Town of Upton

Zoning By-Laws

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SECTION 1.0 - PURPOSE AND AUTHORITY

1.1 **PURPOSE**. These regulations are enacted to promote the general welfare of the Town of Upton, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.2 **AUTHORITY.** This Zoning By-Law is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto.

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

1.4 **APPLICABILITY.** All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning By-Law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

1.5 **AMENDMENTS.** This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

1.6 **SEVERABILITY.** The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

SECTION 2.0 - DISTRICTS

2.1 ESTABLISHMENT. For the purposes of this By-Law, the Town of Upton is divided into the zoning districts set forth below:

1) Single Residential A (SRA)
2) Single Residential B (SRB)
3) Single Residential C (SRC)
4) Single Residential D (SRD)
5) Agricultural Residential (AR)
6) General Business (GB)
7) Commercial & Industrial (C&I)
8) Municipal Government Facilities (MGF)

2.2 MAP. Said districts are located and bounded as shown on a map entitled "Zoning Map of Upton, Massachusetts", dated 1978 and all subsequent amendments to the map on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this By-Law.

2.3 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES. The location of the boundary lines of the districts shown upon the Zoning map shall be determined as follows:

2.3.1 Inside Public Way. Where a boundary is shown as following a public way, private way, railroad, utility transmission line, utility pipe line, natural water course, the boundary shall be the center line thereof, unless otherwise indicated.

2.3.2 Outside Public Way. Where a boundary is shown outside of a public way, private way, railroad, utility transmission line, utility pipe line, natural water course and approximately parallel thereto, it shall be deemed parallel to the nearest exterior line thereof; and a figure placed on the Zoning Map between the boundary and the way, railroad, utility lines, or water course is the distance in feet of such boundary from such exterior line, said distance being measured at a right angle thereto unless otherwise indicated.

2.3.3 Water District Lines. Where a boundary is shown as following a water district line, the boundary shall coincide with said line as existed at the date indicated on the Zoning Map.

2.3.4 Lot Lines. Where a district boundary is indicated, as approximately following a lot line, such line shall be construed to be said boundary.

2.3.5 Lots in Two Districts. Where a district boundary line divides a lot, the regulations applicable to the less restricted portion of such lot may extend not more than thirty (30) feet into the more restricted portion, provided that such lot has frontage on a public or private way in the less restricted district; otherwise, there shall be no extension.

2.3.6 Other. In any cases not covered by the other provisions of Section 2.3, the location of a boundary line shall be determined by the distance, in feet, if given, from other lines upon the Zoning Map, or, if distances are not given, then by the scale of said map.

SECTION 3.0 - USE REGULATIONS

3.1 TABLE OF PRINCIPAL USES. No land shall be used and no structure shall be erected or used except as set forth in the following Table of Principal Uses, Table A, including the notes to Table A, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited.

3.1.1 Symbols. Symbols employed in the Table of Principal Uses shall mean:

Y = Permitted as of right
N = Prohibited
BA = Special Permit/Board of Appeals
PB = Special Permit/Planning Board

SRA = Single Residential A
SRB = Single Residential B
SRC = Single Residential C
SRD = Single Residential D
AR = Agricultural Residential
GB = General Business
C&I = Commercial & Industrial
MGF = Municipal Government Facilities

3.1.2 If Classified Under More than One Use. Where an activity may be classified as more than one of the principal uses listed in the Table of Principal Uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.

3.1.3 Table of Principal Uses: See Table A, below.

Table A – Table of Principal Uses By District

	Principal Use	**SRA**	**SRB**	**SRC**	**SRD**	**AR**	**GB**	**C&I**	**MGF**
	Residential								
1	One-family house, with not more than one such house located on any lot.	Y	Y	Y	Y	Y	BA	BA	N
2	Conversion From Single Family to Two-Family Dwelling (SEE note 1)	BA	BA	BA	BA	BA	BA	BA	N
3	Bed and breakfast, boarding or lodging house but not including overnight cabins, motels, or hotels	BA	BA	BA	BA	N	BA	BA	N
4	Senior Housing Community (SEE Section 7.4 for additional regulations)	PB	PB	PB	PB	PB	N	N	N
5	Townhouses and garden apartments (SEE Section 7.2 for additional regulations)	BA	BA	N	N	N	BA	BA	N
6	Open Space Preservation Subdivision (SEE Section 7.3 for additional regulations)	N	PB	PB	PB	PB	N	N	N
	Agricultural								

Table A – Table of Principal Uses By District									
	Principal Use	**SRA**	**SRB**	**SRC**	**SRD**	**AR**	**GB**	**C&I**	**MGF**
7	Farm, orchard, nursery or similar open use of the land for the raising of agricultural or horticultural crops, on less than five (5) acres.	Y	Y	Y	Y	Y	Y	Y	N
8	The raising and/or keeping of livestock on less than five (5) acres.	N	N	N	N	BA	BA	BA	N
9	The raising of hogs, pigs, or fur-bearing animals for commercial purposes on less than five (5) acres. (SEE note 4)	N	N	N	N	BA	N	N	N
10	Salesroom of stand for the display and sale of agricultural, floricultural, viticultural or horticultural products including wine and dairy products where the majority of such products are grown on the premises (SEE note 2)	N	N	N	N	BA	BA	BA	N
11	Riding stable for commercial purposes on less than five (5) acres	N	N	N	N	BA	N	N	N
	Institutional, Educational and Municipal								
12	Use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation.	Y	Y	Y	Y	Y	Y	Y	N
13	Non-profit museum, art gallery or community center.	BA	BA	BA	BA	BA	Y	Y	N
14	Municipal administration buildings and uses, including town library, fire or police station, public works facility, sewer and water pump stations.	Y	Y	Y	Y	Y	Y	Y	Y
15	Municipal recreation or public water supply use.	Y	Y	Y	Y	Y	Y	Y	Y
16	Child care facility, as defined in G.L. c. 40A, s.3	Y	Y	Y	Y	Y	Y	Y	N
17	Family day care home, as defined in G.L c. 28A, s.9	BA	BA	BA	BA	BA	BA	BA	N
18	Cemetery	BA	BA	BA	BA	N	BA	BA	N
19	Lodge building for use by private club, or other non-profit civic organization	BA	BA	BA	BA	N	BA	N	N
	Recreational								
20	Golf course	N	N	N	N	BA	N	N	N
21	Boat Rental and Storage Facility	N	N	N	N	BA	BA	N	N
22	Country club	BA	BA	BA	BA	N	BA	N	N
23	Place of amusement or assembly. (SEE note 5)	N	N	N	N	N	BA	BA	N
	Retail and Consumer Service								
24	Retail Stores (SEE note 10)	N	N	N	N	N	Y	Y	N
25	Vehicle Repair Shops and Vehicle-Related Businesses excluding self-service gas stations (SEE note 3)	N	N	N	N	N	BA	BA	N

Table A – Table of Principal Uses By District									
	Principal Use	**SRA**	**SRB**	**SRC**	**SRD**	**AR**	**GB**	**C&I**	**MGF**
26	Personal Services (SEE note 9)	N	N	N	N	N	Y	Y	N
27	Eating Establishments (SEE note 8)	N	N	N	N	N	Y	Y	N
28	Business or professional office	N	N	N	N	N	Y	Y	N
29	Banks	N	N	N	N	N	Y	Y	N
30	Showroom for building supplies, including plumbing, heating and ventilating equipment, with storage limited to floor samples only.	N	N	N	N	N	BA	BA	N
31	Showroom for boats, trailers, trucks, farm implements, or machinery, with no repair services.	N	N	N	N	N	BA	BA	N
32	Showroom for Wholesale Establishments	N	N	N	N	N	Y	Y	N
33	Funeral home	N	N	N	N	N	Y	Y	N
34	Planned Village Development (SEE Section 6.4 for additional regulations)	N	N	N	N	N	N	PB	N
35	Drive-thru Establishments (SEE Section 6.5 for additional regulations)	N	N	N	N	N	PB	PB	N
	Utilities, Communication and Transportation								
36	Personal wireless service facilities (SEE Section 6.2 for additional regulations)	PB	PB	PB	PB	PB	PB	PB	PB
37	Privately owned electrical substations and other utilities (not including power plants) that are intended to serve specific areas of town.	BA	BA	BA	BA	N	BA	BA	Y
	Industrial, Manufacturing and Storage								
38	Establishment for the repair or storage of trailers, trucks, farm implements, or machinery. (SEE note 3)	N	N	N	N	N	N	BA	N
39	Trucking terminal or motor freight station.	N	N	N	N	N	N	BA	N
40	Storage facilities and warehouses. (SEE note 6)	N	N	N	N	N	BA	BA	N
41	Plant for light manufacturing or packaging.	N	N	N	N	N	N	BA	N

Notes To Table A

1) The alteration of a single family dwelling existing on the effective date of this By-Law (October 1, 1958) to accommodate two families if located on a lot having an area not less than twice that required for the erection of a single family dwelling in the same district, provided that no exterior change is made which alters the single family character of the dwelling.
2) Provided that any display, whether open or closed, is not less than fifty (50) feet from side and rear lot lines and not nearer the exterior line of any way than the front yard depth required for a building in the district in which said salesroom or stand is located; except that temporary portable stands, not exceeding four feet in height and not exceeding forty square feet in area may be placed nearer the exterior line of any way than the required front yard depth, required in said district, but in no case less than five feet from the exterior of said way.
3) Parking lot for passenger automobiles, salesroom for automobiles, automobile repair garage or automobile service station, provided that all heavy repairs (such as body and fender work, or welding) are conducted within a completely enclosed building.
4) The term "fur bearing animals" is not intended to apply to the keeping of cats and dogs. The raising of hogs, pigs or fur-bearing animals for commercial purposes on less than five (5) acres shall be carried on at least two hundred feet (200') from any property line.
5) Only the following amusement uses: fitness clubs, dance studios, driving ranges and miniature golf.
6) All above-ground storage are limited to ten thousand (10,000) gallons.
7) Provided that all parts and portions of any such use are not less than five hundred feet (500') from any boundary line of a Single Residential SRA, SRB, SRC or SRD District
8) Restaurant or other place for the serving of food or beverage only to persons seated at tables or counter that does not offer drive-thru service, provided that no dancing or live entertainment is furnished except for private gatherings.
9) Only the following personal or consumer service establishments: barber or beauty shop, collection station for laundry or dry cleaning, laundry facilities, photographic studio, shoe or hat repair shop, shop for custom work by dressmaker, milliner or tailor, bicycle repair shop, blueprinting establishment, business or trade school, clothing rental establishment, television or household appliance repair shop, computer repair shop, copy shop, day spa and massage therapists.
10) Only the following retail businesses: book, stationery or news store, cigar store, drug store, delicatessen, dry goods or variety store, florist or gift shop, fruit or grocery store, hardware store, jewelry store, meat market or wearing apparel store. Retail stores are prohibited from selling any quantity of drug paraphernalia, defined as all equipment, products and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marijuana and/or a controlled substance as defined by Massachusetts State Law.

3.2 ACCESSORY USES AND STRUCTURES

3.2.1 Accessory Uses in All Districts. An "accessory use", within the meaning of this By-Law, is either a subordinate use of a building, other structure or tract of land, or subordinate building or other structure:

1) Whose use is customary in connection with the principal building, other structure or use of land, and
2) Whose use is clearly incidental to the use of the principal building, other structure or use of land, and
3) Which is located on the same lot with the principal building, other structure or use of land, or on a lot adjacent to such lot, if in the same ownership, and
4) Which does not constitute, if effect, a conversion of the principal use of the premises to one not permitted

3.2.2 Accessory Use in Residential Districts. In Single Residential SRA, SRB, SRC and SRD Districts and Agricultural Residential Districts, the following uses are hereby specifically declared to be customarily "accessory uses" within the meaning of this By-Law:

1) Private garage for not more than three (3) automobiles, one of which may be commercial vehicle if not exceeding two and one half (2 ½) tons in gross weight.
2) Private greenhouse, stable, tool shed, playhouse, tennis court, boat house, or other similar building of structure for domestic storage or use.
3) The keeping of animals, poultry, livestock (except swine) principally for personal enjoyment or household use.
4) Removal of sod, loam, sand, gravel or other earth products in connection with the construction of a building to be erected on the premises for which a permit has been issued, provided that the amount of such material removed does not exceed the amount contained, before construction, in the particular space to be occupied by the foundation of said building.
5) The use of a room or rooms in a dwelling or building accessory thereto by a person resident on the premises as an office, studio, or work room for a home occupation provided that:
    a. Such use is clearly incidental and secondary to the use of the premises for dwelling purposes, and
    b. Not more than one non-professional person other than residents of the premises is regularly employed thereon in connection with such use, and
    c. No stock in trade is regularly maintained, and
    d. No offensive noise, vibration, smoke, dust, odor, heat, or glare is produced, and
    e. There is no exterior display and no exterior sign, except as hereinafter permitted, and
    f. There is no exterior storage of material or equipment (including the exterior parking of commercial vehicles) and no other exterior indication of such use or variation from the residential character of the premises.

3.2.3 Accessory Uses in Business Districts. In a General Business District, permitted accessory uses include:

1) Such industry or light manufacturing (including processing, assembly and repairs) as is usual in connection with a permitted principal use, provided that it does not occupy an area exceeding fifty (50) percent of the total floor area occupied by the principal use, that the major portion of any products manufactured are to be sold at retail on the premises, and that not more than five (5) persons are regularly employed in such accessory use.

3.3 NONCONFORMING USES AND STRUCTURES

3.3.1 Applicability. This zoning By-Law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning By-Law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder**.**

3.3.2 Nonconforming Uses. The Board of Appeals may issue a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The Board of Appeals may consider a change or substantial extension of the use in determining whether to issue a special permit under this section.

3.3.3 Nonconforming Structures. The Board of Appeals may issue a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be more detrimental than the existing nonconforming structure to the neighborhood. The Board of Appeals may consider a reconstruction, extension or structural change to a nonconforming structure in determining whether to issue a special permit under this section.

3.3.4 Special Permit Required. Except as provided in subsection 3.3.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a special permit from the Board of Appeals.

3.3.5 Nonconforming Single and Two Family Residential Structures. Nonconforming single-family and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following

circumstances shall not be deemed to increase the nonconforming nature of said structure:

1) Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements,
2) Alteration to a structure located on a lot with insufficient frontage that complies with all current setback, yard, building coverage, and building height requirements.
3) Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be more detrimental than the existing nonconforming structure to the neighborhood.

3.3.6 Abandonment or Non-Use. A nonconforming use or structure that has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning By-Law.

3.3.7 Reconstruction after Catastrophe or Demolition. A nonconforming single-family or two-family structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

1) Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
2) Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure, and shall meet all applicable requirements for yards, setback, and height.
3) In the event that the proposed reconstruction would cause the structure to exceed the volume or area of the original nonconforming structure or would exceed applicable requirements for yards, setback, and/or height or would cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition.

3.3.8 Reversion to Nonconformity. No nonconforming use or structure shall, if changed to a conforming use or structure, revert to a nonconforming use or structure.

SECTION 4.0 - DIMENSIONAL REGULATIONS

4.1 GENERAL

4.1.1 General. No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless otherwise exempted by this By-Law or by statute. Uses not expressly allowed or allowed by special permit are prohibited.

4.1.2 Reduction of Occupied Lots. No lot on which a building is located in any district shall be reduced or changed in size or shape so that the building or lot fails to comply with the lot area, frontage, width, coverage, set back or yard provisions of this Section, without the approval of the Board of Appeals. This prohibition shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.

4.2 DIMENSIONAL REGULATION TABLES

4.2.1 Table of Dimensional Requirements. Tables B through D prescribe the minimum lot dimensions requirements, minimum setback requirements, maximum lot coverage requirements, minimum floor areas and maximum building height requirements in each of the zoning districts. No existing lot shall be changed as to size or shape so as to result in a violation of the requirements set forth in these tables. In the case of public, institutional, commercial or industrial buildings, a group of buildings under the same ownership may be considered as occupying the same lot.

4.2.2 Residential District Lots (Table B). No building or structure hereafter erected shall be located on a residential lot having less than the minimum requirements set forth in Table B except as provided herein. Not more than one dwelling shall be located upon any such lot, except in the case of multiple dwellings as provided herein.

4.2.3 General Business and Commercial & Industrial District Lots (Table C). A building or structure hereafter erected in a General Business District or Commercial & Industrial District shall be located on a lot having not less than the minimum requirements set forth in the Table D.

4.2.4 Municipal Government Facilities District Lots (Table D). A building or structure hereafter erected in a Municipal Government Facilities District shall be located on a lot having not less than the minimum requirements set forth in the Table E.

DIMENSIONAL REGULATION TABLES

Table B: Residential District Lots

	Minimum Lot Dimension (Note 1)		Minimum Setback Requirements			Maximum Building Height		
District	Area Square Feet	Front Linear Feet (Note 2)	Front Linear Feet (Note 2)	Side Linear Feet (Note 9)	Rear Linear Feet (Note 9)	# of stories	Height Linear Feet (Note 8)	Max % Coverage Including Accessory Building
SRA	15,000	100	25	10	30	2.5	30	30
SRB	25,000	150	40	20	30	2.5	30	30
SRC	40,000	180	40	25	30	2.5	30	30
SRD	60,000	210	40	30	30	2.5	30	30
AR	80,000	240	50	30	50	2.5	30	30

Table C: General Business and Commercial & Industrial District Lots

	Minimum Lot Dimension (Note 1)		Minimum Setback Requirements (Note 6)			Maximum Building Height		
District	Area Square Feet	Front Linear Feet	Front Linear Feet (Note 2)	Side Linear Feet (Notes 4 & 9)	Rear Linear Feet (Notes 5 & 9)	# of stories	Height Linear Feet (Note 8)	Max % Coverage Including Accessory Building
GB	(Note 7)	(Note 7)	30	10	20	2	25	40
C&I	(Note 7)	(Note 7)	30	20	20	1	25	40

Table D: Municipal Government Facilities District Lots

	Minimum Lot Dimension (Note 1)		Minimum Setback Requirements			Maximum Building Height		
District	Area Acres	Front Linear Feet	Front Linear Feet (Note 2)	Side Linear Feet (Note 4)	Rear Linear Feet (Note 5)	# of stories	Height Linear Feet (Note 8)	Max % Coverage Including Accessory Building
MGF	5	200	40	50	50	3	35	50

Notes For Table B through Table E:

(1) A lot or parcel of land having an area or a frontage of lesser amounts than required by this table may be considered as coming within the area and frontage requirements of this section, provided such lot or parcel of land was shown on a plan or described in a deed duly recorded or registered at the time of the effective date of this By-Law (October 1, 1958) and did not at the time of the effective date of this By-Law (October 1, 1958) adjoin other land of the same owner available for use in connection with such lot or parcel. In all Districts, except as herein provided, no dwelling shall be constructed on a lot having a width at any point between the frontage way and that part of the dwelling nearest thereto of less than eighty (80) percent of the frontage distance required for the district in which said lot is located.

