.
21. Permitted marijuana establishment facilities shall file an annual report to the Building Commissioner, Planning Board and City Council no later than January 31<sup>st</sup> of each year, including a copy of all current applicable state licenses for the facility and/or its owners, managers and agents demonstrating continued compliance with the conditions of the Special Permit. The Special Permit shall be subject to revocation for violations and/or breaches of the conditions of the Special Permit.
22. The permit holder shall notify the Building Commissioner, Police Chief, Board of Health, Planning Board, City Council and Mayor in writing within 48 hours of the cessation of operation of the ME or the expiration or termination of the permit holder's registration with the CCC.

23. No Building Permit or Certificate of Occupancy shall be issued for a ME that is not properly registered with the Cannabis Control Commission (CCC).
24. A ME facility shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state Registration or ceasing its operation. Prior to the issuance of a Building Permit for a ME the applicant is required to post with the City Treasurer a bond or other form of financial security acceptable to said Treasurer in an amount set by the Planning Board. The amount shall be sufficient to cover the costs of the town removing all materials, plants, equipment and other paraphernalia if the applicant fails to do so. The Building Inspector shall give the applicant 45 days written notice in advance of taking such action. Should the applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 45 days written notice, said bond shall be returned to the applicant.

#### **181.648 Termination and Modification.**

181.6481. A special permit or site plan approval may be terminated due to violation of any of its conditions. In addition, a special permit or site plan approval shall terminate upon:

1. Failure of the permit holder to commence operations at the ME within twelve (12) months of the date of approval; or
2. Transfer of ownership of the ME without approval of the Planning Board. For these purposes, transfer of ownership shall include any reallocation of ownership or change in business structure which results in a change of its designated representatives or responsible individuals; or
3. Termination of the Host Community Agreement or failure to pay a host fee or Impact Fee under the Agreement to the City.
4. A finding that an ME facility is conducting an ME use for which it has not obtained a license or approved by the Special Permit Granting Authority.
5. The expiration or termination of the applicant's registration by MDPH or CCC.
6. The permit holder's cession of operations of the ME.

181.6482. A special permit or site plan approval may be modified by the Planning Board after public hearing. No modification is permitted for a change of location; a special permit holder must submit a new application for a change in location. If the registration for a ME has expired or has been revoked, or transferred to another controlling entity, a new special permit shall be required prior to issuance of a Certificate of Occupancy. Any changes in the application materials from the original materials must be submitted with a request for modification. No transfer of ownership, except a transfer to an affiliated entity, shall be permitted for two years after the date of approval of the special permit or site plan review unless required due to the death or disability of an owner. If the special permit holder requests approval of a transfer of ownership, then the holder must submit proof:

1. That the new owner will operate the ME in accordance with the terms of the special permit, as shown by evidence of Moral Character and other substantial evidence; and
2. That all amounts due under the Host Community Agreement have been timely paid and no taxes, fines, penalties, fees, or other charges due to the City are currently unpaid.

## ***181.65 ARTISAN MANUFACTURING AND FOOD AND BEVERAGE.***

### **181.651 Purpose.**

To promote the creation and operation of small-scale manufacturing and food and beverage production operations that can operate in a synergistic or otherwise non-disruptive fashion in non-industrial areas, enabling increased economic versatility and productive use of otherwise underutilized spaces. Such operations may include, but are not limited to, textiles, hardware, woodworking, metalworking, 3D printing, or craft brewing and baking.

### **181.652 Standards.**

181.6521. Artisan and Food and Beverage Manufacturing means the manufacturing of finished products or parts including processing, fabrication, assembly, treatment, and packaging of such products and parts, and incidental storage, sales, and distribution, where all manufacturing processes and noise, smoke, heat, glare, vibration, and odor resulting from the manufacturing processes are contained entirely within a building or not detectable beyond the property boundary. Brewing, baking, and other cooking processes are exempt from the odor provision but subject to all other standards in this section.

181.6522. Activity shall conform with Section [181.55](#) Environmental Performance Standards.

181.6523. There shall be no outside storage or unenclosed disposal of materials.

181.6524. Outdoor consumption of products shall be subject to Section [181.95](#) Site Plan Review.

## ***181.66 LARGE SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC FACILITIES.***

### **181.661 Purpose.**

The purpose of this section is to provide for the creation of new large scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources, and to provide adequate financial assurance for the eventual decommissioning of such installations. The provisions set forth in this section shall apply to the construction, operation, and/or repair of large scale ground-mounted solar photovoltaic installations

### **181.662 Applicability.**

This section applies to large scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

### **181.663 General Requirements.**

Large Scale Ground-Mounted Solar Photovoltaic Facilities may be constructed as set forth in Section [181.313](#), Table of Principal Uses, subject to the requirements set forth herein, upon the issuance of a special permit and site plan approval by the Planning Board, pursuant to Sections [181.94](#) and [181.95](#). The following requirements shall apply:

- A. Compliance with laws, ordinances and regulations. The construction and operation of all large scale solar photovoltaic 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 of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.
- B. Building permit and building inspection. No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining appropriate permits.
- C. Fees. The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.
- D. General. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

### **181.664 Application Requirements.**

Pursuant to the special permit and site plan review process, the project proponent shall include the following information and plans, unless otherwise waived by the Planning Board after consideration and approval of a written request of the applicant:

- A. A site plan conforming to the requirements of [181.955](#) and showing:
  - 1. Property lines and physical features, including roads for the project site; and location of structures and residences within 300 feet of the property lines.
  - 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, security fencing, screening vegetation or structures;
  - 3. Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
  - 4. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - 5. Documentation of the major system components to be used, including the PV panels, mounting system, battery storage, and inverter;
  - 6. Name, address, and contact information for proposed system installer, if not available at the time of application prior to issuance of building permit;
  - 7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
  - 8. The name, contact information and signature of any agents representing the project proponent; and
- B. Documentation of actual or prospective access and control of the project site (see also Subsection 181.664(G);
- C. An operation and maintenance plan;
- D. Zoning district designation for the parcel(s) of land comprising the project site [submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose];
- E. Proof of liability insurance; and
- F. Description of financial surety that satisfies Subsection [181.6673\(E\)](#).



- G. Site control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation. Fencing along the site's perimeter shall be provided to control access to a large scale ground-mounted solar photovoltaic facility in order to prevent access to the facility. The fencing shall be compatible with the character of the City and shall not consist of barbed wire or razor wire.
- H. The project proponent shall submit a plan for the operation and maintenance of the large scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.
- I. Utility notification. No large scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the local electric utility has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems less than 250 kW shall be exempt from this requirement. The Building Commissioner may issue a permit only if the large scale ground-mounted solar photovoltaic device complies with this section.
- J. Execution of a PILOT Agreement with the City of Fitchburg prior to operation of the facility, as applicable

#### **181.665 Waivers.**

The Planning Board may waive the requirements of Section 181.664 as it deems appropriate. The Planning Board may waive the setback requirements of 181.666 if the Board determines that such a waiver does not derogate from the intent of this section and is in the public interest; provided, however, that no such setback waiver shall be granted in the Rural Residential District.

#### **181.666 Dimension and Density Requirements.**

181.6661 Setbacks. For large scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

- A. Front yard: The front yard depth shall be at least 50 feet.
- B. Side yard: Each side yard shall have a depth at least 100 feet.
- C. Rear yard: The rear yard depth shall be at least 100 feet.
- D. Appurtenant structures. All appurtenant structures shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual or noise impacts.

## **181.667 Project Requirements.**

### **181.6671. Design Standards**

- A. Lighting. Lighting of solar photovoltaic installations shall be consistent with dark sky requirements and local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety, security, and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
- B. Signage. Signs on large scale ground-mounted solar photovoltaic installations shall comply with Section [181.53](#) of this Zoning Ordinance. A sign consistent with Section 181.53 of this Zoning Ordinance shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.
- C. Utility connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the electric utility. If an existing aboveground connection solution already exists, however, this can be used if it meets the requirements of the electric utility. Electrical transformers for utility interconnections may be aboveground if required by the electric utility.
- D. Stormwater management. Calculations of storm drainage to demonstrate and assure compliance with the requirements of all applicable federal, state and local regulations and guidelines including, but not limited to, the Department of Environmental Protection Stormwater Management Policy, as it may be amended, must be provided for any large scale solar photovoltaic installation.
- E. Noise. Documentation shall be provided demonstrating the solar photovoltaic installation and appurtenant structures and equipment conform with the provisions of the Massachusetts Department of Environmental Protection (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10) as most recently amended.
- F. Visual Impact. Reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures as determined by the Planning Board. Landscaping shall be provided and maintained by the owner. Residential uses shall be screened from the solar photovoltaic system by means of fencing, plantings and/or maintenance of trees of a species hardy to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses.

### **181.6672. Safety and Environmental Standards.**

- A. Emergency services. The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief and electric utility. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down

the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

- B. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws. Unreasonable land clearing, as determined by the Planning Board, is prohibited.
- C. Monitoring and maintenance.
  - 1. Solar photovoltaic installation conditions. The large scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, stormwater management, landscaping and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and emergency medical services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.
  - 2. Modifications. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board and the electric utility.

#### 181.6673. Abandonment or Decommissioning.

Removal requirements. Any large scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Subsection 181.6673(D) shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- A. Physical removal of all large scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- B. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- C. Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- D. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation.
- E. Financial surety. Proponents of large scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the City must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event

to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by an independent consultant retained by the City at the expense of the project proponent. Such surety will not be required for municipally or state-owned facilities. The surety amount shall be based on a fully inclusive estimate of the costs associated with removal, prepared by such an independent consultant. The amount shall include a mechanism for calculating increased removal costs due to inflation.

#### **181.668 Action by Planning Board.**

The Planning Board may grant a special permit for a large scale ground mounted solar facility where it makes the following findings:

181.6681. The proponent has demonstrated the project reflects every reasonable effort to minimize the volume of cut and fill, the number of removed trees 6-inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

181.6682. The proposed project promotes pedestrian and vehicular safety both on the site and egressing from it;

181.6683. The proposed project does not create adverse visual impacts from publicly accessible locations;

181.6684. Visual intrusions have been satisfactorily mitigated by controlling the visibility of the area viewed from public ways or premises residentially used or zoned;

181.6685. Noise from operation shall conform with the provisions of the Massachusetts Department of Environmental Protection (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10) as most recently amended.

181.6686. The proponent has demonstrated that proposed land clearing, disturbance of natural vegetation, and loss of habitat is limited only to what is necessary for the construction, operation and maintenance of the large scale ground-mounted solar photovoltaic installation;

181.6687. The proposed project will comply with all relevant provisions of this Zoning Ordinance

181.6688. The project, taken as a whole and with all mitigation efforts accounted for, will not have an unreasonably detrimental effect on the surrounding area.

#### ***181.67 ADAPTIVE INDUSTRIAL DISTRICT (AI).***

##### **181.671 Purpose.**

To create a district to promote the adaptive reuse of Fitchburg's historic mills, warehouses, brownfields and previously developed properties while preserving the character of the property and nearby residential and commercial neighborhoods.

### **181.672 Intended Scope.**

These provisions are primarily intended to benefit properties of the following types, provided however that the Zoning Map and not this subsection shall be dispositive in determining whether a parcel is within and subject to the provisions of the AI District:

- Mill or similar properties which lie vacant or underutilized due to functional obsolescence;
- Properties whose floor plates and building layouts were driven by the technology and business practices of the times and no longer serve the needs for which they were originally intended;
- Properties with structures whose age has contributed to their physical deterioration;
- Properties which preceded the adoption of zoning, and in which additions, property improvements, and redevelopment have presented regulatory challenges;
- Brownfield or previously developed properties whose redevelopment presented regulatory challenges.

### **181.673 Definitions.**

For the purposes of this Section, these words and phrases have the following definitions:

*“Adaptive Reuse Project” (ARP)* shall mean the reuse, conversion, or expansion of an existing mill or other building, or portion thereof, or redevelopment of property, to a use or uses in some combination determined by the Planning Board to be consistent with the intent of this Section and does not cause significant detriment to the neighborhood pursuant to Section 181.6782.

*“Permitted Uses”* shall mean any use or combination of uses set forth in the Table of Use Regulations, Section [181.313](#), or any accessory use or structure as the Planning Board may deem, in their sole discretion, as appropriate by special permit.

### **181.674 Adaptive Industrial District.**

The owner of a property within the AI District may elect to have the property governed by the provisions of the Industrial District which shall be deemed the default zoning in the event the owner decides to not utilize the provisions of this section. If a Special Permit pursuant to this section is sought for an Adaptive Reuse Project, the provisions of this section shall supersede such requirements in the default zoning or provide an alternative to such requirements.

### **181.675 Special Permit Required.**

Within the AI, an Adaptive Reuse Project (ARP) may be constructed upon the issuance of a special permit pursuant to Section [181.94](#) by the Planning Board, and upon site plan approval pursuant to Section [181.95](#), subject to the requirements set forth herein. No other use or structures shall be permitted in conjunction with an ARP, except as specifically provided herein.

### **181.676 Special Permit Granting Authority.**

The Planning Board shall serve as the special permit granting authority pursuant to this section. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. An application for a special permit shall be governed by the Planning Board's regulations and Section [181.94](#). In addition, the applicant shall submit:

181.6761. Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by the City Solicitor; and

181.6762. Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by City Solicitor.

### **181.677 Standards.**

In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all the following standards:

181.6771. *Roadways.* The principal roadway(s) within the site shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

181.6772. *Parking.* The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces shall be computed using the requirements of Section [181.51](#) or other applicable provisions acceptable to the Planning Board.

181.6773. *Loading.* Loading areas may be required by the Planning Board where deemed necessary for the efficient operation of the ARP.

181.6774. *Utilities.* All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances. The facility shall be served by the municipal water and sewer system.

181.6775. *Expansion of Existing Buildings.* Existing buildings within an AI may be expanded in accordance with the following requirements:

- A. Such expansion shall be permitted to the extent reasonably necessary, as determined by the Planning Board, to accommodate the proposed ARP.
- B. Such expansion shall be consistent with the character and scale of existing building(s) as determined by the Planning Board.

181.6776. *New Buildings.* Within the Adaptive Industrial District, new buildings may be constructed in accordance with the following requirements:

- A. The type, architectural style, and uses within such new buildings shall be subject to Planning Board approval.
- B. New buildings shall be permitted to the extent reasonably necessary to accommodate the proposed ARP.

### **181.678 Number of Dwelling Units.**

The maximum number of dwelling units shall be established by the Planning Board after reviewing the following criteria: existing structures; proposed method and efficacy of wastewater disposal; availability

of public water; parking availability and proximity to public transit, trip generation and traffic safety; character of the proposed ARP and its relation to the surrounding neighborhood(s); character of the existing buildings and the potential for reuse thereof.

181.6781. *Number of Bedrooms.* The Planning Board may ensure the diversification of dwelling units within an ARP by establishing the number of dwelling units with one, two, or three bedrooms.

#### **181.679 Action by the Planning Board.**

The Planning Board may grant a special permit for an ARP where it makes the following findings:

181.6791. The proposed ARP complies with the requirements of this section;

181.6792. The proposed ARP does not cause substantial detriment to the neighborhood after considering the following factors:

- A. noise, during the construction and operational phases;
- B. pedestrian and vehicular traffic;
- C. environmental harm;
- D. visual impact caused by the character and scale of the proposed structure(s);
- E. other consequences as may be set forth in the Development Impact Statement for the ARP.

181.6793. The Planning Board may impose conditions in the grant of any special permit, including, but not limited to, the following:

- A. that all construction or infrastructure and improvements shall be completed within a specific time period;
- B. that all aspects of the ARP, including authorized uses, building occupancy, and intensity of use, shall remain in substantial conformance with the plans and other documents submitted to the Planning Board as part of the special permit proceeding unless modification of the special permit for the ARP is authorized, after public hearing, by the Planning Board;
- C. that a performance guarantee suitable to the Planning Board may be required.

#### **181.68 FARMERS' MARKETS.**

##### **181.681 Purpose.**

The purpose of this section is to promote farmers' markets for connecting and mutually benefiting Massachusetts farmers, communities, and shoppers while promoting and selling products grown and raised by participating farmers.

##### **181.682 Standards.**

181.6821. Compliance with all laws. All Farmers' Markets and their vendors shall comply with all federal, state, and local laws and regulations relating to the operation, use, and enjoyment of the market premises.

181.6822. Permits and licenses. All Farmers' Markets and their vendors shall receive all required operating and health permits, and these permits (or copies) shall be in the possession of the Farmers' Market Manager or the vendor, as applicable

181.6823. Acceptance of payment from food assistance programs is strongly encouraged. For eligible goods or products sold, all Farmers' Markets and their vendors shall accept all forms of payment – or shall allow a legitimate and duly authorized third party to occupy space within the Farmers' Market area to operate a redemption program – by participants of federal, state, or local food assistance programs, including, but not limited to, the Supplemental Nutrition Assistance Program (SNAP); the Women, Infants, and Children (WIC) Farmers' Market Nutrition Program; and the Senior Farmers' Market Nutrition Program, all in a manner allowed by, and in conformance with, both federal and state laws and regulations as those laws and regulations may be amended from time to time.

181.6824. Operating rules. All Farmers' Markets shall have an established set of operating rules addressing the governance structure of the farmers' market, hours of operation, maintenance and security requirements and responsibilities; and a Market Manager.

181.6825. Market Manager. All Farmers' Markets shall have a Market Manager authorized to direct the operations of all vendors participating in the market on the site of the market during all hours of operation.

181.6826. Parking. All Farmers' Markets shall provide for a minimum of one vehicle parking space for each vendor stall. Farmer's Markets located in the Downtown Business and Intown Business Districts are exempt from this parking requirement.

181.6827. Waste. All Farmers' Markets shall arrange for waste removal in accordance with all applicable Fitchburg codes. The Farmers' Market Manager is responsible for ensuring that the site is restored to a neat condition by no later than the end of the Farmers' Market day.

181.6828. Temporary facilities. Farmers' Market facilities are designed to be temporary in nature and use the existing parking and infrastructure of the site. The use of any permanent open-air structures or other permanent facilities shall be subject to Site Plan Review by the Planning Board.

181.6829 Food permits. Farmer's market vendors that sell food products and processed foods, shall be licensed as a retail food operation and inspected by the Local Board of Health (LBOH) in accordance with Massachusetts Regulation 105 CMR 590.000 - Minimum Sanitation Standards for Food Establishments.



## **181.69 EARTH REMOVAL.**

### **181.691 Applicability.**

Earth removal shall be permitted only upon grant of a special permit in accordance with [181.94](#) from the Planning Board.

### **181.692 Conditions.**

The following conditions shall be met prior to issuance of any Special Permit under this section:

181.6921. The application shall be accompanied by a plan showing existing grades in the area from which the above material is to be removed, and in surrounding areas, together with the proposed finished grades at the conclusion of the operation, and the proposed cover vegetation and trees. Plans should also include provisions for construction phase and post-construction stormwater management and indicate temporary and permanent slope stabilization measures that will be used.

181.6922. A performance bond in an amount determined by the City Engineer shall be posted in the name of the City assuring satisfactory performance in the fulfillment of the requirements of this ordinance and such other conditions as the Planning Board may impose as conditions to the issuance of its permit in the interests of safeguarding the district and the city against injury, the future use of the land after operations are completed, or to control the transportation of such material through the city. Upon failure to comply and forfeiture of the bond, monies therefrom shall be utilized by the town for the purpose of fulfilling these requirements.

181.6923. The Planning Board shall give due consideration to the location of the proposed earth removal, to the general character of the neighborhood surrounding such location, and to the general safety of the public on the public ways in the vicinity.

### **181.693 Removal.**

Removal operations shall be subject to the following conditions.

181.6931. Removal shall not take place on any grade less than one foot above the grade level of any adjacent street or way, or below a level that would reasonably be considered a desirable grade for the later development of the area or below the grades specified on the plan accompanying the permit application.

181.6932. During removal operations, no slope shall exceed one foot vertical rise to two feet horizontal distance or the natural angle of repose of the material in a dry state, whichever is the lower, except in ledge rock.

181.6933. Provision shall be made for safe drainage of water, and for prevention of wind or water erosion carrying material onto adjoining properties or protected resources areas.

181.6934. Soil shall not be disturbed within one hundred feet of the boundaries of the premises, excepting at the conclusion of operations if required in order to improve the overall grading.

181.6935. Earth Removal activities conducted in the Water Resource Protection Overlay District (WRPOD) shall comply with additional requirements set forth in [181.81](#).

181.6936. Earth Removal activities shall comply with City of Fitchburg Stormwater Management code Section 154 and applicable provisions of the Massachusetts Department of Environmental Protection *Stormwater Management Policy Handbook: Volume I & Stormwater Technical Handbook Volume II*, and all other applicable stormwater regulations. Site drainage designs must be approved by the City Engineer.

#### **181.694 Restoration.**

Forthwith following the expiration or withdrawal of a permit, or upon voluntary cessation of operation, or upon completion of removal in a substantial area, that entire area shall be restored to reasonable condition for the uses allowed in the zoning district in which the land is located as follows:

181.6941. All land shall be so graded that no slope exceeds one foot vertical rise in three feet horizontal distance and shall be so graded as to safely provide for drainage without erosion.

