

Appendix A ZONING ORDINANCE¹

ARTICLE I. GENERAL PROVISIONS

Section 1. Relation to state law; relation to other zoning.

- 1.1 This zoning ordinance and amendments thereto enacted conform to the provisions of the Rhode Island Zoning Enabling Act (the act) of 1991, G.L. 1956, §§ 45-24-26 through 45-24-72 inclusive.
- 1.2 All provisions of zoning adopted under authority of the provisions of sections 45-24-1 through 45-24-26 or of chapter 2065 of the Public Laws of 1933 repealed hereby shall become null and void as of July 1, 1994, unless amended so as to conform to the provisions of the act.
- 1.3 Notwithstanding any provisions of this zoning ordinance and amendments thereto, structures, buildings and land owned by the town may be used for the placement, erection and maintenance of telecommunication facilities in any district, and such telecommunication facilities so erected and/or used shall be exempt from the provisions of this zoning ordinance.

(Ord. No. 2010-14, 2-15-2011)

Section 2. General purposes.

These zoning regulations are developed and maintained in reliance upon the West Warwick comprehensive plan prepared and adopted by the town in accordance with the Rhode Island General Laws and are designed to address the following purposes. The town council recognizes these purposes, each with equal priority and numbered for reference only.

- 2.1 Promoting the public health, safety, and general welfare.
- 2.2 Providing for a range of uses and intensities of use appropriate to the character of the town and reflecting current and expected future needs.
- 2.3 Providing for orderly growth and development which recognizes:
 - 2.3.1 The goals and patterns of land use contained in the comprehensive plan of the Town of West Warwick adopted pursuant to the General Laws;
 - 2.3.2 The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;
 - 2.3.3 The values and dynamic nature of freshwater ponds, riverfront, streambanks and the shorelines, and freshwater wetlands;

¹Editor's note(s)—Printed in this appendix is the zoning ordinance of the city, being Ord. No. 94-05, effective July 1, 1994, as amended. The ordinance is included herein substantially as enacted, except that treatment of numbers within text has been made uniform to conform to the style used in this Code, obviously misspelled words have been corrected without notation, and in a few instances, material has been added, in brackets, for clarity. Amendments to the ordinance are indicated in parentheses at the ends of affected sections.

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- 2.3.4 The values of unique or valuable natural resources and features;
 - 2.3.5 The availability and capacity of existing and planned public and/or private services and facilities;
 - 2.3.6 The need to shape and balance urban and rural development; and
 - 2.3.7 The use of innovative development regulations and techniques.
- 2.4 Providing for the control, protection and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation.
 - 2.5 Providing for the protection of the natural, historic, cultural, and scenic character of the town and areas therein.
 - 2.6 Providing for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.
 - 2.7 Providing for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.
 - 2.8 Promoting a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe and sanitary housing.
 - 2.9 Providing opportunities for the establishment of low- and moderate-income housing.
 - 2.10 Promoting safety from fire, flood, and other natural or man-made disasters.
 - 2.11 Promoting a high level of quality in design in the development of private and public facilities.
 - 2.12 Promoting implementation of the comprehensive plan of the Town of West Warwick adopted pursuant to the General Laws.
 - 2.13 Providing for coordination of land uses with contiguous municipalities, other municipalities, the state and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.
 - 2.14 Providing for efficient review of development proposals, to clarify and expedite the zoning approval process.
 - 2.15 Providing for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special use permits, and where adopted, procedures for modifications.
 - 2.16 Providing for coordination with contiguous communities. It is the intention of this ordinance to facilitate coordination with contiguous municipalities and state agencies with regard to land use decisions which may affect shared resources and facilities, abutting property, and the greater public good. This coordination shall be carried out by [by] assuring this ordinance is consistent with the West Warwick comprehensive plan and any amendments thereto, which is reviewed by other municipalities and state agencies; and notifying, in accordance with Rhode Island General Laws, property owners, water resource boards, and/or city or town governing bodies of pending variance and special use applications or zoning map amendment petition and associated public hearings. Notices of proposals in neighboring communities or by state agencies shall be forwarded to the planning board for their review and when concerns exist with regard to consistency with the objectives of the West Warwick comprehensive plan, comments shall be prepared and forwarded to the agency submitting notice.

Section 3. Definitions.

