

Section 7**SUPPLEMENTAL DISTRICT REGULATIONS****(A) Home Occupations**

(As Amended Dec. 6, 2004 Special Town Mtg.)

Home Occupations shall include, but not be limited to the following: the office or studio of a physician or surgeon, dentist, artist, lawyer, handicraft person, architect, professional engineer, realtor or real estate broker, insurance agent or broker, psychologist or counselor, notary public, teacher of scholastic subjects, accountant, hairdressers, beauty parlor operators, or teachers of piano residing on the premises.

Existing occupants with operating home occupations from the above list at the time of the adoption of this section are automatically grandfathered and their grandfathered status will expire when the occupant moves or in any way relinquishes the occupation for a period of one year or more.

All occupants wishing to operate a new home occupation either from the above list of occupations or in any other occupation must apply for a special permit. In conformance with the provisions of Section 9, and subject to the additional requirements and standards described herein, the Planning Board acting as the special permit granting authority may approve a special permit allowing for a home occupation in such districts where permitted under the Use Regulations Schedule, Section 5, Part (D). In all cases, the petitioner, as part of the application for such special permit, shall have secured written consent and approval of at least two (2) of the following property owners:

- The owner of the lot to one side of the petitioner's property,
- the owner of lot to the other side of the petitioner's property, or
- the owner of the lot directly across the street therefrom.

Where the petitioner is the owner of a lot on either side or across from the property for which such special permit is requested, such lot shall be omitted, in which case, written consent and approval shall be secured from the property next to that omitted.

In the case of an application for a special permit involving a dwelling situated on a corner lot or so located that the above enumerated is unreasonable or impossible, the special permit granting authority may approve such permit, provided that the consents of the property owners are obtained substantially in accordance with the principles herein set forth, as may be determined by said authority.

The power to approve such permit for a home occupation shall be within the sole discretion of the Planning Board acting as special permit granting authority. Each case shall be considered on its own merit and no case shall raise a presumption in favor of any case.

The following conditions and restrictions shall apply to all special permits under these provisions:

1. The space occupied by a home occupation shall not exceed twenty (20%) percent of the gross floor area of the dwelling or five hundred (500) square feet, whichever is less.
2. Not more than one person other than residents of the premises shall be regularly employed in connection with the home occupation.
3. No display, sign or advertising device shall be visible from the street except one (1) announcement (nameplate). The nameplate may display the name of the occupant and/or the name of the occupation. It shall not exceed one (1) square foot (144 square inches) in area, shall be non-illuminated, and attached flat to the main structure, visible through a window, or posted in front of the building with a maximum height of four (4) feet.
4. Any approved special permit shall expire when the occupant no longer resides at the premises, or when the occupant relinquishes the occupation for which the special permit was granted for a period of one (1) year or more.

(B) Lodging Houses and Dormitories

Lodging houses and dormitories are permitted only as indicated in the Use Regulations Schedule (Section 5) and provided that there is no display, sign, or other advertising device visible from the street, whether illuminated or otherwise, other than a sign having an area of not more than one hundred forty-four (144) square inches. A public restaurant or dining room shall be permitted as an accessory use in any part of such a building, provided that the dining room and kitchen facilities do not occupy more than twenty-five (25%) percent of the first floor area of such building.

(C) Accessory Uses and Buildings

An accessory use of land or structure is a use for a purpose customarily incidental to the main or principal use permitted in the district. An accessory building or structure is unattached to, subordinate in size to, and used for a purpose incidental to, a principal use or building.

Accessory uses and buildings customarily incidental to any use permitted in the Use Regulations Schedule (Section 5) are permitted in the corresponding districts,

provided that such accessory use or building shall not be offensive or dangerous to life by reason of fire, and provided further, that such accessory use or building shall not include any activity conducted for gain or for the provision of a service to non-occupants of a residence at that location.

No private way or walk shall give access across or upon a lot in any district to a business or industry, except to an agricultural, horticultural or floricultural use on an adjoining lot as permitted in the Use Regulations Schedule.

In industrial districts, accessory uses or activities necessary in connection with scientific research or scientific development or related production, not necessarily on the same parcel as said primary uses or activities, are permitted by special permit from the Planning Board acting as the special permit granting authority, provided that the Planning Board finds that the proposed accessory use does not substantially derogate from the public good.

(D) Agricultural, Horticultural and Floricultural Uses

Agricultural, horticultural and floricultural uses shall include produce farms, truck gardens, dairies, nurseries, wood lots, greenhouses, harvesting of natural ice, and similar pursuits yielding food, fiber or decorative plants.

On parcels of less than five (5) acres, in all districts except Residence A-1, Agricultural, and Industrial A, the following restrictions apply: The keeping and raising of pigs, rabbits, livestock, pigeons, whether raised for table or other purposes, or other like objectionable uses are prohibited. The keeping of poultry is restricted to a small flock for the use of the resident occupant only. The flock shall be confined in an enclosure not less than ten (10) feet from any lot line and not less than twenty-five (25) feet from any building used for human habitation.

For the purpose of this By-Law, a small flock shall mean and shall not exceed one unit of poultry to each five hundred (500) square feet of lot area but in no case more than twelve (12) such units on any lot. The building and enclosure for the keeping of poultry permitted herein shall not exceed one twentieth (1/20) of the area of the lot on which it is located, and any building so used shall be limited to one story in height. The use of such enclosure or building for the keeping of poultry shall be accessory to a dwelling existing on the same lot or on an abutting lot. Any greenhouse on such a parcel shall not be conducted as a business, and any greenhouse heating plant shall be located at least twenty (20) feet from any lot line.

On parcels of less than five (5) acres in Residence A-1 districts, the keeping and raising of poultry – as well as pigs, rabbits, livestock, pigeons and other like objectionable uses – is prohibited. Any greenhouse on such a parcel shall not be conducted as a business, and any greenhouse heating plant shall be located at least twenty (20) feet from any lot line.

On parcels of less than five (5) acres in Agricultural districts, the above-described restrictions shall not apply.

Agricultural, horticultural and floricultural uses are prohibited entirely on parcels of less than five (5) acres in Industrial A districts.

(E) Stables and Riding Academies

1. Accessory to Residential Use. The keeping of horses and/or ponies and a private stable, for personal use are permitted as accessories to residential uses in accordance with the following conditions:
 - a. The minimum acreage required for not more than one (1) horse, pony or stable shall be 32,500 square feet. One additional horse or pony shall be permitted for each 15,000 square feet over the minimum of 32,500 square feet of useable land area not including the square footage for principal and accessory buildings. Foals under six (6) months are not counted.
 - b. The location of the stable shall be not less than one hundred (100) feet from any street line, and not less than thirty (30) feet from any side lot line, and not less than twenty-five (25) feet from a rear lot line, and not less than forty (40) feet from any dwelling.
 - c. The area to be used for the keeping of horses and/or ponies shall have adequate fencing to contain the animal(s) within the property boundaries.
 - d. Stables, corrals and yards shall be properly drained and reasonably free from excessive odor, dust and mud, so as not to create a nuisance or health hazard, to the community or to surrounding property owners, from an air or drainage pollution standpoint.
 - e. Maintenance of the stable and property used in the keeping or horses and/or ponies shall conform to all regulations of the local Board of Health and State Health Authorities.

2. Riding Academies. The term “riding academies” shall be interpreted to include private club riding stables, rental and hacking stables, livery and boarding stables. Where permitted in conformance with the Use Regulations Schedule (Section 5), such uses shall meet the following conditions:

- a. The minimum acreage required shall be a parcel or tract of land of at least ten (10) acres.
- b. The location of barns, stables, riding rings, corrals and accessory facilities shall be located at least one hundred seventy-five (175) feet from any side or rear lot line.
- c. Sufficient off-street parking facilities shall be provided to accommodate all users and visitors to the property.
- d. The conditions described in (1)c, (1)d, and (1)e (above), relating to fencing, nuisances and health regulations, shall also apply to riding academies.

(F) Conversion of Single-Family to Two-Family Dwelling

In conformance with the provisions of Section 9, and subject to the additional requirements described herein, the special permit granting authority may approve a special permit allowing for a single-family dwelling or other suitable structure to be altered and improved and facilities added for a second housekeeping unit on a lot, in such Districts where permitted under the Use Regulations Schedule, Section 5, Part (D).

In all such cases, the petitioner, as part of the Application for such permit, shall present adequate plans setting forth the changes and improvements to be made, and shall have secured the written consent and approval of at least (3) of the following owners:

The owner of the lot on either side of the petitioner's property; the owner of the lot adjacent in the rear of the petitioner's property; and the owner of the lot directly across the street therefrom. Where the petitioner is the owner of a lot on either side, in the rear or across from the property for which such a special permit is requested, and approval shall be secured from the owner of the property adjacent in the rear of the petitioner's property, the owner of the lot which abuts the greater length on the petitioner's property shall be deemed "owner of the lot adjacent in the rear of the petitioner's property" as used in the second clause of the first sentence of this paragraph.

In the case of an application for a special permit involving a dwelling situated on a corner lot or so located that the above enumerated is unreasonable or impossible, the special permit granting authority may approve such permit, provided that the consents of the property owners are obtained substantially in accordance with the principles herein set forth, as may be determined by said authority. The power to approve such permit for conversion to a two-family dwelling shall be within the sole discretion of the special permit granting authority, and no such permit shall be approved unless it shall be clear that the use

requested is for the best interests of the vicinity and in harmony with the general purposes and intent of the By-Law. Each case shall be considered on its own merits and no case shall raise a presumption in favor of any other case.

(G) Noxious Industrial Uses

The following noxious or dangerous uses are permitted in the Industrial B District, subject to approval of a special permit by the Planning Board acting as the special permit granting authority:

- Acetylene gas, cyanide compound or oxygen manufacture
- Asphalt manufacture or refining
- Chlorine or bleaching powder manufacture
- Creosote manufacture
- Distillation of coal or wood
- Drop forge shop
- Explosives, fireworks or ammunition manufacture
- Fertilizer manufacture
- Fumigation plants
- Glue or size manufacture from fish or animal offal
- Gypsum, cement, plaster or plaster of paris manufacture
- Incineration or reduction of or dumping of offal, garbage or refuse on a commercial basis (except where controlled by the Town)
- Junk yard, junk storage, scrapping of autos and parts and the salvage thereof
- Linoleum manufacture
- Match manufacture
- Paint and lacquer manufacture
- Petroleum refining and the bulk storage of petroleum products
- Pyroxylin plastic manufacture
- Rubber, natural or synthetic, or gutte-percha manufactured from crude or scrap material
- Sewage disposal plant (except where controlled by the Town)
- Soap, tallow, grease or lard manufacture
- Slaughterhouse
- Sulphurous, sulphuric, nitric or hydrochloric acid manufacture
- Tannery
- Tar or asphalt roofing manufacture
- Tar products manufacture
- Tire recapping or retreading
- All other enterprises or uses commonly regarded as hazardous or offensive.

(H) Industrial Garden Districts

In addition to all other applicable provisions of this By-Law, and any to the contrary notwithstanding, the following requirements shall be controlling within the Industrial Garden District:

1. Ways and Intersections with Public Ways. All ways upon any lot in an Industrial Garden District shall conform to the following design standards:
 - a. Entrances or exits to public ways of the Town shall be approved by the Board of Public Works as to locations and construction, and shall be designed to minimize potential traffic hazards.
 - b. Ways shall be laid out so as to intersect as nearly as possible at right angles. In no case shall street intersections be less than sixty (60) degrees.
 - c. Street lines at all intersections shall be rounded with a curve at each corner which has a radius of not less than thirty (30) feet.

