

CHAPTER 171 – ZONING
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Chapter 171

ZONING

[HISTORY: Part 1, adopted by the Town of Whately 3-1-1963 Annual Town Meeting, Art. 1, amended through 4-25-1987 Annual Town Meeting, Art. 55; Part 2, adopted by the Zoning Board of Appeals 2-6-1992. Subsequent amendments noted where applicable. Amendments made May 1, 2002, April 25, 2006, and April 24, 2007, April 27, 2010, October 27, 2011, May 9, 2013, Feb. 11, 2014, April 29, 2014, December 11, 2017, April 24, 2018, April 30, 2019, June 23, 2020]

GENERAL REFERENCES

Planning Board -- See Ch. 38.

Fees -- See Ch. 80.

Flood hazard areas -- See Ch. 84.

Hazardous wastes and materials -- See Ch. 95.

Soil removal -- See Ch. 143.

Trailer parks -- See Ch. 158.

Percolation tests -- See Ch. 227.

Subdivision of land -- See Ch. 234.

Part 1 General Regulations

ARTICLE I Authority and Purpose

~ 171-1. Statutory authority.

The Town of Whately Zoning Bylaw is hereby adopted pursuant to the Zoning Act, Chapter 40A of the Massachusetts General Laws and the Home Rule Amendment to the Massachusetts Constitution.

~ 171-2. Purpose.

The purpose of this Zoning Bylaw is to promote the health, safety and general welfare of the inhabitants of the Town of Whately; to conserve the value of land and buildings, including the protection of natural resources and the prevention of pollution; to encourage the most appropriate use of land throughout the town; to facilitate the adequate provision of public services; to secure safety from fire, flood and other dangers; to encourage

housing for residents of all income levels; and to provide for all other purposes authorized under the Zoning Act.

ARTICLE II

Zoning Districts

~ 171-3. Establishment of districts.

For the purpose of this chapter, the Town of Whately is hereby divided into the following districts:

Agricultural/Residential District 1 [amended ATM 4-27-2010, Art 11] extending 400 feet back from the right of way on any existing road providing Lot Frontage [amended ATM 5-9-2013 Art. 21]
Agricultural/Residential District 2 [Added ATM 4-27-2010, Art. 11]
Commercial District
Commercial-Industrial District
Industrial District
Flood Hazard Overlay District
Aquifer Protection Overlay Districts [Added ATM 4-27-2010, Art.11]

~ 171-4. Zoning Map established.

The location and boundaries of these zoning districts shall be as shown on a map titled "Town of Whately Zoning Map," dated March 31, 2010 which is on file with the Town Clerk. The Zoning Map, with pertinent Assessors' maps and all explanatory matter therein, is hereby made a part of this chapter. Zoning district boundaries may be changed only by adoption of an amendment to the Zoning Bylaw. [Amended ATM 4-27-2010, Art.11]

~ 171-5. Interpretation of district boundaries.

For purposes of interpretation of zoning district boundaries, it shall be assumed that:

A. Boundaries which follow streets, railroads, rights-of-way or watercourses shall coincide with the center lines thereof.

B. Boundaries which follow municipal boundary lines shall coincide with the limits of such boundary lines.

C. Boundaries which appear to run parallel to streets or rights-of-way shall be considered parallel to the exterior line of the street or right-of-way at the distance shown on the map or determined by use of the scale on the map if no distance is indicated.

D. Boundaries which intersect the center line of a street, right-of-way or watercourse shall be considered perpendicular to such center line unless otherwise indicated.

E. Where a zoning district boundary (other than a boundary line for an overlay district) divides a lot in existence at the time the district boundary is adopted, residential uses may be extended up to 30 feet into the adjacent district, provided that the lot has adequate frontage. Commercial and industrial uses may not be extended into residential zoning districts unless the use is specifically allowed by right or special permit in residential districts pursuant to Section 171-8 Table of Use Regulations.

ARTICLE III Use Regulations

~ 171-6. Existing uses not affected.

This chapter shall not apply to existing buildings or structures nor to the existing use of any buildings, structures or land to the extent to which it was legally used at the effective date of this chapter. However, this chapter shall apply to any change in use or any reconstruction, extension or structural change to a building or structure in accordance with the Zoning Act, MGL C. 40A, ~ 6, as amended.

~ 171-7. Compliance required; limit on principal structures per lot.

No building, structure or land shall be erected or used except as permitted in this section and all other sections of this chapter. No more than one principal structure may be erected on a lot unless otherwise specified in this chapter.

~ 171-8. Table of Use Regulations.

A. The following Table of Use Regulations is hereby adopted as part of this Zoning Bylaw. The following code shall apply:

Y = Yes, the use is permitted by right in that zoning district.

N = No, the use is not permitted in that zoning district.

SP = The use is allowed in that zoning district only after a special permit has been granted.

* = Site Plan Review required (See Section 171.17 for other uses requiring Site Plan Review)[added ATM 4-27-2010, Art 11]

.¹The Table of Use Regulations shall be as follows: [Amended ATM 4-27-2010, Art 11][Amended 10-27-2011] [Amended ATM 4-29-14][Amended STM 12-11-2017, Art 9][Amended ATM 4-24-2018, Art. 42 and 44, Amended ATM 6-23-2020]

¹ Editor's Note: Former Subsection B, dealing with uses not listed, was repealed by 2-5-1991 STM, Art. 2. Said Article also redesignated former Subsection D as this Subsection B.

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Principal Use	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Residential Use					
Single-family detached dwellings	Y	Y	Y	N	N
2-Family detached dwellings (see~171-20)	SP	SP	SP	N	N
Multifamily dwelling units (apartments, townhouses and condominiums, if in compliance with ~171-20)	SP	SP	SP	N	N
Converted single-family dwellings (see ~171-21)	SP	SP	SP	N	N
Congregate Elderly Housing Facilities (see ~171-23)	SP	SP	SP	N	N
Open Space/Cluster Residential Subdivision Developments (see ~171- 25)[amended ATM 4-27-10]	Y*	Y*	Y*	N	N
Flexible Residential Development (see ~171-24.2) [added ATM 4-27-10]	Y*	Y*	Y*	N	N
Accessory Apartment (see definitions) [added ATM 4-27-10]	SP	SP	SP	N	N
Agricultural Uses					
Consistent with the provisions of G.L. c.40A §3 farm, orchard, nursery, market garden, forestry, sugarhouse, greenhouse or other use of land for agricultural, horticultural, floricultural, aquacultural, silvicultural, or viticultural production. The use may include retail sale of agricultural products, consistent with the provisions of G.L. c.40A, §3, and the retail space is less than 300 square feet. [Amended ATM 4-29-2014, Art. 29A][Amended STM 12-11-2017, Art.9]	Y	Y	Y	Y	Y
Farm stand A with at least 300 square feet of retail space (see definition)[Added ATM 4-29-2014, Art. 29A]	Y*	Y*	Y*	Y*	Y*
Farm stand B (see definition) [Added ATM 4-29-2014, Art. 29A]	SP*	SP*	Y*	Y*	Y*
Year-round commercial greenhouses, salesrooms or stands for wholesale or retail sale of floricultural or nursery products on 5 acres or more with retail space of less than 300 square feet. [Amended ATM 4-29-2014, Art.29A] [Amended ATM 4-24-2018, Art. 44]	Y	Y	Y	Y	Y

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Agricultural Uses (cont.)	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Year-round commercial greenhouses, salesrooms or stands for wholesale or retail sale of floricultural or nursery products on 5 acres or more with retail space of more than 300 square feet. [Added ATM 4-29-2014, Art. 29A] [Amended ATM 4-24-2018, Article 44]	Y*	Y*	Y*	Y*	Y*
Except for commercial piggeries or poultry, the raising or keeping of commercial or noncommercial domestic animals	Y	Y	Y	Y	Y
Year-round commercial greenhouses, salesrooms or stands for wholesale or retail sale of horticultural products, commercial poultry or piggeries on lots of less than 5 acres. [Amended ATM 4-29-2014, Article 29A]	SP*	SP*	SP*	SP*	SP*
Reservations, wildlife preserves or other conservation areas	Y	Y	Y	Y	Y
Outdoor Marijuana Cultivator [Added ATM 4-24-18 Art 42]	N	SP	N	N	N
Indoor Marijuana Cultivator [Added ATM 4-24-18 Art 42]	N	SP	SP	SP	SP
Indoor Marijuana Cultivator in Agricultural buildings and green-Houses in existence on April 24, 2018. [Added ATM 4-24-18 Art. 42]	SP	SP	SP	SP	SP
Accessory Uses					
Tourist homes/bed-and-breakfast establishments (see ~ 171-22)	SP	SP	SP	SP	SP
Home occupations (see ~ 171-11)	Y	Y	Y	Y	Y
Amateur radio towers or antennas (see ~171-28.3)	SP	SP	SP	SP	SP
Community Facilities					
Churches or other religious organizations	Y	Y	Y	Y	Y
Hospitals/nursing homes	SP	SP	SP	SP	SP
Educational uses exempted from zoning regulation under the Zoning Act, MGL C. 40A, ~ 3	Y	Y	Y	Y	Y
Other educational uses	SP	SP	SP	SP	SP
Municipal or nonprofit cemeteries	SP	SP	SP	SP	SP
Membership lodges or clubs (nonprofit)	SP	SP	Y	SP	SP
Public utility service stations or facilities, radio or television stations or transmitting facilities, railroad or bus depots or other public utility or communications uses	SP	SP	SP	SP	SP

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Community Facilities (cont.)	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Other municipal or governmental uses	SP	SP	SP	SP	SP
Public Parks, playgrounds or other public recreational facilities	Y	Y	Y	Y	Y
Commercial Uses					
Eat-in restaurants, bars or lounges for serving food or drinks inside the building [amended ATM 4-27-10, Art 11]	SP	N	SP	SP	SP
Take-out or drive-in food services	N	N	SP	SP	SP
Professional and business offices, including but not limited to medical, legal, banking, insurance and real estate, unless qualifying as a home occupation (see ~ 171-11)	N	N	Y	Y	SP
Retail establishments or developments where all sales, display and storage of merchandise is within the building, with a floor area of 10,000 square feet or less	N	N	SP	SP	SP
Retail establishments or developments where all sales, display and storage of merchandise is within the building, with a floor area greater than 10,000 square feet	N	N	N	N	N
Personal and consumer service establishments	N	N	Y	SP	SP
Dry-cleaning establishments or Laundromats	N	N	N	N	N
Car Washes	N	N	N	N	N
Gas stations, sales of motor vehicle fuel or storage and sale of other fuels	N	N	N	N	N
Automotive repair and servicing shops	N	N	SP	SP	SP
Automobiles, vehicles, boats or equipment sales/service	N	N	SP	SP	SP
Veterinary hospital where all animals are kept inside a permanent building	SP	SP	SP	SP	SP
Service and repair shops for appliances, small equipment, office and household items and other similar products, unless Qualifying as a home occupation (see ~ 171-11)	N	N	Y	Y	SP
Business service and supply service establishments (i.e., automobile parts, office equipment, maintenance service), contractors, tradesperson shops or craft workshops conducted entirely within a building, unless qualifying as a home occupation (see ~ 171-11)	N	N	Y	Y	SP

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Commercial Uses (cont)	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Indoor commercial recreation, including but not limited to bowling alleys and theaters	N	N	SP	SP	SP
Craft workshops involving the use of hazardous materials, where all work is to be conducted within a building	N	N	SP	SP	SP
Newspaper or job-printing establishments	N	N	Y	Y	Y
Outdoor commercial recreation, including but not limited to camping areas and golf courses	SP	SP	SP	SP	SP
Open storage of feed, raw materials, finished goods, lumber or building supplies for commercial sale	N	N	SP	SP	SP
Adult Entertainment	N	N	N	N	N
Earth Removal	SP	SP	SP	SP	SP
Marijuana Retailer or Offsite Medical Marijuana Dispensary (OMMD) [Amended ATM 4-24-2018 Art 42]	N	N	SP	SP	SP
Farmer Brewery Tasting Room [Added ATM 4-24-18 Art 44]	N	SP	SP	SP	SP
Farmer Brewery Tasting Room with pouring permit [Added ATM 4-24-18, Art. 44]	N	SP	SP	SP	SP
Conversion of an Historic (50 years or older) Municipal, Religious or Commercial Structure(s) on one lot to one or more of the following uses: Municipal Uses, Retail Stores (no greater than 2,000 square feet of floor space) except those primarily selling alcoholic beverages, marijuana products, firearms, or vape products. Business or Professional Offices, Eat-in Restaurants, Artisan Studios, or Residential Uses within the existing building footprint (see § 171-21.2)[Added ATM 4-30-19 Art. 34]	SP	N	SP	SP	N
Lodging houses or boarding houses (not part of a residential dwelling)[Added ATM 4-30-19 Art. 36]	SP	N	SP	SP	N

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Light Industrial Uses	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Warehouses, wholesale trade and distribution, bulk storage or the storage of materials, merchandise, products or equipment, provided that the use is within an enclosed building and is not hazardous	N	N	SP	SP	Y
Printing, publishing or data processing	N	N	SP	SP	Y
Enclosed assembly, bottling, packaging or finishing plants of nonhazardous materials	N	N	SP	SP	Y
Research and development facilities not involving hazardous materials	N	N	N	N	SP
Other light industrial uses not involving the use of hazardous materials as a principal activity, provided that the use will not be offensive, injurious, noxious or hazardous	N	N	SP	SP	SP
Any industrial or commercial uses which involve the discharge of process wastewater to the ground, except wastewater from personal hygiene and food [Amended 2-5-1991 STM, Art. 2]	N	N	N	N	N
Automobile salvage or junkyards	N	N	N	N	N
Burial, incineration, storage, disposal, collection and treatment of low, medium and high levels of radioactive wastes (see ~ 171-28)	N	N	N	N	N
Permanent sawmills	SP	SP	SP	SP	SP
Temporary sawmills	SP	SP	Y	Y	Y
Ground Mounted Solar Power Generating Facilities greater than 10 kW _{AC} ¹ up to 500 kW _{AC} that occupy no more than 2 acres and meet the requirements of Section 171- 28.5 [Added 10-27-2011, Art.1][amended 6-23-20, Art.35]	N	Y*	Y*	Y*	Y*
Ground Mounted Solar Power Generating Facilities greater than 500 kW _{AC} or occupying more than 2 acres that meet the requirements of Section 171-28.5 [Added 10-27-2011, Art.1][Amended 6-23-20 Art. 35]	N	SP*	SP*	SP*	SP*

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Light Industrial Uses	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Water-powered or wind-powered generators, up to 80 megawatts [moved this section to this location 10-27-2011 Art. 1]	SP	SP	SP	SP	SP
Other power plants [Moved this section to this location 10-27-2011 Art. 1]	N	N	N	N	N
Independent [Marijuana] Testing Laboratory [Added ATM 4-24-18 Art. 42]	N	N	N	SP	SP
Marijuana Manufacturer or Registered Marijuana Dispensary (RMD)[Added ATM 4-24-18, Art. 42]	N	N	N	SP	SP
Farmer Brewery [Added ATM 4-24-18, Art. 44]	N	SP	SP	SP	SP
Nonresidential uses [Added 5-7-1991 ATM, Art. 24]					
Nonresidential uses which manufacture, process, store or dispose of hazardous wastes, except for agricultural uses, in amounts exceeding the minimum threshold amount requiring compliance with Department of Environmental Protection hazardous waste regulation 310 CMR 30	N	N	N	SP	SP
Nonresidential uses, except for agricultural uses, which involve hazardous materials, including but not limited to trucking or busing terminals; golf courses; slaughterhouses; or wood preserving, furniture stripping and refinishing operations	N	N	N	SP	SP
Solid waste landfills, dumps and salvage yards	N	N	N	N	N
Outdoor storage of pesticides	N	N	N	N	N
The commercial dumping of snow contaminated by salt or deicing chemicals	N	N	N	N	N
Stump Dump	SP	SP	SP	SP	SP
Other principal uses where the physical appearance, operation, parking requirements, and traffic impacts closely resemble a use permitted by right or special permit and which shall not have a detrimental impact on adjacent or nearby uses	SP	SP	SP	SP	SP

¹ Ground Mounted Solar Power Generating facilities of 10kW_{AC} or less which are an accessory use to a residential or non-residential use are allowed “by right”. Roof mounted solar power generating facilities are allowed “by-right”. [Added 10-27-2011, Art. 1][Amended 6-23-20, Art. 35]

C. All uses allowed by right or special permit, other than single-family residences, uses and accessory structures, shall require site plan review in accordance with ~ 171-17 of this chapter.

D. Uses allowed in the Planned Industrial District shall be as specified in the Planned Industrial District Regulations, ~ 171-28.1 of this chapter. [Added 2-5-1991 STM, Art. 2]. [Please note that there are currently no areas in Whately which are zoned for Planned Industrial District].

~ 171-9. Dimensional requirements.

A. General. Any building or structure hereafter erected on a lot or any change in a lot size or shape in any district shall not have less than the minimum requirements set forth in the Table of Dimensional Requirements.

B. Lots of lesser dimensions. Any increase in lot area, frontage, width, yard or coverage requirements of this section shall not apply to a lot or parcel for single- or two-family use not meeting these requirements, provided that, at the time that such increased requirements become effective, the lot or parcel meets the requirements of the Zoning Act, MGL C. 40A, ~ 6.

C. Height regulations. No building or structure shall exceed a maximum height of 35 feet, measured from the highest point of the roof to the average finished ground grade on the premises. Measurements shall not include antennas, chimneys or any other permitted accessory which is not intended for human habitation. Height restrictions do not apply to agricultural uses, municipal buildings and churches.

~ 171-10. Table of Dimensional Requirements.

A. The Table of Dimensional Requirements shall be as follows:

	Minimum Lot Area (square feet)	Minimum Frontage (feet)	Front yard (feet)	Rear/Side Yard * (feet)	Maximum Lot Coverage (percent)
Agricultural/Residential District 1:					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
Agriculture/Residential District 2: [added ATM 4-27-2010, Art 11]					
Lots with Public Water	80,000	200	50	20	30
Lots without Public Water	120,000	300	50	20	30
Commercial and Industrial Districts					
Commercial and Industrial uses	60,000	200	50	20	50
Noncommercial/Nonindustrial Uses					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
Planned Industrial District (see 171-28.1) [Added 2-5-1991 STM, Art. 3]					

* Fifty (50) feet side and/or rear yards in new residential subdivisions adjacent to or nearby to farmland may be required to provide a buffer between the residential lot lines and farmland to minimize conflicts between residential and farming activities.

B. Explanations.

(1) The required minimum frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius.

(2) Front yard requirements shall be 50 feet or the same setback as adjacent lots if less than 50 feet, and shall be measured from the right-of-way line where a plan of the street is on file with the Registry of Deeds or the County Commissioners. In the absence of such a plan, frontage shall be measured from a line 25 feet from and parallel to the center line of such street.

(3) Multifamily structures shall require an additional 20,000 square feet of lot area and an additional 75 feet of frontage for each additional unit in excess of one.

(4) Motels, hotels and commercial lodging and boarding houses shall require a minimum lot size of three acres for the first three units and an additional 10,000 square feet of lot area for each additional unit in excess of three. All motels, hotels and commercial lodging or boarding houses shall be connected to the public water supply system.

(5) [Added 4-25-1989 ATM, Art. 20] "Lot coverage" is defined as follows:

- (a) Sidewalks, roadways, parking areas, driveways or other similar use, all whether paved or unpaved;
- (b) Buildings, whether principal or accessory;
- (c) Structures; or
- (d) Any other areas of a lot rendered impermeable.

~ 171-11. Accessory uses.

Any use which is customarily accessory and incidental to a permitted use shall be allowed only in conjunction with a permitted use, provided that the accessory use is on the same lot or an adjacent lot in the same ownership. Any use which is accessory to a use allowed by special permit only shall also require a special permit. The following uses shall also be considered accessory uses:

A. Home occupations. A business or profession is allowed as an accessory use of a dwelling, provided that:

(1) Such use is clearly secondary to the residential use and the home occupation shall be carried on within the principal building or an accessory building. No more than 50% of the gross floor area of the residence and all accessory buildings shall be used for the purposes of the home occupation.

(2) The home occupation shall be carried on by a resident of the principal dwelling and not more than two nonresidents shall be regularly employed on the premises.

(3) No external change is made which alters the residential appearance of the building on the lot.

(4) Except for a permitted sign of not more than two square feet, there shall be no exterior display, no exterior storage of materials and no other exterior indication of the home occupation or other variation from the residential character of the premises.

(5) Traffic shall not exceed volumes normally expected in a residential neighborhood. For purposes of this bylaw, this shall be defined as 15 trips per day per dwelling unit which is approximately 150% of the average weekday trip rate for single family homes from the Institute for Traffic Engineers Trip Generation Manual.

(6) Adequate off-street parking shall be provided. Parking areas shall not be within 20 feet of a street line or within any required side or rear yard and shall be adequately screened from neighboring residential uses. Parking areas shall not have more than four spaces per dwelling unit.

(7) The home occupation shall comply with the environmental performance standards listed in ~ 171-15.