Where words or terms used in this chapter [ordinance] are defined in section 45-22.2-4 [the definitions section of the "Rhode Island Comprehensive Planning and Land Use Regulation Act"], they shall have the meanings stated therein. In addition, the following words shall have the following meanings:

- 3.1 *Abutter*. One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land.
- 3.2 *Accessory family dwelling unit*. An accessory family dwelling unit is a unit located entirely within or directly attached to a single-family owner-occupied dwelling unit, that is clearly a subordinate part of the single-family owner-occupied dwelling unit and is designed exclusively as a residence for use of not more than two members of the family occupying the principal single family dwelling unit.
- 3.3 *Accessory use*. A use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use may be restricted to the same lot as the principal use. An accessory use shall not be permitted without the principal use to which it is related.
- 3.3a *Adaptive Reuse*. The conversion of an existing structure from the use for which it was constructed to a new use by maintain elements of the structure and adapting such elements to a new use.
- 3.4 *Aggrieved party*. An aggrieved party, for purposes of this chapter [ordinance], shall be:
 - (i) Any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance; or
 - (ii) Anyone requiring notice pursuant to this chapter [ordinance].
- 3.5 *Agricultural land*. "Agricultural land," as defined in section 45-22.2-4. Land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes. Agricultural land includes that defined as prime farmland or additional farmland of statewide importance for Rhode Island by the Soil Conservation Service of the United States Department of Agriculture.
- 3.6 *Agriculture*. The cultivation of the soil for food products, whether or not on agricultural land or in agricultural greenhouses. The normal preparation of such products for market and the incidental raising of small numbers of livestock or poultry for on-premises household consumption shall be considered an accessory use, provided no sale of animals or animal products are conducted.
- 3.7 *Applicant*. An owner or authorized agent of the owner submitting an application or appealing an action of any official, board or agency.
- 3.8 *Application*. The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by an approving authority for development review, approval, or permitting purposes.
- 3.8a *Bed and breakfast*. A residence, usually owner occupied, in which individual furnished rooms are rented on a nightly basis and in which breakfast is included.
- 3.9 *Buffer*. Land which is maintained in either a natural or landscaped state and is used to screen and/or mitigate the impacts of development on surrounding areas, properties or rights-of-way.
- 3.10 *Building*. Any structure used or intended for supporting or sheltering any use or occupancy.
- 3.11 *Building envelope*. The three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; and/or any combination thereof.

Commented [KMS1]: Should we renumber all definitions or remove numbering?

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- 3.12 *Camper*. A mobile recreational seasonal living unit designed to be mounted upon and conveyed by another vehicle. A camper unit shall be not be [shall not be] occupied as a dwelling unit.
- 3.12a *Cardholder*. When used in relation to medical marijuana means a person who has been registered or licensed with the Department of Health or the Department of Business Regulation pursuant to G.L. Title 21, Chapter 28.6 and possesses a valid registry identification card or license.
- 3.13 *Clinic*. A place where medical or dental care is furnished to persons on an out-patient basis by one or more doctors, clinical psychologists, dentists, physician's assistants, nurses, and such other medical professionals licensed or regulated by the State of Rhode Island.
- 3.14 *Common ownership*. Either:
- (i) Ownership by one or more individuals or entities in any form of ownership of two or more contiguous lots; or
 - (ii) Ownership by any association (such ownership may also include a municipality) of one or more lots under specific development techniques.
- 3.15 *Community residence*. In accordance with the provisions of G.L. Title 45, Chapter 24, a home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This shall not include halfway houses or substance abuse treatment facilities. This shall include, but not be limited to, the following:
- 3.15.1 Whenever six or fewer mentally disabled or mentally handicapped or physically handicapped children or adults reside in any type of residence in the community, as licensed by the state pursuant to G.L. 1956, § 40.1-24-1 et seq. All requirements pertaining to local zoning are waived for these community residences;
- 3.15.2 A group home providing care or supervision, or both, to not more than eight unrelated persons with disabilities, and licensed by the state pursuant to G.L. Chapter 24 of Title 40.1;
- 3.15.3 A residence for children providing care or supervision, or both, to not more than eight children including those of the care giver and licensed by the state pursuant to G.L. 1956, § 42-72.1-1 et seq.;
- 3.15.4 A community transitional residence providing care or assistance, or both, to no more than six unrelated persons or no more than three families, not to exceed a total of eight persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than 60 days nor more than two years. Residents will have access to and use of all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.
- 3.16 *Comprehensive plan*. The comprehensive plan when adopted and approved pursuant to the General Laws and to which any zoning adopted pursuant to the act shall be in compliance.
- 3.16a. *Congregate living facility*. An establishment or portion thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.
- 3.16b *Cooperative cultivations*. When used in relation to medical marijuana means two or more qualifying patient or primary caregiver cardholders who cooperatively cultivate marijuana in residential or nonresidential locations and possess a license to operate from the Department of Business Regulation.
- 3.17 *Day care, day care center*. Any other day care center which is not a family day care home.
- 3.18 *Day care, family day care home*. Any home other than the individual's home in which day care in lieu of parental care or supervision is offered at the same time to six or fewer individuals who are not relatives