181.6942. All boulders larger than one-half cubic yard shall be removed or buried.

181.6943. The entire area excepting exposed ledge rock shall be covered with not less than four inches of good quality loam, which shall be planted with cover vegetation adequate to prevent soil erosion using either grasses or ground cover, depending upon conditions.

181.6944. Bond shall not be released until sufficient time has lapsed to ascertain that the vegetation planted has successfully been established and that drainage is satisfactory.

181.6945. Additional Conditions - The Planning Board may set conditions in addition to the above before issuance of a permit, including but not limited to: duration of the permit, hours of the day during which removal may be permitted, hours during which vehicles may be permitted to leave the premises, trees to be planted, and the use of covers on loaded vehicles.

181.6946. Renewal or Revocation of Permit - A permit may be renewed only upon application and following a public hearing. Prior to renewal, inspection of the premises shall be made by the Building Commissioner to determine that the provisions of this By-Law are being complied with. The Planning Board, after hearing and proof of violation of the conditions of the agreement, of the permit, or of this By-Law, shall withdraw the permit, after which the operation shall be discontinued and the area restored in accordance with Section 181.694.

## **SECTION 181.7 SPECIAL RESIDENTIAL REGULATIONS**

### **181.71 FLEXIBLE DEVELOPMENT.**

#### **181.711 Purpose.**

The purposes of this section are:

1. To encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2. To preserve historical and archeological resources; to protect the natural environment, including Fitchburg's varied landscapes and water resources;
3. To protect the value of real property;
4. To promote more sensitive siting of buildings and better overall site planning;
5. To perpetuate the appearance of Fitchburg's traditional New England landscape;
6. To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. To offer an alternative to standard subdivision development;
8. To promote the development of housing affordable to low, moderate, and median income families; and
9. To promote the development of housing for persons over the age of fifty-five.

#### **181.712 Applicability.**

In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the City, having a total area equal to or greater than 5 (five) times the minimum lot area in which the lot or lots are located. In the case of multiple zoning districts the minimum lot area shall be prorated based on the district with the larger minimum lot area.

#### **181.713 Procedures.**

Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board the information required by Section [181.94](#).

#### **181.714 Design Process.**

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

*181.7141. Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.

*181.7142. Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

181.7143. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

181.7144. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with historical development patterns.

181.7145. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

### **181.715 Modification of Lot Requirements.**

The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

181.7151. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

### **181.716 Number of Dwelling Units.**

Dwelling units shall be allowed as follows:

181.7161. *Basic Maximum Number.* The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

181.7162. *Density Bonus.* The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed thirty-five (35%) percent of the Basic Maximum Number. All dwelling units awarded as a density bonus shall be two bedroom units. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

- A. For each additional ten percent (10%) of the site (over and above the required ten percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number.
- B. For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.

## **181.717 Standards.**

181.7171. Types of Buildings. The Flexible Development may consist of any combination of single-family, two-family and multi-family residential structures. A multi-family structure shall not contain more than five (5) dwellings. The architecture of all multi-family buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

181.7172. Roads. The principal roadway(s) serving the site shall be designed to conform with the standards of the City where the roadway is or may be ultimately intended for dedication and acceptance by the City. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

181.7173. Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

181.7174. Contiguous Open Space. A minimum of ten percent (10%) of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the City or its Conservation Commission, shall be subject to a recorded restriction enforceable by the City, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

- A. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 181.711, above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.
- B. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
- C. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths.
- D. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

181.7175. Ownership of the Contiguous Open Space. The contiguous open space shall, at the Planning Board's election, be conveyed to either:

- A. the City or its Conservation Commission; or
- B. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or
- C. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with

conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the City to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the City an easement for this purpose. In such event, the City shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the City may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

181.7176. Buffer Areas. A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50') feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the City for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

181.7177. Drainage. Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

### **181.718 Decision.**

The Planning Board may approve, approve with conditions, or deny a Special Permit for a Flexible Development after determining whether the Flexible Development better promotes the purposes of this Flexible Development section than would a conventional subdivision development of the same locus.

181.7181. Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

## **181.72 PLANNED UNIT DEVELOPMENT.**

### **181.721 Purpose.**

The Planned Unit Development provision is designed to provide various types of land uses which can be combined in a compatible relationship with each other as part of a totally planned development. It is the intent of this provision to insure compliance with good planning and zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications. The advantages which are intended to result from a planned unit development are to be ensured by the adoption of a precise development plan with a specific time limit for commencement of construction.

181.7211. The objectives of planned unit development are to:

- A. Free the development process from the constraints of conventional lot lines and inflexible zoning standards based upon lot-by-lot development.
- B. Encourage flexibility and creativity in the design of development through a carefully controlled review process of particular plans rather than the strict regulation of all plans within a zone.
- C. Encourage innovation in commercial and residential development so that the growing demand for more and varied housing may be met by a greater variety in type and design of living units.
- D. Encourage a less sprawling form of community development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land.
- E. Permanently preserve existing natural topography and wooded areas within developed areas and to provide usable open space and recreation facilities in close proximity to homes.
- F. Provide an efficient procedure which will insure appropriate, high-quality design and site planning and a high level of environmental amenity.
- G. Provide an opportunity for streamlining the redevelopment process in declining urban areas.

#### **181.722 Procedures.**

Planned unit development may be authorized in any district upon the grant of a special permit by the Planning Board. Applicants for planned unit development shall file with the Planning Board the information required by Section [181.94](#). Planned unit developments shall comply with all requirements prescribed herein.

#### **181.723 Use Provisions by District.**

The City of Fitchburg has different use and development objectives for different sections of the city. The use provisions by districts, for a planned unit development are as follows:

181.7231. *All Districts except RR.* In all districts, except Rural Residential (RR), a planned unit development may be allowed but must be limited to those permitted uses that are allowed in the RR, RA, RB, RC, DB, IB NB and FSU Districts. The minimum area for a property to be eligible under this section is the lesser of sixty thousand (60,000) square feet or 5 (five) times the minimum lot area for the district in which it is located.

- A. Such uses shall be allowed, provided that the use is non-nuisance and not objectionable because of dust, odor, fumes, smoke, refuse, glare, radiation, noise or vibration and provided also that the use is not contrary to the general welfare, safety and health of the City of Fitchburg.
- B. There can be a multiplicity of types of development, provided that, at the boundaries with existing residential development, the form and type of development on the planned unit development site boundary is compatible with the existing or potential development of the surrounding neighborhoods. Furthermore, it may be necessary to include appropriate visual screening to buffer the impact between the proposed development and adjacent properties. The plan for the total property shall be submitted, and the applicant shall clearly detail, by

engineering and architectural specifications and drawings, the manner in which the subject area is to be developed and the means that will be employed to protect the abutting property and the health, safety, welfare and privacy enjoyed thereon.

- C. Maximum bulk, density, setbacks, parking and loading requirements shall be established for each planned unit development by the development plan approved by the Planning Board.
- D. Minimum Lot Frontage: To preserve and protect the value of properties adjacent to a proposed planned unit development district and to provide for an orderly and uniform transition, lots which will be adjacent to or across the street from existing residential developments may be required to have an amount of street frontage not less than that of the minimum ordinance requirements for the zone in which they are located.
- E. Minimum lot size: Residential sizes in a planned unit development district may be reduced below the minimum standards required by the Zoning Ordinance. As a prerequisite, the developer shall demonstrate that there is a reasonable relationship between the proposed lot size and the usable and accessible open area within the total development. An individual lot shall be large enough to provide for private open space associated with the living accommodations.

**181.7232. Rural Residence District.** In a Rural Residence District (RR) a planned unit development may be allowed, subject to the above provisions in Section 181.7231 and the following:

- A. In a Rural Residence District, residential development may include single-family and multi-family units in any form of ownership, limited to a height of no more than three (3) stories.
- B. Retail and commercial use may be allowed but restricted to a total floor area not greater than ten percent (10%) of the gross floor area of the proposed residential units. All structures intended for business use shall be of superior design and be similar in architectural type as the proposed residential units. The type of retail or commercial use shall be limited to those that serve the needs of the neighborhood which may include grocery stores, barbershops, professional offices and banks.

#### **181.724 Open Space.**

Provision shall be made so that, when applicable, usable open space shall be owned by a corporation or trust owned or to be owned by the owners of lots or residential units within the development that may be approved by the Planning Board. This land will be protected by legal instruments from future development.

#### **181.725 Planning Board Approval.**

After notice and public hearing, the Planning Board, by a two-thirds vote, may grant a special permit if each of the conditions listed below have been satisfied:

181.7251. The proposed planned unit development is in harmony with the purpose and intent of this chapter and with the stated objectives, and that it will promote the purpose of this section.

181.7252. The mixture of uses in the planned unit development is determined to be sufficiently advantageous to render it appropriate to depart from the normal requirements of the district.



181.7253. The planned unit development would not result in a significant negative environmental impact.

181.7254. The planned unit development will add to the long-term assets of the community and that it will not erode the value of existing and neighboring areas.

### **181.726 Additional Conditions.**

The Planning Board may, in appropriate cases, as it determines, impose further restrictions upon the planned unit development or parts thereof as a condition to granting the special permit.

## ***181.73 ASSISTED AND INDEPENDENT LIVING FACILITIES.***

### **181.731 Purpose.**

The purpose of this section is to provide a mechanism for the approval of:

1. assisted living facilities (ALF) within a residential environment that offer supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and
2. independent living facilities (ILF) that offer congregate living arrangements to persons over the age of fifty five. It is also the purpose of this section to enable the development of ALF and ILF in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and to promote the development of ALF and ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space.

### **181.732 Definitions.**

For the purposes of this Section 181.73, these words have the following definitions:

(ALF) - An Assisted Living Residence as defined in 651 CMR 12.02.

### **181.733 Use Restrictions.**

An ALF and/or an ILF may be constructed as set forth in Section [181.313](#), Table of Principal Uses, subject to the requirements set forth herein, upon the issuance of a special permit, and upon site plan approval pursuant to Section [181.95](#).

181.7331. No other use or structures shall be permitted, except as specifically provided herein.

181.7332. An ALF or an ILF may consist of a single building or multiple buildings.

181.7333. Structures and uses accessory to the ALF or ILF may also be provided (with the exception of covered parking areas) within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult day health facility; hospice residence; food service; laundry and covered parking

areas; provided, however, that such accessory uses and structures shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly be within a structure containing residential units, and shall have not exterior advertising display.

181.7334. The facility shall be served by the municipal water and sewer system.

#### **181.734 Procedures.**

The Planning Board shall serve as the special permit granting authority for special permits under this section. The Planning Board may waive the submittal of technical information or documents otherwise required in Section [181.94](#) where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision. An application for a special permit shall be accompanied, if applicable, by a definitive plan of land pursuant to the provisions of MGL C. 41, S. 810 and 81T as the same may be from time to time amended and the Regulations of the Planning Board and a filing fee determined in accordance with the Planning Board's regulations. The applicant shall also submit copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by the City Solicitor.

#### **181.735 Standards.**

In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

181.7351. Open Space Requirement for ALFs and ILFs in Residentially Zoned Areas: As per the requirements of Section [181.71](#), "Flexible Development".

181.7352. Buffer. A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty feet (50') in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the City for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

181.7353. Removal and Replacement of Vegetation. With the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.

181.7354. Roadways and Paths. The principal roadway(s) serving the site shall be designed to conform with the standards of the City where the roadway is or may be ultimately intended for dedication and acceptance by the City. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant. Where the roadway is or may be ultimately intended for dedication and acceptance by the City, granite curbing, gray in color, is required, except in areas of very low traffic volume where no

curbing will be required. Rolled asphalt (Cape Cod berm) curbing is unacceptable in all such ways. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle, and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways on adjacent sites.

181.7355. Parking. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be 0.3 parking space per dwelling unit in an ALF and 1.0 parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) parking space shall be provided for every three (3) employees during the largest shift. The Planning Board may increase the required parking by up to 10% to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged. Textured paving or grade separated (elevated) walkways are desired on all pedestrian access ways.

181.7356. Loading. Loading areas must be at least 20' x 9' feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

181.7357. Surface Drainage. The surface drainage system shall be designed in accordance with the Regulations of the Planning Board.

181.7358. Utilities. All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances.

181.7359. Emergency Call. The ALF or ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

## **181.736 Design and Architectural Character.**

181.7361. *Massing and Style*: Building massing and style must be distinctively residential in character, drawing on the historical design elements that are contextually consistent with regional New England architecture. Historical and traditional design elements are encouraged. Front yards which use boxwood hedges, evergreen hedges, traditional style picket fences, stone walls, or iron picket fences with granite curb and pilasters is encouraged. Fences or hedges should not exceed three feet in height at the fronts of buildings. Fences and landscaping to screen service areas may exceed this height, consistent with the intent and use of the space.

181.7362. *Roofs*. Preference shall be given to roof pitches consistent with single-family, residential design. New England traditional or vernacular styles are preferred. Material must be consistent with the architecture of the building. Composition shingle material is acceptable, providing that it is of high quality and provides architectural definition to the tab shingle to emulate traditional wood shingle styles. Tile, slate, or metal roofing is permitted, provided it is consistent with the architectural style of the building. Gutters and downspouts are encouraged to provide drainage away from foundations, but must be consistent with the other architectural elements of the building. All buildings should have a chimney to convey the look and feel of residential use.

181.7363. *Facade element*. Design of the facade shall be highly detailed and articulated to be compatible with the scale and sensitivity to the residential uses of the project. Facades should have a well-defined foundation, a modulated wall element, and pitched roof or articulated cornice which defines the character of the building, and provides relation to the human scale of typical family residences.

181.7364. *Entrances*. Building entrances must comply with all current accessibility regulations, however the use of ramps and lifts is discouraged. Buildings should be designed with entrances that are barrier free for the intended residential or commercial uses. The use of sloping entry walks, covered entryways, porticos, arcades, and covered porches is encouraged. Where grade separation of an entrance is required because of site topography, accommodation should be provided in the architectural detail of the entry to allow barrier free use by building residents and visitors.

181.7365. *Door and window openings*. Doors and windows form the transition from public to private space, and should reflect residential detailing in design and placement. The use of cornices, architectural moldings, side lights, transom lights, and raised panels in doors is encouraged. Window openings should vary between buildings, but should not be unbroken and continuous in any circumstance. The use of opening sash windows with true divided lights, or detailing to convey the character of divided lights is encouraged. The use of shutters consistent with the architecture of a building is encouraged. A wide range of material for doors and windows is acceptable, except that the use of commercial, anodized or painted aluminum or steel storefront assemblies is discouraged.

181.7366. *Materials and design elements*. Material chosen for exterior elements should be consistent with the intent and use of materials traditionally found in residential design in New England. Siding materials such as clapboard and shingle are preferred, and the use of new materials which reduce maintenance, but emulate the look and feel of traditional materials is

encouraged. The use of a variety of trim material to provide detail at the eaves, comers, gables, pediments, lintels, sills, quoins, and balustrades is encouraged. The use of bays, towers, cupolas, cross gables, and dormers to provide unique character to a building and provide articulation of the facade is encouraged. The color palette chosen for any building should be consistent with colors traditionally found in residential design in New England.

### **181.737 Conversion of Structures.**

It is the intent of this subsection to permit and encourage the appropriate reuse of land and buildings that are no longer needed or suitable for their original use, and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

181.7371. The Planning Board must find that the proposal protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the City Council on the sale, lease, or transfer of the site.

181.7372. Applicants wishing to convert existing structures to be used as ALFs or ILFS may do so, subject to the following additional conditions: the buffer requirements, minimum open space requirements, and building height requirements shall be those physically existing as of July 21, 2001. Furthermore, in the process of granting a Special Permit hereunder, the Planning Board may permit expansion of the structure to the degree reasonably necessary to construct entryways and features to comply with A.D.A. requirements and fire escape and fire protection features.

### **181.738 Action by Planning Board.**

The Planning Board may grant a special permit for an ALF where it makes the following findings:

181.7381. The proposed ALF complies with the requirements of this section;

181.7382. The proposed ALF does not cause substantial detriment to the neighborhood after considering the following potential consequences:

- A. noise, during the construction and operational phases;
- B. pedestrian and vehicular traffic;
- C. environmental harm;
- D. visual impact caused by the character and scale of the proposed structure(s).

### **181.74 MULTI-FAMILY DEVELOPMENTS.**

#### **181.741 Purpose.**

- To encourage Multi-Family development and re-development in sensible locations in terms of services, transportation, infrastructure, economic opportunity and compatibility with surrounding uses.

- To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of the city and provides an environment with safety, convenience and amenity.
- To encourage mixed uses that serve residents and the general public, where applicable.
- To improve and increase housing choice.

**181.7411 Applicability.** Section 181.74 applies in all zoning districts except for University (FSU) and all Smart Growth Zoning Districts (SGZD). Section 181.74 also does not apply to Multi-Family Developments of 4 to 6 units in the IB zone. Multi-Family Developments in the FSU District are not exempt from Site Plan review under §181.95.

### **181.742 Procedures.**

Multi-family Development may be authorized upon the grant of a special permit and site plan approval by the Planning Board in accordance with Table [181.313](#) Table of Principal Use Regulations. Applicants shall file with the Planning Board the information required by Section [181.94](#) and [181.95](#) and comply with applicable requirements prescribed therein and standards below.

### **181.743 Standards.**

The following standards shall apply to Multi-Family Development (MFD) in various forms (such as but not limited to Multi-Family Development and Planned Unit Development), and is intended to establish criteria where there is none and to provide supplemental guidelines for existing housing ordinance provisions (but not supersede flexibility of those provisions):

1. For every dwelling unit above three (3) units, there shall be an increase in minimum lot area, over and above the minimum for the district, equal to one-third the minimum lot area for the district. In districts with no minimum lot area, a Multi-Family use under this section shall have a minimum lot area of two thousand five hundred (2,500) square feet per unit, including the first three (3) units.
2. For Multi-Family Developments of nine (9) or more dwelling units, the Planning Board may waive this density provision if determined that the grant of such waiver will not adversely affect the neighborhood and promotes the purpose of this section
3. There shall be a buffer zone of fifty (50) feet from any building or structure on an adjacent lot where said lot is not under the same ownership. The Planning Board may waive or reduce the buffer requirement for the reuse of an existing structure or where the Planning Board determines that a smaller buffer will not adversely affect adjoining property.
4. Unless otherwise prescribed within the Zoning Ordinance, Multi-Family Developments shall provide a minimum of one (1) paved off-street parking space for each one bedroom dwelling unit, one and one-half (1.5) paved off-street parking spaces for each two bedroom dwelling unit and two (2) paved off-street parking spaces for each dwelling unit consisting of three or more bedrooms. Non-residential uses shall conform with the provisions of Section [181.51](#) and [181.52](#). Parking areas shall otherwise comply with these provisions unless the applicant provides sufficient justification for a waiver and the Planning Board determines the grant of such waiver will not adversely affect the neighborhood and is in the public interest.
5. Where re-use of a lawfully preexisting nonconforming structure is proposed, the Planning Board may reduce the dimensional front yard, side yard, rear yard setbacks and height requirements to existing

conditions, if the Board determines the reductions will not adversely affect the neighborhood and promotes the purpose of this section.

6. The Planning Board may amend the above requirements for Multi-Family Developments in the DB and IB Districts where it finds the Multi-Family Development to be consistent with Smart Growth principles and adequate means of off-street parking is available.
7. The ownership title to all buildings and all land shall be held in a single ownership, either by a corporation or an individual.
8. All nonresidential uses shall be located within a Multi-Family dwelling on the same lot.

#### **181.744 Other Uses.**

Non-residential uses may be allowed but must be limited to those permitted uses that are allowed in the same District or otherwise allowed by Special Permit by the Planning Board in that District, in accordance with [181.313](#). Non-residential uses must be determined compatible with residential uses. It is the intention of this Section 181.744 to allow certain business uses within the development to provide services for the tenants of the development and general public. Additional parking and loading spaces conforming to the provisions of Sections [181.51](#) and [181.52](#) herein, in addition to the regular parking spaces required for Multi-Family dwellings, shall be provided.

#### **181.745 Design Standards.**

Considerations shall be made to incorporate the following design standards as applicable.

1. Provisions for snow storage/removal
2. Green Spaces
3. Common spaces
4. Pedestrian sidewalks and accessibility improvements
5. Bicycle storage
6. Trash storage/removal/screening
7. Energy efficiency
8. Electric vehicle charging stations
9. Occupant and building security
10. Preservation of historic building architectures (windows, facade etc.)
11. Exterior facade improvements
12. Landscaping, lighting and fencing improvements
13. Water and sewage shall be disposed of by means of adequate connections to the municipal system.

#### **181.75 REAR LOTS.**

##### **181.751 General.**

Individual lots in the RR and RA districts need not have the required amount of street frontage, provided that all of the following conditions can be met for each individual lot lacking such frontage.

##### **181.752 Conditions.**

181.7521. A Rear Lot must have at least two (2) times the minimum area required for the zoning district. That portion of the lot used for access from the street (i.e., the “access strip” (also known as the “pipestem” or “panhandle”) of the lot) may not be used to satisfy this minimum area requirement. *For the purposes of this section the “access strip” is determined to be that portion of the lot between the street providing frontage for such lot and the point at which the width of the lot is equal to the required lot frontage for the zoning district.*

181.7522. A Rear Lot must have an area that contains a circle with a diameter of the “normal” frontage requirement in the applicable zoning district.

