

TOWN OF SHELBURNE

ZONING BYLAW

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SECTION 1.0 - INTRODUCTION

1.1 PURPOSE OF BY-LAW

The Shelburne Zoning Bylaws are enacted pursuant to Chapter 40A of the General Laws and the Home Rule Amendment to the Massachusetts Constitution, to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Shelburne, to protect the value of land and buildings, to conserve natural resources, to preserve the Town's cultural heritage, rural character and open farmland, and to facilitate residential, commercial and industrial development in a responsible manner.

1.2 EXISTING USES OF BUILDINGS AND LAND NOT AFFECTED

This by-law shall not apply to any lawful existing buildings or structures nor to the existing use of any buildings or structures, nor to any land or premises, or part thereof, to the extent of the use, existing at the time this by-law is adopted, although such building or structure, land or premises, or part thereof, does not conform to the regulations of the district in which it is located (See Section 10.)

1.3 EXISTING PERMITS

This Bylaw shall not apply to any lawful permit issued, or any building or structure lawfully begun before the first public notice of the Public Hearing on this bylaw, provided however, that construction work under such permit is commenced within (6) months after it is issued, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practical under the existing circumstances.

1.4 SEVERABILITY

The provisions of this Bylaw are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

SECTION 2.0 – DEFINITIONS

In this by-law the following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed:

- 2.1 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 an 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.
- 2.2 Accessory Use or Structure:** any use or building that is incidental and accessory to the use of the principal building or structure.
- 2.3 Agricultural Manufacturing:** processing or manufacturing of raw materials produced locally to create value-added agricultural products such as cheese or herbal products.

- 2.4 Artisan Studio:** the working space of a practitioner of a handicraft or art requiring special skills, such as handweaving, pottery-making, glassblowing, leatherworking, fine art painting, or sculpting.
- 2.5 Bed & Breakfast:** nightly accommodations for transients within an owner-occupied house, not to exceed five bedrooms rented to guests where breakfast is included. The building must be inspected by the appropriate fire district Chief or his designee and must comply with applicable State Building Codes and Board of Fire Prevention regulations and State Board of Health regulations. Bed & Breakfast establishments which can accommodate five or more persons per night will be required to meet additional Building Code requirements related to fire safety.
- 2.6 Business Office:** the workplace of computer software, insurance or other business professionals which may include space for appropriate support staff (e.g. administrative assistants, etc).
- 2.7 Campers:** a portable dwelling, eligible to be registered and insured for highway use, designed for travel, recreational, and vacation uses but not for permanent residence. Includes equipment commonly called travel trailers, pick-up coaches or campers, motorized campers, and tent trailers, but not mobile homes.
- 2.8 Dwelling:** any building designed for residential use that contains kitchen and sanitary facilities.
- 2.9 Dwelling Unit:** living quarters for a single family, plus not more than two (2) boarders or lodgers, having independent cooking, living, sanitary and sleeping facilities in the unit. Also see Section 11.0 Parking Requirements.
- 2.10 Dwelling, Multiple-Family** a principal building designed for or converted for occupancy by three to nine (9) families living in separate dwelling units separated by vertical walls or horizontal floors. Historic Industrial or Commercial Structures converted for Multiple-Family Residential Use may have more than nine dwelling units. Also see Section 11.0 Parking Requirements.
- 2.11 Dwelling, Two Family:** A dwelling containing two (2) dwelling units, separated by vertical walls or horizontal floors, designed for occupancy by two (2) families. Also see Section 11.0 Parking Requirements.
- 2.12 Family:** any number of individuals legally related by adoption, blood or marriage, or not more than four (4) persons not so related, living and cooking together in a single dwelling unit.
- 2.13 Food Service, Drive Through:** Any restaurant or food establishment which offers clients the opportunity to purchase food, meals and /or beverages by driving up to a window and obtaining the food, meals and or beverages without leaving the vehicle or entering the food establishment.
- 2.14 Food Service, Other:** Any restaurant or food establishment where customers sit down at tables or counters to eat meals and drink beverages; such establishments may include as an ancillary services the opportunity to purchase meals to take away from the premises for consumption off site.
- 2.15 Frontage:** that boundary from which primary access to the lot is gained. Access shall be gained only from a public way or way accepted under the Town of Shelburne Subdivision Regulations. The portion of a lot fronting on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval-Not-Required (ANR)Plans.
- 2.16 Historic:** Any building 50 years or older in age.

- 2.17 Home Based Business/Home Occupancy:** The use of a room or rooms in a dwelling for customary home occupations by resident occupants of the household so as to comply with Section 7.0 of these Bylaws.
- 2.18 Hotel:** a building containing rooms without cooking facilities used or designed to be used for overnight lodging by transient guests. A restaurant for lodgers and the public may be provided.
- 2.19 Inn:** A structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. A guest(s) may not stay at an Inn for more than 90 days in any six-month period.
- 2.20 Lodging House:** Buildings in which separate sleeping rooms are rented providing sleeping accommodations for persons on either a transient or a permanent basis, with or without meals, but which may have separate cooking facilities for individual occupants.
- 2.21 Lot:** A continuous parcel of land in one (1) ownership with legally defined boundaries.
- 2.22 Mixed Use:** Any combination of Retail Stores, Business Offices, Professional Offices, Restaurant(s), Artisan Studios and / or Residential Units.
- 2.23 Mobile Home:** a dwelling unit built on a chassis containing complete electrical, plumbing and sanitary facilities and designed without necessity of a permanent foundation.
- 2.24 Mobile Home Park:** See Section 12.
- 2.25 Motel:** an assemblage of attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.
- 2.26 Motor Vehicle Sales:** the use of premises for the display or sale of new or used motor vehicles, as that term is defined under the Massachusetts General Laws.
- 2.27 Municipal or Non-Profit Trail:** Any trail, walkway or pathway open to the general public and intended for non motorized, recreational use. Such trails shall have barriers at the start and finish, and shall be designed to avoid private lands and return users to public ways. The Trail shall have appropriate signage indicating the beginning and ending of the Trail and directing users away from private lands near the Trail.
- 2.28 Parking Lot:** Any lot where the principal activity, usage or revenue source comes from the parking or storage of motor vehicles not owned by the lot owner.
- 2.29 Parking Space:** An area, not less than 10 feet by 20 feet, which has unimpeded access and egress to a street or traveled way.
- 2.30 Principal Use:** The primary purpose for which land or a building is designed, arranged, maintained or occupied.
- 2.31 Professional Office:** The workplace of physicians, lawyers, engineers, or other licensed professionals which may include space for appropriate support staff (e.g. administrative assistants, nurses, etc).
- 2.32 Solar Panel Systems for Premises Use:** Any system of solar panels, whether located on the building or the ground, designed primarily to generate heat or electricity for the principal home or business located on the lot; such systems may generate a limited amount of excess electricity for resale to an electrical utility provided the system is designed principally to supply the electrical needs of the home or business on the

lot.

- 2.33 Special Permit Granting Authority:** Under this bylaw the Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals except as otherwise expressly stated in the bylaw.
- 2.34 Street Line:** The dividing line between the street right of way and the lot as determined by deeds and plans recorded at the Registry of Deeds. Where no line is thus legally established, then a line parallel with and twenty-five feet from the centerline of the traveled way.
- 2.35 Structure:** a combination of materials assembled at a fixed location to give support or shelter; such as a building, framework, reviewing stand, platform, bin, sign, recreational tramway, flagpole or mast for radio antenna, or swimming pool or tank having a capacity in excess of four thousand (4,000) gallons. The word “structure” shall be construed, where the context requires, as though followed by the words “or part or parts thereof.”
- 2.36 Wireless Communication Facility:** Any wireless communication facility which may include a communication tower and/or communications services as further describer and regulated in Section 16.
- 2.37 Wireless Communications Tower:** a structure for the provision of wireless communications services, including but not limited to freestanding or ground mounted structure with antenna(s) or other devices, if any, together with any guy wire and accessory structures.
- 2.38 Wireless Communications Services:** services which facilitate the transmission of writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other like connection between the points of origin and reception of such transmission, in order to facilitate the following services: cellular telephone service, personal communications service (PCS), paging service, and/or enhanced specialized mobile radio service.