of the care giver but may not contain more than a total of eight individuals receiving day care, as regulated by the state.

- 3.19 *Density, residential.* The number of dwelling units per unit of land, expressed as the ratio of the total number of dwelling units divided by the total number of acres of usable lot area.
- 3.20 *Development.* The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; any change in use, or alteration or extension of the use, of land.
- 3.21 *Development plan review.* ~~See R.I.G.L. § 45-23-32 and 45-23-50. The process whereby authorized local officials review the site plans, maps, and other documentation of a development to determine the compliance with the stated purposes and standards of the ordinance.~~
- 3.21a *Disabilities.* When used in the zoning code the term "disabilities" when referring to a person or persons means a person or persons who has/have a physical or mental impairment that substantially limits one or more major life activities, as defined in G.L., as amended, [G.L. 1956,] § 42-87-1(7).
- 3.65b[3.21b] *Donation collection recycling bins* shall mean those containers in which members of the public generally deposit used clothing, shoes, books and other items of personal property.
- 3.22 *Drainage system.* A system for the removal of water from land by drains, grading, or other appropriate means.
- 3.23 *[Reserved.]*
- 3.24 *Dwelling unit.* A structure or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.
- 3.25 *Dwelling, multiple-family.* A building containing three or more dwelling units with the number of households in occupancy not exceeding the number of dwelling units provided. Apartments, row houses, townhouses, condominium developments, and similar housing types, whether or not dwelling units therein which are sold, rented or leased are included, but not including roominghouses, boardinghouses, dormitories, fraternities and sororities, hotels, motels, hospitals or nursing homes.
- 3.26 *Dwelling, single-family.* A detached building not including a mobile home, containing no more than one dwelling unit.
- 3.27 *Dwelling, two-family.* A detached building containing two dwelling units.
- 3.28 *Extractive industry.* The extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.
- 3.29 *Family member.* A person, or persons, related by blood, marriage, or other legal means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law, grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the household.
- 3.30 *Federally insured or assisted housing.* Federally insured or assisted housing means:
- (i) Low-income housing units insured or assisted under sections 221 (d)(3) and 236 of the National Housing Act [12 USC section 1701 et seq.];
 - (ii) Low-income housing units produced with assistance under section 8 of the U.S. Housing Act of 1937 [42 USC section 1401 et seq.]; and