(8) Automotive repair shops operating out of a residential dwelling and which otherwise meet the criteria for a home occupation shall require a special permit from the Zoning Board of Appeals.

(9) No retail sales shall be allowed except for products produced on the premises, provided that all other requirements of Section 171-11 A. 1-7 can be met and a Special Permit is granted by the Zoning Board of Appeals.

B. Noncommercial animals. The raising or keeping of livestock, poultry or other farm animals used for noncommercial or agricultural purposes by the residents of the premises may be allowed as an accessory use.

C. Accessory scientific uses. Accessory uses necessary to scientific research, development or related production, whether or not located on the same parcel, as a permitted use shall be allowed by special permit by the Zoning Board of Appeals, provided that the Board finds that the proposed accessory use does not substantially derogate from the public good.

D. Accessory buildings. No accessory building or structure shall be located within the required front yard area. No accessory buildings shall be located in any side yard area nearer to the side lot line than 20 feet or any rear yard area nearer to the rear lot line than 20 feet or nearer to another principal or accessory building than 15 feet.

E. Access to a lot via side or rear lot lines and common driveways. Vehicular access to and from a lot shall be across the front lot line, except that the Planning Board may issue a special permit allowing vehicular access to a lot over any side or rear lot line. The Planning Board may also issue a special permit for a common driveway serving more than one lot if the following minimum requirements are met:

(1) A recorded easement providing permanent access for all properties served by the driveway shall be provided.

(2) The special permit shall state that the driveway is not a private road or a public road, that it does not meet the standards for a town road and that if the driveway is ever petitioned to be accepted and maintained as a public way by the town, it must first be upgraded to the road standards required in the Whately Subdivision Regulations, at the petitioner's expense.

(3) Common driveways requirements.

(a) The grade, length and location of common driveways shall be constructed and maintained to provide:

[1] Adequate access and turnaround for vehicles, including sanitary and emergency vehicles, year round.

[2] A width of at least 15 feet, with drainage and culverts where necessary.

[3] A maximum grade of 12%.

(b) Common driveways longer than 1,000 feet are discouraged, especially if serving more than two lots, and the Planning Board may require passing turnouts depending on the length and design of the proposed driveway.

(c) Approval shall be required from the Highway and Fire Departments.

(d) No parking areas or structures shall be allowed in the shared portion of the Common Driveway.

(4) No more than four lots may be served by one common driveway.

(5) Ownership and maintenance of a common driveway shall be assured through a covenant, homeowners' association, other land agreement or a comparable arrangement satisfactory to the Planning Board in which each lot owner served by the common driveway is responsible for a share of the maintenance expenses. Such agreements shall be submitted with the special permit application.

(6) No common driveway shall be extended to serve additional lots subsequently created.

(7) No land held in common ownership with lots served by a common driveway at the time the lots were created shall be subsequently subdivided to be served by another common driveway.

F. Use of agricultural structures. The leasing of agricultural structures for commercial storage purposes shall be considered customarily accessory and incidental to

a permitted use but shall not be construed to include any principal use listed in the Table of Use Regulations involving the storage of commercial or industrial products, materials, etc.

~ 171-12. Nonconforming uses.

The lawful use of any structure or land existing at the effective date of the adoption or subsequent amendment of this chapter may be continued, although such structure or use does not conform to the provisions of this chapter. No nonconforming use shall be changed or extended, except to a conforming use, nor shall any nonconforming building or structure be altered, changed, reconstructed or extended, except as follows:

A. A nonconforming agricultural use or structure or a single or two-family dwelling may be altered, extended, reconstructed or structurally changed, provided that the nonconforming nature of the structure is not increased.

B. Other nonconforming structures or uses may be altered, extended, reconstructed or changed to provide for the same use or a different use under a special permit from the Zoning Board of Appeals only if the Board finds that such alteration, extension, reconstruction or change will not be substantially more detrimental to the neighborhood than the existing nonconforming use and that it will not increase the danger of groundwater pollution or contamination. [Amended 5-7-1991 ATM, Art. 22]

C. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

D. Nonconforming structures damaged or destroyed by fire or other accidental causes may be repaired or reconstructed, provided that the new structure is in equal or better condition than the damaged structure, is located on the same portion of the lot and has the same dimensions as the damaged structure, is not substantially more detrimental to the neighborhood than the damaged structure, is put to the same use as the damaged structure or is rebuilt in conformance with this chapter. If any of these conditions do not apply, then a special permit must be obtained from the Zoning Board of Appeals. Such repair or reconstruction of a damaged structure shall be substantially completed within two years.

E. A nonconforming use which has been abandoned or discontinued for a period of more than two years shall not be reestablished unless a special permit has been obtained from the Zoning Board of Appeals.

**ARTICLE IV
General Regulations**

~ 171-13. Parking and loading requirements.

A. General requirements.

(1) All parking demand for new structures, uses and changes or additions to existing uses shall be accommodated on the premises entirely off street.

(2) No off-street parking area shall be located within 10 feet of a street right-of-way line.

(3) The following additional requirements shall apply to parking areas for six or more vehicles:

(a) The use of the parking area shall not require backing onto a public way.

(b) Driveway widths shall not be less than 12 feet per travel lane.

(c) Required off-street parking shall be located on the same lot as the principal use or, if sidewalks are present between the two parcels, the parking area may be located within 300 feet on a separate parcel. Parking areas may be shared by two or more uses, provided that the total number of spaces for each use computed separately is provided. [Amended 2-5-1991 STM, Art. 4]

(d) Each parking space shall be at least eight and one-half by eighteen (8-1/2 x 18) feet in size and should be provided with adequate access and maneuvering area.

(e) Parking areas shall be of stabilized surface suitable for year-round use and shall have adequate drainage.

(f) Parking areas shall be separated from any residential use by 20 feet.

(g) All driveway entrances shall be kept free from visual obstructions for a distance of 25 feet back from the street line and for a distance of 25 feet along the street line from the point of intersection with the driveway. [Amended 2-5-1991 STM, Art. 4]

(h) Landscaping.

[1] Parking areas shall be landscaped or fenced so as to interrupt or screen the area from access roads, highways and adjacent residential properties. Such landscaping shall be designed to minimize glare and reflection, to reduce the visual impact of parking areas on adjacent residential property and to provide a buffer between parking areas and public ways.

[2] [Added 2-5-1991 STM, Art. 4] Landscaping shall include the following:

[a] All parking areas adjacent to a residential use or district shall be subject to the screening and buffer zone requirements of ~ 171-16 of this chapter.

[b] All parking areas shall be separated from the street line by a ten-foot landscaped buffer strip, including shade trees (three-inch diameter) spaced 40 feet on center and shrubs at least three feet in height at the time of planting.

[c] Parking areas shall be subdivided with landscaping islands so that no more than 20 parking spaces shall be provided in a row (double rows are permitted with 20 spaces on each side of a bay area).

[d] At least one shade tree (three-inch diameter) shall be planted for every 10 parking spaces. Preservation of existing trees is desirable and they may be substituted for planted trees. Internal landscaping shall be distributed throughout the lot for maximum shading and aesthetic improvement.

(i) Off-street parking areas and driveways shall be illuminated by shielded lights no higher than 25 feet designed to prevent glare and to prevent light from shining directly upon any adjacent property or public way. Lighting shall not be directed upwards. [Added 2-5-1991 STM, Art. 4]

B. Parking space requirements. The number of off-street parking and loading spaces are as follows:

(1) Two spaces for each residential dwelling unit, plus half a space for each dwelling unit in excess of two for visitor parking.

(2) Hotels, motels and lodging houses: one space for each room accommodation, plus one additional space for every five rooms.

(3) Places of assembly, such as theaters, churches, auditoriums and clubs: one parking space for each three seats.

(4) Retail stores, offices and personal care establishments: one space for each 150 square feet of gross floor area, excluding storage areas.

(5) Wholesale, warehouse and light industry establishments: one space for each employee on the largest shift, plus one space for each company-owned and -operated vehicle, plus adequate space for customers' vehicles, as appropriate. Adequate additional loading space shall be provided for all delivery or shipping trucks.

(6) Drive-in restaurants: one space for each 30 square feet of gross floor area.

(7) Sit-down restaurants, lounges, bars and nightclubs: two spaces for each four seats, plus one space for each 300 square feet of gross kitchen area.

(8) Off-street parking for other uses shall be determined by the Site Plan Reviewing Board based on the number of spaces needed to accommodate the vehicles of those commonly using the premises.

C. Loading area requirements.

(1) Adequate off-street loading and receiving areas shall be provided for all business, commercial and industrial uses. Facilities shall be sized and laid out so that the trucks do not need to be backed onto or off of a public way or be parked on a public way while loading, unloading or waiting to do so.

(2) Any facility which may have lines of vehicles waiting admission shall have sufficient on-site space for such lines without requiring cars to stand on any public way.

(3) Entrances and exits to loading areas shall not be located closer than 50 feet to any street intersection. [Added 2-5-1991 STM, Art. 4]

(4) Loading areas shall not be located closer than 150 feet to any residential use or district measured from the face of the building at the loading area. [Added 2-5-1991 STM, Art. 4]

(5) Loading areas adjacent to or across the street from a residential use or district shall be screened by a buffer strip, landscaped, bermed or fenced at a suitable height to effectively screen the loading area and lights of delivery trucks from shining onto residential property. [Added 2-5-1991 STM, Art. 4]

D. Access control. The purpose of this subsection is to ensure smooth, efficient and safe traffic flow along Route 5 and 10 by coordinating the location and number of new entrance and exit points while providing access for each lot. This subsection shall apply to land lying along Route 5 and 10 only.

1) All lots of record existing at the effective date of this section [Added 4-27-1987] shall be allowed only one curb cut for a direct access driveway to Route 5 and 10.

2) No parcel shall be subdivided into lots with frontage which would preclude meeting the requirements of Section 171-13.D. unless access and right of ways are provided across adjoining lots via a shared driveway.

3) There shall not be more than two driveway openings from parking areas with six or more spaces. Parcels of land may be divided into lots and recorded after the effective date of this chapter, but all vehicular movement to and from Route 5 and 10

shall be via a shared driveway serving all lots, if necessary to meet this requirement provided all the following conditions can be met:

(a) the access driveway shall have a 500 foot minimum separation distance from other driveways on the same side of the road and a 250 foot minimum separation from driveways on the opposite side of the road. The measurement shall be from centerline to centerline of each driveway.

(b) the access driveway shall have a 250 foot minimum separation distance from intersecting street lines as measured from the centerline of the driveway to the start of the street intersection.

~ 171-14. Sign regulations.

A. Purpose. The following sign regulations are intended to allow the identification and location of activities or premises while protecting the visual character of the town and the safety of its residents. Any exterior sign or advertising device hereafter erected or maintained shall conform to the following regulations.

B. On-premises signs.

(1) Any residential dwelling is allowed one sign up to two square feet in area for each family/household residing on the premises, indicating the name of the owner or occupant or the name of the building, or other non-commercial message. Such sign may pertain to a permitted accessory use.

(2) One announcement or bulletin board up to 12 square feet is allowed for a public, educational, charitable or religious organization.

(3) Commercial and industrial uses shall be allowed two signs, one attached to the building and one freestanding, each up to 12 square feet in area. Any commercial message on such signs shall be limited to identification of the firm and the products or services available or produced on the premises.

(4) Businesses sharing a single building are allowed one wall sign up to 12 square feet per establishment. One shared freestanding sign shall also be allowed for the entire premises, bearing the name of each business located there. Such sign shall not exceed 18 square feet in area.

C. Off-premises signs. Off-premises signs shall be allowed by special permit from the Zoning Board of Appeals only if the Board finds that such signs will serve the public convenience, will not endanger the public safety and will not be detrimental to the neighborhood. Off-premises signs shall only pertain to directional or identification information for businesses located in Whately. Such signs shall not exceed nine square feet in area or 10 feet in height.

D. Temporary signs. Signs of a temporary nature, such as sales promotions, holiday decorations and signs relating to the sale, rental or construction of the premises, are allowed but shall be removed promptly upon completion of the activity to which they relate. Temporary signs shall not exceed nine square feet in area or 10 feet in height.

E. General sign regulations.

(1) No sign shall flash, move or display movement or generate music or an audible message. [Amended 2-5-1991 STM, Art. 5]

(2) Signs may be lighted internally or externally, but illumination of all signs shall be of a white light and shall be shielded or indirect. Signs may be illuminated only during the hours of 7:00 a.m. to 7:00 p.m. in the Agricultural/Residential 1 & 2 Zoning Districts only. Signs in the Commercial and Industrial District may be illuminated during the hours of 7:00 a.m. to 10:00 p.m. These time limits do not apply to those establishments with normal business hours other than these times. Neon signs are prohibited. Sign lighting shall not be directed onto adjacent property, roadways or upward. [Amended 2-5-1991 STM, Art. 5, amended ATM 4-27-2010, Art. 11]

(3) No sign shall be placed closer than 10 feet to a public right-of-way or within any side or rear yard requirement, and it shall not impair pedestrian or vehicular traffic flow or sight.

(4) Freestanding signs may be up to 15 feet in height above the ground, measured from the average ground grade on the premises to the top of the sign.

(5) Signs attached to a building may be either flat against the wall or perpendicular to it but shall not project more than two feet above the eaves line of the building or more than three feet from the vertical plane of the wall. Signs attached to a parapet shall not project above the top of the parapet.

(6) Double-sided signs with equal and parallel faces providing identical information on both sides shall be measured on one side only in determining square footage.

(7) Nonaccessory signs or billboards (general advertising not related to the premises) are prohibited.

(8) Signs may be allowed which are larger in area only under special permit from the Zoning Board of Appeals.

(9) Portable or movable signs may be allowed under a special permit from the Zoning Board of Appeals, provided that such signs are made of wood only, stand on legs and do not exceed four feet in height. [Added 2-5-1991 STM, Art. 5]

~ 171-15. Environmental performance standards.

A. Purpose. The purpose of environmental performance standards is to ensure that any use allowed by right or special permit in any district is conducted in a manner which does not adversely affect the surrounding natural or human environment by creating a dangerous, injurious or objectionable condition.

B. The following environmental controls shall be enforced by the Building Inspector and shall apply throughout the life of the use or structure:

(1) Noise and/or vibration which causes a disturbance to residents or occupants of adjacent properties is prohibited, except for unamplified human voices, temporary construction or maintenance work, parades, agricultural activity or a similar special circumstance. No particularly loud or distinctive noise shall be allowed between the hours of 10:00 p.m. and 7:00 a.m. This does not apply to normal agricultural practices.

(2) Emission of harmful or offensive odors is prohibited. This does not apply to normal agricultural practices.

(3) Generation of dust, dirt, fly ash, fumes, vapors or gases which cause damage to or irritate human health, animals or vegetation or which stain or soil property is prohibited.

(4) All storage or use of explosive or flammable materials shall be adequately equipped with safety devices to prevent or respond to fire or explosions. No highly flammable or explosive materials shall be stored within 75 feet from any lot line or roadway.

(5) Direct or reflected light or glare which is hazardous, distracting or offensive is prohibited. No light shall be directed or reflected beyond the property line of any site or onto any roadway so as to impair the vision of the driver of any vehicle.

(6) Activities that emit radioactivity at any level shall be controlled in accordance with all state and federal regulations.

(7) The proposed development shall provide for safe access to and from public and private roads. Safe access shall be assured by providing an adequate number of access points, properly located with respect to sight distances, intersections, schools and other traffic generators. Where the proposed development is located along Route 5 and 10, the access to and from the site shall be governed by ~ 171-13 of this chapter. The proposed development shall assure safe interior circulation within the site by separating pedestrian areas. Parking and loading areas shall be adequately screened from view.

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

(9) Erosion of soil and sedimentation of streams and water bodies shall be minimized by using the following erosion-control practices:

(a) The duration of exposure of disturbed areas due to stripping of vegetation, soil removal and regrading shall be kept to a minimum.

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

(c) Permanent erosion-control and vegetative measures shall be in accordance with the erosion/sedimentation/vegetative practices recommended by the Soil Conservation Service.

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

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

~ 171-16. Screening and buffer zones.

A. A buffer zone and screening shall be required on any lot in any commercial or industrial district where it adjoins a lot in a residential district. The buffer zone shall be at least 30 feet wide and shall contain a screen of plantings or a wall, fence or berm complemented with plantings. The screen shall be of sufficient density to provide at least 75% of continuous opacity at a height of not less than six feet but of sufficient height to interrupt the view between the two sites. The screen shall be maintained by the owner or occupants so as to maintain the required opaqueness year round.

B. The above screening requirements (but not the buffer zone) shall also apply to a lot in any commercial or industrial district for a new commercial, industrial or institutional use where it adjoins a lot with an existing residential use.

ARTICLE V

Special Regulations

~ 171-17. Site plan review and review of large developments.

A. Site plan review.

(1) Purpose. The purpose of site plan review is to further the purpose of this chapter and to ensure that new development is designed in a manner which reasonably protects the visual, environmental and aesthetic qualities of the neighborhood and the town.

(2) Projects requiring site plan review. Any residential, commercial, industrial or institutional use allowed by right or special permit in any district, including subdivisions, shall require site plan review, except that single-family dwellings on individual lots and normal agricultural uses are exempt. Site plan review of a Large-Scale Ground-Mounted Solar Installation is subject to the requirements of Section 171-28.5 as well as those of this Section, ~171-17. [Last sentence added 10-27-2011 Art.1]

(3) Procedures.

(a) An applicant for site plan review shall file a completed application with the Planning Board, at a regularly scheduled meeting. The application shall include six copies each of an application form, site plan and any narrative documents as necessary. The Planning Board Chairperson shall acknowledge receipt of the plans by signing and dating the application form. A copy of the completed application shall be filed with the Town Clerk by the applicant. The Planning Board shall transmit copies of the application to appropriate Town Boards and municipal officials. This may include the Special Permit Granting Authority if a Special Permit has also been applied for, the Conservation Commission, the Zoning Board of Appeals, the Board of Health, the Historical Commission, the Highway Superintendent, the Fire Chief or the Building Inspector. These Town Boards and municipal officials shall have 45 days from the date the completed application is received from the Planning Board to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval of the application submitted by that Board or municipal official.

(b) The Planning Board shall hold a public hearing within 65 days after the filing of an application and shall take final action on an application for site plan approval within 90 days of the public hearing. Notice and posting of the public hearing shall comply with the provisions of the Zoning Act, MGL C. 40A, ~ 11, regarding notice for public hearings.

(c) No building permits for projects requiring site plan review shall be issued until the Planning Board has approved the site plan or unless the required time period for taking action on a site plan has lapsed without action from the Planning Board.

(d) The Planning Board may adopt and from time to time amend regulations for the submission and approval of site plans.

(e) The Planning Board may waive any of the requirements for site plan submittal and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision.

(f) The Planning Board may expedite the procedure for reviewing site plans for simple projects by holding the public hearing and taking action on the site plan as soon as possible after the filing of an application for site plan review.

(g) Site plan review shall judge the appropriateness of the design of a project. Any question to the appropriateness of the use shall be governed by the Table of Use Regulations or the special permit review process.

(h) For large or complex projects, the Reviewing Board shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the site plan. The applicant shall be responsible for the costs of such advice.

(i) Written Site Plan Review decisions shall be filed with the Town Clerk.

(4) Submittal requirements.

(a) All site plans shall be prepared by a registered architect, landscape architect or professional engineer.

(b) All site plans shall be on standard sheets of 24 inches by 36 inches and shall be prepared at a sufficient scale to show:

[1] The location and boundaries of the lot, adjacent streets or ways and the location and owners' names of all adjacent properties.

[2] Existing and proposed topography, including contours, the location of wetlands, streams, water bodies, drainage swales, areas subject to flooding, unique natural and cultural land features including critical habitat areas identified by the Natural Heritage and Endangered Species Program, wildlife corridors and greenbelt areas identified in the Whately Open Space and Recreation Plan (OSRP), and Priority Heritage Landscapes identified in the Whately Heritage Landscape Inventory Reconnaissance Report (June 2009) and scenic and historic resource areas identified in the OSRP. [Amended ATM 4-27-2010, Art. 11]

[3] Existing and proposed structures, including dimensions and proposed lot lines and proposed orientation of building to maximize solar gain and energy conservation. [Amended ATM 4-27-2010, Art. 11]

[4] The location of proposed public and private ways, parking and loading areas, driveways, walkways, access and egress points. [Amended ATM 4-27-2010, Art. 11]

[5] The location and a description of all proposed septic systems, registered "perc" tests, water supply, storm drainage systems, utilities and refuse- and other waste-disposal methods. [Amended ATM 4-27-2010, Art. 11]

[6] Proposed landscape features, including the location and a description of screening, fencing and plantings including non-invasive species.[Amended ATM 4-27-2010, Art. 11]

[7] The location, dimensions, height and characteristics of proposed signs.

[8] The location and a description of proposed open space or recreation areas and the location of prime farmland soils or soils of state or local importance, active farmland or prime forestland soils. [Amended ATM 4-27-2010, Art. 11]

[9] [Added 5-7-1991 ATM, Art. 20] If the applicant is proposing a use which will use, manufacture, process, store, involve or dispose of hazardous wastes or materials, the following information must be submitted as well:

[a] A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.

