



## ZONING BY-LAWS

Ashby, Massachusetts

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May 1, 1999

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November 18, 2000

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May 4, 2002

May 3, 2003

May 1, 2004

May 7, 2005

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ZONING BY-LAWS  
TOWN OF ASHBY, MASSACHUSETTS

**SECTION 1: PURPOSE**

To promote the health, safety, convenience, and general welfare of its inhabitants, to protect the community, and to promote sound growth.

**SECTION 2: DISTRICTS**

2.1 The Town of Ashby is hereby divided into the following four classes of districts, as follows:

- 2.1.1 Residential--R
- 2.1.2 Residential/Commercial--R/C
- 2.1.3 Residential/Agricultural--R/A
- 2.1.4 Industrial--I

2.2 The boundaries of each district are hereby established as shown on the zoning map entitled, "Zoning Map, Town of Ashby, Massachusetts, Ashby Planning Board". Said map is hereinafter referred to as the Zoning Map.

2.3 Use Regulations Within Districts

2.3.1 Basic Requirements: No building, structure, or land shall be used for any purpose or in any manner other than as permitted and set forth in this by-law. Uses permitted as a matter of right and uses allowed by the Board of Appeals shall be in conformity with all dimensional requirement, and any other pertinent requirement of this by-law. Uses not mentioned are prohibited.

2.3.2 PRINCIPAL USE, ACCESSORY USE

A principal use is a main or primary use of a lot or structure. More than one principal use may be allowed on a lot, except where such use is a dwelling and provided that each principal use is permitted and the sum of such principal uses complies with the other requirements of this By-Law.

An accessory use is one that constitutes only an incidental or insubstantial part of the total activity that takes place on a lot and is commonly associated with and integrally related to the principal use.

Even though a use may be a principal use in another situation, it may be conducted as an accessory use in conjunction with another principal use provided it is insubstantial, incidental, commonly associated with and integrally related to that principal use.

**SECTION 3: DEFINITIONS**

In this by-law certain terms are defined as followed:

- 1) ANTIQUE/GIFT SHOP. A small specialty retail shop.
- 2) ACCESSORY APARTMENT. A dwelling unit constructed within or on an existing house. It is a unit containing a bathroom, kitchen, and living/bedroom space
- 3) ACCESSORY BUILDING. An unattached subordinate building, the use of which is incidental to that of a principal building.

- 4) ACCESSORY USE. The use of a building or premises for a purpose customarily incidental to the main or principal use permitted in the district.
- 5) BANK. A place of business for keeping, lending, exchanging money and engaging in ancillary and related activities.
- 6) BED AND BREAKFAST. A private owner-occupied house where six or fewer rooms are let to transient guests and one meal, served before noon, is included in the rent and all accommodations are reserved in advance
- 7) BUILDING. Any roofed structure designed for the housing or enclosing of persons, animals, or personal property.
- 8) BUILDING LINE. The nearest point of the building housing the principle use of a lot to the street.
- 9) CAMOUFLAGED. A public wireless communications facility that is disguised, hidden or placed within an existing structure is considered camouflaged.
- 10) CAMP. Any land or buildings used primarily for recreational or recuperative purposes by organizations or groups of people whether or not conducted for profit.
- 11) CAMPGROUND. The area or place operated commercially and used for a camp, for camping, or for a camp meeting.
- 12) CANOPY. An area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries, canopy may be noncontiguous, but each unique area included in the total canopy calculations shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.
- 13) CELLAR HOLE FOUNDATION. A subsurface structure of a building, basement.
- 14) CEMETERY. A place or area of land, set apart for the burial of the dead, operated, managed, and controlled under the provisions of General Laws, Tercentenary edition, chapter one hundred fourteen, or a burial place under the care and supervision of the town or other public authority.
- 15) CLUB. An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain.
- 16) COMMON DRIVEWAY A private vehicular access from a road to two lots.
- 17) DOG OR CAT KENNEL. A place where two or more dogs or cats are kept for business purposes.
- 18) DRIVEWAY A private vehicular access from a road to no more than one lot.
- 19) DWELLING, ONE FAMILY. A detached building on a lot designed for and intended for occupancy by a single family whether or not for year-round or seasonal purposes, with access through the lot.
- 20) ELECTRIC SIGN. Any sign illuminated or otherwise powered by electricity, except those which are illuminated by floodlights.
- 21) FAMILY. Any number of individuals living together as a single, non-profit housekeeping unit, as distinguished from a group of individuals occupying a boarding house, lodging house, club, fraternity,

or sorority.

22) FARM. A tract of land in separate ownership devoted primarily to agricultural use.

23) FLOOD-PRONE ZONE. Any potential flood risk area as presented in the map survey by the US Army Corps of Engineers dated April 29, 1977, and titled, "Flood Hazard Boundary Map" for Ashby, Massachusetts.

24) FRONTAGE. Frontage is the distance along the boundary of a lot and street. Frontage is continuous and along one street.

25) GARAGE. A building, available to the public, operated for gain, which is used for maintenance, repair, or storage of motor vehicles.

26) GASOLINE OR SERVICE STATION. Any area of land, including the structure thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories, and which may or may not include facilities for lubricating, washing, maintenance, repair or storage of automobiles.

27) GOLF COURSE. An established acreage of land set aside for the game of golf.

28) GREEN HOUSE. An establishment whose purpose is to grow plants for retail use.

29) HEMP. The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content

30) HOME OCCUPATION. Any use customarily conducted for profit by the inhabitants of a dwelling, provided such use is clearly incidental and secondary to the use of the building for dwelling purposes and does not change the residential character thereof.

31) HOTEL. A building containing rooms intended or designed to be used, or which are used, rented, or hired out to be occupied or which are occupied for sleeping purposes for transient guests, and where only a general kitchen and dining room are provided within the building or in an accessory building.

32) JUNK. Articles such as old iron, brass, copper, tin, lead, or other base metals, cordage, old bags, rags, waste paper, paper clippings, scraps, clips, rubber, glass, empty bottles, empty cans and all other articles discarded and no longer used as a manufactured article composed of any one or more of the materials mentioned, but which may be converted into some other product by means of some manufacturing process.

33) LIBRARY. A building or a room or rooms in a building where books or other material may be studied, read, borrowed, or rented.

34) LODGING HOUSE. A residence where lodgings are let to five or more persons not within the second of kindred to the person conducting the house, and which does not contain a public dining room or cooking facilities in any rented sleeping room.

35) LOT. A parcel of land which is or may be occupied by a principal building and its accessory buildings, which is in conformity with the dimensional and area requirements applicable to the zone in which said lot is located.

36) (deleted)

37) (deleted).

38) MARIJUANA OR MARIHUANA. All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "marijuana" shall not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

39) MARIJUANA ESTABLISHMENT. A licensed Marijuana Cultivator, licensed Craft Marijuana Cooperative, licensed Marijuana Product Manufacturer, licensed Marijuana Retailer, licensed Independent Testing Laboratory, licensed Marijuana Research Facility, licensed Marijuana Transporter, and/or any other type of licensed recreational Marijuana-related business, except a medical marijuana treatment center.

40) MARIJUANA RETAILER. An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

41) MANUFACTURE. To compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

42) MOBILE HOME. A dwelling unit manufactured elsewhere, equipped with wheels or having fittings for wheels and delivered to a legal lot as a single unit or in completed modules for on site assembly, and fastened to a concrete block, poured concrete slab or similar foundation.

43) MONOPOLE. A single self supporting pole that's diameter at no point exceeds one thirtieth (1/30) of its height and that does not require above ground bracing or guy wires for support.

44) MOTEL. A building or group of buildings, detached or in connected units, designed primarily as individual sleeping units for transient guests and providing for accessory off-street parking facilities.

45) NONCONFORMING USE. Use of a building or land, existing at the time of enactment or subsequent amendment of this by-law, which does not conform to the regulations of the district in which it is situated.

46) ORCHARD. A commercial area of fruit trees.

47) PERSONAL WIRELESS SERVICES. Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services.

48) PERSONAL WIRELESS SERVICE FACILITY. Facility for the provision of personal wireless services, as defined by the Telecommunications Act.

49) PROCESS OR PROCESSING. To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

50) REGISTERED MARIJUANA DISPENSARY (RMD) or Medical Marijuana Treatment Center. A not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes

(including development of related products such as edible marijuana infused products, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation and preparation of marijuana.

51) **RIGHT OF WAY OF STREET.** When a strip of land within which is located  
a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or  
b) a way is shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control law, Massachusetts General Laws, Chapter 41, Section 81K to GG inclusive.

52) **SCHOOL.** An institution for the purpose of learning and study, such as preschools, nursery schools, charter schools, public and private schools, and colleges and universities, but not including schools of dance, riding academies, martial arts studios, art studios, or other entities offering instruction in a single area.

53) **SETBACK.** The minimum required unoccupied space or area between the streetline on which the building is numbered or would be numbered, and the part of the building nearest such street line, such unoccupied space or area extending the entire width or distance across the lot.

54) **SIGN.** Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge, or insignia of any government or government agency, or of any civic, charitable, religious, fraternal, or similar organization.

55) **STABLE (RIDING).** A building or group of buildings where one or more horses or ponies are kept for sale, rent, hire, or instruction.

56) **STREET. (Road, Way).** A public way accepted by the Town and certified as such by the Town Clerk or a way shown on a subdivision plan approved in accordance with the Subdivision Control Law or a way in existence when the subdivision control became effective in the Town of Ashby having, in the opinion of the Planning Board, suitable width, suitable grade and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the abutting land thereon or served by and for the installation of municipal services to serve the land and buildings erected or to be erected thereon.

57) **STREET CENTER.** Center line of street.

58) **STREET LINE.** Edge of right-of-way of roadway or street.

59) **STRUCTURE.** Anything constructed or erected which requires location on the ground or attachment to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

60) **TRAVEL TRAILER.** Any unit used for living or sleeping purposes and which is equipped with permanently attached wheels or similar devices used for purposes of transporting said unit from place to place.

61) **TREE NURSERY.** A commercial establishment where trees are grown for retail purposes.

62) **TRUCK GARDEN.** A commercial vegetable farm.

63) **USE.** The purpose for which a building or tract of land is designed, arranged or intended, or for which a building or tract of land is or may be arranged.

64) **VARIANCE.** An exception allowed by the Board of Appeals in the case of an individual property

owner where strict enforcement of this by-law would create a hardship or would not be in the best interests of the Town.

65) WOODLOT. An area of trees grown for commercial value.

## **SECTION 4: GENERAL PROVISIONS**

### **4.1 Permitted Uses**

The following shall be permitted uses in all zoned districts as are shown on the Map of Proposed Zoning (Revised June 1978):

4.1.1 Agriculture on land parcels greater than five (5) acres or to parcels 2 acres or more, if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars,

4.1.2 Municipal, Educational, Religious uses.

### **4.2 Dimensional Requirements**

4.2.1 Heights: Buildings shall not exceed forty (40) feet (12.18 meters) in height. This provision shall not apply to significant traditional accessory appurtenances such as steeples and bell towers.

4.2.2 Setback: Buildings shall have a setback of at least seventy-five (75) feet (22.85 meters) from the center of the street.

4.2.3 Building Area: Building area shall not exceed thirty-five percent (35%) of the lot area.

4.2.4 (Deleted)

4.2.5 Landscaping: The front setback and side yard areas of any building shall be provided with grass lawns, shrubbery or other landscaping.

4.2.6 Every building lot shall contain an area of at least 60% of the minimum required lot area in the district that is not wetlands as defined in 310 CMR 10.00, et seq.

4.2.7 Not less than one hundred and ten (110) feet between the lot lines shall be maintained to the building line as measured perpendicular to the lot lines. This section shall not apply to reduced frontage lots in section 7.2.10.

### **4.3 Driveways**

4.3.1 Any driveway or common driveway, shall be constructed only after obtaining approval for such construction and connection with the abutting public way, or other right of way, from the Planning Board, or its agent. Such connection shall provide for adequate drainage, both for the new connection and the existing right-of-way. All such new connections must be approved by the Ashby Highway Department Superintendent or his agent or in the case of the State or Federal right-of-ways, the appropriate official of said Agency. In order to provide for the safety, convenience and welfare of the inhabitants, driveways with a proposed grade of more than 12% must obtain a special permit from the Planning Board prior to construction. A special permit may be granted by the Planning Board if the applicant demonstrates to the satisfaction of the Board that no alternative route is practical, that potential for erosion is minimized, and that emergency vehicles have practical access to the site. No driveway or connection may be constructed in any manner that would hinder access by emergency vehicles.

4.3.2 No more than two lots served by any one common driveway.

4.3.3 No common driveway shall exceed 800 feet in length, and shall have sufficient provision for vehicle turn around.

#### 4.4 Parking:

All off street parking shall conform to the following design and schedule of parking uses.

##### 4.4.1 Design of Off-Street Parking and Loading Spaces:

All off street parking spaces, open or enclosed, shall consist of 200 square feet of appropriate dimensions, exclusive of drives or aisles. All required parking spaces shall be at least 15 feet from street lines, and shall be maintained to permit their use at all times. All required parking spaces shall be on the same lot as the use served thereby, except that unenclosed spaces may be within 200 feet of the lot.