When the intersection of two streets varies more than ten (10) degrees from a right angle, the radius of the curve at the obtuse angle may be less, and at the acute angle shall be greater than thirty (30) feet.
 - d. On any way where the grade exceeds three (3%) percent on the approach to the intersection, a leveling area with a slope of less than one (1%) percent shall be provided for a distance of not less than fifty (50) feet measured from the nearest exterior line of the intersecting street.
 - e. Ways shall have a minimum width of traveled way of thirty (30) feet. No grade shall be greater than six (6%) percent nor less than one-half of one (0.5%) percent.
 - f. Granite curb inlets shall be furnished at all catch basins located within the way. Bituminous concrete berms, granite or concrete curbing shall be required along street edges where grades exceed four (4%) percent, where catch basins are located, at street intersection returns and where special conditions require. Bituminous concrete berms shall be constructed with a berm machine, providing a base from eight (8) inches to ten (10) inches and a height of eight (8) inches. The height of the berm above finished gutter grade shall be a minimum of five (5) inches.
2. Exterior Construction. The exterior facing of the front elevation and side walls of any building in the Industrial Garden District shall be finished with brick, natural or manufactured stone, terra cotta, glass, aluminum or other structural exterior material of equal durability and architectural effect.

3. Landscaping. No less than two-thirds (2/3) of the front setback and side yard areas of any building shall be provided with grass lawns, shrubbery or other appropriate landscaping.
4. Rubbish and Trash. All rubbish, trash, scrap or other waste material incident to the uses of the building occupation shall be stored within a structure compatible with the requirements of Paragraph (2) above or in a manner which shall be sheltered from public view, provided that such material is not placed closer to the side lot lines than the sides of the principal building; and further provided that such material shall not be stored within fifty (50) feet of the rear lot line.
5. Flammable Materials. All flammable materials stored in quantities in excess of one hundred (100) gallon containers and which are required to be licensed under General Laws Chapter 148, Section 9, as amended, shall be stored below ground and below the mean grade level of the lot on which the storage is required, or otherwise suitably enclosed.
6. General Provisions. In addition to restrictions appearing elsewhere in this By-Law, no use of land in the Industrial Garden District is permitted which is unreasonably objectionable because of excessive noise, vibration, offensive odor, smoke or any other reason which may render the use or occupancy of the land and buildings a nuisance.
7. Subdivisions. Subdivisions within the Industrial Garden District shall conform to the subdivision control law as adopted by the Town of South Hadley, and shall further conform to the subdivision rules and regulations of the Planning Board.

(I) Location of Automobile Services

Public garages, automobile repair shops, greasing stations, storage battery service stations, gasoline filling stations, or any of their appurtenances or accessory uses shall hereafter be erected or placed at least twenty-five (25) feet from any Residence or Agricultural District unless the spaces so used are entirely enclosed in masonry or concrete walls and have roofs without openings, except skylights having metal frames and fixed metal sash, glazed with wire glass. Such buildings shall have no entrances or exits for motor vehicles within a radius of one hundred (100) feet of any school, library, church, playground, or institution for the sick, blind or feeble, or for children under sixteen (16) years of age.

(J) Flexible Development*(Adopted May 8, 2004 Town Mtg.)*1. Purposes.

Flexible Development provisions are designed to encourage:

- a. Development of diverse and affordable housing types while preserving natural open space.
- b. Preservation of natural open space for its scenic qualities and for its agricultural, environmental, forestry, and recreational uses.
- c. Protection and enhancement of property values.
- d. Housing located sensitive to a site's environmental assets and constraints.
- e. Housing developments which minimize the construction of public infrastructure.
- f. Maintenance of existing visual corridors and views of natural community assets (such as, views of Mount Holyoke, Mount Tom, Connecticut River, and agricultural activities).
- g. Interaction of preserved open space with residents.

2. Applicability. The Planning Board may permit creation of a Flexible Development from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town of South Hadley in accordance with the provisions of this subpart of the Zoning By-Law. Creation of a Flexible Development requires approval of a Special Permit and Definitive Subdivision Plan as specified herein.

3. Definitions. As used in this Subpart of the Zoning By-Law, the following words and phrases shall have the meanings and intent respectively ascribed to them by this subpart. If any word or phrase conflicts with definitions specified elsewhere in the South Hadley Zoning By-Law, the meaning and intent ascribed below shall govern:

- a. Base number of dwelling units. The number of housing units which could reasonably be permitted in compliance with the dimensional requirements of the underlying zoning district.
- b. Fifty-Five and over community. A residential development which is developed and maintained to provide at least 80% of the residents are 55 years of age or over.
- c. Flexible development. A process and type of residential development which is designed to maximize the preservation of community-significant open space and visual assets.

- d. Scenic views. Views significant to the cultural and environmental heritage of South Hadley including, but not limited to, views of Mount Holyoke Range, Mount Tom, and the Connecticut River.
 - e. Significant trees. A tree with a caliper of 30 inches or more as measured at the base.
 - f. Single-Family attached housing. A form of development in which each single-family residence is on a separate lot but shares one or more exterior walls common with an adjoining single-family residence.
 - g. Usable open space. Areas suitable for use as facilities and sites for play, tot lots, gardens, hiking/jogging trails, or similar facilities.
 - h. Zero lot line housing. A form of development in which each single-family residence is on a separate lot and has no setback from one side lot line.
4. Design Process. Flexible Development is a unique approach in that it permits wide flexibility in defining the dimensional standards and density allowed for the residential development with a focus on open space and cultural space preservation. The design process outlined below is essential to achieving the purposes of the Flexible Development provisions of the Zoning By-Law. Accordingly, each development plan shall be based on following the multi-step design process outlined below.
- a. Inventory and assessment of the site. As an initial step, the applicant is to inventory the existing site features giving special attention to the site's natural, scenic, and cultural resources and the interrelationships of the important features to each other.
 - b. Evaluation of site context. The next step involves an evaluation of the site in its larger context by identifying environmental, transportation, utility, drainage, and cultural elements and relationships to surrounding land uses and activities. This evaluation must include an assessment of the types and densities of adjoining developments.
 - c. Designation of preservation areas. The third step is to identify the common open space and cultural areas of the site to be preserved or enhanced. These areas should include the most important and unique resources and scenic view elements. To the extent appropriate, areas that serve to extend neighborhood and community open space networks should be included in these areas.
 - d. Delineation of development features. The fourth step is to delineate the locations/areas to be used for the development features, including, but not limited to, building sites, streets, parking areas, paths, utility infrastructure

corridors, and drainage basins. This process should reflect an integrated community which is compatible with surrounding and historical development patterns.

- e. Lot lines. If the development involves division of the property into building lots, the next step is delineation of the lot lines.
- f. Definitive Plan. The final step in the design process is preparation of the Definitive Plan required by the South Hadley Subdivision Regulations. This plan is encouraged to be submitted as part of the Special Permit application, but as provided in Section 5b must be submitted and approved in accordance with the South Hadley Subdivision Regulations.

As part of the public hearing process on the Special Permit application, applicants are to demonstrate to the Planning Board that the applicant, at a minimum, incorporated this design process in developing the proposed development plan.

- 5. Procedures. Flexible Development is a unique use which requires a Special Permit from the Planning Board. In addition to the provisions of Section 9 of the Zoning By-Law the following provisions also apply to the Flexible Development application:
 - a. Concept Review. While not required, applicants are encouraged to submit a concept plan for informal review by the Planning Board. Materials for this informal review shall be submitted at least fifteen calendar (15) days prior to the date of the Planning Board meeting at which the review is to be undertaken. The materials to be provided for this concept review should be sufficient to demonstrate the applicant has, on at least a preliminary basis, completed the Design Process detailed herein.
 - b. Subdivision Plan. All Flexible Development projects will involve submittal and approval of a Subdivision Plan pursuant to the Town of South Hadley Subdivision Regulations. Accordingly, the applicant must submit and obtain approval of the Definitive Plan either at the time of submittal of an application for the Special Permit or at a later date, but in accordance with the South Hadley Subdivision Regulations.
 - i. Applicants are encouraged to submit an application for Definitive Subdivision approval with the application for a Special Permit.
 - ii. If an applicant submits an application for Definitive Subdivision approval with their application for a Special Permit, they must also provide written authorization to extend the deadline for Definitive Plan approval to a date at least thirty (30) days after the Special Permit decision is filed with the Town Clerk.

- c. Supplemental Contents. In addition to the requirements specified in Section 9 and Appendix E of the Zoning By-Law, applications for a Flexible Development must include the following information:
 - i. Boundaries of areas subject to regulation by the South Hadley Conservation Commission.
 - ii. Topographic contours (existing and proposed) at intervals of ten feet or less.
 - iii. Cultural and historic features on the property to include, but not limited to, stone walls, archeological and historic sites and structures, and significant trees.
 - iv. Scenic views (as defined in Section (J)3 above) as determined by on-site observations from public roads and vantage points within the development site.
 - v. Historic sites listed on the National Register of Historic Places or Sites.
 - vi. Description of proposed dimensional standards.
 - vii. Description of how the proposed development reflects compliance with the design process and design standards.

- 6. Housing Types Permitted. To further the purposes of this subpart of the Zoning By-Law, the Planning Board may permit the following types of residential uses:
 - a. Single-family detached
 - b. Single-family attached
 - c. Multiple-family (includes condominium developments)
 - d. Two-family
 - e. Three-family
 - f. Four-family
 - g. 55 & over communities
 - h. Zero-Lot Line housing
 - i. Customary accessory structures and uses

- 7. Dimensional Standards.
 - a. Minimum tract size. The minimum size of tract that may be considered for a Flexible Development is 5 acres.
 - b. Internal dimensional standards. Lots and buildings without direct access to pre-existing public roadways may be developed with dimensional requirements other than those of the underlying zoning district. Therefore, for lots and buildings within a Flexible Development without direct access to pre-existing public roadways, the applicant shall propose dimensional standards including, the minimum lot area, minimum lot frontage, maximum lot coverage, and minimum yard setback requirements to create

building sites which differ from those specified for the underlying zoning district. These internal dimensional standards are subject to Planning Board approval. The applicant shall have the burden of demonstrating, to the Planning Board's satisfaction, that the proposed dimensional standards are appropriate for the site's natural and cultural attributes and in keeping with the purposes of this subpart of the Zoning By-Law.

- c. Perimeter dimensional standards. For lots and buildings within a Flexible Development, but which abut lots or roadways adjoining the proposed development, the dimensional standards of the underlying zoning district as specified in Section 6(B) of the Zoning By-Law shall be applicable.
 - i. Waiver. The Planning Board may permit a vegetated buffer and/or screening fence to be provided to sufficiently screen the proposed residences from the existing developments in lieu of compliance with the underlying zoning district's dimensional standards. Where such a buffer is permitted as provided in this waiver provision, the following conditions shall apply:
 - a.) The Planning Board may require the buffer area to extend around the perimeter of the subject tract.
 - b.) The Planning Board may require the buffer area to be equal to or greater than double the required rear yard setback of the underlying zoning district.
 - c.) Any required buffer area shall be left undisturbed and the applicant shall provide for its maintenance in perpetuity.
 - d.) If the existing vegetation is inadequate to provide a visual buffer, the Planning Board may require the applicant to add vegetation sufficient to provide a buffer.

8. Density Standards. The base number of dwelling units which may be allowed or permitted in a Flexible Development shall not exceed the number of lots which could reasonably be permitted in the underlying zoning district in accordance with the dimensional standards specified in Section 6(B) of the Zoning By-Law.
 - a. Multiple zoning districts. If the subject property is located within multiple zoning districts, the base number of dwelling units shall be based on the acreage situated in the respective zoning districts. However, the location of the approved number of dwelling units is not subject to the boundaries of the underlying zoning district.
 - b. Planning Board restrictions. Where the natural conditions (significant wetlands, floodplain, and/or steep slopes) of the subject site suggest that the base number of dwelling units as determined by the method specified in 8a and 8c is excessive, the Planning Board may require the applicant to

deduct all or a portion of the areas subject to those natural conditions from the gross acreage of the site.