(2) To be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line twenty-five feet (25') from and parallel with the center line of the traveled way.

(3) Open Space Preservation lots shall only be created upon the approval of a Definitive Plan by the Planning Board. The total number of lots in an Open Space Preservation subdivision shall not exceed the number of lots in a standard subdivision as determined by the Planning Board.

(4) Side yard minimum setback requirement shall be fifty feet (50') when a lot is adjacent to a Single Residential SRA, SRB, SRC or SRD District or Agricultural Residential District except for accessory structures with a footprint less than or equal to 120 square feet and a height less than fifteen feet which shall have a minimum side and rear setback of ten feet.

(5) Rear yard minimum setback requirement shall be fifty feet (50') when a lot is adjacent to a Single Residential SRA, SRB, SRC or SRD District or Agricultural Residential District except for accessory structures with a footprint less than or equal to 120 square feet and a height less than fifteen feet which shall have a minimum side and rear setback of ten feet.

(6) No open display or other open use, where permitted, and no structure shall be located nearer than thirty (30) feet from the exterior line of any public or private way, except the following: utility pole; mailbox; plants growing in the soil if not obstructing the view of vehicles entering and leaving the premises; and parking lot for vehicles.

(7) In all General Business Districts and Commercial & Industrial Districts, except as herein provided, no building shall be constructed on a lot having less area or having less frontage on a public or private way than the area and frontage, respectively, required for the least restricted Single Residential District adjacent thereto.

(8) Except as noted herein, chimneys, spires, towers and other projections not used for living purposes, whether constituting separate structures or attached to buildings, may be constructed above the height limitations hereinbefore established, but no such structure or projection shall be constructed in any district to a height greater than fifty (50) feet without authorization of the Board of Appeals. Exception: Personal wireless service facilities. (SEE Section 6.2.6)

(9) Except for accessory structures with a footprint less than or equal to 120 square feet and a height less than fifteen feet which shall have a minimum side and rear setback of ten feet.

4.3 HEIGHT, FRONTAGE AND LOT WIDTH MEASUREMENTS

4.3.1 Building Heights. In all districts the height of buildings shall be measured vertically from the average finished grade of the ground adjoining such building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the average height between eaves and ridge for gable, hip, and gambrel roofs.

4.3.2 Frontage. In all districts, the required frontage shall be measured along a straight line connecting the points of intersection of the side lot lines with the exterior lines of the frontage way.

4.3.3 Lot Width. The required lot width shall be measured parallel to the line along which the required frontage is to be measured, as hereinbefore specified.

4.4 EXCEPTIONS

4.4.1 Lot Size Exceptions. In the Single Residential SRA, SRB, SRC and SRD Districts and Agricultural Residential Districts, a single-family detached house may be constructed on a lot having less than the required lot area, frontage and width, provided that all other requirements of this By-Law are complied with and provided that at least one of the following three conditions is met:

1) Said lot was laid out by deed or conveyance or shown on a duly recorded plan prior to the effective date of this By-Law (October 1, 1958) and provided further that:

   a. Said lot conformed with the lot size provisions applicable to the construction of a dwelling on said lot within the restrictions set forth in the Zoning By-Law of the Town immediately prior to the effective date of this By-Law (October 1, 1958), and

   b. Said lot, on the effective date of this By-Law (October 1, 1958) did not adjoin other land of the same owner available for use in connection with said lot.

2) Said lot was shown on a final or definitive subdivision plan duly approved by the Upton Planning Board prior to the effective date of this By-Law (October 1, 1958).

4.4.2 Frontage Reduction. A residential lot with a reduced frontage requirement may be permitted in accordance with Section 7.5 of this zoning By-Law.

SECTION 5.0 - GENERAL REGULATIONS

5.1 GENERAL. For the purposes of this Section, the following uses shall be considered as business or commercial uses, and all buildings designed, arranged or constructed for, or occupied by, one or more of such uses shall be considered as business or commercial buildings:

1) Any of the uses permitted in General Business Districts and Commercial & Industrial District, but not permitted in a Single Residential SRA, SRB, SRC and SRD District (with or without Board of Appeals authorization).
2) Any of the following Single Residential SRA, SRB, SRC and SRD District uses, when located in a General Business District or Commercial & Industrial District:
   a. Nursery school or other agency for day care of children, or private organized camp.
   b. Tourist home, boarding or lodging house.
   c. Rest home, convalescent or nursing home.
   d. Commercial golf course.
   e. Salesroom or stand for the display and sale of agricultural or horticultural products.
   f. Performance Standards pertaining to all uses.

5.2 BUILDING CONSTRUCTION. All buildings shall be constructed as prescribed by the Building Code in force in the Town of Upton.

5.3 ODOR, DUST AND SMOKE. No such offensive emissions shall be discernible beyond a business-use or commercial-use property line or, in the case of an industrial park development or of multiple use of the property, beyond one hundred feet of the building generating the emission, except that in no case shall the discharge from any source exceed the following limits:

1) Smoke measured at the point of discharge into the air shall not exceed a density of No. 1 on the Ringlemen Smoke Chart, as published by the U. S. Bureau of Mines, except that a smoke of a density not darker than No. 2 on the Ringlemen Chart may be emitted for not more than three minutes in any one hour.
2) Lime dust, as CaO, measured at the property line of any lot on which the activity creates such dust, shall not exceed ten micrograms per cubic meter of air.
3) Total particulate matter measured at all stacks or other points of emission to the air shall not exceed 30 grams per hour per acre of land included in the lot.
4) Odors shall not exceed the smallest values given in Table III (Odor Thresholds) in Chapter 5 of the “Air Pollution Manual,” Manufacturing Chemists Association, Inc., Washington D. C. 1951.
5) All measurements of air pollution shall be by the procedures, and with equipment, approved by the Building Inspector, which procedures and equipment shall be of the latest generally recognized development and design readily available.

5.4 **NOISE**. The noise generated on any business-use or commercial-use lot, measured at any point beyond the property lines of the lot on which the noise source is located, shall not cause the total sound level to be more than three decibels above the natural ambient sound level except as provided below:

1) For not more than five minutes in any one-hour the noise generated may cause the total sound level to be more than three decibels but not more than ten decibels above the natural ambient sound level.
2) For not more than 60 minutes in any seven-day period the noise generated may cause the total sound level to be more than ten but not more than 30 decibels above the natural ambient sound level.
3) Noise making devices that are maintained and are utilized strictly to serve as safety warning devices are excluded from these regulations.

Measurements shall be conducted by personnel approved by the Building Inspector using the "A" weighting on a standard commercial total sound level instrument approved by the Building Inspector. For the purpose of this By-Law the natural ambient sound level shall be assumed to be 40 decibels above 0.0002 microbar during hours of daylight, and 30 decibels above 0.0002 microbar at all other times.

5.5 **HEAT, GLARE, VIBRATION, AND RADIATION**. No heat, glare, or vibration shall be discernible without instruments from the outside of any structure and no radiation shall be discernible from the outside of the structure with or without instruments.

5.6 **EXTERIOR LIGHTING**. No exterior lighting, other than street lighting approved by the Selectmen, shall shine on adjacent properties or towards any street in such a manner as to create a nuisance or hazard.

5.7 **WASTE DISPOSAL AND WATER SUPPLY**. Regulations of the State Board of Health and the Upton Board of Health shall be met and shall be indicated on the site plan, when a site plan is required.

5.8 **OPEN BURNING.** No open burning is permitted unless in an incinerator of a type approved by the Board of Health.

5.9 **ENCLOSURE AND SCREENING**

5.9.1 General Business District. In a General Business District, all permitted uses (whether or not requiring Board of Appeals authorization), and all uses thereto, shall be conducted wholly within a completely enclosed building, except the following:

1) Uses permitted in the Single Residential SRA, SRB, SRC and SRD Districts.
2) Accessory outdoor dining areas.
3) Plants growing in the soil.
4) Parking lots for passenger automobiles.
5) Exterior signs, as hereinafter permitted.

6) Exterior lights, if so arranged as to reflect away from public and private ways and from any adjacent premises located in a Single Residential SRA, SRB, SRC or SRD District.
7) The dispensing of fuels, lubricants or fluids at automobile services stations.

All required setbacks areas shall be adequately and attractively landscaped with lawns and trees and/or bushes and said landscaping shall be installed prior to occupancy or commencement of use and shall therefore be maintained in an attractive manner. Where such compliance is impracticable due to season of the year, the Zoning Officer may issue an occupancy permit with restrictions. Said temporary status shall be issued until all required plantings have been completed in the following planting season. Said landscaping shall thereafter be maintained in an attractive manner.

5.9.2 Commercial & Industrial Districts: In a Commercial & Industrial District, all open storage of junk, scrap metal, rags, waste paper, and similar used materials shall be completely screened from view at normal eye level six (6) feet in height from any public or private way or from any premises. Any other use conducted outside a completely enclosed building, except an open use permitted in General Business Districts, shall, if visible at normal eye level from any point within a Single Residential SRA, SRB, SRC or SRD District and if located less than two hundred (200) feet from a Single Residential SRA, SRB, SRC or SRD District, be completely screened from such view. Screening required under this paragraph shall be by an evergreen planting or other attractive suitable visual barrier.

5.10 OFF-STREET PARKING. In a General Business District or Commercial & Industrial District, no business or commercial building shall be constructed or externally enlarged, and no business or commercial use shall be established or expand its ground floor area unless there is off-street parking provided on the lot or land associated therewith within three hundred (300) feet of such building or use as follows :

5.10.1 Retail Stores. Retail stores, showrooms or salesrooms, wholesale showrooms, consumer, professional or commercial service establishments, offices or banks shall have at least one off-street parking space for each one hundred and eighty (180) square feet of ground floor area of the building plus one additional space for each three hundred and sixty (360) square feet of floor area in all stories above the first story.

5.10.2 Restaurants. Restaurants and other places for the service of food or beverages and theaters and other places of amusement or assembly shall have at least one off-street parking space for each one hundred and eighty (180) square feet of ground floor area of the building plus one additional space for each three hundred and sixty (360) square feet of floor area in all stories above the first story, or at least one off-street parking space for each three (3) seats provided for patron use, whichever requires the greater number of parking spaces.

5.10.3 Tourist Homes. Tourist homes, boarding and lodging houses shall have at least one off-street parking space for each guest bedroom.

5.10.4 Shops of the Building Trades. Shops of the building trades, printing and publishing establishments, and all storage, manufacturing or other uses first specifically listed herein a Commercial & Industrial District shall have at least one off-street parking space for each two (2) persons employed or anticipated being employed, on the largest shift.

5.10.5 Miscellaneous. Automobile service stations, drive-thru establishments and open-air retail businesses (including open-air amusements) shall have sufficient off-street parking spaces to accommodate the automobiles of customers, patrons and employees. Frequent parking of such automobiles within a public or private way adjacent to the premises will be considered as evidence of the inadequacy of the off-street spaces provided in connection therewith. A space of one hundred and eighty (180) square feet of appropriate dimensions for the parking of an automobile, exclusive of access drives or aisles shall be considered as one (1) off-street parking space. In the case of mixed uses in the same building or on the same lot, or the joint use of spaces by two (2) or more separate buildings or uses, the total requirements for off-street parking space shall be the sum of the requirements of the various buildings and the uses computed separately. Required parking spaces shall be located, graded, drained and otherwise constructed in accordance with the site plan hereinafter required, shall be provided and maintained with a dust-free surface, and shall be permanently available for use by the customers, patrons and employees of the establishment with which connected.

5.11 VEHICULAR ACCESS. All vehicular access to and from any lot on which a business or commercial building or use is located (including accessory off-street parking spaces) shall be through designated driveway openings having a width of not more than twenty (20) feet at the exterior line of the public or private way, and not more than one opening for entrance and one opening for exit (which may be contiguous with a total width of forty (40) feet) shall be permitted along any way for each two hundred (200) feet of lot frontage on said way, if in a General Business District, or for each three hundred (300) feet of lot frontage on said way, if in a Commercial & Industrial District. In the case of a lot having less than the specified frontage along the exterior line of way, a total of not more than two designated driveway openings shall be permitted (one of which shall be for entrance and the other for exit), provided that:

1) Said lot was laid out by deed or conveyance or shown on a duly recorded plan prior to the effective date of this By-Law (October 1, 1958) provided that on such date said lot did not adjoin other land of the same owner available for use in connection with said lot, or
2) Said driveway openings are used or to be used in common by two (2) or more lots having a total continuous frontage on the way of at least the amount specified for a single lot, or

3) Said driveway openings are at the exterior line of a private way whose primary function, in the opinion of the Board of Appeals, is to provide access to premises located in non-residential districts, and a variance from these requirements is accordingly authorized by said Board.

5.12 SIGNS

5.12.1 Purpose. The following regulations are intended to establish reasonable regulations for signs within the Town in order to reduce traffic hazards, to facilitate an attractive, harmonious community and to protect property values.

5.12.2 Applicability. This By-Law applies to signs that advertise, promote, call attention to or provide directional instruction to a product, profession, commercial event, organization, service, or business/commercial/industrial establishment including exterior signs and signs visible from the exterior by way of being placed in or on a window or outside door. Political signs are exempt from this By-Law (reference Town General By-Laws for political sign regulations).

5.12.3 General Requirements. The following applies to all zoning districts:

1) The material of which the sign is constructed and the intermediate structure and manner of affixation to a building or post shall be subject to approval from the Building Inspector from a standpoint of public safety.
2) Signs and any associated structural elements shall be kept in good repair and in a proper state of preservation to the reasonable satisfaction of the Building Inspector. The Building Inspector may order the removal of any sign determined to be in a state of disrepair.
3) Any sign and its associated structural elements pertaining to anything that ceases to be applicable, whether on, near or adjacent to the particular premises shall be removed by the owner of the sign within thirty-days.
4) Only signs authorized by the Board of Selectmen may be located on Town property. Any unauthorized sign located on Town property may be immediately removed. Such signs shall be stored for a minimum of two weeks to allow the owner to retrieve the sign after which time the Building Inspector may dispose of such signs.
5) Any non-conforming sign that was legally erected prior to the adoption of this By-Law Section shall be allowed subject to the following: such signs may not be enlarged, reworded, redesigned or altered in any way unless brought into conformity.
6) Any sign in place for greater than a three month period may be considered a permanent, non-temporary sign.

5.12.4 Prohibited Signs. The following signs are prohibited in all zoning districts:

1) Signs erected at or near a street intersection or street and driveway intersection in such a manner as to obstruct free and clear vision.
2) Signs erected at any location where the sign may interfere with any traffic sign, signal or device due to obstruction, confusion or any other applicable interference.

3) Signs constructed of permanent paper, cardboard, cloth, canvas, plastic or other similar non-rigid material that are tacked, posted or otherwise affixed to a utility pole, tree, rock, hydrant, bridge, fence or other similar surface.
4) Signs affixed in any way above a building roof including signs affixed to a cupola, tower, chimney or other structure located on or above the roofline.
5) Signs that contain any part that moves, flashes or is in any way animated including moving lights, rotating beacons, pennants, ribbons, streaming signs and animated signs intended to create the illusion of movement.
6) Billboards (except for non-commercial billboard signs on Town property). Billboards shall include any sign advertising or promoting material not sold, manufactured or distributed from the premises on which the sign is located.

5.12.5 Illumination.

1) Sign illumination shall be limited to a fixed white light from an externally downward directed source unless otherwise provided for by this By-Law.
2) Illuminated signs are prohibited in the Residential SRA, SRB, SRC, SRD and A-R Districts.
3) Signs that incorporate tube-type gaseous elements, neon elements, strings of light bulbs, or upward directed spotlights are prohibited except for one non-flashing interior neon window sign less than three square feet indicating that an establishment is open for business.
4) Signs that result in excessive glare as determined by the Building Inspector are prohibited.
5) Signs that incorporate internal light or rear illuminated light sources shall only be allowed by a special permit of the Board of Appeals in accordance with Section 9.3 of this By-Law.
6) Signs shall be illuminated for no more than thirty minutes before opening or after closing of a commercial establishment.

5.12.6 Signs in Single Residential SRA, SRB, SRC, SRD and A-R Districts. The following signs are allowed as of right subject to any additional regulations or prohibitions set forth in this By-Law:

1) One sign per dwelling unit or lot pertaining to a home occupation or business not-to-exceed four square feet and no portion of which is greater than five feet above ground level. Such sign shall be setback a minimum of twenty feet from the side and rear property lines.
2) One temporary on-site sign pertaining to the advertisement of the sale or lease of a dwelling unit not-to-exceed six square feet and no portion of which is greater than five feet above ground level. Such temporary sign shall be removed within one week following the date of recording of the deed or signing of the lease.
3) Two temporary off-site directional signs pertaining to the advertisement of the sale or lease of a dwelling unit not-to-exceed three square feet. Such temporary signs shall be installed and removed on the same day and shall only be allowed during daylight hours.
4) One temporary sign per dwelling unit pertaining to the advertisement of an architect, engineer or contractor or other participant relating to construction

work on the premises not-to-exceed eight square feet and no portion of which is greater than five feet above ground level. Such sign shall be removed within one week following completion of said construction work.