181.7523. Driveway access to a Rear Lot must provide suitable access, as determined by the Building Commissioner, for emergency vehicles.

181.7524. A building line must be designated on the plan of a Rear Lot, and the width of the lot at that line must equal or exceed the number of feet normally required for street frontage in the district.

181.7525. The “access Strip” also known as the “pipestem” or “panhandle” shall be a minimum of 40 feet wide for its entire length from the street to the point at which the width of the lot is equal to the required lot frontage for the zoning district, and the Lot Frontage shall be a minimum of 40 feet. Lot Frontage shall meet all of the requirements contained in the definition of “frontage” in this Ordinance.

181.7526. Not more than one (1) Rear Lot shall be created from a property, or a set of contiguous properties held in common ownership. Documentation to this effect shall be submitted to the Planning Board along with the application for Approval Not Required or Definitive Subdivision Plans under the Subdivision Control Law. Proposed building lots submitted for such endorsement or approval under this rear lot section must first be reviewed and approved by the Planning Board as to conformance with these provisions. If such lot is found to conform to the requirements of this section, the Planning Board shall endorse the lot as “Approved as a ‘Rear Lot’ under Section 181.74 of the Fitchburg Zoning Ordinance”. This endorsement may be part of the “Approval Not Required” endorsement. The Building Commissioner shall not issue a building permit for any rear lot without first establishing that compliance with this provision has been determined by the Planning Board, and that proof of recording of the plan has been provided to the Building Commissioner.

181.7527. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.

181.7528. The applicant shall submit a plan to the Planning Board under the Subdivision Control Law depicting both the rear lot and the front lot from which the rear lot was created.

181.7529. Rear lots serving principal structures shall have front, rear, and side setbacks in compliance with those required in the district. The setback shall be measured from the point at which the lot width meets the minimum required lot width for the zoning district in which it is located.



## **181.76 RESIDENTIAL DRIVEWAY REGULATIONS.**

### **181.761 General.**

For the purpose of promoting the safety of the residents of the City of Fitchburg, an application for a building permit for a residential structure shall include a plan, at a reasonable scale, not to exceed 1 inch = 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at 10 foot or 3 meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100 feet or less from the building site of the residential structure on the premises, for all vehicles, including, but not limited to, emergency, fire, and police vehicles. The Building Inspector shall not issue a building permit for the principal structure on the premises unless all of the following conditions have been met:

181.7611. Except in access strips of less than fifty (50) feet width to rear lots, or in the case of a common driveway as set forth below, no driveway shall be located within three (3) feet of any property line, building and sidewalk except by special permit issued by the Planning Board after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles. See also applicable driveway design requirements as referenced in [181.51](#) Off-Street Parking and the City Code.

181.7612. The distance of any driveway measured from the edge of travelled portion of the way providing access to the lot to the point where the principal building is proposed shall not exceed a distance of five hundred (500) feet, unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

181.7613. The grade of each driveway where it intersects with the edge way providing access to the lot shall not exceed five percent (5%) for a distance of 20 feet from the travelled surface of such way unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

### **181.762 Common Driveways.**

Common driveways may be permitted to allow for more efficient traffic flow, to reduce traffic hazards from numerous individual driveways, to consolidate access to lots across wetland resources, and otherwise where, in the Planning Board's judgment, such an arrangement will be more advantageous to the neighborhood than separate driveways. Common driveways serving not more than two (2) lots may be allowed by special permit from the Planning Board. A common driveway shall be designed in accordance with all Planning Board Rules and Regulations, the requirements of Section [181.716](#), and all of the following conditions:

181.7621. The centerline intersection with the centerline of the way providing access to the lot shall not be less than 45 degrees.

181.7622. A minimum width of 12 feet shall be maintained over its entire length.

181.7623. A roadway surface of a minimum of four inches (4") of graded gravel shall be installed, placed over a properly prepared base, graded and compacted to drain from the crown.

181.7624. The driveway shall be located entirely within the boundaries of the lots being served by the driveway;.

181.7625. Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest.

181.7626. The Common Driveway shall be within a common access and utility easement at least twenty-five (25) feet wide. All proposed utilities within the common driveway shall be shown on the plan submitted with the Special Permit application.

181.7627. At a minimum, the first twenty-five (25) feet from the public way shall be paved with bituminous asphalt with a total thickness of three inches and return (corner) radii of twenty-five (25) feet. Longer paving distances may be required due to factors such as length or grade of driveway, erosion, visual impacts or safety factors. Access from within the common driveway to the public way shall be so drained as to prevent damage or hazard to abutting properties or public streets.

181.7628. A permanent marker not greater than six (6) square feet in area with a diagram listing addresses of the properties shall be placed at the edges of the driveway where it meets the public way and where the common driveway meets each individual lot driveway. Where a common driveway accesses a roadway other than a public way, additional address markers may be required. The common driveway may be named, but the name must be approved by the Planning Board during the Special Permit review or at the time of application for street numbering to the DPW.

181.7629. Should the Special Permit be approved, a document shall be recorded at the Registry of Deeds and shall so be recited in and attached to every deed to each lot served by the common drive. Such document must include the following:

- A. Provisions for allocating responsibility for maintenance, repair and/or reconstruction of the common driveway, drainage system and signage.
- B. Text of proposed easements including meets and bounds description.

181.7630. Any of the conditions of this Section [181.762](#) may be waived, in part or in total, at the discretion of the Planning Board, if the Board determines that the waiver(s) will not be detrimental to the purpose of the Special Permit section of the Ordinance, and will be in the best interest of the City.

## ***181.77 LODGING AND BOARDING HOUSES.***

### **181.771 Special Permit Criteria.**

Lodging and boarding houses are allowed with the issuance of a special permit and site plan approval in the RC and FSU zoning districts. In addition to the criteria in Sections [181.94](#) and [181.95](#). The Special Permit Granting Authority shall make the following findings:

- A. The propose use and structure is compatible with the scale and character of the neighborhood
- B. The site has sufficient onsite parking to serve residents and employees
- C. The property satisfies the requisite building and life safety codes
- D. The applicant has provided a satisfactory management plan
- E. The proposed use will not generate excessive traffic or noise
- F. The Special Permit will not be transferrable

## ***181.78 HOME OCCUPATIONS.***

Definition: A home occupation is defined as either:

- 1. A home business, profession or trade conducted entirely by a resident of the premises entirely within the residence, or
- 2. Home Based Contractor business that is conducted by a resident of the premises accessory to a residential use and consisting of only an office and no external storage of materials.

### **181.781 Home Occupation – As of Right.**

A home occupation may be allowed as of right, provided that it:

181.7811. is conducted by the person(s) occupying the dwelling as a primary residence;

181.7812. is clearly incidental and secondary to the use of the premises for residential purposes;

181.7813. does not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution;

181.7814. does not utilize exterior storage of material or equipment;

181.7815. does not exhibit any exterior indication, including signs, of its presence or any variation from residential appearance, provided however a single motor vehicle, not in excess of 10,000 lbs. manufacturer's GVW, exhibiting the name and particular of the business, shall be allowed.

181.7816. does not produce any customer, pupil or client trips to the occupation site and has no nonresident employees; and,

181.7817. is registered as a business with the City Clerk.

**181.782 Home Occupation – By Special Permit.**

A home occupation may be allowed by special permit issued by the Board of Appeals, provided that it:

181.7821. fully complies with Sections 181.7812, 181.7813, 181.7814, and 181.7817, above.

181.7822. is conducted by the person(s) occupying the dwelling as primary residence and, in addition to the residents of the premises, by not more than one additional employee;

181.7823. does not exhibit any exterior indication of its presence, or any variation from residential appearance, except for a sign or name plate in compliance with Section [181.53](#); and,

181.7824. a special permit for such use is granted by the Board of Appeals, subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, off-street parking, and maximum number of daily custom vehicle trips. Such special permit shall be limited to five years, or the transfer of the property, whichever first occurs.

**181.783 Prohibited Home Occupations:**

Marijuana Establishment (ME) or similar facility.

***181.79 RESIDENTIAL USES IN THE INTOWN BUSINESS (IB) DISTRICT.***

Residential uses of six (6) units or less are permitted by right in the Intown Business District provided that:

181.791 The dwelling units do not occupy the ground-floor of a structure with frontage on Main Street. Residential uses in the Intown Business (IB) District with units occupying a ground-floor structure with frontage on Main Street requires a Special Permit from the Planning Board.

181.792 Residential dwellings of three units or less are housed within a mixed-use, not standalone structure.

## **SECTION 181.8 OVERLAY DISTRICTS**

### **181.81 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD).**

#### **181.811 Purpose.**

The Water Resource Protection Overlay District (WRPOD) is adopted pursuant to authority provided by MGL C. 40A and the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the Commonwealth. The purpose of the WRPOD is:

181.8111. To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses;

181.8112. To preserve and protect existing and potential sources of drinking water supplies;

181.8113. To conserve the natural resources of the City; and

181.8114. To prevent temporary and permanent contamination of the environment.

#### **181.812 Definitions.**

For the purposes of this Section, these words and phrases have the following definitions:

*Aquifer* - Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

*Automobile Graveyards And Junkyards* - An establishment or place of business which is used, maintained, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, as defined in MGL C. 140B, S. 1.

*Commercial Fertilizers* - Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in MGL C. 128, S. 64.

*De-Icing Chemicals* - Sodium chloride, chemically treated abrasives, or other chemicals used for snow and ice removal.

*Earth Removal* - The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

*Hazardous Material* - Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under MGL C. 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

*Impervious Surface* - Material or structure on, above, or below the ground that does not allow precipitation to penetrate directly into the soil.

*Landfills And Open Dumps* - A facility or part of a facility for solid waste disposal (excluding transfer facilities) established in accordance with the provisions of 310 CMR 19.006.

*Sanitary Wastewater* - Any water-carried putrescible waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, showers, dishwashers, or any other source.

*Soil Conditioner* - Any manipulated substance or mixture of substances whose primary function is to modify the physical structure of soils so as to favorably influence plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in MGL C. 128, S. 64.

*Storage or Landfilling of Sludge and Septage* - Use of land to store sludge or septage as those terms are defined in 310 CMR 32.00.

*Wastewater Treatment Works* - Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, all as defined and regulated by 314 CMR 5.00.

*Water Resource Protection Overlay District (WRPOD)* - That area of land from which surface water and groundwater drain into the City's drinking water supply reservoirs.

### **181.813 Establishment of District.**

The WRPOD is herein established as an overlay district. The WRPOD is described on a map entitled "City of Fitchburg Zoning Map, Adopted July 17, 2001" with district boundary lines prepared by the Department of Community Development. All maps are hereby made a part of this Zoning Ordinance and are on file in the office of the City Clerk.

181.8131. *Boundary Disputes.* Where the bounds of the WRPOD are in dispute, as delineated on the Zoning Map, the burden of proof shall be upon the owners of the land in question to show where they should properly be located. Resolution of boundary disputes shall be through a special permit application to the Planning Board. The applicant shall provide information in substantial conformance with the criteria set forth in 310 CMR 22.00 for the delineation of "Zone III", as administered by the Massachusetts Department of Environmental Protection, to show where the boundary should properly be located.

181.8132. The Planning Board shall not grant a special permit under this section unless the applicant demonstrates that the provisions governing the WRPOD may be waived without detrimental effect to water quality as specified herein.

### **181.814 Use Regulations.**

The WRPOD are overlay districts superimposed over the underlying districts set forth in this Zoning Ordinance. Within a WRPOD, the requirements of the underlying district continue to apply, except where the requirements of the WRPOD are more stringent. Uses are prohibited where indicated by "N" in the following schedule, and require a special permit from the Planning Board where indicated by "SP", even where the underlying district requirements are more permissive. Uses permitted are indicated by "Y". Where a portion of the lot is located partially within WRPOD and partially outside the WRPOD, site design shall, to the extent feasible, locate potential pollution sources outside the WRPOD boundaries.

<b>1. PRINCIPAL USES</b>	<b>WRPOD</b>
A. Manufacture, use, storage, transport, or disposal of hazardous materials as a principal activity	N
B. Landfills and open dumps	N
C. Automobile graveyards and junkyards	N
D. Wastewater treatment works for non-sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities, except the following: (1) replacement or repair of existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s)	SP
E. Wastewater treatment works for sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities	SP
F. Landfilling of sludge and septage	N
G. Storage of sludge and septage	SP
H. Road salt stockpile or storage of other de-icing chemicals in the following manner: 1) outside a structure 2) within a structure designed to prevent the generation and escape of contaminated runoff or leachate	N SP
I. Motor vehicle service station, motor vehicle repair or body shop, marine repair shop, car wash	SP
J. Earth removal; provided, however, that no earth removal shall take place within 6 feet of historical high groundwater as determined from monitoring wells and historical table fluctuation data compiled by the USGS, except for excavations for building foundations, roads or utility works, unless the substances removed are redeposited within 45 days of removal to achieve a final grading greater than 6 feet above the historical high groundwater mark	SP
K. Any building, structure, or use, other than single family dwelling with accessory structures and uses, to be served by on-site wastewater disposal system with a design capacity of greater than 10,000 gallons per day	SP
<b>2. ACCESSORY USES</b>	
A. Underground storage of hazardous materials, including fuel oil and gasoline	SP
B. Aboveground storage of hazardous materials in quantities greater than associated with normal household use, other than fuel oil for residential heating purposes,	SP
C. Any use generating hazardous wastes in quantities greater than associated with normal household use, except the following, which are permitted by right. 1) very small quantity generators, as defined by 310 CMR 30.00; 2) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390; 3) waste oil retention facilities required by MGL C. 21, S. 52A; 4) treatment works approved by the DEP for treatment of contaminated ground or surface waters.	SP
D. Storage of animal manure. Such storage must be within an enclosed building or contained in accordance with the specifications of the U.S. Soil Conservation Service	Y
E. Storage of commercial fertilizers and soil conditioners. Such storage must be within a structure designed to prevent the generation and escape of contaminated runoff or leachate	Y
<b>3. OTHER USES</b>	
A. Rendering impervious more than 15 percent of the lot, or 2,500 sq. ft., whichever is greater, excluding operations associated with the construction or occupancy of a single-family dwelling	SP
B. Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the district	SP
C. Industrial and commercial uses which discharge process wastewater on-site	SP

### **181.815 Special Permit Procedures.**

The Special Permit Granting Authority (SPGA) for this section shall be the Planning Board. Such special permit may be granted if the SPGA determines that the intent of this Section as well as the specific criteria herein are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to groundwater quality which would result if the control measures failed. Any special permit required hereunder shall be in addition to, and separate from, any other special permit required under this Ordinance. An application for a special permit under this section shall be governed by the Planning Board's regulations and [Section 181.94](#). In addition, the applicant shall submit, unless waived or modified by the SPGA, with reasons therefor, the following:

181.8151. A narrative statement detailing all of the information set forth below, if applicable:

- A. A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials, including but not limited to road salt or de-icing chemicals, manure, and fertilizers or soil conditioners, to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.
- B. A description of all potentially hazardous wastes to be generated in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.
- C. For underground or aboveground storage of hazardous materials, certification by a Registered Professional Engineer that such storage facilities or containers are (i) in compliance with all applicable federal or state regulations, (ii) in compliance with design specifications, as prepared by a Registered Professional Engineer, and (iii) are designed with secondary containment adequate to contain a spill the size of the container's total storage capacity.
- D. For any proposed activity on a lot which will render more than 15 percent of the total lot area or more than 2,500 sq. ft. impervious, a system for groundwater recharge must be provided that does not degrade groundwater quality, by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. Such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- E. For stockpiling or disposal of snow from outside the district, earth removal, storage of sludge or septage, manure storage, treatment works, and/or discharge or process wastewater, a narrative statement, prepared by a Registered Professional Engineer, assessing the impacts, if any, of the proposed activity on groundwater and surface water quality on the premises, adjacent to the premises, and on any wellfield(s) downgradient from the proposed activity or use, accompanied by a description of the measures proposed to protect such wellfields.

### **181.816 Special Permit Decision.**

Special permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated herein, that groundwater quality resulting from on-site wastewater disposal or other operations on-site shall not fall below the more restrictive of federal or state standards for drinking water, or, if existing groundwater quality is already below those standards, on-site disposal or operations shall result in no further deterioration.



### **181.817 Dimensional Regulation.**

The minimum lot size in the WRPOD shall be three (3) acres and the minimum frontage shall be three hundred (300') feet, except that with respect to land that remains in the same record ownership as of the adoption of this section (September 21<sup>st</sup> 2005), one additional lot may be created at any time in accordance with the lot area and frontage requirements for the underlying zoning district in effect on the date this provision was adopted. This section is in addition to and not in derogation of any other rights under applicable zoning laws.

### **181.82 PLANNED DEVELOPMENT DISTRICT (PDD).**

#### **181.821 Purpose.**

A Planned Development District (PDD) is encouraged in order to promote various types of land uses which can be combined in a compatible relationship with each other as part of a totally planned development. It is the intent of this provision to ensure compliance with the master plan and good zoning practices, while allowing certain desirable combinations of uses and structures, not otherwise available, in a distinct district. A Planned Development District does not have predetermined standards for development, but are proposed by the developer (with input from the City staff) to serve as guidelines for the development of a particular location. The intent of this district is also to insure that what is presented at the time of a Planned Development District zoning amendment is what is actually constructed.

#### **181.822 Permissible Uses and Requirements.**

A Planned Development District may be composed of commercial, industrial, residential, open space, or other uses, alone or in combination. A Planned Development District requires a rezoning amendment to the Fitchburg Zoning Ordinance. The minimum lot size for a PDD is two (2) acres.

#### **181.823 Procedures.**

A Planned Development District requires an amendment to the Fitchburg Zoning Ordinance and Zoning Map. Applicants for PDD are requested to observe the following procedures in order to promote review of the proposed amendment and to facilitate public-private cooperation in the establishment of the PDD:

181.8231. *Pre-Application Review.* Applicants are strongly encouraged to schedule a pre-application review with the Planning Board and its staff. Pre-application review should precede the preparation of detailed plans or specifications.

181.8232. *Concept Plan.* The applicant should prepare a Concept Plan for the PDD Pre-Application Review with the Planning Board and its staff. The Concept Plan should be prepared using the requirements of Section [181.94](#), herein, as a guide to contents and specifications. Documents recommended for the Pre-Application review include, but are not limited to: an existing conditions plan of subject properties, a project description (either in narrative or sketch form), a listing of proposed uses to be permitted or allowed by special permit, which may be a narrative describing the type and character of uses and/or a listing, by cross reference, of uses to be permitted as they appear in Section [181.313](#) "Table of Principal Use Regulations". An explanation of why existing zoning districts do not meet the needs of the proposal shall also be submitted. The Concept Plan will serve as a preliminary site development plan, which will govern the development standards and uses for that particular location.

181.8233. *Informal Public Workshop.* When the applicant and the Planning Board have arrived at a mutually agreed upon Concept Plan, an informal public workshop(s) should be conducted to inform the neighborhood and the city of the proposal, and the Concept Plan should be adjusted, if necessary, based upon public comments.

181.8234. *Statutory Requirements.* The zoning amendment must thereafter be processed in accordance with MGL C. 40A, S. 5.

181.8235. *Submission Requirements for a PDD Rezoning.* The application for a PDD Rezoning shall include a Development Proposal which consists of the following 4 (four) requirements and detailed in the PD Rules and Regulations. All materials shall be submitted in both hard copy and electronic format.

1. Completed Application to the Planning Board
2. Submission Fee
3. Development Plan (Site Plan)
4. Zoning and Special Conditions

PDD Rezoning Applications can be obtained from the Community Development Department.

No use is permitted and no development may occur in a PDD except in conformity with the preliminary site development plan approved by the City Council.

The City Council, in considering the zoning amendment and concept plan may permit, as an allowable use, manufactured homes in a PDD residential community where occupancy of the units is restricted to persons 55 years of age or older.

181.8236. *Submission Fee.* The Planning Board shall specify submission fees for a PDD rezoning in the PD District Rules and Regulations. The required fee shall be submitted with the PD rezoning Application to the Planning Board.

181.8237. *Development Plan (Site Plan).*

- A. A Development Plan shall include the following, at a scale of no smaller than 1:40 unless otherwise noted, containing all of the following proposed site construction information:
  1. Location of buildings; number of stories, approximate floor area and maximum height of each building; the distance in feet between buildings.
  2. Existing and proposed contours.
  3. Proposed lot lines.
  4. Grading and landscaping.
  5. Location and dimensions of drives and parking areas.
  6. Location and characteristics of any common open space or usable open space.
  7. Proposed drainage system.
  8. Proposed landscaping.
  9. Building elevations.
  10. Building Envelope.