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- (iii) Rural low-income housing financed under section 515 of the Housing Act of 1949 [12 USC section 1715Z].
- 3.30a. *Firearms.* Weapons from which a shot or shots are fired by any explosive force.
- 3.31 *Floodplains or flood hazard area.* As defined in G.L. 1956, § 45-22.2-4. An area that has a one percent or greater chance of inundation in any given year, as delineated by the Federal Emergency Management Agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-448) [42 USC 4011 et seq.].
- 3.32 *Garage, private.* A fully enclosed attached or separate accessory building for the storage of motor vehicles, owned or regularly used by the owner or tenant of the lot. Buildings in which fuel is sold or repair or other services performed shall not be construed as private garages.
- 3.33 *Gas station.* A place where motor vehicle fuels and lubricants are sold at retail and dispensed by the patron or by an attendant. Nonautomotive retail convenience goods may be sold on the premises as an accessory use. Automotive repair or services are prohibited.
- 3.34 *Groundwater.* "Groundwater" and associated terms, as defined in G.L. 1956, § 46-13.1-3.
- 3.35 *Halfway houses.* A residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.
- 3.36 *Hardship.* See G.L. 1956, § 45-24-41.
- 3.37 *Historic district or historic site.* As defined in G.L. 1956, § 45-22.2-4. "Historic district" means one or more historic sites and intervening, or surrounding property significantly affecting or affected by the quality and character of the historic site or sites, and has been registered, or is deemed eligible to be included, on the state register of historical places pursuant to section 42-45-5. "Historic site" means any real property, man-made structure, natural object, or configuration or any portion or group of the foregoing which has been registered, or is deemed eligible to be included, on the state register of historic places pursuant to G.L. 1956, § 42-45-5.
- 3.38 *Home occupation.* Home occupation shall include:
- 3.38.1 An accessory use of a dwelling unit or accessory structure, involving the manufacture, provision or sale of good and/or services, which is carried out by members of the family residing on the premises plus no more than one nonresident assistant or employee.
- 3.38.2 Home occupations do not include occasional garage sales and yard sales nor home parties which are held for the purpose of sale of goods or services, provided however, that if the collective total of all such sales and/or parties exceed three in any calendar year such sales and/or parties shall be considered a home occupation and regulated hereby.
- 3.38a. *Hotel.* An establishment that provides lodging and frequently meals, entertainment and various personal services for the public.
- 3.39 *Household.* One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" shall be synonymous with the term "dwelling unit" for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:
- 3.39.1 A family, which may also include servants and employees living with the family; or
- 3.39.2 A person or group of no more than three unrelated persons living together.
- 3.40 *Kennel.* The temporary keeping of others' animals for remuneration.

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- 3.41 *Infrastructure.* Facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.
- 3.42 *Land development project.* ~~As defined in R.I.G.L. § 45-23-32. A project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, recreational, open space, and/or mixed uses as may be provided for in this zoning ordinance.~~
- 3.43 *Laundromat.* A building or portion thereof where patrons wash, dry or dry-clean clothing and other fabrics in machines operated by the patron.
- 3.44 *Lot.* Either:
- (i) The basic development unit for determination of lot area, depth, and other dimensional regulations; or
 - (ii) A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or recorded map and which is recognized as a separate legal entity for purposes of transfer of title.
- 3.45 *Lot area.* The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet.
- 3.46 *Lot area, usable.* For the purpose of calculating the lot building coverage on a lot and for the purpose of determining minimum lot area requirements, the calculation of the usable lot area for all uses shall exclude the following:
- (i) Lands under water.
 - (ii) Wetlands as defined by G.L. 1956, § 2-1-1 et seq., or amendments thereto.
 - (iii) All streets or rights-of-way, public or private, which serve or are intended to service more than one principal building or use. Public access or scenic areas, exclusive of those located in wetlands, conveyed by easement to the town, state or other governmental entity solely, or waterfront access may be included in lot area for calculations.
 - (iv) Lands possessing areas with slopes in excess of 20 percent and ledge outcrops.
 - (v) Lands located within special flood hazard areas, as defined by the Federal Emergency Management Agency's "Flood Insurance Rate Map" and "Flood Boundary and Flood Way Map," as may be amended.
- 3.47 *Lot building coverage.* That portion of the lot that is or may be covered by buildings and accessory buildings. This shall be expressed as a percent and shall express the portion of the usable lot area that is or may be covered by the total maximum horizontal cross-section of any building or buildings.
- 3.48 *Lot depth.* The distance measured from the front lot line to the rear lot line. For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth but shall not be less than minimum required depth, wherever measured. Refer to subsection 5.7.2 for additional measurement procedures.
- 3.49 *[Reserved.]*
- 3.50 *Lot frontage.* That portion of a lot abutting a street. Refer to subsection 5.7.1 for additional measurement procedures.
- 3.51 *Lot line.* A line of record, bounding a lot, which divides one lot from another lot or from a public or private street or any other public or private space and shall include:

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- (i) *Front*. The lot line separating a lot from a street right-of-way where the front lot line fronts on more than one street, the front lot line shall be determined by the building inspector;
 - (ii) *Rear*. The lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line; and
 - (iii) *Side*. Any lot line other than a front or rear lot line. On a corner lot, one side lot line may also be a street lot line.
- 3.52 *Lot, through*. A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.
- 3.53 *Lot width*. The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum front setback line. Refer to subsection 5.7.3 for additional measurement procedures.
- 3.54 *Mere inconvenience*. See G.L. 1956, § 45-24-41.
- 3.55 *Mixed use*. A mixture of land uses within a single development, building, or tract.
- 3.56 *Mobile home*. A dwelling unit, factory-built and factory-assembled, designed for conveyance, after fabrication, on streets and highways on its own wheels or on a flatbed or other trailers and arriving at the site where it is to be occupied as a dwelling unit, complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, such as locating on jacks or other foundation or connection to utilities. A prefabricated home, modular home or structure shall not be included in this definition.
- 3.57 *Modification*. Permission granted and administered by the building inspector pursuant to the provisions of this ordinance to grant a dimensional variance other than lot area requirements, not to exceed 25 percent of each of the applicable dimensional requirements.
- 3.57a. *Motel*. An establishment that provides lodging and parking for the public and in which rooms are frequently accessible to an outside parking area.
- 3.58 *Nonconformance*. A building, structure, or parcel of land, or use thereof, lawfully existing at the time of the original adoption or amendment of the zoning ordinance and not in conformity with the provisions of such ordinance or amendment. Nonconformance shall be of only two types:
- 3.58.1 *Nonconforming by use*. A lawfully established use of land, building, or structure which is not a permitted use in that zoning district. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; or
- 3.58.2 *Nonconforming by dimension*. A building, structure, or parcel of land not in compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations include all regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension.
- 3.59 *Nursing home*. A structure designed or used for residential occupancy and providing medical or nursing care on the premises for occupants on rehabilitative or long-term care but not including a hospital or clinic, nor separate living quarters for each occupant containing some or all provisions of a dwelling unit.

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- 3.60 *Open space.* Any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that the area may be improved with only those buildings, structures, streets, and off-street parks and other improvements that are designated to be incidental to the natural openness of the land.
- 3.61 *Performance standards.* A set of criteria or limits relating to elements which a particular use or process either must meet or may not exceed.
- 3.62 *Permitted use.* A use by right which is specifically authorized in a particular zoning district.
- 3.63 *Planned development.* A "land development project," as defined herein, and developed according to plan as a single entity and containing one or more structures and/or uses with appurtenant common areas.
- 3.64 *Planning board.* The body established by the town of West Warwick which has the responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the town council.
- 3.65 *Preapplication conference.* A review meeting of a proposed development held between applicants and reviewing agencies as permitted by law and municipal ordinance before formal submission of an application for a permit or for development approval.
- 3.65a *Primary caregiver.* When used in relation to medical marijuana means a natural person, who is at least 21 years old.
- 3.66 *Residential mobile home park.* A subdivision designed and intended for residential use where all residences are therein mobile homes.
- 3.67 *Restaurant, fast food.* That type of retail restaurant, refreshment stand, and/or commercial establishment, self-service or otherwise, designed or used, in whole or in part, to cater to and/or accommodate, in whole or in part, the consumption of food, dessert, or beverages anywhere upon the premises, both inside and outside the building from which it is sold and/or dispensed, whether or not the owner of such restaurant or commercial establishment grants active permission for customers to do so, including, but not limited to, that type of retail establishment which includes substantially stand-up, counter and/or drive-in service and primarily serves or dispenses food, dessert, or beverages in or with disposable or nonreusable containers and/or utensils.
- 3.68 *Restaurant, standard.* A retail establishment where food or beverages are cooked or prepared and offered for sale and where individual customer service is provided at fixed or movable seating at which it is consumed, whether or not entertainment is offered, and includes establishments commonly known as bars, grilles, cafes, taverns, and nightclubs permitting consumption on the premises, but excludes fast food restaurants.
- 3.69 *Right-of-way.* Any easement in or property acquired by the town or state for the purpose of establishing streets or highways, including pedestrian sidewalks, bicycle paths, safety rest areas, landscaping, or any other purpose incidental to highway travel.
- 3.70 *Roominghouse.* A dwelling unit where individual rooms, with furniture are provided for rent, usually for an extended period of time.
- 3.71 *Service station.* A business establishment that performs automotive repairs or service, and which may supply fuel, oil, and automobile accessories to motor vehicles, including grease racks, elevators, provide minor tire and battery services, but not including the storage of unregistered cars, nor more than six cars awaiting parts or customer pickup. Nonautomotive or retail convenience sales are not permitted.