5) One sign not exceeding twelve square feet and no portion of which is greater than five feet above ground level bearing the name of a residential subdivision at each entrance to the subdivision.
6) One on-site sign pertaining to a residential subdivision advertising the sale or lease of subdivision lots. Such sign shall not exceed twenty square feet no portion of which shall be greater than five feet above ground level.
7) Signs erected on a lot associated with a religious organizational use or non-profit educational organization use subject to the following criteria: one sign shall be allowed for each public entrance up to but not exceeding three signs; each sign not-to-exceed twenty square feet and with no standing sign greater than seven feet in height above ground level.

5.12.7 Signs in General Business Districts and Commercial & Industrial Districts. The following signs pertaining to permitted buildings, structures and uses on the premises are allowed as of right on a building, subject to any additional regulations or prohibitions set forth in this By-Law:

1) One primary building sign for each building tenant either affixed to a building or standing in accordance with the following:
   a. Signs affixed to an establishment building wall shall not exceed one square foot for each one hundred square feet of establishment ground floor area up to a maximum of twenty square feet and shall not extend more than six inches from such wall if affixed parallel to the wall or no more than six feet when affixed perpendicular to wall.
   b. Standing signs shall not exceed one square foot for each one hundred square feet of establishment ground floor area up to a maximum of twenty square feet and shall not exceed ten feet in any dimension or ten feet above ground level. A standing sign shall be subject to the setback provisions of Section 4.0 of this By-Law.
2) One additional secondary building sign for each building tenant affixed to the building only if such building has more than one public entrance. The minimum allowable secondary building sign size shall not exceed 50% of the allowable primary building sign size or four (4) square feet, whichever is greater.
3) One additional similar sign indicating a directory of building tenants either affixed to a building or standing, except that the directory of building tenants sign size shall not exceed a total area greater than two square feet for each tenant up to a maximum of twenty square feet. A standing directory of building tenants sign shall only be allowed if there are no other standing signs associated with a building.
4) One interior window sign illuminated or otherwise for each building tenant not to exceed three square feet indicating that an establishment is open for business.
5) Customary signs on gasoline pumps and the price thereof.
6) Any sign allowed in the Single Residential SRA, SRB, SRC, SRD and A-R

Districts.

5.12.8 Administration.

1) The Building Inspector shall be the permit granting authority.
2) No permanent sign greater than two square feet shall be erected until an application together with a scale drawing, colored rendering of the sign and other such information as the Building Inspector may require is submitted to the Building Inspector and a Building Permit has been issued.
3) The Board of Selectmen shall establish and from time to time review a sign permit fee that shall be published as part of the sign permit application.
4) Building Inspector shall within thirty days approve or reject any permit application for a permanent sign filed with the Building Inspector. A Building Permit shall be issued for any sign application that is consistent with the purpose of this section and is compliant with all requirements of this section and all other applicable laws, bylaws and regulations.
5) The Board of Appeals may issue a special permit in accordance with Section 9.3 of this Zoning By-Law for a larger sign up to twice the size provided for as of right if it is determined that such sign is consistent with the purpose and intent of this section, will not be a detriment to the surrounding area, and is consistent with the architecture of the building, the building lot and surrounding area. The Board of Appeals shall specify the size and location of such sign and may impose other terms and conditions as it may deem to be in the public interest.
6) In addition to any other remedy granted or penalty imposed by law, whoever is in violation of any provision of this section who fails to remedy such violation within five days after receipt of such notice given by the Building Inspector or Board of Selectmen shall be punished by a fine not exceeding one hundred dollars for each such violation for each day such violation occurs.

SECTION 6.0 - SPECIAL REGULATIONS

6.1 COMMON DRIVEWAYS. A common driveway is any road to be used for vehicular access to two or more dwellings or places of business. All persons constructing common driveways in any and all districts of the Town of Upton shall meet the following standards:

1) Common driveways shall be of sufficient design so as to provide safe travel for vehicles and pedestrians and to obtain maximum amenities for future residents.

2) All common driveways shall be identified by a sign posted at the intersection with public way, and the sign shall state: "NOT A PUBLIC WAY."

3) The driveway shall be graded and prepared according to all requirements of Subdivision Control Laws, Sections V (Required Improvements for an Approved Subdivision), subsection B. 2, 3, and 4.

4) Common driveways shall have an easement width of not less than twenty-four feet (24') and shall have a paved width of not less than eighteen feet (18').

5) A three-foot shoulder shall be constructed along at least one side of the paved driveway.

6) The maximum centerline grade shall not exceed 8%. No grade shall exceed 3% within seventy-five feet (75') of street right of way lines.

7) Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than thirty-degrees.

8) Common driveways shall not exceed five hundred feet (500') in length.

9) In the circular turning area at the end of the cul-de-sac the minimum easement shall be of a diameter of not less than one hundred twenty feet (120') and the paved area shall be not less than one hundred feet (100') in diameter.

6.2 WIRELES DATA TRANSFER FACILITIES

6.2.1 Purpose and Intent. The purpose of this section is to regulate wireless data transfer facilities such that these services may be provided with the minimum harm to the public health safety and general welfare by:

1) Protecting the general public from hazards associated with wireless data transfer facilities.

2) Minimizing visual impact from wireless data transfer facilities.

3) Preventing adverse impact on local property values.

4) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

6.2.2 Special Permit Granting Authority. A wireless data transfer facility shall only be allowed by a special permit. The Planning Board shall act as the Special Permit Granting Authority (SPGA) for wireless data transfer facilities in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for wireless data transfer facilities in accordance with the provisions of this Zoning By-Law.

6.2.3 Application in Zoning Districts. A wireless data transfer facility shall be allowed by special permit in all zoning districts in accordance with the requirements and regulations of the Town of Upton Zoning By-Laws.

6.2.4 Applicability and Exemptions. This section applies to any wireless data transfer facility. The following specific uses are exempt:

1) Satellite dishes or antennas used exclusively for residential use;

2) Police, fire, ambulance and other public emergency dispatch;

3) Citizen band radio.

4) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC provided that the tower is not used or licensed for any commercial purpose and the tower is removed upon loss or termination of said FCC license.

A non-exempt wireless data transfer facility or repeater facility that shares a tower or other structure with any exemptions listed above shall not be considered exempt from this bylaw for any reason.

Existing towers may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in this Zoning By-Law.

Wireless data transfer devices and wireless data transfer accessory buildings may be located totally within existing buildings and existing structures in all zoning districts, subject to a special permit granted by the Planning Board

6.2.5 Consistency With Federal Law. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

1) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.

2) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

3) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

6.2.6 Design Requirements and Performance Standards: All wireless data transfer facilities erected, installed and/or used shall comply with the following design requirements and performance standards:

1) Shared Use: Shared use of towers by commercial wireless data transfer carriers is required unless such shared use is shown by substantial evidence to not be feasible.

2) Height: The maximum allowed height of a tower shall be 150 feet.

Data transfer devices located on a structure shall not exceed ten feet in height above the roof-line of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roof line, such as water tanks, the height of the data transfer devices shall not exceed ten feet above the highest point of the structure.

3) Co-Location: In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this Bylaw, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is less than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.

4) Proximity to Existing Residence: towers shall be located a minimum of seven-hundred fifty feet from an existing residential dwelling or proposed dwelling in a permitted submission.

5) Setback: A tower shall be set back from the property lines of the lot on which it is located by a distance equal to one and a half times the overall vertical height of the tower and any attachments.

6) Screening Requirements. All exterior wireless data transfer facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless data transfer facilities, equipment and fixtures visible against a building structure shall be colored to blend with such

building or structure. Wireless data transfer facilities, equipment and fixtures visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.

Data transfer devices shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets and residences. Free-standing dishes or data transfer devices shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences, and to limit the need to remove existing vegetation. All equipment shall be screened, colored, molded and/or installed to blend into the structure and/or the landscape.

7) Fencing: Fencing shall be provided to control access to wireless data transfer facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board. Any entry to the proposed access road shall be gated (and locked) at the intersection of the public way, and a key to the lock provided to emergency response personnel.

8) Lighting: Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the Federal Aviation Administration.

9) Parking: There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not be used for the permanent storage of vehicles or other equipment.

10) Access: For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless data transfer facility accessory buildings, and shall be designed to provide proper storm drainage.

6.2.7 General Requirements:

1) No wireless data transfer facility may be erected except upon the issuance of a special permit by the Planning Board and approval under Site Plan Approval as set forth in Section 9.4 of the Zoning Bylaw and subject to all of the provisions of this Section. It is recommended to the applicant to undertake both the special permit and Site Plan Approval procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged provided there is one lead applicant responsible for all submissions and further provided that

no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

2) All owners and operators of land used in whole or in part for a wireless data transfer facility and all owners and operators of such wireless data transfer facility shall, as a continuing condition of installing, constructing, erecting and using a wireless data transfer facility, permit other FCC-licenses commercial entities seeking to operate wireless data transfer facility, to install, erect, mount and use compatible wireless data transfer equipment and fixtures on the equipment mounting structure on reasonable commercial terms provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless data transfer facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless data transfer equipment or fixtures.

3) Each proposed construction of a new wireless data transfer facility, tower, wireless data transfer device or wireless data transfer accessory building shall require an initial special permit. Any extension in the height of, addition of wireless data transfer accessory buildings, wireless data transfer devices to, or replacement of any wireless data transfer facility shall require an amendment to the special permit previously issued for that facility; or in the case where there is no special permit, an initial special permit.

4) New facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:

   a. The applicant has used reasonable efforts to co-locate its proposed wireless data transfer facilities on existing or approved facilities; and

   b. That the applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e. the height, structural integrity, weight bearing and wind-resistant capacity of the existing or approved facility), and radio frequent engineering (i.e. height, coverage area etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequent engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission.

5) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional.

6) A wireless data transfer facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this Bylaw.

6.2.8 Criteria for Granting Special Permit: Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of Section 6.2 herein, Section 9.4 of this zoning bylaw and MGL c.40A, s9.

When considering an application for a Wireless Data Transfer facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New towers shall only be considered after a finding that existing (or previously approved) towers suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed use(s), taking into consideration radio frequency engineering issues and technological constraints.

When considering an application for a proposed data transfer device to be placed on a structure, the Planning Board shall take into consideration the visual impact of the unit from the abutting residences and streets.

6.2.9 Conditions: The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of the Zoning Bylaw, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of Section 6.2 herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed in writing with the granting of a special permit. As a minimum, the following conditions shall apply to all grants of special permit pursuant to this Section:

1) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation and required maintenance shall be filed with the Inspector of Buildings by the special permit hold, with a copy received by the Planning Board no later than January 31 of each year.

2) Removal of Abandoned towers and Facilities. Any wireless data transfer facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such tower and facility shall remove same within ninety (90) days of receipt of notice from the Planning Board notifying the owner of such abandonment. If such tower or facility is not removed within said ninety (90) days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there

are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless data transfer facility from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of three percent for the term of the lease. The term of the bond shall be for the full term of any lease plus twelve months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.

4) For all towers, an Agreement must be executed whereby the user will allow the installation of municipal data transfer devices at no cost to the Town of Upton, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town controlled data transfer devices.

5) For all towers located on non-municipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, where upon towers are located, if any Town-wide or Town-controlled telecommunications are located thereon.

6) For all towers located on municipal property, a Certificate of Insurance for liability coverage in amounts determined by the Board of Selectmen must be provided naming the Town as an additional insured.

7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the user.

8) All permitees shall be required to file annually on or before February 1st with the Upton Planning Board a complete list of all wireless data transfer facility locations in the Town then used by the permitee, including data transfer devices mounted on the interior of a building or structure.

9) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board

before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.

10) Any future extension or addition of a wireless data transfer facility or construction of new or replacement towers shall be subject to an amendment of the special permit, following the same procedure as for an original grant of a special permit.

11) Prior to construction, the permittee shall provide a recorded copy of a restrictive covenant prohibiting construction on all areas contained in the setback/fall areas.

6.2.10 Severability: If any section of this bylaw is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.

6.3 MEDICAL WASTE TREATMENT. To the extent permitted by law, no new building or facility or part thereof shall be constructed or used, and no premises shall be used, and no building or facility or part thereof shall be altered, enlarged, reconstructed or used for any purpose to include: processing, storing or staging of solid waste, hazardous waste, infectious waste as defined by the Department of Environmental Protection or the Commonwealth of Massachusetts or as defined herein.

6.4 PLANNED VILLAGE DEVELOPMENT

6.4.1 Intent. The intent of this Planned Village Development By-Law is to permit greater flexibility and more creative and imaginative design for the development of municipal, commercial, retail, general business, and residential mixed-use areas than is generally possible under conventional zoning provisions. It is further intended to promote a vibrant, compact, pedestrian friendly development with the virtues of a traditional New England village, but with modern amenities and services, enabling residents of diverse income levels and ages to live, work, or retire in a well planned built and natural environment. In addition, the Town may use this By-Law to promote unmet housing needs, including affordable housing and handicap barrier free housing

6.4.2 Special Permit Granting Authority. The Planning Board shall act as the Special Permit Granting Authority (SPGA) for a Planned Village Development in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for Planned Village Developments in accordance with the provisions of this zoning By-Law.

6.4.3 Application in Zoning Districts. A Planned Village Development may only be permitted by a special permit in a Commercial & Industrial District in accordance with the requirements and regulations of this section of the Town of Upton Zoning By-Laws.

6.4.4 Design Requirements.

1) Overall Threshold of Development. The maximum area of development or gross floor area of retail/office use or residential units permissible under a Planned Village Development special permit and for a Planned Village Development tract of land shall be determined as part of the Concept Plan review and approval process. Based on its review and in order to advance the purpose of this By-Law, to ensure that residential development is not the dominant land use, and mixed-use development is achieved, the Planning Board shall determine the following:
   a. Developable area as defined.
   b. Open space area as defined.
   c. The maximum amount of retail/office density.
   d. The maximum amount of residential density, not to exceed eight (8) dwelling units per developable acre.
   e. The maximum amount of municipal density.
   f. A minimum percentage of gross floor area to be devoted to retail/office and/or municipal uses that advance the purposes of this By-Law.
   g. A maximum ratio of total residential building gross floor area to total commercial and municipal building gross floor area.

2) Developable Area**.** Developable Area shall be defined as an area calculated by a Registered Civil Engineer and/or Registered Land Surveyor that does not include any of the following:
   a. Land within the 100-year flood plain as defined by G.L. c. 131, s.40.
   b. Fresh water wetlands as defined by G.L. c. 131, s.40.
   c. Land subject to the Massachusetts River Protection Act as defined by G.L. c. 131, s.40.
   d. Land having a slope greater than 20%.
   e. Land subject to any local and/or state law or regulation, right of way, public or other restriction, which prohibits development.

3) Open Space. Open Space should generally be planned as contiguous areas that promote the objectives of this By-Law while retaining the natural features of the site most worthy of preservation in a natural state. Open Space in a Planned Village Development shall consist of three categories:
   a. Open space for active and/or passive recreational pursuits including but not limited to ball fields, soccer fields, trail systems, parks, etc., that would be transferred to the town, state, or other non-profit agency;
   b. Open space associated with retail/office and/or municipal uses;

c. Open space consisting of landscaped or natural vegetation that shall serve as buffers for the residential components of the Planned Village Development.

The first two categories of open space would generally provide for public access, which would be defined through covenants approved by the Planning Board as part of the special permit process.

6.4.5 Dimensional Requirements. In order to permit site planning best tailored to the land under consideration, there are no predetermined dimensional requirements except for the following:

1) When the Planned Village Development property adjoins residential property, a buffer area shall be provided and delineated on a Planned Village Development Site Plan.
2) The minimum frontage of a Planned Village Development property proposed for a Planned Village Development special permit shall be 200 feet on an existing Town accepted way.
3) Open Space requirements for the property proposed for a Planned Village Development special permit shall be as follows:
   a. No less than 30% of the Developable Area within the Planned Village Development site shall be designated as open space.
   b. No less than 20% of the Planned Village Development site shall be designated as upland open space that shall not consist of wetlands as defined by G.L. c. 131, s.40.
   c. Wetland areas shall be incorporated into open space to the greatest extent possible.
   d. No less than half of the Planned Village Development site classified as upland open space shall be dedicated as publicly accessible and useable open space that shall not consist of wetlands as defined by G.L. c. 131, s.40.

6.4.6 Unmet Housing Needs. In order to promote the intent and purpose of this By-Law, the Planning Board shall determine a percentage of housing built under the By-Law and within a Planned Village Development that, shall be required by covenant or restriction acceptable to the Planning Board to be set aside to meet unmet housing needs, as shall be determined by the Planning Board, including those specified in Section 6.4.1.

6.4.7 Procedures & Administration. Applications shall be filed in accordance with the Site Plan Review Rules and Regulations of the Planning Board. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board.

6.4.8 Application Procedure. The application procedure shall consists of two steps:

1) Submission of a conceptual site plan to the Planning Board for pre-application review.

2) Submission of a application for approval of a Planned Village Development special permit to the Planning Board, which will include the following:
   a. A special permit application cover letter form.
   b. A preparation of plans with a designer certificate.
   c. A development impact statement.
   d. Development plans as specified herein this special permit By-Law.

6.4.9 Pre-Application. To be eligible to apply for a special permit, applicants are first required to have submitted a conceptual site plan prepared by a landscape architect, a registered architect, and a registered professional engineer for review at a scheduled Planning Board meeting. The Planning Board may conduct its review of a conceptual site plan at more than one meeting.

The conceptual site plan shall include a detailed analysis of site topography, wetlands, unique land features, soil type, site layout and building design. The purpose of this requirement is to help applicants and Town officials develop a better understanding of the property and to help establish an overall design approach that respects the intent of this By-Law.

As an integral part of the pre-application process and prior to its formal review conducted in its capacity as SPGA, the Planning Board shall set forth its preliminary findings pursuant to its review of a conceptual site plan. These findings may include but not be limited to suggestions related to the design, scope, building, use, or development program, open space, infrastructure, or other components related to an anticipated Planned Village Development proposal for the subject property.

6.4.10 Special Permit Application. Applicants are required to submit a special permit application and site plan, conforming to the requirements of this By-Law, to the Planning Board for approval.

Contents of special permit application: The application for a Planned Village Development special permit shall be accompanied by a site plan including all of the plans and information listed below.