Common parking areas may be permitted for the purpose of serving uses on separate lots provided that:

- 1) the combined amount of parking is not less than the sum of the requirement for each use separately,
- 2) it is evident that such common facility will remain available for the several buildings or uses,
- 3) that the several buildings or uses are so closely related, that it is unlikely that any one or more of the uses will change in kind or extent so as to substantially increase the parking requirement of the common area,
- 4) if any use does not abut the common parking area, such use shall not be located at a distance greater than 500 feet from the common parking area.

4.4.1.1 Required off-street parking and loading spaces shall not hereafter be reduced.

4.4.1.2 Required off-street parking and loading spaces shall have adequate access to the street. Street accesses shall not be located closer than 200 feet apart, and shall be provided with separate entrance and exit lanes.

4.4.1.3 All off-street parking and loading areas shall be paved according to specifications prepared by the Planning Board and contained in the Planning Board Rules and Regulations, except that a stand for the sale of farm products may have a gravel surface parking area.

4.4.1.4 All required parking and loading areas used after sundown shall be lighted during use with the lighting arranged so as not to shine on abutting properties or streets, nor in any way creating a hazard or nuisance.

##### 4.4.2 Schedule of Parking Uses and Spaces Required

Accessory Apartment One space per bedroom

Hotel, Inn or Motel One space for each bedroom plus one space for each employee on the largest shift.

Educational One space for each staff position plus one space for each five persons of rated capacity of the largest auditorium plus one space for each student vehicle which can be expected at any one time based on average daily attendance on the premises.

Nursing Home One space for each two beds plus one space for each employee on the largest shift.

Retail Store, General and Personal Services One space for each 180 square feet of net floor area.

Professional Office, Bank One space for each 200 square feet of net floor area.

Restaurant, Religious, Club or Other Place of Assembly One space for each three seats plus

one space for each employee on the largest shift.

Motor Vehicle Service Station or Repair or Body Shop Three spaces for each service bay plus one space for each employee on the largest shift.

Industrial One space for each 2,000 square feet of net floor area for the first 20,000 square feet plus one space for each additional 10,000 square feet of net floor area plus one space for each employee on the largest shift.

#### **4.5 Site Plan:**

A Site Plan granted by the Planning Board in accordance with the standards set forth in Section 12.5 of this by-law shall be required for the following uses:

4.5.1 The initial development of land in the Industrial District.

4.5.2 The initial development of land for commercial uses or mixed residential-commercial uses in the Residential/Commercial district and Residential/Agricultural district.

4.5.3 The expansion of any building used for commercial or industrial uses by more than 1000 square feet of gross floor area.

4.5.4 Site Plan review required for uses other than single family homes in section 9.8 Ashby Village Center Overlay District.

#### **4.6 Accessory Apartments**

##### **4.6.1 Purpose**

The purpose of this section is to encourage accessory apartments as an alternative housing choice in Ashby, in a manner consistent with Ashby's rural character.

##### **4.6.2 Applicability**

Accessory apartments shall be permitted by right in residential zoning districts (Residential, Residential/Commercial, Residential/Agricultural) if they are added to an existing single family dwelling unit. Prior to issuance of a building permit, the applicant must secure all other requisite permits and approvals for the accessory apartment.

##### **4.6.3 Requirements for Accessory Apartments in all Permitted Zoning Districts**

4.6.3.1 The accessory apartment shall clearly be a subordinate part of the single-family dwelling.

4.6.3.2 The principle unit or the accessory apartment shall be occupied by the owner of the premises and in the case of multiple owners at least one of the owners of the dwelling except for temporary absences.

4.6.3.3 The dwelling unit in which the accessory apartment is located shall be owned under a single deed.

4.6.3.4 No new driveway or curb cut shall be created to service the accessory apartment.

4.6.3.5 The accessory apartment must be designed so that the appearance of the building remains unchanged, and there shall be no change to the front façade of the house. Unless otherwise required by the Massachusetts Building Code, any new exterior stairs to provide primary or secondary access to the accessory apartment shall be covered and located on the side or rear of the building.

4.6.3.6 The primary dwelling and the accessory apartment shall each be an independent living unit, each containing a kitchen and bathroom and a minimum of one bedroom or bedroom / living area.

4.6.3.7 Not more than one accessory apartment shall be permitted in a single-family home.

4.6.3.8 The living space in an accessory apartment shall not exceed thirty-three (33) percent of the total heated living area of the primary dwelling, and shall contain no more than two bedrooms.

4.6.3.9 Satisfactory evidence must be presented that adequate provision has been made for disposal or sewage, waste and drainage in accordance with the requirements of the Board of Health.

4.6.3.10 Accessory apartments must be constructed per the current building code requirements of the Town of Ashby and the Commonwealth of Massachusetts.

#### **4.7 Associate Planning Board Member**

The position of Associate Planning Board member is hereby established providing for one associate member to be appointed by the Board of Selectmen with the recommendation of the Planning Board, for a period of three years.

## **SECTION 5: RESIDENTIAL**

### **5.1 Permitted Uses:**

5.1.1 A one-family dwelling for one housekeeping unit only.

5.1.2 Accessory use (home occupational) include the following, provided that they are customarily incidental to a permitted main use on the same premises and not detrimental to a residential neighborhood. Except as indicted, there shall be no exterior indication of the accessory use. No more than 2 persons outside the resident family are to be employed at one time. One sign of one or two sides no larger than 6 square feet (.55 sq. m.) per side may be displayed. All electrified signs prohibited. Under no circumstances will outdoor displays of merchandise be allowed.

5.1.2.1 Use of space in dwelling for a customary home occupation, professional office or studio maintained by resident occupants.

5.1.2.2 Use of premises in connection with their trade by a resident carpenter, electrician, painter, plumber, or other artisan provided that no manufacturing or business requiring substantially continuous employment shall be within the principal structure or within suitable accessory buildings.

5.1.2.3 Renting of rooms or furnishing of board for not more than 3 non-transient persons in a dwelling regularly occupied for residential purposes.

5.1.4 Retail sale of products of home occupation.

### **5.2 Special Permits:**

Uses which may be allowed by the Board of Appeals after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential area.

5.2.1 Library

5.2.2 A structure of any kind including fences and walls for any purpose located within a flood-prone zone, but in no case will a dwelling, accessory building or public building be allowed in a flood-prone zone.

5.2.3 Temporary use of a trailer or mobile home for dwelling purposes in excess of 60 days and not to exceed 6 months, provided that adequate provision is made for water, sewage disposal, and electric power. Each trailer or mobile home site must meet setback and land area requirements for a one-family dwelling.

5.2.4 Temporary use of a cellar hole foundation for dwelling purposes in excess of 6 months but not to exceed 1 year.

5.2.5 Bed and Breakfast or Restaurant with or without liquor license.

5.2.6 Agriculture on land parcels of 5 acres or less that annually generates less than \$1,000 per acre based on gross sales dollars

5.2.7 Cemetery

5.2.8 Nursing home, sanitarium, orphanage, or similar use.

### **5.3 Table of Dimensional and Area Requirements:**

5.3.1 Minimum Area - 40,000 square feet (3716 square meters)

5.3.2 Minimum Frontage - 150 feet (45.72 meters)

5.3.3 Minimum Setback

5.3.3.1 Setback from Street Center 50 feet

5.3.3.3 Minimum Side and Rear Setback 25 feet (7.62 meters)

## **SECTION 6: RESIDENTIAL/COMMERCIAL**

### **6.1 Permitted Uses in all Residential/Commercial Districts**

6.1.1 A one-family dwelling for one housekeeping unit only.

6.1.2 Office, bank, newspaper, or retail stores (grocery, pharmacy, hardware, dry-goods, bakery, antique, gift, furniture, sporting goods, and package).

6.1.3 Store for custom work or for the making of articles to be sold at retail on the premises to the customer. No more than four employees are to be engaged in such work.

6.1.5 Accessory uses (home occupational) include the following, provided that they are customarily incidental to a permitted main use on the same premises and not detrimental to a residential neighborhood. Except as indicated, there shall be no exterior indication of the accessory use. No more than 2 persons outside the resident family are to be employed at one time. One sign of one or two sides no larger than 6 square feet (.55 sq. m.) per side may be displayed. All electrified signs prohibited. Under no circumstances will outdoor displays of merchandise be allowed.

6.1.5.1 Use of space in dwelling for a customary home occupation, professional office or studio maintained by resident occupants.

6.1.5.2 Use of premises in connection with their trade by a resident carpenter, electrician, painter, plumber, or other artisan provided that no manufacturing or business requiring substantially continuous employment shall be within the principal structure or within suitable accessory buildings.

6.1.5.3 Renting of rooms or furnishing of board for not more than 3 non-transient persons in a dwelling regularly occupied for residential purposes.

6.1.6 Nursing Home, Sanitarium, orphanage, or similar use.

6.1.7 Retail sale of products of home occupation.

6.1.8 Cemetery

### **6.2 Special Permits in all Residential/Commercial Districts:**

Uses which may be allowed by the Board of Appeals after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential/commercial area.

6.2.1 Library

6.2.3 A structure of any kind including fences and wall for any purpose located within a flood-prone zone, but in no case will a dwelling, accessory building, or public building be allowed in a flood-prone zone.

6.2.4 Club

6.2.6 Temporary use of trailer or mobile home for dwelling purposes in excess of 60 days and not to exceed 6 months, provided that adequate provision is made for water, sewage disposal and electric power. Each trailer or mobile home site must meet setback and land area requirements for a one-family dwelling.

6.2.7 Temporary use of a cellar hole foundation for dwelling purposes in excess of 6 months but not to exceed one year.

6.2.10 Activities, accessory to activities otherwise permitted within the district as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities permitted as a matter of right, subject to the provisions of Section 11.3 for a Special Permit.

6.2.11 Agriculture on land parcels of 5 acres or less that annually generates less than \$1,000 per acre based on gross sales dollars

6.2.12 Bed and Breakfast

**6.3 Table of Dimensional and Area Requirements:**

6.3.1 Minimum Area - 40,000 square feet (3716 square meters)

6.3.2 Minimum Frontage - 150 feet (45.72 meters)

6.3.3 Minimum Setback:

6.3.3.1 Frontage on Right-of-way of less than 50 feet width:

Set-back from Street Center 75 feet (22.86 meters)

6.3.3.2 Frontage on right-of-way of at least 50 feet width:

Set-back from Street Center 100 feet (30.48 meters)

6.3.3.3 Minimum Side and Rear Set-back: 25 feet (7.62 meters)

6.3.4 All structures must meet minimum set-back requirements, be no more than 2 stories and less than 30 feet (9.14 meters) in height measured from the sill or lowest point of egress.

**6.4 Residential/Commercial District A**

6.4.1 Permitted Uses

6.4.1.1 One sign of one or two sides no larger than 60 sq ft (6.4 sq m) per side. No electric signs of any type will be permitted except those illuminated by stationary flood light.

6.4.2 Special Permits; Uses which may be allowed by the Board of Appeals after a public hearing

and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential/commercial area.

6.4.2.1 Sale or storage of feed, fuel, lumber, or building supplies.

6.4.2.2 Automobiles service or gasoline station

6.4.2.3 An additional sign for advertising not to exceed 60 sq ft (6.4 sq m) No electric signs will be permitted except those illuminated by stationary flood light.

6.4.2.4 Hotel, Motel, Restaurant, with or without liquor license.

6.4.2.5 Sale of Automobiles

6.4.2.6 Marijuana Retailer. A maximum of two (2) Marijuana Retailers may be located in the Residential/Commercial A District, subject to approval of a special permit by the Zoning Board of Appeals. All special permits shall be subject to Section 12.3 Special Permits, Paragraph 12.3.3 Requirements, Marijuana Establishments. A Marijuana Retailer may be located in an existing or new retail store. Marijuana Social Consumption Operations shall not be permitted.

6.4.2.6.1 All Marijuana Retailers shall be located a minimum of 500 (five hundred) feet from any existing or proposed school or Marijuana Establishment. All Marijuana Retailers shall be licensed by the State, meet all applicable State regulations and State permit conditions, and conform to all provisions of this section.

## **6.5 Residential/Commercial District B**

### 6.5.1 Permitted Uses

6.5.1.1 One sign of one or two sides no larger than 30 sq. ft (3.2 sq. m) per side. No electric signs of any type will be permitted except those illuminated by stationary floodlight.

6.5.1.2 No outside display of merchandise shall be permitted except agricultural and horticultural products.

6.5.1.3 Post office.

6.5.2 Special Permits; Uses which may be allowed by the Board of Appeals after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential/commercial area.

6.5.2.1 Hotel, restaurant with or without liquor license provided no drive up or curbside food service shall be allowed.

6.5.3 Special Permits; Uses which may be allowed by the Planning Board after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential/commercial area:

6.5.3.1 Restaurant with drive up or curbside food service.

## **SECTION 7: RESIDENTIAL/AGRICULTURAL**

### **7.1 Permitted Uses:**

7.1.1 Uses permitted in residential district.

7.1.2 Farm, orchard, greenhouse, tree nursery, truck garden, or wood lot including sale of agricultural or horticultural products raised on the premises. One or more signs with a total area of no more than 20 square feet may be displayed during seasons when such products are for sale.