[b] Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board, Board of Health and Fire Chief, which shall include:

[i] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures.

[ii] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.

[iii] Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act, 310 CMR 30.

[c] Drainage recharge features and provisions to prevent loss of recharge.

(c) The applicant shall also submit the following information:

[1] Measures to prevent pollution of surface and ground water, increased runoff, changes in groundwater levels and flooding.

[2] Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, enhance aesthetic assets and screen objectionable features from neighbors and roadways.

[3] Control measures to prevent erosion and sedimentation and the sequence of grading and construction activities, installation of control measures and final stabilization of the site.

[4] Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site and adequate circulation within the site.

[5] Measures to minimize impacts to existing farmland, and agricultural soils classified as prime farmland soils or soils of state or local importance. [Added ATM 4-27-2010, Art. 11]

[6] Measures to minimize impacts to prime forestland, critical habitat areas, and wildlife corridors. [Added ATM 4-27-2010, Art. 11]

[7] Measures to minimize impacts to Priority Heritage Landscapes and scenic and historic resources identified in the OSRP. [Added ATM 4-27-2010, Art. 11]

[8] Other information the Planning Board may reasonably request in order to make a decision. [Added ATM 4-27-2010, Art. 11]

(5) Site plan approval. Site plans shall be approved if the Planning Board determines that the site plan satisfactorily complies with the following design criteria where applicable:

(a) The development shall be integrated into the existing terrain and surrounding landscape and shall include measures to minimize impacts to natural, cultural and scenic resources identified in the site plan. Building sites shall, to the extent feasible: [Amended ATM 4-27-2010, Art. 11]

[1] Minimize use of wetlands, steep slopes and hilltops.

[2] Minimize obstruction of scenic views from publicly accessible locations.

[3] Preserve important or unique natural, scenic or historical features. [Amended ATM 4-27-2010, Art. 11]

[4] Minimize tree, vegetation and soil removal.

[5] Minimize grade changes.

[6] Minimize impacts to farmland and prime farmland soils or soils of state or local importance. [Added ATM 4-27-2010, Art. 11]

[7] Maximize solar orientation for energy conservation or generation. [Added ATM 4-27-2010, Art. 11]

(b) Architectural style is flexible but shall be compatible with the character and scale of buildings in the vicinity through the use of building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and to avoid monotony.

(c) Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

(d) The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways.

(e) The site plan shall show adequate measures to prevent pollution of surface or ground water, to minimize erosion and sedimentation and to prevent increasing potential for flooding.

(f) Drainage shall be designed so that runoff shall not be increased, groundwater recharge is maximized and neighboring properties will not be adversely affected. Surface water on paved surfaces shall be collected at intervals so that it will not create puddles and obstruct the flow of vehicular or pedestrian traffic.

(g) Electric, telephone, cable television and other such utilities shall be underground where physically and environmentally feasible.

(h) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened from the neighbor's view.

(i) The site plan shall comply with any zoning requirements for parking, loading, dimensions, environmental performance standards and all other provisions of this chapter. Before approval of a site plan, the Reviewing Board may request that the applicant make modifications in the proposed design of the project to ensure that the above criteria are met.

B. Review of large developments.

(1) Review required. Wherever any development is proposed, that is allowed by right or special permit according to Section 171-8 Table of Use regulations, in which the total enclosed floor area is over 10,000 square feet, or any development which will require the subdivision of a parcel of land into 10 or more lots, whether a subdivision or not, or the creation of 10 or more dwelling units within one year is proposed, said development shall require the submission of an impact statement to the Planning Board before a building permit is issued. This review will follow the process described below and is required in addition to other requirements

of this chapter. The review is designed to prepare the town for the possible impact of a large development and to allow it to recommend modifications calculated to reduce that impact.

(2) Site plans and impact statements.

(a) A detailed site plan of the subdivision or development shall be prepared in accordance with the submittal requirements of the site plan review or special permit sections of this chapter.

(b) The site plan must be accompanied by an impact statement which details the probable effects of the subdivision or development on the following aspects of concern to the town:

- [1] Attendance at public schools.
- [2] Increases in vehicular traffic.
- [3] Changes in the number of legal residences.
- [4] Provision of housing for town residents and for persons of low and moderate income.
- [5] Increases in municipal services.
- [6] Load on public utilities or future demand for them.
- [7] Public safety.
- [8] Changes in tax revenue.
- [9] Changes in surface drainage.
- [10] Increased consumption of groundwater.
- [11] Increased refuse disposal.
- [12] Pollution of water and air.
- [13] Land erosion or loss of tree cover or farmland or farmland soils. [Amended ATM 4-27-2010, Art. 11]
- [14] Disturbance of other aspects of the natural ecology.
- [15] Blocking of views.
- [16] Harmony with the character of surrounding development.

[17] Impact on historic, natural, cultural or scenic resources.
[Amended ATM 4-27-2010, Art. 11]

(3) Review process.

(a) The Planning Board will review both the site plan and the impact statement, giving weight to the factors in Subsection B(2) above, as they affect the future of the town and of the neighborhood adjacent to the site. It may ask for further information where necessary to review the application adequately and may make recommendations for modifications to the development as it thinks proper to protect the town. Approval must be granted, however, if all other provisions of this chapter are met.

(b) One copy of an impact statement submitted to the Planning Board as required by Section 171-17.B. Review of large developments, shall forthwith be forwarded to the Zoning Board of Appeals for its review. The Zoning Board of Appeals shall submit an advisory report to the Planning Board within 45 days from the date of application. Failure to respond within 45 days shall be deemed a lack of objection by the Zoning Board of Appeals. The Planning Board shall consider the Zoning Board of Appeals comments in its decision regarding the review of large developments.

~ 171-18. Earth removal.

A. No person, firm or corporation shall strip, sever, remove, excavate or convey away soil, loam, rock, sand, gravel or any other earth material or minerals without first obtaining a special permit from the Whately Board of Selectmen.

B. Exemptions. The following earth removal operations shall be exempt from this chapter and shall not require a special permit:

(1) Removal of not more than 10 cubic yards of material from any lot within one year.

(2) The necessary removal of earth material incidental to construction on the premises under an existing building permit or special permit for the construction of buildings or installation of walkways, streets, driveways, septic systems or other accessory uses to such buildings, provided that the quantity of materials removed shall not exceed the amount displaced by the building or accessory use below finished grade.

(3) Excavation in the course of normal and customary agricultural use of land.

(4) An existing earth removal activity operating under a permit issued prior to the date of adoption of this section may continue until the expiration date of the permit, except that any expansion or change in operation not specified in the permit shall be subject to this chapter.

C. Procedures. Written application shall be made to the Board of Selectmen and shall be accompanied by a plan describing the premises and the proposed operation. The plan shall be prepared by a registered land surveyor or registered professional engineer and shall include the following information:

(1) Property lines, names and addresses of all abutters, including those across any way.

(2) Existing contours, at two-foot intervals, in the area from which material is to be excavated and in surrounding areas, together with the contours, at two-foot intervals, below which no excavation shall take place.

(3) Natural features such as wetlands, the one-hundred-year floodplain, existing vegetation, surface water and groundwater. Water-table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation. The number of soil borings taken shall be commensurate with the size and geological makeup of the site.

(4) A topographical map showing drainage facilities, final grades and proposed vegetation and trees.

(5) An erosion and sediment-control plan for during and after excavation.

(6) Location of buildings, structures and access roadways.

D. Operating standards. The following standards of operation shall apply to all earth removal permits issued by the Board:

(1) Removal operations shall not take place within 50 feet of a public way or adjacent property lines, except as needed for an approved building.

(2) An excavation shall not take place within 100 feet of a stream, water body or wetland or the one-hundred-year flood elevation of any water body.

(3) No excavation shall be conducted less than 10 feet above the annual high-water table, as established from test pits and soil borings.

(4) No area shall be excavated so as to cause accumulation of freestanding water. Permanent drainage shall be provided as needed, in accordance with good conservation practices. Drainage shall not lead directly into streams or ponds.

(5) All topsoil and subsoil shall be stripped from the operation area and stockpiled, seeded with an erosion control mixture and used to restore the area.

(6) The area under excavation at any one time shall not exceed a total of three acres. Natural vegetation shall be left on undisturbed land for screening and noise-reduction purposes.

(7) Any shelters or buildings erected on the premises shall be screened from public view and shall be removed from premises within 60 days after they are no longer needed for work upon that site.

(8) All access roads leading to public ways shall be constructed with suitable material to reduce dust and mud for a distance of 200 feet back from the way. The operator shall clean up any spillage on public ways.

(9) Access roads shall be constructed at an angle to the public way or with a curve so as to help screen the operation from public view if there is no naturally occurring visual barrier.

(10) Operation hours shall be only between 7:00 a.m. and 5:00 p.m. on weekdays, and trucks may enter and leave the premises only within such hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

(11) All trucking routes and methods shall be subject to the approval of the Chief of Police.

(12) The Board of Selectmen shall require that barriers or fences be erected in areas of excavation that constitute a hazard or a menace to the public safety.

(13) Storage of hazardous materials including oil, gasoline and other petroleum products shall be protected from weather conditions and placed on a diked impermeable surface. Storage of hazardous materials in excess of household quantities or fueling operations on-site shall require a Special Permit to be issued by the Zoning Board of Appeals in order to protect ground water quality.

E. Restoration standards. The site shall be restored according to the following criteria:

(1) No slope shall be left with a slope steeper than 2:1 (50%).

(2) All debris, stumps, etc., shall removed from the site and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil.

(3) Following excavation and as soon as possible thereafter, ground levels and grades shall be established as shown on the site plan showing final grades. Restoration of areas no longer under excavation shall be required while excavation is occurring on other areas of the site.

(4) Retained subsoil and topsoil shall be respread over the disturbed area to a minimum depth of four inches and seeded with a grass or legume mixture prescribed by the Conservation District. Trees or shrubs of prescribed species will be planted in order to provide screening and natural beauty and to reduce erosion. The planted area shall be protected from erosion during the establishment period using good conservation practices.

(5) Upon completion of the operation, the land shall be left so that storm drainage leaves the property at the original natural storm drainage points and so that the area of drainage to any one point is not increased.

(6) Within six months after termination of gravel operations, all equipment, buildings, structures and unsightly evidence of operations shall be removed from the premises.

F. Granting of a special permit for earth removal shall be subject to the special permit requirements of ~ 171-31 of this chapter and shall be granted only by a unanimous vote of the three-member Board of Selectmen. Special permits for earth removal shall lapse after three years. A renewal permit shall be required and granted in conformance with this chapter, except that the Board of Selectmen may waive the submittal requirements if there is no substantial change in the project.

G. The Board of Selectmen shall require, as a condition to granting a permit, that the applicant furnish a performance bond or other acceptable security in an amount sufficient to guarantee satisfactory compliance with the requirements of this chapter and any other conditions imposed in the permit. The security shall not be released until a registered professional engineer or a registered land surveyor has certified that the restoration has been completed in compliance with this chapter, the permit and the plan specifications.

~ 171-19. Unregistered vehicles.

No more than one unregistered motor vehicle, assembled or disassembled, shall be parked, stored or placed upon any land in the town for a period of more than 30 days unless said vehicles are kept within an enclosed building or are otherwise screened or located so that they cannot be seen from public ways or from abutting properties. The following exceptions shall apply:

A. Motor vehicles used for farming purposes are exempt.

B. Commercial establishments which require the use of unregistered vehicles as a normal business practice and which are permitted by special permit are exempt from obtaining a special permit under this section.

C. A special permit to store more than one unregistered vehicle on any premises may be granted by the Board of Selectmen after a public hearing only if such storage of vehicles is consistent with the Special Permit Regulations of ~ 171-31 of this chapter, will not adversely affect the neighborhood, and will not be a nuisance or pose a hazard to public health or safety. The Board of Selectmen may place conditions on the permit in accordance with the Special Permit section of this chapter.

~ 171-20. Two-family and multifamily dwelling units.

Two-family and multifamily dwelling units shall be permitted in all districts only upon issuance of a special permit from the Zoning Board of Appeals and shall be subject to the special permit requirements of ~ 171-31 of this chapter.

A. The following conditions shall also be met before a special permit for multifamily dwelling units will be granted:

(1) Two-family and multifamily structures shall be governed by the minimum lot size and frontage requirements in the district. However, an additional 20,000 square feet of lot area and 75 feet of frontage shall be required for each unit in excess of one.

(2) Two-family and multifamily structures shall comply with the requirements set forth in the site plan review section and environmental performance standards section of this chapter.

B. In addition, multifamily structures shall also comply with the following requirements:

(1) Each multifamily structure shall contain no more than four dwelling units.

(2) Multifamily structures shall be located on roads having sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic generated by the site.

(3) Only one two-family or multifamily structure is allowed per lot, and must be provided with access, drainage and utilities functionally equivalent to that provided under the Planning Board's Subdivision Rules and Regulations. The applicant shall submit with the special permit application certification from the Planning Board that the plans so comply.

(4) Parking areas shall not be located within a required front, rear or side yard and shall be screened from public ways and adjacent or abutting properties by building location, fencing or planting. No parking area shall contain more than 10 spaces.

(5) No building shall be floodlit. Drives and parking areas shall be illuminated only by shielded lights not higher than 15 feet.

(6) The applicant shall submit a septic system design approved by the Board of Health with the special permit application. No septic system serving the project shall exceed 1,500 gallons per day sewage flow (as determined under Title 5, Section 15-02, of the State Environmental Code). More than one septic system may serve the site in order to meet this requirement.

~ 171-21.1 Converted dwellings.

In order to conserve the existing character of the town and previous resource investment, a dwelling structure in existence for at least 10 years at the date of application may be granted a special permit from the Board of Appeals for conversion to multifamily use, provided that the following conditions are complied with:

- A. No more than three dwelling units will be allowed within a structure.
- B. No more than three dwelling units will be allowed on a lot.
- C. One of the dwelling units must be owner-occupied.
- D. No external additions to the existing structure to accommodate dwelling units will be allowed, except to the extent that such improvements are directly related to required ingress and egress.
- E. The water supply for the dwelling units must be of sufficient quantity and quality to meet current state and local standards. It is required that any person attempting to obtain or who has obtained the above special permit will have the water supply for the dwelling units tested at the expense of the owner in the manner and method required by the Board of Health. In addition to the cost of testing, the owner will be required to pay a filing fee of \$15 each year to the Board of Health for the review of such tests.
- F. The added dwelling units must be served by an on-site disposal system meeting the requirements of the State Environmental Code, including enlarging or replacing existing septic tanks and/or leach fields to accommodate the additional effluent generated when the total number of bedrooms is increased as a result of the building alteration.
- G. A minimum of two parking spaces per dwelling unit will be required. The parking spaces shall not be nearer than 10 feet to the street line or nearer than 20 feet to the nearest abutter and shall be screened from the street by vegetation not less than 3 feet in height at the time of planting.

H. Every owner will be required to have the property inspected by the Board of Health and the Building Inspector prior to the granting of a permit, with fees to be set by the Board of Health and the Building Inspector, and all fees will be paid by the owner. This inspection will include but will not be limited to the sewage disposal system, the water supply to the dwelling units and the building itself.

I. To be eligible for conversion, the structure and the lot must be in compliance with all dimensional regulations in ~ 171-9.

~ 171-21.2. Converted historic municipal, religious and commercial buildings (added ATM 4-30-2019 Art. 33)

The purpose of this section is to facilitate the preservation of historically important municipal, religious, and commercial buildings and to allow for their adaptive reuse. All of the following conditions apply:

- A. Buildings may be publicly or privately owned;
- B. Buildings shall have served the general public and been in existence for at least 50 years, and shall be deemed historically significant by the Whately Historical Commission;
- C. Potential Uses are listed in ~171-8. Table of Use Regulations;
- D. Site Plan Review is required;
- E. The dimensional requirements of §171-9.C., ~171.10, ~171-20 and ~171-28.4F may be waived if there is no feasible alternative, although increases in lot density ratio in Aquifer Overlay Districts are discouraged;
- F. Parking and loading shall meet the requirements of §171-13 to the extent feasible;
- G. Septic systems must be adequate for the proposed use;
- H. More than 3 dwelling units may be allowed in a converted historic building if there is sufficient off-street parking and adequate water supply and wastewater treatment;
- I. No additions to the existing structure shall be allowed except for required egress and access; and
- J. Uses must have all the necessary state and local licenses and approvals for the use.

~171-22. Short-term rentals in Accessory Apartments, and Single-family, Two-family & Multifamily dwellings [Amended ATM 4-30-2019 Art. 35]

The purpose of this section is to allow for short-term rentals while ensuring public safety, preventing possible nuisances for abutters, and preserving the rural character of the town. Rentals for a period of less than 30 days may be allowed in residential units under a Special

Permit from the Zoning Board of Appeals subject to the conditions outlined below. All such rentals must comply with all applicable Board of Health regulations. This section does not apply to property that is rented out through monthly tenancies at will or leases or to time share agreements.

A. Short-term rentals in Dwellings that are owner-occupied.

- (1) No more than three bedrooms may be rented for transient occupancy.
- (2) Rooms rented for transient occupancy shall not have independent kitchen facilities and may have either private or shared bathroom facilities.
- (3) All bedrooms within the dwelling itself shall share a common entrance.
- (4) The portion of the dwelling devoted to transient occupancy shall be secondary to the use of the dwelling as a Single-family dwelling and shall not change the external character of the building.
- (5) The Special Permit shall establish a limit on the number of occupants permitted under the rental agreement and establish the number of required parking spaces.
- (6) One off-street parking space shall be provided for each room to be rented.
- (7) No loud noise or music, excessive traffic or other disturbances shall be allowed.
- (8) The rental may, or may not, include breakfast. No meals other than breakfast may be served, and breakfast may be served only to overnight guests. The owner or leaseholder must obtain all State and local permits and licenses required to provide food services if breakfast is served on the premises.
- (9) The owner must have all the necessary state and local licenses and approvals for the short term rental.

B. Short-term rentals in Dwellings that are not owner-occupied.

- (1) The rental may be for a dwelling unit that is an Accessory Apartment or Single-family home or for one or more dwelling units within a Two-family or Multi-family dwelling.
- (2) Tenant(s) may not sublet the property or hold special functions such as weddings or large parties.
- (3) The property shall not be rented under the provisions of this section for more than 120 days per year.
- (4) All bedrooms within the dwelling unit shall share the same entrance and the same kitchen facilities.

- (5) Rooms rented for transient occupancy may be located within a detached structure (Accessory Apartment) on the property which may have a bathroom and separate kitchen facilities.
- (6) Adequate potable water and wastewater treatment shall be provided.
- (7) The bathrooms may be shared or private.
- (8) No changes shall be made to the external character of the building(s).
- (9) The Special Permit shall establish a limit on the number of people to be permitted for overnight occupancy under the rental agreement and establish the number of required parking spaces.
- (10) No meal service is to be provided.
- (11) No loud noise or music, excessive traffic or other disturbances shall be allowed.
- (12) The owner must have all the necessary state and local licenses and approvals for the short term rental.

~ 171-23. Congregate elderly housing.

The Zoning Board of Appeals may grant a special permit for the construction and occupancy of a congregate elderly housing development within any district. The intent of this provision is to provide an alternative housing choice for elderly residents of Whately. In addition to the special permit criteria set forth in ~ 171-31 of this chapter, the following conditions will be met before a special permit for congregate elderly housing will be granted:

- A. A congregate housing structure may contain up to four dwelling units.
- B. More than one congregate housing structure may be placed on a lot, but structures shall not be placed closer together than the height of the taller structure. No more than five congregate housing structures may be placed on a lot.
- C. Congregate housing development shall require the minimum lot size for that district for the first unit, plus an additional 10,000 square feet of lot area and an additional 50 feet of frontage for each additional unit.
- D. A minimum of one off-street parking space shall be provided for each dwelling unit plus one space for every two dwelling units for visitor parking, rather than the number required in ~ 171-13.
- E. Connecting walkways shall be provided between structures and parking areas within the site.

F. No parking area shall contain more than 10 parking spaces, but more than one parking area may be provided to meet the requirements of this section.

G. No building shall be floodlit. Driveways and parking areas shall be illuminated only by shielded lights not higher than 15 feet.

H. No septic system serving the premises shall exceed 1,500 gallons per day sewage flow (as determined under Title 5, Section 15-02 of the State Environmental Code). More than one septic system may serve the site in order to meet this requirement.

I. Congregate elderly structures shall comply with requirements set forth in the site plan review section and the environmental performance standards section of this chapter.

~ 171-24.1 Flag lots. [Amended numbering ATM 4-27-2010, Art 12]

The Zoning Board of Appeals may issue a special permit for the creation of up to one flag lot with reduced frontage, provided that the following requirements are complied with:

A. A flag lot may only be created by subdividing one lot which was in existence at the time of the adoption of this Flag Lot Bylaw amendment [Added April 27, 1987], which conforms to all of the provisions of the Zoning Bylaw except that the original lot from which the flag lot is created has not had contiguous land in common ownership sufficient to create a standard lot with the normal frontage requirements since the date of the adoption of this Flag Lot Bylaw Amendment.