1) A special permit application cover letter form.
2) A preparation of plans, designer certificate.
3) A Development Impact Statement, as defined in this By-Law.
4) Development plans as specified herein this special permit By-Law.
5) Payment of any application fee(s) required under the Planning Board's Rules and Regulations for the administration of this By-Law

6.4.11 PVD Special Permit - Rules and Regulations. The Planning Board shall adopt reasonable rules and regulations for the administration of this By-Law, which may be amended from time to time.

6.4.12 Public Hearing. The Planning Board shall hold a public hearing on any application for a Planned Village Development special permit within sixty-five

(65) days from the date of filing of the special permit application. The Planning Board shall provide notice of hearings in accordance with G.L. c. 40A, s.9 and G.L. c. 40A, s.11.

6.4.13 Basis for Approval, and Required Findings and Determinations.

1) Upon receipt of the application and required plans, the Planning Board shall transmit one copy each to the Board of Selectmen, Board of Health, Conservation Commission, Public Works Department, Fire Department, and Police Department for recommendations consistent with the intent of this By-Law as set out in Section 6.4.1. Failure of such boards and officials to make any recommendation within thirty-five (35) days of receipt of the special permit application by such boards and officials shall be deemed lack of opposition to the special permit. The Planning Board shall act on applications according to the procedures specified in G.L. c. 40A, s.9.

2) The decision of the Planning Board shall be made within ninety days following the date of such public hearing. The required time limit for a public hearing and said action may be extended by written agreement between the petitioner and the Planning Board. A copy of such agreement shall be filed in the office of the Town Clerk as required by G.L. c. 40A, s.9. The Planning Board shall file its special permit granting decision with the Town Clerk as required by G.L. c. 40A, s.9.

3) Special permits shall be granted by the Planning Board, unless otherwise specified herein, upon its written determination that;
   a. The proposed development is consistent with the intent of this By-Law, as set out in 6.4.1
   b. Municipal services such as water, sewer or other services are adequate or will be adequate at the time of completion of the development
   c. The benefit to the Town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

4) In addition to the determination listed above, prior to granting approval of the Planned Village Development, the Planning Board shall also give consideration of each of the following:
   a. Social, economic, or community needs that are served by the proposal;
   b. Adequacy of vehicular and pedestrian traffic safety on and off the site, and adequacy of parking and loading areas;
   c. Adequacy of utilities and other public services;
   d. Impacts on neighborhood character and social interaction;
   e. Impacts on the natural environment; and
   f. Potential fiscal impact, including impact on municipal services, tax base, and employment.

5) The Planning Board shall not grant approval for the following:

a. A Planned Village Development solely for residential use shall not be permitted. Strictly single-family detached residential development shall not be permitted.
b. A Planned Village Development shall not be permitted when municipal services such as water, sewer or other services are not adequate or will not be adequate at the time of completion of the development. Proof of adequacy of municipal services shall be the burden of the developer. The Planning Board shall determine, based on all evidence submitted to it, what constitutes adequate municipal services.
c. A Planned Village Development that does not meet the specified intent of this By-Law.

6.4.14 Conditions. The special permit may be granted with such reasonable conditions, safeguards, or limitations on time or use, performance guarantees, site construction requirements, inspection requirements, and owner/occupancy reporting requirements to satisfy compliance with the special permit. The Planning Board may require additional conditions as it finds reasonably appropriate to safeguard the health, safety, and welfare of the existing neighborhoods and the Town of Upton or otherwise serve the intent of this By-Law.

6.4.15 Change in Plans after Grant of Special Permit. No change in any aspect of the approved plans shall be permitted unless approved by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial. The Planning Board shall hold a public hearing if the proposed change is determined to be substantial, within the provisions of this By-Law.

No land for which a special permit for a Planned Village Development has been granted shall be further subdivided.

6.4.16 Lapse. The special permit shall lapse if a substantial use thereof or construction hereunder has not begun, except for good cause, within 24 months following the filling of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s.17, from the grant thereof) with the Town Clerk.

6.4.17 Appeal. An aggrieved party may appeal a Planning Board decision pursuant to G.L. c. 40A, s.17.

6.4.18 Validity. If any provision of this By-Law is determined to be invalid, it shall not affect the validity of the remaining provisions.

6.4.19 Development Impact Statement. At the discretion of the Planning Board, the submittal of a Development Impact Statement may be required at the expense of the applicant. The Planning Board may deny a special permit when the Development Impact Statement discloses that the proposed use does not comply

with the provisions of this By-Law or would be detrimental to the Town or its citizens. The Development Impact Statement shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Civil Engineer, Registered Surveyor, and a Land Planner, and may include all or some of the following information.

1) Physical Environment
   a. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, locations of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
   b. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

2) Surface Water and Subsurface Conditions.
   a. Describe locations, extent, and types of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
   b. Describe any proposed alterations of shorelines or wetlands.
   c. Describe any limitations imposed on the project by the site's soil and water conditions.
   d. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

3) Vehicle Circulation System
   a. Project the number of motor vehicles to enter or depart the site per average day and during peak hours. Also state the number of motor vehicles to use streets adjacent to the site per average day and during peak hours. Such data shall be sufficient to enable the Planning Board to evaluate: existing traffic on streets adjacent to or approaching the site; traffic generated by or resulting from the site; and the impact of such additional traffic on all ways within and providing access to the site.
   b. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for producing the study shall be attached to the Development Impact Statement.

4) Support Systems
   a. Water Distribution: Discuss the water system proposed for the site, and the means of providing water for fire fighting, and any problems unique to the site.
   b. Sewage Disposal: Discuss the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility.

c. Refuse Disposal: Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
d. Protection Service: Discuss the distance to the fire station, police station, and emergency medical service, and the adequacy of existing equipment and manpower to service the proposed site.
e. Recreation: Discuss the distance to and type of public facilities to be used by the residents of the proposed site, and the type of private recreation facilities to be provided on the site.
f. School System: Project the increase to the student population for nursery, elementary, middle school, and high school levels.

5) Phasing. Where development of the site will be phased over more than one [1] year, indicate the following:
   a. Describe the phasing of the construction with a dated time line with dated milestones.
   b. Describe the approximate size and location of the portion of the parcel to be cleared at any given time and the length of time of exposure.
   c. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.
   d. Describe how the site will be separated into work areas and made safe for workmen and residents.

6) Preparation of Plans. A Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect shall prepare plans, as appropriate, which shall be clearly and legibly drawn in black line on white paper. Dimensions and scale shall be adequate to determine that all requirements are met and to enable complete analysis and evaluation of the proposal. Sheet size shall be as specified in the Planning Board Site Plan Rules and Regulations. If multiple sheets are used, an index sheet showing the entire Planned Village Development, adjacent streets, and abutting properties shall accompany them.

7) Contents of Plans. Contents of Plans shall include:
   a. Plan form and content shall be as specified in the Planning Board's Site Plan Rules and Regulations.
   b. A written statement indicating the estimated time required to complete the proposed project and any and all phases thereof shall accompany the plan. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.
   c. A written summary of the contemplated project(s) shall be submitted with the plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all

land that will become common or public land, and any other evidence necessary to indicate compliance with this By-Law.

d. Storm drainage design and roadways, private and public, must conform to the durability requirements and other requirements of the Town of Upton subdivision rules and regulations, unless another standard is specified by the Planning Board. When in the public interest, and to meet the objectives of this By-Law, alternative road width and other requirements varying from the subdivision rules and regulations may be specified in the granting of a Planned Village Development.

6.5 DRIVE-THRU ESTABLISHMENTS

6.5.1 Purpose and Intent. The purpose of this section is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town of Upton by providing detailed review of the design and layout of drive-thru establishments given the impact upon the character of the Town as well as traffic, utilities and services therein.

6.5.2 Procedures. Drive-thru establishments may only be allowed by special permit from the Planning Board (SPGA) in accordance with the special permit process as set forth in this section as well as Section 9.3 of this zoning By-Law.

6.5.3 Applicability.

1) This section applies to any establishment that intends to include a drive-thru window.
2) Drive-thru establishments are limited to a bank or pharmacy by special permit in the General Business and Commercial-Industrial districts.
3) Drive-thru establishments other than a bank or pharmacy are prohibited in all districts.

6.5.4 Traffic Study. A traffic impact analysis shall be submitted for any proposed drive-thru establishment. A registered professional engineer experienced and qualified in traffic engineering shall prepare the traffic impact study. The study shall contain the following:

1) Existing traffic conditions average daily and peak hour volumes, average and peak speeds, sight distances, accident data for the previous 3 years, and levels of service (LOS) of intersections and streets affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1000 feet of the project boundaries, and shall be no more than 12 months old at the date of application, unless other data is specifically approved by the SPGA.

2) Projected traffic conditions for design year of occupancy shall include: statement of design year of occupancy, average annual background traffic growth, and additions of proposed developments which have already been approved, under construction and /or are pending before a town Board.

3) Projected impacts of the proposed development shall include: Projected peak hour and daily traffic generated by the development on roads and ways in the vicinity of the development; sight lines at the intersections of the proposed access connection and adjacent streets; existing and proposed traffic controls in the vicinity of the proposed development; and the projected post development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development (as defined above).

4) A proposed mitigation plan shall include: A plan (with supporting text) to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, directional signage or other appropriate means; and an interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems. Measures shall be proposed such that all streets and intersections to be impacted by the project shall, at a minimum, have the same Level of Service that existed prior to development.

6.5.5 Standards.

1) Dimensional Requirements: Drive-thru establishments shall have the following minimum dimensional requirements: lot area = 30,000 square feet; lot frontage = 200 feet; lot depth = 150 feet. Separation between access connections on all collector and arterials shall be based on the posted speed limit in accordance with the following table:

Posted Speed Limit (MPH)	***Access Connection Spacing (Feet)***
20	140
30	210
40	280
50	350

The width of the access connections at the front property line of the development shall not exceed 25 feet, unless a landscaped traffic island is used or the traffic impact study identifies and the SPGA agrees to the need for turning lanes to or from the development and the adjacent public road. For a site at an intersection where no alternatives exist, the SPGA may allow construction of an access connection at a location suitably removed from the intersection. In such cases, the applicant shall provide directional restrictions (i.e. right in/right out only and/or a restrictive median) as required by the SPGA.

Any drive-thru service facilities shall be a minimum of one hundred (100) feet from the property line of a residential use.

A leveling area shall be provided, having a maximum one percent (1%) grade for a distance of at least thirty (30) feet. This shall be measured from the nearest exterior line of the intersecting street, to the point of vertical curvature.

The following minimum landscaped buffer shall be provided between the exterior lot lines and any paved areas (except across access connections): Frontage along public ways = ten (10) feet; side and rear yards abutting residential property = twenty-five (25) feet.

2) Stacking Lanes: Drive-thru establishments shall provide a minimum of eight (8) stacking spaces (within the site) before the transaction window. An additional space shall also be provided adjacent to the transaction window.

   Each stacking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width along straight portions. Stacking spaces and stacking lanes shall be a minimum of twelve (12) feet in width along curved segments. Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with the use of one or more of the following: striping, curbing, landscaping and the use of alternative paving materials or raised medians. Entrances to stacking lane(s) shall be clearly marked at least of sixty (60) feet from the intersection with the access connection. The distance shall be measured from the street to the beginning of the entrance.

   Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: separate drive-thru traffic from site circulation traffic, not impede or impair access into or out of parking spaces, minimize conflicts between pedestrian and vehicular traffic by physical and visual separation between pedestrian ways and stacking lanes and driveways, or at the crossing of the two.

   Stacking lanes shall not interfere with required loading and trash storage areas nor impede or impair vehicular movement within stacking lanes. If said separate stacking lane is curbed, an emergency by-pass or exit shall be provided.

   The intersection of stacking lanes and walk-in customer access shall be a minimum of fifty (50) feet from any access connections and/or transaction windows. Said intersections shall be provided with a crosswalk. These crosswalks must be emphasized by enriched paving and striping and include warning signage aimed at both the pedestrian and vehicle.

   Access to and egress from all stacking lanes shall be made within the parking lot not directly from/to a public right-of-way. Stacking lanes shall be integrated with the site circulation pattern

3) The mass, proportion and scale of the building, roof shape, roof pitch, and proportions and relationships between doors and windows should be harmonious among themselves and with those of the surrounding area. Proposed buildings and structures shall be integrated as much as possible with the existing building locations, landscape and terrain. The building's location shall be oriented parallel or perpendicular to the street.

4) Exposed machinery, utility structures and areas for parking, loading, storage, service and disposal shall be screened from adjoining properties and streets.

5) When a drive-thru establishment is proposed on a property with an historic building, the architectural character and defining exterior elements of historic building shall be preserved. Signage should be compatible with the historic character of the building.

6) The landscape shall be preserved in its natural state as much as possible by minimizing tree and soil removal. Abrupt grade changes shall be avoided. Grade changes shall avoid straight lines and should blend into existing topography. All open space shall be landscaped with a variety of native plant material and maintained accordingly.

7) The removal of surface water shall not adversely affect adjoining properties, streets or storm drainage systems nor obstruct circulation of vehicles and pedestrians. For parking areas serving new buildings or expansions to existing parking areas, the performance of surface drainage shall be based on standards set forth in the Planning Board's Subdivision Rules and Regulations.

6.5.6 Compliance.

1) No building permit shall be issued by the Building Inspector for any development subject to this section and no construction or site preparation shall be started, until a decision of the SPGA approving a drive-thru establishment has been filed with the Town Clerk and a special permit has been issued by the SPGA.

2) An As-Built plan, certified by a registered professional land surveyor or engineer shall be submitted to the Building Inspector before the issuance of a permanent occupancy permit. The As-Built plan shall attest to a development's conformity to its approved site/drive-thru plan including traffic mitigation, vehicular and pedestrian circulation, landscaping, buildings, drainage flow, number of parking stalls, and drive-thru standards.

3) No permanent occupancy permit shall be issued for any building subject to this section unless such building and all its related facilities have been completed according to the approved site/drive-thru plan. No permanent occupancy permit shall be issued for more than eighty percent (80%) of the structures or units within a multiple unit development unless the development has been completed according to the approved site/drive-thru plan. No activity subject to drive-thru special permit shall be conducted on the site unless, in the opinion of the Building Inspector, the development or approved phase thereof has been substantially completed according to the approved site/drive-thru plan, and unless the SPGA pursuant to the drive-thru special permit approval procedure reviewed the proposed activity.

4) Any changes in the approved site/drive-thru plan, or in the activity to be conducted on the site shall be submitted to the Board for review and approval.

5) Drive-thru establishments are prohibited from operating in a manner that results in vehicular stacking that interferes with a public way.

SECTION 7.0 – SPECIAL RESIDENTIAL REGULATIONS

7.1 SCHEDULED DEVELOPMENT IN APPROVED SUBDIVISIONS

1) The objective of this Section is to relate the timing of residential development to the Town's ability to provide services to such subdivision development, and thereby to promote the health, safety, convenience and welfare to the inhabitants of the Town, by regulating the maximum rate at which individual developments may proceed.
2) This Section shall take effect only when and if the Building Inspector determines that 44 dwelling units, including units in multi-family complexes have been authorized Town wide within a twenty-four (24) month period.
3) While this Section is in effect, the Building Inspector shall issue building permits for construction of new dwelling units in subdivisions given approval after passage of this Paragraph, only if permit issuance will not result in authorizing construction within a 24 month period of more than 44 units or 20 percent of the units potentially allowed in each subdivision, whichever is greater.
4) Permits shall be issued hereunder for each specific subdivision lot after the date so designated for the lot on a development schedule, which has been approved by the Planning Board and recorded with the subdivision plan, which created the lot. Planning Board approval of a development schedule shall provide that:
   a. The schedule designates for building not more than 44 units or 20 percent of the potential dwelling units in the subdivision, whichever is greater, within the first two years following definitive approval;
   b. In each year thereafter, the schedule permits construction of not more than 22 units or 10 percent of the total number of potential dwelling units in the subdivision, whichever is greater;
   c. In the opinion of the Planning Board, the development sequence established by the schedule is not arbitrary or unreasonable; and
   d. In the opinion of the Planning Board, the development schedule will not place an unreasonable burden on the Town.
5) Units designed for low or moderate income residents of all ages and units receiving or eligible to receive state or federal subsidies shall be exempt for this scheduling by law.
6) Insofar as the subdivision is not exempted by G. L. Ch. 40A s.6 from the provisions of this By-Law, the period of time provided under G. L. Ch. 40A in which a subdivision is not affected by zoning changes is hereby extended during the duration of this By-Law, so as to protect such subdivisions against further changes in use and density requirements.

7.2 TOWNHOUSES AND GARDEN APARTMENTS

7.2.1 General. Townhouses and garden apartments shall be permitted within a Single Residential SRA or SRB District provided that there be the equivalent of fifteen thousand (15,000) square feet of lot area per dwelling unit in a Single Residential SRA District and an equivalent of twenty-five thousand (25,000) square feet of lot area per dwelling unit in an SRB District and provided that there are no more than

eight (8) dwelling units in any one townhouse building and no more than twelve (12) dwelling units in any garden apartment building and subject to the following restrictions:

1) Each dwelling unit shall have two exposures.

2) Each dwelling unit shall have two separate exits.

3) There shall be one off-street parking space of two-hundred fifty (250) square feet per dwelling unit plus one off-street parking space per bedroom over and above that area needed for access roadways and maneuvering to a maximum of three (3) spaces per unit. No more than fifty (50) spaces may be allowed in any one parking lot, each of which shall be adequately screened from view from exterior streets by appropriate landscaping. No parking spaces shall be located within thirty feet (30') of that part of a building containing windows of habitable rooms at the basement or first story level. Unless such rooms are protected from headlight glare by at least a four feet (4'), but not more than five foot (5') high densely planted landscaped strip or fence placed at the periphery of the parking area. Such parking spaces which are screened as above mentioned may be located up to, but not within, ten feet (10') of that part of a building containing habitable rooms at the basement or first story level.

4) Each dwelling unit shall be connected to Town water in a Single Residential SRA District or supplied by a water source as approved by the Town Board of Health in a Single Residential SRB District.