- B. A table within the plan set containing all of the following information:
  - 1. Total land area (square feet).
  - 2. Building envelope (square feet and percentage of the total land area).
  - 3. Common and open space, if any (square feet and percentage of the total land area).
  - 4. Site coverage of buildings (square feet and percentage of the total land area).
  - 5. Impervious surface area (square feet and percentage of the total land area).
  - 6. Pervious surface area (square feet and percentage of the total land area).
  - 7. Gross floor area of all nonresidential buildings.
  - 8. Floor area ratio, if applicable.
  - 9. Density of dwelling units, or their equivalent, if applicable.
  - 10. Number of off-street parking spaces and, if applicable, loading bays.
- C. A locus-context map of all land within 500 feet of any part of the proposed PDD containing all of the following information (the scale on this map may be no smaller than 1:600):
  - 1. All dwellings and principal buildings.
  - 2. Land use of each lot.
  - 3. Lot and right-of-way lines.
  - 4. Existing contours at two-foot intervals.
  - 5. Principal natural features in general, including but not limited to: Significant rock outcroppings, Water systems (including standing surface water, brooks or streams, the direction of drainage, wetlands, and the 100-year flood elevation.)
  - 6. Significant vegetation, including, but not limited to: mature trees, unique specimens of vegetation, and vegetation that indicates wetlands.
  - 7. Zoning district boundaries.
  - 9. Recorded easements on the proposed PDD and within the 500-foot limit.
  - 8. Public facilities, including, but not limited to: conservation or recreation land, footpaths, bicycle paths, and streets.
  - 9. Significant noise/visual impact, including, but not limited to: views from the site and sources of noise affecting the site.
  - 10. Historically or architecturally significant structures and sites on or adjacent to the proposed PDD.
  - 11. Areas of known contamination and a delineation of the disposal site area within 500 feet.
- D. A property rights and dimensional standards plan containing the following information:
  - 1. The location of existing easements or other property rights affecting the proposed development.
  - 2. The approximate locations of any sections of the land to which the Town would be granted property rights, either easements or transfer of ownership for street, utility, conservation or other purposes.
  - 3. The anticipated division of the property into parcels in private ownership, if any, if it affects zoning provisions.

4. The yard setback in feet for buildings and parking lots from lot lines and, where applicable, a zoning district boundary, a brook or a pond.
  5. The boundaries of any common open space or usable open space.
- E. A utilities analysis showing:
1. The location and size of the Town's existing water mains, fire hydrants, sanitary sewers, and storm drains.
  2. The proposed locations and the approximate size of utilities to be constructed on the site and their proposed connections to the Town's utilities, and any special features, such as culverts or pumping stations, that might affect the ability of the Town to service the development.
- F. An existing conditions plan.

181.8238. *Zoning Amendment.* The finalized Development Plan provides the basis for the text of the zoning amendment. The Planning Board and the Community Development Department and City Solicitor staff shall prepare the text of the amendment and locate the new district on the Zoning Map

181.8239. *City Council Action.* No use is permitted and no development may occur in a PDD except in conformity with the Development Plan approved by the City Council.

The City Council, in considering the zoning amendment and concept plan may permit, as an allowable use, manufactured homes in a PDD residential community where the units are restricted to persons 55 years of age or older.

### **181.824 PDD Special Permit Requirements.**

181.8241. *Changes in Uses or Site Development Plan.* Changes in uses or substantial changes in the site development plan approved by City Council may be made only after approval by City Council of a new preliminary site development plan according to the procedures used for a zoning amendment, followed by the issuance of a Special Permit based on the new approved plan.

181.8242. *Special Permit Required.* The Planning Board may grant a Special Permit with site plan review for a Planned Development subject to the following provisions:

- A. The Planning Board makes a determination that the development conforms substantially to the preliminary site development plan approved by the City Council and is consistent with the considerations set forth in Section [181.821](#);
- B. The Special Permit incorporates, by reference, the definitive site development plan filed with the Special Permit application;
- C. The Special Permit may allow any or all of the uses specified in the plan approved by City Council but no others;
- D. The Planning Board may, in its discretion, permit revisions from the preliminary site development and use plan approved by the City Council provided they do not conflict with the provisions of the text of such plan. Such revisions shall generally be limited to the location of the building(s) and changes in the site plan;

- E. The Special Permit shall require that any land designated as common open space on the approved plan shall be either conveyed to the City or protected by an easement granted to the City; and
- F. The Special Permit may contain such additional conditions as the Planning Board finds will serve the public interest.

181.8243. *Denial of Special Permit.* The Planning Board may deny an application for a Planned Development Special Permit and base its denial upon a finding that the proposed development does not conform substantially to the plans for the commercial or residential development of the tract as approved by the City Council.

181.8244. *Revision of Special Permit.* Subsequent to a Special Permit granted by the Planning Board, minor revisions may be made from time to time in accordance with applicable laws, ordinances, and regulations, but the commercial or residential development approved under such Special Permit shall otherwise be in accordance with the application for the special permit, except as modified by the decision of the Planning Board. The developer shall notify the Planning Board in advance of any such revision which shall not be effective until approved by vote of the Board. If the Planning Board determines such revisions not to be minor, it shall order that an application for a revised Special Permit be filed, and a public hearing held in the same manner as set forth in Section [181.94](#).

### **181.83 PRIORITY DEVELOPMENT SITE OVERLAY DISTRICT (PDS).**

#### **181.831 Purpose.**

The City designates Priority Development Sites (PDS) to encourage the redevelopment of the sites by providing expedited permitting processes pursuant to MGL C. 43D. This section shall be construed and interpreted to be consistent with MGL C. 43D and the regulations promulgated thereunder. Any terms used in this section shall have the meaning defined in MGL C. 43D

#### **181.832 Location.**

The Priority Development Sites are located as follows, as shown on the Zoning Map:

1. An area off Intervale Road and Airport Road consisting of the following parcels:
  - a. 135 Intervale Road, shown on the Assessors' Map as parcel ID 123-60-0
  - b. 0 Airport Road, shown on the Assessors' Map as parcel ID 143-1-0
2. An area in the City of Fitchburg consisting of the following parcel:
  - 0 Princeton Road, shown on the Assessors' Map as parcel ID W-11-B

### **181.833 Procedures.**

All applications for development within a PDS, except applications for building permits, definitive subdivision plans and plans submitted under MGL C. 41, S. 81P as plans not requiring approval (ANR), must be processed and approved within the specific time-frames described in this section. If any deadline or date described in this section falls on a Saturday, Sunday, legal holiday or during a state of emergency declared by a public authority, the deadline will be computed to be the business day which occurs immediately following that Saturday, Sunday, legal holiday or publicly declared state of emergency.

181.8331. The application shall be filed with the appropriate permit granting authority and the City Clerk subject to the rules, regulations and requirements of that permit granting authority. The applicant shall also file a complete copy of the application with the primary municipal liaison a person appointed by the Mayor, without Council approval, who will coordinate all applications for the project.

181.8332. The primary municipal liaison shall ensure that all relevant local boards, commissions, officials, and other authorities have received a copy of the application for review.

181.8333. Within 20 business days after receiving the application, the permit granting authority will determine whether the application is complete, and will notify the applicant of its determination by certified mail. If the permit granting authority determines the application is complete, it will issue a Certificate of Completeness to the applicant within this 20 day period. If the permit granting authority fails to mail the notice of Completeness within this 20 day period, the application will be deemed complete and the permit granting authority will issue a Certificate of Completeness on request. If the permit granting authority determines the application is incomplete, it will notify the applicant in writing by certified mail a statement of the reasons why the application is incomplete and inform the applicant what information is necessary to complete the application. The re-submission of a new application in response to the notice of incompleteness starts a new 20 business day completeness review period.

181.8334. The permit granting authority will complete the review of the application and will render its decision on the application within 180 calendar days from the day after the issuing a Certificate of Completeness. This period may be waived or extended only in the following circumstances:

1. For good cause shown, upon written request, and with the consent of both the applicant and the permit granting authority;
2. If, within the first 150 days after a Certificate of Completeness has been issued, the permit granting authority determines that another permit or additional review by another authority is required which had not been previously identified by the municipal liaison, the time limits may be extended as described in this subsection 2 if the permit granting authority notifies the applicant by certified mail immediately upon the discovery of the need for the additional permit or review. The time period will be extended by no more than 30 days from the close of any public hearing or public comment period required by the additional permit or review if one is required, or, if no public hearing or comment period applies, by 30 days from the original 180 day period. The special permit granting authority will schedule any hearing or comment period as quickly as publication allows.
3. If, during the process, the application is modified to the degree that the permit granting authority cannot make a decision on the application within the original 180 day period, or, if

the applicant makes a substantial change to the project for the purpose of public benefit, provided that the permit granting authority makes a written request to the Interagency Permitting Board established under MGL C. 23A, S. 2, or the Permitting Ombudsman and includes the reasons for the request and the requested new time-frame. The Board or Ombudsman shall respond with their determination on the request within 10 business days of receipt of such request. If the permit granting authority does not get a response within this time, the time will be extended until such a response is received and then extended, in accordance with the response.

4. The 180 day period will also be extended in cases if:
  - a. action by another federal, state, or municipal government agency, not subject to MGL C. 43D, is required before the permit granting authority may reasonably act;
  - b. pending judicial proceedings affect the ability of the permit granting authority or the applicant to proceed with the application; or
  - c. enforcement proceedings that could result in revocation of an existing permit for the project or denial of the application have commenced.

In these cases, the 180 day clock shall resume when the reason for the extension is no longer applicable. The permit granting authority will notify the applicant and the City Clerk by certified mail of the resumption of the process.

181.8335. If an application to modify a permit or decision is filed, the permit granting authority shall inform the applicant within 20 business days after it receives the application whether the request is: approved, denied, if it requires additional information to make a decision, or if the proposed modification is substantial enough to require additional time and/or public hearings for review. In cases where additional information is required, the permit granting authority shall have an additional 20 business days after it receives the new information within which to complete the review and issue their decision. In cases where the proposed modification is substantial and/or requires a public hearing, the permit granting authority shall make every reasonable effort to complete the process in a timely manner to maintain the integrity of the expedited permitting process.

181.8336. Failure of the permit granting authority to take final action on an application within the 180 day period, except as extended under this section, shall be deemed a constructive grant of the relief or approval requested by the applicant pursuant as set forth in MGL 43D. If this happens, the applicant may file, within the next 14 calendar days, an affidavit together with a copy of the application in the office of the City Clerk. The affidavit describe all of the facts giving rise to the constructive grant or approval and shall state that copies been mailed by certified mail to all parties to the proceedings and all persons entitled to notice of hearing. This constructive grant or approval shall not apply when:

1. the permit granting authority has made a timely determination that the application is incomplete and the applicant has not provided the requested information within 90 calendar days – in which case the permit granting authority shall notify the Interagency Permitting Board that the permit process has been discontinued;
2. The permit granting authority has determined that the application has undergone substantial modifications as referred to in section 181.8335;

3. The permit granting authority has determined the application contained false or misleading information, in which case notice of said determination shall be mailed by certified mail to the applicant and the Interagency Permitting Board.

181.8337. Appeals of the permit granting authority's decision or from the constructive grant of approval shall be filed within 20 calendar days after the last permitting decision related to the project has been rendered or the conclusion of the 180 day period (or the extended time period as applicable), whichever is later, as set forth in MGL C. 43D.



## **181.84 SMART GROWTH ZONING DISTRICTS (SGZD).**

### **181.841 General Regulations that apply to all Smart Growth Zoning Districts.**

181.8411. *Purposes.* The purposes of the Smart Growth Zoning Districts are:

- A. To establish zoning that will encourage smart growth in accordance with the purposes of G. L. Chapter 40R.
- B. To provide an opportunity for residential development and to especially encourage mixed-use development, including both new construction and renovation of existing buildings, within a distinctive, attractive and livable environment that supports the commercial revitalization of Fitchburg.
- C. To promote continuing development and redevelopment in Fitchburg that is pedestrian friendly and consistent with Fitchburg history and architecture.
- D. To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Fitchburg and provides an environment with safety, convenience and amenity.
- E. To provide for a diversified housing stock at a variety of costs within walking distance of services and public transportation, including affordable housing and other housing types that meet the needs of the City's population.
- F. To generate positive tax revenue for the City, and to benefit from the financial incentives provided by Massachusetts General Law Chapter 40R, while providing the opportunity for new business growth and additional local jobs.
- G. To encourage preservation and rehabilitation of historic structures and buildings.
- H. To promote efficient use of land and existing parking supply and limit the expansion of surface parking within the district by encouraging shared parking.
- I. To encourage adoption of energy efficient building practices and sustainable construction methods.
- J. To ensure compliance with the Massachusetts Department of Environmental Protection stormwater management policies and practices.
- K. To designate zoning districts that allow multi-family development as-of-right in order to comply with Mass General Law Chapter 40A, Section 3A of the Zoning Act, referred to as MBTA Communities, while maintaining the continuity of ground-floor retail and other active uses in the core of Main Street downtown.

181.8412. *Definitions.* For purposes of this Section 181.84; the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Governing Laws or as set forth in the AA Regulations. Where, for readability or other reasons, the terms defined in the AA Regulations or the Governing Laws, appear without capitalization, such use shall nevertheless be presumed to have the same meaning as defined in the AA Regulations or the Governing Laws, as applicable, unless it is obvious from the context that the common law definition applies. Common law definitions shall apply to all other terms not defined in the AA

Regulations or the Governing Laws, except that any terms not otherwise defined herein, in the AA Regulations or Governing Laws but defined in Section [181.10](#) may apply to the extent such definitions are not in conflict with the purposes of Governing Laws. To the extent that there is any conflict between the definitions set forth herein or in the AA Regulations and those contained in the Governing Laws, the terms of the Governing Laws shall govern.

Administering/Monitoring Agent – An entity designated by the Fitchburg Planning Board with the power to monitor and to enforce compliance with the provisions of this section related to Affordable Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Unit in the SGZD (See Section 181.8418)

Administrative Regulations or AA Regulations – Administrative rules and provisions relative to Plan Approval that are adopted by the Planning Board pursuant to 40R and applied to Projects in its capacity as the 40R Plan Approving Authority under Section 181.8418. To the extent they are applied to Projects developed under this Section 181.84, such rules and regulations, Project application form(s), any other application requirements, including the Planning Board's Rules & Regulations must be approved by the Executive Office and Housing and Livable Communities.

Affordable Homeownership Unit - A Dwelling Unit required to be sold to an Eligible Household per the requirements of this Section.

Affordable Housing – Housing that is affordable to and occupied by Eligible Households.

Affordable Housing Restriction - A deed restriction of an Affordable Unit meeting statutory requirements in MGL C. 184, S. 31 and the requirements of Section 181.8418.

Affordable Rental Unit - A Dwelling Unit required to be rented to an Eligible Household per the requirements of Section 181.8418.

Affordable Unit - The collective reference to Affordable Homeownership Units and Affordable Rental Units.

Allowed Use – A Principal, Accessory or other permitted Use listed under Section [181.844](#).

Annual Update - A list of all approved and currently proposed Smart Growth Districts within the City of Fitchburg and other associated information, to be filed on or before July 31<sup>st</sup> of each year with the Executive Office and Housing and Livable Communities pursuant to Massachusetts General Law Chapter 40R and applicable regulations (760 CMR 59.07(1)).

Applicant - A landowner or other petitioner who files a plan for a Development Project subject to the provisions of this Section.

Approving Authority Or Plan Approval Authority (AA) - The Fitchburg Planning Board authorized under this Section to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SG district.

Area-wide Median Income - The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

Artist Live/Work Space - A Building or any portion thereof containing units used by the occupant(s) therein for both residential use and Artist Studio Space. Retail sales of art supplies and/or art produced on-site that does not take place more than twenty (20) hours per week will be an

allowable accessory use. Such units shall not constitute Bonus Units and shall be subject to the limitations on non-residential use contained in this Section 181.84, unless the applicable percentage of Affordable Units required under this Section is applied proportionately to such units within a given Project or such proportionality has been expressly waived in writing by EOHLC for the Project.

Artist Studio Space - Space used for the creation, production, rehearsal or teaching of any visual art or craft, including but not limited to, painting, drawing, graphic design, photography, video, film, sculpture, and pottery; of written works of fiction or nonfiction; or of any performing art, whether for live or recorded performance, including music, dance, and theater, office of creative design professional (e.g., architect, landscape architect, industrial designer), accessory sales of such art, and other bona fide arts-related uses. Activities must conform to the following requirements:

1. The use, including storage of materials or products, shall be carried on strictly within an enclosed building.
2. The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, and other customary potential impacts arising from such uses shall comply with applicable law.
3. Retail sales of art produced on-site will be an allowable accessory use.

As-of-Right or As-of-Right Development - A use or Development Project allowable under this Section without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Plan Review requirement of this Section shall be considered an As-of-Right Development.

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.

Density - The number of dwelling units per acre of land.

Design Standards – Provisions adopted in accordance with [Section 181.843\(L\)](#), that shall be applicable to all Development Projects within the SGZD.

Development Project or Project - A Residential Project or Mixed Use Development Project undertaken under this Section. A Development Project shall be identified as such on the Plan which is submitted to the Plan Approving Authority for Plan Review.

Dwelling - A unit within a Building occupied exclusively as a residence for one or more families, including artist live/work space

Dwelling - Multi-Family - For purposes of this Section 181.84 only, multi-family shall be any residential use on a lot or lots held in common ownership that contains three (3) or more dwelling units among one or more structures. For purposes of this Section 181.84 only, Multi-Family shall mean at least three or more units in one structure, or at least two units in each of two structures.

Eligible Household - An individual or household whose annual income is below eighty percent (80%) of the Area-wide Median Income as determined by the United States Department of

Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

EOHLC - the Commonwealth of Massachusetts' Executive Office of Housing and Livable Communities, which oversees 40R Smart Growth and 3A MBTA Communities requirements. Formerly known as the Massachusetts Department of Housing and Community Development (DHCD).

Family - A person or number of persons occupying a dwelling unit and living as a Single Housekeeping Unit.

Floor Area - The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, including habitable finished basements but excluding cellars or unfinished basements.

Governing Laws – MGL C. 40R and 760 CMR 59.00

Institutional Use - A non-profit or quasi-public use or institution, such as a church, library, public or private school, municipally owned or operated Building, Structure or land, used for public purpose.

Loading Space - Off-street space logically and conveniently located for bulk pickups and deliveries by truck, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Master Plan - The Fitchburg Master Plan adopted by the Fitchburg Planning Board, as amended.

Mixed-Use Development Project - A Development Project containing a mix of Residential Uses and Non-Residential Uses, in which residential uses occupy at least 50% of the total gross floor area (with further restrictions for the DSGZD-MMU subdistrict as specified in Section 181.8415) and subject to all provisions of this Section 181.84.

Non-Residential Use. Allowable Non-Residential Uses in a Mixed-Use Development project include:

- Exempt Uses (as listed in the Table of Principal Use Regulations 181.313) including Child Care Facility; and Family Daycare Home, Small.
- Institutional Uses (only the following): Municipal facilities, Adult Day Care Facility.
- Commercial Uses (only the following): Lodge or Club; Retail Stores and Services (excluding open air displays); Florist; Restaurant; Artisan Food and Beverage up to 7,500 SF gross floor area; Artisan Manufacturing up to 7,500 SF gross floor area; Business or Professional Office; Medical Office; Amusement Facility; Commercial Indoor Recreation; Personal Service Facility; General Service Establishment; Artist Studio Space.

Artist Live/Work Space shall not be considered a Non-Residential Use.

Parking (Off-Street) - For purposes of this Section 181.8416, an off-street parking space shall conform to the provisions in Sec. [181.514](#), Off-street Parking Design Standards unless otherwise approved by EOHLC.

Plan - A plan depicting a proposed Development Project for all or a portion of the SGZD and which is submitted to the Planning Board for its review and approval in accordance with the provisions of this Section 181.84.

Plan Approval - The Planning Board's authorization, acting as the Plan Approving Authority (AA) per the Governing Laws, for a proposed Development Project based on a finding of compliance with this Section and the Smart Growth Design Standards after the conduct of a Plan Review.

Plan Review - The review procedure established by this Article and administered by the Fitchburg Planning Board acting as AA.

Residential Project – A Project that consists of residential, parking and accessory uses as defined in Section 181.8412.

Residential Use - A use within a Building or part of a Building containing Dwelling Units as defined herein above and associated parking that is Accessory to the Dwelling Units. Artist Live/Work Space shall be considered a Residential Use.

Service - The performance of any act for the benefit of another with a view to profit or for a livelihood.

SINGLE HOUSEKEEPING UNIT - Any household whose members are an interactive group of persons jointly occupying a dwelling unit, including joint access to and use of all common areas including living, kitchen and eating areas within the dwelling unit, and sharing household activities, and responsibilities such as meals, chores, expenses and maintenance, and whose makeup is determined by the members of the unit rather than by the landlord, property manager, or other third party. This does not include a boarding, lodging or rooming house.

Smart Growth Zoning District (SGZD) - An Overlay Zoning District adopted pursuant to Massachusetts General Law Chapter 40R, in accordance with the procedures for zoning adoption and amendment as set forth in Massachusetts General Laws Chapter 40A and approved by the Executive Office of Housing and Livable Communities pursuant to Massachusetts General Laws Chapter 40R and applicable regulations.

Underlying Zoning - The zoning requirements adopted pursuant to Massachusetts General Law Chapter 40A that are otherwise applicable to the geographic area in which the SGZD is located, as said requirements may be amended from time to time.

Unrestricted Unit - A Dwelling Unit that is not an Affordable Unit.

Use - The purpose for which land or a Building or Structure is arranged, designed, intended or erected, or for which land or a Building or Structure is or may be occupied.