B. For minimum lot size and other dimensional requirements, a flag lot shall be considered to be in the district where it has its street frontage, except if any portion of the flag lot other than the access strip is in the Aquifer Protection District then the flag lot shall meet the minimum lot size requirements for the Aquifer Protection District. [Added ATM 4-27-2010, Art. 12]

C. No lot eligible for flag lot development shall be subsequently subdivided so as to create more than one flag lot.

D. The lot shall be used for single-family purposes only.

E. The flag lot shall have a minimum street frontage of not less than 40 feet and an access width of not less than 40 feet from the front lot line to the principal structure. The front lot shall meet all of the zoning dimensional requirements normally required in the district.

F. No more than two flag lots may be adjacent to each other at the street line.

G. The area of each flag lot, excluding the access strip, shall be at least double the minimum lot area required in the district. In the Aquifer Protection District the area of each flag lot, excluding the access strip, shall be at least three (3) acres.

H. The width of the lot where the principal building is to be constructed shall equal or exceed the distance normally required for street frontage in that district.

I. Front, rear and side yards must equal or exceed those normally required in the district.

J. The grade, length and location of access driveways shall be constructed and maintained to provide:

(1) Adequate access and turnaround for vehicles, including sanitary and emergency vehicles, year round.

(2) A width of at least 15 feet with drainage and culverts where necessary. Driveways longer than 1,000 feet are discouraged and the Planning Board may require passing turnouts depending on the length and design of the proposed driveway.

(3) A maximum grade of 12%.

(4) A distance no closer than 10 feet to any abutting property line.

(5) Approval from the Highway and Fire Departments.

(6) No parking areas or structures shall be allowed in the strip.

K. There shall be maintained or kept a naturally occurring or a planted vegetated buffer zone between any flag lot and any front lot sufficient to provide privacy between the two lots.

L. Plans submitted to the Zoning Board of Appeals under this section shall be the same as the plans submitted to the Planning Board under the Subdivision Control Law and shall include the statement, "Lot _____ is a flag lot; building is permitted only in accordance with the special permit flag lot provisions of the Whately Zoning Bylaw."

M. The Planning Board shall not endorse any plan under the Subdivision Control Law for the purpose of creating a flag lot unless the plan depicts both the flag lot and the front lot from which the flag lot was created and unless the plan has been granted a special permit from the Zoning Board of Appeals.

~ 171-24.2 Flexible Development for Small Residential Projects [Added section at ATM 4-27-2010, Art. 13]

A. Flexible Development is an optional development device for residential development, not requiring a Special Permit, designed to encourage efficient use of Whately's topography and to preserve unique natural and cultural features while maintaining the overall density allowed through the Town's zoning.

B. Any parcel in the Agricultural/ Residential District may be divided into not more than ten (10) lots and built upon under the following alternative area and frontage requirements:

(1) The average frontage for all building lots created shall be no smaller than the minimum required under Section 171-10 Table of Dimensional Requirements, but individual lots may have frontage of as little as 60% of that requirement.

(2) The number of building lots created shall be no more than would have been allowed according to Section 171-10 Table of Dimensional Requirements for that zoning district.

(3) Individual lot area per unit may be as little as 80% of the minimum lot size required in Section 171-10 Table of Dimensional Requirements provided that the average lot size of all lots in the development meets the required minimum lot size. If one or more lots are reduced in size, others must be increased to compensate for the reduction. (For example, if one lot is reduced to 80% of the minimum lot size, another lot must be increased to 120% of the minimum lot size).

(4) Opting to develop under this method does not remove the developer's obligation to conform to all other rules and laws pertaining to construction or subdivision.

(5) The ANR or Subdivision Plan creating the lots shall be endorsed by the Planning Board as Approved for Flexible Development in addition to receiving the endorsement or approval required under the Subdivision Control Law.

(6) No further increase in the number of lots shall be allowed through subsequent land division and this restriction shall be recorded on relevant plans and deeds.

~ 171-25. Open space/cluster developments.

A. General description. An "open space/cluster development" shall mean a residential development in which the houses are clustered together into one or more

groups on the lot and separated from each other and adjacent properties by undeveloped land. [Amended ATM 4-27-2010, Art. 11]

B. Purpose. The purpose of cluster development is to allow for a flexible design in residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district unless a density bonus is granted in accordance with 171-25H. The intention is to: [Amended ATM 4-27-2010, Art. 11]

(1) Promote a more efficient use of land in harmony with its natural features.

(2) Encourage a less sprawling form of development that consumes less open land.

(3) Encourage the permanent preservation of open space, agricultural lands and other natural resources.

(4) Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.

(5) Promote single-family housing at a more affordable cost.

(6) Maintain the character of the town and surrounding residential areas.

C. Applicability. The Planning Board may approve a Site Plan for the construction of an open space/cluster development subject to the regulations and conditions set forth under this section. [Amended ATM 4-27-2010, Art. 11]

D. Procedures.

(1) Preapplication review.

(a) To promote better communication and to avoid misunderstanding, applicants are encouraged to submit a preliminary plan for review by the Planning Board prior to the application for site plan approval. Such preliminary plans shall comply with the Town of Whately Subdivision Control Regulations. [Amended ATM 4-27-2010, Art. 11]

(b) The Planning Board approval of a site plan in accordance with 171-17 shall not substitute for compliance with the Subdivision Control Law nor oblige the Planning Board to approve a related definitive plan for subdivision nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined site analysis/development plan and

application which shall satisfy this section and the Board's regulations under the Subdivision Control Act. [Amended ATM 4-27-2010, Art. 11]

(c) A site analysis/development plan shall be submitted to the Planning Board with the application for site plan approval. A definitive plan shall be submitted to the Planning Board, consistent with its Subdivision Regulations and in substantial conformity with the approved site analysis/development plan. [Amended ATM 4-27-2010, Art. 11]

(2) Application. Applicants for Site Plan Review for an open space/cluster development shall submit four copies of an application, and a site analysis/development plan. [Amended ATM 4-27-2010, Art. 11]

(3) Site analysis/development plan. The site analysis/development plan shall be prepared by an interdisciplinary team to include a registered professional engineer, registered land surveyor and registered architect or landscape architect. The site analysis/development plan shall be drawn at a scale of one inch equals 40 feet, shall be on standard sheets of 24 inches by 36 inches and shall include the following information:

- (a) The location and boundaries of the site.
- (b) The existing and proposed topography, at two-foot contour intervals, and the location of existing wetlands, water bodies, watercourses, one-hundred-year floodplain elevations and other natural features.
- (c) Identification of existing vegetative cover and land uses.
- (d) Existing structures, wells, septic systems, sewer lines, waterlines, utilities and drainage.
- (e) Soil types, based on the Soil Conservation Service Soil Survey and on-site soil boring logs, approximate depth to groundwater, location and results of percolation tests and other subsurface tests.
- (f) Proposed uses of land and buildings.
- (g) Proposed lot lines, streets, parking areas, walkways, drainage and utilities and existing and proposed easements.
- (h) The general location and description of proposed public waterlines, private wells, public sewer lines or septic systems.
- (i) The location and description of proposed Protected Open Space, parks and other community uses. [Amended ATM 4-27-2010, Art. 11]
- (j) A proposed landscaping plan and grading plan.

(k) A narrative statement:

[1] Capability of soils to support the proposed development without danger of groundwater or surface water pollution and proposed measures to prevent such pollution.

[2] Measures to prevent soil erosion, increased runoff and flooding.

[3] Proposed design features intended to integrate the proposed development into the existing landscape and enhance aesthetic assets.

[4] Drainage calculations.

[5] Projected traffic flow patterns.

[6] The total number of building lots.

(l) Additional information:

[1] Materials indicating the landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.

[2] If necessary to determine compliance with the requirements or intent of this section, the Planning Board may require further engineering or environmental analysis, to be prepared at the expense of the applicant.

(4) Review by other boards. Forthwith upon receipt of the application and required site analysis/development plans, the Planning Board shall transmit one copy each to the Board of Health and the Conservation Commission, who shall submit written comments to the Planning Board within 45 days of the application date. Failure to comment within 45 days shall be deemed a lack of objection to the proposed project.

E. Minimum requirements.

(1) The parcel(s) shall be held in single ownership or control at the time of application. [Amended ATM 4-27-2010, Art. 11]

(2) The maximum number of lots for the development shall not exceed that which is normally allowed in the district under a conventional plan unless a density bonus is granted in accordance with 171-25-H. [Amended ATM 4-27-2010, Art. 11]

(3) The development shall include single-family dwellings or two-family dwellings only. [Amended ATM 4-27-2010, Art. 11]

(4) Each lot shall have adequate access on a public or private way.

(5) Each lot shall comply with the minimum dimensions required in this section.

(6) Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.

(7) At least forty percent (40%) of the total parcel shall be permanently protected as agricultural, forested land, or other open space ("Protected Open Space"). The minimum required Protected Open Space shall not include wetlands and related resource areas, water bodies, all areas with slopes of 25% or greater, 100-year floodplains, existing permanently protected open space, and all other areas determined by the Board of Health to be unsuitable for on-site sewage disposal ("Land with Environmental Constraints"). To the extent possible the preserved land shall form a contiguous tract to enable continued farming or forestry operations. Land with Environmental Constraints may be included in the Protected Open Space subject to a Conservation Restriction in perpetuity if it increases the amount of Protected Open Space beyond the 40% minimum amount (e.g. agricultural or forested land equals 40% of the total parcel plus Land with Environmental Constraints equals 10% of the total parcel resulting in Protected Open Space of 50% of the total parcel). The Planning Board may grant a waiver to reduce the minimum required percentage of protected agriculture or forested land to thirty-five percent (35%) of the total parcel if at least sixty percent (60%) of the total lot area is permanently protected and no more than twenty-five percent (25%) of the total lot area is composed of wetlands and related resource areas, floodplains, or land with slopes greater than 25%. Existing permanently protected open space, roadways and accessory uses shall not count towards the sixty percent (60%) of permanently Protected Open Space. [Amended ATM 4-27-2010, Art. 11]

(8) All residential structures and accessory uses within the development shall be set back from the boundaries of the development by a buffer strip of at least 50 feet in width, to be kept in a natural or landscaped condition.

(9) There shall be an adequate, safe and convenient arrangement of pedestrian circulation, facilities, roadways, driveways and parking. There shall be no parking in the buffer strip.

(10) The design of roads, utilities and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Control Regulations insofar as reasonably applicable, but the Board may vary those standards to meet the particular needs of the cluster development.

(11) Reserved for Future Use. [Amended ATM 4-27-2010, Art. 11]

(12) All structures which require plumbing shall be connected to a public sanitary sewer, if available, or to an individual or communal septic system at no expense to the municipality. With the Definitive Subdivision Plan, the applicant shall submit a septic system design prepared by a Registered Professional Engineer and approved by the Board of Health, in conformance with Title 5 of the State Environmental Code, and a plan illustrating the location of water supply wells with the application. Cluster development may utilize shared systems designed, installed and maintained in accordance with the State Environmental Code Title 5, 310 CMR. Such shared systems may be located within the residential common open space or the buffer strip. Septic Systems shared or otherwise shall be located outside of all agricultural land supporting farming operations. [Amended ATM 4-27-2010, Art. 11]

F. Dimensional and density requirements.

(1) Lot sizes shall not be less than 20,000 square feet per lot. [Amended ATM 4-27-2010, Art. 11]

(2) In no instance shall a designated lot have less than 100 feet of frontage on a public or private way.

(3) The Front Yard setback shall not be less than 20 feet for all principal and accessory structures. Side and Rear Yard setbacks shall not be less than 10 feet for all principal and accessory structures, except that attached single family dwelling units may be laid out with one side having no Side Yard setback (zero setback). The other Side Yard of an attached single family unit (the nonattached side) shall be at least 10 feet. Nonattached single family units shall have a minimum Side Yard setback of 10 feet. The maximum height of dwelling units and structures shall be 35 feet. To minimize conflict with agricultural operations, all residential lot lines shall be located at least one hundred (100) feet from agricultural activities. This area shall be made up of a buffer strip of trees or open space. [Amended ATM 4-27-2010, Art. 11]

(4) In a Cluster Development, the maximum number of building lots will be determined as follows: [Added ATM 4-27-2010, Art. 11]

(a) The maximum number of lots permitted within a Cluster Development in the Agricultural/ Residential District 2 shall be one building lot for each 120,000 square feet of the net developable acreage of the cluster development tract for areas without public water and one building lot for each 80,000 square feet of the net developable acreage of the cluster development tract for areas with public water. The maximum number of lots permitted within a Cluster Development in the Agricultural/ Residential District 1 District shall be one building lot for each 60,000 square feet of the net developable acreage of the cluster development tract for areas without public water and one building lot for each 40,000 square feet of the net developable acreage of the cluster development tract for areas with public water. Net developable acreage is determined by subtracting all wetlands and resource areas, all areas with slopes of 25%

or greater, 100-year floodplains, existing permanently protected open space, 10% of the total development tract for roads and drainage and all areas determined by the Board of Health to be unsuitable for on-site sewage disposal. [Added ATM 4-27-2010, Art. 11]

(b) All wetlands and resource areas shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40 and its regulations 310 CMR 10.00. [Added ATM 4-27-2010, Art. 11]

(c) Under the supervision of the Board of Health, and in conformance with Title 5, percolation tests shall be conducted for all lots in the total acreage of the property that would be developed in a standard subdivision layout. The area of these lots which is determined to be not suitable for on-site sewage disposal shall be subtracted from the net developable acreage of the total parcel. [Added ATM 4-27-2010, Art. 11]

G. Protected Open Space [Amended ATM 4-27-2010, Art. 11]

(1) All land not devoted to dwellings, accessory uses, roads or other development shall be set aside as common land for recreation, conservation or agricultural uses which preserve the land in essentially its natural condition.

(2) Further subdivision of Protected Open Space or its use for other than the above-listed uses, except for easements for underground utilities and septic systems, shall be prohibited. Structures or buildings accessory to recreation, conservation or agricultural uses may be erected but shall not exceed the lesser of 5% or 1 acre of such Protected Open Space. [Amended ATM 4-27-2010, Art. 11]

(3) Such Protected Open Space shall be either: [Amended ATM 4-27-2010, Art. 11]

(a) Conveyed to a corporation or trust owned or to be owned by the owners of lots within the development; if such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

(b) Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space; or

(c) Conveyed to the Town of Whately, at no cost, and may be accepted by it for a park or open space use. Such conveyance shall be at the option of the town and shall require the approval of the voters at the town meeting.

(d) The Planning Board, at the request of Applicant, may grant a Special Permit to have the Protected Open Space retained by a private individual or a trust owned by private individuals provided that both the interests of the residents of the Cluster Development and the interests of the Town will be protected as outlined in the

requirements of the Conservation Restriction or the Agricultural Preservation Restriction. Such Special Permit shall meet the requirements of Section 171-31 Special Permits of the Zoning Bylaws and other requirements to be determined by the Planning Board. A Conservation Restriction shall be placed on the Protected Open Space. [Added ATM 4-27-2010, Art. 11]

(4) Such Protected Open Space shall be covered by a recorded restriction enforceable by the Town, providing that such land shall be kept in an open, natural or undeveloped state, or that it shall be preserved for exclusively agricultural purposes. Any such land proposed as Protected Open Space may be served by suitable access for purposes of passive recreational use, forest management, or agricultural cultivation. The area to be preserved as Protected Open Space shall be made subject to a perpetual restriction of the type described in M.G.L. Chapter 184 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Whately. To ensure this, a Conservation Restriction in accordance with M.G.L. Chapter 184 or a comparable Conservation Restriction acceptable to the Planning Board and Town Counsel that assures permanent protection shall be imposed on the Protected Open Space. Such Conservation Restriction shall be recorded in the Registry of Deeds by the applicant at the time the approved Definitive Plan is submitted to the Registry of Deeds for recording unless an extension is granted in writing by the Planning Board. The Conservation Restriction placed on the Protected Open Space shall be held by the Conservation Commission of the Town of Whately, a suitable State Agency, or by a non-profit conservation land trust the principal purpose of which is the conservation or preservation of open space. Any fees associated with the holding and enforcement of the Conservation Restriction by an entity such as a non-profit conservation land trust will be the responsibility of the Applicant or Homeowners Association as agreed to in writing prior to the recording of the Conservation Restriction.

The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The purpose of the Conservation Restriction will be to clearly identify the uses and restrictions which apply to the Protected Open Space in order to protect the value of the property within the development. [Amended ATM 4-27-2010, Art. 11]

(5) If the Protected Open Space is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated nonprofit homeowners' association, covenant or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the development plan and shall be subject

to approval by the Planning Board and Town Counsel. [Amended ATM 4-27-2010, Art. 11]

(6) Such covenants shall specify that each lot owner shall have an equal say in determining the affairs of the organization, that costs shall be equally allocated to each lot and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.

(7) Such covenants of the homeowner's association shall provide that, in the event that the organization established to own and maintain the Protected Open Space or any successor organization fails to maintain the Protected Open Space in reasonable order and condition, in accordance with the site analysis/development plan, the town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the Protected Open Space from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the town shall be assessed ratably against the properties within the development and shall become a charge on said properties and that such charge shall be paid by the property owners within 30 days after receipt of a statement therefor. [Amended ATM 4-27-2010, Art. 11]

H. [Replaced at ATM 4-27-2010 Art 11] Creating a subdivision development using the cluster approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Whately's provision of a cluster development option should be considered an incentive unto itself. However, to further encourage cluster development the following "point incentive system" has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan, the bonus point total.

(1) Any development that increases the amount of land permanently preserved by 5% above the 40% requirement earns 10 points. Each additional 5% increase in preserved land results in an additional 10 points. Such land above the 40% minimum requirement may include Land with Environmental Constraints such as floodplains.

(2) For protected farmland, sale of the farmland to a person or entity currently engaged in farming, or lease of the farmland for five or more years to a person or entity engaged in farming, and/or creation of a homeowners association and dedicated resources to be provided to that association for the establishment and maintenance of a community farm or gardens, earns 10 points.

(3) For protected forestland, a binding arrangement to ensure that the forest is managed in such a way as to qualify for "green certification" by the Forest Stewardship Council or other comparable organization acceptable to the Planning Board, earns 10 points.

(4) A cluster plan that protects at least 10 acres of land in one contiguous tract earns 5 points; a plan that protects at least 20 acres in one contiguous tract earns 10 points.

(5) A cluster plan that protects land in a tract that is contiguous to an already protected area so as to increase the area of working agricultural land, forest, or wildlife habitat earns 10 points.

(6) For forestland, wetlands, water bodies or other natural areas supporting high-quality wildlife habitat, implementation of a significant ecological restoration project earns 15 points. Examples include: removal of a small dam or other barrier to aquatic organism passage, replacement of a preexisting sub-standard stream culvert, restoration of eroding stream banks, restoration of riparian areas, removal of non-native invasive species or mitigation of a preexisting source of water pollution.

(7) A development plan that screens structures from view from a public way as evidenced by cross sections of the definitive plan at a scale of 1 inch = 10 feet earns 5 points or a planting plan which includes sufficient trees and plantings to improve the visual character of the development earns 5 points or if both are provided such plan can receive a total of ten points.

(8) Architectural designs for the single or two-family structures that match the current character of the area earn 10 points. Architectural elevation drawings of the single or two-family homes must accompany the site plan to be eligible to receive points in this category.

(9) A development plan that provides recreational opportunities for residents of Whately by providing access to walking trails or other passive forms of recreation via an easement will earn 10 points.

(10) If all houses are certified as Energy Star (or its equivalent) Homes, 10 points will be earned (to be secured by a covenant). Homes in cluster plans for Senior Housing pursuant to 171-25 H.(12) below will only receive 5 points.

(11) If a minimum of 20% of the dwelling units will be affordable and will be made available for a minimum of thirty (30) years via sale, lease, or deed restrictions to persons or families qualifying as low or moderate income as defined by the Department of Communities & Development of the Commonwealth and such unit(s) count towards the 10% requirement of Chapter 40B, then 20 points will be earned.

(12) A cluster plan that provides senior housing (age 55 and over) can earn 20 points if all the following requirements are met:

a.) The occupancy of units in the Cluster Development shall be restricted to those 55 years of age or older;

b.) There shall be 2 or fewer bedrooms in each unit;

c.) Units should incorporate renewable energy technologies such as solar hot water heaters and all units should be Energy Star rated;

d.) At least 20% of the dwelling units must be available for rent, for a minimum of thirty (30) years, or for sale, in perpetuity, via a deed restriction to seniors qualifying as low or moderate income households as defined by the Department of Communities & Development of the Commonwealth and such units must count towards the 10% requirement of Chapter 40B; and

e.) At least 50% of the units must be handicapped accessible.

A development plan will earn points and a building lot bonus above the basic number of building lots allowed under Section 171-25 F. (4) as follows:

Bonus Points	Building Lot Bonus	Example – 10 Lot Subdivision
40	10%	1 Bonus Lot – 1-2 dwellings
50	20%	2 Bonus Lots – 2-4 dwellings
60	30%	3 Bonus Lots – 3-6 dwellings
70	40%	4 Bonus Lots – 4-8 dwellings
80+	50%	5 Bonus Lots – 5-10 dwellings

If the point total results in a building lot bonus of a fractional number less than .5, the bonus building lot total will be rounded down to the next lowest whole number. The total number of bonus building lots under this section cannot exceed 50% of the maximum number of building lots allowed before the addition of bonus units.