- c. Determining base number of dwelling units. The base number of dwelling units shall generally be determined by either of the following methods:
 - i. Preliminary Plan. The applicant may submit a Preliminary Plan which demonstrates the number of dwellings which could reasonably be situated on the site subject to the underlying zoning district’s dimensional requirements.
 - ii. Preset Method. Multiply the gross acreage of the subject site by the following maximum density standard for the subject zoning district:

<u>Zoning District</u>	<u>Number of Units per Acre</u>
Agricultural	0.75 or 0.90*
Residence A-1	1.20
Residence A-2	2.00
Residence B	3.25

*If the property is located within the Water Supply Protection District and lacks public water and sewer services, the lower density figure will apply. However, if the subject property is provided with public water service and either public sewer service or an alternative sewage disposal system pursuant to Section (J)10dii below, the higher number of 0.90 units per acre may be used.

Planning Board Verification. However, the Planning Board may require submittal of a Preliminary Plan to substantiate the number of lots proposed to be used as the base number if a substantial portion of the subject property is occupied by natural features and/or easements and dimensions which restricts the number of lots which might be developed on the property.

- 9. Density Bonuses. The Planning Board may permit density bonuses to increase the number of dwelling units beyond the base number of dwelling units as provided in Subsection 8. The Planning Board shall utilize the following conditions as the bases for granting density bonuses:
 - a. Additional open space. For each additional ten percent of the site (over and above the required 30 percent) set aside as common open space, a density bonus of one additional unit may be awarded; provided that this density bonus shall not exceed 50 % of the base number of dwelling units. Vegetated areas required as buffer areas between the subject development

and adjoining properties or roadways shall not qualify for this additional open space density bonus.

- b. Affordable housing units. For developments that provide that at least 25% of the dwelling units are permanently affordable for persons with an income of no more than 80% of the median family income for the area, the Planning Board may permit a density bonus of 25% of the base number of dwelling units.
- c. Fifty-Five and over community. Flexible Developments restricted as Fifty-Five and over communities may qualify for a bonus of 25% of the base number of dwelling units.
- d. Limits on bonuses. Density bonuses shall be cumulative and shall not cumulatively exceed 50% of the base number of dwelling units.

10. Site Design Standards.

- a. Building and lot orientations.
 - i. Structures shall be oriented toward the street serving the premises and not the required parking areas.
 - ii. Lots shall be laid out and designed, to the greatest extent feasible, to preserve and protect historic and archeological sites, farmland, wooded stream corridors, forested areas and large trees, scenic views particularly as seen from public roads, ridgelines and hilltops.
- b. Roadways.
 - i. Conformity to standards. The principal roadway(s) serving the site shall be designed to conform with the standards set forth in the Town of South Hadley Subdivision Regulations.
 - ii. Waiver(s). The applicant may request waiver of roadway and related standards as provided for in the Town of South Hadley Subdivision Regulations. However, the Planning Board may restrict such waivers to proposed private roadways.
- c. Parking. Each dwelling unit shall be served by off-street parking spaces as provided in Section 8(G) of the Zoning By-Law.
 - i. Waiver. The Planning Board may grant waiver(s) of the requirements of Section 8(G) of the Zoning By-Law subject to conditions the Board determines to be appropriate.

- d. Water Supply Protection District. The Planning Board may grant a Special Permit to allow a Flexible Development in the Water Supply Protection District where the following conditions are satisfied:
 - i. Protection of Water Supply. The Planning Board determines that the density and design of the development will provide adequate protection for the Water Supply. To this end, the number of dwelling units shall be determined by the Preliminary Plan method stated in paragraph 7(J)8ci. The maximum density bonuses which may be permitted in the Water Supply Protection District pursuant to Subpart J(9) above shall not exceed one-half the amount permitted outside the Water Supply Protection District.
 - ii. Sewage Disposal. The Board of Health grants approval for a common septic disposal system where public sewer is not available. The Planning Board may, but is not required, permit the area occupied by such system to be included in the common open space if the Planning Board determines that inclusion of such an area in the common open space is consistent with the purposes of this By-Law Subpart and the purposes of the common open space.
- e. Modification of Zoning By-Law Restrictions. The Planning Board may grant waivers of the fence and parking restrictions/requirements where the Board deems it necessary to further the purposes of this subsection of the Zoning By-Law.

11. Common Open Space.

Each Flexible Development shall provide for usable common open space.

- a. Minimum required. A minimum of 30% of the parcel shown on the development plan shall be in usable open space.
- b. Multiple parcels. The required common open space may be in multiple parcels, provided that no individual parcel shall be less than 25% of the required common open space and all of the parcels are connected via walkways, pathways, roadways, or other means of access. The portion of the connecting accessway located outside of the limits of roadway or roadway right of way may be included in the calculation of the area of the common open space.
- c. Uses of common usable open space. The required common usable open space shall be used for agriculture, natural education, recreation, conservation, historic, park purposes, or a combination of such uses. Public easement purposes may also be permitted to traverse portions of the common usable open space. Only structures commonly associated with

and incidental to the permitted uses shall be permitted in the common usable open space areas.

- d. Composition of common usable open space. While the Planning Board will make the final determination of the composition of the common usable open space, the common usable open space may include wetlands, floodplain land, and steep slope. However, the required open space shall not be comprised exclusively of lands with such restrictions. As a general guide, no more than 50% of the required open space shall be composed of wetlands. The applicant has the burden of demonstrating that the composition of the proposed open space and its location and access further the purposes of the Flexible Development provisions and are appropriate for the proposed development.

The Planning Board may deny use of any surface drainage systems (such as retention and detention ponds, swales, etc.) as qualifying for the required open space.

- e. Access from Dwelling units. A maximum number of the subject development's dwelling units compatible with good design shall abut the open space. All dwelling units shall have ready access to the common open space either physically or through internal pedestrian paths or sidewalks.
- i. Exception. The Planning Board may grant an exception to the access requirement upon a recommendation from the Conservation Commission that the resource area is vulnerable to trampling or other disturbance and physical access should not be provided.
- f. Accessory buildings. Structures or buildings accessory to recreation, conservation, or agriculture use may be erected but shall not exceed five percent of the area protected as common open space. Accordingly, the applicant may make provision for erection of such structures by subsequent owners of the residences; however, the aggregate size of all such structures shall not exceed the five percent rule. Further, the applicant shall make provisions for maintenance of any accessory structures or buildings (such provisions may include assignment of responsibility to a homeowners association).

12. Ownership of Common Open Space.

- a. Conveyance. The required common open space shall, at the Planning Board's election, be conveyed to:
- i. The Town or its Conservation Commission and be accepted by the Town for park or open space use.

- ii. A nonprofit organization, the principal purpose of which is the conservation of open space.
 - iii. A corporation or trust owned or be owned by the owners of the lots or residential units within the development. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units.
- b. Restriction. Regardless of the ownership of the open space, any conveyance shall be subject to the conditions of the Planning Board approval of the Flexible Development and subject to a recorded restriction enforceable by the Town, providing that such land shall be:
- i. perpetually kept in an open state; and,
 - ii. preserved for exclusively agricultural, horticultural, educational, or recreational purposes (except for those lands permitted to also be used for a common septic disposal system pursuant to paragraph 7(J)10d; and,
 - iii. maintained in a manner which will ensure its suitability for its intended purposes; and,
 - iv. prohibited from being further subdivided.
13. Not Subject to Variance. No provision of this subpart, nor any project for which a Special Permit was granted under this subpart, shall be subject of a dimensional variance from the Zoning Board of Appeals. If deviations from the approved dimensional standards become necessary, the Planning Board may amend the Special Permit to accommodate such conditions.

(K) Fences or Walls in Residential Districts

(Amended June 7, 2005 Special Town Mtg.)

Fences or walls in residential districts, which are more than four (4) feet high and more than one-quarter (1/4) solid, except retaining walls, shall be erected not less than three (3) feet from any lot line.

Fences, including hedges, may not be higher than three (3) feet for a distance extending twenty (20) feet off the street right-of-way line.

Fences, except living fences, higher than six (6) feet shall require a Special Permit from the Planning Board.

Fences shall be of a safe, non-hazardous construction, not likely to endanger the health or safety to the public.

(L) Mobile Homes

1. Purpose. It is the purpose and intent of these regulations to allow for the provision of housing at a lower cost than is possible through conventional means of construction by permitting the use of mobile homes, as defined and limited herein, in the Residence A-1, Residence A-2 and Residence B Districts.

Such use shall be subject to the requirements set forth herein in order to assure that such mobile home shall be the functional equivalent of a home built by conventional construction methods, and to assure acceptable similarity in exterior appearance between such mobile home and dwellings that have been or might be constructed under these and other lawful regulations on adjacent lots in the same Districts.

2. Standards. Mobile homes shall be permitted in the Residence A-1 and A-2 Districts (including Cluster Subdivisions) and Residence B Districts only if determined by the Building Commissioner to be functionally equivalent to a home built by conventional construction methods and acceptably similar in exterior appearance to conventional housing construction. The Building Commissioner shall make such determination for a mobile home only if such home conforms to all of the following standards:
 - a. The structure shall be affixed to a permanent foundation; the exterior walls of the structure shall rest upon said foundation.
 - b. The structure shall meet the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development, and shall be so certified by the manufacturer.
 - c. The minimum width of the main body of the mobile home as assembled on the site shall not be less than 24 feet (20 feet in a cluster subdivision), as measured across the narrowest portion.
 - d. The pitch of the main roof shall be not less than one foot of rise for each four feet of horizontal run. Minimum distance from eaves to ridge shall be 12 feet (10 feet in a cluster subdivision).
 - e. Any materials that are generally acceptable for housing built on the site may be used for exterior finish or roofing on a mobile home, provided, however, that reflection from such exterior shall not be greater than from siding coated with white gloss exterior enamel paint.
 - f. No mobile home shall have fenestration or any other features, or use colors or color combinations, that would be incompatible with other

structures in a residential neighborhood in which most residences are site-built.

Said determination by the Building Commissioner shall be made prior to, and shall be required as a necessary precondition for, approval of a special permit for a mobile home by the Planning Board.

(M) Professional Business

(As Amended October 17, 2006 Special Town Mtg.)

Professional Business Use is to provide through the specific provisions of the Special Permit process, a method of applying for the use of a structure to house professional occupants who provide useful labor, but shall not manufacture tangible goods, or provide motor vehicle services. *(As Amended October 17, 2006 Special Town Mtg.)*

The applicant must be the proprietor of the professional business.

Under these regulations, except as herein otherwise provided, an existing structure may be used or a structure constructed or altered to be used for an occupation(s) which may include, but not be limited to the following: Professional offices for physician, funeral director, surgeon, dentist, lawyer, chiropractor, chiropodist (podiatrist), accountant, architect, psychologist or engineer, practicing individually or in a group, insurance offices, consultants, financial services, administrative offices and real estate offices.

All applicants wishing to operate a qualifying professional business must apply for a Special Permit. In conformance with the Special Permit provisions of Section 9 of this By-Law and subject to the additional requirements and standards described herein, the Planning Board acting as the Special Permit Granting Authority (SPGA) may approve a Special Permit allowing for a professional business in such districts where permitted under the Use Regulations Schedule, Section 5, Part (D), and according to the Dimensional Regulations Schedule, Section 6, Part (B).

The power to approve such permit for a professional business shall be within the sole discretion of the Planning Board acting as SPGA and an affirmative vote of four (4) of its five (5) members is required for approval. Each case shall be considered on its own merit and no case shall raise a presumption in favor of any case.

The following additional conditions and restrictions shall apply to each parcel on which one or more Professional Business Special Permits are approved under these provisions:

1. A single sign may be permitted on each parcel. The sign may be approved for placement either flat on the building in which the Professional Business is

located or free standing on the parcel. Sign illumination by means of continuous indirect lighting may be permitted. The cumulative size of the sign structure permitted shall be within the discretion of the SPGA but in no case shall it exceed sixteen (16) square feet; provided, however, the SPGA may permit the area of the sign to be calculated by the area within the border of the sign and not as provided in Section 3(B)68 of the Zoning By-Law.