SECTION 3.0 - ESTABLISHMENT OF DISTRICTS

- 3.1** For the purposes of this by-law, the Town of Shelburne is hereby divided into the following types of districts:

- 3.1.1** Rural Residential/ Agricultural (RA),
- 3.1.2** Village Residential (VR),
- 3.1.3** Village Commercial (VC),
- 3.1.4** Commercial (C),
- 3.1.5** Industrial (I).

3.2 LOCATION OF DISTRICTS

- 3.2.1** The boundaries of each of the said “districts” are hereby established as shown, defined and bounded on a map entitled “Zoning Map of the Town of Shelburne.” The zoning map, with all explanatory matter thereon, is hereby made a part of this by-law.
- 3.2.2** Where the boundary lines are shown upon said map within the street lines of public and private ways the centerline of such ways shall be the boundary lines.
- 3.2.3** Where the boundary lines are shown upon said map approximately on the location of a property, lot or boundary line and the exact location of the property, lot or boundary line is not indicated by means of dimensions shown in figures then the property or lot line shall be the boundary line.

- 3.2.4 Boundary lines located outside of such street lines and shown approximately parallel thereto, shall be regarded as parallel to street lines and dimensions shown in figures placed upon said map between such boundary lines from such street lines shall govern such distance being measured at right angles to such street lines unless otherwise indicated
- 3.2.5 Boundary lines shown as a specific distance from a road or street shall be measured from the edge of the right of way for that road or street.
- 3.2.5 In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, or by the scale of said map.

SECTION 4.0 USES PERMITTED BY RIGHT OR SPECIAL PERMIT, OR PROHIBITED

4.1 LIMIT ON PRINCIPAL STRUCTURES PER LOT

No building or structure shall be erected or land used except as permitted in this section and all other sections of this Bylaw. No more than one principal structure or use is allowed on a lot except by Special Permit in the Village Commercial, Commercial, or Industrial Districts provided that all the dimensional requirements of Section 5 can be met.

4.2 TABLE OF USE CODES:

The following Table of Use Regulations sets forth for each District the uses permitted by right, the uses permitted by special permit and the uses prohibited. The following codes shall apply:

- 4.2.1 Y = Yes, the use is permitted by right in that zoning district; however user still must comply with the dimension schedule (section 5.2), all other relevant sections of these and other town bylaws (e.g. parking), Provisions of M.G.L. 40 A, and other regulating authorities such as the Board of Health, Conservation Commission, Fire Chief, Building Inspector, etc.
- 4.2.2 N = No, the use is explicitly prohibited in that zoning district.
- 4.2.3 SP = The use is allowed in that zoning district only if a Special Permit has been granted by the SPGA; however, even if receiving a Special Permit, user still must comply with the dimension schedule (section 5.2), all other relevant sections of these and other town bylaws (e.g.. parking), Provisions of M. G. L. 40 A, and other regulating authorities such as the Board of Health, Conservation Commission, Fire Chief, Building Inspector, etc.
- 4.2.4 RA = Rural Residential/Agricultural District
- 4.2.5 VR = Village Residential District
- 4.2.6 VC = Village Commercial District
- 4.2.7 C = Commercial District
- 4.2.8 I = Industrial District

4.3 TABLE OF USE REGULATIONS:

(Shading are provided only for ease of reading and have no other significance. Entries in the last column, entitled “See:” direct reader to M.G.L. or town bylaw sections which may provide additional helpful information.)

<u>Residential Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Single-Family Dwelling	Y	Y	Y	Y	SP	
Two-Family Dwelling	Y	Y	Y	Y	SP	
Multi-Family Dwelling	SP	SP	SP	SP	N	
Accessory Apartment	Y	Y	Y	Y	SP	
Temporary Mobile Home	Y	SP	SP	Y	Y	Sect 12
Mobile Home	N	N	N	N	N	Sect 12
Mobile Home Parks	SP	SP	SP	SP	SP	Sect 12
Conversion - Single Family Home to a Two-Family Home	Y	Y	Y	Y	SP	
Conversion - Single or Two Family to Multi-Family Dwelling	SP	SP	SP	SP	SP	
Conversion - Industrial or Commercial to Single or Two-family use	Y	Y	Y	Y	SP	
Conversion - Industrial or Commercial to Multi-family use	SP	SP	SP	SP	SP	
Apartment on Upper Floors off Commercial or Industrial Structure	N	SP	SP	SP	SP	
Cluster Housing	SP	SP	N	SP	N	Sect. 13.4
<u>Agricultural & Recreational Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Forestry	Y	Y	Y	Y	Y	
Farming on a lot 5 acres or greater	Y	Y	Y	Y	Y	
Pig Farming on a lot less than 5 acres	SP	N	N	N	N	
Other Livestock Farming on a lot less than 5 acres	Y	SP	SP	SP	SP	
Non Livestock Farming on a lot less than 5 acres	Y	Y	Y	Y	Y	
Commercial Greenhouse on a lot 5 acres or greater	Y	Y	Y	Y	Y	
Commercial Greenhouse on a lot 2 to 5 acres	Y	SP	SP	Y	SP	
Commercial Greenhouse on a lot less than 2 acres	Y	SP	SP	Y	SP	
Agricultural Manufacturing with 5,000 square feet or less of enclosed floor area	SP	SP	SP	SP	Y	
Wildlife Preserve or Other Conservation Uses not listed elsewhere	Y	SP	SP	Y	Y	
Municipal or Non-Profit Trail	SP	SP	SP	SP	SP	
Other Recreational Facility	SP	SP	SP	SP	SP	
<u>Community Services</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Public Service Corporation Facility not exempted from	N	SP	SP	SP	SP	MGL 40A

zoning regulation

Wireless Communication Facility	SP	SP	SP	SP	SP	Sect 16
Educational Uses exempted from zoning regulation	Y	Y	Y	Y	Y	MGL 40A
Other educational uses not exempted from zoning regulation	SP	SP	SP	SP	SP	MGL 40A
Church, other Religious Use	Y	Y	Y	Y	Y	
Cemetery	SP	SP	N	SP	N	
Family Day Care Home for six or fewer children or adults	Y	Y	Y	Y	SP	
Family Day Care Home for more than six children or adults	SP	SP	SP	SP	SP	
Child Care Facility exempted from zoning regulations	Y	Y	Y	Y	Y	MGL 40A
Nursing Home	SP	SP	SP	SP	N	
Hospital, Medical Clinic	SP	SP	SP	SP	N	
Parking Lot (Public or Private)	SP	SP	SP	SP	SP	
Municipal Uses not covered elsewhere	SP	SP	SP	SP	SP	

Business Uses

	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Business, Professional Offices with 3,000 sq ft or less enclosed floor space	SP	SP	Y	Y	Y	
Business, Professional with more than 3,000 sq. ft. enclosed floor space	N	SP	SP	SP	SP	
Bed and Breakfast	SP	SP	SP	SP	SP	
Banks	N	N	Y	Y	Y	
Standalone Automated Teller Machines	N	N	SP	SP	SP	
Unattended Vending Machines	N	N	SP	SP	SP	
Conversion of Historic Industrial or Historic Commercial Structure to Mixed Uses	SP	SP	Y	Y	Y	
Food Service, drive through	N	N	N	SP	N	
Food Service, other	SP	SP	Y	Y	SP	
Motor Vehicle Sales	N	N	SP	SP	SP	
Car Wash	N	N	N	SP	SP	
Laundry, Laundromat	N	N	SP	SP	SP	
Theaters	SP	N	SP	SP	SP	
Motels, Hotels, Lodging House	N	N	SP	SP	N	
Inns	SP	SP	SP	SP	N	