I. Other requirements.[Amended ATM 4-27-2010]

(1) There shall be no amendments or changes to site analysis/development plan without review and approval from the Planning Board.

(2) No lot within an approved open space/cluster development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any definitive plan of a subdivision and on the approved site analysis/development plan, if not a subdivision under the Subdivision Control Law.

~ 171-26. Flood Hazard Overlay District regulations.

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

FBFM -- Flood Boundary and Floodway Map. The map is provided by the Federal Insurance Administration and is revised from time to time by it.

FIRM -- Flood Insurance Map. It is based on the FBFM and is also revised from time to time by the Federal Insurance Administration.

B. Flood Hazard District. A Flood Hazard District is hereby created as an overlay district comprising all areas designated as Zone A or Zones A1 - A30 on the Town of Whately FIRM and FBFM dated September 14, 1979, and on file with the Town Clerk. These maps are incorporated herein by reference.

C. Development regulations.

(1) The following requirements apply in the Flood Hazard District:

(a) Within Zone A or Zones A1 - A30, where base flood elevation is not provided on the FIRM or FBFM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

(2) The following provisions apply in the floodway designated on the FBFM:

(a) Within the floodway designated on the FBFM, no encroachments (including fill, new construction, substantial improvements to existing structures or other development) shall be allowed unless it is certified by a registered professional engineer that the proposed development, as a result of compensating actions, will not result in any increase in flood levels within the town during the occurrence of a one-hundred-year flood.

(b) Any encroachment in the floodway meeting the above standard must also comply with the floodplain requirements of the State Building Code.

~ 171-27. Trailers, recreational vehicles, and mobile homes.

Trailers, recreational vehicles, and mobile homes shall not be kept within the boundaries of the Town of Whately except under the following conditions:

A. The trailer or recreational vehicle is in bona fide storage limited to a single trailer or recreational vehicle per legal lot.

B. The trailer or recreational vehicle is being used for a temporary camping shelter. Such use for a camping shelter shall not exceed 14 consecutive days, for a total of 60 days in any calendar year. This time limit does not apply to trailers or recreational vehicles which are kept at a campground operating under a Special Permit.

C. A mobile home may be occupied as temporary shelter by the owner and occupier of a residence that has been destroyed by fire or other natural holocaust, on the site of such residence and for a period not to exceed 12 months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

~ 171-28.1. Planned Industrial District regulations. [Added 2-5-1991 STM, Art. 7]

A. Purpose. The purpose of the Planned Industrial District is to:

- (1) Attract environmentally acceptable light industries.
- (2) Encourage diversity in the community tax base through appropriate industrial development.
- (3) Minimize potential adverse environmental conditions, such as pollution and noise, associated with industrial development.
- (4) Protect industrial development from commercial and residential encroachment.
- (5) Ensure that industrial development is designed in a manner which protects adjacent residential areas, protects views from public ways, preserves the scenic character of the Route 5 and 10 corridor and is consistent with the rural character of the town.

B. Use regulations. Uses in the Planned Industrial District shall comply with all other applicable sections of this chapter in addition to the provisions of this section, including but not limited to ~ 171-13, 171-14, 171-15, 171-16 and 171-17. Where the requirements of other sections of this chapter differ, the requirements of the Planned Industrial District shall govern. All uses in the Planned Industrial District shall be connected to the town's public water supply.

C. Uses permitted by right.

- (1) Agricultural uses.
- (2) Except for commercial piggeries or poultry, the raising or keeping of commercial or noncommercial domestic animals.

(3) Reservations, wildlife preserves or other conservation areas.

(4) Home occupations in existing dwellings.

D. Uses permitted by right with site plan review and approval.

(1) Churches or other religious organizations.

(2) Educational uses exempt from zoning regulation under the Zoning Act, MGL C. 40A, ~ 3.

(3) Newspaper or job-printing establishments.

(4) Warehouses, wholesale trade and distribution, bulk storage or the storage of materials, merchandise, products or equipment, provided that the use is within an enclosed building and is not hazardous.

(5) Printing, publishing or data processing.

(6) Enclosed assembly, bottling, packing or finishing plant of nonhazardous materials.

(7) Research and development facilities not involving hazardous materials.

(8) United States Postal Service or private courier service.

(9) Offices for regional or administrative corporate headquarters.

(10) Medical or dental laboratory and/or medical research and associated facilities.

(11) Office park for regional or administrative corporate headquarters.

(12) Accessory structures and uses customarily incidental to the above permitted uses, including retail sales, cafeterias, automatic teller machines and day-care facilities, provided that the accessory use is limited to no more than 20% of the floor area of the principal use.

E. Uses permitted by special permit with site plan review and approval. The Zoning Board of Appeals shall be the special permit granting authority. All special permit applications shall be accompanied by a site plan in accordance with ~ 171-17 of this chapter. The site plan shall be acted on as part of the special permit review and shall not require a separate hearing by the Planning Board. Within 10 days of receiving the special permit application and site plan, the Zoning Board of Appeals shall transmit one copy of the application and site plan to the Planning Board for review and comment. Failure by

the Planning Board to comment within 45 days shall be deemed as no objection to the application and site plan. The following are uses permitted by special permit with site plan review and approval:

- (1) The processing of grain, vegetables or dairy products for human consumption.
- (2) Trade or industrial (vocational) school.
- (3) Day-care facility.
- (4) Commercial poultry or piggery on lots of five acres or less.
- (5) Tourist homes (bed-and-breakfast establishments in existing residential structures).
- (6) Water-powered or wind-powered generators up to 80 megawatts.
- (7) Public utility service stations or facilities, radio or television stations or transmitting facilities, railroad or bus depots or other public utility or communication uses.
- (8) Other light industrial uses not involving the use of hazardous materials as a principal activity, provided that the use will not be offensive, injurious, noxious or hazardous.

F. Prohibited uses. Uses not specifically permitted in the Planned Industrial District, ~ 171-28.1, are prohibited. The following uses are prohibited in the Planned Industrial District:

- (1) Solid waste landfills, dumps, junk, salvage, brush and stump dumps, recycling yards and all other disposal of materials except normal agricultural practices.
- (2) Gasoline stations and bulk storage and/or sale of petroleum products.
- (3) Car and truck washes.
- (4) Motor vehicle sales, leasing, repair or servicing establishments.
- (5) Trucking or bus terminals.
- (6) Dry-cleaning or laundry establishments.
- (7) Earth removal.

(8) Industrial or commercial uses which involve the discharge of process wastewater to the ground, except wastewater from personal hygiene and food.

(9) Any use in which the principal activity is the manufacture, treatment, storage, transportation or disposal of hazardous materials or wastes.

(10) Disposal of liquid or leachable wastes except sewage disposal systems and normal agricultural operations.

(11) Storage or transmission of oil, gas or other petroleum products except within a building.

(12) Underground or outdoor storage of petroleum, chemicals, pesticides or any other hazardous material or waste.

(13) Outdoor storage of salt, deicing chemicals, pesticides or herbicides.

(14) Burial, incineration, storage, disposal, collection and treatment of radioactive wastes.

(15) The use of septic system cleaners which contain toxic chemicals.

G. Dimensional requirements. All uses in the Planned Industrial District shall comply with the following dimensional requirements:

- (1) Minimum lot area: 3.5 acres.
- (2) Minimum frontage: 250 feet.
- (3) Minimum front yard: 50 feet.
- (4) Minimum side yard: 20 feet.
- (5) Minimum rear yard: 20 feet.
- (6) Maximum lot coverage: 50%.

H. Industrial planned unit developments. Industrial planned unit developments may be permitted within the Planned Industrial District under a special permit from the Planning Board. The purpose of an industrial planned unit development is to permit a mix of land uses, densities and building types in one development; to encourage high-quality industrial development which is harmonious with the surrounding landscape, prevents strip development and provides open space; and to provide an option to include commercial uses.

(1) Parcel size. An "industrial planned unit development" shall mean the development of a parcel of land as a single entity in which the permitted uses are

clustered together on reduced lot sizes. The land not included in the building lots shall be permanently preserved as open space. The minimum parcel size shall be three acres. A development parcel may consist of land in more than one ownership, provided that all the lots within the parcel are contiguous. Proposed developments may include preexisting buildings, provided that all of the industrial planned unit development requirements can be met. The Planning Board may permit more than one building on each lot.

(2) Dimensional requirements. The total number of lots in the development shall not exceed the number of lots which could be developed under normal dimensional requirements in the Planned Industrial District.

- (a) Minimum lot area: 40,000 square feet.
- (b) Minimum frontage: 175 feet.
- (c) Minimum front yard: 25 feet.
- (d) Minimum side yard: 20 feet.
- (e) Minimum rear yard: 20 feet.
- (f) Maximum lot coverage: 70%.

(3) Open space.

(a) At least 25% of the total development parcel in an industrial planned unit development shall be set aside as permanent open space. Up to 50% of the required open space may be wetlands. The land set aside as permanent open space shall be a contiguous parcel not smaller than one acre.

(b) The required open space shall be conveyed to either the Whately Conservation Commission, a nonprofit conservation organization, or to a corporation or trust to be owned by the lot owners within the planned unit development. A conservation restriction in perpetuity shall be placed on the open space in accordance with MGL C. 184, §§ 31 through 33.

(c) The required open space shall be of sufficient configuration, location and access to protect farmland and to enable the continuation of existing farming operations.

(4) Permitted uses. All of the uses permitted by right or by special permit in the Planned Industrial District shall be permitted in an industrial planned unit development. The following commercial uses may be permitted in planned unit

developments located in the Planned Industrial District Subarea A as shown on the Whately Zoning Map:²

(a) Professional and business offices, including but not limited to medical, legal, banking, insurance and real estate.

(b) Retail establishments where all sales, display and storage of merchandise is within the building, with a floor area of 10,000 square feet or less per floor.

(c) Personal and consumer service establishments.

(d) Eat-in restaurants, bars or lounges for serving food or drinks inside the building but not in freestanding structures.

(e) Hotels, motels and inns.

(f) Construction industry suppliers.

(g) Year-round commercial greenhouses, salesroom or stands for wholesale or retail sales of agricultural products where the majority of such products for sale have not been produced on the premises.

(5) Design standards.

(a) Industrial planned unit developments shall comply with all of the design standards of the Planned Industrial District.

(b) Access to a planned industrial development shall be via one of the three options listed in ~ 171-28.1I(1)(a) of the Planned Industrial District.

(c) Along major streets (such as Route 5 and 10), buildings shall be set back at least 75 feet from the street line, and a landscaped and/or naturally vegetated buffer of at least 50 feet wide shall be provided between the street line and the buildings except where site entrances occur. Buffer zones may contain pedestrian paths but no parking or other paved surfaces.

(6) Procedures.

(a) The special permit review for an industrial planned unit development shall comply with the requirements of ~ 171-31 and 171-17 of this chapter for special permits, site plan review and review of large developments.

²Editor's Note: The Zoning Map is on file with the Town Clerk.

(b) The review process shall be as required in the Planning Board rules and regulations.

(7) Criteria and conditions for approval.

(a) In reviewing an industrial planned unit development, the Planning Board shall consider the following criteria:

[1] The general special permit criteria and site plan requirements in §§ 171-31 and 171-17 of this chapter.

[2] The requirements of this section.

[3] Whether the plan is superior to a conventional one in preserving open space for conservation, recreation or agriculture and in utilizing the natural features of the land.

[4] Whether the plan allows for the efficient provision of streets, utilities and other public services.

[5] Any standards set forth in the Planning Board's rules and regulations.³

(b) Conditions for approval.

[1] There shall be no amendments or changes to a planned unit development plan without review and approval from the Planning Board.

[2] No lot within an approved planned unit development may be further subdivided so as to increase the number of lots without review and approval from the Planning Board.

[3] Construction may not begin and no buildings or lots may be occupied or sold until a conservation restriction for preserving the required open space in perpetuity has been recorded in the Registry of Deeds.

[4] Any other condition deemed necessary by the Planning Board to protect the public health, safety and welfare.

I. Design standards. The Planning Board and Zoning Board of Appeals shall consider the following design standards when reviewing applications for site plan review and special permits for the Planned Industrial District:

(1) Access and driveways.

³Editor's Note: See Ch. 234, Subdivision of Land.

(a) The number of curb cuts on state and local roads shall be minimized. To the extent feasible, access to businesses shall be provided via one of the following:

[1] Access via a common driveway or service driveway serving adjacent lots or premises.

[2] Access via a nonresidential side street.

[3] Access via a cul-de-sac or loop road shared by adjacent lots or premises.

(b) One driveway per business shall be permitted as a matter of right. Where deemed necessary by the reviewing authority, two driveways may be permitted as part of the site plan approval process, which shall be clearly marked "entrance" and "exit."

(c) Driveway entrances shall be located to the best advantage with regard to street alignment, sight distance and grades.

(d) Entrances off state highways shall conform to Massachusetts Department of Public Works standards and regulations.

(e) Driveways shall be designed and constructed in accordance with the Planning Board rules and regulations.

(f) Driveways and entrances shall be located to prevent drawing nonresidential traffic to and through residential streets.

(2) Parking and loading.

(a) Parking areas shall be located to the side or rear of buildings. See ~ 171-13 for other parking requirements.

(b) Loading and storage areas shall be located to the side or rear of buildings. Loading or storage areas on the sides of buildings shall be screened and set back a minimum of 200 feet from Route 5 and 10.

(c) The reviewing authority may permit parking and loading areas to be located to the front of buildings on lots which have frontage on internal subdivision roads to encourage design options in which parking and loading areas are not visible from external public ways.

(3) Signs. In addition to complying with ~ 171-14 of the Whately Zoning Bylaw, signs in the Planned Industrial District shall conform to the following:

(a) Signs within the Planned Industrial District shall share at least one common characteristic, such as lettering, size, material, style, etc., so that they may project an integrated appearance.

(b) Shared freestanding signs identifying the name of each business located on the premises shall conform to the following:

[1] The display board shall be of an integrated and uniform design.

[2] The total allowable sign area shall not exceed 64 square feet.

(c) Signs shall have a harmonious color scheme and lettering style, with at least one of the sign's colors matching the predominant building color of the establishment. Color and brightness of signs shall not be garish and shall contain natural tones. Freestanding signs and wall signs associated with the same establishment shall be of similar design (i.e., color scheme, lettering and material).

(d) The number of graphic elements on a sign shall be held to the minimum needed to identify the firm and the products or services produced or available on the premises and shall be composed in proportion to the area of the sign face.

(e) Applications for an industrial planned unit development shall include an integrated sign design scheme for all uses in the development, including color scheme, lettering, lighting, location of signs on the buildings, material and sign proportion.

(4) Architectural standards. The reviewing authority may consider the following architectural standards when reviewing site plans and special permits.

(a) Architectural style shall be in harmony with the prevailing character and scale of buildings adjacent to the Planned Industrial District through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variations in detail, form and siting shall be used to integrate buildings into the landscape, provide visual interest and avoid monotony. Proposed buildings within the district shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

(b) The roofs of the proposed buildings in the district shall be peaked when structurally feasible.

(c) Any facades visible from a road, except Interstate 91, shall be designed in an attractive, integrated manner. Buildings with at least 75% brick, clapboard or textured architectural block on facades facing streets will receive favorable

review. Buildings shall be landscaped or otherwise designed so that there is not one uniform surface area in view and to provide relief.

(d) When more than one building is located on a lot, buildings shall have the same materials or those that are architecturally harmonious used for all walls and other exterior components visible from the street.

(e) Building materials shall be of durable quality.

(f) No more than three exterior colors shall be used per building. Colors shall be natural tones, harmonious, and only compatible accents shall be used.

(g) No more than 65% of the facade facing a street may be glass, unless incorporated as part of a solar energy design. Any other reflective material which would cause glare and reflection of light onto adjacent property, streets and from distant vantage points is prohibited.

(h) The proportions and relationships between building components such as doors, windows and eaves shall be compatible with each other and with the style and character of surrounding buildings.

(i) Building materials, architecture and building placement shall minimize the visibility of buildings from distant vantage points and blend with backgrounds and surroundings.

(5) Landscaping. In addition to the landscaping required in ~ 171-16, the following shall be required:

(a) A landscaped buffer strip at least 25 feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium-height shrubs and shade trees. Trees shall be a minimum of three inches in diameter, planted at least every 25 feet along the road frontage with shrubs interspersed to create a densely vegetated screen. At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard.

(b) Any loading, outdoor area for storage, including but not limited to refuse collection equipment, trucks and vehicles except passenger cars, or utilities shall be screened from view from neighboring residential properties and streets. Screening may include densely planted evergreens at least five feet in height or opaque wooden fences or berms at least six feet in height complemented with plantings. Where evergreens are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height. Where there exists any potential safety hazard to

children, physical screening shall prevent children from being able to access the area with the hazard (using fences, walls, etc.).

(c) All landscaped areas shall be maintained in a healthy and growing condition and shall be kept free of weeds and debris. Shrubs or trees which die shall be replaced within one growing season.

(d) A seventy-five-foot buffer zone is required along side and rear lots abutting any residential or commercial use and shall contain screening as required in ~ 171-16 of this chapter.

(e) All portions of a lot not devoted to structures or other impermeable surfaces shall be landscaped. Naturally vegetated areas with trees and shrubs shall be retained and integrated into the landscaping plan, when deemed appropriate by the reviewing authority.

(6) River/wetland buffer zones. All buildings and development within the Planned Industrial District, including but not limited to parking and loading areas, outdoor storage, driveways, filling, grading and disruption of vegetation, shall be set back 75 feet from the Mill River, Great Swamp Brook and any bordering vegetated wetlands to the Mill River and Great Swamp Brook as defined in the Massachusetts Wetlands Regulations, 310 CMR 10.00. Drainage from impermeable surfaces shall be designed to have a minimal impact on the Mill River, Great Swamp Brook and its bordering wetlands. No more than 50% of the area comprising the Mill River, Great Swamp Brook and any bordering vegetated wetlands to the Mill River and Great Swamp Brook shall be included in the undeveloped area when determining maximum lot coverage as required under ~ 171-28.1G and 171-28.1H(2) of this chapter.

(7) Environmental performance standards. In addition to the standards in ~ 171-15, the following standards shall be required:

(a) Noise.

[1] Any noise within the district shall be muffled so as not to be objectionable due to volume, frequency, shrillness or intermittence.

[2] Every use within the Planned Industrial District shall be operated so that the resultant noise or ground vibrations are not discernable without the use of instruments at any boundary line of the district for more than three minutes' duration in any one hour of the day. The above shall not apply to noise or vibrations caused by motor vehicles, trains or aircraft operated in a manner normally incidental to the principal use.

(b) Air pollution. Atmospheric emissions of gaseous or particulate matter generated by land use shall conform to the then-current regulations of the Massachusetts Department of Environmental Protection (DEP). If the proposed land

use shall be of a nature to arouse the concern of the Building Inspector and/or the Planning Board, the applicant may be required to produce plans and specifications of detail sufficient for review by DEP. Determination by DEP that potential exists for emissions in excess of allowable limits shall be grounds for permit refusal.

(c) Radioactivity. Activities that emit radioactivity shall not be permitted.

(d) Water pollution.

[1] No discharge into a private sewer system, stream or the ground of any material that can contaminate any running stream or water supply or otherwise cause the emission of dangerous or objectionable elements and accumulation of wastes shall be permitted.

[2] Parking areas shall provide and maintain oil and grease separators; all runoff from parking areas and other impermeable surfaces shall be directed into a drainage system equipped with oil and grease separators before being discharged into the ground, adjacent wetlands, streams or water bodies.

[3] Floor drains which discharge outside the building shall have an enclosed collection system or approval from the Board of Health and the Department of Environmental Protection.

(e) Wastes and refuse.

[1] No waste material or refuse shall be dumped upon, or permitted to remain upon, any part of the lot or tract outside of buildings constructed thereon. Waste material or refuse stored outside buildings shall be placed in completely enclosed containers.

[2] No outdoor storage of any materials that could leach into the groundwater or surface water is permitted. All storage of leachable wastes must have an impermeable surface on the ground and sufficient overhead cover to prevent any leaching of rainwater through the leachable material and into the ground.

~ 171-28.2. Wireless Communications Services District. [Added 4-29-1997 ATM, Art. 18]

A. Purpose. The purpose of this section is to establish a district in which wireless communications services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless Communications Services District has been created to:

(1) Protect the general public from the hazards associated with wireless communication towers and facilities; and

(2) Minimize visual impacts from wireless communications towers on residential districts within Whately.

B. Definitions. For the purposes of this section, the following words shall have the following meanings:

WIRELESS COMMUNICATIONS SERVICES -- The provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service. Such service, it is anticipated, will be provided via wireless communications towers, including antennas and accessory structures, if any.