- a. The Planning Board may also permit one (1) additional sign per business (not to exceed one (1) square foot in area) to be located on the exterior of the building.
2. Buildings in which the Professional Business is located shall, as far as practicable, resemble residential buildings in style, materials and landscaping.
3. The development of new structures shall be in harmony with the historic, scenic and/or agriculture/residential nature of the Town.
4. Adequate off-street parking as determined by the SPGA shall be provided to the patrons and the occupiers of the professional business.
5. Any approved Special Permit shall expire when the professional relinquishes the use for which the Special Permit was granted for a period of one (1) year.

(As Amended October 17, 2006 Special Town Mtg.) In granting a Special Permit for a Professional Business, the Planning Board may permit the sale or rental of goods subject to the following conditions:

1. Accessory Use or Function. The sale or rental of goods must be part of, and subordinate to, the Professional Business. Accordingly, the sale or rental of goods must be carried out as a subordinate or accessory use or function of the Professional Business.
2. Not a Separate Business Entity. The sale or rental of goods may not be carried out by a business entity separate from the Professional Business.
3. Limitation on Space. No more than 35% of the gross floor area, excluding storage space, shall be used for the sale or rental of goods.
4. Supplemental Application Requirement. As part of the application, the applicant shall provide a floor plan which delineates the portion of the building to be used for the sale or rental of goods.
5. Multiple Professional Businesses. In buildings involving multiple Professional Businesses, the above-listed restrictions (items 1 through 4 of this paragraph) shall be applicable to each of the individual Professional Businesses.

(N) Water Supply Protection District

1. Purposes

To promote the health, safety and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources.

2. Scope of Authority

The Water Supply Protection District is an overlay district and shall be superimposed on the other districts established by this by-law. All regulations of the Town of South Hadley Zoning By-Law applicable to such underlying districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.

3. District Delineation

The Water Supply Protection District is herein established to include all lands within the Town of South Hadley, lying within the primary and secondary recharge areas of groundwater aquifers and watershed areas of reservoirs which now or may in the future provide public water supply. The map entitled "South Hadley Water Protection Area" on file with the Town Clerk, delineates the boundaries of the district.

Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located.

4. Permitted Uses

The following uses are permitted within the Water Supply Protection District, provided that they comply with all applicable restrictions in this by-law, including but not limited to Sections 7(N)5-7(N)8.

- a. Single family residences, provided that where not serviced by public sewer, lot size shall be 10,000 square feet of lot area per bedroom or 40,000 square feet, whichever is greater. For cluster development, minimum lot size may be calculated on a net density for an entire development, which includes individual lots and common open space of varying size. Where serviced by public sewerage, minimum residential lot size shall comply with the residential requirement of the underlying district.

- b. Residential accessory uses, including garages, driveways, private roads, utility rights of way, and on-site wastewater disposal systems.
- c. Agricultural uses such as farming, grazing and horticulture.
- d. Forestry and nursery uses.
- e. Outdoor recreational uses, including fishing, boating and play areas.
- f. Conservation of water, plants and wildlife.
- g. Wildlife management areas.
- h. Excavation for earth removal, provided that the requirements of Section 7(N)6 and 8(E) are met, and an earth removal permit is granted by the Building Commissioner.
- i. Wireless Communications Facilities when approved pursuant to Section 5(D) and Section 7(S) subject to the conditions of the Planning Board as set forth in the Special Permit decision.

5. Prohibited Uses

The following uses are prohibited within the Water Supply Protection District:

- a. Business and industrial uses, not agricultural including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair, which generate, use, treat, process, store or dispose of hazardous wastes except for the following:
 - 1. very small quantity generators of hazardous waste, as defined by 310 CMR 30.00 which generate less than 20 kilograms or 6 gallons of hazardous waste per month may be allowed by Special Permit in accordance with Section 9 of this by-law;
 - 2. household hazardous waste collection centers or events operated pursuant to 301 CMR 30.390;
 - 3. waste oil retention facilities required by M.G.L., C.21, s.52A; and,
 - 4. treatment works approved by the Massachusetts Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground and surface waters.

- b. Business or industrial uses, not agricultural, which dispose of process wastewaters on-site.
- c. Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops, commercial fuel oil storage and sales.
- d. Solid waste landfills, dumps, auto recycling, auto graveyards, junk and salvage yards, landfilling or storage of sludge and septage with the exception of the disposal of brush or stumps.
- e. Storage of liquid petroleum products of any kind, except for the following:
 - 1. Storage which is incidental to:
 - a. normal household use and outdoor maintenance or the heating of a structure;
 - b. waste oil retention facilities required by Mass. General Laws, C.21, s.52A;
 - c. emergency generators required by statute, rule or regulation; or,
 - d. treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.

Provided that such storage shall be in a free standing above ground container within a structure or within the basement of a structure, within a diked, impermeable area sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater, and provided that the storage tank and piping must comply with all applicable provisions of 527 CMR 9.00 Massachusetts Board of Fire Prevention regulations.

- 2. Replacement of storage tanks or systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this by-law, provided that:
 - a. all such replacement storage tanks or systems shall be located underground as required by Massachusetts Board of Fire Prevention regulations 527 CMR 14;

- b. all such storage systems be protected by one of the secondary containment systems specified in Massachusetts Board of Fire Prevention regulations 527 CMR 9.08(3);
- c. the head of the respective Fire Department may deny an application for tank replacement, or approve it subject to conditions, if he or she determines that it constitutes a danger to public or private water supplies in accordance with 527 CMR 9.26(4)(d). Replacement of all other storage tanks for liquid petroleum products other than gasoline must be above-ground in accordance with Section 7(N)5e1.
- f. Outdoor storage of salt, de-icing materials, pesticides or herbicides.
- g. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichlorethane, or other household hazardous wastes. (See list of prohibited chemicals at Board of Health or Town Clerk's office).
- h. Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- i. Waste water treatment works subject to 314 CMR 5.00 (those treatment works which discharge over 15,000 gallons per day to the ground), except the following:
 - the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
 - the replacement of an existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
 - treatment works designed for the treatment of contaminated ground or surface waters subject to 314 CMR 5.00.

6. Restricted Uses

The following uses are restricted within the Water Supply Protection District:

- a. Excavation for removal of earth, loam, sand, gravel and other soils or mineral substances shall not extend closer than five (5) feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water table fluctuation data compiled by the United States Geological survey, whichever is higher. A monitoring well shall be installed by the property owner to verify groundwater elevations. This section shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
 1. Access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.
 2. Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products, shall be disposed of off-site to prevent damage to aquifer recharge characteristics.
- b. Sodium chloride for ice control shall be used at the minimum salt to sand ratio which is consistent with the public highway safety requirements, and its use shall be eliminated on roads which may be closed to the public in winter.
- c. The storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads shall be covered and located on a paved surface, with berms, within a structure designed to prevent the generation and escape of contaminated run-off leachate.
- d. Fertilizers, pesticides, herbicides, lawn care chemicals or other leachable materials for agricultural and/or commercial applicator use shall be used in conformance with the Massachusetts Pesticide Control Act, M.G.L., Chapter 132B, regulations promulgated by the Massachusetts Pesticide Bureau (333 CMR 1-12), and the manufacturer's label instructions. All other reasonable precautions to minimize adverse impacts on surface and groundwater should be used.
- e. Fertilizers, pesticides, herbicides, lawn care chemicals and other leachable materials for non-agricultural and non-commercial applicator use shall be used in accordance with the Lawn Care Regulations of the Massachusetts Pesticide Board 333 CMR 10.03 (30.31) as amended, according to the manufacturer's label instructions and all other necessary precautions to minimize adverse impacts on surface and groundwater.

- f. On-site sewage disposal systems shall not be installed without additional measures imposed by the Board of Health. (See Board of Health Regulations).
- g. The storage of commercial fertilizers and soil conditioners shall be within structures that prevent the generation and escape of contaminated run-off or leachate.
- h. To the extent feasible all new permanent animal manure storage areas shall be covered and/or contained to prevent the generation and escape of contaminated run-off or leachate.
- i. All liquid hazardous materials as defined in M.G.L., Chapter 21E, must be stored either in a free standing container within a building or in a free standing container above ground with protection to contain a spill the size of the containers total storage capacity.

7. Drainage

For commercial and industrial uses, to the extent feasible, run-off from the impervious surfaces shall be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Such run-off shall not be discharged directly to rivers, streams or other surface water bodies. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination.

All recharge areas shall be permanently maintained in full working order by the owner(s).

8. Special Permit Uses

a. Uses Allowed by Special Permit

The following uses may be allowed by Special Permit obtained from the Planning Board:

1. Commercial, industrial, governmental or educational uses which are allowed in the underlying district, and which are not prohibited in Section 7(N)5.
2. Any enlargement, intensification, change of use or alteration of an existing commercial or industrial use.
3. The rendering impervious of more than 15%, or 2,500 square feet of any lot, provided that a system for artificial recharge of

precipitation to groundwater is developed, which shall not result in degradation of groundwater. (See (7) above).

b. Requirements for Special Permit in the Water Supply Protection District

The applicant shall file six (6) copies of a plan prepared by a qualified professional with the Special Permit Granting Authority. In addition to those rules and regulations contained in the Special Permit Application (Form SP) the plan shall include:

1. Drainage recharge features and provisions to prevent loss of recharge.
2. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.

In addition, the applicant shall provide at a minimum the following information where pertinent:

1. A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
2. Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board, Fire Chief and Board of Health, which shall include:
 - a. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage.
 - b. Accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.
 - c. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
 - d. Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA Identification Number from the Mass. Department of Environmental Protection.

c. Additional Procedures for Special Permit in the Water Supply Protection District:

1. The Special Permit Granting Authority shall follow all special permit procedures contained in Section 9 of this By-Law. In addition, the Special Permit Granting Authority shall distribute

copies of all application materials to the Board of Health, the Conservation Commission and the Water Commissioners, each of which shall review the application, and following a vote, shall submit recommendations and comments to the Special Permit Granting Authority. Failure of boards to make recommendations within 35 days of distribution of the applications shall be deemed to be lack of opposition.

2. The Special Permit Granting Authority may grant the required special permit only upon finding that the proposed use meets the following standards and those specified in Section 9 of this By-Law. The proposed use must:
 3. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District, and;
 4. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.
5. The Special Permit Granting Authority shall not grant a special permit under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards given in this section.

9. Non-Conforming Use

Non-conforming uses which were lawfully existing, begun or in receipt of a building or special permit prior to the first publication of notice of public hearing for this by-law may be continued. Such non-conforming uses may be extended or altered, as specified in M.G.L., Chapter 40A, Section 6, provided that there is a finding by the Planning Board that such change does not increase the danger of surface or groundwater pollution from such use.