5) In cases of seventy-five (75) dwelling units or more each dwelling shall be connected to a packaged on-site sewage treatment facility as approved by the Town Board of Health and the State Department of Health. Such treatment facility shall be constructed concomitantly with the dwelling units and shall be fully operable before the occupancy of any of the dwelling units. In the case of a single owner of all of the dwelling units, such owner shall be responsible for the maintenance of the treatment plant in a manner prescribed by the State Department of Health. In the case of more than one owner, each owner shall, as a condition of purchase, be required to join a homeowner's association for the purpose of maintaining the treatment plant in a manner prescribed by the State Department of Health, and each owner shall be required to pay a periodic assessment to the association for the maintenance of said sewage treatment plant. The organization of such homeowner's association shall be on file with the Town Clerk along with an annual report including the names and addresses of officers, to be submitted to the Town Clerk by February 15 of each year.

6) There shall be adjacent to the exterior walls of each residential building, except at entrances, at least a three-foot (3') wide area of landscaping.

7) There shall be eight thousand (8,000) square feet of usable common open space per dwelling unit. Usable common open space shall mean areas left substantially in a natural state or improved by landscaping and primarily designed and intended for the active and passive recreation of the occupants of the dwellings. Usable common open space shall not include street right-of-ways, open parking, or service areas, driveways, easements for above-ground utilities, laundry drying areas, required front yards, landscaped area around the buildings or any other land deemed unsuitable by the Planning Board for reasons of excessive slope or poor drainage.

   In case of rental property, the Owner shall assume the responsibility for maintaining the open space. In cases of the sale of individual units, there shall be included in the deed a requirement obligating the purchasers to participate in a non-profit homeowner's association and to support the maintenance of the common open space accessible and available for the purchasers only, by paying assessments to the association. This association may be one and the same as that referred to in sub-section (5) above. In cases of public open space dedicated in fee to the Town, such open space shall be maintained as a public park, accessible to the public. This shall not preclude the Town from refusing to accept such land without a favorable report from the Planning Board.

8) There shall be a satisfactory design and location of collection points for the disposal of garbage and trash, adequately screened for reasons of health and safety, as determined by the Planning Board and the Board of Health.

9) All proposed utilities should be installed underground at the time of initial construction.

10) A site plan prepared in accordance with the provisions of Section 9.4 has been submitted and approved.

11) If there is more than one (1) such structure on a lot of record there shall be at least forty feet (40') between each structure.

12) Each applicant who seeks a special permit from the Zoning Board of Appeals for construction of townhouses or garden apartments shall also file a Definitive Plan with the Planning Board and otherwise comply with all the procedures contained therein for the submission of a Definitive Plan and all design and construction specifications shall apply to all interior streets (considered minor streets unless otherwise designated by the Planning Board), public walkways (sidewalks) and parking areas, the latter to be constructed to the same construction specifications as a street.

7.3 OPEN SPACE RESIDENTIAL DEVELOPMENT

7.3.1 Intent.

The primary objectives of Open Space Residential Development are:

1) To permit greater flexibility and more creative and imaginative design for residential development than is generally possible under conventional zoning;
2) To encourage the permanent preservation and protection of open space, agricultural land, forestry land, wildlife habitat, geological features, and other natural resources including aquifers, water-bodies, and wetlands in a manner that is consistent with the Upton Master Plan and the Upton Open Space & Recreation Plan;
3) To encourage a less sprawling and more efficient form of development that consumes less open space land and conforms to existing topography and natural features better than a conventional or grid subdivision;
4) To minimize the total amount of disturbance on the site;
5) To further the goals of the Upton Master Plan and the Upton Open Space & Recreation Plan;
6) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner;
7) Encourage preservation of stone walls and other historic structures and historic landscapes.

The secondary objectives of Open Space Residential Development are:

1) To preserve and enhance the community's village character;
2) To protect community water supplies;
3) To promote unmet housing needs, including affordable housing and handicap barrier free housing;
4) To enhance recreational opportunities appropriate and accessible to all Upton residents;
5) To promote energy conservation and energy independence.

7.3.2 Special Permit Granting Authority. The Planning Board shall act as the Special Permit Granting Authority for Open Space Residential Development in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for Open Space Residential Development in accordance with the provisions of this Zoning By-Law.

7.3.3 Eligibility.

1) Minimum Size of Tract: To be eligible for consideration as an Open Space Residential Development, the tract shall contain a minimum of ten acres.

2) District Applicability: Only tracts located in an Agricultural-Residential, SRB, SRC, or SRD District shall be eligible for consideration as an Open Space Residential Development.

3) Land Division: To be eligible for consideration as an Open Space Residential Development, the tract may be a subdivision or a division of land pursuant to M.G.L., Chapter 41, Section 81P.

7.3.4 Procedures & Administration.

1) Application Procedure: The application procedure shall consist of the following three steps: pre-application conference to review Scope of Project plans; submission of an application for an Open Space Residential Development Special Permit; and submission of an Open Space Residential Development Definitive Subdivision Plan and associated supporting materials.

2) Administration: Applications shall be filed in accordance with the Sections 7.3.5, 7.3.6 and 7.3.7 of this By-Law as well as in accordance with any special permit regulations of the Planning Board. The Planning Board may adopt additional rules and regulations for the administration of this Zoning By-Law.

The Planning Board shall use the fee structure of the Site Plan Rules and Regulation to assess reasonable administrative fees and technical review fees for the applications for Open Space Residential Development special permits.

An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board.

7.3.5 Step #1: Pre-Application Conference.

1) Conference. The applicant is encouraged to request a pre-application conference at a regular business meeting of the Planning Board. The Planning Board may invite representatives of the Conservation Commission, Board of Health, Historical Commission, Open Space Committee, and the Department of Public Works Director. The purpose of a pre-application conference is to commence discussions with the Planning Board at the earliest possible stage in the development. At the pre-application conference, the applicant may outline the proposed development including both conventional and Open Space Residential Development models, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a special permit application. The Planning Board, at the applicant's expense, may engage technical experts to review the Scope of Project plans of the applicant and to facilitate submittal

of a formal application for a Conventional or Open Space Residential Development Special Permit.

2) Scope of Project Plan. In order to facilitate review of the special permit at the pre-application stage, applicants shall submit the following information:

a. Site Context Map. This map shall illustrate the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it shall show existing infrastructure, various kinds of major natural resource areas, protected areas, trails, or other features that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

b. Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map shall locate and describe noteworthy resources that could be protected through sensitive subdivision layouts. These resources shall include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature woodlands, hedgerows, farmland, unique or special wildlife habitats, trails, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan, the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

3) Site Visit (Optional). Applicants are encouraged to request a site visit by the Planning Board and/or its agents as part of the pre-application process. If a site visit is requested, the Planning Board shall invite representatives of the Conservation Commission, Board of Health, Historical Commission, Open Space Committee, and the Department of Public Works Director.

4) Preliminary Findings. As an integral part of the pre-application process the Planning Board may set forth its preliminary findings pursuant to its review of the Scope of Project Plan. These findings may include but not be limited to suggestions related to the design, building style, open space requirements [location, type and amount], infrastructure requirements, unmet housing needs, or other components related to the anticipated Open Space Residential Development special permit application. At their discretion, the Planning Board may provide a preliminary assessment of the number of conventional lots that could, based on existing information, be permitted in a conventional subdivision. Pre-application findings shall not represent an endorsement of an Open Space Residential Development plan.

7.3.6 Step #2: Special Permit Application.

1) Contents. The application for an Open Space Residential Development special permit shall be accompanied by a Site Plan including all of the plans and information listed below.
   a. A special permit application cover letter form.
   b. A preparation of plans, designer certificate.
   c. A Development Impact Statement, if required by Planning Board.
   d. Site Plan as specified herein this special permit By-Law.
   e. Statement of threshold of development and supporting information pursuant to Section 7.3.8 of this By-Law.
   f. Proposal for ownership and protection of the open space pursuant to Section 7.3.9 of this By-Law.
   g. Payment of any application fee(s) required under the Planning Board's Rules and Regulations for the administration of this By-Law.

2) Site Plan and Phasing.

   Site Plan: An Open Space Residential Development Site Plan shall be prepared by a multi-disciplinary team of which one member must be a certified Landscape Architect, conforming to the provisions this By-Law, all the provisions of the Site Plan Rules and Regulations, and the Town of Upton Site Plan Review Zoning By-Law.

   Phasing: Where development of the site will be phased over more than one year, the plan shall indicate the following:

   a. Describe the phasing of the construction with a dated time line with date milestones.

   b. Describe the approximate size and location of the portion of the parcel to be cleared at any given time and the length of time of exposure.

   c. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.

   d. Describe how the site will be separated into work areas and made safe for workers, town officials, and residents.

3) Development Impact Statement. If the Planning Board determines the scope of the project requires additional information to make an informed decision, the Planning Board may require submittal of a Development Impact Statement at the expense of the applicant. The Development Impact Statement shall describe the impacts of the proposed Open Space Residential Development and compare them to those of a conventional subdivision. The Planning Board may deny a special permit when the Development Impact Statement discloses that the proposed use does not comply with the provisions of this By-Law, or would be detrimental to the Town or its citizens. The Development Impact Statement shall be prepared by an interdisciplinary team including a Registered Landscape Architect or

Architect, a Registered Civil Engineer, Registered Surveyor, and a Land Planner, and may include all or some of the following information:

a. Physical Environment. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, locations of significant viewpoints, stone walls, trees over twenty inches in diameter, trails and open space links, and wildlife habitat. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

b. Surface Water and Subsurface Conditions. Describe locations, extent, and types of existing water and wetlands including vernal pools as defined by Upton Wetland By-Law. Describe existing surface drainage characteristics, both within and adjacent to the site. Describe any proposed alterations of shorelines or wetlands. Describe any limitations imposed on the project by the site's soil and water conditions. Describe the impact upon ground and surface water quality, including estimated groundwater withdrawal and recharge, phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

c. Vehicle Circulation System. Project the number of motor vehicles to enter or depart the site per average day and during peak hours. Also state the number of motor vehicles to use streets adjacent to the site per average day and during peak hours. Such data shall be sufficient to enable the Planning Board to evaluate existing traffic on streets adjacent to or approaching the site; traffic generated by or resulting from the site; and the impact of such additional traffic on all ways within and providing access to the site. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for producing the study, shall be attached to the Development Impact Statement.

d. Support Systems. Describe the water system proposed for the site, impacts to abutters, the means of providing water for fire fighting, and any problems unique to the site. Describe the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility. Describe the distance to the fire station, police station, and emergency medical service, and the adequacy of existing equipment and manpower to service the proposed site. Describe the distance to and type of public facilities to be used by the residents of the proposed site, and the type of recreation facilities to be provided on the site.

4) Public Hearing The Planning Board shall comply with the notice and hearing provisions of M.G.L., Ch. 40A, Section 9 and M.G.L., Chapter 40A, Section 11.

5) Coordination with Other Town of Upton Boards and Commissions. Upon receipt of the application and required plans, the Planning Board shall transmit one copy each to the Board of Selectmen, Board of Health, Conservation Commission, Open Space Committee, Historical Commission, Recreation Commission, Public Works Department, Fire Department, and Police Department for recommendations consistent with the intent of this By-Law. Failure of such boards and officials to make any recommendation within thirty-five days of receipt of the special permit application by such boards and officials shall be deemed lack of opposition to the special permit. The Planning Board shall act on applications according to the procedures specified in M.G.L., Chapter 40A, Section 9.

6) Basis for Approval, and Required Findings and Determinations. The decision of the Planning Board shall be made within ninety days following the close of such public hearing. The required time limit for a public hearing and said action may be extended by written agreement between the petitioner and the Planning Board. A copy of such agreement shall be filed in the office of the Town Clerk as required by M.G.L., Chapter 40A, Section 9. The Planning Board shall file its special permit granting decision with the Town Clerk as required by M.G.L., Ch. 40A, §9.

   Special permits may l be granted by the Planning Board, unless otherwise specified herein, upon its written determination that the proposed development is consistent with the intent of this By-Law, municipal services such as water, sewer or other services are adequate or will be adequate at the time of completion of the development, the dimensional requirements for the open space have been met, the benefit to the Town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site, and all requirements of Section 9.3 of Upton Zoning By-Law are met.

7) Conditions. The special permit may be granted with such reasonable conditions, safeguards, or limitations on time or use, performance guarantees, site construction requirements, inspection requirements, and owner /occupancy reporting requirements to satisfy compliance with the special permit. The Planning Board may require additional conditions as it finds reasonably appropriate to safeguard the health, safety, and welfare of the existing neighborhoods and the Town of Upton or otherwise serve the intent of this By-Law.

8) Changes in Plans after Grant of Special Permit. No change in any aspect of the approved plans shall be permitted unless approved by the Planning Board after public notice and hearing in accordance with the provisions of M.G.L.

Chapter 40A, Sections 9 and 11 and as provided for below in subsection 7.3.7(3), last paragraph.

No land for which a special permit for an Open Space Residential Development has been granted shall be further subdivided.

9) Lapse. The special permit shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, Section 17, from the grant thereof) with the Town Clerk.

10) Appeal. An aggrieved party may appeal a Planning Board special permit decision pursuant to M.G.L, Chapter 40A, Section 17

7.3.7 Step #3: Open Space Definitive Subdivision Plan

1) Preparation of Plans. A Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect shall prepare plans, as appropriate, which shall be clearly and legibly drawn in black line on white paper. Dimensions and scale shall be adequate to determine that all requirements are met and to enable complete analysis and evaluation of the proposal. Sheet size shall be as specified in the Planning Board Site Plan Rules and Regulations. If multiple sheets are used, an index sheet showing the entire Open Space Residential Development, adjacent streets, and abutting properties shall accompany them.

2) Contents of Plans. Plan form and content shall be as specified in the Planning Board's Site Plan Rules and Regulations.
A written statement indicating the estimated time required to complete the proposed project and any and all phases thereof shall accompany the plan.

A written summary of the contemplated project(s) shall be submitted with the plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-Law.

Storm drainage design and roadways, private and public, must conform to state and federal stormwater management guidelines, and to the durability requirements and other requirements of the Planning Board's Subdivision of Land Rules and Regulations, unless another standard is specified by the Planning Board.

When in the public interest, and to meet the objectives of this By-Law, alternative road width and other requirements varying from the Subdivision Rules and Regulations may be specified in the granting of a Open Space Residential Development Special Permit.

3) Relationship Between the Special Permit, Site Plan and Definitive Subdivision Plan. The issuance of an Open Space Residential Development special permit allows the applicant to submit a Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Control Law. Any special permit shall specifically state that the Definitive Subdivision Plan shall substantially comply with the special permit and Site Plan.

A Definitive Subdivision Plan will be considered not to substantially comply with the special permit and/or Site Plan if the Planning Board determines that any of the following conditions exist:

a. An increase in the number of dwelling units and/or building lots;
b. A significant decrease in the open space acreage;
c. A significant change in the lot layout;
d. A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
e. Significant changes to the storm water management facilities;
f. Significant changes in the wastewater management system;
g. Significant change in the potable water supply system.

If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the special permit and/or Site Plan, the Board may disapprove the Definitive Subdivision Plan.

The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the special permit and/or the Site Plan. However, such approval must identify those respects in which the Definitive Subdivision Plan does not substantially comply with the special permit and/or the Site Plan and shall require that the special permit and/or Site Plan be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the special permit and/or the Site Plan.

The public hearing on the application to amend the special permit and/or the Site Plan shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Definitive Subdivision Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the special permit and/or Site Plan.

7.3.8 Design Requirements.

1) General. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing removal of trees, other vegetation, natural features, and soil. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

   Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on the subject parcel and in the neighborhood.

   All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

   The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

2) Overall Threshold of Development. The maximum number of residential units permissible under an Open Space Residential Development shall be determined as part of the special permit application review process. Based on its review and in order to advance the purpose of this By-Law, the Planning Board shall make the following findings:
   a. Open space area and location within the site.
   b. The maximum amount of residential units within the Open Space. Residential Development; not to exceed the number reasonably expected to be permitted in a conventional subdivision.
   c. The minimum dimensional requirements for each dwelling unit lot within the Open Space Residential Development, including minimum frontage, setbacks, and lot shape.

3) Site Development Dimensional Requirements. In order to permit site planning best tailored to the land under consideration, there are no predetermined dimensional requirements except for the following:
   a. The access to a tract of land proposed for an Open Space Residential Development Special Permit shall be a minimum of sixty feet on an existing Town accepted way. The Planning Board may require a greater right of way width.

b. Lots on a street other than a street created by the Open Space Residential Development shall conform to residential lot dimensional regulations set forth in Section 4.2, Table B of the Upton Zoning By-Law.

c. Except as the Planning Board may approve in accordance with subsection 7.3.8.4), last paragraph, below, Open Space requirements for the property proposed for an Open Space Residential Development special permit shall be as follows: no less than 50% of the area of the overall site shall be designated as open space; a minimum of 35% of the overall site shall be upland open space; and upland areas adjacent to wetlands, rivers, streams, and vernal pools shall be incorporated into open space to the greatest extent possible. Wetland areas are as defined by M.G.L., Chapter 131, Section 40, the Upton Wetland By-Law and Upton Wetland By-Law Regulations.

4) Open Space. Open space shall be used solely for wildlife habitat conservation, watershed protection, agriculture, forestry or recreation (see below) purposes. Open space shall generally be contiguous within the Open Space Residential Development and with adjacent permanently protected parcels. Where appropriate, multiple use of open space is encouraged. The proposed use of the open space shall be specified in the special permit application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

To ensure that the designated open space is kept in an open and/or natural state and shall not be built upon, except as provided below, restrictions shall be defined through covenants approved by the Planning Board as part of the special permit process.

Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking and access roads.

Open space for active and/or passive recreational pursuits including but not limited to ball fields, soccer fields, trail systems, parks, etc., that would be transferred to the Town of Upton or a non-profit agency and are accessible to the residents of the Town of Upton shall be acceptable as open space pursuant to this Zoning By-Law.

Open space should generally provide for public access, which would be defined through covenants approved by the Planning Board as part of the special permit process.

A portion of the open space may be used for components of water supply and sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, and enhances the site plan. The Planning Board shall require

adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development.

The Planning Board may accept the off-site location of open space for the purpose of satisfying this Zoning By-Law.