WIRELESS COMMUNICATIONS TOWER -- A structure (with antennas, if any) designed to facilitate the following types of services: cellular telephone service, personal communications service and enhanced specialized mobile radio service.

WIRELESS COMMUNICATIONS FACILITY -- Devices (other than a wireless communications tower) which are mounted on top of an existing building or structure (roof-mounted), mounted adjacent to the side or rear of an existing building or structure (side-mounted) or mounted to the facade of an existing building or structure (facade-mounted) designed to facilitate the following types of services: cellular telephone service, personal communication service and enhanced specialized mobile radio service.

C. Location. The Wireless Communications Services District shall be located on land owned or co-owned, managed or co-managed by the Town of Whately as of the effective date of this Section 171-28.2 and its affiliates which, in case of land owned or co-owned by the town, is held in the care, custody, management and control of the Board of Selectmen and on land zoned for commercial and/or industrial purposes. The Wireless Communications Services District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.

D. Submittal requirements.

(1) As part of any applications for a permit, applicants shall submit, as a minimum, the information required for commercial site plan approval, as set forth herein at ~ 171-17, as may be amended. Applicants shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures. All calculations shall be certified by, and bear the stamp or seal of, a professional engineer licensed in Massachusetts.

(2) Procedure for a special permit. All applications for wireless communications facilities, antennas or satellite dishes shall be made and filed on the applicable application forms for site plan and special permit in compliance with the Town

of Whately Zoning Board of Appeals application instructions and shall include review and advertising fees as noted in the application guidelines. In addition to the requirements for site plan review under ~ 171-17 of the Town of Whately Zoning Bylaw and the special permit requirements under ~ 171-31 of the Whately Zoning Bylaw, five copies of the following information must be submitted for an application to be considered complete:

(a) A locus plan at a scale of one inch equals 200 feet which shall show all property lines, the exact location of the proposed structure(s), street landscape features, residential dwelling and the abutting neighborhoods and all buildings within 500 feet of the facility.

(b) A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed location is required. A rendition shall also be prepared illustrating a view of the monopole, dish or antenna from the nearest street or streets.

(c) The following information must be prepared by a professional engineer retained by the town and paid for by the applicant:

[1] A description of the facility and the technical, economic and other reasons for the proposed location, height and design.

[2] Confirmation that the facility complies with all applicable federal and state standards.

[3] A description of the capacity of the facility, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.

[4] If applicable, a written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.

E. Use restrictions: wireless communication towers. A wireless communication tower (including antennas and accessory structures, if any) may be erected in a Wireless Communications Services District upon the issuance of a special permit by the Zoning Board pursuant to ~ 171-31, subject to site plan approval as set forth herein at ~ 171-17, as may be amended (without exemption due to size of structure), and subject to all of the following conditions:

(1) To the extent feasible, all service providers shall co-locate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practicable.

(2) New towers shall be considered only upon a finding by the Zoning Board that existing or approved towers, or other existing structures, cannot accommodate the wireless communications equipment planned for the proposed tower.

(3) In no event shall any such tower be located closer than one mile to any other such tower.

(4) Tower height shall not exceed 55 feet above the existing terrain.

(5) A tower shall not be erected nearer to any property line, existing building or way (public or private) than a distance equal to twice the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base.

(6) No more than one such tower is permitted per lot.

(7) Accessory structures housing support equipment for towers shall not exceed 400 square feet in size and 15 feet in height and shall be subject to site plan approval.

(8) To the extent feasible, all network interconnections from the communications site shall be via land lines.

(9) Existing on-site vegetation shall be preserved to the maximum extent practicable.

(10) The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board, through site plan review, may impose reasonable conditions to ensure this result, including painting and lighting standards. This may include but is not limited to:

(a) There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a telephone number where the owner can be reached on a twenty-four-hour basis. All signs shall conform with the Sign Bylaw (~ 171-14 of the Town of Whately Zoning Bylaws).

(b) Night lighting of the facilities shall be prohibited unless required by the Federal Aviation Administration (FAA). Lighting shall be limited to that needed for emergencies and/or required by the FAA.

(c) There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the facility and the site, and not be used for the permanent storage of vehicles.

(11) Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.

(12) Applicants proposing to erect wireless communications towers, accessory facilities and structures on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Whately to conduct wireless communications services on municipally owned property.

(13) Any proposed extension in the height, addition of cells, antennas or panels, construction of a new facility or replacement of a facility shall be the subject of a new application for an amendment to the special permit.

F. Use restrictions: wireless communications facility. A wireless communications facility (other than a wireless communications tower) may be erected in a Wireless Communications Services District upon the issuance of a special permit by the Zoning Board pursuant to ~ 171-31, subject to site plan approval as set forth herein at ~ 171-17, as may be amended (without exemption due to size of structure), and subject to all of the following conditions:

(1) Installations on existing buildings or structures shall be camouflaged or screened and designed to be harmonious and architecturally compatible with the building or structure. Any equipment associated with the facility shall be located within the building or structure to the extent feasible.

(2) No facility shall project more than five feet above the existing roof line of the building, or more than five feet out from the plane of the existing wall or facade to which it is affixed, provided that such projections do not otherwise violate existing yard dimension or setback requirements.

(3) Any proposed addition of cells, antennas or panels or replacement of a facility shall be the subject of a new application for an amendment to the special permit.

G. Nonuse. All unused towers or parts thereof or accessory facilities and structures which have not been used for one year shall be dismantled and removed at the owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town Treasurer a bond or other form of financial security acceptable to said Treasurer in an amount set by the Planning Board. The amount shall be suitable to cover demolition in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures or deems it unused for more than a year. The Building Inspector shall give the applicant 45 days' written notice in advance of any demolition action.

H. Exemptions. The following types of wireless communications towers are exempt from this ~ 171-28.2:

(1) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that the tower is not used or licensed for any commercial purpose; and

(2) Satellite dishes and antennas for residential use.

I. Waivers. The Zoning Board of Appeals may (but is not required to) waive strict compliance with the use restriction requirements of Subsections E and F when, in its judgment, such action is in the public interest and not inconsistent with the intent of this Zoning Bylaw. Any waiver request must be made in writing at the time of application with documentation relative to site constraints or location difficulties.

~171-28.3. Amateur Radio Facilities. (Added 4-25-2006 ATM, Art. 12)

A. Purpose. The purpose of this section is to establish standards and procedures for the permitting of amateur radio facilities consistent with the following goals:

(1) To reasonably accommodate the construction and operation of amateur radio facilities in accordance with federal law and M.G.L. C. 40A, §3, and

(2) To minimize the impacts amateur radio towers may cause, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, and historical locations; obstruction of flight corridors; injurious accidents; property damage; and diminution of property values.

B. Definitions. As used in this chapter, the following terms shall have the meanings indicated below:

(1) AMATEUR RADIO OPERATOR – an individual who (1) pursues an interest in radio technique as a personal aim without pecuniary interest and (2) holds an amateur operator license granted by the United States Federal Communications Commission (“FCC”).

(2) AMATEUR RADIO ANTENNA – any wire, set of wires, or exterior apparatus, designed, constructed, or used for amateur radio communications through the sending and/or receiving of electromagnetic waves.

(3) AMATEUR RADIO TOWER – any structure designed, constructed, or used for the purpose of supporting one or more amateur radio antennas.

C. General Provisions:

(1) No amateur radio antenna, or amateur radio tower, having any dimension greater than 5 feet shall be constructed or modified by any entity or individual (hereinafter the “applicant”) unless the applicant has obtained a special permit from the Zoning Board of Appeals and site plan approval from the Planning Board pursuant to the provisions of this section.

(2) Permits and approvals granted pursuant to this section are not transferable and may not be conveyed with ownership of a permitted amateur radio tower or amateur radio antenna.

(3) No amateur radio antenna or tower permitted under this section shall be nearer to any property line, existing building, or way (public or private) than a distance equal to twice the vertical distance from the highest point of the antenna or tower, whichever is higher, to the mean finished grade at the base of the antenna or tower, whichever is lower.

(4) Only one amateur radio tower shall be permitted per lot. An applicant may obtain an exemption from this restriction upon a showing that the type of amateur radio communications that the applicant wishes to engage in requires more than one amateur radio tower be placed on a lot.

(5) Amateur radio antennas and amateur radio towers permitted under this section may only be used by amateur radio operators as a personal aim without pecuniary interest. No antenna or tower permitted under this section may be used for commercial purposes.

(6) Antennas and towers commonly and universally associated with those that one finds in a factory area or an industrialized complex shall not be permitted in residential zones.

(7) The height regulation set forth in ~171-9(c) shall not apply to amateur radio towers permitted under this section.

D. Submittal Requirements

(1) As part of any application for a permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at ~171-17, as may be amended. Applicants shall also describe the capacity of any proposed tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures. For applications involving proposed or existing amateur radio towers with a height in excess of 55 feet, all calculations shall be certified by, and bear the stamp or seal of, a professional engineer licensed in Massachusetts.

(2) All applications for amateur radio antennas or towers shall be made and filed on the application forms for site plan and special permit approval in accordance with ~171-17 and ~171-31 of the Whately Zoning Bylaws. In addition to the foregoing, five copies of the following documentation must be submitted for an application to be considered complete:

a. Proof that the applicant holds an amateur radio operator’s license issued by the FCC and that the applicant is in good standing with the FCC.

b. A locus plan at a scale of one inch equals 200 feet which shall show all property lines, the exact location of any proposed antennas or towers, street landscape features, residential dwellings on abutting lots and all buildings within 500 feet of any proposed antennas or towers.

c. A color photograph or rendition of any proposed antennas or towers in their proposed location. A rendition shall also be prepared that illustrates any proposed antennas or towers from the nearest street or streets.

d. Applicants seeking permits to construct or alter amateur radio towers with a height in excess of 55 feet shall submit the following additional documentation:

i. A description of any proposed towers or antennas and the technical, economic, or other reasons for the proposed location, height, and design.

ii. Confirmation that proposed towers or antennas comply with all applicable federal and state standards.

iii. A description of the capacity of any proposed antennas or towers including the number and type of panels, antennas and transmitter receivers that can be accommodated, the radio frequency coverage, and the basis for these calculations.

iv. A written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.

E. Review. The Planning Board and the Zoning Board of Appeals will review applications submitted pursuant to the provisions of this section based on the criteria listed below. The Planning Board, through the site plan review, may impose reasonable conditions, including height restrictions, to accomplish the purposes of this bylaw and the purposes of ~171-17.

(1) Whether the proposed facility or modification complies with all local, state, and federal rules and regulations including, but not limited to, the general provisions of this section.

(2) Whether existing on-site vegetation will be preserved to the maximum extent practicable.

(3) Whether the plan minimizes, to the maximum extent feasible, adverse visual effects.

(4) Whether the plan minimizes, to the maximum extent feasible, adverse effects on environmentally sensitive areas.

(5) Whether the plan minimizes, to the maximum extent feasible, adverse effects on nearby historical areas.

(6) Whether the proposed or existing facility will be, or is, owned and operated by a licensed amateur radio operator.

171-28.4 AQUIFER PROTECTION DISTRICT (Added 4-25-2006 ATM, Article 10)

A. PURPOSE

The purpose of the Aquifer Protection District is:

- to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Whately;
- to protect existing and potential groundwater supplies and recharge areas, particularly those areas that contribute to the public water supplies;
- to conserve the natural resources of the Town of Whately; and
- to prevent temporary and permanent contamination of the environment.

B. AUTHORITY

The Aquifer Protection District is an overlay district superimposed on the underlying zoning districts. This overlay district by-law applies to all new construction, reconstruction, or expansion of existing buildings, parking areas, and new or expanded uses. Applicable activities or uses within a portion the Aquifer Protection District must comply with the requirements of this district, as well as with the underlying zoning. Uses prohibited in the underlying zoning districts are not permitted in the Aquifer Protection District.

C. CRITERIA DEFINING THE AREAS WITHIN THE AQUIFER PROTECTION DISTRICT

For the purposes of this district, there are hereby established within the Town, four (4) Aquifer Protection District Areas, consisting of Zone I, Zone II, Zone III, and an Interim Wellhead Protection Area. The criteria used to delineate these areas are set forth in the Massachusetts Drinking Water Regulations, 310 CMR 22.02, and are described in the Source Water Assessment Program Reports prepared by the Massachusetts Department of Environmental Protection for the Whately Water District (January 14, 2002) and the Whately Water Department (November 27, 2002).

(1) Zone I – The protective radius around a public water supply well that should be owned or controlled by the water supplier. For the two (2) Water District wells, the protective radius is 245 feet around each well. For the two (2) Water Department wells, the protective radius is 400 feet around each well.

(2) Zone II – The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

(3) Interim Wellhead Protection Area (IWPA) – The Massachusetts Department of Environmental Protection established an Interim Wellhead Protection Area (IWPA) for each of the Whately Water District Wells. The IWPA is a circle around each well that has a radius of 605 feet.

(4) Zone III – Means that land area beyond the area of Zone II and the IWPA from which surface water and groundwater drain into Zone II and the IWPA. The surface drainage area as determined by topography is commonly coincident with the groundwater drainage area and will be used to delineate Zone III. In some locations, where surface and groundwater drainage are not coincident, Zone III shall consist of both the surface drainage and the groundwater drainage areas.

D. AQUIFER PROTECTION DISTRICT AREA BOUNDARIES

(1) Aquifer Map

The boundaries of the Aquifer Protection District are shown on the “Whately Zoning Map – Aquifer Protection District Areas” dated April 24, 2007 as amended by Town Meeting. This map includes the newly defined Zone II and expanding Zone III for the three (3) bedrock wells in the Whately Water District. Said map is hereby made a part of this Zoning Bylaw.

(2) Location of Building Lots

If any portion of a proposed building lot lies within an Aquifer Protection District Area, then the lot is subject to the regulations of the Aquifer Protection District Area in which it is located.

(3) District Boundary Disputes

If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the

Zoning Board of Appeals (ZBA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

The burden of proof shall be upon the owner(s) of the land to demonstrate where the location of the district boundary is with respect to their parcel(s) of land when the location of the district boundary is disputed. At the request of the owner(s), the Town of Whately may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land. The Town may charge the owner(s) for reasonable costs for the investigation.

E. PROHIBITED USES

The following uses are prohibited within the Aquifer Protection District:

1. In Zone 1, all uses are prohibited except structures and uses necessary to extract groundwater for the purpose of providing a public water supply. The disposal of liquid or leachable wastes or the discharge of any septage waste within Zone 1 is prohibited.
2. The following uses are prohibited within Zone I, Zone II, Zone III and the Interim Wellhead Protection Area (IWPA):
 - (a) landfills, stump dumps, and open dumps as defined in 310 CMR 19.006 and landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L.c. 21, §26 through §53; M.G.L.c. 111, §17; M.G.L.c. 83, §6 and §7, and regulations promulgated thereunder;
 - (b) storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
 - (c) any floor drainage system that discharges to the ground;
 - (d) manufacture and production of paving, roofing, and other construction materials using petroleum-based coatings and/or preserving materials;
 - (e) airports, heliopads, truck and bus terminals or stations;
 - (f) storage of sodium chloride, chemically treated abrasives and other deicing chemicals, except quantities necessary for normal household use, unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
 - (g) automobile graveyards and junkyards, as defined in M.G.L.c. 140B, §1;
 - (h) facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L.c. 21C and 310 CMR 30.00, except for:
 - (1) very small quantity generators as defined under 310 CMR 30.000;
 - (2) household hazardous waste centers and events under 310 CMR 30.390;
 - (3) waste oil retention facilities required by M.G.L.c. 21, §52A;
 - (4) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;

- (i) petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
- (j) storage of liquid hazardous materials, as defined in M.G.L.c. 21E, and/or liquid petroleum products unless such storage is:
 - (1) above ground level, and;
 - (2) on an impervious surface, and
 - (3) either
 - (i) in container(s) or above ground tank(s) within a building, or
 - (ii) outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
- (k) hairdressing and beauty salons;
- (l) discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
 - (1) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - (2) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and
 - (3) publicly owned treatment works.
- (m) stockpiling and disposal of snow and ice containing deicing chemicals;
- (n) storage of commercial fertilizers, as defined in M.G.L. Chapter 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- (o) automotive service and repair, boat repair and service, internal combustion engine service and repair, gasoline stations, and commercial car washes;
- (p) on-site dry cleaning establishments;
- (q) the excavation or the removal of soil, loam, sand, gravel or any other mineral substances within ten (10) feet of the historical high groundwater table elevation (as determined by a DEP approved soil evaluator in accordance with 310 CMR 15.103 (3) and witnessed by the Board of Health) unless the substances removed are re-deposited on site within 45 days of removal to achieve a final grading greater than ten (10) feet above the historical high water mark, and except for excavations for the construction of building foundations, swimming pools, roof runoff infiltration systems or the installation of utility works and approved drainage systems.
- (r) storage of manure, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate;
[Added ATM 6-23-20, Article 34]

F. DIMENSIONAL REQUIREMENTS FOR THE AQUIFER PROTECTION DISTRICT

(1) Within Zone II, the Interim Wellhead Protection Area, and the Zone III, the minimum lot size for all uses is three (3) acres. A lot must have two hundred (200) feet of frontage on a street. The lot must comply with the dimensional requirements of the underlying zoning district for Front Yards and Rear Side Yards. Flag lots in these areas, excluding the access strip, shall be at least three (3) acres.

(2) Within Zone II, the Interim Wellhead Protection Area, and the Zone III, the maximum lot coverage shall not exceed ten percent (10%) of the lot.

(a) The following shall not be considered coverage:

- (1) natural areas; such as, landscaping, gardens, lawns, etc.;
- (2) one shed less than 120 square feet;
- (3) open decks, (i.e. slotted, allowing precipitation to easily flow through to the ground);
- (4) handicap ramps;
- (5) above ground swimming pools;
- (6) building footprints of up to ten percent (10%) of lot area, with approved artificial recharge systems.

(b) Lot coverage is defined as all uses on a lot that include, but are not limited to:

- (1) buildings,
- (2) structures,
- (3) driveways,
- (4) parking areas, and
- (5) impervious walkways and patios.

(c) Lot coverage calculations for lots in an open space/cluster development (as defined in Section 171-25 of the Zoning Bylaws) shall be based on the inclusion of a proportionate share of the permanently protected open space approved as part of the open space/cluster development.

G. SPECIAL PERMIT USES

(1) Unless a protected and lawful use, or an exempted use, the following shall require a Special Permit, pursuant to ~171-31, from the Zoning Board of Appeals:

- (a) the expansion or modification of a non-conforming use.
- (b) any subdivision of land subject to the requirements of Chapter 234.
- (c) the construction of one or more multifamily structures.

(2) Land uses and developments that require a Special Permit in the underlying zoning district, as designated in ~171-8, Table of Use Regulations, must comply with ~171-31. Special Permits; and the Application Procedures, Criteria, and Performance Standards that apply in the Aquifer Protection Overlay District, ~171-28.4 G. and ~171-28.4 H.

(3) Application Procedures. The applicant must submit a completed Water Supply Protection Review Checklist with the application for a Special Permit.

(4) Criteria.

(a) Before granting a special permit, the Zoning Board of Appeals shall consider the proposed use in relation to the site and the adjacent uses and structures and the town and shall find that there will be no significant adverse impacts to the Whately public water supplies and aquifer recharge areas, considering the following criteria:

(1) The proposed project complies with the performance standards of the Aquifer Protection Overlay District.

H. PERFORMANCE STANDARDS FOR THE AQUIFER PROTECTION OVERLAY DISTRICT

(1) Commercial, Industrial, Institutional, Multi-family Residential, and Residential Subdivision Recharge and Stormwater Management Requirements

(a) New commercial, industrial, institutional and multi-family residential uses, and all roads and parking facilities (greater than 5 spaces), shall require a stormwater management plan. The stormwater management plan must be developed by a professional engineer registered in the State of Massachusetts, and shall be reviewed and approved by the Zoning Enforcement Officer who reserves the right to retain a consultant engineer to review said plan, at the applicant(s) expense.

(b) Applicants are encouraged to incorporate natural drainage patterns and Low Impact Development (LID) techniques in their site design in order to mimic pre-development hydrology and remove pollutants from stormwater.

(c) All recharge systems shall be maintained in full working order by the owner(s) under the provision of an operations and maintenance plan approved by the Zoning Enforcement Officer to ensure that the system functions as designed.

(d) Recharge systems shall be designed to contain a volume equivalent to one inch of runoff from the tributary area or, if dynamic operation is proposed, to accommodate at least a one-inch (1") runoff in a one (1) hour period.

(e) Direct stormwater discharge, except roof runoff, into dry wells or underground discharge is prohibited on non-residential properties except where first filtered through a device that provides approved pre-treatment.

(f) Infiltration systems shall be designed to control hazardous material spills, remove contamination, and to avoid sedimentation of leaching facilities.

(g) The Zoning Board of Appeals may require an operations and maintenance plan for recharge systems including yearly inspection and enforcement procedures. The Zoning Enforcement Officer may modify the inspection schedule based on the results of prior inspections, not to exceed three (3) years between inspections.