(O) Flag Lots

The Planning Board may issue a Special Permit allowing for the reduction of the frontage requirement for lots in Residence A-1, Residence A-2 and Agricultural districts when such lot having less than the required frontage can substitute increase square footage and is to be used for a single dwelling unit only, provided said lot has:

1. access strip frontage on an existing public way of at least fifty (50) feet;

2. access strip width from the front lot line to the principal structure of at least fifty (50) feet;
3. at least double the minimum lot area normally required for that district, exclusive of the access strip;
4. an access strip that is accessible having a maximum length not exceeding four hundred (400) feet;
5. a minimum distance between two flag lot right-of-ways that is equal to or greater than the minimum lot frontage in that zoning district;
6. an appropriate easement delineated on the plot plan and on the deeds to the lots, including a clear provision for the responsibility for the maintenance of the access strip, utilities (if any) and snow removal, running with the land. Said easements shall:
 - a. become part of the deeds; and,
 - b. be recorded at the Hampshire County Registry of Deeds (proof of the latter to be submitted to the Building Commissioner prior to the issuance of any building permits);
7. in the opinion of the Planning Board acceptable design grade, length and location of the access drive shall be of suitable construction for the access and, where applicable, the turn-around for vehicles, including moving vans, ambulances, fire and police;
8. an access driveway within the privately owned access strip that is so drained as to prevent damage or hazard to abutting properties or public trees and shall be paved with bituminous asphalt, concrete, compacted gravel or similar paving material;
9. been created from one lot which was in existence at the time of the adoption of this flag lot By-Law amendment, which conforms to all of the provisions of the Zoning By-Law, and which does not have sufficient frontage to create an additional lot with the normal frontage requirements;
10. an access drive that is located, constructed and maintained a distance of no closer than ten (10) feet to any abutting property line;
11. no parking areas or above ground structures within the access strip;
12. a conifer buffer zone between any flag lot and abutting lots sufficient to provide privacy between the two lots when required by the Planning Board;

13. plans submitted to the Board that have been prepared by a registered land surveyor or engineer and may be subject to Section 5.00 Subdivision Regulations submission standards. The plans shall also contain the statement “Lot [fill in lot number] is a flag lot; building is permitted only in accordance with the Special Permit flag lot provisions of the South Hadley Zoning By-Law”;
14. the flag lot frontage (see Appendix A) that is a minimum of 150 feet in the Agricultural district and 125 feet in both the Residence A-1 and A-2 districts measured parallel to the existing street line from which access is derived. The flag lot building front setback line is to be measured from the point where the flag lot frontage has been satisfied. The side and rear setbacks are as listed in Section 6 (B) Dimensional Regulations for the district the flag lot is permitted in; and,
15. an access strip that begins at the existing street line and ends where the flag lot frontage width has been satisfied. Acceptable examples are shown as Illustrations Type 1-4 in Appendix A.

(P) Business C District Development Methods

The Business C District is established to provide a comprehensive set of development methods to be applied in the commercial district, and to recognize the specific characteristics of the associated highway corridor. A performance guarantee may be required as a condition of approval for either Special Permit or Site Plan Review projects. A Special Municipal Account may be required as determined by the Planning Board.

1. Purposes: The Business C District is established to achieve the following objectives of the Town of South Hadley:
 - a. to direct large-lot businesses and auto-oriented uses to the appropriate location. No single user may occupy greater than 65,000 square feet of building space and high traffic generators such as drive through restaurants, drive-up ATM machines, gas stations, etc., shall not be permitted in this district.
 - b. to provide safe, efficient traffic flow in the Business C District.
 - c. to maintain a high level of design and landscaping quality.
 - d. to provide safe pedestrian access to businesses and uses in the Business C District.
 - e. to protect property values through quality control.
2. Uses Permitted with Site Plan Approval or by Special Permit

Uses permitted with Site Plan Review or by Special Permit in the Business C District are listed in the Table of Use Regulations in Section 5.

3. Density and Dimensional Requirements

All developments and uses within the Business District must conform to the density and dimensional requirements in Section 6.

COMMERCIAL DEVELOPMENT PERFORMANCE STANDARDS

In order to receive site plan approval or special permit, all projects must demonstrate compliance with the Commercial Development Performance Standards herein.

4. Parking Standards

Proposed uses must comply with Parking and Off-Street Loading regulations in Section 8(G) and the following:

- a. No parking shall be permitted within the required front yard setback of a structure.
- b. To the extent feasible, parking areas shall be shared with the adjacent businesses.

5. Appearance/Architectural Design Standards

- a. Architectural design shall be compatible with the character and scale of buildings in the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings. The Planning Board may take into consideration whether exterior building facades and materials are consistent with South Hadley's character. The Planning Board may consider whether the roofline is peaked, or is otherwise consistent with the Town's character. Large work area doors or loading docks shall not open toward or face roadways.
- b. The Planning Board may adopt such regulations as may be necessary to further specify design standards.

6. Lighting Standards

- a. Any outdoor lighting fixture newly installed or replaced shall be shielded so that it does not produce a strong, direct light beyond the property boundaries.

- b. No light standard shall be taller than thirty (30) feet.

7. Access Standards

Applicants for projects or uses within the Business C District must demonstrate that the project or use will minimize traffic and safety impacts on highways.

- a. The number of curb cuts on state and local roads shall be minimized. To the extent feasible, access to businesses shall be provided via of the following:
 - 1. Access via a common driveway serving adjacent lots or premises
 - 2. Access via an existing side street
 - 3. Access via cul-de-sac or loop road shared by adjacent lots or premises
- b. Only one curb cut per lot shall be allowed. Additional curb cuts may be permitted by the Planning Board as part of the Site Plan Review process.
- c. Curb cuts shall be limited to the minimum width for safe entering and exiting and will not normally exceed 24 feet in width per lane.
- d. All driveways shall be designed to afford motorists exiting to highways with safe sight distance.
- e. Adequate pedestrian and bicycle access shall be provided as follows:
 - 1. Sidewalks shall be provided to enable pedestrian access to adjacent properties between individual businesses with a development. The appropriate authority may waive this requirement in a case where such action is in the public interest and not inconsistent with the purposes stated in Sections 9 and 12.

8. Landscaping and Screening Standards

- a. Large parking areas shall be subdivided with landscaped islands so that no paved parking surface shall extend more than eighty (80) feet in width. One tree (minimum two (2) inch caliper) per thirty (30) parking spaces shall be provided within the area.
- b. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or all or fencing complemented by evergreen plantings. Evergreen plants must be at least two (2) feet tall at planting with the capacity to grow to full screening of the unsightly use.

Plantings must be four (4) feet at planting when abutting a residential zone.

- c. All landscaped areas shall be properly maintained. Shrubs or trees which die shall be replaced within one growing season.
- d. Completion of the landscaping requirements may be postponed for a period not to exceed six (6) months from the time of project completion due to winter weather conditions.
- e. A landscaped buffer strip at least fifteen (15) feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium height shrubs, and shade trees (minimum two (2) inch caliper, planted at least every fifty (50) feet along the road frontage). At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard. The sidewalk shall be incorporated into the buffer strip.

9. Pedestrian Standards

- a. Sidewalk shall be provided to provide access to adjacent properties and between individual businesses within a development.

10. Traffic Impact Statement

- a. A traffic impact statement shall be prepared, which shall contain:
 - 1. Traffic flow patterns at the site including entrances and egresses, loading and unloading areas, and curb cuts on site and within one hundred feet of the site.
 - 2. A detailed assessment of the traffic safety impacts of the proposed project or use on the carrying capacity of any adjacent highway or road, including the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak hour traffic levels, road capacities and impacts on intersections.
- b. An additional traffic impact statement shall be prepared for individual structures that are greater than ten thousand (10,000) square feet. It shall contain:
 - 1. A plan to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, or other appropriate means.

2. An interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems.

11. Public Transportation

- a. The Planning Board and the Applicant shall request the Pioneer Valley Transit Authority (PVTa) to locate a bus stop on the premises or within one quarter (1/4) mile of the development.

(Q) Public-Private Recreation

1. The purpose of the Public-Private Recreation use within the Industrial Garden District is to permit land uses for the development of recreationally related facilities designed to serve the general public preserve and enhance areas of natural scenic beauty including mountain views, ridges, exceptional vistas, and related natural resources.
2. Public-Private Recreation Use is a use in the Industrial Garden District that may be permitted, subject to compliance with the mandatory standards, conditions and requirements for a Special Permit and Site Plan Review as well as the conditions set forth in this section. Such recreational use may include, but not be limited to the following uses and any approved combination thereof:
 - a. Outdoor athletic activities, including facilities for skating, skiing, sledding, swimming, and tennis and related activities.
 - b. A golf course as a principal recreational use and putting greens and driving ranges accessory uses to the principal recreational use.
 - c. Equestrian trails.
 - d. Outdoor picnic facilities including appropriate sheds and outdoor fireplaces.
 - e. Social and recreational facilities for dining and dancing, including banquets, meetings, receptions, assemblies and entertainment, provided that such activities are accessory to and a part of a principal recreational use.
 - f. Retail shops accessory or incidental to the principal recreational use.
 - g. Other publicly owned facilities or other facilities designed for the benefit of the general public.
3. Design and operating criteria governing the location and construction of improvements, buildings and facilities shall include the following:

- a. A landscaped buffer strip shall separate the recreational activities from any abutting property.
- b. All parking shall be regulated as prescribed in Section 8, Subsection (G), and golf courses shall have an additional minimum of ten (10) parking spaces per hole of golf or parking facilities equal to sixty (60) percent of the serving facilities, whichever is greater.
- c. The volume of sound from music and public address systems and recreational motor vehicles shall be so controlled as to prevent objectionable noise off the premises.
- d. Banquets, meetings, stage presentations and dancing shall be held inside a structure, but this shall not prevent presentation outside a structure of athletic exhibitions or contests or theatrical performance.
- e. Artificial lighting of a golf course or golf practice area is specifically prohibited.
- f. The procedure for submission of an application for regional recreational use shall be consistent with the submittal requirement of Section 9, Special Permits and Section 12, Site Plan Review, and subject to the additional requirements set forth in this subsection.

(R) Bed and Breakfast

- 1. The Planning Board may issue a Special Permit for a bed and breakfast home that is an existing owner occupied single-family dwelling in which the resident or residents of the dwelling provide overnight lodging to paying guests in a maximum of three guest bedrooms located within the dwelling. Breakfast shall be the only meal served and no person may occupy said room or rooms more than fourteen (14) days in any thirty (30) day period. The home shall function as a private home with house guests.
- 2. In addition to the Special Permit requirements in Section 9 of this By-Law, the following bed and breakfast requirements must be met as a condition of approval:
 - a. no cooking facilities are permitted in any guest room; and
 - b. there shall be no substantial change to the exterior of the building; and
 - c. one parking space shall be provided for each room to be occupied by bed and breakfast lodgers in addition to the parking required under Section 8, Subsection (G); and

- d. if such facility is to be served by an existing on-site septic system, the owner shall obtain a letter from the Board of Health that the sewage disposal system is adequate for the proposed use; and
 - e. signage shall be limited to an announcement sign as permitted under Section 7, Subpart (A).
3. Plan Requirements: Plans for a bed and breakfast home shall be prepared by a registered architect, registered landscape architect or engineer and shall show the following together with appropriate dimensions:
- a. proposed name of the bed and breakfast home;
 - b. location by legal description;
 - c. name and address of applicant and designer of the plan;
 - d. scale of the plan, 1" = 40' or larger;
 - e. date, north arrow, contours at two (2) foot intervals;
 - f. boundary line of property indicated by a solid line, and the total acreage encompassed thereby;
 - g. bed and breakfast homes using private water wells shall provide a certificate of good water quality from the Board of Health.
4. Owner-Occupancy Requirement
- a. In the event the property is owned by multiple persons, related or unrelated, only one of the persons having ownership interest in the property must reside in the residence to satisfy the requirement that the property be owner-occupied.
 - b. In the event the property is owned by a business entity, the Planning Board must require the entity to designate a person to reside in the residence on a permanent or ongoing basis to carry out the functions as if they were the owner of the property relative to this Section of the Zoning By-Law.

(S) Wireless Communications Regulations

(Adopted May 12, 2001 Town Mtg.)

1. Purposes

The purposes of the Wireless Communications Regulations are:

- a. Provide reasonable, non-discriminatory standards and procedures under which adequate and necessary Wireless Communications Facilities may be permitted, developed and maintained; and,
- b. Ensure that permitting Wireless Communications Facilities will be in harmony with the Zoning By-Law and the character and appearance of the surrounding community; and,
- c. Protect the community's scenic, historic, and environmental resources; and,
- d. Locate Wireless Communications Facilities such that their location does not have negative impacts (such as, but not limited to visual blight, attractive nuisance, noise and falling objects) on the general safety, welfare and quality of life of the community; and,
- e. Encourage Co-Location of Wireless Communications Facilities to the maximum extent possible; and,
- f. Provide for the development of free standing Wireless Communications Towers to the extent necessary to enable the Providers of Wireless Communications Services to provide adequate coverage throughout the community, yet limit the number of such Towers to the minimum amount needed for such services.