181.8413. *Scope and Authority.* The Smart Growth Zoning District is established pursuant to the Governing Laws, and shall be deemed to overlay the parcels shown on the Zoning Map of the City of Fitchburg, as amended. The Underlying Zoning shall remain in effect, and the Applicant shall have the option of applying for Plan Approval pursuant to the zoning controls set forth in this Section 181.84, or complying with all applicable zoning controls set forth in the Zoning Ordinance of the City of Fitchburg for the underlying district(s) or for other overlay zoning that may be therein defined. Development Projects proceeding under this Section 181.84 shall be governed solely by the provisions of this Section 181.84 and shall be deemed exempt from the standards and/or procedures of the Underlying Zoning and other overlay provisions, including limitations upon the issuance of building permits for Residential Uses related to a rate of development or

phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or Dwelling Unit limitations. To the extent that there is any conflict between the Governing Laws and this Section 181.84, inclusive of the AA Regulations and the Design Standards, the Governing Laws shall govern.

181.8414. *Performance Standards.* All permitted Uses must comply with the following:

- A. Does not regularly emit noxious odors, or dust particles, or smoke, or poses danger, such as manufacture of acids, gases, fertilizers and glue, petroleum refining, reduction of animal matter, and manufacture of cement, gypsum, or explosives, and which would not violate applicable state and federal laws.
- B. Does not present a danger to persons within or outside the SGZD by reason of emission of odor, fumes, gases, particulate matter, smoke, noise, vibration, glare, radiation, electrical interference, threat of fire or explosion, or any other reason in violation of applicable state and federal laws.
- C. Development Projects proposed pursuant to Sec. 181.84 shall be subject to all other applicable local, state and federal regulation not applicable to zoning.
- D. All such All such Development Projects shall be governed by the requirements of this Section 181.84 and the Design Standards.
- E. Complies with Chapter 154 of the Fitchburg City Code “Stormwater Management & Erosion Control”, regardless of the amount of area being disturbed. Until such time that the City of Fitchburg has qualified for one or more density bonus payments corresponding to a number of Bonus Units that is equal to or greater than the minimum number of Incentive Units associated with any Zoning Incentive Payment received for a given SGZD established under this Section 181.84, any subsequent amendments to Stormwater Management Ordinance shall not apply to Development Projects insuch SGZD until EOHLC has received written notice of such amendment(s) and determined that such amendment(s) does not Unduly Restrict development within the such SGZD as per 760 CMR 59.02.

181.8415. ***Mixed-Use Development within the DSGZD-MMU subdistrict.*** In the DSGZD-MMU subdistrict, Mixed-Use Development (per Section 181.8412. *Definitions*) is required; stand-alone Multi-Family Dwellings are prohibited. Residential Uses should only be located on upper floors, not the ground floor. Non-Residential Uses may also be located on upper floors. In order to contribute to active street frontages, the ground-floor Non-Residential Use in the DSGZD-MMU subdistricts shall occupy at least 75 percent of the street frontage along the front façade, and shall have a minimum depth of 20 feet as measured perpendicular to the street. ~~Artist Live/Work Spaces are prohibited on the ground floor of the MMU district, but may be located on upper floors.~~

In Smart Growth Zoning subdistricts outside the DSGZD-MMU subdistrict, mixed-use development is optional.

181.8416. *Off-Street Parking and Loading.*

- A. Off-Street Parking –
  - a. Within the DSGZD-MMU subdistrict, off-street parking is not required for Non-Residential uses.

- b. In all areas of a SGZD except for DSGZD-MMU, Non-Residential Uses located within eight hundred (800) feet of a public off-street parking facility shall be exempt from off-street parking requirements *provided* there exists continuous pedestrian access between the parking and the entrance to the Development Project. In all other cases, off-street parking shall be provided for Non-Residential Uses to meet the underlying zoning requirements.
  - c. In all locations of a SGZD, including the DSGZD-MMU subdistrict, residential units shall provide a minimum of 1.25 spaces per Dwelling Unit, and may provide up to 2.0 off-street parking spaces per Dwelling Unit.
- B. Guest Parking. Guest parking is required at a rate of one (1) off-street parking space for every ten (10) Dwelling Units, in addition to the requirements in Section 181.8416.A,.
- C. Off-Street Loading & Delivery - Off-street loading spaces shall be provided to meet the underlying zoning requirements.
- D. Location of Parking - Any surface parking lot shall, to the maximum extent feasible, be located at the side or rear of a Building, relative to any public right-of-way, public open space, or pedestrian way. In no case shall surface parking for new construction be permitted within any applicable restricted Front Setback area.
- E. Waiver of Parking Requirements - The Planning Board may grant a Plan Approval providing such relief from the parking standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed Use and will not result in or worsen parking or traffic problems in the SGZD.
- F. Conditions. The Planning Board may impose conditions of Use or occupancy appropriate to such modifications, provided that the particular use and occupancy were voluntarily proposed by the applicant and would not impair the development of housing within the District which is appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.
- G. Shared Use of Required Parking - Shared use may be made of required parking spaces by intermittent Use establishments, for example, churches, assembly halls or theaters, whose peak parking demand is only at night or on specific days of the week; by other Uses whose peak demand is only during the day; or in public parking lots. At the time of application, a formal agreement shall be made in writing by the owners of the Uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement.  
  
The Applicant shall demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g., the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other industry established studies on shared parking).
- H. Cooperative Establishment and Operation of Parking Areas - Required parking spaces for any number of Uses may be provided in a combined Lot or Lots (public or private), provided that the number of spaces in the combined facility shall not be less than the sum of those required of the individual Uses, with allowances made, upon formal designation, for night use or for separate and distinct working shifts, and provided also that such Lot or Lots shall be within 800 feet of the Principal Buildings served.

- I. Parking Design - Parking shall be designed and constructed to comply with all applicable state or federal accessibility requirements including but not limited to the Americans with Disabilities Act (ADA) and 521 CMR 23.00, Parking and Passenger Loading Zones

181.8417. *Open Spaces and Recreational Areas.* The site design for Development Projects may include common open space and facilities. Where proposed, the Plans and any necessary supporting documents submitted with an application for Plan Approval within the SGZD shall show the general location, size, character, and general area within which common open space or facilities will be located. The Plans and documentation submitted to the Planning Board shall include a description of proposed ownership and maintenance provisions of all common open space and facilities and, if requested by the Planning Board, any necessary restrictions or easements designed to preserve the open space and recreational areas from future development. Upon consideration of the above information, the Planning Board may approve a waiver as provided for in Section 181.843(E) for a front Setback to allow for common open space or facilities.

181.8418. *Affordable Housing.*

- A. Affordable Units shall comply with the following requirements:

1. For an Affordable Rental Unit, the monthly rent payment, including applicable utility allowances, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one, unless another methodology for determining the target household size has been approved by EOHLC.
2. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one.
3. Affordable Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

- B. Number of Affordable Units - Twenty percent (20%) of all Dwelling Units constructed in a Development Project 13 units or larger in size shall be Affordable Units; provided however, that for Development Projects in which all of the Dwelling Units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five percent (25%) of the Dwelling Units shall be Affordable Units and that the total number of affordable units within the entire SGZD equals not less than 20%.

- C. Fractional Units - When the application of the percentages specified in Section 181.8418(a) results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.

- D. Design and Construction - Affordable Units must be dispersed equitably and proportionately throughout a Development Project, including, where applicable, across all Buildings, floors and unit types, and across all gross floor area devoted to residential units. Affordable Units must be comparable in exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Units must have access to all on-site amenities. Affordable Units shall be



finished housing units. All Affordable Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units. In Development Projects that are constructed in phases, Affordable Units must be constructed and occupied in proportion to the number of units in each phase of the Development Project.

- E. Unit Mix - The total number of bedrooms in the Affordable Units shall be at least proportionate to the total number of bedrooms in all units of the Project of which the Affordable Units are a part.
- F. Affordable Housing Restriction - Each Affordable Unit shall be subject to an Affordable Housing Restriction approved by EOHLC, pursuant to 40R, and recorded with the Worcester Northern District Registry of Deeds or Land Court Registry. All Affordable Housing Restrictions must include, at minimum, the following:
  - 1. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity, initial unit designations, number of bedrooms and number of bedroom types of Affordable Rental Units in a Development or portion of a Development which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Development Project or the rental portion of a Development Project with the designated Affordable Rental Units initially identified in the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and able to float on a limited basis, as necessary, subject to specific approval by EOHLC in accordance with the AFHMP and EOHLC's AFHMP guidelines.
  - 2. The term of the Affordable Housing Restriction which shall be in perpetuity or for the longest period customarily allowed by law, as further specified in the AA's Plan Approval decision, but shall be no less than thirty (30) years.
  - 3. The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction.
  - 4. Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by EOHLC, pursuant to 40R for the corresponding Project or phase(s) therein, the housing marketing and selection plan may provide for local preferences in resident selection. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size.
  - 5. A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan.
  - 6. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
  - 7. A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit shall be given to the Monitoring Agent.
  - 8. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.

9. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the City of Fitchburg, in a form approved by municipal counsel and EOHLC pursuant to the Governing Laws, and shall limit initial sale and re-sale to and occupancy by an Eligible Household.
  10. Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the provisions of this Section 181.8418 and containing such other information as may be reasonably requested in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
  11. Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and the City of Fitchburg, in a form approved by municipal counsel and EOHLC pursuant to the Governing Laws, and shall limit rental and occupancy to an Eligible Household.
  12. A requirement that residents in Affordable Units provide such information as the Monitoring Agent may reasonably request in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
  13. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.
- G. Administration - The Monitoring Agent shall ensure the following (See Section 181.8412:
1. Prices of Affordable Homeownership-Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
  2. Income eligibility of households applying for Affordable Units is properly and reliably determined.
  3. The housing marketing and resident selection plan has been approved by EOHLC pursuant to the Governing Laws, conforms to all requirements and is properly administered.
  4. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given.
  5. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Worcester Northern District Registry of Deeds or Land Court. In the case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Planning Board or by the Executive Office of Housing and Livable Communities, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Fitchburg Planning Board.
- H. Costs of Housing Marketing and Selection Plan - The housing marketing and selection plan may make provision for payment by the owner of reasonable costs to the Monitoring Agent and the owner shall pay reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements under this Section 181.84 and the Governing Laws
- I. In combination, the various documentation required under Section 181.8418, to be submitted with an application for Plan Approval, shall include details about construction related to the provision, within the Development Project, of units that are accessible to the disabled and

appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

#### **181.842 Plan Approval Procedures.**

Plan approval procedures shall be as follows:

181.8421. *Pre-Application Review.* Applicants are strongly encouraged to schedule a pre-application review with the Approving Authority staff, which may include meeting with the Fitchburg Development Review Committee. A "Concept Plan" may be submitted to help guide the development of the definitive submission for project build out. Such Concept Plan should include the following: overall building envelope areas, open space and natural resource areas, general site improvements, drainage plans, groupings of buildings and proposed land uses, anticipated parking spaces and locations, site vehicular access. The Concept Plan is intended to be used as a tool for both the Applicant and the Planning Board to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGZD.

181.8422. *Application Procedures.* All Projects are subject to Plan Approval.

##### **A. Submittal**

1. An application for Plan Approval shall be submitted in accordance with the requirements herein and further specified in the SGZD Administrative Regulations, on the form provided by the AA along with the application fees set forth in the Administrative Regulations. The application shall be accompanied by such plans and other documents as required by the Administrative Regulations required to verify compliance with any of the provisions of this Section in a manner that, as defined in 760 CMR 59.02, does not Unduly Restrict development within the SGZD. As part of the submission requirements of Administrative Regulations, an application for Plan Approval shall include in its submission, conformance with the requirements of **Section—181.95 Site Plan Review**, as well as applicable administrative application and fee requirements for Site Plan Review within the Planning Board's "**Rules & Regulations**," ~~as in effect upon the adoption of this Section 181.84~~ In addition to the submission requirements of Administrative Regulations, an application for Plan Approval shall include all of the following:
  - a. Development narrative including all Uses, breakdown of square footage for each Use, number of housing units and zoning summary.
  - b. Photos of adjacent properties and other properties impacted by the Development Project.
2. At least thirty (30) days prior to the Applicant filing an Application with the City Clerk, the Applicant shall file the application for preliminary review with the City Department of Community Development and Planning. Upon completion of filing with the City Clerk, the Applicant shall file forthwith with the Planning Board a copy of the complete application, including the date of filing as certified by the City Clerk, as well as the required number of copies of the application. Application submissions must include a hard copy as well as an electronic copy in PDF. Said filing shall include any required forms provided by the Planning Board. As part of any application for Plan Approval for a Development Project, the Applicant must submit the following documents to the Planning Board and the Monitoring Agent:

- a. Evidence that the Development Project complies with the cost and eligibility requirements of Section 181.8418.
- b. Development Project Plans that demonstrate compliance with the design and construction standards of Section 181.8418(D); and
- c. A form of Affordable Housing Restriction that satisfies the requirements of Section 181.8418(F).
- d. Review Fees: The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Planning Board, pursuant to MGL C. 40R, S. 11(a). Such fees shall be held by the City of Fitchburg in a separate account, and shall be used only for expenses associated with the use of outside consultants employed by the Planning Board in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith;

181.8423. *Traffic Impact Study.* When required by the Approving Authority, the traffic impact study shall include the following information:

- A. A report on existing traffic conditions including estimated average daily and peak hour traffic volumes, average and peak speeds, sight distances, accident data for the previous three years, and levels of service (LOS) of intersections and streets likely to be impacted by the proposed development. Generally, such data shall be presented for all major streets and intersections within 1000 feet of the project boundaries provided, however, that all such studies shall be no more than 18 months old at the date of the application. -
- B. Projected traffic conditions for design year of occupancy: statement of design year of occupancy, average annual background traffic growth, impacts of proposed developments which have already been approved or are pending before City boards.
- C. Projected impact of proposed development: Projected peak hour and daily levels and directional flows resulting from the proposed Project; sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity of the proposed development; and projected post development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed Project.
- D. Proposed methods as necessary to mitigate the estimated traffic impact and methodology and sources used to derive existing data and estimations. At the discretion of the Approving Authority, the Applicant may within a mitigation plan contribute funds for the purpose of partial design and/or construction of off-site traffic improvements provided the funding is proportional to the impacts of the traffic impacts resulting from the proposed Development Project. The Approving Authority may reduce the amount of required mitigation upon a finding that achieving this performance standard would Unduly Restrict opportunities for development.

181.8424. *Circulation to Other Boards.* In accordance with the Administrative Regulations the Planning Board shall provide a copy of the application materials to all relevant municipal Boards, Departments, Commissions and Officials as determined by the Planning Board and to the Monitoring Agent. These entities shall provide any written comments within 35 days of the filing of the Plan and application with the City Clerk.

181.8425. *Public Hearing and Time Limits.* The Planning Board shall hold a public hearing for which notice has been given according to the procedure specified in MGL C. 40A, S. 11, and review all applications in accordance with the Governing Laws

**181.843 Decision of the Planning Board.**

- A. The decision of the Planning Board shall require a majority vote of the board's members and be made, and written notice of the decision filed with the City Clerk within 120 days of receipt of the application by the City Clerk. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the City Clerk. Failure of the Planning Board to take action within said 120 days or the extended time shall be deemed an approval of the Plan Approval application.
- B. **Criteria for Plan Approval** - The Planning Board shall approve the Development Project upon all of the following findings:
  - 1. The Applicant has submitted the required fees and information as set forth in the SGZD Administrative Regulations
  - 2. The proposed Development Project as described in the application meets all of the requirements and standards set forth in this Section 181.84, applicable Design Standards and the SGZD Administrative Regulations, or a waiver has been granted there from, and shall also include written confirmation by the Monitoring Agent that all Affordable Housing requirements have been satisfied.
  - 3. Any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.
- C. **Criteria for Conditional Approval.**
  - a. The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with this S. 181.84 and applicable Design Standards, or to mitigate any extraordinary adverse impacts of the Project on nearby properties, insofar as such conditions are compliant with the provisions of MGL C. 40R and applicable regulations and do not Unduly Restrict opportunities for development.
  - b. The Approving Authority may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address extraordinary adverse Project impacts on nearby properties.
- D. **Criteria for Plan Denial** - A Plan Approval application may be disapproved only where the Planning Board finds that:
  - 1. The Applicant has not submitted the required fees and information as set forth in the SGZD Administrative Regulations; or
  - 2. The Project as described in the application does not meet all the requirements and standards set forth in this Section 181.84, applicable Design Standards and the SGZD Administrative Regulations, or that a required waiver there from has not been granted; or
  - 3. It is not possible to adequately mitigate significant Project impacts on nearby properties by means of suitable conditions.
- E. **Waivers** - Upon request of the Applicant, the Planning Board may waive dimensional and other requirements, including Design Standards, with conditions, in the interests of design flexibility and overall Project quality, and upon a finding of consistency of such variation with the overall purpose

and objectives of the SGZD and the Fitchburg Master Plan, and if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses and/or physical character allowed under this Section. Notwithstanding anything to the contrary in this Section (181.84) or the Zoning Ordinance of Fitchburg, the Affordable Housing provisions that comprise Section 181.8418 shall not be waived without the express written approval of EOHLC. The Planning Board will also take into consideration the following items when considering a waiver:

1. High performance energy efficient Buildings and construction methods.
2. Projects with publicly accessible open space.
3. Projects that include Retail and Restaurants located on Street level.
4. A demonstrated shared parking initiative that makes efficient use of land and existing parking supply.
5. The preservation or rehabilitation of historic properties or other Buildings considered significant to the City; and/or,
6. Such other factors which the AA deems consistent with the Purposes described under Section 181.8411.

**F. Plan Changes After Approval by Planning Board**

1. Minor Plan Changes - After Plan Approval, an Applicant may apply to make minor changes in a Development Project that do not affect the overall build out or Building envelope of the site, or provision of open space, number of housing units, or housing need or Affordable Housing features. Such minor changes must be submitted to the Planning Board on redlined prints of the approved Plan, reflecting the proposed change, and on application forms provided by the Planning Board. The Planning Board may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Planning Board shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the City Clerk.
2. Major Plan Changes - Those changes deemed by the Planning Board to constitute a major change in a Development Project because of the nature of the change in relation to the prior approved Plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the Planning Board as a new application for Plan Approval pursuant to this Section.

**G. Fair Housing Requirement** - All Development Projects within the SGZD shall comply with applicable federal, state and local fair housing laws.

**H. Project Phasing** - The Planning Board may allow a Project to be phased at the request of the Applicant or to mitigate any extraordinary adverse impacts on nearby properties and provided that the submission shows the full build-out of the Project and all associated impacts as of the completion of the final phase and subject to approval of the Planning Board. For Projects that are approved and developed in phases, the proportion of Affordable Units shall be no less than the minimum percentage required for the Project as a whole under Section 181.8418(b).

**I. Decisions** - The Planning Board shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected and the Plans that were the subject of the decision and certifying that a copy of the decision has been filed with the City Clerk. If 20 days have elapsed after the decision has been filed with the City Clerk without an appeal having been filed, or if such appeal having been filed is dismissed or denied, or if a Plan is approved by reason of the failure

of the Planning Board to timely act, the City Clerk shall so certify on a copy of the decision. A copy of said decision shall be filed with the Registry of Deeds.

A Plan Approval shall be issued to a specific applicant and is not transferable to new ownership without the Plan Approving Authority's review and approval. Plan Approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. A Plan Approval may, for good cause, be extended in writing by a majority vote of the Plan Approving Authority for one or more terms not exceeding two years each, upon the written request of the applicant.

Approved Development Projects shall be substantially complete within seven years of the effective date of approval, unless the Approving Authority has granted an extension.

The Planning Board may require the posting of a performance bond to secure and/or screen a Development Project site in the event that demolition is undertaken but subsequent work lapses, for any reason within or outside the Applicant's control, for a period longer than one year.

- J. **Date of Effect** - The effective date of this SGZD Ordinance (Section 181.84), as amended **[07-18-19]**, shall be the date on which such adoption is voted upon by City Council pursuant to the requirements of Section 5 of Chapter 40A of the General Laws and Chapter 40R of the General Laws; provided, however, that the Approving Authority may not issue a Plan Approval decision pursuant to this Ordinance (Section 181.84) prior to the receipt of conditional or final approval of this Ordinance (Section 181.84) and accompanying Zoning Map by the Executive Office of Housing and Livable Communities.
- K. **Severability** - If any provision of this Section is found to be invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected but remain in full force. The invalidity of any provision of this Section shall not affect the validity of the remainder of the City's Zoning Ordinance.
- L. **Design Standards** - The Planning Board may adopt and amend, by simple majority vote, Smart Growth Design Standards which shall be applicable to all Projects in Section 181.84. Such Design Standards must be objective and not subjective and may only address the scale and proportions of Buildings, the alignment, width, and grade of Streets and sidewalks, the type and location of infrastructure, the location of Building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. EOHLC may, at its discretion, require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.
  - 1. Before adopting any Design Standard, the Planning Board shall submit the proposed Design Standard to EOHLC for approval. Any amendment to the Design Standards shall not take effect until approved by EOHLC and filed with the City Clerk.
  - 2. An application for Plan Approval that has been submitted to the City Clerk pursuant to this Section shall not be subject to any Design Standard that has not been approved by EOHLC.