171-28.5 Solar Electric Generating Facilities [Added section 10-27-2011][Amended ATM 6-23-2020, Article 36]

A. Purpose

The purpose of this bylaw is to facilitate the creation of new Large-Scale Ground-Mounted Solar Electric Installations (see Section 171-37. Terms defined) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

(1) Applicability

The provisions set forth in this section shall apply to the construction, operation, repair and/or removal of Large-Scale Ground-Mounted Solar Electric Installations greater than 10 kW. Smaller scale (10 kWAC or less) ground mounted solar electric installations which are an accessory structure to an existing residential or non-residential use do not need to comply with this section, but require a building permit and must comply with all applicable local, state and federal requirements, including but not limited to

all applicable safety, construction, electrical, and communications requirements and other provisions of Whately's Zoning Bylaws such as setback requirements.

Large-Scale Ground-Mounted Solar Electric Installations greater than 10 kWAC up to 500 kWAC that occupy no more than 2 acres of land proposed to be constructed in the Agricultural/Residential District 2, Commercial, Commercial- Industrial, or Industrial Zoning Districts are allowed by right but are subject to Site Plan Review (see Section 171-17) and the requirements of this section.

Large-Scale Ground-Mounted Solar Electric Installations which require a Special Permit and Site Plan Review in accordance with the Zoning Bylaws of the Town of Whately in addition to meeting the requirements of this section are as follows:

- (a) an installation larger than 500 kWAC; or
- (b) an installation occupying more than 2 acres of land on one or more adjacent parcels in common ownership (including those separated by a roadway) in the Agricultural Residential 2, Commercial, Commercial-Industrial or Industrial Zoning Districts.

This section also pertains to physical modifications that materially alter the type, configuration, or size of Large-Scale Ground-Mounted Solar Electric installations or related equipment.

All buildings and fixtures forming part of a solar electric installation shall be constructed in accordance with the Massachusetts State Building Code.

B. General Requirements for all Large-Scale Solar Ground-Mounted Solar Electric Installations

The following requirements are common to all Large-Scale Ground-Mounted Solar Electric installations.

(1) Compliance with Laws and Regulations

The construction and operation of all Large-Scale Ground-Mounted Solar Electric Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar electric installation shall be constructed in accordance with the Massachusetts State Building Code.

(2) Building Permit and Building Inspection

No Large-Scale Ground-Mounted Solar Electric Installations shall be constructed, installed or modified as provided in this section without first obtaining a building permit and paying any required fees.

C. Site Plan Review

Large-Scale Ground-Mounted Solar Electric Installations shall undergo Site Plan Review (see Section 171-17) by the Planning Board prior to construction, installation or modification as provided in this section.

(1) General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

(2) Required Documents

The project proponent shall provide the following documents in addition to or in coordination with those required for Site Plan Review (see Section 171-17):

- (a) A site plan showing:
 - i. Property lines, map and lot from the Assessor's records, and physical features, including roads and topography, for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures including their height;
 - iii. Locations of wetlands and Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP)
 - iv. Locations of Floodplains or inundation areas for moderate or high hazard dams;
 - v. Locations of local or National Historic Districts, Priority Heritage Landscapes, and Scenic Roads and Scenic Views identified on the Scenic Resources and Unique Environments Map of the Town's Open Space & Recreation Plan;
 - vi. A list of any hazardous materials proposed to be located on the

site in excess of household quantities and a plan to prevent their release to the environment, as appropriate;

- vii. Blueprints or drawings of the solar electric installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- viii. A detailed impact study for the Utility Interconnection including information on the location and type of any poles, transformers or other electrical components required by the utility to support the proposed solar facility including electrical equipment upgrades outside the facility to allow the site to connect to the grid including any necessary tree trimming. The list of abutters shall include abutters within a 300' radius of these changes.
- ix. A copy of an Interconnection Application filed with the utility including a one or three line electrical diagram detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- x. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.;
- xi. Documentation by an acoustical engineer of the noise levels projected to be generated by the installation;
- xii. Name, address, and contact information for proposed system installer;
- xiii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- xiv. The name, contact information and signature of any agents representing the project proponent;
- xv. Documentation of actual or prospective access and control of the project site;

- xvi. Provision of water including that needed for fire protection;
 - xvii. Existing trees 6” caliper or larger and shrubs; *and*
 - xviii. Location of prime farmland soils or soils of State-wide importance.
- (b) An operation and maintenance plan (see Section 171-28.5 E.);
 - (c) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
 - (d) Proof of liability insurance; and
 - (e) Description of financial surety that satisfies Section 171-28.5 K; and
 - (f) A detailed planting plan showing the location and species selected for all proposed plantings and screening (see 171-28.5 H.(10) Screening and H.(5) Control of Vegetation).

D. Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar electric installation.

E. Inspections and Operation & Maintenance Plan

The project may be inspected at various times during the construction and operation of the solar electric facility including during the placement of utility connections underground, installation and maintenance of required landscaping or the construction and maintenance of the stormwater management system. The Zoning Board of Appeals, as special permit granting authority, or the Planning Board, pursuant to the Site Plan Review process, may hire an on-site inspector with background and experience in solar electric generating facilities, stormwater management, pollinator habitat and/or landscaping to provide inspection services at the expense of the project proponent. Such required inspections may be specified in the Special Permit and/or Site Plan Review conditions.

The project proponent shall submit a plan for the operation and maintenance of the Large-Scale Ground-Mounted Solar Electric Installation, which shall include measures for maintaining safe access to the

installation, storm water and vegetation controls, as well as general procedures for operational maintenance of the installation.

F. Utility Notification

No Large-Scale Ground-Mounted Solar Electric Installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar electric installation owner or operator's intent to install an interconnected facility. Off-grid systems shall be exempt from this requirement.

G. Dimension, Size and Height Requirements

- (1) Setbacks for Large-Scale Ground-Mounted Solar Electric Installations, front, side and rear setbacks shall be as follows
 - (a) Front yard: The front yard depth shall not be less than 100 feet.
 - (b) Side yard. Each side yard shall have a depth of at least 100 feet.
 - (c) Rear yard. The rear yard depth shall not be less than 100 feet.
- (2) Setbacks for Large-Scale Battery Storage systems in Solar Electric Installations shall be as follows:
 - (a) No less than 500 feet from any abutting plot in the AR1 or AR2 Districts.
 - (b) No less than 200 feet from any well for lots not served by public water

The required setback areas should not be included in the 2 acre maximum calculation for By-Right solar electric installations (see Section 171-28.5 A.).

(2) Appurtenant Structures

All appurtenant structures to Large-Scale Ground-Mounted Solar Electric Installations shall be subject to regulations concerning the bulk and height of structures, lot area, and setbacks as specified in Section 171-28.5 G., open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

(3) Height of Structures

The height of any structure associated with a Large-Scale Ground-Mounted Solar Electric Installation shall not exceed 25 feet. [Amended height 5-9-2013 ATM, Art. 21]

- (4) The size of the Solar Electric Generating Facility including required setbacks shall not exceed 10 acres., except that where the Special Permit Granting Authority determines it appropriate, the maximum size of the facility may be increased by

(a) an additional 2 ½ acres if the Facility is sited on glacial till and sandy soil that is not heavily forested; and

(b) an additional 2 ½ acres if the Facility is sited in a location where it is not visible from any existing residence.

H. Design and Performance Standards

(1) Lighting

Lighting of solar electric installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar electric installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

(2) Signage

Signs on Large-Scale Ground-Mounted Solar Electric Installations shall comply with Whately's sign bylaw, Section 171-14. A sign consistent with Whately's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar electric installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar electric installation.

(3) Utility Connections

Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar electric installation Electrical transformers for utility interconnections may be above ground if required by the utility provider.

(4) Roads

Access roads shall be constructed to minimize grading, removal of stone walls or trees and minimize impacts to environmental or historic resources.

(5) Control of Vegetation

Herbicides may not be used to control vegetation at the solar electric installation. Mowing, grazing or using geotextile materials underneath the solar array are possible alternatives. Removal of existing trees on the site should be minimized to the maximum extent feasible; the Zoning Board of Appeals, as special permit granting authority, or the Planning Board, pursuant to the Site Plan Review process, may require that replacement trees be planted outside the Facility unless the owner is subject to the fee requirement in paragraph (8) of this section.

(6) Hazardous Materials

Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar electric equipment then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.

Any associated battery storage systems may not be located in Zone 1 of the Aquifer Protection District and must be located above the 100 year floodplain. The storage system must be located within a building with the following features: a temperature and humidity maintained environment; an impervious floor with a containment system for potential leaks of hazardous materials; a smoke/fire detection, fire alarm and fire suppression system; a thermal runaway system; and a local disconnect point or emergency shutdown feature. The containment area must be designed so that in event of a fire, fire extinguishing chemicals will be completely contained.

The building and systems must be approved by the Whately Fire Chief and must be designed and installed in accordance with all applicable State codes and safety requirements as well as safety measures recommended by the National Fire Protection Association. The applicant shall provide for annual training of Whately Fire Department staff in coordination with the Fire Chief. Periodic inspections to ensure the integrity of the batteries, other equipment and the containment system may be required as conditions of the special permit and the site plan review.

Battery storage units shall be limited to only those needed to support the solar installation at the site, their total maximum power output may not exceed the nominal rated kW generating capacity of the installation as measured in direct current, and the storage capacity should not be larger than that required to provide electricity at that maximum power output for a period of 4 hours. Spent or expired battery units must be immediately removed from the site.

(7) Noise

Noise generated by Large-Scale Ground-Mounted Solar Electric Installations and associated equipment and machinery shall conform to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10. A source of sound will be considered in violation of said regulations if the source:

- a. increases the broadband sound level by more than 10 db(A) above ambient; or produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more.

Said criteria are measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours, unless established by other means with the consent of the DEP. Noise generated shall further comply with Section 171-15 B (1) of the Town of Whately bylaws.

(8) Impact on Agricultural and Environmentally Sensitive Land

The facility shall be designed to minimize impacts to agricultural and environmentally sensitive land and to be compatible with continued agricultural use of the land whenever possible. For every acre of land assessed under the provisions of MGL Chapter 61, or 61A in any of the previous three years to be occupied by the Solar Facility, including its plantings and setbacks, the owner or operator shall pay a Resource Replacement Fee to the Town of Whately Community Preservation Act Open Space Reserve for the preservation of farmland and timberland.

(9) Drainage

The solar facility design shall minimize the use of concrete and other impervious materials to the greatest extent possible.

(10) Screening

Large-Scale Ground-Mounted Solar Electric Installations shall be screened from view by a minimum fifteen (15) foot wide buffer zone with staggered and grouped planting of shrubs and small trees. Such plantings shall use native plants and a mix of deciduous and evergreen species and may be located within the setback area. Such plantings must be a minimum of five (5) feet high at the time of installation and any plant that is damaged or dies shall be replaced on an annual basis each Spring or Fall.

I. Safety and Environmental Standards

(1) Emergency Services

The Large-Scale Ground-Mounted Solar Electric Installations owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar electric installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

(2) Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Large-Scale Ground-Mounted Solar Electric Installation or otherwise prescribed by applicable laws, regulations, and bylaws. Such installations shall not occur on any slopes greater than 15% in order to minimize erosion. All facilities must be located at least 100 feet from any wetland or Priority Habitat Area as delineated in accordance with the Massachusetts Endangered Species Act regulations at 321CMR 10.00 or successor regulation.

J. Monitoring, Maintenance and Reporting

(1) Solar Electric Installation Conditions

The Large-Scale Ground-Mounted Solar Electric Installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the solar electric installation and any access road(s).

(2) Modifications

All material modifications to a solar electric installation made after issuance of the required building permit shall require approval by the Planning Board.

(3) Annual Reporting

The owner or operator of the installation shall submit an Annual Report which certifies compliance with the requirements of this bylaw and their approved site plan including control of vegetation, noise standards, and adequacy of road access. The Annual Report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The Annual Report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Inspector, Board of Health and Conservation Commission (if Wetlands Permit was issued) no later than 45 days after the end of the calendar year.

K. Abandonment or Decommissioning

(1) Removal Requirements

Any large-scale ground-mounted solar electric installation which has reached the end of its useful life or has been abandoned consistent with Section 171-28.5 K. of this bylaw shall be removed. The owner or operator shall physically remove the installation within 150 days of abandonment or the proposed date of decommissioning and if not the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned Large-Scale Ground-Mounted Solar Electric Generating Installation. As a condition of Site Plan or Special Permit approval, an applicant shall agree to allow entry to remove an abandoned or decommissioned installation. The cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all Large-Scale Ground-Mounted Solar Electric Installations, structures, equipment, security barriers and transmission lines from the site, including any materials used to limit vegetation.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

(2) Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar electric installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the Large-Scale Ground-Mounted Solar Electric Installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

(3) Financial Surety

Proponents of Large-Scale Ground-Mounted Solar Electric Installations shall provide a form of surety, either through escrow account, bond or other form of surety approved by the Planning Board to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no

event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent and the Town. Such surety will not be required for municipal or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

~ 171-28.6 Adult Use Recreational and Medical Marijuana Establishments [Amended 4-24-2018 Article 41]

A. Purpose and Intent

It is the purpose of this article to promote public health, safety and general welfare, and to support the availability of recreational marijuana in accordance with State law. To mitigate potential impacts to adjacent areas this bylaw will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young people in the vicinity of schools, public parks and other areas where children congregate.

B. Definitions

Craft Marijuana Cultivator Cooperative - a marijuana cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the Commonwealth, or an appropriate business structure as determined by the Cannabis Control Commission, that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products for delivery to marijuana establishments but not to consumers.

Greenhouse - a structure, primarily of glass or sheets of clear plastic with no concrete flooring, in which temperature and humidity can be controlled for the cultivation or protection of plants.

Host Community Agreement – A marijuana establishment seeking to operate in Whately shall execute an agreement with the host community setting forth the conditions for having a marijuana establishment located within the host community. Such Host Community Agreement shall include, but not be limited to, all stipulations of responsibilities between Whately and the marijuana establishment. A Host Community Agreement between a marijuana establishment and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or a greater amount if allowed by the State. Such Host Community Agreement shall be effective

for 5 years and can be renewed for successive 5-year periods at the option of the Town. Any cost to Whately imposed by the operation of a marijuana establishment shall be documented and considered a public record.

Independent Testing Laboratory - a laboratory that is licensed by the State Cannabis Control commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Cannabis Control Commission.

Licensee - a person or entity licensed by the State Cannabis Control Commission or under the provisions of 105 CMR 725.00 to operate a marijuana establishment.

Marijuana Cultivator - an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

Marijuana Establishment – a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of marijuana related business licensed by the Commonwealth of Massachusetts.

Marijuana Product Manufacturer – an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

Marijuana Products – products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Retailer – an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

C. Requirements Regarding the Allowed Locations for Marijuana Establishments

1. See ~ 171.8 Table of Use Regulations for locations for permitted Marijuana Establishments.
2. Marijuana Establishments shall not be located within 500 feet of any existing public, parochial, or private school, kindergarten, or State-approved day care center. This setback shall include the grounds on which said public, parochial, or private school, kindergarten or State-approved day care center is located on. The distance between any Marijuana Establishment and any public, parochial, or private school, kindergarten, State-approved day care center, or other location where children congregate shall be measured in a straight line, without regard to intervening structures, from the closest property line of any existing public, parochial, or private school, kindergarten, or State-approved day care center, or other places where children congregate to the Marijuana Establishment.
3. Marijuana Establishments shall not be located within 500 feet from any public recreation area or park measured in a straight line, without regard to intervening structures, from the closest property line of the recreation area to the Marijuana Establishment.
4. Marijuana Establishments shall not be located within 500 feet from any existing church without regard to intervening structures, from the closest property line of the church to the Marijuana Establishment.
5. Marijuana Establishments may request a waiver from the setback standard of 500 feet required by Sections C.2 - 4 from the Zoning Board of Appeal to no less than 300 feet if there is no other feasible alternative. Such waiver may be granted in the ZBA's sole discretion.
6. No Marijuana Establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
7. Marijuana establishments shall have a minimum 50-foot setback from all property lines except Marijuana Retailers shall have a minimum 20-foot setback from rear/side yard property lines in the Commercial District.

D. Site Development, Permitting Standards & Application

Pursuant to Chapter 40A Section 9A the following site improvements and amenities are required to protect public safety and neighboring property values, in addition to the Special Permit requirements found in ~171-31 and the Site Plan Review requirements found in ~171-17. The reviewing authorities are empowered hereunder

to review and approve Special Permit and Site Plan Review applications for Marijuana Establishments and impose requirements for: buffering; odor control; noise; outdoor lighting; parking; access to the site from public roads; hazardous materials; water and energy efficiency; and landscaping and buildings. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

1. Dimensional Requirements: Any building or structure containing a Marijuana Establishment shall meet the setback requirements of this Section C.6 and other dimensional controls of the appropriate district as specified in these bylaws. For any property proposed to contain a Marijuana Establishment, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
2. Parking and Loading Requirements: On-site parking and loading shall be provided in accordance with the requirements of ~171-13 of these bylaws. For any property proposed to contain a Marijuana Establishment Business in the Commercial, Commercial-Industrial, and Industrial Districts, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
3. Site Screening: The Special Permit and Site Plan Review granting authorities shall have the ability to require appropriate screening from abutters.
4. Lighting & Security: Security cameras covering external areas shall include cameras with the capability to function with minimum lighting at night. External lighting should be consistent with public safety requirements and hours of operation, reasonably shielded from abutting properties and designed to reduce light pollution. Internal lighting in greenhouses shall be fully screened from abutters after sunset.
5. Noise & Odors: Except for outdoor cultivation, no noise or marijuana or other odors detectable at the property line of the Marijuana Establishment shall be allowed. Outdoor Marijuana Cultivators shall be required to mitigate odors through siting, use of low-odor seed varieties, and other odor-reduction methods as practicable.
6. Energy Efficiency: Except for outdoor cultivation, marijuana establishments shall be required to prepare a detailed energy efficiency plan. Cultivators in buildings and greenhouses shall generate a minimum of 50% of their projected energy use on site where feasible. For solar power generation, priority is to be given to roof-mounted facilities, then to siting on non-arable land, then to dual-use facilities that permit agriculture

underneath high-mounted and well-spaced panels, and then to the least productive arable land.

7. Water Efficiency: Marijuana Establishments are required to prepare a plan for water management and efficiency, including the incorporation of greenhouse run-off recapture and reuse. Where public water is to be used, Marijuana Cultivators are required to receive certification from the Water Department that there is sufficient capacity for their projected water use.
8. Hazardous Materials: Submission of a complete list of chemicals, pesticides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Provide a Hazardous Materials Management Plan if using or storing hazardous materials on site in excess of household quantities to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism. The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
9. Signs: All signs for a Marijuana Establishment must meet the requirements of ~ 171-14 of this bylaw and the State Regulations (935 CMR 500.000) including the requirement that, no advertising signs shall be located within twenty feet of a public or private way and must be set back a minimum of twenty (20) feet from all property lines.
10. Greenhouses: Greenhouses (see Definition in Section B) for Marijuana Cultivation shall be designed to limit the impact on arable land and shall be subject to the lot coverage requirements of ~171-10 and ~171-28.4F(2)
11. Buildings: Appearance of buildings for Marijuana Establishments shall be consistent with the appearance of other buildings in Whately, not employing unusual color or building design which would attract attention to the premises. In Agricultural/Residential District 2 new buildings for Marijuana Cultivators including Craft Marijuana Cultivators shall resemble vernacular agricultural buildings, such as barns. Marijuana Establishment Buildings shall not exceed 4000 square feet in the Agricultural/Residential Districts and 5000 square feet in the Commercial District.
12. Marketing: Marijuana Establishments shall not be allowed to disseminate or offer to disseminate marijuana marketing materials to minors or suffer minors to view displays or linger on the premises. No free samples may be provided by Marijuana Establishments to consumers.

13. Hours of operation: The hours of operation shall be set by the Special Permit Granting authority but in no event shall a facility be open to the public and no sale or other distribution of marijuana occur on the premises or via delivery between the hours of 8:00 pm and 7:00 am.
14. Retailer limits: No more than three Marijuana Retailers will be permitted to operate in Whately.
15. Applications: The applicant requesting permission to operate any Marijuana Establishment must file their application with the Special Permit Granting Authority and the Town Clerk. Such application shall contain the information required by ~171-31 Special Permit and any rules and regulations established by the Special Permit Granting Authority and the State Cannabis Control Commission. The application shall also include:
 - a) Name and Address of the legal owner and Licensee of the Marijuana Establishment;
 - b) Name and Address of all persons having lawful, equity or security interests in the Marijuana Establishment;
 - c) Name and Address of the Manager of the Licensed Marijuana Establishment;
 - d) The number of proposed employees; and
 - e) Proposed security precautions.
16. Site Plan Review: No Marijuana Establishment shall be established prior to submission and approval of a site plan by the Planning Board, pursuant to ~171-17. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed Marijuana Establishment and all existing uses within 1,000 feet of the property lines of the proposed Marijuana Establishment. The site plan shall show all exterior proposed security measures including lighting, fencing, gates, cameras, alarms, etc. A traffic study may be required.
17. Reporting: All Marijuana Establishments shall provide public safety officials, the Building Inspector and the Town Administrator with the names, phone numbers and email addresses of all management staff and key holders, including a minimum of two operators or managers of the facility identified as contact persons. All such contact information shall be updated to keep it current and accurate.