2. Consistency with Federal and State Laws

The Wireless Communications Regulations are intended to be consistent with the Telecommunications Act of 1996 and applicable state laws, in that:

- a. The Regulations do not prohibit or have the effect of prohibiting the provision of Wireless Communications Services; and,
- b. The Regulations are not intended to be used to unreasonably discriminate among Providers of functionally equivalent Wireless Communications Services; and,
- c. The Regulations do not regulate Wireless Communications Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

3. Definitions

As used in the Wireless Communications Regulations, the following words and phrases shall have the meanings and intent respectively ascribed to them

by this section. If any word or phrase conflicts with definitions specified elsewhere in the South Hadley Zoning By-Law, the meaning and intent ascribed below shall govern:

Alternate Tower Structure: A building or structure which was not primarily erected or used for Wireless Communications Services but with minor modifications, including addition of antennas, may be usable for Wireless Communications Services in addition to the structure's primary use. Examples of Alternate Tower Structures include, but are not limited to, municipal buildings, water tanks, silos, church steeples, etc.

Antenna(s): A device or surface area which is attached to or part of a Tower or Alternate Tower Structure for the purpose of transmitting and/or receiving electromagnetic signals for wireless communications. Also referred to as Wireless Communications Antenna.

Antenna, Wireless Communications: See Antenna.

Carrier: See Provider.

Co-Location: Use of a single Tower by more than one Carrier.

Elevation: The measurement of a point in reference to feet above mean sea level.

Equipment Shelter: A structure located at a Wireless Communications Tower or Alternate Tower Structure to house equipment used in connection with wireless communications transmissions to and from Antennas located on the Tower.

Facility Site: The parcel of land used by one or more Carriers and upon which one or more Wireless Communications Facility (-ies) and related equipment, Equipment Shelter, and landscaping are located.

FAA: Federal Aviation Administration.

FCC: Federal Communications Commission.

Fire District: South Hadley Fire District 1 and/or South Hadley Fire District 2 inclusive of the Water Departments associated with the Fire Districts.

Height of Wireless Communications Facility: The vertical distance between the highest point of the Wireless Communications Facility (inclusive of the Wireless Communications Tower and any Antennas, poles, and any other equipment which may extend above the Wireless

Communications Tower) and the lowest point of the grade of the ground at the Facility Site. The grade of the ground is to be determined at a distance within ten (10) feet of the Wireless Communications Tower's perimeter unless the Planning Board determines a different basis for said measurement is more appropriate. Thus, the "height" of Wireless Communications Facilities will not fall within the definition of "height" as provided in Section 3 of the Zoning By-Law.

Municipal Entity: The phrase "municipal entity" shall include the Town of South Hadley, South Hadley Fire District Number 1, and South Hadley Fire District Number 2 and any department under the jurisdiction and authority of any of these three entities.

Provider: An entity that provides Wireless Communications Services. Also refers to Carrier.

Tower: A structure erected for the purpose of Wireless Communications Services and on which Antennas or other wireless communications devices and associated equipment are placed for the purpose of Wireless Communications Services. Also referred to as Wireless Communications Tower.

Tower, Guyed: A Tower that is tied to the ground or other surface by cables which are typically in a diagonal alignment.

Tower, Lattice: A Tower that is self-supporting with multiple legs and cross bracing of structural steel.

Tower, Monopole: A Tower that is self-supporting with a single shaft of wood, steel, or concrete and a platform (or racks) for Antennas arrayed at the top and/or intermediate positions along the length of the Tower.

Tower, Wireless Communications: See Tower.

Wireless Communications Facility: All equipment with which a Carrier transmits and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof (including, but not necessarily limited to, a Wireless Communications Tower, Alternate Tower Structure, Wireless Communications Antennas, and related equipment and structures).

Wireless Communications Facility, Pre-existing: A Wireless Communications Facility in existence prior to the adoption of the Wireless Communications Regulations as part of the Zoning By-Law by the Town Meeting.

Wireless Communications Services: Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include cellular services, Personal Communications Services (PCS), Enhanced Mobile Radio Services, Paging Services (PS), and similar such services.

4. Exempted Uses

The following Wireless Communications Facilities are specifically exempted from the provisions of the Wireless Communications Regulations:

- a. Police, fire, ambulance, Antennas and associated Towers and equipment for the internal use of either the Town's DPW or either District and other similar emergency dispatch; and,
- b. Citizens band radio; and,
- c. Amateur radio equipment and Towers used in accordance with the terms of amateur radio service licenses issued by the FCC, provided that (1) the Tower is not used or licensed for any commercial purpose, and (2) the Tower shall be removed upon loss or termination of said FCC license; and,
- d. Satellite dishes and antennas for non-commercial residential use and/or for non-commercial educational use.

5. Location Criteria

- a. Existing Towers and Alternate Tower Structures: To the extent feasible, Antennas are to be located on existing Towers and existing Alternate Tower Structures.
- b. Spacing: No Wireless Communications Tower shall be located closer than one mile of any other such Tower, except as provided below. The spacing distance shall be measured as the shortest distance between two points as if on a flat topography.
- c. Historic and Residential Properties: No Wireless Communications Tower shall be located closer than three-hundred feet (300') to any property (1) listed on either the State or National Register of Historic Places or (2) developed as part of a residential subdivision for which a Definitive Plan was approved by the South Hadley Planning Board, except as may be waived by the Planning Board as provided below.

- d. Elevation: No portion of any Wireless Communications Facility may exceed the elevation level of 400 feet above mean sea level, except as may be waived by the Planning Board as provided below.
 - e. Holyoke Range Area: No Wireless Communications Tower or related equipment may be located within the area bounded as follows: the Towns of Hadley and Amherst to the north; the Town of Hadley and Route 47 to the west; Route 47 and Pearl Street to the south; and Route 116 (north of Pearl Street) and the Town of Granby to the east.
 - f. Waiver for Wireless Communications Antennas on Alternative Tower Structures. In unique circumstances where the Planning Board makes findings as to technical necessity, topographic conditions, community benefit, and/or special conditions which protect the surrounding properties and community assets, and that a waiver is consistent with the purposes of this subpart, the Planning Board may grant a waiver of one or more of the Location Criteria specified within this subsection for location of Wireless Communications Antennas on Alternate Tower Structures.
 - g. Waiver for Wireless Communications Towers. In unique circumstances where the Planning Board makes findings as to technical necessity, unique topographic conditions, community benefit, and/or special conditions which protect the surrounding properties and special community aesthetic assets (such as, but not limited to views of the Holyoke Range), and finds that a waiver is consistent with the purposes of this subpart, the Planning Board may grant a waiver of the selected Location Criteria listed below as they relate to location of Wireless Communications Towers, subject to the limitations stated herein:
 - 1.) Spacing between Wireless Communications Facilities as stated in item b of this subsection; provided, however, the spacing shall not be reduced to less than one-half mile.
 - 2.) Distance from an Historic or Residential Property as stated in item c of this subsection; provided, however, the distance shall not be reduced by more than 200 feet.
 - 3.) Elevation as stated in item d of this subsection; provided, the maximum elevation will not be permitted to exceed 450 feet.
6. Design and Siting Requirements – General

All Wireless Communications Facilities must be designed, developed, and operated in accordance with the following requirements:

- a. Co-Location: Towers must be designed, developed, and equipped, and leases for use of such structures must provide authority, to allow for co-location of as many Carriers as technically feasible.
- b. Equipment Shelter: An Equipment Shelter not exceeding four-hundred (400) square feet in area per carrier located on the Tower and not exceeding fourteen feet (14') in height may be provided at each Tower or Alternate Tower Structure. However, the Planning Board may impose special conditions to reduce the maximum size of the Equipment Shelter at a particular Facility Site if it determines such conditions are necessary to fulfill the aesthetic purposes of the Zoning By-Law or these Wireless Communications Regulations.

To the extent practicable the related Equipment Shelter shall be contained within or adjacent to the existing Wireless Communications Tower or Alternate Tower Structure or within an addition to such Wireless Communications Tower or Alternate Tower Structure, the façade of which is compatible with the existing Wireless Communications Tower or Alternate Tower Structure.

- c. Security: All Wireless Communications Facilities shall be protected, by fencing and/or other appropriate means, against unauthorized access.
- d. Parking: There shall be a minimum of one (1) parking space at each Wireless Communications Facility. Parking at such facility shall be used solely in connection with the maintenance of the Wireless Communications Facility and is not to be used for the permanent storage of vehicles or other equipment.
 - 1.) Exception: The Planning Board may grant an exception to the parking requirement when the Wireless Communications Facility involves use of an Alternate Tower Structure and the Planning Board determines that other parking at the Facility Site satisfactorily meets the parking need for the Wireless Communications Facility.
- e. Signage: The only signs associated with the Wireless Communications Facility which may be permitted are the following:
 - 1.) Identification sign. One identification sign identifying the Wireless Communications Facility and detailing the owner, operator, and an emergency telephone number where the owner or their emergency representative can be reached on a twenty-four (24) hour basis.
 - 2.) No trespassing signs. Such signs are required.

- 3.) FCC Registration. A sign displaying the FCC registration number.
- 4.) Warning sign. Signs are required to warn of danger.

No sign should be larger than four (4) square feet in area unless State or Federal regulations require larger signs.

- f. Screening: A landscape buffer of evergreen shrubs or trees shall be provided in a manner to screen views of any Equipment Shelter and fencing from adjoining property. The shrub or tree plantings shall mature to a height equal to the level of the Equipment Shelter height or fence (whichever is greater). At planting the shrubs or trees shall be at least six (6) feet in height and spaced such that the plantings reasonably screen the Equipment Shelter while providing opportunity for the vegetation to mature and be maintained. All landscape plantings must be continually maintained.
 - 1.) Exceptions: The Planning Board may grant exceptions to the screening specifications outlined herein where (1) the topography and site conditions warrant that alternative standards can achieve the purpose of the screening and/or (2) the proposed plantings and screening warrant alternative spacing standards.
- h. Radio-Frequency Effect: All Wireless Communications Facilities shall be operated only at FCC designated frequencies, power levels, and standards. Upon request by the Planning Board, Providers and applicants shall provide certification that the maximum allowable frequencies, power levels, and standards will not be exceeded.

7. Design and Siting Requirements – Wireless Communications Towers

Wireless Communications Facilities involving erection of new Wireless Communications Towers must be designed, developed, and operated in accordance with the following requirements:

- a. General: The requirements detailed in subsection 7(S)(6) Design and Siting Requirements – General.
- b. Height: All Wireless Communications Towers shall be constructed to the minimum height necessary to accommodate the anticipated usage. Towers designed for one Provider shall be limited to the lesser height of 200% of the maximum height allowed in the zoning district in which it is to be

located or a height of 130 feet. If no maximum height is specified for the zoning district, the maximum height shall not exceed 130 feet. When calculating the height, the measured distance shall be inclusive of all planned antennas and other attached features.

- 1.) Exceptions: The Planning Board may grant an exception to the height limit for Wireless Communications Towers designed for co-located facilities. In such situations, the Board may allow the Tower height to be increased by an additional 20 feet for each additional Provider up to a total Tower height not to exceed a maximum of 220 feet. Further, the Planning Board may grant exceptions to the height restriction in unique circumstances only upon making findings as to a.) technical necessity, b.) unique topographic conditions, c.) community benefit, d.) special conditions which protect the surrounding properties and special community aesthetic assets (such as, but not limited to views of the Holyoke Range), and e.) that an exception is consistent with the purposes of this subpart and the Zoning By-Law.
 - 2.) Exemption: These height limits shall not apply to Towers for government or emergency telecommunications to the extent such height is essential to serve the government or emergency telecommunication use.
 - 3.) Justification Required. The height limits stated within this subsection 7b do not convey an entitlement to any specific height. Rather, as provided in subsection 7(S)(11), all applications for Wireless Communications Towers must include technical evidence to justify the need for the proposed height including any height exceptions being requested. The Planning Board when acting on a Special Permit shall specify the maximum allowable height inclusive of all planned Wireless Communications Antennas to be allowed for the proposed facility up to the limits outlined above.
- c. Setbacks: The setbacks for Wireless Communications Towers shall be measured from the nearest property line and the outer edge of the base of the Tower. The required setback shall be the greatest of the following:
- 1.) Three-hundred feet (300') if (i) the adjoining property is zoned Residential A-1, A-2, B, or C or (ii) is developed as part of a subdivision for which a Definitive Plan has been approved by the Planning Board or (iii) is included on a National or State Register of Historic Places.
 - 2.) One foot (1.0') for each foot of height of the structure.