#### **181.844 Establishment and Delineation of the Smart Growth Zoning Districts.**

##### **181.8441. West Smart Growth Zoning District (WSGZD)**

The West Smart Growth Zoning District consistd of the parcels shown in the Zoning Map of the City of Fitchburg.






- C. Dimensional and Other Requirements - Applications for Plan Approval shall be governed by this Section 181.84 and the Smart Growth District Design Standards.

For New Construction:

DIMENSIONAL REQUIREMENT	
Maximum Building Height	55 feet
Minimum Lot Frontage	20 feet
Minimum Front Setback	0 feet
Maximum Front Setback	10 feet
Interior Setback (between Buildings on same Lot)	20 feet

- [1] Residential Density Allowances - The minimum Multi-Family Residential density shall be 20 units per acre and the maximum Multi-Family Residential Density shall be 40 units per acre for all Lots and all Buildings.
- [2] Contiguous Lots - In the WSGZD, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.
- [3] Age-Restricted Housing Units - An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 181.84 and the Design Standards.

181.8442 *Downtown Smart Growth Zoning District (DSGZD).*

- A. **Establishment and Delineation of the DSGZD** - The DSGZD is an overlay district that is superimposed over the Underlying District. The boundaries are delineated as the "Downtown Smart Growth Zoning District" on the Official Zoning Map of the City of Fitchburg on file in the office of the City Clerk, said map hereby made a part of the Fitchburg Zoning Ordinance. **Within the DSGZD, the following subdistricts are created: DSGZD/3A-MMU and DSGZD-3A.**
- B. **Allowed and Prohibited Uses** - Any Use not listed herein as an Allowed Use is deemed prohibited.
- C. **Allowed Uses** - The following Uses shall be permitted As-of-Right in the DSGZD upon Plan Approval pursuant to the provisions of this Section 181.84, and following the definitions in Section 181.8415

- 
1. In the DSGZD-3A subdistrict:
    - a. Dwelling, Multi-family
    - b. Mixed-use Development Project, as defined in Section 181.8415
  2. In the DSGZD-MMU subdistrict:
    - c. Mixed-use Development Project, as defined in Section 181.8415

In addition to the Allowed Uses listed above, the following Uses are permitted As-of-Right for Development Projects within the DSGZD subject to the requirements of this Section 181.84:

1. Parking accessory to any of the above permitted Uses, including surface, garage-under, and structured parking
2. Accessory Uses customarily incidental to any of the above permitted Principal Uses and allowed by Section [181.32](#) Accessory Uses.

**D. Dimensional and Other Requirements** - Applications for Plan Approval shall be governed by this Section 181.84 and the Smart Growth Design Standards.

For New Construction:

DIMENSIONAL REQUIREMENT	
Maximum Building Height	70 feet
Minimum Lot Frontage	20 feet
Minimum Front Setback	0 feet
Maximum Front Setback	10 feet
Interior Setback (between Buildings on same Lot)	20 feet

1. Residential Density Allowances - The minimum Multi-Family Residential density shall be 20 units per acre and the maximum Multi-Family Residential Density shall be 85 units per acre for all Lots and all Buildings.
2. Contiguous Lots - In the DSGZD, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.
3. Age-Restricted Housing Units - An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 181.84 and the Design Standards.
4. Existing Buildings - Notwithstanding anything to the contrary herein, a building existing as of the date of adoption of this SGZD which does not comply with the dimensional requirements described in Section 181.8442(D) above shall be deemed compliant with the setback and/or height requirements existing as of the date of adoption of this SGZD above, provided that that the Project does not propose any increase in building footprint or building height.

**181.85 FLOODPLAIN PROTECTION OVERLAY DISTRICT (FPOD).**

**181.851 Purpose.**

The purposes of the Floodplain Protection Overlay District are to ensure public safety through reducing the threats to life and personal injury; eliminate new hazards to emergency response officials; prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding; avoid the loss of utility services; eliminate costs associated with the response and cleanup of flooding conditions; reduce damage to public and private property resulting from flooding waters.

#### **181.852 General.**

The Floodplain Protection Overlay District (FPOD) shall be in all portions of the city as indicated on the Flood Insurance Rate Maps as the Floodplain District. The City's permit review process includes the requirement that the proponent obtain all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit a list demonstrating that all necessary permits have been acquired. The Building Commissioner is the designed floodplain administrator (FPA) and shall maintain the maps and records and administer, interpret and enforce the provisions of this Section. Where there is a conflict between a mapped boundary and actual field conditions, the Building Commissioner shall determine the boundaries of the Floodplain District.

#### **181.853 Overlay District.**

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the City's Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, dated September 18, 1991. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated September 18, 1991. The effective FIRM, FBFM, and FIS report are incorporated herein by reference and are on file with the City Clerk, Department of Community Development and Planning, and Building Commissioner.

#### **181.854 Definitions.**

COMPENSATORY STORAGE means a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream or creek.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

**FLOODWAY.** The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

**FUNCTIONALLY DEPENDENT USE** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

**HISTORIC STRUCTURE** means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1. By an approved state program as determined by the Secretary of the Interior or
  - 2. Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

**RECREATIONAL VEHICLE** means a vehicle which is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Title 44 CFR §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

### **181.855 Changes in Base Flood Elevation.**

If the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief  
99 High St., 6<sup>th</sup> floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator

MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

### **181.856 Development Regulations.**

The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection. The following requirements apply in the FPOD:

181.8561. Within Zone A1-A30, all residential and nonresidential construction and substantial improvements shall comply with the following:

- Provisions of the Massachusetts State Building Code which address floodplain areas (currently 780 CMR 3107.0, “Flood Resistant Construction”).
- Wetlands Protection Regulations (currently 310 CMR 10.00).
- Minimum Requirement for the Subsurface Disposal of Sanitary Sewage (currently 310 CMR 15, Title V).

181.8562. Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

181.8563. Permits are required for all proposed development in the Floodplain Overlay District. The City of Fitchburg requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

181.8564. In the floodway designated on the Flood Boundary and Floodway Map the following provisions shall apply:

- A. All encroachment, including fill, new construction, substantial improvements to existing structures and other development and all other development is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- B. Floodway encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.  
Any encroachment meeting the above standard shall comply with the floodplain requirements of the Massachusetts State Building Code.
- C. The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.

- D. Subdivision and development proposals shall be reviewed to assure that such proposals minimize flood damage, adequate drainage is provided, and that public utilities and facilities are located and constructed so as to minimize flood damage.
- E. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.
- F. In a riverine situation, the Building Commissioner shall notify the following of any alteration or relocation of a watercourse:
  - Adjacent Communities, especially upstream and downstream
  - Bordering States, if affected
  - NFIP State Coordinator  
 Massachusetts Department of Conservation and Recreation  
 251 Causeway Street, 8th floor  
 Boston, MA 02114
  - NFIP Program Specialist  
 Federal Emergency Management Agency, Region I  
 99 High Street, 6th Floor  
 Boston, MA 02110
- G. Compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within Bordering Land Subject to Flooding, when in the judgment of the issuing authority said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows.

181.8565. Within Zone A1-A30, all mobile homes shall comply with the provisions of the Massachusetts State Building Code in addition to providing that:

- A. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home and its associated utilities will be at or above the base flood level;
- B. Adequate surface drainage and access for a hauler are provided; and
- C. In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart and reinforcement is provided for piers more than six (6) feet above ground level.

181.8566. In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

181.8567. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

181.8568. In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation

requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

#### **181.857 Floodplain District Variance.**

The Board of Appeals may vary the requirements of this section (other than the provisions of the state regulations referenced above) upon the issuance of a variance. Variances may be issued for new construction and substantial improvements on lots one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. Variances for larger lots shall require increased technical justification. The Board of Appeals may grant such variance after considering the following:

181.8571. A showing of good and sufficient cause;

181.8572. A determination that failure to grant the variance would result in (non-financial) hardship to the applicant;

181.8573. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances; and

181.8574. A determination that the variance is the minimum necessary, considering the flood hazards, to afford relief.

#### **181.858 Variance Conditions.**

181.8581. A variance shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

181.8582. If a variance outside of the floodway is granted, the Board of Appeals shall notify the applicant, in writing over its signature, that:

- A. The issuance of such variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage; and
- B. Such construction below the base flood level increases risks to life and property.
- C. The Board of Appeals will maintain a record of all variance actions, including justification for their issuance.

Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or on the State Inventory of Historic Places, without regard to the procedures set forth above, provided that documentation is included to show that the structure is indeed a verifiable historic structure, per NFIP regulations.

#### **181.859 Abrogation & Severability.**

1. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.
2. If any section, provision or portion of this ordinance is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.



## **SECTION 181.9 ADMINISTRATION AND PROCEDURES**

### ***181.91 ADMINISTRATION.***

#### **181.911 Permits.**

This ordinance shall be administered by the Building Commissioner.

Pursuant to the State Building Code, the Building Commissioner may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth and may request advisory reviews by other municipal boards and officials. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use unless in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as certification of such compliance.

181.9111. *Occupancy permit.* No building hereafter erected, altered or relocated shall be used and no change shall be made of the use of any building or any parcel of land, except for the use of land for agriculture, horticulture, or floriculture, unless an occupancy permit signed by the Building Commissioner has been granted to the owner or occupant of such land or building. Such permit shall not be granted unless the proposed use of the land or building and all accessory uses comply in all respects with this chapter, and no use shall be made of such land or building except the use or uses authorized by such occupancy permit.

#### **181.912 Enforcement.**

The Building Commissioner of the City of Fitchburg is hereby designated as the officer charged with the enforcement of this Zoning Ordinance.

181.9121. *Enforcement action.* The Building Commissioner, upon a written complaint of any citizen of Fitchburg or owner of property within Fitchburg or upon such Commissioner's own initiative, shall institute any appropriate action or proceedings in the name of the City of Fitchburg to prevent, correct, restrain or abate violation of this chapter. In the case where the Building Commissioner is requested, in writing, to enforce this chapter against any person allegedly in violation of the same and the Commissioner declines to act, the Commissioner shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days of receipt of such request.

181.9122. *Non-criminal disposition.* In addition to the provisions for enforcement of the Zoning Ordinance described in Section 181.9121, the provisions of the Zoning Ordinance may also be enforced by and in the discretion of the Building Commissioner, by a non-criminal complaint filed in the District Court or Worcester County Housing Court pursuant to the provisions of MGL C. 40, S.21D. Each day on which a violation exists shall be deemed a separate offense. The penalty for violation of any provision of the Zoning Ordinance pursuant to this paragraph shall be fifty dollars (\$50.00) for the first offense; seventy-five dollars (\$75.00) dollars for the second offense; one hundred dollars (\$100.00) for the third offense; and one hundred twenty-five dollars (\$125.00) for the fourth and each subsequent offense.

### **181.913 Penalties.**

The penalty for violation of any provision of this ordinance, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals, any special permit granting authority, or the site plan approval board shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

### **181.92 BOARD OF APPEALS.**

#### **181.921 Establishment.**

The City of Fitchburg Board of Appeals is hereby designated as the Board of Appeals required by the Zoning Act of the Commonwealth of Massachusetts. The Board of Appeals shall consist of five (5) members with two (2) associate members, who shall all be residents of the City of Fitchburg. At least one (1) member shall be a member of the Bar. Each member shall be appointed by the Mayor, subject to confirmation by the City Council, for terms of five (5) years and the appointments shall be so arranged that the term of one (1) member shall expire each year. Vacancies, removals and other organizational matters shall be governed by MGL C. 40A, S. 12.

#### **181.922 Powers.**

The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws of the Commonwealth and by this ordinance. The Board's powers are as follows:

181.9221. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section [181.94](#), or as otherwise specified.

181.9222. To hear and decide appeals or petitions for variances from the terms of this ordinance, with respect to particular land or structures, as set forth in MGL C. 40A, S. 10. The Board of Appeals shall not grant use variances in the Residential Districts.

181.9223. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL C. 40A, S. 7, 8 and 15.

181.9224. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in MGL C. 40B, S. 20-23.

#### **181.923 Conditions.**

Variances may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the board of appeals may deem necessary to serve the purposes of this ordinance. Such conditions may include, but are not limited to: private disposal of waste; deadline to commence construction; signage; alarm system; limits on vehicles, number of students, gender of residents, noise, possession of substances; maintenance requirements; landscaping, parking spaces; dust control; term for years with or without automatic renewals; sewer connection; bond.

### **181.924 Regulations.**

The Board of Appeals may adopt rules and regulations for the administration of its powers.

### **181.925 Fees.**

The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

## **181.93 VARIANCES.**

### **181.931 General.**

A variance from the specific requirements of this chapter, excluding a variance authorizing a use not otherwise permitted, may be authorized by the Board of Appeals.

181.9311. Rules and regulations and fees. The Board of Appeals shall adopt and from time to time amend rules and regulations not inconsistent with the provisions of this chapter or MGL C. 40A or other applicable provision of the General Laws and shall file a copy of said rules and regulations with the City Clerk. Such rules shall prescribe, as a minimum, the size, form, contents, style and number of copies of plans and specifications, the city boards or agencies from which the Board of Appeals shall request written reports and the procedure for submission and approval of such permits. The Board of Appeals may adopt and from time to time amend fees sufficient to cover reasonable costs incurred by the city in the review and administration of variances.

181.9312. Application. Any person who desires to obtain a variance from the requirements of this chapter shall submit a written application to the Board of Appeals on a form prescribed by the Board of Appeals.

181.9313. Public hearing and decision. The Board of Appeals shall hold a public hearing no later than sixty-five (65) days after the filing of an application. The Board of Appeals shall have the power to continue a public hearing under this section if it finds that such continuance is necessary to allow the petitioner or applicant to provide information of an unusual nature and which is not otherwise required as part of the variance application. The Board of Appeals shall issue a decision of such variance no later than one hundred (100) days following the filing of the variance petition with the Board of Appeals.

181.9314. Mandatory findings. Before the grant of any variance from the requirements of this chapter, the Board of Appeals must specifically find that owing to circumstances relating to the soil conditions, shape or topography of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.

181.9315. Conditions and safeguards. The Board of Appeals may impose such conditions, safeguards and limitations as it deems appropriate upon the grant of any variance.

181.9316. Time limitation on variance. Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this section, except that the Board, in its discretion and upon written application by the grantee of the right in a variance, may extend the time for exercise of such rights for a period not to exceed an additional six (6) months if the grantee applies for the extension prior to the expiration of the one-year period.

181.9317. Effective date of a variance. No variance or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Northern Worcester County Registry of Deeds. Such decision shall bear the certification of the City Clerk that twenty (20) days has elapsed after the decision has been filed in the office of the City Clerk and no appeal has been filed or that, if such an appeal has been filed, it has been dismissed or denied.

### **181.932 Use variance.**

181.9321. The Board of Appeals may authorize a use variance, but no use variances shall be granted in the Residential Districts. In addition to the requirements of Section 181.931 of this chapter and Massachusetts General Law, the Board must unanimously find:

1. That the proposed use is in the public interest.
2. That the applicant has demonstrated that the proposed use would not create any hardship to the neighborhood.
3. That the applicant has demonstrated that the proposed use would not disturb the existing character of the neighborhood.

181.9322. It is the intent of this section to allow use variances only in those rare cases when the applicant, the neighborhood and the general public equally benefit.

### **181.94 SPECIAL PERMITS.**

#### **181.941 Special Permit Granting Authority.**

Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority.

#### **181.942 Criteria.**

Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this ordinance, the determination shall include consideration of each of the following:

181.9421. Social, economic, or community needs which are served by the proposal;

181.9422. Traffic flow and safety, including parking and loading;

181.9423. Adequacy of utilities and other public services;

181.9424. Neighborhood character and social structures;

181.9425. Impacts on the natural environment, including drainage; and

181.9426. Potential fiscal impact, including impact on city services, tax base, and employment.

### **181.943 Procedures.**

Applicants shall file with the City Clerk the number of copies of the special permit application and plans, and follow the procedures as listed in the Special Permit Granting regulations.

181.9431. An application shall not be deemed complete until all copies of required information and documentation have been filed with the special permit granting authority.

181.9432. The special permit granting authority shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time or to file plans with the agencies or officials set forth above shall be deemed non-submittal of the application, without prejudice.

181.9433. Reports from other boards and officials shall be submitted to the special permit granting authority by the date of the public hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.

181.9434. In the event that the public hearing by the special permit granting authority is held prior to the expiration of the 35 day period, said authority shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period.

181.9435. The provisions of this Section 181.943 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may adopt regulations to establish procedures governing the form of such applications.

### **181.944 Plans and Other Submittals.**

Unless waived by the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 181.94, herein. At the discretion of the special permit granting authority, the submittal of a development impact statement (DIS) may be required. The DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Professional or Civil Engineer, and a Registered Surveyor.

181.9441. *Physical Environment.*

- A. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
- B. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

181.9442. *Surface Water and Subsurface Conditions.*

- A. Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
- B. Describe any proposed alterations of shore lines, marshes, or seasonal wet areas.
- C. Describe any limitations imposed on the project by the site's soil and water conditions.
- D. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

181.9443. *Circulation Systems.*

- A. Project the number of motor vehicles to enter or depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the site per average day and peak hour. Such data shall be sufficient to enable the special permit granting authority to evaluate: (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and providing access to the site. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

181.9444. *Support Systems.*

- A. *Water Distribution:* Discuss the types of wells or water system proposed for the site, means of providing water for fire-fighting, and any problems unique to the site.
- B. *Sewage Disposal:* Discuss the type of on-site or sewer system to be used, suitability of soils, procedures and results of percolation tests, and evaluate impact of disposal methods on surface and groundwater.
- C. *Refuse Disposal:* Discuss the location and type of facilities, the impact on existing city refuse disposal capacity, hazardous materials requiring special precautions.
- D. *Fire Protection:* Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing firefighting equipment to confront potential fires on the proposed site.
- E. *Recreation:* Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.

- F. *Schools*: Project the increase to the student population for nursery, elementary, junior high school, and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.

181.9445. *Phasing*. Where development of the site will be phased over more than one (1) year, indicate the following:

- A. Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.
- B. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.

#### **181.945 Conditions.**

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this ordinance. Such conditions may include, but are not limited to: private disposal of waste; deadline to commence construction; signage; alarm system; limits on vehicles, number of students, gender of residents, noise, possession of substances; maintenance requirements; landscaping, parking spaces; dust control; term for years with or without automatic renewals; sewer connection; bond; limitation to the term of ownership or use by the applicant.

#### **181.946 Lapse.**

Special permits shall lapse if a substantial use thereof or construction thereunder has not begun and continued without interruption, except for good cause, up to 24 months as determined by the Special Permit Granting Authority following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in MGL C. 40A, S. 17, from the grant thereof) with the City Clerk. The special Permit Granting Authority may consider an extension of time upon request from the applicant prior to expiration.

#### **181.947 Regulations.**

The special permit granting authority may adopt rules and regulations for the administration of this section.

#### **181.948 Fees.**

The City Council may adopt reasonable administrative fees and technical review fees for applications for special permits.

## **181.95 SITE PLAN REVIEW.**

### **181.951 Applicability.**

The following types of activities and uses require site plan review by the Planning Board:

181.9511. Construction, exterior expansion of, or change of use within a municipal, institutional, commercial, industrial, multi-family or three-family structure

181.9512. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family or three-family structure or purpose.

181.9513. Siting, construction or expansion of a Marijuana Establishment (ME).

181.9514. Siting, construction or expansion of a Wireless Communications Facility.

181.9515. Lodging and Boarding Houses

181.9516. Siting, construction or expansion of large ground mounted photovoltaic energy system.

181.9517. Siting, construction or expansion of a Non-Exempt Container Farming.

181.9518. Siting, construction or expansion of a Contractor's Yard, Lumberyard or Salvage Yard.

181.9519. Earth Removal or Timber Harvesting.

181.9520. Siting, construction or expansion of a Drive-Through Facility.

181.9521. Siting, construction or expansion of uses, where Site Plan Review is otherwise referenced within the City of Fitchburg Zoning Ordinance.

### **181.952 Exemptions from Site Plan Review.**

Construction of less than 500 gross square feet of floor area.

### **181.953 Procedures.**

Minor site plan review, as set forth in Section 181.955, below, shall follow the procedures set forth herein. Major site plan review shall require a public hearing in accordance with the procedures set forth in MGL C. 40A, S. 9 and 11. Applicants shall submit the number of copies as required by the Planning Board's Site Plan regulations for site plan review. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within ninety (90) days of its receipt, and notify the applicant of its decision. This timeline may be extended upon agreement between the Planning Board and the Applicant. The decision of the Planning Board shall be upon a majority of the members present which comprises a quorum and shall be in writing. No building permit or certificate of occupancy shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 90 days lapse from the date of the submittal of the site plan or extended review period (whichever is greater) without action by the Planning Board.



181.9531. Application for Building Permit. An application for a building permit to perform work as set forth in Section 181.951 available as of right shall be accompanied by an approved site plan.

181.9532. Application for Special Permit or Variance. An application for a special permit or a variance to perform work as set forth in Section 181.951 shall be accompanied by an approved site plan; in the alternative, any special permit or variance granted for work set forth in Section 181.951 shall contain the following condition:

“The work described herein requires the approval of a site plan by the Fitchburg Planning Board pursuant to Section 181.95 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.”