Building Materials, Sales & Storage	N	N	SP	SP	Y	
Home Based Business	SP	SP	Y	Y	Y	Sec 7.4.1
Funeral Home	SP	SP	SP	SP	N	
Equipment Rentals	N	N	SP	Y	Y	
Kennel or Animal Shelters	SP	N	SP	SP	SP	
Commercial Recreation - Health, Exercise Club, Dance, Yoga Studio, etc.	SP	SP	Y	Y	SP	
Retail Store Building 2,500 sq. ft. or less of enclosed floor area	SP	SP	Y	Y	Y	
Retail Store Building 2,500 sq. ft. up to 5,000 sq. ft. floor area	N	N	SP	Y	SP	
Retail Store Building greater than 5,000 sq. ft. enclosed floor area	N	N	SP	SP	SP	
Veterinarians	SP	SP	SP	Y	Y	
Farm Stand allowed by Ch. 40A, Sec. 3	Y	Y	Y	Y	Y	MGL 40A

<u>Industrial Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Manufacturing with 5,000 sq ft or less enclosed floor area	N	N	SP	SP	Y	
Manufacturing with greater than 5,000 sq ft of enclosed floor area	N	N	N	SP	SP	
Processing	N	N	SP	SP	SP	
Laboratories	N	N	SP	SP	SP	
Freight or Transportation Facilities	N	N	SP	SP	SP	
Gasoline Station	N	N	SP	SP	SP	
Automotive Repair Garage	N	N	SP	SP	SP	
Quarrying, Gravel, Mining & Earth Removal	SP	SP	SP	SP	SP	Sect. 13.1
Solar Panel Systems for Premises Use	Y	Y	Y	Y	Y	
Commercial Electric Generating Facilities	SP	SP	SP	SP	SP	
Sawmill	SP	N	N	N	SP	Sect. 13.2
Junk yard, automobile dismantling or used parts yards, dumps, and landfills	N	N	N	N	SP	
Bulk Storage, Warehousing, or Storage Units	SP	N	N	SP	SP	

SECTION 5.0 – LOT COVERAGE AND SET BACKS

5.1 DIMENSIONAL REQUIREMENTS: A structure shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following schedule.

5.2 DIMENSIONAL SCHEDULE

	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>
Minimum Lot Area (sq ft)	86,000	20,000 (a)	20,000	86,000	86,000
Minimum Lot Frontage (ft)	250	100 (a)	100	250	250
Front Yard Setback (ft)	25	20 (b)	20 (b)	30	50
Side Yard Setback (ft) (c)	20	10	10	30	30
Rear Yard Setback (ft)	20	20	20	30	30
Maximum Height of Buildings (ft) (d)	35	35	35	35	35

Footnotes to Dimensional Schedule:

- (a) If public water or public sewer is not available increase the lot size to 40,000 square feet and lot frontage to 150 feet;
- (b) However, the front yard dimension may be determined by the setback of existing structures on adjacent parcels where those setback are less than the minimum front yard dimension required by this bylaw;
- (c) New driveways must be set back to meet the Side Yard requirement for each district unless a variance is granted by the Zoning Board of Appeals (ZBA);
- (d) The ZBA may grant a Special Permit for structures higher than 35 feet where the ZBA determines that said higher structure is compatible with the surrounding structures and does not unreasonably interfere with existing structures.

5.3 GENERAL REGULATIONS

- 5.3.1 Projecting eaves and uncovered steps shall not be taken as coming within the meaning of this section.
- 5.3.2 No lot on which is located any buildings used for any purpose in any district shall be changed or reduced in area or shape so that it does not conform to the provisions of this by-law; provided however that this regulation shall not apply in case of a lot, a portion of which is taken for a public use.
- 5.3.3 Providing further, that in a residential district a corner lot shall provide unobstructed visibility at intersections. No sign, fence, wall, tree, hedge or other vegetation and no building or other structure shall be more than two and one half feet above the established street grade within the area formed by the intersecting street lines and a straight line joining said street lines at a point which is twenty-five feet distant from the point of intersection measured along said street lines.

SECTION 6.0 – SPECIAL PERMITS

- 6.1 **Purpose:** The Special Permit process is intended to ensure that proposals are consistent with the purpose and intent of this Bylaw. The Special Permit process incorporates a detailed review of specific uses and structures which may have a significant impact upon traffic, municipal services, cultural resources, the environment, energy conservation, tax revenues and the character of the Town.
- 6.2 **Rules and Regulations:** Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the SPGA shall adopt rules relative to the issuance of Special Permits. The SPGA's Rules and Regulations may relate to the size, form, content and style of the plans, fees, and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The SPGA shall from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk. Copies of Special Permit Applications and related documents shall be submitted to the Board of Health, the Planning Board, and the Conservation Commission, who shall have 30 days within which to comment.
- 6.3 **Lapse of Special Permit:** If substantial use or construction under a Special Permit, in the sole judgment of the SPGA, has not commenced within two years of the date of issuance of the Special Permit, that permit shall be considered to have lapsed. If an existing use requiring a Special Permit is discontinued or abandoned for a period of more than two years in the sole judgment of the SPGA, then the Special Permit shall lapse.
- 6.4 **Scientific Research & Development:** Uses, whether or not on the same parcel as activities permitted as a matter of right or accessory to activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the SPGA finds that the proposed accessory use does not substantially derogate from the public good.
- 6.5 **Limitations:** The SPGA may impose conditions, safeguards and limitations on both time and use as it may deem reasonably appropriate to protect the neighborhood.
- 6.6 **Criteria:** Special Permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the benefits to the town and the neighborhood outweigh the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in the By-Law, the determination shall include consideration of each of the following:

- 6.6.1 Social, economic, or community needs which are served by the proposal;
- 6.6.2 Adequacy of vehicular and pedestrian traffic safety on and off the site, and adequacy of parking and loading;
- 6.6.3 Adequacy of utilities and other public services;
- 6.6.4 Potential fiscal impact, including impact on town services, tax base, and employment, and
- 6.6.5 Surface and ground water run-off.

6.7 Public Hearing: After the opportunity for review by other boards has taken place, the SPGA shall hold a Public Hearing under this section, in conformity with the provisions of M.G.L., Ch. 40A Section 9. Abutters shall be notified by mail of the Public Hearing. The decision of the SPGA, and any extension, modification or renewal thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. A copy of the decision shall be mailed to the Applicant and parties in interest pursuant to M.G.L. 40A, Section 11 by the Town Clerk and to any person attending the Public Hearing which requests it. Each such notice shall specify that appeals if any shall be made pursuant to M.G.L. Chapter 40 A, section 17 and shall be filed within 20 days after the date of filing of the notice in the office of the town clerk.

SECTION 7.0 – HOME-BASED BUSINESS

7.1 A business or profession (“home-based business”) may be allowed as an accessory use of a dwelling and may be permitted as described in this section. Examples of home-based businesses include, but are not necessarily limited to: artist studio such as a craftsperson, potter, photographer, sculptor, painter or musician; computer programmer or technician; cake decorator or caterer; licensed real estate, insurance or financial broker or agent; dressmaker, tailor, or seamstress; professional office of a doctor, dentist, lawyer, architect, engineer, cleric, or accountant; office and incidental storage of an artisan, electrical, plumbing, heating, painting, landscaping, or carpentry contractor.

7.2 Uses explicitly prohibited by Section 4 of this Bylaw are not eligible home-based businesses in the District(s) where prohibited.

7.3 The Building Inspector may grant approval for home-based businesses in Village Commercial (VC), Commercial (C), and Industrial (I) Districts in conformity with this Bylaw.

7.3.1 Exception: If Section 4 of this Bylaw requires that a Special permit be Granted by the SPGA for the proposed type of use, the applicant must apply for a Special permit.