7.1.3 Commercial raising of poultry, cattle, horses, goats, sheep, swine, or other domestic farm animals.

### **7.2 Special Permits:**

Uses which may be allowed by the Board of Appeals after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the residential/agricultural area provided no more than six employees to be engaged in such use.

7.2.1 Library.

7.2.2 Sale and making of harness and tack.

7.2.3 Club

7.2.4 Sale or storage of feed or lumber.

7.2.5 Cemetery, golf course, riding stable, boat livery, cross country ski trails, campground, or camp for children or adults.

7.2.6 Dog or cat kennel or veterinary hospital.

7.2.7 Temporary use of trailer or mobile home for dwelling purposes in excess of 60 days and not to exceed 6 months, provided that adequate provision is made for water, sewage disposal and electric power. Each trailer or mobile home site must meet setback and land area requirements for a one-family dwelling.

7.2.8 Temporary use of a cellar hole foundation for dwelling purposes in excess of 6 months but not to exceed 1 year.

7.2.9 Bed and Breakfast or Restaurant.

7.2.10 Reduced Frontage Lot. Reduced frontage lots may be created by special permit granted by the Planning Board. Reduced frontage lots shall have a minimum of fifty (50) feet of frontage, twenty (20) acres of area, and fifty (50) foot building setback from all the lot lines. A minimum of fifty (50) feet between the lot lines shall be maintained to the building line as measured perpendicular to the lot lines. At least ten (10) acres shall not be wetland areas as determined by 310 CMR 10.00 et seq. A covenant running with the land providing for no further division of the lot shall be required.

7.2.11 A structure of any kind including fences and wall for any purpose located within a flood-prone zone, but in no case will a dwelling, accessory building or public building be allowed in a flood-prone zone.

7.2.12 Marijuana Cultivation of Limited Area.

7.2.12.1 Cultivation within a building or buildings with a combined footprint not to exceed 2,500 square feet. A maximum of two (2) Marijuana Establishments for licensed marijuana cultivation only within a building or buildings may be located in the Residential / Agricultural Zoning District, subject to the requirements of the Section and approval of a special permit by the Zoning Board of Appeals. Total building footprint area shall not exceed 2,500 square feet per Marijuana Establishment. Total Canopy area for each Marijuana Establishment shall not exceed 5,000 square feet. No retail product sales to the general public shall be permitted. Marijuana product manufacturing in whole or in part is not permitted.

In order to maintain the residential character of the Residential/ Agricultural Zoning District, existing buildings such as barns or greenhouses shall be used for indoor cultivation where possible. Any new construction that requires a building permit shall harmonize with nearby architectural styles to the greatest possible extent.

7.2.12.2 Outdoor cultivation not to exceed 5,000 square feet of Canopy. A maximum of two (2) Marijuana Establishments for licensed marijuana cultivation with a maximum Canopy not to exceed 5,000 square feet per Marijuana Establishment may be located in the Residential/ Agricultural Zoning District subject to approval of a special permit by the Zoning Board of Appeals. No product manufacture or retail product sales to the general public shall be permitted. Marijuana product manufacturing in whole or in part is not permitted.

Security fencing shall be as inconspicuous as possible and compatible with the surrounding neighborhood. In no case shall barbed wire topped fence or similar style be permitted. All lighting shall be shielded and downward directed so as not to shed light onto adjacent properties.

7.2.12.3 Where Marijuana Cultivation of Limited Area would abut an existing Residential use, a landscape buffer up to a maximum of twenty (20) feet in width, designed to visually shield the Establishment from the existing Residential use may be required. All landscape buffers shall comply with State Cannabis Control Commission security requirements.

7.2.12.4 All Marijuana Cultivation of Limited Area shall be located a minimum of 500 (five hundred) feet from any existing or proposed public or private school. All Marijuana Cultivation of Limited Area shall be licensed by the State, meet all applicable State regulations and State permit conditions, and conform to all provisions of this section.

7.2.12.5 All special permits for Marijuana Cultivation of Limited Area shall be subject to Section 12.3 Special Permits, Paragraph 12.3.3 Requirements, Marijuana Establishments and Registered Marijuana Establishments.

### **7.3 Table of Dimensional and Area Requirements:**

7.3.1 Minimum Area - 80,000 square feet (5574 square meters)

7.3.2 Minimum Frontage - 200 feet (53.34 meters)

7.3.3 Minimum Setback

7.3.3.1 Frontage on Right-of-Way of less than 50 feet width.

Set-Back from Street Center 75 feet (22.86 meters)

7.3.3.2 Frontage on Right-of-Way of at least 50 feet width.

Set-Back from Street Center 100 feet (30.48 meters)

7.3.3.3 Minimum Side and Rear Set-Back 25 feet (7.62 meters)

## **SECTION 8: INDUSTRIAL**

### **8.1 Permitted Uses:**

Any industrial use that is not commonly regarded as hazardous or offensive. No use shall be permitted which would be hazardous to the community because of fire or explosion or any other cause. No use shall be permitted which would be offensive because of noise, smoke, vibration, gas, fumes, odors, dust or other objectionable features.

8.1.1 The research and development, testing, manufacturing and sales of photovoltaic and wind energy systems.

8.1.5 SIGNS. One sign of one or two sides no larger than 60 sq ft (6.4sq m) per side. No electric signs of any type will be permitted except those illuminated by stationary flood lights.

8.1.6 EXTERIOR CONSTRUCTION. The exterior facing of the front elevation and side walls of any building in the industrial zone shall be finished with brick, natural or manufactured stone, terra cotta, glass, aluminum, or other structural material of equal durability and architectural effect.

8.1.7 LANDSCAPING. No less than two-thirds (2/3) of the front set-back and side areas of any building shall be provided with grass lawns, shrubbery, or other appropriate landscaping.

8.1.8 RUBBISH AND TRASH. All rubbish, trash, scrap, or other waste materials incident to the use of the building occupation shall be stored within a structure or in such a manner which shall be sheltered from public view, provided 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 (15.24 meters) of the rear lot line.

8.1.9 FLAMMABLE MATERIALS STORAGE. All flammable materials stored in quantities in excess of 100 gallon containers (378.5 liters) which are required to be licensed under General Laws (ter. ed.) Chapter 148, Section 9, and amendments thereto, shall be stored below ground and below the mean grade level of the lot on which the storage is required, or otherwise suitably enclosed.

8.1.9.1 FENCES. No fence shall be more than one-quarter (1/4) solid.

### **8.2 Special Permits:**

8.2.1 Temporary use of a travel trailer or mobile home for office or work associated with construction of a permanent building or buildings in excess of 60 days and not to exceed six (6) months, provided that adequate provision is made for water, sewage disposal, and electric power.

8.2.2 (deleted)

8.2.3 Agriculture on parcels of 5 acres or less that annually generates less than \$1,000 per acre based on gross sales dollars

8.2.4 "Activities, accessory to activities otherwise permitted within the district as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities permitted as a matter of right, subject to the provisions of Section 11.3 for a Special Permit"

8.2.5 Marijuana Establishment. A maximum of one (1) Marijuana Establishment may be located in the Industrial Zoning District subject to approval of a special permit by the Zoning Board of Appeals. Marijuana social consumption shall not be permitted. All special permits shall be subject to Section 12.3 ("Special Permits"), Paragraph 12.3.3 ("Requirements, Marijuana Establishments and Registered Marijuana Dispensaries.")

All Marijuana Establishments shall be located a minimum of 500 (five hundred) feet from any existing or proposed public or private school. All Marijuana Establishments shall be licensed by the State, meet all applicable State regulations and State permit conditions, and conform to all provisions of this section.

8.2.6 Registered Marijuana Dispensaries. A Registered Marijuana Dispensary may be located in the Industrial Zoning District subject to approval of a special permit by the Zoning Board of Appeals. All special permits shall be subject to Paragraph 12.3.3 Requirements, Marijuana Establishments and Registered Marijuana Dispensaries. Marijuana social consumption shall not be permitted.

**8.3 Table of Dimensional Requirements:**

Minimum Area 60,000 sq ft (5574 sq m)

Minimum Frontage 150 feet (45.72 m)

Minimum Set-Back from Street Center 75 feet (22.86 m)

Minimum Side and Rear Yard Set-Back 25 feet ( 7.62 m)

Building area shall not exceed thirty-five percent (35%) of the lot area.

All structures must meet minimum set-back requirements.

## **SECTION 9: OVERLAY DISTRICTS AND SPECIAL PROVISIONS**

### **NATIONAL FLOOD INSURANCE PROGRAM (NFIP)**

#### **9.1 Floodplain District Boundaries and Regulations**

9.1.1 Flood District. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Ashby designated as Zone A on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the Town of Ashby are panel numbers 25017C0010E, 25017C0030E, 25017C0035E, 25017C0040E, 25017C0042E and 25017C0045E effective June 4, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report effective June 4, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Building Inspector.

9.1.1.1 Floodway Data. In Zone A, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the occurrence of the base flood discharge.

9.1.1.2 Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 5 lots or 5 acres, whichever is lesser, within Zone A.

9.1.2 Development Regulations. All development in the District including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following; Section(s) of the Massachusetts State Building Code which address floodplain areas; Wetland Protection Regulations, Department of Environmental Protection; Inland Wetlands Restriction, Department of Environmental Protection; Regulations of the Ashby Board of Health and the Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, Department of Environmental Protection; Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of the these state regulations.

9.1.2.1 The Planning Board shall review all subdivision proposals to assure that such proposals minimize flood damage and all public utilities and facilities are located and constructed to minimize or eliminate flood damage and adequate drainage is provided to reduce exposure to flood hazards.

9.1.3 Notification of Watercourse Alteration. The following must be notified in writing at least 30 days prior the alteration of any riverine situation;

The Selectmen or City Council of all abutting communities.  
The National Flood Insurance State Coordinator, Massachusetts Office of Water Resources,  
The National Flood Insurance Program Specialist, Federal Emergency Management Administration, Region I.

#### **9.2 Personal Wireless Communications Facility**

9.2.1 Purpose;

The purpose of this bylaw is to minimize the impact of personal wireless communication facilities on adjacent properties and residential neighborhoods, to promote the health, safety and general

welfare of the community, to conserve the value of lands and buildings, to encourage the more appropriate use of the land, to ensure that personal wireless communications facilities are sited, designed and screened in a manner that is sensitive to the surrounding neighborhood, to minimize the number and height of such facilities to only what is essential and to promote the use of shared facilities.

## 9.2.2 Requirements

9.2.2.1. No Personal Wireless Communications Facility shall be erected or installed except in compliance with this section. In all cases a Special Permit is required from the Zoning Board of Appeals. Any proposed extension in the height, addition of cells, antenna, panels, transmitters or construction of a new or replacement facility shall be subject to a new application for a Special Permit. Private commercial wireless communications facilities are not permitted under this section.

### 9.2.2.2. Structures

9.2.2.2.1 If feasible, personal wireless service facilities shall be located on existing structures, including but not limited to buildings, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. If located on a utility structure within the utility or public right of way no setbacks shall apply. The facility shall not increase the height of the structure by more than ten feet. If located on an existing building, the setback and height provisions of the zoning district shall apply however the personal wireless communication facility shall not project more than ten feet above the roof line of the building. In the case of pre-existing non-conforming buildings, personal wireless service facilities and their equipment shelters shall not increase any non-conformities. No personal wireless facilities shall locate on the exterior of any structure in the historic district. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

9.2.2.2.2 If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless service facilities shall be located on a free-standing monopole as specified in section 9.2.4. All free standing monopole sites must meet the dimensional requirements of the district in which they are located or this section, whichever is greater. Lattice style towers and similar types of construction with or without guy wires are not allowed.

9.2.2.3. Where ever possible wireless communication facilities shall be satisfactorily screened from abutters.

9.2.2.4. If required by the Board of Appeals, annual certification demonstrating continued compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Building Inspector by the Special Permit holder. Structures shall be removed within one year of cessation of use. Prior to receiving a permit, the applicant shall obtain a bond, either in cash or issued by a surety authorized to do business in Massachusetts, in the form approved by Town Counsel and an amount approved by the Board of Appeals to ensure that the facility and any other structure, buildings or improvements to be erected by the applicant are properly maintained and timely removed.

An initial cash bond, in a reasonable amount determined and approved by the Board of Appeals, shall be enforced to cover removal of the facility. Failure to meet the standards of this section or to post satisfactory bond shall be grounds for denial or revocation of the Special Permit.

9.2.2.5 Any new free standing personal wireless service facility shall provide at least one carrier of personal wireless services.

### 9.2.3 Application Process

All applications for a Personal Wireless Communications Facility shall be made and filed on an applicable form in compliance with the Board of Appeal's instructions on file with the Town Clerk. The application shall be accompanied by the following:

9.2.3.1. A locus plan of suitable scale showing the exact location of the proposed facility, all property lines, streets, landscape features, topography and buildings within one thousand (1,000) feet of the proposed facility. Said plan shall be prepared by one or more registered professional engineers.