181.9533. Where the Planning Board approves a site plan “with conditions”, and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

181.9534. Where the Planning Board serves as the special permit granting authority for proposed work, it shall consolidate its site plan review and special permit procedures.

181.9535. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

181.9536. No deviation from an approved site plan shall be permitted without modification thereof.

181.9537. Where a site plan is submitted with a Special Permit, the site plan review timeline shall run concurrent with the Special Permit review and not be subject to a grant of constructive approval.

#### **181.954 Preparation of Plans.**

Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board. Unless waived by the Board, the size, scale, contents and number of copies of plans shall be as required by the Board’s Site Plan regulations referred to in Section [181.958](#).

#### **181.955 Waiver of Compliance; Minor and Major Site Plans.**

The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 181.953 where the project involves relatively simple development plans or constitutes a minor site plan. The Planning Board may, upon request of the applicant, reduce parking and landscaping requirements set forth in [181.512](#), 181.514, 181.515, 181.516, 181.517, [181.543](#), [181.544](#) and [181.545](#) upon a finding that the reduction is not a detriment to public health and safety, and meets the objectives of [181.51](#), [181.54](#) and [181.956](#).

181.9551. *Minor Site Plan*. An application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will not exceed a total gross floor area of 2,000 square feet, or an application which will not generate the need for more than 10 parking spaces shall be deemed a “minor site plan.” For the purposes of computing the total gross

floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans, at the discretion of the Planning Board, may be required to set forth all of the information required by Section [181.953](#); provided, however, that the requirements for the preparation of such plans shall normally be relaxed by the Planning Board.

#### **181.956 Approval.**

Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including but not limited to those set forth in Section [181.945](#), to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations, and applicable local, state or federal requirements. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

181.9561. Minimize the volume of cut and fill, the number of removed trees 6-inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

181.9562. Maximize pedestrian and vehicular safety both on the site and egressing from it;

181.9563. Minimize obstruction of scenic views from publicly accessible locations;

181.9564. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

181.9565. Minimize glare from headlights and lighting intrusion;

181.9566. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

181.9567. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

181.9568. Ensure compliance with the provisions of this Zoning Ordinance, including parking and landscaping.

#### **181.957 Lapse.**

Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

#### **181.958 Regulations; Fees.**

The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines. The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

**181.959 Appeal.**

Any decision of the Planning Board pursuant to this Section 181.95 shall be appealed in accordance with the provisions of MGL C. 40A, S. 17 to a court of competent jurisdiction.

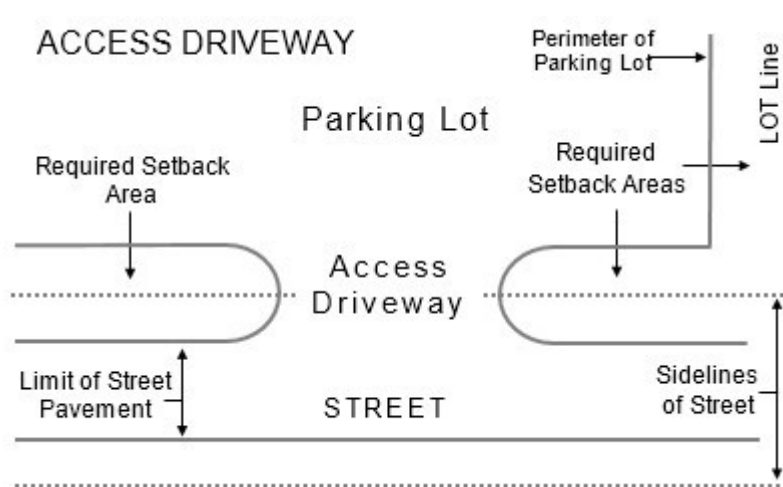
***181.96 PLANNING BOARD ASSOCIATE MEMBERS.*****181.961 General.**

To assist in carrying out its duties as a special permit granting authority, there shall be two (2) associate members of the Planning Board appointed by the Mayor, subject to confirmation by City Council, under authority of MGL C. 40A, S. 9. The associate members shall sit on the Planning Board for the purposes of acting at special permit application hearings in case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.

## SECTION 181.10 DEFINITIONS

In this ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word “shall” is mandatory and “may” is permissive or discretionary. The word “and” includes “or” unless the contrary is evident from the text. The word “includes” or “including” shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word “lot” includes “plot”; the word “used” or “occupied” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied”. The words “building,” “structure,” “lot,” or “parcel,” shall be construed as being followed by the words “or any portion thereof.” The word “person” includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this ordinance.

**ACCESS DRIVEWAY** - The travel lane that allows motor vehicles ingress from the street and egress from the site.



**ACCESSORY BUILDING** - A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**ACCESSORY USE** - A use customarily incidental to that of the main or principal building or use of the land.

**ADULT DAY CARE FACILITY** - A social day care or adult day health facility as those terms are defined by the Commonwealth’s Department of Elder Affairs.

**ADULT USE** - Adult Use shall mean a sexually oriented business as defined herein.

**AGRICULTURE EXEMPT**— shall mean the primary use of a property for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture purposes within the meaning of MGL C. 40A, S. 3 AND MGL C. 128, S. 1A that are exempted from prohibition, unreasonable regulation, or the requirement of a special permit, in the manner provided by MGL C. 40A, S. 3. The change of use to AGRICULTURE EXEMPT or new construction or the expansion of existing construction by more than 500 SF shall require site plan approval from the planning board.

*Agri-commercial* - means commercial activities designed to market to and bring the public to a Farm Enterprise for a farm related experience and increase the sale of agricultural products to the public with the express purpose of enhancing the agricultural viability of a Farm Enterprise.

*Agri-entertainment* - means entertainment, such as a seasonal event, festival, contest, music, party, or other time-specific event, designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of the agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-entertainment is designed to enhance the agricultural viability of farm operations.

*Agri-tourism* - means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the goal to encourage the purchase of agricultural products. Agricultural tourism shall include Farm-Stay programs, entertainment events on the farm, fundraising activities, and community events. Agri-tourism is designed to enhance the agricultural viability of the farm

**AGRICULTURE NONEXEMPT** – shall mean the primary use of a property for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture purposes within the meaning of MGL C. 40A, S. 3 AND MGL C. 128, S. 1A that are NOT exempted from prohibition, unreasonable regulation, or the requirement of a special permit, in the manner provided by MGL C. 40A, S. 3. The change of use to AGRICULTURE NONEXEMPT or new construction or the expansion of existing construction by more than 500 SF shall require site plan approval from the planning board.

**AIRPORT** - A facility for the landing, takeoff, storage and repair of airplanes, including helicopters.

**AMUSEMENT FACILITY** - Indoor facilities open to the public, such as a theater, cinema or video arcade.

**ANTENNA** - A device used to transmit and/or receive electromagnetic waves conducted through the air.

**ANTENNA SUPPORT STRUCTURE** - Any frame, pole, tower or other mechanical device to which one or more antennas are attached. Examples of Antenna Support Structures are towers, smokestacks, roof-mounted poles, or wall-brackets.

**ANTENNA TRANSMISSION** - The commercial transmission or reception of radio, television and/or microwave signals provided that such transmission or reception shall be conducted in accordance with all federal and state rules and regulations.

**APPLICANT** - The person or persons, including a corporation or other legal entity, who applies for issuance of a permit, approval, or other action pursuant to this Zoning Ordinance. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

**ASSISTED LIVING FACILITY (ALF)** - An assisted living residence as defined in 651 CMR 12.02.

**ARTISAN FOOD AND BEVERAGE** - Small-scale production or preparation of food made on site with limited to no automated processes involved and may include, but is not limited to, direct sales to or consumption by consumers. This definition includes uses such as small-batch bakeries, micro-breweries (manufacturing 15,000 barrels per year or less) artisan distilleries (manufacturing 10,000 barrels per year or less) as regulated by the Commonwealth of Massachusetts, small-batch candy shops, and local cheese makers. This use may or may not have outdoor seating or patio as an accessory use depending on the zoning district in which it is located.

**ARTISAN PRODUCTS** - Handicrafts including, but not limited to, glass, ceramics, clothing, jewelry, paintings, and sculptures.

**ARTISAN MANUFACTURING** - Application, teaching, making, or fabrication of crafts or products by an artist, artisan, or craftsperson either by hand or with minimal automation and may include direct sales to consumers. This definition includes uses that employ activities and processes such as small-scale fabrication, welding, and coating, that are typically not permitted in non-industrial zoning districts. This definition shall not include Artisan Food and Beverage preparation or sales.

**ARTIST LIVE/WORK SPACE** - A Building or any portion thereof containing units used by the occupant(s) therein for both residential use and Artist Studio Space. Retail sales of art supplies and/or art produced on-site that does not take place more than twenty (20) hours per week will be an allowable accessory use.

**ARTIST STUDIO SPACE** - Space used for the creation, production, rehearsal or teaching of any visual art or craft, including but not limited to painting, drawing, journalism, architecture, graphic design, photography, video, film, sculpture, and pottery; of written works of fiction or nonfiction; or of any performing art, whether for live or recorded performance, including music, dance, and theater, and accessory sales of such art. Activities must conform to the following requirements:

1. The use, including storage of materials or products, shall be carried on strictly within an enclosed building.
2. The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, and other customary potential impacts arising from such uses shall comply with applicable law.

**BANK OR FINANCIAL AGENCY** - A bank, loan agency or similar facility.

**BED AND BREAKFAST ESTABLISHMENT** - Accommodations with not more than five bedrooms occupied by bed and breakfast guests in which the owner of the establishment resides. Bed and breakfasts are intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

**BEDROOM** - A separate room intended for, or which customarily could be used for, sleeping.

**BOARDING HOUSE** - See Lodging House.

**BUFFER** - Screening accomplished by the use of planted areas, berms, natural contours or natural vegetation, fences or a combination of the above.

**BUILDING** - A structure enclosed within exterior walls, built, erected and framed with a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property.

**BUILDING-MOUNTED ANTENNA SUPPORT STRUCTURE** - Any out-of-doors ANTENNA SUPPORT STRUCTURE mounted on, erected on, or supported in whole or in part by an existing building or structure occupied and/or used for purposes other than wireless communications. Such structures include, but are not limited to, office and industrial buildings, smokestacks, steeples, water tanks and towers, observation towers, silos, fixed-position industrial machinery. However, if the structure is constructed primarily to support and/or camouflage an antenna installation, see the definition of FREESTANDING ANTENNA SUPPORT STRUCTURE.

**BUILDING TRADE SHOP** - An establishment for use by the practitioner of a building trade such as a carpenter, welder, plumber, electrician, builder, mason or similar occupation.

**BUSINESS OR PROFESSIONAL OFFICE** - A business or professional office, a or outpatient clinic, including laboratories incidental thereto.

**CAMOUFLAGED** - Masked or disguised, partially or fully, to reduce the visual impact of an ANTENNA SUPPORT STRUCTURE and/or ANTENNA.

**CEMETERY** - Use of land as a burial ground.

**CHILD CARE FACILITY** - A day care center or school age child care program, as those terms are defined in MGL C. 15D, S. 1A.

**COMMERCIAL KENNEL** - An establishment where dogs, cats or other pets are kept for the purpose of sale, breeding or boarding care.

**COMMERCIAL PARKING FACILITY** – An area or structure not accessory to a principal use on the same lot or associated premises pursuant to the provisions Section 181-51 (Off-Street Parking) used for the parking of vehicles for a fee

**COMMERCIAL INDOOR RECREATION** – A recreational use principally conducted inside a building and operated as a business either open to the public or private membership primarily for use by persons who do not reside on the same parcel on which the use is located. Examples of Commercial Indoor Recreation uses include, but are not limited to, indoor: athletic fields, courts, and practice facilities; golf simulators and driving ranges; roller and ice skating rinks; bowling alleys; climbing walls; swimming pools, health and fitness centers; and accessory uses such as restrooms and changing areas, snack bars, pro shops, or clubhouses designed and intended primarily for use by patrons of the principal commercial indoor recreation use.

**COMMERCIAL OUTDOOR RECREATION** – A recreational land use principally conducted outside of a building, operated as a business either open to the public or private membership primarily for use by persons who do not reside on the same parcel on which the use is located, and characterized by light to moderate impacts on the surrounding neighborhood due to the characteristics or intensity of the use, size of the parcel, location of the use on the parcel, proximity to neighboring uses, access to sufficient transportation infrastructure, and other factors. Examples of Commercial Outdoor Recreation uses include, but are not limited to: hiking, snowshoeing, skiing, and zip-line trails; campgrounds; horseback



riding and stables; athletic fields, courts, and practice facilities; golf driving range, miniature golf, and disc golf; boating, fishing, and swimming; and accessory indoor uses such as restrooms and changing areas, snack bars, pro shops, or clubhouses designed and intended primarily for use by patrons of the principal commercial outdoor recreation use.

**CONCEALED WIRELESS COMMUNICATIONS FACILITY** - A WIRELESS COMMUNICATIONS FACILITY which is mounted, erected, or supported within an existing building or structure (including buildings, cupolas, church spires, inactive smoke stacks, and the like) occupied and/or used for purposes other than wireless communications, and which is not apparent from the exterior of the structure.

**CONSERVATION** - The use of land in its natural state or improved with trails or resource management programs that do not significantly alter its natural state.

**CONTAINER FARMING** - A vertical hydroponic farm built inside an insulated container capable of growing a variety of produce year-round regardless of outside climate. The farm is equipped with climate control technology.

**CONTRACTOR'S YARD** - A facility or area for storage, open or enclosed, for construction equipment or materials and commercial vehicles associated therewith.

**DIRECTIONAL SIGN** - An on-premises sign for the purpose of safely directing traffic into or through parking lots and driveways

**DRIVE-THROUGH FACILITY** - A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle.

**DWELLING, SINGLE FAMILY** - A detached dwelling unit designed as the residence of one (1) family.

**DWELLING, THREE FAMILY** - Three (3) attached dwelling units designed as the residences of three (3) families.

**DWELLING, TWO FAMILY** - Two (2) attached dwelling units designed as the residences of two (2) families; including in-law apartments.

**DWELLING UNIT** - A room or group of rooms occupied or capable of being occupied separate from any other such room or group of rooms occupied by a family and equipped with cooking and sanitary facilities for the exclusive use of such family for living, sleeping, cooking and eating.

**EARTH REMOVAL** - The removal of earth products from a lot, including but not limited to sand, gravel, soil, loam and mineral products. The removal of earth products which is incidental to and in connection with the necessary excavation and grading of a site for a building or structure and its appurtenant driveways or parking facilities, for which a permit has been granted by the Building Commissioner, if such removal does not exceed one hundred fifty percent (150%) of the volume of the first floor of the building or structure, or the construction of a street approved under the Subdivision Control Law, shall not be considered as "earth removal" for the purposes of this provision.

EDUCATIONAL USE - Use of land, buildings and structures for providing learning in a general range of subjects on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a bona fide religious sect or denomination or by a nonprofit educational entity.

EDUCATIONAL USE, NONEXEMPT - Educational facilities not exempted from regulation by MGL C. 40A, S. 3.

ESSENTIAL SERVICES - Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhand, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

FAMILY - A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of five or more unrelated persons shall not be deemed a "family" where not related by blood, marriage or adoption, including wards of the state.

FAMILY DAY CARE HOME, SMALL - any 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 sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Family day 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 therefor. (MGL C. 15D, S.1A)

FAMILY DAY CARE HOME, LARGE - 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 sixteen 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 in accordance with regulations promulgated by the office; provided, however, that the number of children under the age of sixteen in a large family day care home shall not exceed ten, including participating children living in the residence. A large family day care home shall have at least one approved assistant when the total number of children participating in such day care exceeds six. Large family day 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 therefor. (MGL C. 15D, S. 1A)

FARM ENTERPRISE - A farming operation that is entitled to protection under MGL C. 40A, S. 3.

FARM STAND, NONEXEMPT - Facility for the sale of produce, wine and dairy products on property not exempted by MGL C. 40A, S. 3.

FARMERS' MARKET - An outdoor market at a fixed location, operating on a regular schedule, open to the public, and operated by a governmental agency, a nonprofit corporation, or one or more producers, at which (a) at least 50 percent of the vendors sell Farm Products or Value-added Farm Products, (b) the remaining 50% of vendors serve either Educational Uses or are vendors of Artisan Products, (c) at least 50 percent of the vendors are Producers, agents of Producers, or individuals selling farm products or Value-Added Farm Products purchased or taken on consignment from Producers, with the final

determination made by Market Manager Flea markets, yard sales and auctions are not Farmers' Markets. A wayside stand or an individual selling such items from a truck are not considered Farmers' Markets.

**FARM PRODUCTS** - Fruits, vegetables, mushrooms, herbs, grains, nuts, shell eggs, honey or other bee products, maple syrup, flowers, nursery stock, and livestock food products (including meat, milk, cheese, and other dairy products).

**FREESTANDING ANTENNA SUPPORT STRUCTURE** - Any out-of-doors ANTENNA SUPPORT STRUCTURE attached to the ground and built for the primary purpose of supporting antennas, including but not limited to monopoles, lattice towers (with or without guy wires), and structures which are designed primarily to support antennas but appear or act as another type of structure, such as flag poles, watchtowers or obelisks.

**FRONTAGE** - A continuous LOT line along the side line of a STREET which provides safe, convenient and meaningful vehicular and utility access to the buildable portion of the LOT. Calculation of the FRONTAGE dimensional requirements shall be in conformance with Section 181.4122 of this ordinance.

**FUNERAL HOME** - An undertaking or funeral establishment.

**GENERAL SERVICE ESTABLISHMENT** - Establishment providing services to the general public or to business establishments, such as equipment rental and leasing, building cleaning, photocopying, telephone answering, word processing or secretarial services; computer service bureaus; facilities for dancing, martial arts or music instruction; facilities for repair of appliances, office equipment, bicycles, lawn mowers or similar equipment; and food-catering facilities.

**HOME OCCUPATION** - An occupations, business, trade, service or profession which is incidental to and conducted in a dwelling unit or in a building or other structure accessory thereto, by a resident thereof.

**HOSPITAL** - A facility for the provision of health care services, licensed as an acute, sub-acute or chronic care facility by an appropriate governmental authority if and to the extent required by applicable law, including any facility for providing in-patient or ambulatory diagnostic, preventive, medical, dental, surgical, mental or rehabilitation services, treatment or counseling.

**HOTEL, INN OR MOTEL** - A facility providing transient lodging accommodations to the general public.

**INDEPENDENT LIVING FACILITY (ILF)** - A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

**LAND** - Land, including areas covered by water and including, but not limited to, all waterways, dams, waterfalls, and canals.

**LANDSCAPING BUSINESS** - The premises of a landscaping business where any of the following activities and/or uses may be conducted by the business: indoor or outdoor storage of equipment, supplies and materials; the parking of wheeled equipment; the parking of two or more commercial vehicles.

**LARGE SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC FACILITIES** - A solar photovoltaic system that occupies more than 1,750 square feet of surface area, that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 10 kW DC.

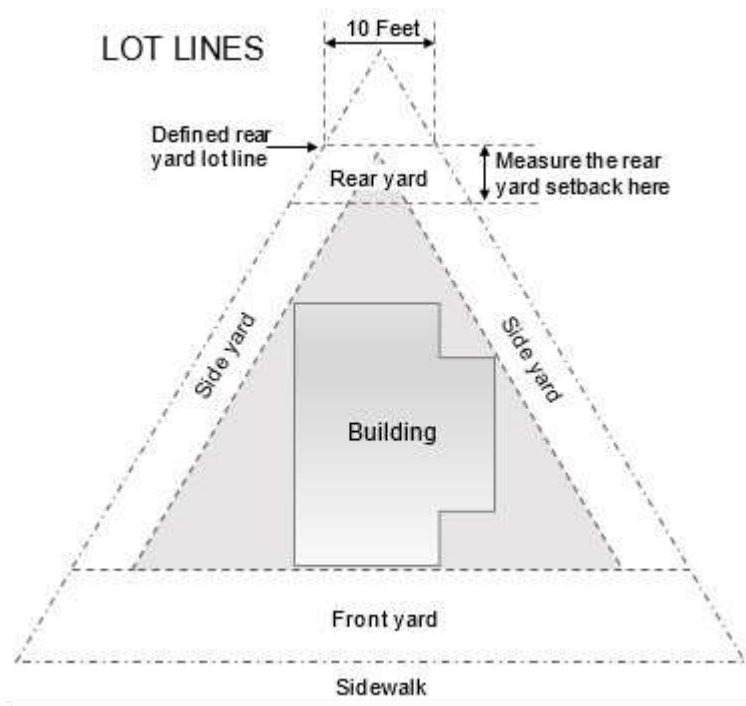
**LIGHT MANUFACTURING** - The production, fabrication, processing or assembly of goods in a manner that is in compliance with all state and federal rules and regulations; confines disturbing smoke, fumes, dust, chemical discharge and noise to the premises; and is not hazardous to abutters because of potential fire, explosion or radiation.

**LODGE OR CLUB** - A facility used by a noncommercial organization which is characterized by formal written membership requirements.