5) Residential Unit Density (Conventional Subdivision). It is the responsibility of the applicant to provide sufficient documentation so that the Planning Board may establish the number of dwelling that would be reasonably expected to be permitted by the Planning Board in a conventional subdivision (the "Basic Maximum Number"). All determinations of residential unit density by the Planning Board shall be final. The required documentation shall include, without limitation, the following:
   a. Soil Analysis: The purpose of the soil analysis is to demonstrate that lots shown in the conventional subdivision layout are suitable for subsurface sewage disposal. The soil analysis shall include an analysis of soil maps and other existing information, a site specific soil survey by a qualified soil scientist, and may include some soil testing. The identified lots shall conform to the regulations for subsurface sewage disposal in accordance with the rules and regulations of the Town of Upton Board of Health and applicable laws of the Commonwealth of Massachusetts. It is not the intent of this By-Law to normally require soil testing for each proposed lot shown on a conventional subdivision layout. The Planning Board may, however, require testing, at the applicant's expense, of a subset of the lots to verify the soil analysis.
   b. A layout for each conventional lot and supporting technical documentation to clearly demonstrate that each conventional lot can also fully comply with all of the applicable laws and regulations pertaining to zoning and subdivision requirements for: sewage disposal, water supply, wetlands protection, storm water management, and roadway construction.
   c. The Planning Board reserves the right to require such further documentation or other evidence, as it deems necessary.

6) Unmet Housing Needs. The Planning Board may allow an increase in the number of dwelling units beyond the Basic Maximum Number to further the goals of this By-Law and satisfy unmet housing needs. The increase shall not, in the aggregate, exceed twenty percent (20%) of the Basic Maximum Number. A density bonus may be awarded as follows:
   a. For every two dwelling units restricted in perpetuity to occupancy by Moderate-Income Households (as determined by the United States Department of Housing and Urban Development for the Standard Metropolitan Statistical Area that includes the Town of Upton), one market rate dwelling unit may be added to the Basic Maximum Number. Such affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and

Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

b. The Planning Board may accept the off-site location of affordable and architectural barrier free housing for the purpose of satisfying the above requirement.

7) Increase in Permissible Density.

a. For every historic structure preserved and subject to a historic preservation restriction, one dwelling unit may be added to the Basic Maximum Number.

b. For each additional ten percent (10%) of the site area over and above the required 50% set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded, if the Planning Board determines such additional set aside would further the objectives of this By-Law. The additional open space shall be at least 65 percent (65%) upland.

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8) Ownership and Protection of Open Space. The open space shall, at the option of the Planning Board, be conveyed by the owner of the land to one of the following entities:

1. The Town of Upton;
2. A nonprofit organization (i.e. Land Trust) the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
3. A corporation or trust owned jointly or in common by the owners of lots within the Open Space Residential Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions that effectuate these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board and shall be subject to Planning Board and Town Counsel review and approval, at the applicant's expense, , and shall thereafter be recorded in the registry of deeds by the corporation or trust. Nothing in this paragraph may be

construed to obligate the Town to undertake or perform any maintenance regarding the open space and facilities.

In addition to the above, any open space, unless conveyed to the Town, shall be subject to a recorded restriction enforceable by the Town Conservation Commission, providing that such land shall be perpetually kept in an open state as provided in the special permit, that it shall be preserved exclusively for the purposes set forth therein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

7.4 SENIOR HOUSING COMMUNITY

7.4.1 Purpose & Intent. The purpose of the Senior Housing Community By-Law is to encourage development that provides alternative housing choices for people that are fifty-five years of age or older. It is the intent of this By-Law to enhance and preserve the rural village character of Upton, to protect open space, to preserve our natural resources and to promote efficient use of the land and infrastructure.

7.4.2 Objectives. The following objectives will apply to all proposed Senior Housing Communities construction in Upton.

1) To establish a procedure whereby each proposal for a Senior Housing Community will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environment.
2) To ensure the Senior Housing Community is developed in accordance with the planning objectives [Master Plan] of the town and at a rate that can be supported by the town services.
3) To encourage the conservation of viable acres of open land, wildlife habitats, historical and natural resources.
4) To encourage and recognize the importance of diversity and variety in the exterior design of structures so that those are specifically designed for and related to special conditions and features of the proposed site.
5) To require builders to use visual space planning to all site development elements, such as parking, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
6) To provide for design review of all proposed Senior Housing Community prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or ground water, traffic congestion or inappropriate site development.

7.4.3 Definitions

1) Assisted Living Facility: Includes the provisions of services geared to an aging adult population which may have difficulty functioning independently and may require oversight including, but not limited to the provisions of a

full meal plan, transportation services, personal care and assistance with medication.

2) Congregate Senior Housing: Means private dwelling units/apartments which may have kitchen facilities within a complex containing central dining and other common areas and is designed for an adult population requiring some supportive services including but not limited to meals, housekeeping, home health and other supportive services.

3) Common Land: Common land shall be an area of land owned and maintained by a homeowners association and used solely for recreational, conservation, agriculture or forestry purpose by residents of the development and/or the public.

4) Dwelling Unit: One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with individual or congregate cooking, living, and sanitary facilities, excluding mobile homes and trailers. The intent of this definition is to define a "home" with private sleeping rooms rather than a dormitory arrangement of sleeping quarters.

5) Impervious Surface: A surface area in which water is not allowed an entrance, which includes but not limited to building footprints, roadways, driveways, and parking lots, etc.

6) Independent Senior Housing: Means private residential dwelling units, individually equipped with a minimum of a kitchen, bedroom, bathroom and living area. Geared toward independently functioning adults, this housing typically does not offer on-site supportive services but is designed to be barrier free and should include emergency call features complemented by housing management and facility maintenance services.

7) Open Space: Open space shall be an area of undeveloped land used solely for conservation and is permanently protected from development by a permanent conservation restriction in accordance with G.L. c.184, s.31. Open space shall not contain any common land.

8) Restorative Care/Skilled Nursing Facility: Includes the provision of service for long-term nursing, convalescent or rehabilitative care; supervision and care incident to advanced age, retirement home care for elderly persons.

9) Additional Terms
   a. Shall: Indicates a mandatory requirement.
   b. Should: Indicates a recommendation or that which is advised but not necessarily required.
   c. SPGA: Special Permit Granting Authority.

7.4.4 Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority for Senior Housing Community in the Town of Upton, and is authorized to hear and decide upon applications for special permits for senior housing communities in accordance with the provisions of this zoning section.

7.4.5 Application in Zoning Districts. A Senior Housing Community, under single ownership or as condominiums, may only be permitted by a special permit in Single Residential SRA, SRB, SRC and SRD Districts and Agricultural Residential Districts where residential uses are permitted by right in accordance with the requirements and regulations of the Town of Upton Zoning By-Laws**.**

7.4.6 Application Procedure. The application procedure consists of two steps:

1) Pre-application review of a conceptual site plan by the Special Permit Granting Authority. To be eligible to apply for a special permit, applicants are required to have submitted a conceptual site plan prepared by a registered landscape architect, a registered architectural architect, and a registered professional civil engineer at a scheduled Planning Board meeting. The conceptual site plan shall include a detailed analysis of site topography, wetlands, unique land features and soil type, site layout and building design. The purpose of this requirement is to help applicants and Town officials develop a better understanding of the property and to help establish an overall design approach that respects the intent of this By-Law.

   Commentary: The pre–application process should not be limited to one meeting, but should be a series of meetings to review and discuss details and options.

2) An application for approval of a senior housing community special permit to the SPGA. Applicants are required to submit a special permit application and site plan, conforming to the requirements of this By-Law, to the SPGA for approval. The application for a senior housing community special permit shall be accompanied by a site plan including all of the plans and information listed below.
   a. The plan or plans shall contain the following: The name of the record owner(s) of the land, the name of the applicant, the name of the registered landscape architect, the name of the registered architectural architect, the name of the registered professional engineer, and the name of the land surveyor who made the plan(s).
   b. An “EXISTING CONDITIONS PLAN” [at a scale of not less than 1” = 100’] showing topography, soil types, watercourses, wetlands and 100-year floodplains, existing streets, all known easements, and structures within and on parcels contiguous to the tract.
   c. An “OVERALL LAND USE PLAN” [at a scale of not less than 1” = 100’] showing the location, ownership, and use of the proposed common

land, the extent of open space, the area of residential use, the maximum number of residential units proposed, and the maximum number of bedrooms, any amenity or recreation area serving the residential uses, and the general layout of all roads and access ways. The "Overall Land Use Plan" shall include a tabulation indicating the total area, upland area, wetlands area, open space area, common land area, all impervious area to be created in the senior housing community and the respective percentage of each area for the entire tract.

d. A "LAYOUT PLAN" for the proposed senior housing community at a scale of not less than 1" = 100' showing the intended location of each residential building, accessory structure and facility, the intended location of all roads and access ways, curb cuts, driveways and approximate finished grades, the proposed location of all recreational areas, proposed improvements and structures on the common land, and methods for providing water and sewerage facilities.

e. A plan or plans showing the proposed grading of the tract and the proposed location, dimensions, materials and type of construction of streets, common drives, parking areas, walks, paved areas, utilities, emergency access ways, easements, and the location and outline of all proposed buildings and structures including, but not limited to dwellings, garages, and any accessory structures thereto. If the proposed senior housing community is to be constructed in separate phases, this plan or plans shall clearly indicate the construction phases proposed.

f. A plan or plans showing the proposed use of common land [whether public or private], including all improvements intended to be constructed thereon.

g. A plan or plans showing in a general way existing vegetation [at a scale of 1" = 100'] and detailed landscaping and planting plans [at a scale of 1" = 100'] for all areas to be disturbed and buffer areas.

h. A perspective plan or plans showing the proposed architecture of the buildings/structures by type and such plan(s) shall include a tabulation of proposed buildings/structures by type [i.e. number of units per building, and number of bedrooms per unit].

i. Copies of all instruments to be recorded with the senior housing community special permit, including the proposed deed(s) for the common land, dispositions of open space, the articles of organization and By-Laws of any corporation or trust to be organized to own the land and the language of all restrictions to be imposed on the land.

j. A management plan for common land to be incorporated in the deed covenants to be executed with purchases of land or other interests in the senior housing community.

7.4.7 Development Impact Statement. At the discretion of the SPGA, the submittal of a Development Impact Statement may be required at the expense of the applicant. The SPGA may deny a special permit where the Development Impact Statement discloses that the proposed use does not comply with the provisions of this By-Law, or would be detrimental to the Town or its citizens. The Development

Impact Statement shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Civil Engineer, Registered Surveyor, and a Land Planner, and may include all or some of the following information.

1) Physical Environment
   a. Describe the general physical conditions of the site, including amounts and varieties of vegetations, general topography, unusual geologic, archeological, scenic and historical features or structures, locations of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
   b. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

2) Surface Water and Subsurface Conditions
   a. Describe locations, extent, and types of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
   b. Describe any proposed alterations of shore lines or wetlands.
   c. Describe any limitations imposed on the project by the site's soil and water conditions.
   d. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

3) Vehicle Circulation System
   a. Project the number of motor vehicles to enter or depart the site per average day and during peak hours. Also state the number of motor vehicles to use streets adjacent to the site per average day and during peak hours. Such data shall be sufficient to enable the SPGA to evaluate (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and providing access to the site.
   b. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the Development Impact Statement.

4) Support Systems
   a. Water Distribution: Discuss the water system proposed for the site, means of providing water for fire fighting, and any problems unique to the site.
   b. Sewage Disposal: Discuss the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility.

c. Refuse Disposal: Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
d. Protection Service: Discuss the distance to the fire station, police station, and emergency medical service, and the adequacy of existing equipment and manpower to service the proposed site.
e. Recreation: Discuss the distance to and type of public facilities to be used by the residents of the proposed site, and the type of private recreation facilities to be provided on the site.

5) Phasing. Where development of the site will be phased over more than one [1] year, indicate the following:
   a. Describe the method to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiled. Describe the approximate size and location of portion of the parcel to be cleared at any given time and the length of time of exposure.

   b. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.

7.4.8 SPGA - Rules and Regulations. The SPGA shall adopt reasonable rules and regulations for the administration of this section, which may be amended from time to time. Such regulations shall include a schedule of fees, site construction requirements, inspection requirements, and owner/occupancy reporting requirements to satisfy compliance with the age restriction, as well as such other items as the SPGA deems necessary including the following:

1) SPGA-Public Hearing. The SPGA shall hold a public hearing and shall file its decision with the Town Clerk as required by G.L. c. 40A, s.9.

2) Approval. The SPGA may grant a special permit for a senior housing community if it determines that all the requirements under the By-Law have been met and such use will not be detrimental to the public good.

3) Upon receipt of the application and required plans, the SPGA shall transmit one copy each to the Board of Health and Conservation Commission. Within 45 days of their receipt of the application/plans, these agencies shall submit any recommendations to the SPGA. The SPGA shall act on applications according to the procedures specified in G.L. c. 40A, s.9. Notice shall be provided of hearings in accordance with G.L. c. 40A, s.11.

   Commentary: Compliance with the time frame requirements of Chapter 40A are necessary in order to prevent constructive grants.

4) The SPGA may impose special permit conditions as a condition of approval such as site construction requirements, inspection requirements, and owner / occupancy reporting requirements to satisfy compliance with the age restriction. The SPGA may require additional conditions as it finds reasonably appropriate to safeguard the health, safety, and welfare of the existing neighborhoods and the Town of Upton or otherwise serve the purpose of this By-Law.

5) The SPGA may approve the special permit application with a condition of approval from the Board of Health and Conservation Commission.

6) Change in Plans After Grant of Special Permit**.** No change in any aspect of the approved plans shall be permitted unless approved in writing by the SPGA. A new or amended special permit will be required if the SPGA determines any proposed change to be substantial. The SPGA shall hold a public hearing if the proposed change is determined to be substantial, with the provisions of this By-Law.

7) No land for which a special permit for a senior housing community has been granted shall be further subdivided.

7.4.9 Optional Incentive Provisions. The SPGA may approve density bonuses pursuant to one or more of the following provisions, provided, however, that in no case shall the density bonus be greater than a 15% increase in the number of bedrooms permitted in the applicable senior housing community.

1) Affordable Option**.** A density bonus may be permitted when the proposed community provides affordable housing opportunities consistent with the Upton Local Housing Partnership Policy Plan. For each affordable housing unit provided under this section, four additional bedrooms may be permitted subject to the 15% limitation expressed in Section 7.4.9. Affordable units shall be developed concurrently with the market rate units in the development. The affordable units must be subject to use restrictions of a substantial duration to ensure that the units remain available exclusively to persons with qualifying income.

2) Recreational Space Option. A density bonus may be permitted when the proposed community provide for public access to recreational facilities and/or recreational fields within the community or when they are deeded to the municipality. For every 5 acres of land that is donated to the municipality or open to public use, four additional bedrooms may be permitted subject to the 15% limitation expressed in Section 7.4.9. Recreational space that is open to public use shall be accessible from a public way and adequate parking shall be provided to meet anticipated demand.

3) Open Space Option. A density bonus may be permitted when the proposed community provides additional open space. For every 5 acres of land that is

donated to the municipality or land trust, four additional bedrooms may be permitted subject to the 15% limitation expressed in Section 7.4.9.

4) Provision for off-site locations. The SPGA may accept the off-site location of affordable housing, recreational space, or open space for the purpose of satisfying the optional incentive provisions.

7.4.10 Standards.

1) Independent Senior Housing. As used by this By-Law, Independent Senior Housing means private residential dwelling units, individually equipped with a minimum of a kitchen, bedroom, bathroom and living area. Geared toward independently functioning adults, this housing typically does not offer on-site supportive services but is designed to be barrier free and should include emergency call features complemented by housing management and maintenance services.

2) Congregate Senior Housing. As used in this By-law, Congregate Senior Housing means private dwelling units/apartments which may have kitchen facilities within a complex containing central dining and other common areas and is designed for an adult population requiring some supportive services including, but not limited to meals, housekeeping, home health and other supportive services. Congregate Senior Housing under this section of the By-Law shall obtain all required permits and/or licenses that are required to operate such facilities by the Commonwealth of Massachusetts and the Town of Upton.

   The standards for this By-Law section shall be the same as Independent Senior Housing except where stated otherwise.

   Exceptions

   a. Building & Dwelling Requirements (SEE Section 7.4.18) can be waived or modified.

3) Assisted Living Facility Defined. As used in this By-law, an Assisted Living Facility means a twenty-four hour staff along with private dwelling units which may contain independent efficiency kitchens, but which facility contains a common kitchen, dining and other activity areas. Assisted Living facilities are geared to an adult population which may have difficulty functioning independently and may require oversight including, but not limited to the provisions of a full meal plan, transportation services, personal care and assistance with medication. Special care programs specifically designed for adults with memory loss are included in this category. Assisted Living Facility under this section of the By-Law shall obtain all required permits and/or licenses required to operate such a facility by the Commonwealth of Massachusetts and the Town of Upton.

The standards for this By-Law section shall be the same as the By-Law section for Independent Senior Housing except where stated otherwise.

Exceptions

a. Building & Dwelling requirements (SEE Section 7.4.18) can be waived or modified.
b. Parking Area requirements (SEE Section 7.4.20) can be waived or modified.

4) Restorative Care/Skilled Nursing Facility Defined. Restorative Care/Skilled Nursing Facility includes any institution which provides services primarily to three or more individuals admitted thereto with long-term nursing, convalescent or rehabilitative care; supervision and care incident to old age; or retirement home care for elderly persons and include services provided by nursing homes, convalescent homes, long term facilities, rest homes, infirmaries for older adults, charitable homes for the aged. Restorative care/Skilled Nursing Facility under this By-Law shall obtain all applicable permits and licenses required by the Commonwealth of Massachusetts and the Town of Upton.

The standards for this By-Law section shall be the same as the By-Law section for Independent Senior Housing except where stated otherwise.

Exceptions

a. Occupancy Restriction requirements (SEE Section 7.4.11) can be waived or modified.
b. Building & Dwelling requirements (SEE Section 7.4.18) can be waived or modified.
c. Parking Area requirements (SEE Section 7.4.20) can be waived or modified.