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- 3.72 *Setback line or lines.* A line or lines parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed.
- 3.73 *Sign.* Any permanent or temporary device or structure which contains one or more of the following characteristics in each of the paragraphs 3.73.1, 3.73.2, and 3.73.3 below:
- 3.73.1 Freestanding, attached to a building or structure or erected, painted, represented, or reproduced outside any building or structure or any natural object such as a tree, rock, bush, including the ground itself.
- 3.73.2 Which displays, reproduces or includes any letter, word, name, number, model, symbol, insignia, design, device, representation or trademark, or flag (including banner or pennant).
- 3.73.3 Which is used to identify the premises or occupant or owner of the premises; to advertise any trade, business, profession, industry, service, or other activity; to advertise any product or item; to advertise the sale or rental or use of all or part of any premises, including that upon which it is displayed; to direct vehicular or pedestrian traffic other than state, county or municipal highway and roadway markers; and shall include any announcement, declaration, demonstration, display, illustration, insignia, or any representation used to advertise or promote the interests of any person.
- 3.73.4 In no event shall the word "sign" be construed to mean any sign in the interior of any structure unless it is specifically set forth in this ordinance or displayed within the view of persons passing on a street or public sidewalk.
- 3.73.5 *Sign.* Defined by location.
- 3.73.5.1 *Ground.* A detached sign erected upon or supported by the ground.
- 3.73.5.2 *Roof.* A sign erected upon the roof of any building.
- 3.73.5.3 *Wall.* A sign erected against the wall of any building with the exposed face thereof in a plane parallel to the plane of said wall, and which sign is mounted, at a distance, measured perpendicular to said wall, no greater than 12 inches. A wall sign shall include a sign suspended from the ceiling of a marquee, canopy, or vestibule and a sign attached to any fence, screen, or freestanding wall.
- 3.73.5.4 *Projecting.* A sign erected approximately perpendicular to the wall of a building, including a sign erected at the corner of a building, projecting into an open space or yard but not projecting into the right-of-way of any street, sidewalk, alley, or other public thoroughfare.
- 3.73.5.5 *Marquee.* A sign other than a projecting sign mounted on the marquee of any building.
- 3.73.5.6 *Canopy or awning.* A sign other than a projecting sign designated on a canopy or awning and identifying the name or address of a building or an establishment contained therein.
- 3.73.5.7 *Face signs.* Sign painted on the wall of a building.
- 3.73.5.8 *Mobile signs.* A sign mounted on its own wheels or mounted on a vehicle.
- 3.74 *Signs.* Defined by message conveyed.
- 3.74.1 *Real estate.* A sign advertising the sale, rental or lease of the premises on which it is maintained, including a subdivision sign.
- 3.74.2 *Job site or improvement.* Temporary signs announcing the erection of buildings or other construction work, either freestanding or attached to the premises.

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- 3.74.3 *Business.* A sign directing attention to a business, commodity, service or entertainment conducted, sold, or offered upon the same premises as those upon which the sign is maintained.
- 3.74.4 *Bulletin board; change board.* A sign of permanent character, but with movable letters, words or numerals, or changeable copy, not by any mechanical or electronic means, indicating the names of persons associated with the events conducted upon or products or services offered upon the premises upon which such sign is maintained.
- 3.74.5 *Professional.* A sign indicating the name and occupation of a professional person or group or associated professional persons.
- 3.74.6 *Nameplate.* A sign indicating only the name and address of an occupant.
- 3.74.7 *Instructional or directional.* A sign conveying instructions with respect to the premises on which it is maintained, such as a sign designating the entrance to or exit from a parking area, a trespassing sign, danger sign, and similar signs.
- 3.74.8 *Temporary promotional.* A display sign, banner or advertising device constructed of cloth, canvas, fabric, plywood, or other light temporary material, with or without a structural frame, intended to promote special sales, free gifts, openings, or campaigns.
- 3.74.9 *Billboard.* An off-premises outdoor advertising structure displaying a sign or signs not pertinent to a use on the premises.
- 3.74.10 *Off-site directional signs.* Official signs erected by the town of West Warwick, the State of Rhode Island or federal government, indicating the route to major public facilities, shopping areas and the like and such signs erected by service clubs and churches.
- 3.74.11 *Political sign.* Temporary sign designating a candidate for elective office, or other matter on the ballot.
- 3.75 *Site plan.* The development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.
- 3.76 *Special use.* A regulated use which is permitted pursuant to the special use permit issued by the authorized governmental entity, pursuant to G.L. 1956, § 45-24-42 ~~of the act~~. Formerly referred to as a "special exception."
- 3.76.1 *Storage unit.* Any temporary structure or container used for the storage personal property of every nature and kind.
- 3.77 *Street.* A public right-of-way or highway established, accepted and maintained under public authority.
- 3.78 *Street line.* The dividing line between a public way and an adjacent lot.
- 3.79 *Structure.* A combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.
- 3.80 *Structure, temporary.* A structure having the same requirements as a permanent structure, except that it does not require a foundation.
- 3.81 *Substandard lot of record.* Any lot lawfully existing at the time of adoption or amendment of the zoning ordinance and not in conformance with the dimensional and/or area provisions of the ordinance.
- 3.82 *Telecommunications facility.* The plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.
- 3.83 *Travel trailer.* A mobile home not exceeding eight feet in width nor more than 33 feet in length. Travel trailers shall not be occupied as a dwelling unit.