7.4 A home-based business to be operated within the Rural Residential/Agricultural (RA) or Village Residential (VR) Districts shall require a Special Permit from the Zoning Board of Appeals.

7.4.1 Exception: Where a home-based business complies with all criteria of Section 7.5, the Building Inspector may grant approval for such use without requiring a Special Permit.

7.4.2 In order to issue a Special permit, the SPGA must receive adequate information from the applicant to allow the SPGA to review the criteria in Section 7.5, all

other Special Permit criteria, and make a determination that the use will not negatively impact the residential character of the neighborhood. The home-based business should exhibit most, if not all, of the criteria outlined in Section 7.5. The SPGA may require that outside storage and off-street parking be screened from neighboring properties and the public way by a fence or an evergreen hedge of sufficient depth or height to provide screening.

7.4.3 The SPGA may impose reasonable conditions, safeguards, and limitations on both time and use, as it may deem reasonably appropriate to protect the neighborhood.

7.5 The Building Inspector may grant approval for home-based businesses in the Rural/Residential Agricultural (RA) or Village Residential (VR) Districts, provided that the Building Inspector has received adequate information from the applicant to make a determination that all of the following criteria are satisfied:

7.5.1 Such use shall be clearly secondary and incidental to the residential use, and the home-based business shall be carried on within the principal building or an accessory building on the lot or an adjoining lot in common ownership. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home-based business. If the home-based business is located in an accessory building, the gross floor area devoted to the home-based business shall not exceed 50% of the gross floor area of the dwelling or 2,000 square feet, whichever is less.

7.5.2 The home-based business shall be principally owned and operated by a resident of the dwelling and not more than two non-residents shall be regularly employed on the premises.

7.5.3 No external change shall be made to the dwelling, or to other buildings on the lot, that alters their residential appearance.

7.5.4 Except for signs permitted in the Sign Regulations of this Bylaw, there shall be no exterior display or other exterior indication of the home-based business or other variation from the residential character of the premises. No outside storage shall be allowed.

7.5.5 Traffic shall not exceed volumes expected in a residential neighborhood, for purposes of this Bylaw; this shall be defined as approximately 15 trips per day, which is approximately 150% of the average weekday trip rate for single-family homes from the "Institute for Traffic Engineers Trip Generation Manual."

7.5.6 Adequate off-street parking shall be provided. Parking areas shall not be within twenty (20) feet of a street line or within the required side or rear yard setback dimension and shall be adequately screened from neighboring residential uses by fence or an evergreen hedge of sufficient depth or height to provide screening.

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Parking areas for the home-based business shall not have more than four spaces and shall not be greater than 1,200 square feet in size.

7.5.7 No home-based business shall create an unreasonable level of noise, light, air or water pollution, and must comply with the environmental Controls of this Bylaw.

7.5.8 No home-based business shall pose an unreasonable hazard to abutters, vehicles, or pedestrians.

SECTION 8.0 - FLOOD PLAIN DISTRICT

8.1 FLOODPLAIN DISTRICT BOUNDARIES

8.1.1 The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas designated as Zone A and A13 on the Shelburne Flood Insurance Rate Maps (FIRM) and the Flood Boundary and Floodway Map, dated July 2, 1980, on file with the Town Clerk, Planning Board, and Building Inspector. These maps, as well as the accompanying Shelburne Flood Insurance Study, are incorporated herein by reference.

8.2 USE REGULATIONS

8.2.1 The underlying permitted uses are allowed providing all development in the district, including structural and non-structural activities are in compliance with the following:

8.2.1.1 Chapter 131, Section 40 of the Massachusetts General Laws;

8.2.1.2 Section of the Massachusetts State Building Code which addresses flood plain areas (currently 780 CMR 3107.0, "Flood Resistant Construction");

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

8.2.1.4 Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);

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

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

8.2.3 The applicant shall transmit one copy of the development plan to the Board of Selectmen, Conservation Commission, Board of Health, Building Inspector, Zoning Board of Appeals, and Planning Board for comments, which will be considered by the Zoning Board of Appeals prior to issuing permits.

8.3 ENCROACHMENTS

In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

8.3.1 All encroachments including fill, new construction, substantial improvements to existing structures and other development ("development" for the purposes of this by-law, means "any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations") are prohibited unless certification, by a registered professional engineer or architect, is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the One Hundred (100) Year Flood. The best available Federal, State, local, or other floodway data shall be used to determine the limits of the 100-year flood boundary.

- 8.3.2** Any encroachment meeting the above standard shall comply with flood plain requirements of the State Building Code.

8.4 DEVELOPMENT STANDARDS FOR THE FLOOD PLAIN DISTRICT

- 8.4.1** All subdivision proposals, and other proposed new developments shall be reviewed *by* the Planning Board to determine whether such proposals will be reasonably safe from flooding. If any part of the subdivision proposal, or other new development, is located within the Flood Plain District established under the Zoning By-law, it shall be reviewed to assure that:

- 8.4.1.1** the proposal is designed consistent with the need to minimize flood damage and;
- 8.4.1.2** all public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and;
- 8.4.1.3** adequate drainage systems shall be provided to reduce exposure to flood hazards, and;
- 8.4.1.4** base flood elevation (the level of the One Hundred (100) Year Flood) data shall be provided for proposals greater than fifty (50) lots or five (5) acres, whichever is the lesser, for that portion within the Flood Plain District. Base Flood is defined as the flood having one percent chance of being equaled or exceeded in any given year.

8.5 HEALTH REGULATION PERTAINING TO THE FLOOD PLAIN DISTRICT

- 8.5.1** The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Flood Plain District established under the zoning by-law, shall require that:
- 8.5.1.1** new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and;
 - 8.5.1.2** new and replacement sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - 8.5.1.3** Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

8.6 FLOOD PLAIN DISTRICT REGULATIONS

8.6.1 DEVELOPMENT REGULATIONS FOR TEMPORARY MOBILE HOMES

- 8.6.1.1** Within Zone A 1-30 all mobile homes shall provide that:
- 8.6.1.1.1** stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, and;
 - 8.6.1.1.2** adequate surface drainage and access for a hauler are provided, and;
 - 8.6.1.1.3** In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart and reinforcement is provided for piers more than six (6) feet above ground level.
 - 8.6.1.1.4** The placement of mobile homes is prohibited in the floodway.

8.7 NOTIFICATION OF WATERCOURSE ALTERATION

- 8.7.1** In a riverine situation notify the following of any alteration or relocation of a watercourse:
- 8.7.1.1** adjacent communities;

- 8.7.1.2 NFIP State Coordinator (Address: Massachusetts Office of Water Resources, 100 Cambridge Street, Boston, MA, 02202)
- 8.7.1.3 NFIP Program Specialist (Address: FEMA Region I, Rm. 462, J.W. McCormack Post Office & Courthouse, Boston, MA, 02109)
- 8.7.1.4 The definition of riverine is: relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SECTION 9.0 - SIGN REGULATIONS

9.1 Lighting shall be arranged so that no glare is visible from any way or from any property residentially zoned or occupied. No sign shall flash or move.