9.2.3.2. A rendition of the proposed Personal Wireless Communications Facility including but not limited to the monopole, other structures, fences and the like.

9.2.3.3. The following prepared by one or more professional engineers:

- a. A description of the Personal Wireless Communications Facility and the technical, economic and other reasons for the proposed location as well as a description of all other feasible sites within the reception/transmitting area of the proposed facility.
- b. Confirmation that the Personal Wireless Communications Facility complies with all applicable federal and state standards.
- c. A description of the capacity of the Personal Wireless Communications Facility including, but not limited to, the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations.
- d. Eight, (8) view lines in a one (1) mile radius from the proposed site beginning at true north and continuing at forty-five (45) degree intervals around the compass.
- e. Proof of authorization to place such facilities on the location proposed, such as deed, lease, license or binding preliminary approval, such as letter of intent.
- f. Nothing contained in this bylaw shall preclude the Board of Appeals from requesting additional information related to the subject of the application, which information shall be provided by the applicant.

9.2.3.4. Applicable review and advertising fees and such fees as the Board of Appeals may require for independent engineering review and any associated legal reviews.

### 9.2.4 Design Requirements

The following requirements shall be used when preparing plans for the siting and construction of all personal wireless communications facilities.

9.2.4.1. All monopoles shall be constructed at the minimum height necessary to accommodate the anticipated use. Set back of the monopole from the lot property lines shall be at least equal to the height of the monopole. No monopole or attached antenna shall exceed 120 feet in height as measured from the base of the monopole. No monopole shall be located within five hundred (500) feet of a residential structure.

9.2.4.2. All personal wireless communications facilities shall be sited in such a manner that the view of the facility from abutters and other areas of Town shall be as limited as possible. All monopoles and attached panels, antenna and transmitters shall be camouflaged and shall be painted so as to blend in with the landscape and sky.

9.2.4.3. To the extent feasible, all service providers shall co-locate on a single facility. The applicant shall have the burden of proving that there are no feasible existing facilities upon which to locate. Personal wireless communications facilities shall be

designed to accommodate the maximum number of users possible under state of the art The intent of this requirement is to reduce the number of facilities which may be located within the town to serve public interest.

9.2.4.4. Applicants proposing a Personal Wireless Communications Facility in a residential or residential agricultural district shall prove to the satisfaction of the Board of Appeals that the visual, economic and aesthetic impacts of the facility on residential properties in the area are minimal and that the facility must be located at the proposed site due to technical, topographic or other unique circumstances.

9.2.4.5. Fencing to control access to the facility shall be compatible with the character of the area in which the facility is located. In no case shall razor wire or barbed wire be allowed.

9.2.4.6. There shall be no signs, except for (1) announcement signs, (2) no trespassing signs and (3) a required sign giving the telephone number where the owner may be reached on a twenty four hour basis. The aggregate size of the signage shall not exceed three (3) square feet.

9.2.4.7. Night lighting shall be limited to that required by the Federal Aviation Administration or that needed for emergencies.

9.2.4.8. There shall be one parking space for the facility to be used in connection with maintenance of the site.

9.2.4.9. Outdoor storage of vehicles or equipment is prohibited.

#### 9.2.5 Special Permit (Review)

9.2.5.1 Procedures for considering special permits shall be governed by section 11.3 of this bylaw.

9.2.5.2. Applications for Special Permits may be approved with conditions if the applicant has fulfilled and addressed the requirements of these regulations to the satisfaction of the Board of Appeals. Applications for Special Permits may be denied if the applicant does not fulfill and address the requirements of the regulations to the satisfaction of the Board of Appeals. Conditions shall be reasonably appropriate to safeguard the neighborhood and otherwise be consistent with the purposes of this bylaw. Including but not limited to, screening, buffer zones, lighting, fencing, the exterior appearance of the structure(s), limitation upon size, method of access, egress or other traffic features, parking, removal or cessation of use. Such conditions shall be imposed in writing and the applicant may be required to obtain bond or other surety to insure compliance with said conditions in a form approved by Town Counsel and in an amount approved by the Board of Appeals.

9.2.5.3. When considering an application for a Personal Wireless Communications Facility the Board of Appeals shall place great emphasis on the proximity of the facility to residential structures, neighborhoods and streets and its impact on same.

9.2.5.4. New facilities shall only be approved or approved with conditions after a finding that previously approved facilities can not accommodate the proposed use.

### **9.3 Rate of Development**

9.3.1 Purpose. The purpose of this Article is to ensure that growth occurs in an orderly and planned manner that allows the Town time to maintain high quality municipal infrastructure and public services, allows the Town to protect and promote public health, safety and welfare, and to plan to maintain the character of the town, while allowing a reasonable amount of additional

residential growth and allowing the Town the ability to finance government activities under the financial limitations of Proposition 2 ½. Conditions are made to encourage residential growth which addresses the housing needs of specified population groups and/or which have a low impact on public services, thus reducing the ultimate impacts of residential development on the Town.

9.3.2 Definitions. For the purpose of this section the following shall mean:

- 1 ) Affordable Housing. Dwelling units available at a cost of no more than 30% of gross household income to households at or below 80% of the area median income as reported by the U.S. Department of Housing and Urban Development (HUD).
- 2) Applicant. Individuals, partnerships, corporations, trusts and other legal entities in which the applicant of record holds a legal or beneficial ownership of greater than one (1) percent. The intent of the Bylaw is that related individuals, corporations, partnerships, trusts or other legal entities will be treated as one Applicant under the bylaw. The Planning Board will determine, based on evidence presented, whether permit applications from more than one party have been submitted by a single Applicant.
- 3) Year. The period beginning January 1 of any given year and ending December 31 of the following year.
- 4) Residential Dwelling Unit. Living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, whether in a complete, individual unit or a unit sharing common facilities.

9.3.3 Applicability. The rate of development bylaw shall apply to the issuance of all building permits for construction of new dwelling units. This bylaw shall become effective immediately upon its passage by Town Meeting. This bylaw shall be effective for five (5) years from that date, and may be extended by vote at Town Meeting without lapse of its provisions. Prior to that time, the Planning Board shall report to Town Meeting the effectiveness of the rate of development limitations and the need, if any, to continue and/or amend said limitation.

9.3.4 General. Building permits shall not be issued authorizing construction of more than twenty (20) new dwelling units in any year. The number of permits shall be prorated for any portion of a year following the adoption of this bylaw with fractional permits being rounded to the nearest whole number.

9.3.4.1 Exceptions: The following shall be exempt from the limit of twenty new dwelling units in any year as provided in section 9.3.4.

- a. The creation of dwelling units under any program or statute intended to assist the construction of low or moderate income housing or affordable housing, as defined in the applicable statute or regulation, including Town Bylaws.
- b. The creation of dwelling units in nursing homes and congregate care facilities.
- c. Any lot in existence at the time of the adoption of this bylaw will receive a one-time exemption from this bylaw for a period of two years from the date of the adoption of this bylaw.

9.3.5 Schedule. The Building Inspector shall issue building permits in accordance with the following:

9.3.5.1 Applications for building permits shall be dated and time-stamped upon receipt by the Building Department. Permits shall be issued on a first-in-time basis subject to the restrictions set forth in Sections 9.3.5.2, 9.3.5.3, and 9.3.5.4.

9.3.5.2 Within any calendar month, no more than twenty-five percent (25%) of the number of building permits allowed during the calendar year for new dwelling units may be issued. Unused permit allotments are to be carried forward for issuance in the subsequent month until the total permits authorized by Section 9.3.4, above, have been issued. No unused building permits shall be carried forward from one calendar year to the next.

9.3.5.3 No more than twenty-five percent (25%) of the building permits authorized by Section 9.3.4 for new dwelling units shall be issued to any one applicant or set of applicants involving one or more of the same principals within a single calendar year.

9.3.5.4 In one year, there shall be no more than a total of three (3) building permits issued for any parcel or contiguous parcels of land that was or were owned by one party as of the effective date of this section.

9.3.5.5 Limitation. There shall be no more than a total of three (3) building permits issued in any one subdivision in any year for new dwelling units, regardless of the applicant(s). In one year, there shall be no more than a total of three (3) building permits issued for any parcel or contiguous parcels of land that was or were owned by one party as of May 1, 2004. No more than six building permits shall be issued in any one calendar month.

9.3.6 Zoning Change Protection. The protection against zoning changes as granted by Section 6 of Massachusetts General Laws Chapter 40A shall, in the case of a development whose completion has been constrained by this Bylaw, be extended to the minimum time for completion allowed under this Bylaw.

#### **9.4 Open Space Residential Development**

9.4.1. Purpose. The purposes of this open space residential development (OSRD) bylaw are to provide for the public interest by the preservation of open space and natural landscape features in perpetuity, ensure that residential development respect the natural features of the land to the maximum extent possible, encourage a more compact and efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional grid-style subdivision, facilitate the goals of the Ashby Community Development Plan, encourage innovative land-use and site design techniques such as low impact development (LID), greenway connections, vernacular architecture and contextual response and promote housing patterns that are designed to be sensitive to and accommodate a site's physical characteristics. Such features include wetlands and water bodies, topography, vegetation, wildlife habitats, scenic views and vistas, the integrity of ancient ways, historic sites, and the remaining rural character of the community which is exemplified by its farmlands, open fields and orchards.

9.4.2. Applicability. The Open Space Residential Development bylaw shall apply as follows:

9.4.2.1. Applicability. Open Space Residential developments shall be allowed by special permit within the Residential, Residential/Agricultural, and Residential/Commercial Districts.

9.4.2.2. For the subdivision of any parcel or contiguous parcels equal to or greater than ten (10) acres under M.G.L. C.41, sections 81K to 81GG, an application must be made to the Planning Board for a special permit for an Open Space Residential Development. For the division of any other parcel or contiguous parcels an application may be made to the Planning Board for a special permit.

9.4.2.3. For any residential development defined as any division of land proposed under Approval not Required (ANR) control, M.G.L. C.41, section 81P, an application for a special permit for an Open Space Residential Development may be made at the applicant's option.

9.4.2.4. The application for a special permit for an Open Space Residential Development shall be reviewed and acted upon by the Planning Board as the Special Permit Granting Authority in accordance with the requirements of G.L. c. 40A, sections 9 and 11.

9.4.3. Procedure. In a Residential District the division of land shall be completed as follows:

9.4.3.1. Applicants seeking a special permit for an OSRD should request a pre-application conference or conferences with the Planning Board, and other boards as appropriate, to review the scope of the project and the site for which it is proposed.

9.4.3.2. For any application for an Open Space Residential Development, the applicant shall prepare two sets of concept plans, as described in the Town of Ashby Planning Board Rules and Regulations for Special Permits, for the parcel of land to be subdivided. One plan shall describe a conventional subdivision while the second shall describe an Open Space Residential Development.

9.4.3.3. The total number of lots shown on the Open Space Residential Development plan shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan without zoning variances or waivers and in full conformance with zoning, subdivision regulations, the Wetlands Protection Act and Board of Health Regulations. The Planning Board shall use the concept plan described in section 9.4.3.2. as guidance in determining the permissible number of OSRD lots. The number of lots will be specified in the special permit and reflected in the definitive subdivision plan that follows the granting of the special permit.

9.4.3.4. The Planning Board may grant a special permit for an Open Space Residential Development if the Board determines that the Open Space Residential Development plan is superior to the conventional plan in preserving open space for conservation, agriculture or recreation, stormwater management, utilizing the natural features of the land, and allowing more efficient provision of public services, and that the Open Space Residential Development plan is thereby more beneficial to the Town than the conventional plan.

9.4.3.5. A special permit for an OSRD shall remain effective for a period of two (2) years from the date of approval. At its discretion, the Planning Board may grant extensions for good cause shown.

9.4.4. Requirements. In a Residential District a special permit for an Open Space Residential Development shall conform to the following requirements:

9.4.4.1. In issuing a special permit for an Open Space Residential Development, the Planning Board may waive some or all of the area and dimensional requirements of the zoning district in which the Open Space Residential Development is to be located, if the Board finds that the waivers will result in better design and improved protection of natural, cultural, and scenic resources, provided that all the lots within the Open Space Residential Development are at least forty thousand (40,000) square feet in area.

9.4.4.2. A Buffer Area of twenty-five (25) feet shall be provided along the perimeter of the property being subdivided where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The area within the perimeter buffer area does count towards the minimum required open space. The Planning Board may waive this perimeter buffer requirement where:

- a. The land abutting the site is the subject of a permanent restriction for agriculture, forestry, conservation or recreation, or
- b. The land abutting the site is owned by the Town and used for conservation or recreation purposes, or
- c. The Planning Board determines that a small buffer will promote improved protection of natural, cultural, and scenic resources.