7.4.11 Occupancy Restrictions. The following provisions are intended to ensure that the dwelling units in Independent Senior Housing are used as residences for persons of fifty-five years of age and older.

1) Each dwelling unit in an Independent Senior Housing Community shall be subject to a recorded deed restriction limiting occupancy to at least one person 55 years of age or older.

2) Individuals under the age of 18 or guests may not reside in a dwelling unit in an Independent Senior Housing Community for more than six [6] months in a twelve [12] month time period.

3) In the event of the death of the qualifying occupant of a unit, or foreclosure or other involuntary transfer of a unit in an Independent Senior Housing

Community, a two-year exemption shall be allowed to facilitate the transfer of the unit to another eligible household.

7.4.12 Site Dimensional Requirements.

1) The tract of land for an Independent Senior Housing Community shall contain at least five [5] acres and shall have at least one hundred [100] feet of frontage on an existing Town accepted way.
2) A 100-foot screened buffer zone consisting of landscaped or natural vegetation shall encompass the entire perimeter of the development site.
3) Upon finding by the SPGA that a buffer zone of lesser width would be sufficient to visually screen and/or separate the Independent Senior Housing Community from adjacent property, the SPGA may waive and/or alter the buffer zone requirement. The SPGA may require no-cut easements, conservation restrictions or the like where the buffer zone has been reduced.

7.4.13 Density.

1) The residential density in an Independent Senior Housing Community shall not exceed six bedrooms per acre of developable area, and shall contain no more than two hundred [200] bedrooms except when optional incentive provisions have been applied. For the purpose of this computation, the developable area shall be the total area of the tract, including the common land, but excluding all listed non-buildable areas as provided under section 7.4.14.

2) The total area of dwelling unit footprints, garages, accessory buildings, and all other impervious surfaces shall not exceed 20% of the site area, except when optional incentive provisions have been applied.

7.4.14 Usable Land. Developable area shall be calculated by a registered civil engineer and/or registered land surveyor and shall not include any of the following.

1) Land within a 100-year floodplain as defined by G.L. c. 131, s.40.
2) Fresh water wetlands as defined by G.L. c. 131, s.40.
3) Land having a slope greater than 20%.
4) Land subject to conservation restrictions that prohibit development.
5) Land subject to any local and/or state law or regulation, right of way, public or other restriction, which prohibits development.
6) Land recorded with open space restrictions.

7.4.15 Open Space. A minimum of 25% of the development site shall be dedicated to open space and shall be clearly delineated and defined on the "Overall Land Use Plan" of each application. It is the intention of this section that open space should generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state. The minimum required area of open space shall consist of no more than 30% wetlands

as defined in G.L. c. 131, s.40. Land comprising the buffer zone under section 7.4.12 shall not count toward this open space requirement.

7.4.16 Common Land. The common land shall be dedicated and used for conservation, recreation, park purposes, outdoor education, agriculture, horticulture or forestry, or for any combination of such use. Common land shall be planned as large and contiguous whenever possible. Common land may be set aside in more than one parcel provided that the size, shape, and location of such parcel are suitable for the designated use. Strips or narrow parcels of common land shall be permitted only when necessary for access, or if the SPGA finds that a vegetation buffer strip along the site's perimeter is appropriate and consistent with the purpose of the Senior Housing Community By-Law.

7.4.17 Recreational Space. Suitable recreational space for the Independent Senior Housing Community should be provided. Such areas should be suitable for a site of an active recreational facility. Such recreational areas should be contiguous to the open space or may be separately located.

7.4.18 Building & Dwelling Requirements. In an Independent Senior Housing Community the following Building & Dwelling requirements shall apply:

1) Dwelling units in an Independent Senior Housing Community may be attached, detached, or a combination of these types.

2) No building shall contain more than eight [8] bedrooms.

3) No dwelling unit shall contain more than two [2] bedrooms.

4) Buildings shall not exceed 2-1/2 stories and/or thirty feet [30'] in height.

5) In an Independent Senior Housing Community, the following setbacks requirements shall apply.

6) All buildings must be located a minimum of thirty feet [30'] from other structures within the Independent Senior Housing Community.

7) All buildings must be located a minimum of thirty feet [30'] from an interior roadway and driveway, which are not considered accepted public way.

8) All buildings must be located a minimum of one hundred feet [100'] from any side or rear site lot line from any off-site private or public way.

9) Upon finding by the SPGA that a setback of lesser width would be sufficient to visually screen and/or separate the Independent Senior Housing Community from adjacent property, the setback may be reduced. The SPGA may require no-cut easements, conservation restrictions or the like where the setback has been reduced.

7.4.19 Water & Sewage Services. Each dwelling unit in a Single Residential SRA and SRB District shall be connected to the municipal water system. Each dwelling unit in a Single Residential SRC and SRD District and Agricultural Residential District under this By-Law shall be supplied by a water source approved in writing by the Board of Health and by the Director of Public Works.

Each dwelling unit in a Single Residential SRA and SRB District shall be connected to a municipal wastewater treatment system. Each dwelling unit in a Single Residential SRC and SRD District and Agricultural Residential District shall be connected to a municipal wastewater treatment system, as agreed to in writing by the Director of Public Works, or to an on-site sewage treatment facility, as approved in writing by the Board of Health and under state law, where applicable.

If an on-site sewage treatment facility is used, the owner(s) shall have complete responsibility for maintenance and operation of the facility. If individual units are sold, each owner shall, as a condition of purchase, be required to join a homeowner's association or a condominium trust for the purpose of maintaining the treatment plant in a manner prescribed by the Massachusetts Department of Environmental Protection, and approved by the Board of Health.

Commentary: The Town of Upton at the discretion of the DPW Director and the Board of Health may provide testing, maintenance and service work for a fee.

For proposals where neither the municipal water system nor the municipal wastewater treatment system is to be used, a coordinated water supply/sewage treatment facility plan must be submitted to, and approved in writing by, the Board of Health and when required by the Massachusetts Department of Environmental Protection

7.4.20 Parking Area. There shall be provisions for one and one half [1.5] parking spaces per bedroom, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.

7.4.21 Landscaping. Suitable landscaping materials shall be placed along site property lines to provide screening if there is no suitable natural growth in these areas. No solid fences shall be allowed along site property lines.

7.4.22 Rubbish. The owner, or homeowners association, or condominium trust shall provide rubbish disposal. There shall be a satisfactory design and location of collection points for the disposal of rubbish. Provisions for adequate screening shall be determined by the SPGA.

7.4.23 Illumination. All outdoor lighting shall be directed away from adjoining property. Streetlights should be installed within the Independent Senior Housing

Community with best engineering practices and be of the type and style that matches the architectural style of the community.

7.4.24 Accessory Buildings & Structures.

1) Accessory buildings and structures for the use of residents of the Independent Senior Housing Community and their guests may be permitted, including garages, clubhouses, swimming pools, tennis courts, cabanas, and maintenance structures.
2) Accessory buildings and structures shall be shown on the site development plan and shall not be constructed within designated open space.

7.4.25 Maintenance. The owners of the dwelling units within the Independent Senior Housing Community shall be responsible for the maintenance of all common elements and facilities owned by and serving the residents of the Independent Senior Housing Community and an organization of owners or condominium trust shall be established to carry out these maintenance responsibilities. Such homeowner's association or condominium trust shall file an annual report including the names and addresses of its officers, with the Town Clerk by February 15th of each year.

The special permit shall be conditional on the SPGA approval of the declaration of homeowners trust.

7.4.26 Validity. If any provision of this By-Law is determined to be invalid, it shall not affect the validity of the remaining provisions.

7.5 LARGE LOT FRONTAGE REDUCTION, SPECIAL PERMIT

7.5.1 Intent. The intent of this large lot frontage reduction is to permit greater flexibility and more creative and imaginative design for the development of residential areas than is generally possible under conventional zoning provisions. It is further intended to promote more economical and efficient use of the land, while preserving the natural environment and scenic qualities of open space which otherwise might be lost.

Commentary: The Planning Board may grant by special permit the right to build on a large parcel that has insufficient frontage by right to build on but is large enough to create a subdivision with a road and multiple lots.

7.5.2 Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority for large lot frontage reduction in the Town of Upton and is authorized to hear and decide upon applications for special permits for large lot frontage reduction in accordance with the provisions of this zoning section.

7.5.3 Application in Zoning Districts. A residential lot with reduced frontage may only be permitted by a special permit in all residential districts where residential use is

permitted by right in accordance with the requirements and regulations of the Town of Upton Zoning By-laws.

7.5.4 Application. Applicants are required to submit a special permit application and site plan, conforming to the requirements of this By-Law, to the Planning Board for approval.

1) Contents of special permit application: The application for a large lot frontage reduction special permit shall be accompanied by a site plan including all of the information listed below.
   a. A special permit application.
   b. A site plan shall conform to the latest ANR (81-P) drawing requirement that the Town of Upton has.

7.5.5 Public Hearing. The Planning Board shall hold a public hearing and shall file its decision with the Town Clerk as required by G.L. c. 40A, s.9

7.5.6 Approval. Upon receipt of the application and required plan, the Planning Board shall transmit one copy each to the Board of Health and Conservation Commission. Within 45 days of their receipt of the application/plan, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedures specified in G.L. c. 40A, s.9. Notice shall be provided of hearings in accordance with G.L. c. 40A, s.11.

Commentary: Compliance with the time frame requirements of Chapter 40A is necessary in order to prevent constructive grants.

Special permits shall be granted by the Planning Board, unless otherwise specified herein, only upon its written determination that the benefit to the town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

Specific Criteria:

1) The parcel has a minimum of seventy [70] feet of frontage along a public way;
2) The parcel contains a minimum of three times [3x] the land area it would normally require in each district;
3) A sixty-five [65] foot diameter circle must be able to pass from the frontage through to the front building line without touching a side lot line;
4) The front set back dimensional requirement shall be increased by a factor of three [3x], all other dimensional requirements of the districts in which the parcel is located shall apply;
5) The parcel shall be accessed from its frontage only.

In addition to any specific criteria that may be set forth in this By-Law, the determination shall have consideration of each of the following:

1) Adequacy of vehicular and pedestrian traffic safety on and off the site;
2) Adequacy of utilities and other public services;
3) Impacts on the natural environment.

7.5.7 Conditions. The special permit may be granted with such reasonable conditions, safeguards, or limitations on use, including performance guarantees, site construction requirements, inspection requirements, and owner / occupancy reporting requirements to satisfy compliance with the special permit. The Planning Board may require additional conditions as it finds reasonably appropriate to safeguard the health, safety, and welfare of the existing neighborhoods and the Town of Upton or otherwise serve the purpose of this By-Law.

7.5.8 Change in Plans After Grant of Special Permit. No change in any aspect of the approved plans shall be permitted unless approved in writing by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial. The Planning Board shall hold a public hearing if the proposed change is determined to be substantial, with the provisions of this By-Law.

No land for which a special permit for a large lot frontage reduction has been granted shall be further subdivided or be granted additional zoning waivers.

7.5.9 Lapse. The special permit shall lapse if a substantial use thereof or construction hereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval [plus such time required to pursue or wait the determination of an appeal referred to in G.L. c. 40A, s.17, from the grant thereof] with the Town Clerk.

7.6 ACCESSORY APARTMENTS

7.6.1 Purpose and Intent. It is the purpose of this By-Law to provide small additional dwelling units specifically intended for property owner family members, family au pair providers or family health care providers without adding to the number of buildings in the Town.

7.6.2 Special Permit Granting Authority. Accessory apartments may only be allowed by special permit from the Board of Appeals in accordance with the special permit process as set forth in this section as well as Section 9.3 of this Zoning By-Law.

7.6.3 Procedures.

1) Applications shall be filed in accordance with the rules and regulations of the Zoning Board of Appeals. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Zoning Board of Appeals.

2) The Zoning Board of Appeals shall hold a public hearing as required by M.G.L., Chapter 40A, s.11.
3) The Zoning Board of Appeals shall file its decision with the Town Clerk as required by M.G.L., Chapter 40A, s.9.
4) The special permit decision may be appealed pursuant to G.L., Chapter 40A, s.17 and filed within twenty days after the date the decision notice was filed with the Town Clerk.
5) No special permit, or any extension, modification or renewal thereof, can take effect until a copy of the decision bearing the certification of the Town Clerk is recorded in the registry of deeds.
6) The special permit shall lapse if a substantial use thereunder has not begun within twenty-four months following the filing of the special permit approval with the Town Clerk; provided, however, if before the expiration of the twenty-four months, the Zoning Board of Appeals finds that there is good cause for such lack of substantial use, the Zoning Board of Appeals may extend the permit.

7.6.4 Criteria. The Zoning Board of Appeals may grant a special permit for an accessory dwelling unit if it determines that all the requirements set forth in this By-Law have been met and such use will not be detrimental to the public good, the determination shall include consideration of each of the following criteria:

1) Occupancy. Occupancy shall be limited to the owner of the property and no more than four family members related to the homeowner by blood, adoption or marriage; or au pair providers; or health care providers. An affidavit from the owner shall be provided stating that occupation of the accessory apartment will be limited to family members; au pair providers; or health care providers. An affidavit shall be provided stating that one of the two dwelling units shall be occupied by the owner of the property. For the purpose of this subsection, the "owner" shall be one or more individuals who constitute a family, who hold title to the dwelling, and for whom the dwelling is the primary residence for voting purposes.

2) Plans. A plot plan of the existing dwelling unit and proposed accessory apartment shall be submitted to the SPGA showing the location of the building on the lot, the proposed accessory apartment, location of any septic system and the required parking.

3) Physical Size. The accessory apartment shall not exceed one thousand (1,000) square feet in floor space with no more than two bedrooms and shall be located in or attached to the principal residential structure on the lot.

4) Number of Units. No more than one accessory apartment may be established on a lot.

5) Services. The Board of Health may issue a recommendation as to the suitability of the disposal of sewage, waste and drainage generated by the occupancy of the accessory apartment. In addition, no special permit shall

be granted without a condition that the accessory apartment shall conform to the provisions of Title V of the Sanitary Code, 310 CMR 15.00.

6) Building Exterior. The external appearance of the building in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family building. All stairways to upper floors shall be enclosed within the exterior wall of the building. There shall be no enlargement or extension of the building except for the accessory apartment itself and minimal additions necessary to comply with building, safety or health codes, handicap accessibility (if needed), or the enclosure of an entryway or stairway. Any new exterior entrance shall be located on the side or rear of the building.

7) Off-Street Parking. There shall be at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the accessory apartment dwelling unit. No parking spaces shall be located within the boundary of a street right of way. In no case shall parking spaces which are more than two spaces deep be considered in computing the required number of parking spaces. Said parking space(s) shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.

7.6.5 Decision. Special permits for an accessory apartment may be granted by the SPGA upon a finding that the construction and occupancy of an apartment will not be detrimental to the neighborhood in which the subject property is located and after consideration of all criteria set forth in this By-Law subsection as well as Section 9.3 of this Zoning By-Law.

7.6.6 Conditions. Accessory apartments shall be subject to the following conditions in addition to any other conditions that may be provided for in the special permit:

1) The ownership of an accessory apartment dwelling unit shall not be conveyed or otherwise transferred separately from the principal dwelling.
2) The Code Enforcement Officer may, in addition to other remedies, order removal of the separate kitchen facilities, equipment or fixtures that were made or installed to create such unit, if the unlawful use of such unit is discovered.
3) The applicant for a special permit shall file with the Zoning Board of Appeals such plans, specifications and other information concerning the unit and its proposed use as the Board may require by general rule or request to the applicant.
4) Except as provided herein, all requirements of single residential districts and the agricultural residential district apply as provided in the Town of Upton Zoning By-Laws.

7.6.7 Duration. The special permit shall expire after five years. The special permit shall be renewed by the SPGA without a public hearing if the special permit holder submits an affidavit to the SPGA prior to such expiration indicating that

there has been no change in circumstances with regard to the accessory apartment.

7.6.8 Grandfathering. Accessory apartments permitted or allowed by variance at the time of adoption of this By-Law subsection are exempt from these provisions.

SECTION 8.0 – SPECIAL DISTRICT REGULATIONS

8.1.1 Overlay District

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Upton designated as Zone A and AE, on the Worcester 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 Worcester County FIRM that are wholly or partially within the Town of Upton are panel numbers 25027C0832E, 25027C0834E, 25027C0842E, 25027C0844E, 25027C0851E, 25027C0855E, 25027C0858E, 25027C0861E, 25027C0862E, 25027C0863E, 25027C0864E, 25027C0866E, 25027C1026E and 25027C1030E dated July 4, 2011. 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 Worcester County Flood Insurance Study (FIS) report dated July 4, 2011. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Building Inspector.

8.1.2. In the floodway designated within the Town of Upton on the Worcester County Flood Insurance Rate Maps, the following provisions shall apply:

1) All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

8.1.3 Base Flood Elevation and Floodway Data

1) **Floodway Data**. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2) **Base Flood Elevation Data**. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

8.1.4 Notification of Watercourse Alteration

In a riverine situation, the Planning Board Clerk shall notify the following of any alteration or relocation of a watercourse:

1) Adjacent Municipalities

2) NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104

3) NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

8.1.5 Reference to Existing Regulations

The Floodplain District is established as an overlay district to all other districts. 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:

1) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");

2) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

3) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

4) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

8.1.6 Other Use Regulations

In Zone AE, along watercourses that have a regulatory floodway designated within the Town of Upton on the Worcester County FIRMs encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

1) All subdivision proposals must be designed to assure that:
a. such proposals minimize flood damage;

b. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
c. adequate drainage is provided to reduce exposure to flood hazards.

SECTION 9.0 - ADMINISTRATION AND PROCEDURES

9.1 ADMINISTRATION

9.1.1 Permits. This By-Law shall be administered by the Building Inspector. Pursuant to the State Building Code, the Building Inspector may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning and after all necessary permits have been received under federal, state, or local law.