9.2 The following signs are exempt from the regulations which follow but, not from #1 above:

- 9.2.1 legal notices: identification, informational or directional signs created or required by governmental bodies
- 9.2.2 signs directing and guiding traffic and parking but bearing no advertising matter including name or products
- 9.2.3 paper or cardboard signs inside display windows illuminated by building illumination only
- 9.2.4 signs of up to nine (9) square feet advertising rental or sale of the premises

9.3 Permitted signs in residential districts:

- 9.3.1 one (1) sign for each family residing on the premises indicating the occupant or pertaining to a permitted accessory use provided that no such sign shall exceed two (2) square feet in area
- 9.3.2 one (1) sign, not over nine (9) square feet in area, pertaining to permitted buildings and use of the premises other than dwellings and their accessory uses

9.4 Permitted signs in commercial and industrial districts, any sign relating to the premises on which they are located or to products, accommodations, services, or activities on the premises provided that:

- 9.4.1 the total area of such signs, free-standing or attached, shall not be more than one (1) square foot per linear foot of lot frontage on the street toward which they are oriented.
- 9.4.2 not more than one (1) free-standing sign may be erected on any lot except that two (2) such signs may be erected on any lot if oriented to, and intended to be read from, Route 2. No free-standing sign shall exceed one hundred (100) square feet in area
- 9.4.3 signs attached to a building shall not extend above a flat roof or the elevation of the front wall by more than twenty percent of the building height
- 9.4.4 no free standing sign shall exceed eighteen (18) feet in height above ground level

9.5 OFF PREMISE SIGNS

9.5.1 For the purpose of this by-law “off-premise” shall be defined as follows: A sign which directs attention to a business, profession, commodity, event or entertainment that is not carried on said, or offered on, the property where the sign is located.

9.5.2 Off-premise signs are prohibited in the Town of Shelburne except for the following:

9.5.2.1 Trailblazing signs accompanying Tourist Oriented Directional Signs (“TOD” signs) are permitted provided that a public hearing is held by the Zoning Board of Appeals giving property owners who may be aggrieved by the placement of such signs the right to object. Trailblazing signs shall conform to the following regulations:

9.5.2.1.1 a sign assembly shall consist of no more than three (3) sign panels mounted on a support post, with not more than one (1) sign panel per applicant

- 9.5.2.1.2 not more than one (1) sign assembly allowed for an intersection or other decision-making point. No straight ahead application shall be allowed
- 9.5.2.1.3 a sign panel shall be eight (8) inches high by twenty-four (24) inches wide. It shall have a "TOD" blue background, a white border, a white legend, a directional arrow, and may include mileage
- 9.5.2.1.4 applicants shall be responsible for the full costs for fabricating and supplying the sign panel(s), and shall also be responsible to the Town of Shelburne for the cost of vandal-proof fasteners and support posts
- 9.5.2.1.5 the Town of Shelburne highway department shall be reimbursed by the applicant, for the cost of installing the sign supports, attaching the sign panels to the supports and for maintaining the sign assembly
- 9.5.2.1.6 any sign panels destroyed by accident, vandalism or wear shall be replaced at the expense of the applicant
- 9.5.2.1.7 the location of an existing traffic control device, or the need for a new device, shall take precedence over the location of a trailblazing sign, either existing or proposed location of a trailblazing sign, either existing or proposed
- 9.5.2.2 A Municipal Directory of businesses, residences and or points of interest may be created, or required of the developer by the Board of Selectmen. This directory must be appropriate to its location.

SECTION 10.0 NON-CONFORMING USES

10.1 GENERAL REGULATIONS

- 10.1.1 The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this by-law may be continued even though such structure or use does not conform with this by-law.
- 10.1.2 **ALTERATION:** no non-conforming use shall be changed, moved or extended and no non-conforming building or structure shall be constructed or substantially altered or enlarged except where alteration, reconstruction, extension or structural change to a single or two family residential structure does not increase the non-conforming nature of said structure or except pre-existing non-conforming structures or uses may be extended or altered provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of Sections 29 through 33 inclusive of Chapter 93 of the Massachusetts General Laws.
- 10.1.3 **RESTORATION:** In the event that a non-conforming building is destroyed by fire or other cause, the same maybe reconstructed or repaired on the same location for the same or less non-conforming use provided the new building may be equal in appearance and character to the original structure.
- 10.1.4 **LIMITATION ON RESTORATION:** In the event that any non-conforming building is damaged by fire, explosion or other cause, restoration work must be undertaken within two years of the date damage is inflicted unless, upon application to the Zoning Board of Appeals, it can be shown that restoration within the time limit is impossible in which case extension of time may be granted.
- 10.1.5 **CHANGES:** once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

10.1.6 ABANDONMENT: a non-conforming use or structure, which has been abandoned or not used for more than two years shall not be re-established and any future use shall conform with this by-law.

11.0 PARKING REQUIREMENTS

11.1 All parking demand created by new structures or uses, additions to existing structures or uses and change of use in existing structures shall be accommodated on the premises entirely off street. Normally this will require two (2) parking spaces per dwelling unit plus one (1) parking space per motel guest unit plus one (1) space per employee plus one (1) space per one hundred fifty (150) square feet of retail floor space. The ZBA may waive or modify this requirement, in part or in its entirety, if it is determined that to do so is in the public interest and does not substantially derogate from the intent or purpose of this by-law.

11.2 No off-street parking area shall be maintained within ten (10) feet of a street line. For parking areas of six (6) cars or more the following shall apply:

11.2.1 their use shall not require backing onto a public way;

11.2.2 there shall not be more than one (1) entrance and one (1) exit from such lots per three hundred (300) feet of street frontage or fraction thereof. If necessary to meet this requirement, user shall arrange for shared egress;

11.2.3 such lots shall be screened from any abutting residential use by densely planted shrubs;

11.2.4 egress likely to be used more than five hundred (500) times per day (serving more than one hundred fifty (150) dwelling units or two hundred (200) employees or one hundred (100) restaurant seats or two (2) gas pumps) shall provide three hundred (300) feet visibility in each travel direction on a minor or collector street, six hundred (600) feet visibility on an arterial street. Minor streets shall include, but not limited to, Water Street, Severance Street, Church Street, Barnard Road and Anderson Road. Arterial streets shall include, but not limited to, Main Street, Bridge Street, Bardwells Ferry Road, South Maple Street and Little Mohawk Road.

SECTION 12.0 MOBILE HOMES AND CAMPERS

12.1 GENERAL REGULATIONS: No person shall park, store or occupy a camper or mobile home for living or business purposes in the Town of Shelburne except:

12.1.1 in a garage or other accessory building or in the rear half of a lot owned or occupied by the owner of the camper or mobile home but, it must be located at least twenty-five (25) feet from the rear and side lot lines and its use for living and/or business purposes is prohibited

12.1.2 as a temporary office incidental to construction or development of the premises on which the camper or mobile home is located

12.1.3 as a temporary residence on or near the site of a permanent residence which has been destroyed by fire or other natural holocaust. The owner or occupier of the residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site and reside in such a home for a period of

twelve (12) months. No zoning ordinances shall prohibit this, and any such mobile home shall be subject to the provisions of the State Sanitary Code.

- 12.1.4** The owner of land may permit occupancy of such land by a non-paying guest using a camper for living purposes for a period not to exceed two (2) weeks in any calendar year. If the non-paying guest proposes to stay longer than two weeks a permit must be obtained from the Select Board.
- 12.1.5** A mobile home may be occupied as a permanent residence only if within a Mobile Home Park. Mobile Home Parks shall be allowed only by a special permit from the Zoning Board of Appeals and following approval by the Board of Health. The Zoning Board of Appeals shall grant a special permit for a Mobile Home Park only if it finds:
- 12.1.5.1** that the park has access, both to the park and within the park, adequate to serve the number of rental spaces proposed
 - 12.1.5.2** that utilities, including water supply, disposal of sewage effluent and electricity are adequately provided for with a utilities layout meeting the board's approval
 - 12.1.5.3** that the site design of the park makes the most effective use, reasonably possible, of the site topography and existing landscaping so as to preserve existing trees, natural features, preserve vistas and river views from public ways and minimize intrusion into the character of existing development.
- 12.1.6** The Zoning Board of Appeals shall seek the recommendation of the Planning Board concerning any or all of these issues. Normally, these requirements will mean that mobile home parks will only be allowed when the following are complied with:
- 12.1.6.1** Access: if the density of the proposed mobile home park exceeds four (4) rental spaces per acre of total park area then the park must have direct access to a major street;
 - 12.1.6.2** Utilities and/soils: unless in an area already serviced by public sewer and water systems, such parks shall not be allowed on soils rated as having "severe" limitations for septic tank sewage effluent disposal as determined by the U.S.D.A. Soil Conservation Soil Survey of Franklin County completed in 1967;
 - 12.1.6.3** Proximity to Existing Development: mobile home parks shall not be allowed on a parcel which is within eight hundred (800) feet of three (3) or more existing dwellings;
 - 12.1.6.4** In all cases, a mobile home park shall meet the following requirements:
 - 12.1.6.4.1** The minimum lot area of a mobile home park shall be ten acres but not less than six thousand (6,000) square feet times the number of rental spaces.
 - 12.1.6.4.2** Each rental space shall have a minimum area of five thousand (5,000) square feet and shall be serviced with electricity, water and sanitary sewage suitable for permanent connection.
 - 12.1.6.4.3** No mobile home shall be placed within one hundred (100) feet of a street or other lot line unless dense vegetation or topography provide effective screening in which case, a fifty (50) foot separation may be allowed. No mobile home shall be allowed closer to another mobile home or structure than twenty-five (25) feet measured from its end or forty-five (45) feet measured laterally.
 - 12.1.6.4.4** The provisions of this ordinance shall not be retroactive to apply to a camper or mobile home now located in the Town of Shelburne but shall apply to any future construction or occupancy of said camper or mobile home.