18. Change in License or Owner: The Owner and Licensee of any Marijuana Establishment issued a Special Permit under this bylaw shall report, in writing, within 10 business days any change in the name of the legal owner of the Marijuana Establishment or any expiration or suspension of a license to the Building Inspector and Planning Board. Any failure to meet this requirement of this Bylaw will result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the Special Permit cease immediately.
19. Change of Ownership: A Special Permit issued under this Article shall lapse upon any transfer of ownership or legal interest of more than 10% or change in contractual interest in the subject premises or property. The Special Permit may be renewed thereafter only in accordance with this Article 171-28.6 and ~ 171-31 (Special Permit) and ~ 171-17 (Site Plan Review).
20. Host Community Agreement: Applicant shall submit the proposed Host Community Agreement that is required between a Marijuana Establishment and the town it is operating in at the time they submit their Application.

E. Expiration

A Special Permit to operate a Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but shall be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the Special Permit Granting Authority at least 60 calendar days prior to said expiration and that no objection to said renewal is made and sustained based upon compliance with all conditions of the Special Permit as well as public safety factors applied at the time the Special Permit renewal is requested. In addition, an updated Host Community Agreement satisfactory to Whately shall be provided if requested by the Town.

F. Severability

The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.

ARTICLE VI

Administration and Enforcement

~ 171-29. Enforcement; violations and penalties.

A. The Building Inspector shall enforce this chapter and any subsequent amendments.

B. No building or structure shall be constructed, altered or moved and no land, building or structure shall be changed in use without a permit from the Building Inspector.

C. No permit shall be issued unless the construction, alteration or change in use is in compliance with the provisions of this Zoning Bylaw.

D. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector.

E. Construction or operations under a building or special permit shall conform to any subsequent amendment of the Zoning Bylaw unless the use or construction is commenced within a period of six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

F. Any person violating any of the provisions of this chapter, any of the conditions of a permit granted under this chapter or any of the decisions rendered by the Board of Appeals shall be fined \$50 for each offense. Each day that such violation continues shall constitute a separate offense.

~ 171-30. Zoning Board of Appeals.

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

A. To hear and decide special permit applications, as provided for in this chapter and in the Zoning Act, Chapter 40A of the Massachusetts General Laws.

B. To hear and decide appeals and variances, as provided for in the Zoning Act, Chapter 40A of the Massachusetts General Laws.

~ 171-31. Special permits.

A. Purpose. Special permits are required for certain uses, structures or conditions, as designated in ~ 171-8, Table of Use Regulations. Special permit review is intended to ensure that any proposed use of land or structures will not have an adverse effect on other uses in a neighborhood or on the town and that the use is in harmony with the intent and purpose of this chapter.

B. Special permit granting authority. The Zoning Board of Appeals shall be the special permit granting authority unless specifically designated otherwise in this chapter.

C. Public hearing. Special permits shall only be issued following a public hearing held within 65 days after filing an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant. The special permit granting authority shall take final action on an application for special permit within 90 days following the closing of the public hearing. Failure to do so shall constitute approval. A unanimous vote of a three-member board and a vote of at least four members of a five-member board is required.

D. Application procedures. Rules relative to the application, submittal requirements and approval of special permits may be adopted and from time to time amended by each special permit granting authority for special permits under its authority as specified in this chapter. Copies of application forms and rules and regulations are available from the special permit granting authority and are on file with the Town Clerk.

E. Expiration. Special permits shall lapse after one year if substantial use has not commenced or if construction has not begun by such date, except for good cause. Operations under a special permit shall conform to any subsequent amendment of this chapter unless the use is commenced within a period of not less than six months after the issuance of the permit.

F. Criteria.

(1) Before granting a special permit, the special permit granting authority shall consider the proposed use in relation to the site and the adjacent uses and structures and the town and shall find that there will be no significant adverse effects to the neighborhood or the town, considering the following criteria:

(a) The proposed project shall comply with the environmental performance standards specified in ~ 171-15 of this chapter and with all other provisions of this chapter.

(b) The proposal will not create traffic congestion or impair pedestrian safety. Provisions shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets, property or improvements.

(c) The proposed project shall not create any significant emission of noise, dust, fumes, noxious gases, radiation or any other significant adverse environmental impact.

(d) The proposed project shall not increase erosion, flooding or sedimentation, either on site or on neighboring properties, and shall be consistent with the

Massachusetts Wetlands Protection Act (MGL C. 131, ~ 40). Provision shall be made for minimizing runoff, erosion and sedimentation.

(e) The proposed project shall not create a significant adverse impact to the quality of surface water or groundwater during and after construction, and provisions shall be made for maximizing groundwater recharge.

(f) The project shall be compatible with existing uses and other uses allowed by right in the district and shall be designed to be compatible with the character and scale of neighboring properties.

(g) The design of the project shall minimize the visibility of visually degrading elements and protect the neighboring properties from potentially detrimental or offensive uses through the use of screening or vegetated buffer zones.

(h) The design of the project shall minimize earth removal and the volume of cut and fill. Any grade changes shall be in keeping with the general appearance of the neighborhood.

(i) The removal of existing trees and vegetation shall be minimized. If established trees are to be removed, special attention shall be given to the planting of replacement trees.

(j) The design of the project shall provide for adequate methods of disposal of sewage, refuse or other wastes generated by the proposed use.

(k) The proposed use will not overload the capacity of public facilities such as water and sewer systems, storm drainage, schools and refuse-disposal facilities.

(2) When reviewing an application for a special permit, the special permit granting authority may require the submission of a statement from an independent authority qualified in addressing a specific type of environmental concern, chosen by the special permit granting authority and paid for by the applicant, indicating that the proposed structure and/or use will not constitute a detriment to the community with respect to that particular environmental concern.

(3) In reviewing site plans submitted with a special permit application, the special permit granting authority shall consider the site plan submittal and approval requirements of ~ 171-17A(4) and (5) of this chapter.

(4) In case of proposed uses which require a special permit for uses which involve hazardous material or wastes, a higher level of scrutiny will be required to ensure the future health and safety of our groundwater supplies. [Added 5-7-1991 ATM, Art. 21]

G. Conditions, safeguards and limitations. In granting a special permit, the special permit granting authority may, in accordance with Chapter 40A of the General Laws, impose conditions, safeguards and limitations. Such conditions, safeguards and limitations shall be in writing and may include but are not limited to the following:

(1) Setback, side and rear yards greater than the minimum required in this chapter.

(2) Screening of parking areas or other parts of the premises from adjoining properties or from streets by the use of walls, fences, plantings or other such devices.

(3) Limitations of size, number of occupants, method or time of operation or extent of facilities.

(4) Modification of the exterior design or appearance of buildings, structures, signs or landscape materials.

(5) Additional parking, loading or traffic requirements beyond the minimum required in this chapter.

(6) Measures to protect against environmental pollution.

(7) A performance bond or other security to ensure that the project meets the conditions specified in the special permit.

H. Changes, alterations and expansion. Any substantial change, alteration or expansion of a use allowed by special permit shall require a special permit from the appropriate special permit granting authority.

~ 171-32. Appeals.

The Zoning Board of Appeals may hear appeals from:

A. Any person aggrieved because of an inability to obtain a permit or enforcement action from any administrative officer under the provisions of the Zoning Act, Chapter 40A of the Massachusetts General Laws.

B. The Franklin Regional Council of Governments Executive Committee or the Franklin Regional Planning Board, who act as the regional planning agency.

C. Any person, including any officer or board of the Town of Whately or of any abutting town, aggrieved by any order or decision of the Building Inspector or other administrative official which is in violation of any provision of this chapter or of the Zoning Act, Chapter 40A of the Massachusetts General Laws. Any such appeal shall be

submitted to the Board of Appeals within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal with the Town Clerk, in accordance with the provisions of MGL C. 40A, ~ 15.

~ 171-33. Variances.

A. The Zoning Board of Appeals shall hear and decide, upon appeal or petition, requests for variances from the provisions of this chapter in respect to the particular use or dimensions of land or a structure. A variance shall be granted only where the Board of Appeals finds that:

(1) A literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.

(2) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structure and especially affecting such land or structure but not affecting generally the zoning district in which it is located.

(3) Desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this chapter.

B. The Zoning Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures, but excluding any condition, safeguard or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant petitioner or any owner.

(1) Applicants for a variance must submit a copy of the application to the Town Clerk. The Zoning Board of Appeals may request a site plan to aid in its review of the request for a variance.

(2) The Zoning Board of Appeals shall hold a public hearing within 65 days of the application date.

(3) The Zoning Board of Appeals shall act on the variance request within 75 days of the date of filing of the application.

(4) A unanimous vote of a three-member Board is required for the granting of a variance.

~ 171-34. Amendments.

This chapter may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of MGL C. 40A, ~ 5.

~ 171-35. Greater restrictions to controls.

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

~ 171-36. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

**ARTICLE VII
Definitions**

~ 171-37. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

ABANDONMENT -- The cessation of a non-conforming use or structure as indicated by the visible or otherwise indicated intention to discontinue a non-conforming use or structure.

ACCESSORY APARTMENT -- An additional dwelling unit consisting of no more than four rooms and no more than 800 square feet of living area in a pre-existing single-family home. An Accessory Apartment may also be located in a pre-existing accessory structure such as a garage or barn provided there is no expansion of square footage of the accessory structure. The Accessory Apartment shall be occupied by no more than two people. The owner of the property shall permanently occupy the principal or accessory residence. Adequate off-street parking shall be provided and parking shall be to the side or rear of the principal structure to the maximum extent possible. [Added ATM 4-27-2010, Art. 12]

ACCESSORY BUILDING OR USE -- A subsidiary building not attached to any principal building, or a use customarily incidental to, and located on the same lot with the principal building or use.

CONGREGATE ELDERLY HOUSING -- A building or buildings arranged or used for the residence of persons age 55 or older, with some shared facilities and services.

CONTAMINATION or POLLUTION -- Any substance introduced to water which exceeds Massachusetts drinking water standards, guidelines or health advisories or any substance detected in quantities determined by the Department of Environmental Protection to negatively impact public health. [Added 5-7-1991 ATM, Art. 23]

DWELLING -- A building or portion of a building used exclusively for the residence of one or more families.

DWELLING UNIT -- A building or portion of a building providing separate and complete living facilities for one family.

FAMILY -- An individual residing in one dwelling unit, a group of persons related by blood, marriage or adoption or a group of not more than four individuals not so related residing in one dwelling unit.

FARMER BREWERY - A business licensed under MGL Ch. 138 Sec. 91C. [Added ATM 4-24-2018 Art. 45]

FARMER BREWERY TASTING ROOM - A facility operated as a part of a brewery licensed under MGL Ch 138 sec 19C which offers on-site sampling and retail sales for at-home consumption of the brewery's products only. [Added ATM 4-24-2018 Art. 45]

FARMER BREWERY TASTING ROOM WITH POURING PERMIT - A facility operated as a part of a brewery licensed under MGL Ch 138 sec 19C which offers on-site sampling and sales of its products for on-site consumption under a Farmer Series Pouring Permit in addition to retail sales for at-home consumption. [Added ATM 4-24-2018 Art. 45]

FARM STAND A - A salesroom or farm stand for the sale of nursery, garden or other agriculture produce (including items of home manufacture made from such produce) with more than 300 square feet of retail space, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, all as provided for under G.L. c.40A, §3, as amended. [Added ATM 4-29-2014, Art. 29A]

FARM STAND B --A salesroom or farm stand for the sale of nursery, garden or other agriculture produce (including items of home manufacture made from such produce) provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 15 per cent

of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 15 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, all as provided for under G.L. c.40A, §3, as amended. [Added ATM 4-29-2014, Art 29A]

GROUNDWATER -- All waters found beneath the surface of the ground. [Added 5-7-1991 ATM, Art. 23]

HAZARDOUS MATERIAL -- Any substance with such physical or infectious characteristics as to pose a potential hazard to existing or potential water supplies or to human health. "Hazardous materials" include, but are not limited to, toxic chemicals, heavy metals, radioactive or infectious wastes, acids and alkalis, pesticides, petroleum products, herbicides, organic solvents and thinners. [Added 5-7-1991 ATM, Art. 23]

HAZARDOUS WASTE -- Any waste material hazardous to human health or the environment as designated by the United States Environmental Protection Agency under 40 CFR 261 and the Regulations of the Massachusetts Hazardous Waste Management Act, MGL C. 21c. [Added 5-7-1991 ATM, Art. 23]

JUNK or SALVAGE YARD -- An open-air (not enclosed in a structure with an impermeable floor) land use which includes the abandonment, collection, processing, purchase, receipt, storage or sale of scrap or discarded goods, materials, machinery or other type of junk. Exceptions to this definition shall be recycling stations for glass, paper, plastic, aluminum, tin and other items as the Board of Health shall deem to be recyclable and safe to the immediate environment, including groundwater; leaf and yard waste composting facilities; state-licensed transfer stations; and architectural component facilities. [Added 5-7-1991 ATM, Art. 23]

LARGE-SCALE GROUND-MOUNTED SOLAR ELECTRIC INSTALLATION -- A solar electric system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 10 kW AC. [Added 10-27-2011 Art. 1][Amended ATM 6-23-20, Art. 37]

LOT -- A parcel of land, with definite boundaries, described and recorded on a plan or deed in the Franklin County Registry of Deeds.

LOT COVERAGE -- The area of a lot occupied by structures, walkways, drives, parking or other impervious surfaces. [Added 2-5-1991 STM, Art. 6]

LOT FRONTAGE -- The portion of a lot coinciding with a street line, providing both rights of access and potential vehicular access across the lot line to a potential building site. The street upon which the lot has frontage must be determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Whately Subdivision Regulations.⁴ The portion of a lot coinciding with a discontinued road or a road appearing only on paper does not constitute "frontage." Similarly, the portion of a lot coinciding with a road deemed by the Building Inspector, in consultation with the Planning Board, to be impassable does not provide "frontage." In determining whether or not a road is passable, the Building Inspector and the Planning Board shall consider such factors as: the condition of the road bed and the surface of the road, whether the road contains obstructions, whether the road is navigable by ordinary passenger vehicles, whether the road is navigable by emergency vehicles and other appropriate factors.

MOBILE HOME -- A movable or portable dwelling unit on a chassis, designed for connection to utilities when in use and designed with or without the necessity of a permanent foundation for year-round living.

MULTIFAMILY DWELLING -- A building containing more than two dwelling units and not classified as a one- or two-family dwelling.

OFF-SITE REGISTERED MARIJUANA DISPENSARY (ORMD) -- A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved not-for-profit entity which operates the affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered qualifying patients or their personal caregivers in accordance with the provisions of 105CMR 725.00. [Added ATM 4-29-2014, Art. 29B]

PRINCIPAL USE -- The primary purpose for which land or a building is designed, arranged, maintained or occupied.

RATED NAMEPLATE CAPACITY -- The maximum rated output of electric power production of the Electric system in Alternating Current (AC) or Direct Current (DC). [Added 10-27-2011 Art. 1]

REGISTERED MARIJUANA DISPENSARY (RMD) -- A use operated by a not-for-profit entity registered and approved by the MA Department of Public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products. The cultivation and processing of medical marijuana in accordance with these

⁴Editor's Note: See Ch. 234, Subdivision of Land.

regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning. [Added ATM 4-29-2014, Art. 29B]

RESOURCE REPLACEMENT FEE - A fee to be paid by the owner or operator of a large-scale ground-mounted solar facility for removing agricultural or forest land from production, the size of which shall be determined by the Selectboard with input from the town Agricultural and Conservation Commissions. [Added ATM 6-23-20, Art. 37]

SINGLE-FAMILY DWELLING -- A detached building containing one dwelling unit.

STRUCTURE -- Anything constructed or erected, the use of which requires a fixed location on the ground, including swimming pools having a capacity of four thousand (4,000) gallons or more and mobile homes. Satellite television or reception dishes shall be deemed "structures" and shall comply with applicable setback and other zoning requirements. Structures are subject to the height requirements of these zoning bylaws. [Added ATM 4-27-2010 Art. 12]

TRAILER OR RECREATIONAL VEHICLE -- A portable dwelling eligible to be registered and insured for highway use and designed to be used for travel, recreational and vacation use, but not for permanent residence; including equipment commonly called "travel trailers," pickup coaches or campers, motorized campers and tent trailers, and recreational vehicles, but not including mobile homes.

TWO-FAMILY DWELLING (DUPLEX) -- A detached building containing two dwelling units.

WAY, ROAD or STREET -- A public way; a way which the Town Clerk certifies is maintained and used as a public way; a way shown on an approved and endorsed subdivision plan in accordance with the Subdivision Control Law; or a way in existence at the time the Subdivision Control Law was adopted by the town. The way shall have, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic and utilities for the proposed use of the land abutting the way.

ARTICLE VIII

Growth Control

[Adopted 5-7-1991 ATM, Art. 19]

~ 171-38. Purpose.

The purpose of the Growth Control Bylaw is to promote orderly growth in the Town of Whately, consistent with the rate of growth over the last 10 calendar years, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services, to provide the town, its boards and its agencies information, time and capacity to incorporate such growth into a master plan for the community and the

regulations of the community and to preserve and enhance existing community character and the value of property.

~ 171-39. Individual building permits.

A. No more than 10 individual building permits for new dwellings shall be issued in any one calendar year unless they meet the criteria found in Subsection B(3) or in ~ 171-40.

B. Building permits for new dwellings will be available starting on January 1 of each year. Permits will be issued on a first-come, first-served basis subject to the following criteria:

(1) No person may receive more than one building permit in a twelve-month period unless they meet the criteria of ~ 171-40.

(2) No more than three permits for new dwellings can be issued in a twelve-month period that are on contiguous lots or that were under common ownership, whether contiguous or not, at the time of the adoption of this Article unless they meet the criteria of ~ 171-40.

(3) Special conservation permits. Five permits in a twelve-month period will be available to applicants with substantial building lots who are willing to dedicate all of the land except that needed for a one-acre house lot to conservation purposes. The dedication would entail a deed restriction or a conservation restriction enforceable by the town or a nonprofit land trust and the town. The special conservation permits will not count toward the overall town building cap. To qualify for one of these permits, the following conditions must be met:

(a) The parcel in question must contain a minimum of 15 acres and 400 feet of frontage on a public way.

(b) All of the land except for the one acre needed for the building site must be placed under a conservation or a deed restriction enforceable by the town or a nonprofit land trust and the town.

(c) Only one single-family dwelling or a duplex would be allowed on the lot.

(d) The building shall be sited to minimize the impact on existing views, prime farmland, valuable forestland and other natural resources.

~ 171-40. Multiple building permits.

A. Up to 10 building permits for 10 dwelling units within a calendar year may be granted using the criteria set out below. The permits would be exempt from the town building permit cap described in ~ 171-39.

B. Any person, persons, corporations, partnerships or other equity interested in building on either more than three contiguous parcels or on more than one parcel of land held in common ownership at the time of passage of this article may apply for up to five permits in a twelve-month period, provided that they meet one or more of the following criteria:

(1) The proposed development is an open space development as defined in ~ 171-25.

(2) The site design for the proposed development minimizes the impact on prime farmland or prime forestland as designated on the land use maps prepared by the Franklin Regional Council of Governments Planning Department. Minimizing the impact can be accomplished by clustering the proposed units and placing the valuable resources under permanent conservation restrictions.

(3) The proposed development incorporates a minimum of 25% affordable housing. For the purposes of this article, "affordable housing" will be defined as housing that meets the specifications of either federal or state housing assistance programs.

C. If a development proposal which has been approved by all appropriate local boards and commissioners involves more than five dwelling units, the developer may request from the Planning Board a guaranty that five permits for five dwelling units will be issued each following year until the development is complete.

~ 171-41. Procedures.

[Amended 4-30-1996 ATM, Art. 12]

To qualify for a building permit application, the applicant must fill out a growth control application, which he obtained from the Building Inspector. The applicant must complete the growth control application and have its date and time stamped by the Building Inspector. The Building Inspector will be responsible for maintaining a list of applicants and for reviewing the growth control application to determine the conformance of the project with the Growth Control Bylaw. Applicants will be given preference on a first-come, first-served basis for deciding the order of the waiting list. The applicant, upon completion of the phase growth application, is then able to apply for a building permit with the Building Inspector. The Building Inspector will notify the Planning Board of building permits issued under the Phase Growth Bylaw. The Planning Board has the

authority to promulgate regulations regarding the contents of the growth control application and may revise it as necessary.

~ 171-42. Building permit amendments.

No change may be made to an existing building permit without the approval of the Building Inspector as required by the State Building Code, 780 CMR 113.8 and 113.9.

~ 171-43. Protection against zoning changes.

The protection against subsequent zoning change granted to land in a subdivision by MGL c. 40A, ~ 6, shall, in the case of development whose completion has been constrained by town actions taken under the Growth Control Bylaw, be extended the length of the time needed to complete a project, with a maximum of 10 years.