9.1.2 Enforcement. The Building Inspector shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.

9.1.3 Penalties. The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be three hundred dollars ($300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

9.2 BOARD OF APPEALS

9.2.1 Establishment. There shall be a Board of Appeals consisting of three persons, inhabitants of the Town. The Board of Selectmen shall appoint the members. They shall hold office for a term of three years, except that, when the Board is first established hereunder, one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; and one member shall be appointed for a term of three years. The Board of Selectmen shall also appoint three persons, inhabitants of the Town, associate members of said Board of Appeals, who shall hold office for a term of three years, except that, when associate members are first appointed hereunder, one shall be appointed for a term of one year; one shall be appointed for a term of two years; and one shall be appointed for a term of three years. In case of vacancy, inability to act, or interest on the part of any member of the Board of Appeals, an associate member shall take his place.

9.2.2 Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

1) To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.

2) To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10.

3) To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.

4) To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

9.2.3 Regulations. The Board of Appeals may adopt rules and regulations for the administration of its powers.

9.2.4 Fees. The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

9.3 SPECIAL PERMITS

9.3.1 Special Permit Granting Authority. Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

9.3.2 Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1) Social, economic, or community needs which are served by the proposal;

2) Traffic flow and safety, including parking and loading;

3) Adequacy of utilities and other public services;

4) Neighborhood character and social structures;

5) Impacts on the cultural, historical, and natural environments; and

6) Potential fiscal impact, including impact on town services, tax base, and employment.

9.3.3 Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

9.3.4 Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

9.3.5 Plans. Unless otherwise provided the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 9.4, herein. The provisions of this Section 9.4 should not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two-family structure. The SPGA shall establish procedures governing such applications by regulation.

9.3.6 Regulations. The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

9.3.7 Fees. The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

9.3.8 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s.17, from the grant thereof) with the Town Clerk.

9.4 SITE PLAN APPROVAL

9.4.1 Applicability. Except when conducted in relation to a special permit, site plan review and approval, when applied to a by right use, is an administrative process. The following types of activities and uses require site plan review by the Planning Board:

1) Construction, exterior alteration or exterior expansion of a two thousand (2000) square feet or greater area, or change of use within a municipal, institutional, commercial, industrial, or multi-family structure with four or more dwelling units.

2) Construction or expansion of a ten (10) car parking lot containing or that will contain 10 or more vehicle spaces for a municipal, institutional, commercial, industrial, or multi-family structure or purpose.

3) Personal Wireless Facility as provided for in Section 6.2.

4) Exception: Any construction, alteration, demolition, or removal of a structure that is considered routine maintenance or that does not result in a substantial change in appearance shall be exempt from these requirements.

9.4.2 Procedure. Applicants for site plan approval shall submit an application with ten (10) copies of the site plan to the Planning Board for review. A copy of the submitted site plan will be forwarded to the Board of Health, Conservation Commission, Public Works Department, Fire Department, Police Department, and Code Enforcement Department for their advisory review and comments. The Planning Board will also submit a copy of the site plan to the Town Clerk for public review. If comments from town departments are not received within 45 days of filing with the Planning Board it is deemed no opposition.

1) A site plan approval process requires a public hearing., within 90 days of filing the application. The applicant must provide the Planning board with an abutters list and must furnish notice of the proposed project to all abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the proposed project. The applicant will be responsible for sending this notice via United States Postal Service Certified Mail return receipt requested at his/her expense. All return receipts shall be submitted to the Planning Board at the opening of the scheduled public hearing. A minor change to an approved site plan does not require a public hearing, but requires approval of the Planning Board. The difference between a site plan review and a minor change to an approved site plan shall be stated in the Site Plan Rules and Regulations, as amended.

2) The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within 120 days of its receipt, and send notice of the decision to the applicant and file the decision with the Town Clerk. The decision of the Planning Board shall be upon the majority of the members of the Planning Board and shall be in writing. At the written request of the applicant, and with the concurrence of the Planning Board, the 120-day period may be extended.

3) No building permit or certificate of occupancy shall be issued by the Code Enforcement Department without the written approval of the site plan by the Planning Board, unless 120 days lapse from the date of the submittal of the site plan without final action by the Planning Board or an extension of such time has been granted.

4) An application for a building permit to perform work as set forth in Section 9.4.1, available as of right, shall be accompanied by an approved site plan.

5) An application for a special permit or a variance to perform work, as set forth in Section 9.4.1 shall be accompanied by an approved site plan. In the alternative, any special permit or variance granted for work set forth in Section 9.4.1 shall contain the following condition: The work described herein requires the approval of a site plan by the Planning Board pursuant to Section 9.4.1 of the Zoning By-Law. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.

6) Where the Planning Board approves a site plan with conditions, and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

7) Where the Planning Board serves as the Special Permit Granting Authority for proposed work, it shall consolidate its site plan review and special permit procedures.

8) In addition to the requirements of this section, a site plan shall contain information specified in accordance with any Site Plan Rules and Regulations adopted by the Planning Board.

9) No deviation from an approved site plan shall be permitted without modification thereof.

9.4.3 Preparation of Plan. Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board. A Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect shall prepare plans, as appropriate. Dimensions and scale shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal.

9.4.4 Content of Plan. The content of the plan shall comply with the Site Plan Rules and Regulations adopted by the Planning Board, as amended from time to time.

9.4.5 Waiver of Technical Compliance. Upon a written request from the applicant, the Planning Board, where such action is in the public interest and not inconsistent with the intent and purpose of this section and its Rules and Regulations, may waive requirements of submitting a full site plan. Such determination may be made by an affirmative vote of not less than three (3) members of the Planning Board.

9.4.6 Approval. Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building

construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provisions for utilities and storm-water drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New buildings construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of the building form, grading, egress points, and other aspects of the development, so as to:

1) Minimize the volume of cut and fill, the length of removed stone walls, the number of large trees removed, the area of wetland vegetation displaced, the extent of storm-water flow increase from the site, soil erosion, and the threat of air, water, and noise pollution;

2) Maximize pedestrian and vehicular safety both on-site and egressing from it;

3) Minimize obstruction of scenic views from publicly accessible locations;

4) Minimize visual intrusion by controlling the visibility of parking and loading, signage, storage, or other outdoor service area viewed from public ways or premise residentially used or zoned;

5) Minimize glare from headlights and lighting intrusion;

6) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

7) Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premise involving the use, storage, handling, or containment of hazardous substances;

8) To provide adequate landscaping, screening and buffer areas;

9) Certification that the proposal is in compliance with the provisions, if applicable, of the American with Disabilities Act and the Massachusetts Architectural Barriers Board.

9.4.7 Period of Validity. Site Plan approval lapses if it is not exercised within two (2) years of the date on which the Planning Board decision is filed with the Town Clerk. Any lapsed Site Plan approval and any major amendment to the plan submitted in the original review process will require a new application and approval by the Board.

9.4.8 Rules and Regulations. The Planning Board may adopt and from time to time amend reasonable rules and regulations for the administration of this Site Plan By-Law. The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

9.4.9 Appeal. In the event of an unfavorable decision, the applicant may appeal the decision through the building permit process via the Zoning Board of Appeals and ultimately to a court of competent jurisdiction.

9.5 PLANNING BOARD ASSOCIATE MEMBER

9.5.1 The Planning Board, when it is sitting as the Special Permit Granting Authority, shall consist of five members and one associate member. The Planning Board chairman may designate an associate member to sit on the Board for purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest of a regular member, or in the event of a vacancy on the Planning Board until said vacancy is filled in a manner provided under G.L. c. 41, s.81A.

9.5.2 The Associate Member shall be a registered voter in the Town of Upton and shall be appointed by the majority vote of the Selectmen and the Planning Board. The term of Associate Member shall be two years.

SECTION 10 – DEFINITIONS

In this By-Law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the By-Law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this By-Law.

Access: A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

Access Connection: Any driveway, street, curb cut, turnout or other means of providing for the movement of vehicles to or from the public/private roadway network

Access Connection Spacing: The distance between access connections, measured along the edge of the pavement of the public/private roadway.

Accessory Apartment: A separate dwelling unit complete with its own cooking and sanitary facilities and functioning as a separate unit, and contained within a building that contains a single-family dwelling. Additions, renovations and all construction shall meet the requirements of the current edition of the State Building Code.

Accessory building: A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Accessory use: An accessory use is either a subordinate use of a building, other structure or tract of land, or subordinate building or other structure: Whose use is customary in connection with the principal building, other structure or use of land, and whose use is clearly incidental to the use of the principal building, other structure or use of land, and which is located on the same lot with the principal building, other structure or use of land, or on a lot adjacent to such lot, if in the same ownership, and which does not constitute, if effect, a conversion of the principal use of the premises to one not permitted.

Adult day care facility: A social day care or adult day health facility as defined by the Commonwealth's Department of Elder Affairs.

Affidavit: A written declaration made under oath before a notary public.

Agricultural use, nonexempt: Agricultural use of property not exempted by G.L. c. 40A, s.3

Alterations: As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement whether by extending on a side or by increasing in height, or the moving from one (1) location or position to another.

Antenna: The surface from which wireless radio signals are sent or received by a personal wireless data transfer facility, and which are attached to a tower or other structures.

Antenna Support Structure: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting or receiving of data.

Automobile-related Businesses: Salesroom for automobiles, automobile repair garages, automobile service stations, parking lots for passenger automobiles.

Bed & Breakfast: A private residence that offers sleeping accommodations for rent to lodgers in eight (8) or fewer rooms for rent in the innkeeper's (the owner or operator) principal residence and serves breakfast at no extra cost to its lodgers. For the purpose of this definition, a lodger means a person that rents a room in a bed and breakfast establishment for fewer than thirty (30) consecutive days."

Boarding house: A dwelling or part thereof in which lodging is provided by the owner or operator to more than four (4) boarders. Where four (4) or more unrelated individuals rent a dwelling, it shall be considered a boarding house.

Building: A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

Building coverage: That percentage of the lot or plot area covered by the roof area of a building or buildings

Building height: The vertical distance from the grade to the highest point of the roof. When a building faces more than one street, the height shall be measured from the average of the grade at the centerline of each street front. Not included are spires, cupolas, antennae, or similar parts of structures that do not enclose potentially habitable floor space.

Building, principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Business or professional office: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

Campground: An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment, which is primarily used for recreational purposes and retains on open air or natural character.

Carrier: A company that provides wireless services

Child Care Facility: A day care center or school age child care program, as those terms are defined in G.L. c. 28A, s. 9.

Club or lodge, private: Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Common Driveways: A common driveway is any road to be used for vehicular access to two or more dwellings or places of business.

Contractor's yard: Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

Co-Location: The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

Country Club: A club organized and operated primarily for social and outdoor recreation purposes, including incidental accessory uses and structures such as clubhouses, restaurant and/or banquet facilities, locker rooms and pro shops.

Coverage Plot (Data Mapping): Defined as depicting on a map, by graphical (colors, shading, or symbols) means to show actual or predicted values of signal coverage parameters in order to establish adequacy of service.

Drive-Thru Establishment: A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include the selling of fuel at a gasoline filling station or the accessory functions of a carwash facility such as vacuum cleaning stations.

Dwelling: A building designed and occupied as the living quarters of one (1) or more families. Single- and two-family dwellings shall be designed for and occupied by not more than one (1) or two (2) families, respectively. A multi-family dwelling shall be one designed for and occupied by three (3) or more families.

Earth removal: Extraction of sand, gravel, top soil, or other earth for sale or for use at a site removed from the place of extraction exclusive of the grading of a lot preparatory to the construction of a building for which a building permit has been issued, or the grading of streets in accordance with an approved definitive plan, and exclusive of granite operations.

Educational use, nonexempt: Educational facilities not exempted from regulation by G.L. c. 40A, s.3.

Erect: To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain, and the like preparation for building shall also be considered to erect.

Family: Any number of individuals living and cooking together on the premises as a single housekeeping unit.

Family day care home: Any private residence operating a facility as defined in G.L. c. 28A, s.9.

Farm stand, nonexempt: Facility for the sale of produce, wine and dairy products on property not exempted by G.L. c. 40A, s.3.

FCC (Federal Communication Commission): The government agency responsible for regulating telecommunications in the United States. FCC 96-326: A report and order that sets new national standards for emissions from FCC-regulated transmitters. This report and order is now contained within Title 47 Regulations, Section 1, 51.1307

Floor area, gross: The total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Funeral home: Facility for the conducting of funerals and related activities such as embalming.

Garden Apartment Building: A structure of more than one (1) story but not more than three (3) stories containing garden apartment dwellings grouped around a central stairwell.

General Laws (abbreviated G.L): The General Laws of Massachusetts. In case of rearrangement of the General Laws, any citation of particular sections of the General Laws shall be applicable to the corresponding citations in the new codification.

Hazardous material: Any substance that is listed in, but not limited to, the EPA priority pollutants as described in section 307(a) of the Clean Water Act, as amended.

Home occupation: An occupations, business, trade, service or profession which is incidental to and conducted in a dwelling unit or in a building or other structure accessory thereto, by a resident thereof.

House, one-family detached: A detached dwelling designed for and occupied by one family.

Impervious: Any area impenetrable by surface water.

Infectious Waste: Infectious waste shall mean “infectious waste or physically dangerous medical or biological waste” as defined in 105CMR 480.00. Department of Public Health, State

Sanitary Code and includes: blood and blood products; pathological waste; cultures and stocks of infectious agents and associated biologicals; contaminated animal carcasses, body parts and bedding; sharps; and biotechnological bi-product effluents.

Junk: Any article or material or collection thereof that is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall be considered junk.

Light manufacturing: The process or fabrication of materials and products where the process(es) involved will not produce noise, odor, vibration, air pollution, fire hazard, or noxious emission that will disturb or endanger neighboring properties.

Lot: A continuous parcel of land with legally definable boundaries.

Lot, corner: A lot with two (2) adjacent sides abutting upon streets or other public spaces.

Lot, depth of: The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

Lot, frontage of: A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection is greater than one hundred and twenty (120) degrees. Vehicular access to a building site on the lot shall be exclusively through the frontage of the lot.

Lot line: A line dividing one lot from another, or from a street or any public place.

Lot, width of: The horizontal distance between side lot lines, measured parallel to the lot frontage at the front yard setback line.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

Mobile home: A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

Motel or hotel: A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such hotel or motel may

claim residency at such location.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

Municipal facilities: Facilities owned or operated by the Town of Upton.

Parking garage: A structure which is accessory to a commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the customers, visitors and employees of such an establishment.

Personal service establishment: A facility providing only those personal services listed in the Table of Use Regulations.

Planned Village Development: A development proposed for a single tract of land, authorized by special permit in a Commercial & Industrial District, specifying a mixture of land uses, including residential uses such as single family, multi-family, townhouses and other uses such as commercial, municipal, civic or other uses permitted in Single Residential SRA, SRB, SRC and SRC Districts, Agricultural Residential Districts, General Business Districts and Municipal Government Facilities Districts.

Power Plant: Any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering, or furnishing electricity for the production of power.

Repair Shops: Establishments primarily engaged in providing repair services generally to individuals, on items such as bicycles, shoes, typewriters, computers, home appliances, and televisions.

Repeater: A receiver/relay transmitter designed to provide service to areas that are not able to receive adequate coverage directly from a base.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility.

Restrictive Median: A physical barrier in the roadway that separates traffic traveling in opposite directions, such as a concrete barrier or landscaped island.

Retail: A facility selling only those goods specifically listed in the Table of Use Regulations.

Senior Housing Community: A multi-family residential land use consisting of a multiple dwelling unit(s) on one single contiguous parcel, with the intent that at least one resident of each dwelling unit be 55 years of age or older. For the purpose of this By-Law, housing units are

intended for occupancy by persons fifty-five years of age or older within the meaning of G.L. c. 151B, s.4.6 and shall comply with the provisions set forth in 42 U.S.C., §3601. This shall include assisted living facilities, congregate senior housing and/or independent senior housing as further defined and provided for in Section 7.4 of this Bylaw.

Sign: Any device designed to advertise, promote, call attention to or provide directional instruction to a product, profession, commercial event, organization, service, or business/commercial/industrial establishment including exterior signs and signs visible from the exterior by way of being placed in or on a window or outside door. Political signs are exempt from this By-Law (reference Town General By-Laws for political sign regulations).

Sign area: The area of the smallest horizontally or vertically oriented rectangle that could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matters hall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

Solid waste disposal facility: Refuse transfer station, composting plant, solid waste recycling operation and any other works or use approved by the Massachusetts Department of Public Health and the Board of Health of the Town of Upton for processing, handling, treating, and disposing of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items, and sludges but not raw sewage, and similar waste items.

Stacking Lane: An area of stacking spaces and driving lane provided for vehicles waiting for drive-thru service that is physically separated from other traffic and pedestrian circulation on the site.

Stacking Space: An area within a stacking lane for vehicles waiting to order and/or finish a drive-thru transaction

Storage facilities and warehouses: Storage in bulk of, or warehouse for, lumber and other building supplies, contractor's equipment, cotton or wool, livestock feed, fertilizer, food, furniture, hardware, heating fuel with above-ground storage limited to one hundred thousand (100,000) gallons, paint and paint supplies, pipe, rubber, shop supplies, tobacco, tools, wood or any products of manufacturing activities hereinafter listed.

Street: An accepted town way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the subdivision control law, or a way determined by the planning board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

Telecommunications (Wireless Data Transfer): Commercial and/or noncommercial mobile services, licensed and/or un-licensed wireless services, and personal wireless service. Said services to include but are not limited to, cellular services, Personal Communications Services (PCS), specialized mobile radio services, paging and broadcasting services, and include conventional wired communication lines. The FCC regulates these services.

Telecommunications Provider: An entity, licensed by the FCC, to provide telecommunications services to individuals and/or institutions

Temporary structure: A structure without any foundation or footings to be removed within a twelve-month time period. Said structure shall conform to the requirements of the Table of Dimensional Requirements and shall receive a permit from the building inspector.

Tower: Any self-supporting or guyed structure that is designed and constructed primarily for the purpose of supporting one or more antennas, and associated equipment, and includes but is not limited to, lattice and monopole type towers.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

Wireless: A term describing radio based systems that allow transmission of data through the air without a physical connection.

Wireless Data Transfer Facility: Transmission, monitoring or receiving antennae systems, their support structure and any peripheral attached thereto, that allow transfer of data through the air without a physical connection. It does not refer to the structures housing the electronic systems necessary to operate the antennae.

Yard: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

Yard, front: A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

Yard, rear: A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

Yard, side: A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.