SECTION 13.0 SPECIAL REGULATIONS

- 13.1 Earth Removal:** the removal of more than fifty cubic yards of sod, loam, and gravel, mineral aggregates or rock from any premises within any twelve month period, except incidental to construction of a building for which a building permit is in force or incidental to routine farming operations, shall be allowed only by special permit from the Zoning Board of Appeals. Such special permit shall require restoration of removal areas through regrading, replacement of topsoil and planting, and, shall not allow removal to create hazards or destroy future utility of the land.
- 13.2 Sawmills and Logging:**
- 13.2.1** Operation of a sawmill on any premises shall be allowed only by special permit in the Rural Residential/Agricultural or Industrial Districts from the Zoning Board of Appeals.
- 13.2.2** All forestry operations shall comply with the regulations of Mass General Law, Chapter 132 which include obtaining an approved cutting plan for harvesting more than 25 thousand board feet and following Best Management Forestry Practices such as properly building and maintaining skid trails, truck roads and stream crossing, reducing slash, and limiting cutting in wetland buffer zones and forestry equipment operations near wetlands, vernal pools and endangered species habitat.
- 13.2.3** Any forestry operations within 100 feet of wetlands, vernal pools or endangered species' habitat not done under an approved cutting plan shall receive the approval of the Conservation Committee.
- 13.3 Unsightly Condition:** Accumulated or scattered junk, junk cars, trash, debris or scrap materials shall be adequately screened by the occupant or owner away from the view of public lands and ways in all cases; and, similarly, screened from the lands of any adjacent property owners upon their request for such relief to the selectmen.
- 13.4 Cluster Housing:** By special permit, issued by the Planning Board, a tract of twenty (20) acres or more may be divided into lots having less area frontage and providing smaller setbacks than the requirements above provided that the number of dwelling units in the tracts shall not ever exceed the number obtained by dividing the tract area devoted to residential plus open space by the minimum lot size applicable to it, that at least twenty-five (25) percent of the tract area shall be set aside for open space governed by a conservation restriction accepted by either the Town or its conservation commission under Massachusetts General Laws Chapter 184 Sections 31-33 and, that the Board of Health approve sanitary arrangements for each lot. Such special permits shall be granted only where the Planning Board finds that such development will be superior to conventional development in preserving open space for conservation or recreation, utilizing natural features of the land, and allowing more efficient provision of public services; and at least equal to a conventional plan in other respects.

SECTION 14.0 ENVIRONMENTAL CONTROLS

- 14.1 Disturbances:** No use shall be allowed if it will cause undue sound, noise, vibration, odor or flashing perceptible without instruments more than two hundred (200) feet from the boundaries of the originating premises except for warning devices for construction work, maintenance, seasonal or intermittent agricultural use or other special circumstances.

- 14.2** Pollution: No sewage effluent leaching field shall be located within one hundred (100) feet of the normal bank of any Year-round stream or of any pond. All requirements of the sanitary code of the Department of Public Health and all Regulations of the Department of Environmental Protection shall be complied with prior to the issuance of any permits. Satisfying health requirements may, in some cases, require land area in excess of the minimum requirements of Section 6.0.
- 14.3** Screening: Open storage and loading of service areas shall be screened from any adjacent residence or public way by plantings. Junk, unregistered motor vehicles, trash or debris shall be confined out of sight.
- 14.4** Hazard: No use shall be allowed which would create hazard due to explosion, fire or other causes. Potentially hazardous conditions shall be fenced, covered or otherwise rendered safe.
- 14.5** Flooding: The peak flood channel of any year-round stream or river shall not be reduced by filling.

SECTION 15.0 ADMINISTRATION

- 15.1 ENFORCEMENT**: This by-law shall be enforced by the building inspector. No building shall be built or altered and no use of land shall be begun or changed without a permit having been issued by the building inspector. Any person violating the provisions of this by-law may be fined not more than three hundred dollars (\$300) for each offense. Each day that said violation continues shall constitute a separate offense. In the event that there is not a building inspector, the Board of Selectmen shall act as the enforcing body.

15.2 ZONING BOARD OF APPEALS

- 15.2.1** There is hereby established a Zoning Board of Appeals of five members and three alternate members to be appointed by the Selectmen as provided in Massachusetts General Laws Chapter 40A. The Zoning Board of Appeals shall act on all matters within its jurisdiction under this by-law in the manner prescribed in Massachusetts General Laws Chapter 40A. The Zoning Board of Appeals shall have the following powers:

- 15.2.1.1 Appeals**: To hear and decide an appeal made or filed by any person aggrieved by reason of his/her inability to obtain a permit from any administrative official under the provision of the Massachusetts General Laws Chapter 40A.

15.2.1.1.1 Each appeal application, when submitted, shall be accompanied by a certified check or money order in accordance with the Regulations and fee schedule of the Zoning Board of Appeals.

15.2.1.1.2 Fees for the ZBA appeals are not refundable.

15.2.1.1.3 Appeal fee does not include advertising costs for hearings. All advertising costs shall be borne by the applicant(s).

- 15.2.1.2 Variances**: To authorize, upon appeal or upon petition, a variance from the dimensional terms of this by-law where owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying, or substantially derogating from, the intent or purpose of this by-law, but not otherwise.

SECTION 16.0 Shelburne, Massachusetts Telecommunications By-law

16.1 PURPOSE: The purpose of this Telecommunications Ordinance is to:

- A. preserve the character and appearance of the Town while simultaneously allowing adequate wireless communication services to be developed,
- B. minimize any adverse impacts,
- C. provide standards and requirements for regulation, placement, construction, modification, and removal of *Commercial Mobile Radio Service Facilities (CMRS) including* Personal Wireless Service facilities,
- D. minimize the total number and height of freestanding CMRS facilities throughout the Community, and
- E. provide incentive for co-location by means of using existing structures.

16.2 DEFINITIONS:

Architectural and Engineering Plans - plans certified by a State of Massachusetts licensed engineer, created to show the design of a CMRS facility.

Building, Roof or Wall-Mounted facility - a CMRS facility where antennas are mounted either on the roof or face(s) of a legally existing building other than a building or structure accessory to a telecommunications facility.

Co-location - the act of attaching antennas to an existing structure.

Equipment Storage Shelter - a structure used to house CMRS equipment. These shelters are not intended for human habitation.

Freestanding CMRS Structure - a support structure including monopoles, self supporting towers, guyed towers, or other structures used to attach antennas for the purpose of operating a CMRS facility.

Guyed tower - a tower supported by guy wires.

Height - shall mean, when referring to a freestanding CMRS structure, the distance measured from ground level to the highest point on the tower or other structure, including antenna.