9.4.4.3. Open Space Requirements. An OSRD must provide at least 35% of the total land area as permanently protected open space. The Ashby Open Space and Recreation Plan considers open fields, existing trails, and agricultural land to be the most valuable type of open space to preserve when the parent parcel consists of several landscape types. The open space shall have no structures or parking within it, unless such structures are part of an ongoing or proposed agricultural or forestry operation that is acceptable to the Planning Board.

9.4.4.4. Open Space Limitations: Shared or community water wells and stormwater management facilities may be placed within open space areas, if needed to safely and adequately serve the residents of the OSRD. Areas cleared for installation of wells and stormwater management facilities, shall not, however, count towards the minimum required amount of permanently protected open space. The following additional standards apply to the minimum required common open space in an OSRD:

- a. Other than any area(s) devoted to wells, stormwater management and active recreation, as described in this section, open space shall be maintained in its natural condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation, recreation, or agricultural area and serve as a visual and natural amenity for the subdivision and the Town.
- b. At least 50% of the required open space shall be contiguous and linked as a unit, with links no less than fifty (50) feet wide. Open space that is contiguous to permanently protected lands outside the boundaries of the OSRD, such as town or state conservation lands, shall also be considered contiguous for the purpose of this bylaw.
- c. The location of the common open space shall be subject to approval by the Planning Board.
- d. The percentage of marginal or unbuildable areas that can count towards the minimum required amount of permanently protected open space shall be directly proportional (1:1) to the amount of such land in the parent parcel. For example, if 50% of the parent parcel consists of marginal lands, then 50% of the minimum required amount of permanently protected open space can be marginal lands. Marginal or unbuildable lands consist of areas covered by wetlands and a fifty (50) foot buffer there from, rivers and a one-hundred (100) foot buffer there from, floodplains and slopes greater than 25%.
- e. Existing rights of way and utility easements may not be counted towards the required percentage of minimum open space, unless the rights of way or easements are dedicated as trails.
- f. Though the open space will be primarily protected for its natural, cultural, and/or scenic resources, a small area, totaling no more than 10% of the required open space, can be set aside as a playground or other area for “active” recreation by the development’s residents and/or the town, depending on the ownership of the open space as discussed in section 9.4.7 below. The location and size of such active recreational area(s) shall be approved by the Planning Board prior to final action on the plan. Active recreational areas must be built and completed prior to the issuance of any certificates of occupancy for housing units in the OSRD.

9.4.4.5. Section 4.2.6 of the Ashby Zoning Bylaw, which addresses minimum non-wetland area, shall not apply to lots in an approved Open Space Residential Development.

9.4.4.6. If the Planning Board approves a Special Permit for an Open Space Residential Development, the applicant may thereafter submit preliminary and final subdivision plans for the Open Space Residential Development for approval in accordance with the provisions of the Planning Board's Rules and Regulations. If the Planning Board denies a Special Permit for an Open Space Residential Development, the applicant may submit subdivision plans based on the conventional plan.

9.4.4.7. Any OSRD special permit issued by the Planning Board shall specifically state that the subsequent definitive subdivision plan shall substantially comply with the special permit plan in terms of the number of dwelling units, road and lot layout, open space percentage and layout, and stormwater management systems. If the Planning Board determines that the definitive subdivision plan for the OSRD does not comply with the provisions of the special permit, the

Planning Board shall require the applicant to submit a revised subdivision plan that does comply with the provisions and conditions of the special permit, or to seek another special permit.

#### 9.4.5. Dimensional Requirements for Open Space Residential Developments

In issuing a special permit for an Open Space Residential Development, the Planning Board may reduce some or all of the dimensional (intensity) requirements of the zoning district in which the OSRD is to be located, if the Board finds that such reduction(s) will result in better site design and the provision of permanently protected open space. The following minimum dimensional requirements shall be adhered to for all dwelling units on building lots within the OSRD:

- Minimum Lot Size: 40,000 square feet
- Minimum Frontage: 50 feet
- Minimum Lot Width at building line: 80 feet

#### 9.4.6. Planning Board Regulations

The Ashby Planning Board may adopt regulations to assist in the administration of this section. These regulations may address, but not be limited to, the following considerations: plan submittal requirements, provisions for combined special permit and subdivision hearings, site landscaping and buffering standards, open space use restrictions, architectural design, common or shared driveways, road design and shared driveways, and alternative stormwater systems such as low impact development.

#### 9.4.7. Common Open Space Ownership and Management

Common open space in any approved Open Space Residential Development shall be conveyed to one or more of the following:

1. a Land Trust or any other non-profit corporation approved by the Planning Board, the principal purpose of which is land preservation subject to covenants, enforceable by the Town, to keep the dedicated common space open or in a natural state as approved by the Planning Board: and/or
2. a corporation, trust or association owned or to be owned by the owners of the lots in the development, hereafter referred to as the "Homeowners Association", provided that the land shall be conveyed to the "Homeowners Association" subject to covenants, enforceable by the Town, to keep the dedicated common space open or in a natural state as approved by the Planning Board: and/or
3. the Town and may be accepted by it for conservation and/or recreational use subject to covenants to keep the dedicated common space open or in a natural state as approved by the Planning Board.

All common open space shall be dedicated and recorded with covenants at, or prior to, the time the permit holder receives a Building Permit.

#### 9.4.8. Subsequent to Approval

Subsequent to approval of such Open Space Residential Development, no land therein shall be sold and no lot line shall be changed in such a way as to increase the number of lots or the extent of non-conformity with the provision of the dimensional requirements of the underlying district.

## 9.5 Inclusionary Housing

9.5.01 Purpose and Intent: The purpose of this bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in tandem with various initiative

programs developed by state, county and local government. It is intended that the affordable housing units that result from this bylaw/ordinance be included on the Town's Subsidized Housing Inventory ("SHI") as kept by the Department of Housing and Community Development ("DHCD"). It is intended that this by-law provide a mechanism to compensate for those decreases in the Town's percentage of affordable housing stock that are directly caused by increases in the Town's overall housing stock.

9.5.02 Definitions:

9.5.2.1 Local housing fund. An account established by: (a) the Town for the specific purpose of creating affordable housing, including use by the Town Housing Authority for the purchase of land or units, or the development of new or rehabilitation of existing dwelling units for affordable housing occupants; or (b) a housing trust or community development corporation designated by the Town and created under the laws of the Commonwealth of Massachusetts.

9.5.2.2 Affordable housing unit. A dwelling unit available at a cost of no more than 30% of gross household income of households at or below 70% of the Applicable area median income as reported by the U.S. Department of Housing and Urban Development ("HUD") and/or DHCD

9.5.2.3 Qualified affordable housing unit purchaser or tenant. An individual or family with household income that does not exceed 80% of the median income, with adjustments for household size, as reported by HUD and/or DHCD.

9.5.03 Applicability:

9.5.3.1 Division of Land. The division of land into ten (10) or more lots shall require a special permit from the Planning Board. A special permit shall be required whether said lots are created at one time or are the accumulation of 10 or more lots from land held in single ownership. A special permit shall be required for "conventional" or "grid" divisions allowed by G.L. c.41 sect. 81-L and sect. 81-U, as well as those divisions that do not require subdivision approval per G.L. c. 41, §81P.

9.5.3.2 Multi-family Units. The construction of ten (10) or more multi-family dwelling units, whether on one or more contiguous parcels, held in common ownership on May 6, 2006, shall require a special permit from the Planning Board.

9.5.04 Mandatory Provision of Affordable Units:

9.5.4.1 The Planning Board shall, as a condition of approval of any development referred to in Sections 9.5.3.1 and 9.5.3.2, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this bylaw/ordinance and more fully described in Section 9.5.05. Any special permit granted hereunder shall contain a condition that no construction shall commence on the subject land until the affordable units created thereby are eligible for inclusion on the Town's SHI.

9.5.05 Provision of Affordable Units:

9.5.5.1 The Planning Board shall deny any application for a special permit for development under this bylaw if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:

9.5.5.1(a). At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

1. constructed or rehabilitated on the locus subject to the special permit; or
2. constructed or rehabilitated on a locus different than the one subject to the special permit.

The applicant may offer, and the Planning Board may accept, any combination of the Section 9.5.5.1(a)(1)-(2) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

9.5.06 Provisions Applicable to Affordable Housing Units On- and Off-Site:

9.5.6.1 Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

9.5.6.2 Minimum design and construction standards for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. The features of affordable units shall comply in all respects to any minimum design and construction standards set forth in the Guidelines promulgated by DHCD.

9.5.6.3 Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%
Fractions of units shall not be counted.	

9.5.6.4 Local preference. To the extent permitted by law, the Planning Board may require that Ashby residents shall be given preference for 70 (seventy) percent of the affordable housing created under this bylaw. Ashby residents shall include current residents, current residents' child or parent, the spouse or domestic partner of current residents' child or parent and any person employed at least 30 hours per week in Ashby. This preference shall not supercede any law or regulation to prevent discrimination.

9.5.6.5 Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the Planning Board for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. If applicable, this plan shall include a description of the lottery or other process to be used for selecting buyers or tenants. The plan shall be in conformance with DHCD rules and regulations, and shall be subject to the prior review and approval of Town Counsel.

9.5.07 Provision of Affordable Housing Units Off-Site:

9.5.7.1 As an alternative to the requirements of Section 9.5.06, an applicant subject to the bylaw/ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 9.5.05 off-site. All requirements of this bylaw/ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the special permit review and approval process.

9.5.08 Preservation of Affordability; Restrictions on Resale:

9.5.8.1 Each affordable unit created in accordance with this bylaw shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The deed restriction must be deemed acceptable to DHCD and Town Counsel prior to the issuance of any building or occupancy permits and shall be recorded at the Middlesex County Registry of Deeds or the Land Court and shall be in force for the longest period allowed by law, unless the Planning Board determines that a shorter period of affordability will facilitate the development of affordable housing.

9.5.09 The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed an amount that is deemed affordable for a household earning no more than 70% of the area median income, as determined by the DHCD.

The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the applicant comply with the mandatory set-asides and accompanying deed restrictions on affordability.

9.5.9 Conflict with Other Bylaws: The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

9.5.10 Severability: If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Ashby's zoning bylaw.

9.5.11 Regulations: The Planning Board may adopt regulations for the orderly administration of this by-law.

## **9.6 Utility-Scale Wind Energy Facilities**

9.6.1 Purpose: The purpose of this by-law is to provide by special permit for the construction and operation of wind energy facilities (WEF) located in the Residential, Residential/Agricultural and Residential/Commercial districts and to provide standards for the placement, design, construction, monitoring, modification and removal of wind energy facilities that address public safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning. The Zoning Board of Appeals (ZBA) is hereby designated as the special permit granting authority for wind energy facilities as provided for in this bylaw.

9.6.1.1 Applicability: This section applies to all wind energy facilities with a rated nameplate capacity of 60 kilowatts or greater. Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment shall require a special permit.

## 9.6.2 Definitions

**Utility-Scale Wind Energy Facility:** A commercial wind energy facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

**On-Site Wind Energy Facility:** A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.

**Substantial Evidence:** Such evidence as a reasonable mind might accept as adequate to support a conclusion.

**Wind Energy Facility:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

**Wind Monitoring or Meteorological Tower:** A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

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

## 9.6.3. General Requirements

9.6.3.1 Special Permit Granting Authority: No wind facility 60 kilowatts or greater of rated nameplate capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the ZBA. The construction of a WEF shall be permitted in the Wind Energy Facility Zoning Overlay District subject to the issuance of a Special Permit, and provided that the use complies with all requirements set forth in sections 9.6.3, 4, 5 and 6. All such WEF shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the ZBA finds in writing that:

- (1) the specific site is an appropriate location for such use;
- (2) the use is not expected to adversely affect the neighborhood;
- (3) there is not expected to be any serious hazard to pedestrians or vehicles from the use;
- (4) no nuisance is expected to be created by the use; and
- (5) adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the WEF, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to reasonable regulations concerning the bulk and height of structures and determining yard-size, lot area, setbacks, open space, parking, and building coverage requirements

9.6.3.2 Compliance with Laws, Bylaws and Regulations: The construction and operation of all such proposed WEF shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

9.6.3.3 Proof of Liability Insurance: The applicant shall be required to provide evidence of liability insurance in an amount and a duration sufficient to cover loss or damage to persons and structures caused by the failure of the WEF.

9.6.3.4 Site Control: At the time of its application for a special permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed WEF. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

#### 9.6.4 General Siting Standards

9.6.4.1 Height: Wind energy facilities shall be no higher than 400 feet above the current grade of the land.

9.6.4.2 Setbacks: Wind turbines shall be set back a distance equal to 1.5 times the overall blade tip height of the wind turbine from the nearest existing residential, agricultural or commercial building and 100 feet from the nearest property line and private or public way.

9.6.4.3 Setback Waiver: The ZBA may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a special permit under the provisions of this section.

#### 9.6.5 Design Standards

9.6.5.1 Color and Finish: The ZBA shall have discretion to select the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.

9.6.5.2 Lighting and Signage: WEFs shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the WEF, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Signs on the WEF shall comply with the requirements of the town's sign regulations, and shall be limited to those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.