- 3.) Waivers. The setback requirement from property zoned Residential A-1, A-2, B, or C may be waived if:
- (a.) The Planning Board grants a waiver of the setback provision specified in subsection 5c pursuant to subsection 5g2. In such instance, the extent of the waiver so granted shall govern as the required setback.
- 4.) Waiver of Setback from Non-residential Properties. The Planning Board may grant a waiver of the setback requirement specified in subsection 7(S)7c2 as the setback applies to adjoining properties not zoned Residential A-1, A-2, B, or C or used for residential purposes.
- 5.) Limitations on Setback Waivers. No setback waiver shall permit any Wireless Communications Tower to be located nearer than one-half foot (0.5') for each foot of height of the structure.
- d. Pre-engineered Fault: All Wireless Communications Towers shall be pre-engineered to “fold at a pre-determined height ” in the event of catastrophic failure. The height of this pre-determined point of fold shall be specified as part of the Special Permit application. The purpose of this “Pre-engineered Fault” is to insure that in the event of a catastrophic failure, the Wireless Communications Tower shall remain on the parcel on which the Tower was permitted. Recognizing that technology changes over time, the Planning Board may permit the applicant to utilize an alternative means of achieving the purpose of the “Pre-engineered Fault” provided the Board determines that this alternative means is at least as equally effective for achieving this purpose.
- e. Style of Towers: Lattice Towers and any Guyed Towers shall not be permitted unless the applicant shall demonstrate to the Planning Board’s satisfaction that such Tower shall be no more visually blighting or intrusive than a monopole structure at the same location. Accordingly, applicants proposing to construct a Tower other than a monopole shall submit appropriate plan documents as part of the Special Permit application sufficient to allow the Planning Board to make a decision as to whether to grant a Special Permit allowing a Tower other than a monopole-style Tower. To grant a Special Permit for a Tower other than a monopole-style, the Planning Board shall make a finding that the style of Tower proposed is appropriate for the site and is no more detrimental to the visual character of the area than a monopole.
- f. View: Wireless Communications Towers shall not be permitted in such locations as to adversely impact the community. Accordingly,

- 1.) Such Towers shall be sited in such a manner that the view of the Tower (inclusive of all antennas and related attached features) from adjacent properties, residential neighbors, adjacent roadways, and other areas of Town shall be as limited as possible; and,
 - 2.) Such Towers shall be painted, colored, and/or constructed of materials that minimize the visual impact of the Tower on adjacent abutters, residential neighbors, and other areas of Town; and,
 - 3.) The Planning Board may impose such conditions as it deems reasonable on the Special Permit so as to achieve the fore-stated standards and objective. Such conditions may include, but need not be limited to painting and lighting standards, reduction in height, increase setbacks, and/or increased screening.
- g. Preservation of Vegetation: Existing on-site vegetation shall be preserved to the maximum extent practicable.
- h. Lighting: Except as required by the FAA, Wireless Communications Towers shall not be artificially lighted.
8. Design and Siting Requirements – Wireless Communications Antennas

Wireless Communications Antennas attached to Towers and/or Alternate Tower Structures must conform to the following requirements:

- a. General: The requirements detailed in subsection 7(S)(6) Design and Siting Requirements – General.
- b. Height: The Wireless Communications Antennas may only extend to the minimum height above the existing Tower or Alternate Tower Structure as necessary to accommodate the technical requirements. No Antennas shall extend more than ten (10) feet above the height of the existing Tower or Alternate Tower Structure.
- c. Extension: Wireless Communications Antennas shall not extend more than technically necessary for the operation of the Wireless Communications Services, but in no case shall they extend more than thirteen (13) feet beyond the side or outer perimeter of the Tower or Alternate Tower Structure.
- d. Integral Part of Structure: All building-mounted components of the facilities shall be designed and located, to the extent practicable, so as to appear as an integral part of the architecture of the existing Alternate Tower Structure. In no case shall such facilities be approved where their inclusion is detrimental to the architectural quality of the Alternate Tower

Structure on which they are to be affixed or structures on abutting properties.

9. Bond Required

Prior to obtaining a building permit to erect a Wireless Communications Tower or to install a Wireless Communications Tower or to install Antennas on a Tower or on an Alternate Tower Structure, the Wireless Communications Facility owner shall post and submit a bond or other financial surety acceptable to the Town. However, the Planning Board may waive such a bond or other financial surety when the project involves an Alternate Tower Structure if the Board deems such a waiver to be appropriate and consistent with the purposes of the Wireless Communications Regulations.

- a. Amount of Surety: The amount of the bond or surety shall be sufficient to reasonably restore the site to the condition which existed prior to installation of the Wireless Communications Tower and/or Wireless Communications Antennas (including related equipment and fixtures). Said amount shall be certified by a qualified engineer, architect, or other professional registered to practice in the Commonwealth of Massachusetts. The bond or surety shall provide for increases in coverage as the cost of removal of the Facility escalates.
- b. Use of Bond or Financial Surety: The posted bond or financial surety shall be used by the Town for its intended purpose upon the occurrence of either of the following events:
 - 1.) Cessation of Use: If the Wireless Communications Facility, according to the Building Commissioner, has ceased to be used for its intended wireless communications purpose for a period of not less than twelve (12) calendar months; or,
 - 2.) Condemnation: The Building Commissioner condemns the Wireless Communications Facility as an unsafe structure.
- c. Deficient Amount – Recourse: In the event the amount of the posted bond or surety does not cover the cost of demolition and/or removal of the Wireless Communications Facility, the Town may pursue all recourses available to it for recovery of the additional sum including but not limited to:
 - 1.) Lien. Placing a lien upon the property.
 - 2.) Assessment. Assessing all Carriers who had antennas on the facility at such time as the Wireless Communications Tower or

Alternate Tower Structure ceased to be used for Wireless Communications purposes.

3.) New Permits. Withholding permits for new Wireless Communications Facilities by the responsible party (-ies).

d. Duration of Bond or Surety: The Bond or Surety is to be for a duration of no less than the time period for which the Wireless Communications Facility is to be operating. Accordingly, the Planning Board as a condition of the Special Permit or Site Plan Review, whichever is applicable, shall specify the minimum duration for the Bond or Surety. The Planning Board may provide the Bond to be for a specified period of time with provisions for automatic renewals or substitution of new bonds or sureties.

10. Cessation of Use/Abandonment, Maintenance, and Removal

a. Cessation of Use/Abandonment: If the Wireless Communications Facility ceases to be used for a period of twelve (12) consecutive months, the facility will be deemed to have been abandoned. At any point after that time, the Wireless Communications Facility may only be used upon prior approval of a new application in accordance with the provisions of the Zoning By-Law in effect at that time.

b. Maintenance: The owner of, and Carriers utilizing, the Wireless Communications Facility are solely responsible for maintaining the Wireless Communications Facility in good order. Failure to do so may, at the Town's discretion, result in termination of the right to use the facility and/or removal of the facility.

c. Removal: Owners of Wireless Communications Facilities shall be solely responsible and liable for dismantling and removing facilities within a time frame set forth by the Building Commissioner. If the demolition/removal is to be undertaken by the Town, the Building Commissioner shall send to the Wireless Communications Facility owner and the associated Carriers (if any) written notice by registered mail at least 45 calendar days prior to commencing demolition/removal.

11. Submission Requirements

a. Site Plan Review Required: For Wireless Communications Facilities for which only Site Plan Review is required, applicants must submit the following:

1.) Plans and materials required by Section 12 of the Zoning By-Law;
and,

- 2.) Evidence of their authority to install and maintain the Wireless Communications Facilities on the existing Tower or Alternate Tower Structure; and,
 - 3.) Plans and documents demonstrating conformity with the provisions of these Wireless Communications Regulations; and,
 - 4.) Estimated cost to remove the facilities as certified by a qualified professional engineer registered to work in the Commonwealth of Massachusetts.
- b. Special Permit Required: For Wireless Communications Facilities for which a Special Permit is required, applicants are required to submit the following:
- 1.) Section 12 Requirements. Plans and materials required by Section 12 of the Zoning By-Law; and,
 - 2.) Section 9 Requirements. Plans and materials required by Section 9 of the Zoning By-Law; and,
 - 3.) Authority. Evidence of their authority to develop, erect, and maintain the proposed Wireless Communications Facilities on the subject property; and,
 - 4.) Conformity. Plans and documentation demonstrating conformity with the provisions of the Wireless Communications Regulations; and,
 - 5.) Need. Demonstration of the need for the Wireless Communications Facility as proposed including, but not limited to:
 - a.) That all existing Wireless Communications Towers and Alternate Tower Structures have been evaluated and why they are not sufficient to meet the needs to be served by the proposed Wireless Communications Tower including demonstration that the applicant cannot co-locate on an existing Wireless Communications Tower or Alternate Tower Facility and fulfill their coverage needs; and,
 - b.) That the height proposed for the Wireless Communications Facility is the minimum height necessary to provide the service coverage and co-location opportunities necessary.
 - 6.) Removal Cost. Estimated cost to remove the Wireless Communications Facilities and restore the site to its pre-development condition as certified by a professional engineer registered to work in the Commonwealth of Massachusetts; and,

- 7.) Schedules. Proposed Inspection and Maintenance Schedule; and,
- 8.) Color Photograph or Rendition: A color photograph or rendition of the proposed Wireless Communications Facilities, including, but not limited to, the proposed Wireless Communications Tower with the proposed associated Wireless Communications Antennas; and,
- 9.) View Lines: Four view lines in a one- to three mile radius of the proposed Wireless Communications Facility Site beginning at True North and continuing at ninety-degree intervals; and,
- 10.) Balloon Test: On a weekend day prior to (but within ten calendar days of the date of the advertised public hearing) and on the day of the public hearing to be held by the Planning Board, the applicant shall cause a balloon to be flown at the maximum proposed height of the proposed Wireless Communications Facility. The balloon shall be flown for at least three consecutive hours between 8:00 a.m. and 4:00 p.m. The balloon shall be at least three feet in diameter and either orange or red in color.

12. Registration and New Plans

By July 1 of each year, all owners of Wireless Communications Towers and Alternate Tower Structures in use or permitted by the Planning Board must register with the Planning Board.

- a. Owners of Wireless Communications Towers are to:
 - 1.) Identify each site within the limits of, and within one mile of, South Hadley they are presently using by tax map and parcel number and the specific longitude and latitude coordinates of the Wireless Communications Tower Facility; and,
 - 2.) Identify existing co-location capacity of the Wireless Communications Tower Facilities identified in item 12a; and,
 - 3.) Provide inspection reports and evidence of maintenance activities for the wireless communications facilities identified in item 12a for the past year.
- b. Owners of Alternate Tower Structures are to:
 - 1.) Identify each site within the limits of, and within one mile of, the Town of South Hadley (which they are presently using for Wireless Communications Services) by tax map and parcel number; and,

- 2.) Provide a list of the Carriers presently utilizing the Alternate Tower Structure.

13. Jurisdiction of Planning Board

The conditions of a Special Permit issued by the Planning Board pursuant to the provisions of this subpart 7(S) may not be subject to a subsequent modification by means of a dimensional variance from the Zoning Board of Appeals without concurrent or prior amendment to such Special Permit by the Planning Board.

(T) Outdoor Recreation Facilities

(Adopted October 28, 2003 Special Town Mtg.)