Commercial Mobile Radio Service (CMRS) facility - an un-manned facility consisting of a wireless antenna configuration, support structure, equipment storage shelters, and accessory equipment used for the reception, switching and/or transmission of wireless telecommunications including, but not limited to, paging, enhanced specialized mobile radio, personal communications services, cellular telephone, and similar technologies.

Monopole - a structure composed of a single spire used to support telecommunications equipment.

Municipal Facility - any structure or land owned by the town of Shelburne used for municipal purposes. This includes, but is not limited to; office space, garages, storage yards, parks, playgrounds, roads, or other Town owned property.

Commercial Mobile Radio Service Overlay District (CMRSOD) - an area designated by the Town as a desired location for a CMRS facility.

Wireless antenna - a device that is attached to a support structure for transmitting and receiving electromagnetic waves. This includes panel antennas, whip antennas, and microwave dishes.

16.3 GENERAL REQUIREMENTS:

1. A Commercial Mobile Radio Service Overlay District (CMRSOD) shall be established in the Town of Shelburne as shown on the map entitled Official Zoning Map for the Town of Shelburne.
2. The requirements established in this by-law shall supercede all other requirements for CMRS facilities in the existing Town of Shelburne Zoning Ordinance and/or Subdivision Control Plan.
3. The applicant is required to meet with the Town of Shelburne Zoning Board of Appeals (ZBA) as a pre-hearing conference to discuss the project.
4. One and/or all of the parties involved as an applicant for this permit, must have a current FCC license.
5. A copy of a the FCC license of the applicant must be on file with the Town Clerk upon submittal of the application
6. All CMRS facilities are subject to and must comply with Section 16.7 of this ordinance.

7. An Environmental Assessment must be provided to the town of Shelburne prior to the issuance of a building permit if the CMRS facility location is in a defined environmentally sensitive area as defined by current NEPA standards.
8. Access to the site shall be by a roadway which is passable in all seasons and which the applicant has a legal right to use. Roadway must have a minimum width of 10' (ten feet). A gravel road is permitted.
9. Traffic associated with the CMRS facility shall not adversely affect abutting ways.
10. All new freestanding CMRS structures shall be at least a distance of 500 feet from any residential structure.
11. All new freestanding CMRS structures shall be at least a distance of 1500' feet from the property line of any school.
12. Existing on-site vegetation shall be preserved to the maximum extent practicable.
13. The Equipment Storage Shelter and all Accessory Equipment shall be screened from abutting properties to the greatest extent possible.
14. Night lighting of the facilities shall be prohibited unless required by the Federal Aviation Administration (FAA).
15. Any lighting required by the FAA shall be shielded to prevent an undue burden on abutting property owners. All other lighting associated with the facility shall not be visible beyond the property line.
16. A minimum 6' high chain link fence will be required around the CMRS facility.
17. No CMRS facility owner or lessee or employee thereof shall act to exclude or attempt to exclude any other CMRS provider from the same location.
18. A CMRS facility owner or lessee or employee thereof shall cooperate in good faith to achieve co-location of antennae with other CMRS providers.
19. Non reflective painting of any or all equipment may be required to help the CMRS facility blend in with its surroundings.
20. All equipment associated with a CMRS facility shall meet the setback requirements as set forth in the Zoning District, and must be a minimum of 15' from any property boundary with the exception of fencing.
21. All towers must be engineered to fall at a pre-determined height, enabling the entire structure to collapse and be contained within the lot area of the lot on which it is located.

16.4 FACILITIES WITHIN THE CMRSOD:

All CMRS facilities within the CMRSOD shall abide by the general regulations set forth in Section 16.3 of this ordinance and the regulations set forth in this section.

A. FACILITIES PERMITTED WITHIN THE CMRSOD:

1. Within the CMRSOD the following facilities are permitted upon the review and approval of Architectural and Engineering plans, (such plans shall be in accordance with Section 16.9.A.1-8 of this ordinance):
 - a. The co-location of a CMRS facility on an existing structure. The facility shall include the addition of ancillary equipment, including the equipment storage shelters, accessory equipment, and requirements needed for operation of a CMRS facility.
 - b. The replacement of any freestanding CMRS structure with another structure of the same height.

B. FACILITIES REQUIRING A SPECIAL PERMIT WITHIN THE CMRSOD:

1. Within the CMRSOD the following uses are permitted through Special Permit:
 - a. The creation of a new freestanding CMRS facility, including antennas, equipment storage shelters, accessory equipment, and requirements needed for operation of said facility when co-location to an existing structure within the same CMRSOD is not an option because of limited structural and/or vertical space on existing structures or limits of network design. Any new freestanding CMRS facility must structurally allow for reasonable co-location.

- b. The height extension of a freestanding CMRS facility to a maximum height of 195 feet including all antennas, lightning rods, and any other attachments. Such an extension is subject to Section 16.4.C.2 and 3 of this ordinance.

C. DIMENSIONAL REQUIREMENTS WITHIN THE CMRSOD:

1. The Maximum height shall be 150 feet, including all antennas, lightning rods, and all other attachments.
2. The height may be increased to 195 feet, including all antennas, lightning rods, and all other attachments only upon a written request for a wavier as per Section 16.10 of this by-law. Such request must be from the applicant at the time of submittal of the application to the ZBA. The applicant must demonstrate the technological necessity for the additional height above 150 feet.
3. Any new freestanding CMRS facility must structurally allow for reasonable co-location for a minimum of two licensed CMRS providers.
4. No minimum lot frontage shall be required for any new CMRS facility located within the CMRSOD, but access must be via a legal, deeded right of way

16.5. FACILITIES OUTSIDE THE CMRSOD: All CMRS facilities outside the CMRSOD shall abide by the general regulations set forth in Section 16.3 of this ordinance and the regulations set forth in this section.

A. GENERAL REQUIREMENTS OUTSIDE THE CMRSOD:

1. The applicant must provide substantial proof that locating within the CMRSOD is not technologically feasible or that co-location on existing structures is not technologically possible. Such proof shall be in the form of a technical report, including coverage plots of radio signal propagation for the CMRS facility. The report shall include all information requested by the ZBA at the pre-application meeting, including but not limited to a written narrative explaining the rationale for the proposed location and height with respect to the CMRS's network design, if applicable.
2. For new freestanding CMRS structures outside the CMRSOD the applicant shall provide a "balloon test", (or place "crank up" tower, crane or temporary structure) equal to the height of the proposed structure for a period of 4 hours on a pre-determined date prior to the hearing for a special permit application. Said date will be established, including an alternative date due to inclement weather, at the time of the pre-application meeting with the ZBA. The applicant will be responsible for placing a notice 1 week prior to the "balloon test" on site (size, location, and type of notice will be determined by the ZBA). The applicant will also be responsible for placing a public notice in at least one local publication and notifying adjacent parcel owners via US Mail at least 1 week prior to the "balloon test". Failure to notify or place the appropriate notices will result in a continuance of the public hearing of the special permit application until this requirement is met.

B. FACILITIES PERMITTED OUTSIDE THE CMRSOD:

Outside the CMRSOD, the following facilities are permitted upon the ZBA's review and approval of Architectural and Engineering Plans (such plans shall be in accordance with Section 16.5A, 16.9.A.1-8 of this ordinance):

1. The co-location of a CMRS facility on an existing structure that does not exceed 10 feet above tree line or 100 feet, whichever is less. The facility shall include the addition of ancillary equipment, including the equipment storage shelters, accessory equipment, and requirements needed for operation of a CMRS facility.
2. The replacement of any freestanding CMRS structure with another structure of the same height.
3. Building, Roof or Wall Mounted facilities, such Building, Roof or Wall Mounted CMRS facilities shall be subject to the Section 16.3 of this ordinance and the following additional regulations:

- a. No equipment associated with the CMRS facility shall exceed 10 feet above the height of the building or 100 feet above the ground, whichever is less
- b. Antennas and accessory equipment shall be fully screened to be harmonious and architecturally compatible with the building, including but not limited to painting equipment to match the building

C. FACILITIES REQUIRING A SPECIAL PERMIT OUTSIDE THE CMRSOD:

Outside the CMRSOD, a special permit shall be required for all new CMRS facilities, except as set forth in Section 16.5.B.1-3 and Section 16.6. of this ordinance.