9.6.5.3 Utility Connections: Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

9.6.5.4 Appurtenant Structures: Structures and buildings shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse

visual impacts. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible.

9.6.5.5 Support Towers: Monopole towers are required for WEFs.

#### 9.6.6 Safety, Aesthetic and Environmental Standards

9.6.6.1 Emergency Services: The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the ZBA. Upon request, of the ZBA, the applicant shall cooperate with local emergency services in developing an emergency response plan.

9.6.6.2 Unauthorized Access: Wind turbines or other structures part of a WEF shall be designed to prevent unauthorized access.

9.6.6.3 Shadow/Flicker: WEF's shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

9.6.6.4 Noise: The WEF and associated equipment shall conform with the provisions of the Department of Environmental Protection's, (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the ZBA agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

- (a) increases the broadband sound level by more than 10 dB(A) above ambient, or
- (b) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The ZBA, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

9.6.6.5 Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WEF and is otherwise prescribed by applicable laws, regulations, and bylaws.

#### 9.6.7 Monitoring and Maintenance

9.6.7(A) Facility Conditions: The applicant shall maintain the WEF in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction of the WEF.

9.6.7(B) Modifications: All material modifications to a WEF made after issuance of the special permit shall require prior approval by the ZBA as provided in this section.

9.6.7(C) Change in Ownership: Notice shall be provided to the ZBA of any change in the ownership of the WEF and the lot on which it is located.

#### 9.6.8 Abandonment or Decommissioning

9.6.8.1 Removal Requirements: Any WEF which has reached the end of its useful life or has been abandoned shall be removed. When the WEF is scheduled to be decommissioned, the owner shall notify the Board of Selectmen and the ZBA by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the WEF no more than 90 days after the date of discontinued operations. This period may be extended at the request of the operator and at the discretion of the ZBA. "Physically Remove" shall include, but not be limited to:

(1) Removal of all wind turbines, structures, shelters, machinery, equipment, security barriers and transmission lines from the site;

(2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations; and

(3) Restoration of the location of the WEF to its natural condition, except the ZBA may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

9.6.8.2 Abandonment: Absent notice of a proposed date of decommissioning, the WEF shall be considered abandoned when the facility fails to operate for more than 180 days without the written consent of the ZBA. The ZBA shall determine in its Special Permit decision what proportion of the facility operations would have to be suspended for the facility to be considered abandoned.

9.6.8.3 Financial Surety: The ZBA may require the applicant for WEF to provide a form of surety, either through escrow account, bond or other form of security satisfactory to the ZBA, prior to the commencement of construction of the facility, to cover the cost of removal in the event the ZBA must order removal of the facility. The amount of such surety shall be equal to one hundred twenty five (125) percent of the cost of removal and compliance with Section 9.6.8.1. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer calculated to include Cost of Living Adjustments after ten (10) and fifteen (15) years.

#### 9.6.9 Term of Special Permit:

A special permit issued for any WEF shall be valid for 25 years, unless the Special Permit is extended or renewed upon a finding of satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the Special Permit. Upon the expiration of the Special Permit or any renewal thereof, the WEF shall be removed by the operator in accordance with Section 9.6.8.1.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

#### 9.6.10. Application Process

The ZBA shall adopt rules and regulations relative to application procedures and requirements for WEF Special Permits.

## 9.7 Small Wind Energy Systems

### 9.7.1 Purpose

The purpose of this By-law is to provide criteria which will help the Town of Ashby evaluate a small wind project. The criteria will be utilized by building inspectors charged with issuing building permits for Small Wind Energy Facilities (SWEF). Any proposed non-conforming small wind energy systems will be addressed through a special permit process under the review of the special permit granting authority.

#### 9.7.1.1 Applicability

This section applies to small wind systems no greater than 60 kilowatts of rated nameplate capacity proposed to be constructed after the effective date of this section.

#### 9.7.2 Definitions

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.

**Small Wind Energy System:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 60 kW or less.

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

#### 9.7.3 General Requirements

##### 9.7.3.1 Special Permit Granting Authority

No wind facility less than 60 kilowatts of rated nameplate capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the Zoning Board of Appeals (ZBA). The construction of a SWEF shall be permitted in the all zoning districts subject to the issuance of a Special Permit, and provided that the use complies with all requirements set forth in sections 9.7.3, 4, 5 and 6. All such SWEF shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the ZBA finds in writing that:

- (1) the specific site is an appropriate location for such use;
- (2) the use is not expected to adversely affect the neighborhood;
- (3) there is not expected to be any serious hazard to pedestrians or vehicles from the use;
- (4) no nuisance is expected to be created by the use; and
- (5) adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the SWEF, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

#### 9.7.3.2 Compliance with Laws, Bylaws and Regulations

The construction and operation of all such proposed SWEFs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications, and FAA aviation requirements.

#### 9.7.4 General Siting Standards

##### 9.7.4.1 Setbacks

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all inhabited structures, overhead utility lines, public road or right of way and at least twenty five (25) feet from property boundaries.

##### 9.7.4.1.1 Setback Waiver

The building inspector may reduce the minimum setback distance if written permission is granted by the entity with care and control over the affected asset.

#### 9.7.5 Design Standards

##### 9.7.5.1 Appearance, Color and Finish

The wind generator and tower shall remain painted or finished the non-reflective color or finish that was originally applied by the manufacturer, unless approved in the building permit.

##### 9.7.5.2 Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration.

Lighting of other parts of the SWEF, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

##### 9.7.5.3 Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall defer to the requirements of the Town of Ashby sign regulations.

#### 9.7.6 Safety, Aesthetic and Environmental Standards

##### 9.7.6.1 Unauthorized Access

Wind turbines or other structures part of a SWEF shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

##### 9.7.6.2 Noise

The SWEF and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10),

unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable.

#### 9.7.6.3 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the SWEF and is otherwise prescribed by applicable laws, regulations, and bylaws.

#### 9.7.7 Monitoring and Maintenance

##### 9.7.7.1 System Conditions

The applicant shall maintain the SWEF in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

#### 9.7.8 Abandonment or Decommissioning

##### 9.7.8.1 Removal Requirements

Any SWEF which has reached the end of its useful life or has been abandoned shall be removed. When the SWEF is scheduled to be decommissioned, the owner shall notify the Board of Selectmen and the ZBA by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the SWEF no more than 90 days after the date of discontinued operations. This period may be extended at the request of the operator and at the discretion of the ZBA. "Physically Remove" shall include, but not be limited to:

- (1) Removal of all wind turbines, structures, shelters, machinery, equipment, security barriers and transmission lines from the site;
- (2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations; and
- (3) Restoration of the location of the SWEF to its natural condition, except the ZBA may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

##### 9.7.8.2 Abandonment

Absent notice of a proposed date of decommissioning, the SWEF shall be considered abandoned when the facility fails to operate for more than 180 days without the written consent of the ZBA.

#### 9.7.9 Term of Special Permit

A special permit issued for any SWEF shall be valid for 25 years, unless the Special Permit is extended or renewed upon a finding of satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the Special Permit. Upon the expiration of the Special Permit or any renewal thereof, the SWEF shall be removed by the owner in accordance with Section 9.6.8.1.

#### 9.7.10. Application Process

The ZBA shall adopt rules and regulations relative to application procedures and requirements for SWEF Special Permits.

## 9.8 Ashby Village Center Zoning Overlay District

### 9.8.1 Intent and Purpose

The vitality and diversity of the Ashby village center benefits the general health and welfare of its residents and the community generally by fulfilling existing commercial, residential, transportation, civic, cultural and employment needs. Therefore, the Town implements this bylaw and designates a zoning district as the Ashby Village Center Overlay District to encourage economic and residential growth that fits the character of the Town. The purposes of the Ashby Village Center Overlay District are to:

9.8.1.1 Build upon the historic development patterns in the existing village center in the spirit of village centers throughout the New England region in order to create attractive, walkable neighborhoods;

9.8.1.2 Encourage adaptive reuse of abandoned, vacant, or underutilized buildings or structures where appropriate;

9.8.1.3 Allow for a mix of new and existing land uses that are appropriate to both the needs of the community and the scale and visual character of surrounding neighborhoods;

9.8.1.4 Maintain the traditional design character throughout the district.

### 9.8.2 Establishment

The Village Center Overlay District is hereby established and consists of those areas so designated and shown on the map designated as "Zoning Map, Village Center Overlay District, Town of Ashby, Massachusetts, Ashby Planning Board" on file with the Town Clerk and dated April 1, 2012.

### 9.8.3 Definitions

9.8.3.1 **FORMULA BUSINESS:** The term "formula business" refers to a particular type of service-oriented chain establishment. It is a type of retail sales establishment, restaurant, tavern, bar, or takeout food establishment which is under common ownership or control or is a franchise, and is one of 14 or more other businesses or establishments worldwide maintaining three or more of the following features:

9.8.3.1.1 Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings;

9.8.3.1.2 Trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods of one party from those of others, on products or as part of store design;

9.8.3.1.3 Standardized color scheme used throughout the interior or exterior of the establishment; and

9.8.3.1.4 Standardized uniform including but not limited to aprons, pants, shirts, smocks or dresses, hat.

9.8.3.2 **PUBLIC SPACE:** In the context of an application for a Village Center Overlay District Special Permit, this term denotes open areas set aside for use by the public as part of a coordinated site development process.

9.8.3.3 WINDOW SPACE: The amount of transparent window space that occupies a building façade including standard street level windows and doorway windows.

#### 9.8.4 Authority

The Planning Board shall act as the administering authority for any Site Plan Review procedure associated with this bylaw according to Section 12.5, Site Plan Special Permits. The Planning Board shall also serve as the Special Permit Granting Authority for any use that requires a Special Permit in the underlying district, any use requiring a Special Permit pursuant to Section 9.1.5, and any applicant seeking an Ashby Village Center Overlay District (AVCOD) Special Permit subject to Section 9.1.10. Where standards or other requirements listed as part of this overlay district may conflict with those in the underlying district, the overlay provisions shall apply.

#### Applicability

- a. Construction of a new commercial or mixed use structure on a vacant lot.
- b. Construction of a commercial accessory structure of more than 500 square feet on a lot.
- c. Conversion of a residential property to a commercial use or mixed use.
- d. Any other projects requiring application for a Ashby Village Center Overlay District special permit.

#### 9.8.5 Use Provision

9.8.5.1 Permitted Uses: The following uses are allowed by-right subject to any Site Plan Review requirements listed in Section 12.5 and all applicable density and design provisions listed in this bylaw.

- 9.8.5.1.1 Single-family homes and their permitted accessory uses;
- 9.8.5.1.2 Civic uses;
- 9.8.5.1.3 General retail sales of 2,500 sq.ft. or less;
- 9.8.5.1.4 Bank, business or professional offices.

9.8.5.2 Special Permit Uses: The following uses are allowed in the Ashby Village Center Overlay District only through the granting of a Special Permit by the Planning Board pursuant to the procedures outlined in Section 12.3, Special Permits.

- 9.8.5.2.1 General retail sales in excess of 2,500 sq.ft. of floor space;
- 9.8.5.2.2 Dwelling units above non-residential uses (ownership units);
- 9.8.5.2.3 Coffee shop or cafés;
- 9.8.5.2.4 Art galleries;
- 9.8.5.2.5 Personal services (including consumer repair services);
- 9.8.5.2.5 Restaurants and eateries
- 9.8.5.2.7 Bed and breakfast inn;
- 9.8.5.2.8 Outdoor seating associated with restaurants or cafés subject to applicable licensing requirements;
- 9.8.5.2.9 Cinema or performance theatre with a maximum of one screen or stage;
- 9.8.5.2.10 Agriculture, horticulture, floriculture, viticulture, permaculture on less than five (5) acres;
- 9.8.5.2.11 Outdoor markets subject to applicable licensing requirements;
- 9.8.5.2.12 Health or athletic club (limited to 5000 sq.ft. or less);
- 9.8.5.2.13 Mixed-uses, wherein a combination of permitted and/or special permit uses are allowed in the same building, structure, or lot;

### 9.8.5.3 Prohibited Uses:

- 9.8.5.3.1 Formula businesses as defined in section 9.8.1;
- 9.8.5.3.2 Sale of motor vehicles;
- 9.8.5.3.3 On-premises sale of fuel;
- 9.8.5.3.4 All uses not permitted by right or by special permit in this section or the underlying district.

### 9.8.6 Dimensional Requirements

Dimensional standards not mentioned herein must meet the requirements of the underlying zoning district.

9.8.6.1 Minimum setback from street center: forty (40) feet.

9.8.6.2 Height Limitations for Non-residential and Mixed Use: Building height for mixed use or non-residential use shall not exceed thirty-five (35) feet from the sill or lowest point of egress and no building shall have more than three (3) stories.

### 9.8.7 Landscape Requirements

Landscaping shall provide for the maximum vegetated space possible after meeting other requirements of this section. Standards are found in the Ashby Village Center Overlay District regulations.