**LODGING HOUSE** - A building, structure or a portion thereof where lodgings are let to more than three, persons not within the second degree of kindred to the person conducting it and shall include fraternity houses and dormitories of educational institutions. The term includes student housing owned by non-governmental persons or persons or entities. The definition does not include inns, bed and breakfast establishments, or any hospital, sanatorium, convalescent or nursing home, infirmary or boarding home for the aged licensed by the Department of Public Health or any dwelling licensed, authorized or regulated by the Department of Mental Health or any other agency of the Commonwealth or United States.

**LOT** - An area of land in one (1) ownership, with definite boundaries, used or available for use as the site of one or more buildings. Not more than ten percent (10%) of land under any water body, bog swamp, swamp meadow or marsh, as defined in MGL C. 131, S. 40 shall be included in the lot area required under this chapter.

**LOT LINE** - The boundary between a lot and other property or the public right-of-way.



#### Lot Line Types.

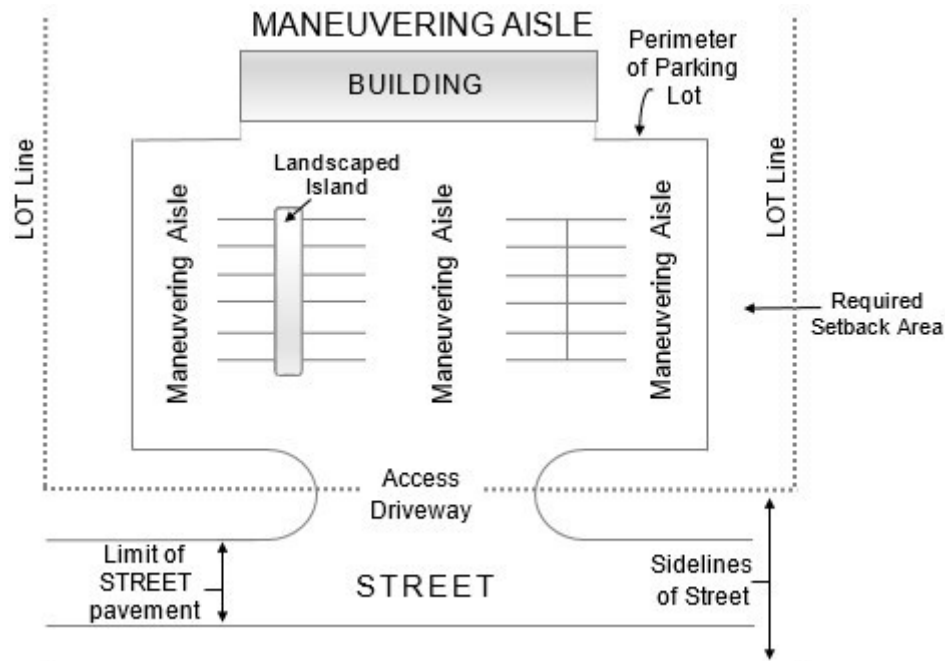
1. **Front Lot Line.** On an interior lot, the line separating the lot from the street or lane. On a corner lot, the shorter lot line abutting a street or lane. On a through lot, the lot line abutting the street or lane providing the primary access to the lot. On a rear or panhandle lot, the interior lot line most parallel to and nearest the street or lane from which access is obtained. See Section 181.4122 Frontage.

2. Rear Lot Line. The lot line that is opposite and most distant from the front lot line. Where no lot line is within forty-five degrees of being parallel to the front lot line, a line ten feet in length within the lot, parallel to and at the maximum possible distance from the front lot line, will be deemed the rear lot line for the purpose of establishing the minimum rear yard.
3. Side Lot Line. Any lot line that is not a front or rear lot line.

**LUMBERYARD** - A facility for the open or enclosed storage and sale of building materials.

**MAJOR RECREATIONAL VEHICLE**- Boats, trailers, motor homes, campers, recreational vehicles, and other such types of equipment.

**MANEUVERING AISLE** - A travel lane located within the perimeter of a parking lot by which motor vehicles directly enter and leave parking spaces.



**MANUFACTURING** - The production, fabrication processing or assembly of goods in a manner that is in compliance with all state and federal rules and regulations.

**MEDICAL OFFICE** - A use providing consultation, diagnosis, therapeutic, preventive, or corrective personal treatment services by doctors, dentists, medical and dental laboratories, and similar practitioners of medical and healing arts for humans, licensed for such practice by the Commonwealth of Massachusetts. Incidental medical and/or dental research within the office is considered part of the office use, where it supports the on-site patient services.

**MEDICAL TREATMENT CENTER, FACILITY OR CLINIC** - A facility that provides out-patient treatment whose primary use includes the on-site dispensing of medication as a form of treatment.

**MOBILE FOOD OPERATION** - A food service operation that is operated from a moveable vehicle, portable structure, or watercraft; has the capability of changing location, and does not remain at any one location for more than forty consecutive days will all licenses under applicable law.

**MOBILE HOME** - A structure, transportable in one (1) or more sections, which is eight (8) body feet or more in width and is thirty-two (32) body feet or more in length and which is built on a permanent chassis and designed to be used as a dwelling with permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

**MOTOR VEHICLE AND EQUIPMENT SALES** - Salesroom and related facilities, including but not limited to open-air display, for the sale or lease of automobiles, motorcycles, recreational vehicles and similar vehicles, boats, or light industrial or farm equipment.

**MOTOR VEHICLE FUEL DISPENSING STATION** – Premises for supplying fuel and oil, but not lubrication, washing, minor repair services, body-work, etc.

**MOTOR VEHICLE REPAIR OR BODY SHOP** - An establishment where the principal service is the repair of motor vehicles or similar motor vehicles, provided that all major maintenance and servicing of vehicles shall be conducted entirely within a building, and further provided that outside storage of vehicles shall be authorized by a special permit from the City Council.

**MOTOR VEHICLE SERVICE STATION** - Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

**MULTI-FAMILY DEVELOPMENT** – Residential use or mixed use on a lot or lots held in common ownership that contains four (4) or more dwelling units in one or more structures.

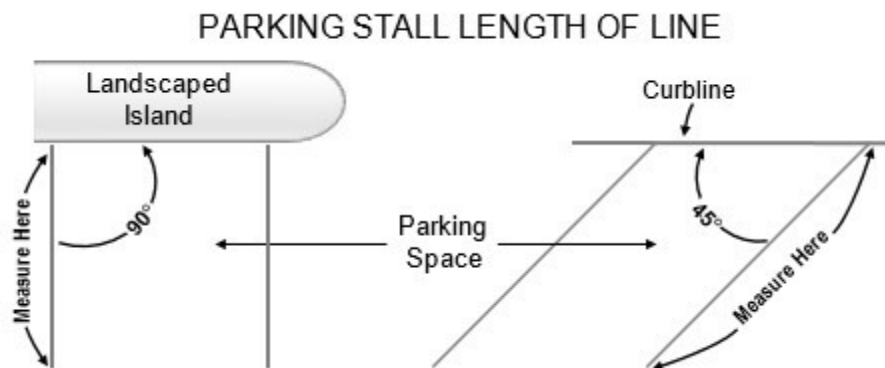
**MUNICIPAL** - Use of land, buildings and structures by the City of Fitchburg.

**NURSING HOME** – A facility for the assistance, maintenance, care, treatment, or recuperation of mentally or physically handicapped, injured, invalid, convalescent or chronically ill persons on a full or part time basis, licensed by an appropriate governmental authority if and to the extent required by applicable law, including independent living facilities, assisted living facilities, continuing care-retirement facilities, congregate living facilities, group care facilities, nursing homes, long-term pediatric or geriatric care facilities, and rehabilitation or physical, psychiatric, psychological, cognitive or behavioral therapy facilities whether or not owned by or affiliated with a hospital.

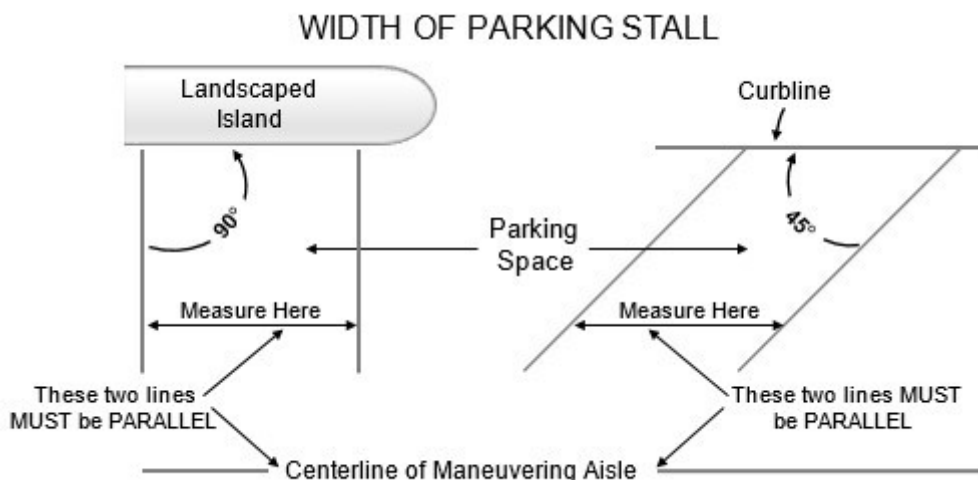
**OPEN-AIR STORAGE** - Open-air storage of materials, merchandise, products or equipment needed in connection with, or provided by the principal use of the premises, provided that all such storage shall be screened from neighbors and public ways.

**PARKING FACILITY** - Privately owned commercial parking open to the public for automobiles and similar light motor vehicles.

**PARKING STALL LENGTH OF LINE** - The longitudinal dimension of the stall measured parallel to the angle of parking.



**PARKING STALL WIDTH** - The linear dimension measured across the stall and parallel to the maneuvering aisle.



**PERSONAL SERVICE FACILITY** - An establishment providing services involving the care of a person or his or her apparel, such as a barbershop, laundry or dry-cleaning shop, diaper service, shoe repair shop, steam bath, reducing salon and health club, and clothing rental shop.

**PHOTOVOLTAIC SYSTEM (ALSO REFERRED TO AS PHOTOVOLTAIC INSTALLATION)** - An Active Solar Energy System that converts solar energy directly into electricity

**PLANNED UNIT DEVELOPMENT** - A planned development on a plot of land in which a mixture of residential, open space, commercial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant a special permit to depart from the normal requirements of the district to the extent authorized by this ordinance.

**PRINCIPAL USE** - The primary or predominant use to which the property or usage is or may be devoted, and to which all other uses on the premises are accessory.

**PRODUCER** - A person or entity that raises or produces Farm Products.

**PUBLISHING AND PRINTING** - Publishing and/or printing services, provided that all operations shall confine disturbing smoke, fumes, dust, chemical discharge and noise to the premises.

**RATED NAMEPLATE CAPACITY** - The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

**RECREATION** - Noncommercial outdoor facilities for activities such as horseback riding, skiing, ice skating, swimming and tennis.

**REGULATIONS** - The rules and regulations of the Planning Board relative to subdivisions, special permits and site plans.

**RELIGIOUS** - Use of land, buildings and structures for religious purposes by a bona fide religious sect or denomination.

**RENEWABLE OR ALTERNATIVE ENERGY, RENEWABLE OR ALTERNATIVE FUELS RESEARCH, DEVELOPMENT OR MANUFACTURING FACILITIES** - shall include Facilities used primarily for the research, development, testing, generation or production of Renewable or Alternative Energy or Renewable or Alternative Fuels. This can include the design, development, manufacturing and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of generation/production or manufacturing.

**RENTING OF ROOMS** - The renting of rooms for not more than two (2) persons that may include a private or common bath but no kitchen or cooking facilities.

**RESEARCH AND TESTING** - Investigation and/or testing of goods and/or equipment, provided that all operations shall confine disturbing smoke fumes, dust, chemical discharge and noise to the premises and that no operation shall violate any federal or state rule or regulation.

**RESIDENTIAL COMMUNICATIONS FACILITY** - Any permanently affixed fixture or equipment used for the wireless transmission or reception of radio signals located on the same lot as, and customarily incidental to, a residential use. Such fixture or equipment shall include, but not be limited to, those used for reception of free or subscription radio or TV broadcasts, reception and transmission of licensed amateur radio communications (per MGL 40A, S. 3), and reception and/or transmission of Citizen's Band or other two-way radio communications.

**RESTAURANT** - An establishment where food and beverages are sold within a building to customers for consumption at a table or counter or on a patio or off the premises as carryout orders.

**RESTAURANT, FAST-FOOD** - An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

**RETAIL** - An establishment engaged in displaying and selling goods or merchandise within a building to the general public or to business establishments, which goods or merchandise are not intended for resale, except that a garden center, florist or commercial greenhouse may have open-air display of horticultural products and that other open-air displays may be allowed with a special permit from the Board of Appeals.



**ROOMING UNIT** – The room or group of rooms let to an individual for private use as living and sleeping quarters with shared or common facilities for cooking, shared bathroom facilities and common shared living area. Shared or common facilities or areas are not permitted at all if they can be reached only by passing through any private part of the dwelling unit or rooming unit of another. The permit granting authority may not waive this prohibition.

**SEXUALLY ORIENTED BUSINESS** - Any place of business at which any of the following activities is conducted:

*Adult Bookstore or Adult Video Store* -- which shall mean a business that devotes more than fifteen percent (15%) of the total display, shelf, rack, table, stand or floor area for the display and sale of the following: Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in MGL C. 272, S. 31; or instruments, devices, or paraphernalia which are designed for use in connection with “sexual conduct” as defined in MGL C. 272, S. 31, other than birth control devices.

*Adult Cabaret* -- which shall mean a nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features (a) live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in MGL C. 272, S. 31, and/or (b) features films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentations of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in the MGL C. 272, S. 31.

*Adult Drive-In Theater* -- which shall mean an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as described in MGL C. 272, S. 31.

*Adult Motel* -- which shall mean a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by the depiction or description of materials which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in MGL C. 272, S.31.

*Adult Motion Picture Arcade* -- which shall mean a place, to which the public is permitted or invited, wherein coin or slug operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in MGL C. 272, S. 31.

*Adult Motion Picture Theater* -- which shall mean an establishment with a capacity for five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in MGL C. 272, S. 31, for observation by patrons. For purposes of this subsection and subsections (3), (4), (5), (6) and (7) infra, a “substantial portion of the total presentation time” shall

mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

*Adult Theater* -- which shall mean a theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in MGL C. 272, S. 31.

*Nude Model Studio*- which shall mean a place where a person appears in a state of nudity as defined by MGL C. 272, S. 31, or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, or sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration, either on or off-site and either contemporaneously or via recorded media of any form, for such display where such display is characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as defined in MGL C. 272, S. 31.

*Sexual Encounter Center* -- which shall mean a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling and /or tumbling, rolling or similar conduct between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in a state of nudity, or where the activities, described in (a) or (b) of this clause, are characterized by conduct which meets the definition of "harmful to minors" and/or "sexual conduct" as defined in MGL C. 272, S. 31.

*Specified Anatomical Areas* -- as used herein shall mean uncovered or exposed human genitals, the pubic region, or pubic hair; or buttocks or female breast(s) below a point immediately above the top of the areola or nipple; or a combination of the foregoing, or human male genitals in a discernible erect state, even if completely and opaquely covered.

*Specified Sexual Activities* -- as used herein shall mean sexual conduct, either actually occurring or simulated, including acts of human masturbation; sexual intercourse; or physical contact by one person, in an act of apparent sexual stimulation or gratification, with another person's, clothed or unclothed, genitals, pubic area, buttocks, or the breast(s) of any female; or any sadomasochistic abuse, or acts by any person in apparent or actual sexual stimulation or gratification, including acts using animals or any objects.

**SIGN** - Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs." The following, however, shall not be considered signs within the context of this ordinance:

- A. Flags and insignia of any government except when displayed in connection with commercial promotion.
- B. Legal notices, or informational devices erected or required by public agencies.
- C. Temporary displays inside windows, covering not more [than] thirty (30) percent of window area, illuminated by building illumination only.
- D. Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.

- E. Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.
- F. Devices identifying a building as distinct from one (1) or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four (4) square feet in area.
- G. Address identification through numerals or letters not exceeding three (3) inches in height.
- H. Interior window coverings not directing public attention to a service, event, or use that are intended to block public view to vacant space or space under construction or renovation.

**SIGN AREA** - The area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matters shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

**SINGLE HOUSEKEEPING UNIT** - Any household whose members are an interactive group of persons jointly occupying a dwelling unit, including joint access to and use of all common areas including living, kitchen and eating areas within the dwelling unit, and sharing household activities, and responsibilities such as meals, chores, expenses and maintenance, and whose makeup is determined by the members of the unit rather than by the landlord, property manager, or other third party. This does not include a boarding, lodging, or rooming house.

**SLEEPING UNIT** - A room or space in which people sleep which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**SOLAR ENERGY SYSTEM** - A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

**SOLAR ENERGY SYSTEM, ACTIVE** - A solar energy system 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.

**SOLAR ENERGY SYSTEM, GROUND-MOUNTED** - An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

**SOLAR ENERGY SYSTEM, LARGE SCALE** - An Active Solar Energy System that occupies more than 1,750 square feet of surface area (equivalent to a rated nameplate capacity of greater than 10 kW DC).

**SOLAR ENERGY SYSTEM, ROOF MOUNTED** - An Active Solar Energy System that is structurally mounted to the roof of a building or structure.

**SOLAR ENERGY SYSTEM, SMALL SCALE** - An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of 10 kW DC or less).

**STREET** - A street shall be an improved public way, a way which the City Clerk certifies is maintained and used as a public way, a way shown on a subdivision plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or a way in existence on August 25, 1958, if such way has, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereupon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereupon. For the purposes of this definition, a public way shall be considered improved if such public way has, in the opinion of the Planning Board, sufficient paved width, paved suitable grade and otherwise adequate construction and ongoing city maintenance to provide for the needs of the vehicular traffic in relation to the proposed use of the land abutting thereupon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereupon.

**STRUCTURE** - A combination of materials assembled to give support or shelter, such as buildings, kiosks, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, signs or fences, but not including driveways, walkways and other paved areas, underground storage tanks, septic tanks and septic systems and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

**TIMBER HARVESTING** - The cutting and removal of forest products on any parcel of land in quantities greater than twenty-five thousand (25,000) board feet or fifty (50) cords of wood, but not including clearing of land associated with a valid building permit or the cutting of timber for consumption by the property owner, provided that all activity shall be in accordance with the Forest Cutting Practices Act of the Commonwealth of Massachusetts.

**TEMPORARY PORTABLE STORAGE CONTAINER** - A container fabricated for the purpose of transporting freight or goods by a truck, railroad or ship, including cargo containers, shipping containers, storage units, or other portable structures that are placed on private property and used for storage of items, including, but not limited to, clothing, equipment, goods, household or office fixtures or furnishings, materials and merchandise.

**TRANSPORTATION TERMINAL** - A facility for the storage and repair of trucks and/or buses.

**VALUE-ADDED FARM PRODUCT** - Any product processed by a Producer from a Farm Product, such as but not limited to baked goods, jams, jellies, preserved vegetables and fruits, and beeswax candles.

**VEHICLE SALVAGE YARD** - Outdoor storage of unregistered vehicles in whole or part, or used vehicle parts.

**VETERINARY CARE** - A facility where animals are given medical or surgical treatment and where the boarding of animals is limited to short-term care incidental to the medical or surgical treatment.

**WAREHOUSE** - A building for the storage, distribution or wholesale marketing of material merchandise, products or equipment.

**WETLANDS** - Land subject to the provisions of MGL C. 131, S. 40 and 40A.

**WIRELESS COMMUNICATIONS** - All forms of communications which transmit and receive electromagnetic signals.

**WIRELESS COMMUNICATIONS ACCESSORY BUILDING** - A structure designed to house radio communications equipment that is associated with one or more WIRELESS COMMUNICATIONS FACILITIES. It is placed in proximity to an ANTENNA SUPPORT STRUCTURE with a means to permit its ANTENNAS to be connected to equipment housed in the accessory building.

**WIRELESS COMMUNICATIONS FACILITY** - One system of transmission and/or reception equipment operated by an FCC licensee or a communications service installed at one location. The system includes any network equipment, one or more ANTENNAS mounted on an ANTENNA SUPPORT STRUCTURE, a means to connect the ANTENNA(S) to communications equipment, communications transmitting and/or receiving equipment and related equipment required for the operation of the facility. Such related equipment may be, for example, network interconnection equipment, alternate power sources, or control and monitoring systems. This definition shall include all facilities and equipment used by Grantee to provide Service, including but not limited to antennas, cables, fiber, repeaters, microwaves, radios, wires, lines, waveguides, poles, towers, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, or other associated conductors, converters, equipment of facilities, and related hardware, installed by Grantee at a particular location to be used for its distribution and provision of Communications Service and other lawful services within the City of any so called utility infrastructure facility and any so-called hybrid transport network. Mobile vehicle-mounted or transported systems, such as used for mobile news organizations, are not considered wireless communications facilities under this ordinance.

**YARD** - A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

**YARD, FRONT** - A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

**YARD, REAR** - A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

**YARD, SIDE** - A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

**ZONING MAP** - The Zoning Map of the City of Fitchburg, Massachusetts, adopted in accordance with and pursuant to the provisions of MGL C. 40A.

**ZONING ORDINANCE** - The Zoning Ordinance of the City of Fitchburg, Massachusetts, adopted in accordance with and pursuant to the provisions of MGL C. 40A