1. Purpose. The overall purpose of the Outdoor Recreation Facilities use within the Agricultural zoning district is to preserve agricultural lands through enhancing the economic viability of active farmland operations.
2. Facilities Allowed. Outdoor Recreation Facilities may be permitted, subject to compliance with the mandatory standards, conditions and requirements for a Special Permit and Site Plan Review as well as the conditions set forth in this subpart. Such Outdoor Recreation Facilities may only include miniature golf facilities (up to 36 holes) and batting cages may be permitted as Outdoor Recreation Facilities.

Nothing herein is to be interpreted as precluding the use of any land for passive recreational activities such as, but not limited to, hunting, hiking, skiing, fishing, etc.

3. Minimum Area of Parcel. The Outdoor Recreation Facility Use may only be permitted on a single parcel of no less than 50 acres or contiguous parcels in common ownership of an aggregate area of no less than 50 acres.
4. Minimum Frontage. The parcel to be permitted must have at least two-hundred fifty feet (250') of continuous frontage on a public way.
5. Parcel Coverage. Outdoor Recreation Facilities shall not occupy more than 2.5% of the total land area of the parcel on which the facilities are located. This area limitation includes the portion of the tract occupied by required parking facilities and any associated structures and does not apply to buildings and structures used for agricultural purposes (including accessory uses).
6. Minimum Setbacks. The Outdoor Recreation Facilities Use areas and buildings (not to include related parking areas and trails for pedestrians or non-motorized vehicles) shall be no closer than forty feet (40') of a public road right of way line, and have the following side and rear yard setbacks:

<u>Setback</u>	<u>Agricultural</u>
Side Yard	20 feet
Rear Yard	25 feet

7. Maximum Height: Buildings and structures used as part of the Outdoor Recreation Facility Use shall be no higher than thirty-five feet (35') and include no more than 2 stories.
8. Maintenance of Agricultural Uses. Outdoor Recreation Facility Uses are to be incidental to the active farmland of the parcel on which they are located. Accordingly, the parcel must be maintained largely in an active agricultural usage. The applicant for the Special Permit (and owner of the property, if the applicant is not the owner) must provide demonstration that the property will be preserved in such use. If a substantial portion of the property ceases to be maintained as active farmland, the Special Permit for Outdoor Recreation Facility Use will be subject to termination by the Planning Board.

(U) Adult Entertainment Uses

(Adopted February 17, 2004 Special Town Mtg.)

1. Authority. This Subpart is enacted pursuant to the Town's authority under the Home Rule amendment to the Massachusetts Constitution and the authority and provisions of Chapter 40A, Section 9A, Massachusetts General Law.
2. Findings and Purposes. Preventing land uses from having deleterious impacts is a fundamental purpose of Zoning. Concentration of adult entertainment uses (as defined herein) and encroachment of such uses on residential areas have deleterious effects on the community and the adjacent areas. Among the deleterious secondary effects of such uses are increased crime levels and general blight. Late-night noise and traffic associated with the hours of operation of such uses also cause adverse secondary impacts of such uses. Accordingly, regulation of adult entertainment uses pursuant to this subsection has the following purposes:
 - a. Preventing the deleterious effects that such uses have on the community and adjacent areas.
 - b. Preventing the secondary effects associated with such uses.
 - c. Protect the health, safety, and general welfare of the present and future inhabitants of the Town.
 - d. Provide for regulation of such uses without suppressing any speech or expression activities protected by the First Amendment. Accordingly, the provisions of this Subpart (U) and the Zoning By-law in general have neither the intent nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the intent or office of this Subpart (U) to restrict or deny access by adults to sexually oriented matter or materials protected by the Constitution of the United States or of the

Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matter or materials may have to sell, distribute or exhibit such matter or materials. Nor is it the intent or effect of this Subpart (U) to legalize the distribution of obscene matter or materials.

3. Applicability. This subpart applies to all adult entertainment uses as defined herein.
4. Definitions. As used in this Subpart of the Zoning By-Law, the following words and phrases shall have the meanings and intent respectively ascribed to them by this subpart. If any word or phrase conflicts with definitions specified elsewhere in the South Hadley Zoning By-Law, the meaning and intent ascribed below shall govern:
 - a. Adult bookstore. As defined in Chapter 40A, Section 9A, MGL, this is an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in Chapter 272, Section 31, MGL.
 - b. Adult motion picture theatre. As defined in Chapter 40A, Section 9A, MGL, this is an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in Chapter 272, Section 31, MGL.
 - c. Adult paraphernalia store. As defined in Chapter 40A, Section 9A, MGL, this is an establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in Chapter 272, Section 31, MGL.
 - d. Adult video store. As defined in Chapter 40A, Section 9A, MGL, this is an establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in Chapter 272, Section 31, MGL.
 - e. Establishment which displays live nudity for its patrons. As defined in Chapter 40A, Section 9A, MGL, this is any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in Chapter 272, Section 31, MGL.
 - f. Adult entertainment use. This is an establishment which is engaged in any one or more of the following uses as defined herein:
 - i. Adult bookstore
 - ii. Adult motion picture theatre
 - iii. Adult paraphernalia store
 - iv. Adult video store
 - v. Establishment which displays live nudity for its patrons

- g. Residential zoning district. Residential Zoning District shall refer to any and all property located within any of the following zoning districts as depicted on the South Hadley Zoning Map: Residence A-1, Residence A-2, Residence B, and Residence C.
 - h. Individual residential use. This term shall refer to any single-family or two-family residence located on a parcel located within the Agricultural Zoning District as depicted on the South Hadley Zoning Map.
5. Special Permit Required. No adult entertainment use shall be established or operated without a Special Permit having been issued by the Planning Board pursuant to this Subpart (U) and Section 9 of the Zoning By-Law.
 6. Location Restrictions. A Special Permit for any adult entertainment use may only be granted if the following location restrictions are met:
 - a. Overlay District. The subject property is located within the Adult Entertainment Use Overlay District established in Section 4 of the Zoning By-Law; and,
 - b. Business District. The subject property is entirely zoned either Business A-1 or Business B.
 7. Spacing from Uses and Districts. No Special Permit for any adult entertainment use may be granted unless the subject property is no less than 500 feet from the following uses or districts located within the Town of South Hadley:
 - a. Residential zoning district
 - b. Individual residential use
 - c. Public or private school
 - d. Church
 - e. Public or private library
 - f. Facilities licensed under Chapter 138, Section 12, MGL (except for such facility which is proposed to be used as adult entertainment use)
 - g. Any other adult entertainment uses
 8. Measurement of Spacing Requirements. The 500 feet distance specified in Subpart 7(U), paragraph 7 shall be measured as a straight line from the nearest point on the exterior property lines of the proposed adult entertainment use and the nearest point on the exterior property line aforementioned uses or districts.
 9. Development Standards. No Special Permit for an adult entertainment use shall be granted unless the site on which the use is proposed to be undertaken conforms to the following standards or provision is made for conformity with these standards prior to the adult entertainment use being operated:

- a. *Buffer.* A 6-foot high vegetative buffer shall be provided along the rear and side lot lines of any parcel on which is located an adult entertainment business. The purposes of this buffer are to provide visual screening of the adult entertainment use from the adjoining property. For purposes of this Subpart, this buffer shall be a continuous landscaped buffer strip and shall be no less than 6 feet in height and 10 feet in width. The Planning Board may authorize installation of a solid wood, stockade fence in lieu of the vegetation.
 - b. *Screening.* All building openings, entries, and windows shall be screened in such a manner as to prevent visual access to the interior of the building by the public.
 - c. *Multi-Tenant Buildings.* No adult entertainment use shall be located in a building or on a property with more than one business located thereon.
 - d. *Dimensional Requirements.* All adult entertainment uses shall comply with the dimensional requirements of the underlying zoning district.
 - e. *Display Restrictions.* No graphics, pictures, publications, videotapes, movies, covers, or other implements, items, or advertising, that fall within the definition of, or associated with, an adult entertainment use shall be displayed in the windows of, or on the building of, any adult entertainment use, or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semipublic, outside such establishments.
 - f. *Signs.* All signs shall comply with the provisions of Section 8(F) of the Zoning By-Law. No sign that falls within the definition of an adult entertainment use shall be displayed in the windows of, or on the building of, any adult entertainment use, or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semipublic, outside such establishments.
 - g. *Illumination of Parking Areas.* All parking areas associated with the adult use shall be illuminated. Said illumination shall be designed, installed, and operated so as to be contained on the property. The Planning Board may, as a condition of the Special Permit, restrict the hours of illumination.
10. Special Permit Conditions. Acting as the Special Permit Granting Authority, the Planning Board may attach special conditions to the Special Permit where the Planning Board determines such conditions are necessary and appropriate to fulfill the purposes of the Zoning By-Law.
 11. Applicant Restrictions. No special permit to operate an adult entertainment use shall be issued to any person convicted of violating the provisions of Chapter 119, Section 63, Mass. General Law or Chapter 272, Section 28,

Mass. General Law. This restriction shall apply to owners, officers, directors, and general partners of the business entity.

12. Management Restriction. No person convicted of violating the provisions of Chapter 119, Section 63, Mass. General Law or Chapter 272, Section 28, Mass. General Law shall be employed to manage or operate an adult entertainment use.

13. Special Requirements for Applications. In addition to the requirements specified in Section 9 of the Zoning By-Law, any application for a Special Permit for an adult entertainment use shall also include the following materials/items:
 - a. *Description.* A written description of the proposed project, including:
 - i. Nature of proposed use; and,
 - ii. Improvements to be made to the property; and,
 - iii. Number of employees; and,
 - iv. Proposed hours and days of operation.

 - b. *Spacing Requirements.* A locus map highlighting the subject property, displaying the boundary lines of the following:
 - i. The subject property; and,
 - ii. All zoning districts within 500 feet of the subject property; and,
 - iii. Lots used for single or two-family residential purposes within 500 feet of the subject property; and,
 - iv. All uses specified in Subpart (U), Section 7.

This map shall be a minimum of 24" by 36" and a scale of 1" = 100'. The Planning Board may require a different scale where the Board determines that an alternative scale is deemed appropriate and necessary.

 - c. *Site Plan Requirements.* A Site Plan in accordance with Section 12 of this Zoning By-Law. If the proposed adult entertainment use involves use of an existing building and no new construction or exterior modification is proposed, the Board may waive appropriate requirements of the Site Plan, but shall require a plan that details the existing site conditions, proposed landscaping, proposed signage, proposed site and building ingress and egress, and proposed parking.

 - d. *Interior Layout.* An interior layout of the building as proposed by the applicant. This layout shall identify all areas which are to be accessible by the establishment's customers.

- e. *Security Provisions.* Proposed provisions for securing the safety of the public inside and outside of the adult entertainment use establishment.
 - f. *Applicant/Management Restrictions.* A sworn statement that neither the applicant (inclusive of the owners, officers, directors, and general partners), nor the manager in the adult entertainment use business has been convicted of violating the provisions of Chapter 119, Section 63, MGL or Chapter 272, Section 28, MGL.
 - g. *Authorization.* Written authorization from the owner of the property acknowledging the application and authorizing the applicant to submit the application.
14. Duration of Special Permit. A Special Permit for an adult entertainment use shall expire 12 months after from its date of issuance and shall be renewable upon submittal of a written request for such renewal. The Planning Board shall consider the request and grant the renewal upon findings that i.) the use has been operated in accordance with the conditions of the Special Permit and the Zoning By-Law, ii.) the use has not had a deleterious effect on the surrounding neighborhood, and iii.) there have not been changes in the ownership or management of the adult entertainment use.
- a. *Provision for Three-Year Renewal.* The Planning Board may grant a three-year renewal period for any adult entertainment use upon a determination that the use has been operated for the previous thirty-six consecutive months without an adverse impact on the neighborhood or change in ownership or management.
15. Pre-Existing Adult Entertainment Use. Pursuant to Chapter 40A, Section 9A, MGL, all existing adult entertainment uses shall apply for a Special Permit within ninety (90) days following adoption of this By-Law amendment.
16. Severability. If any portion of this By-Law amendment is ruled invalid, such ruling will not affect the validity of the remainder of the by-law amendment.