### 9.8.8 Parking Requirements

The base parking standards for the underlying Zoning Districts shall apply to individual uses in the Ashby Village Center Overlay District. As part of a Site Plan Approval or Special Permit process within this overlay district, the applicant may request reductions to minimum requirements or alternative methods for meeting the required parking. Available innovative parking strategies include:

#### 9.8.8.1 Shared On-Site Parking

9.8.8.1.1 Non-competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demands for noncompeting uses. Up to 75% of the requirements for the predominant use may be waived by the Planning Board if the applicant can demonstrate that the peak demands for two uses do not overlap.

9.8.8.1.2 Competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements where peak demands do overlap. In these cases, the Planning Board may reduce the parking requirements of the predominant use by up to 30%.

9.8.8.2 Off-Site Parking: Separate from, or in conjunction with Shared Parking provisions, an applicant may use off-site parking to satisfy their parking requirements in accordance with the following conditions:

9.8.8.2.1 Off-site parking shall be within five hundred (500) feet of the property for which it is being requested.

9.8.8.2.2 Off-site parking spaces provided by a separate private property owner shall be subject to a legally binding agreement that will be presented to the Planning Board as a condition of the Special Permit. Where an agreement shall expire within a specified timeline, the applicant or current property owner shall continue to provide evidence to the Zoning Enforcement Agent that the agreement has been extended.

## 9.8.9 Design Standards

Design Standards for the development and redevelopment of commercial buildings:

Buildings shall be constructed in a manner consistent with the traditional historic designs existing in the district. The historic designs in the district include wood and/or brick siding, prominent corner boards, vertical windows with divided lites, embellished main entries, pitched roofs with multiple gables and brick chimneys. The design standards shall apply to those portions of the building seen from the street. The Planning Board may, following a public hearing, develop regulations further elaborating on these traditional design features. The regulations must allow for flexible design in incorporating the historic design features.

### 9.8.10 Ashby Village Center Overlay District Special Permit

Applicants may apply for, and the Planning Board may grant, an Ashby Village Center Overlay District (AVCOD) Special Permit subject to the following provisions:

9.8.10.1 Purpose: In addition to those purposes listed in Section 9.1.1 of this bylaw, the purpose of an AVCOD Special Permit is to provide the opportunity to develop pockets of higher density, coordinated mixed use developments that include a diverse use profile and act as centers of culture, commerce, and social and community activity within the overlay district.

9.8.10.2 Mixed Uses Encouraged: Applicants for an AVCOD Special Permit are encouraged to provide for a mix of uses for both new construction and reconstruction. Uses that can be mixed in one building shall comply with the provisions of Section 9.1.5.1 Permitted Uses, and/or Section 9.1.5.2 Special Permit Uses, of this section. In general, for multi-story buildings, the Planning Board encourages non-residential uses on the ground floor and residences in the floors above.

9.8.10.3 Frontage: As part of an AVCOD Special Permit application, the Planning Board may authorize reduced frontage as low as fifty (50) feet when it is determined that the reduced frontage will not be detrimental to the established or future character of the neighborhoods and town and subject to appropriate conditions or safeguards if deemed necessary.

9.8.10.4 Additional Design Standards: In addition to those design standards listed in Section 9.8.8 of this bylaw, applications for an AVCOD Special Permit shall also meet the following standards:

#### 9.8.10.4.1 Signs

9.8.10.4.1.1 One sign of one or two sides no larger than 30 sq. ft per side. No electric signs of any type will be permitted except those illuminated by stationary floodlight.

9.8.10.4.1.2 Directory signs may be permitted as part of a VCOD Special Permit application where several non-residential operations are accessed through a common vehicular entrance. Such signs shall not exceed twenty (20) square feet and each tenant shall be allowed a maximum of five (5) square feet to display the company or agency name.

#### 9.8.10.4.2 Site Design

9.8.10.4.2.1 Buildings shall be arranged in a manner that optimizes the ability of residents and consumers to access public spaces and pedestrian amenities.

9.8.10.4.2.2 Buildings shall be oriented toward each other in a way that minimizes conflicts between pedestrians and automobiles.

9.8.10.4.2.3 Public space shall be designed as a public gathering place. Public areas shall be located in a manner that connects buildings to each other and to public sidewalks without interruption from parking areas or automobile travel lanes to the greatest practicable extent.

9.8.10.4.2.4 Features that may be used to create open space areas acceptable to the Planning Board may include, without limitation, fixed benches, fixed tables, fountains, pathways, bikeways, bicycle racks, period lighting, shade trees, perennial gardens, picnic areas, and/or trash receptacles.

#### 9.8.10.4.3 Application Process and Requirements

9.8.10.4.3.1 Applicants for a AVCOD Special Permit shall comply with the Special Permit Procedures outlined in Section 12.3 and shall provide all applicable information for a Full Site Plan Review pursuant to Section 12.5.

9.8.10.4.4 Decision: The Planning Board may approve an application for an AVCOD Special Permit with those conditions specified in this bylaw pursuant to the following criteria:

9.8.10.4.4.1 Proposed development is consistent with the purposes listed in Section 9.1 and Section 9.1.10.1 of this bylaw;

9.8.10.4.4.2 All applicable standards for use, parking and dimensional requirements are met;

9.8.10.4.4.3 All applicable design standards listed in Section 9.1.9 are met;

9.8.10.4.4.4 All applicable additional design standards listed in Section 9.1.10.4.1 are met;

9.8.10.4.5 Where multiple structures are proposed, the site design reflects a thoughtful arrangement of elements that will facilitate the movement of pedestrians between structures through the use of sidewalks, internal walkways, alleys or public space features as required in Section 9.1.10.4.2

#### 9.8.11 Severability

If any section or provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

#### 9.8.12 Conflict With Other Laws

All development activities within the AVCOD shall comply with all applicable laws, regulations, and standards of the town. In the event of a conflict between this bylaw and any section of the zoning bylaw the provisions of this bylaw shall control, provided that they are consistent with state and federal law.

### **9.9 Solar Energy Systems**

#### 9.9.1 Intent and Purpose

The purpose of the Ashby Solar Energy Systems Bylaw (hereafter ‘the bylaw’) is to provide for the construction and operation of solar energy systems and to establish standards for the placement, design, construction, monitoring, modification and removal of solar energy systems that address public safety, minimize impacts on scenic, natural and historic resources of the Town, and provide adequate financial assurance for decommissioning. The provisions set forth in this section shall take precedence over all other sections of the Ashby Zoning Bylaws when considering applications related to the construction, operation and/or repair of solar energy systems.

#### 9.9.2 Establishment

The Ashby Solar Energy Systems Bylaw is adopted pursuant to MGL Chapter 40A. This bylaw applies to the installation, siting and approval of solar energy systems within the various zoning districts of the Town.

#### 9.9.3 Definitions

Photovoltaic System (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Solar Energy System, Active: A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Solar Energy System, Ground-Mounted: An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

Solar Energy System, Large-Scale: An Active Solar Energy System that occupies 40,000 or more square feet of area.

Solar Energy System, Medium-Scale: An Active Solar Energy System that occupies more than 1,750 but less than 40,000 square feet of area.

Solar Energy System, Roof-Mounted: An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

Solar Energy System, Small-Scale: An Active Solar Energy System that occupies 1,750 sq.ft. or less of area.

#### 9.9.4 Authority

The Planning Board shall act as the administering authority for any Site Plan Review procedure associated with this bylaw according to Section 12.5. The Planning Board shall also serve as the Special Permit Granting Authority for any use that requires a Special Permit under the terms of this bylaw.

#### 9.9.5 Solar Energy Use Provisions

The following table of uses describes what type of solar energy systems are allowed by right (Y), allowed through site plan review (Site Plan), allowed by Special Permit with Site Plan review (SP), or prohibited (PR) in each of Ashby’s four major zoning districts. Descriptions of what

constitutes roof mounted, small-scale ground, medium-scale ground, and large-scale ground systems are found in the Definitions section of this bylaw.

Principal Use	Residential – Agricultural	Residential – Commercial (A and B)	Residential	Industrial
Small-Scale Ground-Mounted Solar Energy Systems	Y	Y	Y	Y
Medium-Scale Ground-Mounted Solar Energy Systems	SP	SP	SP	Site Plan
Large-Scale Ground-Mounted, Solar Energy Systems	SP	SP	PR	Site Plan
Accessory Use	Residential – Agricultural	Residential – Commercial (A and B)	Residential	Industrial
Roof-mounted Solar Energy Systems*	Y	Y	Y	Y
Small-Scale Ground Mounted System	Y	Y	Y	Y
Medium-Scale Ground Mounted System	Site Plan	Residential/Commercial A: Site Plan Residential/Commercial B: SP	SP	Site Plan
Large-Scale Ground Mounted System	PR	PR	PR	PR

Y = Permitted By-Right with building permit

Site Plan = Requires Site Plan review and approval

SP = Requires Special Permit *and* Site Plan review

PR = Prohibited

\* Roof mounted systems to serve an individual residential, commercial or industrial structure

## 9.9.6 Dimensional, Design and General Requirements

### 9.9.6.1 General Requirements for all solar energy systems

The following requirements are common to all solar energy systems:

9.9.6.1.1 Compliance with laws: The construction and operation of all proposed solar energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

9.9.6.1.2 Construction Deadlines. If the solar energy system is not installed and functioning within 24 months from the date the building permit is issued, the solar energy system is considered abandoned unless an extension of the special permit has been approved.

9.9.6.1.3 System conditions: Owners of solar energy systems shall be responsible for maintaining them in good condition. Maintenance shall include, but not be limited to, structural repairs and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Services. The project owner shall be responsible for the cost of maintaining the solar energy system and any access road(s), and the cost of repairing any damage occurring as a result of operation and construction.

9.9.6.1.4 Modifications: All material modifications, including but not limited to alterations to the type, size, location or configuration of a solar energy system, made after issuance of any approval issued pursuant to this bylaw shall require approval by the Planning Board as provided in this bylaw.

#### 9.9.6.2 Roof Mounted Solar Energy Systems

9.9.6.2.1 Roof mounted solar energy systems shall not be erected, constructed, installed or modified without first obtaining a building permit from the Ashby Building Inspector.

9.9.6.2.2 Roof mounted solar energy systems that are not flush mounted to an existing roof but are "slanted or tilted" to meet desired angles must not exceed the overall building height limits of the underlying district. The height shall be measured to the highest protruding point of the solar system at its fullest extension.

#### 9.9.6.3 Small and Medium Scale Ground Mounted Systems

9.9.6.3.1 Small and medium scale ground-mounted solar energy systems shall not be erected, constructed, installed or modified as provided in this section without first obtaining a building permit from the Ashby Building Inspector.

9.9.6.3.2 Small and medium scale ground-mounted solar energy systems shall meet the setbacks for buildings from all property lines in the district in which they are located.

9.9.6.3.3 All small and medium scale ground-mounted solar energy systems in residential districts shall be installed either in the side yard or rear yard.

9.9.6.3.4 All medium-scale ground mounted solar energy systems shall not increase stormwater runoff or increase the impervious area of a lot as compared to pre-development levels.

9.9.6.3.5 Whenever possible, utility lines for medium-scale ground-mounted systems shall be located underground unless the presence of ledge and/or wetlands or other obstacles prevents such location.

#### 9.9.6.4 Large-Scale Ground Mounted Systems

9.9.6.4.1 Large-scale ground mounted solar energy systems shall adhere to the same setbacks as are required for principal buildings in the underlying Ashby zoning districts.

9.9.6.4.2 Whenever possible, utility lines for large-scale ground-mounted systems shall be located underground unless the presence of ledge and/or wetlands or other obstacles prevents such location.

9.9.6.4.3 Siting Criteria for large-scale ground mounted solar energy systems:

Large-scale ground mounted solar energy systems shall be located so as to minimize the potential impacts on the following:

- a. Visual/aesthetic: Large-Scale Solar Energy Systems shall, when possible, be sited off ridgelines to locations where their visual impact is least detrimental to valuable historic and scenic areas, and established residential areas;
- b. General health, safety, and welfare of residents;
- c. Natural habitats, forests and wetlands;
- d. Lands with prime agricultural soils;
- e. Glare from the solar panels onto any abutting or nearby properties;
- f. Potential vehicular traffic conflicts; and
- g. Diminution of residential property values;

#### 9.9.7 Planning Board Action / Findings

The Ashby Planning Board may approve solar energy systems requiring either site plan approval and/or a special permit subject to the applicable general Site Plan Review Criteria, found in Section 12.5.5 of the Ashby Zoning Bylaw; as well as satisfactorily meeting the siting criteria of section 9.9.6.4.3 of this section in the case of large-scale ground mounted solar energy systems.

#### 9.9.8 Regulations

After public notice and public hearing, the Ashby Planning Board may promulgate regulations to achieve the purposes and assist in the implementation of this bylaw. Such regulations will be added to Ashby's Rules and Regulations for Site Plan Approval.

Failure to promulgate such regulations, or the invalidation by a court of law of one or more of such regulations, shall not act to suspend or invalidate any provision of this bylaw.

#### 9.9.9. Plan Submittal Requirements.

Plan submittal requirements are specified in the accompanying solar energy systems regulations as adopted by the Ashby Planning Board.