D. DIMENSIONAL REQUIREMENTS OUTSIDE THE CMRSOD:

1. The maximum height for a new freestanding CMRS facility shall be 10 feet above tree line not to exceed 100 feet, whichever is less, including all antennas, lightning rods, and all other attachments.
2. The height of a new or existing freestanding CMRS facility may be increased to 20 feet above tree line not to exceed 100 feet, whichever is less, including all antennas, lightning rods, and all other attachments only upon a written request for a waiver as per Section 16.10 of this by-law. Such request must be from the applicant at the time of submittal of the application to the ZBA. The applicant must demonstrate the technological necessity for the additional height up to 20 feet above tree line or 100 feet, whichever is less.
3. Minimum lot frontage shall be required for any new CMRS facility located outside the CMRSOD.

16.6 EXEMPTIONS: The following types of wireless communication towers are exempt from the Telecommunication Ordinance:

- A. Towers used in accordance with the terms of any radio services license issued by the Federal Communication Commission (FCC) for any amateur, personal, or private use, provided that the tower is not used for the purpose of commercial users.
- B. Satellite dishes and antennas for residential use.
- C. Any CMRS facility or related facility in existence before the adoption of this ordinance.
- D. Police, Fire and emergency medical services and dispatch services operated by Federal, State, or Municipal entity.

16.7 CMRS SIGNS: Signs shall be required at the discretion of the ZBA. All CMRS facilities requiring a sign and/or signs specific to the site location are subject to this ordinance and must comply with any or all current applicable Town of Shelburne by laws for signs. No other signs are permitted.

A. SIGN INFORMATION:

1. All CMRS facilities must display minimally one sign that displays the following information:
 - a. Identification of the facility - address
 - b. Facility Owner(s) and contact Phone Numbers
 - c. A 24 hr. Emergency Telephone Number
 - d. Operator(s) of the facility and contact Phone Numbers
 - e. FCC License #'s of Operator(s), Tenant(s), Owner(s)
2. No trespassing sign
3. Any signs required by the FCC, FAA or any regulatory agency having authority

B. SIGN DESIGN:

1. No Sign(s) shall have company logo's or be used for advertising
2. Sign(s) must be visible within 25 feet of the facility and/or from the facility access

16.8 NON USE:

All unused towers or parts thereof or accessory facilities and structures which have not been used continuously for one year shall be dismantled and removed at the owners expense. Prior to issuance of a Building Permit for a freestanding CMRS facility, the applicant is required to post with the Town Treasurer a bond or other form of financial security for an amount up to \$50,000.00, as set forth by the ZBA. The bond will be 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 continuously for more than a year. The Building Inspector shall give the applicant 90 days written notice in advance of any demolition action.

16.9 APPLICATION REQUIREMENTS: Any application for a CMRS facility shall contain the following:

A. ARCHITECTURAL AND ENGINEERING PLANS:

1. A title sheet with the following:
 - a. A title labeling the company, type of proposal (i.e. co-location to an existing freestanding CMRS facility), and location.
 - b. A vicinity map showing all major roadways within 2000'
 - c. A sheet index describing all parties involved in the project.
 - d. A project summary block labeling the applicant, facility address, owner, deed reference, facility parcel number, and current zoning district.
2. A general plan sheet showing the complete plan view of the proposal at a preferred scale of 1"= 20' or a scale appropriate to accurately portray the proposed facility. All setback lines, property lines, easement lines, and utility lines shall be shown.
3. A project area plan of the facility area that shows the detail of the facility area at a preferred scale of 1" = 5' or a scale appropriate to accurately portray the proposed facility.
4. Elevation plans showing the complete proposal at a scale appropriate to accurately portray the proposed facility.
5. Photo simulations from a highly visible location showing before and after. The location will be pre-determined by the pre-application meeting with the ZBA.
6. A view-shed map showing the affected areas within a 500' radius of the location.
7. Photos of relevant equipment associated with the facility, including but not limited to buildings, antennas, and other equipment outlined in the pre-application meeting.
8. Any other drawings deemed necessary at the pre-application meeting.

B. WRITTEN PROJECT DESCRIPTION:

1. A description of the company and the type of service they are bringing to the community.
2. A written description of the proposed project and the methodology for choosing the proposed facility location and type of facility. The description shall include specific design features used to minimize the impacts of a CMRS facility within the proposed environment. This description shall such things as include building dimensions, antenna dimensions, and any information that was required by the ZBA at the time of the pre-application meeting.
3. An 8 1/2" x 11" copy of a USGS quad map with a site arrow showing the location of the proposed facility.

C. COMPLETED APPLICATION.

16.10 WAIVERS:

The Zoning Board of Appeals may waive strict compliance with the any of the requirements set forth in this ordinance when, in its judgement, such action is in the public interest and not inconsistent with the intent of this Zoning By-law. Any waiver request must be made in writing at the time of application with documentation relative to facility constraints or location difficulties. Said waiver would be granted only after consultation with the Planning Board and the Board of Selectmen.

16.11 REVOCATION: The ZBA may revoke a special permit if the Building Inspector or Zoning Enforcement Officer finds a violation of the permit. The Building Inspector or Zoning Enforcement Officer must notify permittee of evidence in writing within 14 days of permit violation. The permittee must correct violation and provide evidence to the Building Inspector or Zoning Enforcement Officer within 30 days. If the permittee believes that no such violation exists, it may petition the ZBA during the 30 day cure period. If the permittee does not provide evidence to the Building Inspector or Zoning Enforcement Officer that it has corrected the violation or if it has petitioned the ZBA that no violation exists a revocation hearing shall be conducted by the ZBA upon 30 day written notice to the permittee . The permittee shall have the right to legal council and present such evidence appropriate and/or relevant at the time of the hearing to show that no violation exists. At the conclusion of the revocation hearing, the ZBA will notify permittee and all relevant parties of its decision in writing within 14 days of said hearing.

16.12 PERFORMANCE GUARANTEES AND FEES:

A. Applicant shall pay or reimburse the town for all expenses incurred by the ZBA in reviewing the application and installation of the applicant's facility. Expenses may include, without limitation, engineering, planning, technical, or legal services.

B. A maintenance bond shall be posted for the access road valid for the duration of the permit in an amount approved by the ZBA.

16.13 SPECIAL PERMIT REVIEW: Special permits issued under this by-law shall be subject to a safety and compliance review every five years by a registered engineer. Written results of review shall be given to ZBA. As a result of review, additional conditions may be added if deemed necessary by the ZBA. Said review shall be pad for by the owner of the tower.

16.14 DESCRIPTION OF PROPOSED SPECIAL OVERLAY DISTRICT FOR PERSONAL WIRELESS SERVICES FACILITIES

Beginning at the northwest corner of Lot No. 18 and running southerly in a straight line along the west line of Lots No. 18 and 17 and thence in a straight line projection to the Deerfield Town line; then easterly along the Deerfield Town line to a point fifty (50) feet east of the southeast corner of Lot No. 25; then northerly in a straight line to a point fifty (50) feet east of the northeast corner of Lot No. 18; then westerly along the north line of Lot. No. 18 to the point of beginning. This includes Lots No. 15,16,17, and 18 in their entirety, a westerly portion of Lot No. 14 and an easterly portion of Lot No. 25.

SECTION 17 AMENDMENTS

17.1 This by-law may be amended from time to time at an annual or special town meeting in accordance with the provisions of the Massachusetts General Laws 40A, Section 5.