#### 9.9.10 Site Plan Review

The site plan review standards for solar energy projects in Ashby are found in the Town of Ashby Rules and Regulations for Site Plan Approval and in Section 12.5 of the Ashby Zoning Bylaws.

#### 9.9.11 Special Permits

Applicants for medium and large-scale ground mounted solar energy systems requiring a Special Permit pursuant to section 9.9.5 of this bylaw, shall adhere to the Special Permit criteria and procedures found in section 12.3 of the Ashby Zoning Bylaws, the requirements for Site Plans as specified in Section 9.9.8 and 9.9.9 above.

9.9.11.1 Expiration. A special permit issued pursuant to this bylaw shall expire if: i) the solar energy system is not installed and functioning within 24 months from the date the permit is issued; or ii) the solar energy system is abandoned. The Ashby Planning Board may extend the special permit if it deems there are unique circumstances that justify a delay in the installation and/or functioning of the solar energy system.

#### 9.9.12 Operation, Monitoring and Maintenance

These operation, monitoring and maintenance requirements shall apply to medium-scale and large-scale ground mounted solar energy systems developed as the principal use of a lot.

9.9.12.1 Facility Conditions. The medium-scale or large-scale ground mounted solar energy systems owner or operator shall maintain the facility in good condition. Maintenance shall address all elements of the project, including but not limited to, structural repairs, landscaping and screening, fencing and other security measures, stormwater management, and access. The project owner shall be responsible for the cost of maintaining the solar energy system and any access road(s), and the cost of repairing any damage occurring as a result of operation and construction.

9.9.12.2 Operation and Maintenance Plan. The project applicant shall submit a plan for the operation and maintenance of the large-scale solar energy system as part of the special permit application. This plan shall include measures for maintaining safe access to the installation, stormwater management control, and general procedures for operational maintenance of the facility.

9.9.12.3 Modifications. All material modifications to a solar energy facility made after issuance of the permit shall require approval by the special permit granting authority as provided in this bylaw.

#### 9.9.13 Abandonment and Decommissioning

These abandonment and decommissioning requirements shall apply to medium-scale and large-scale ground mounted solar energy systems developed as the principal use of a lot.

9.9.13.1 Removal requirements. Any medium-scale or large-scale ground mounted solar energy system which has reached the end of its useful life or has been abandoned shall be removed. When the solar energy system is scheduled to be decommissioned, the owner or operator shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the solar system installation no more than 150 days after the date of discontinued operations. At the time of removal, the solar system site shall be restored to the state it was in before the system was constructed or to any other legally authorized use, subject to all Town approvals.

More specifically, decommissioning shall consist of the following:

- a. Physical removal of all solar photovoltaic installations, including structures, equipment, security barriers, and transmission lines from the site;
- b. Any utility connections shall be disconnected to the satisfaction of the Ashby Fire Department and the Town's Wiring Inspector;
- c. Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations and standards; and
- d. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner/operator to leave landscaping or any designated below-grade foundations in order to minimize erosion and disruption to vegetation.

9.9.13.2 Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a large-scale ground mounted solar energy system shall be considered abandoned when it ceases to operate for more than twelve (12) months, without written consent of the Planning Board. "Cease to operate" is defined as not performing the normal functions associated with the large-scale solar energy system and its equipment on a continuous and ongoing basis for a period of one year. The Planning Board shall provide written notification of abandonment to the owner/operator.

If the owner/operator fails to remove the solar energy system in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property, to the extent it is duly authorize by law, and physically remove the solar energy system.

9.9.13.3 Financial Surety Applicants for principal-use medium-scale and large-scale ground-mounted solar energy system projects shall provide a form of surety to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount determined to be reasonable by the Ashby Planning Board and the applicant.

The applicant may choose to provide the surety in the form of a bond or escrow account. In no event shall the amount exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant and the Ashby Planning Board. Such surety will not be required for municipally- or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The estimated cost of removal shall include a mechanism for calculating increased removal costs due to inflation.

#### 9.9.14 Severability

If any section or provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

#### 9.9.15 Conflict with Other Laws

All development activities undertaken through this solar energy systems bylaw shall comply with all applicable laws, regulations, and standards of the Town of Ashby. In the event of a conflict between this bylaw and any section of the zoning bylaw the provisions of this section shall control, provided it is consistent with state and federal law.

## **SECTION 10: ENFORCEMENT**

### **10.1 Permits:**

This by-law shall be enforced by the Building Inspector. No building or structure shall be erected or exterior alterations made changing the size of the building and no major use of land or a building shall be commenced or changed unless a permit has been issued by the Building Inspector.

No permit issued by the Building Inspector hereunder shall be in force for more than one hundred and eighty days unless the work or use proposed shall have been actually commenced and carried on in good faith within that time.

### **10.2 Pre-existing Nonconformance**

Pre-existing nonconforming structures or uses may be extended or altered when the permit granting authority or special permit granting authority makes a finding that the change, extension, or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use.

Any pre-existing nonconforming use abandoned or not used for more than two years may not be re-established.

### **10.3 Penalty**

The Building Inspector shall take such action as may be necessary to enforce full compliance with the provisions of the by-law and of permits and variances issued hereunder, including notification of

noncompliance and request for legal action through the Selectmen to Town Counsel. Any person violating any provision of this by-law, any condition under which a permit is issued, or any decision rendered by the Board of Appeals, may be fined not more than one hundred dollars (\$100.00) for each offense. Each day or portion thereof that any violation occurs shall constitute a separate offense.

## **SECTION 11: VALIDITY OF EXISTING BUILDING PERMITS**

Any building permit issued prior to a notice of a hearing on the question of the enactment of this by-law shall be valid from the date of special permit granting authority vote until six (6) months after such date.

## **SECTION 12: ADMINISTRATION**

### **12.1 Board of Appeals**

There is hereby established a Board of Appeals of 3 members and 3 associate members to be appointed by the Selectmen as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under the provisions of this by-law as prescribed in Chapter 40A. The Board of Appeals shall have the following powers:

12.2 APPEALS: To hear and decide on appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or Board of the Town or by any person aggrieved by any order or decision of the Board of Selectmen or other administrative official in violation of Chapter 40A, General Laws or by this by-law.

### **12.3 Special Permits:**

To grant a special permit for an exception as provided by sections of this by-law when it shall have found that the use involved will not be detrimental to the established or future character of the neighborhoods and town and subject to appropriate conditions or safeguards if deemed necessary.

#### **12.3.1 Procedures for Considering Special Permits:**

- a. A public hearing must be held within 65 days following the date the application is filed with the special permit granting authority.
- b. the applicant must give a copy of the application to the town clerk;
- c. specify who is the special permit granting authority for each particular class of permit (Planning Board for some, Board of Appeals for some, Board of Selectmen for some, and so forth);
- d. each special permit granting authority shall adopt, and from time to time amend, rules governing the issuance of such permits; such rules may prescribe the form, size, style, contents, number of copies of plans, and the procedures for filing and processing all applications for special permits, and an up-to-date copy of the rules must be kept on file in the office of the Town Clerk.
- e. the special permit granting authority must act on the permit request within 90 days following the public hearing on each application;
- f. Failure to act within the 90 days constitutes approval; and

g. granting a special permit requires a two-thirds majority vote of boards with more than five members; four members of a five member board; and the unanimous vote of a three-member board.

#### 12.3.2 Time Limitations:

Special permits granted by the Board of Appeals will lapse if not used within 1 year.

#### 12.3.3 Requirements, Marijuana Establishments and Registered Marijuana Dispensaries.

Prior to the start of site work, construction activities, or start of operation, the special permit issued by the Zoning Board of Appeals must be recorded at the Middlesex County Registry of Deeds and proof of recording provided to the Building Inspector.

Applications. All applications for special permits shall include the following, with the number of copies sufficient for Zoning Board of Appeals members and Town departments:

- a. A completed special permit application form and associated check;
- b. A complete copy of the submitted application for a license from the State of Massachusetts as a Marijuana Establishment under 935 CMR 500;
- c. An executed Host Community Agreement as required under 935 CMR 500.101;
- d. A site plan showing new construction, if any, and all paved areas such as driveways and parking, lighting and fencing; intended screening/landscape buffers; the boundaries of any proposed outdoor growing area(s) and how they will be identified on the ground;
- e. A narrative describing the management and general operation of the facility, including: the proposed hours of operation; the amounts and types of fertilizers, pesticides and herbicides to be used and maintained on the site and how they will be stored and disposed of; the method of water recycling; the method of waste material disposal; the type and intensity of noise generated, and a description of anticipated odors;
- f. A lighting plan including photometrics;
- g. A security plan;
- h. A fire protection plan, and
- i. A list of other federal, state and local approvals required for the Marijuana Establishment.

At the discretion of the Zoning Board of Appeals, the following may also be required:

- j. Elevations of proposed buildings;
- k. A plan or diagram of proposed signage, and
- l. The Zoning Board of Appeals may have additional requirements for material to be submitted with special permit applications.

Granting of Special Permits. The Zoning Board of Appeals shall be the special permit granting authority for special permits for Marijuana Establishments.

- a. Prior to approval of the special permit, the Zoning Board of Appeals shall make a finding that the proposed use is not offensive nor detrimental to the area, and does not adversely affect the natural or human environment, including wetlands, water resources, stormwater, soils, noise, odors, lighting, visual aesthetics, traffic, or the safety and welfare of the residents of the Town.
- b. The following condition shall be included in all special permits for Marijuana Establishments, where retail sales to the general public are not permitted under this Bylaw, or are prohibited by State law:  
Sales, gifts or delivery of marijuana or marijuana products to the general public shall be prohibited.
- c. Upon conclusion of the work, the applicant shall provide an as-built plan with certification from a Massachusetts Licensed Professional Engineer that all work is in conformance with the approved plan and setting forth deviations, if any exist.

- d. The Zoning Board of Appeals may add other conditions to the special permit as deemed appropriate to protect the natural and human environment.

**12.4 Variances:**

Variances can be granted by the zoning board of appeals after a public hearing, of which all interested parties have been notified by mail, has been held. The variance may be granted where the board finds that:

- a. special circumstances relating to soil conditions, shape, or topography of the land or structures exist on the particular parcel, and
- b. these special circumstances specifically affect the particular parcel involved and do not generally affect other parcels in the same zoning districts in which the parcel is located, and
- c. a literal interpretation of the provisions of the zoning by-law would involve substantial hardship to the petitioner, either financial or otherwise, and
- d. desirable relief might be granted to the petitioner without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the by-law.

No variance may be given where the use or activity is not otherwise permitted in the district in which the land or structure is located.

**12.5 Site Plan Permits**

12.5.1 The Planning Board may grant a Site Plan Permit in accordance with the standards of this by-law.

12.5.2 Applicability: A Site Plan Permit shall be required in all instances as provided in Section 4.5 of this by-law.

12.5.3 Administration: All of the requirements of Sections 12.31 and 12.32 shall apply to a Site Plan Permit.

12.5.4 Design Standards, Purposes: The purpose of the following site design standards is to ensure that adequate consideration be given to the natural resources and characteristics of a site, to its topographic, hydrologic and geologic conditions, to public convenience and safety and to the suitability of a proposed use on a particular site. Before the granting of any Site Plan Permit, the Planning Board shall determine that each site plan submitted for its review shall comply in full with the following design standards:

12.5.4.1 Stormwater Runoff: The peak rate of stormwater runoff from the development site shall not exceed the rate existing prior to the new construction based on a design storm with a 10% annual probability.

12.5.4.2 Outdoor Lighting: In the area of new construction, outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be designed to minimize glare and light spill onto adjacent properties. Except for low level intensity pedestrian lighting with the luminaries at a height of less than eight feet, all outdoor lighting shall be designed and located such that 1) the angle of cutoff of the luminaire is less than 76 degrees from the

vertical, 2) every line drawn from the luminaire along a cutoff line intersects the ground at a point within the development site, and 3) the light source is completely shielded from direct view at any point five feet above the ground on neighboring properties or streets.

12.5.4.3 Landscape Buffers: In the Residential Commercial and Industrial districts where a commercial or industrial use abuts a residential district, a landscape buffer up to a maximum width of twenty feet, designed to mitigate the effect of the commercial or industrial use on the residential districts may be required by the Planning Board.

12.5.5 Action by the Planning Board: The Planning Board, in considering a site plan, shall ensure that the use of the site is consistent with the uses permitted in the district in which the site is located. Prior to the granting of any special permit, the Planning Board shall find that, to a reasonable degree, the site plan:

- 1) Protects the neighborhood and the town against seriously detrimental or offensive uses on the site and against adverse effects on the natural environment,
- 2) Provides for convenient and safe vehicular and pedestrian movement, and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site,
- 3) Provides an adequate arrangement of parking and loading spaces in relation to the uses proposed for the premises,
- 4) Provides adequate methods for the disposal of refuse or other wastes resulting from the uses permitted on the site.

### **SECTION 13: CHANGING THE ZONING BY-LAW**

This by-law may be amended from time to time at an annual or special town meeting as provided in Section 5 of Chapter 40A of the General Laws.

(deleted)