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- 3.84 *Use*. The purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.
- 3.85 *Variance*. Permission to depart from the literal requirements of the zoning ordinance. An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land, which is prohibited by the zoning ordinance. There shall be only two categories of variance, a use variance or a dimensional variance. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.
- 3.85.1 *Use variance*. Permission to depart from the use requirements of the zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning ordinance.
- 3.85.2 *Dimensional variance*. Permission to depart from the dimensional requirements of ~~this~~ the zoning ordinance under the applicable standards set forth in R.I.G.L. § 45-24-41, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations.
- 3.86 *Waters*. As defined in G.L. 1956, § 46-12-1(b).
- 3.87 *Wetland, freshwater*. As defined in G.L. 1956, § 2-1-20. A marsh, swamp, bog, pond, river, river or stream flood plain or bank, area subject to flooding or storm flowage; emergent or submergent plant community in any body of fresh water; or area within 50 feet of the edge of a bog, marsh, swamp, or pond, as defined in G.L. 1956, § 2-1-20.
- 3.88 *Yard*. The required space on a lot to be open, unoccupied and unobstructed by structures, whether such structures be affixed permanently or temporarily to the ground or whether such structures be an overhang from a principal structure, except as otherwise provided for in this zoning ordinance, or by storage of vehicles, campers, travel trailers, mobile homes, boats, boat trailers or similar equipment, located between any lot line and the setback required there from, except as otherwise specified in this ordinance.
- 3.88.1 *Yard, front*. A required yard extending across the full width of the lot adjacent to the front lot line.
- 3.88.2 *Yard, rear*. A required yard extending from the rear of the principal structure to the rear lot line and extending across the full width of the lot.
- 3.88.3 *Yard, side*. A required yard extending from the rear of the required front yard, or from the side lot line where no front yard is required, to the rear lot line.
- 3.88.4 *Yard, interior side*. A required side yard not adjacent to a public way.
- 3.88.5 *Yard, corner side*. A required side yard adjacent to a public way.
- 3.89 *Zoning certificate*. A document signed by the building inspector, as required in the zoning ordinance, which acknowledges that a use, structure, building or lot either complies with or is legally nonconforming to the provisions of the zoning ordinance or is an authorized variance or modification therefrom.
- 3.90 *Zoning map*. The map or maps which are a part of this zoning ordinance and which delineate the boundaries of all mapped zoning districts within the physical boundary of the town.
- 3.91 *Zoning ordinance*. An ordinance enacted by the West Warwick town council pursuant to the Rhode Island General Laws and in the manner providing for the adoption of ordinances in the town Charter,

which sets forth regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the comprehensive plan of the town as defined in G.L. 1956, § 45-22.2-1 et seq., of the act, which includes the zoning map, and which complies with the provisions of Rhode Island General Laws.

- 3.92 *Zoning use districts.* The basic unit in zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use. The districts may include, but are not limited to, agricultural, commercial, industrial, institutional, open space, and residential. Each district may include subdistricts. Districts may be combined.

(Ord. No. 2000-24, 2-2-2001; Ord. No. 2005-4, 3-1-2005, eff. 3-23-2005; Ord. No. 2007-2, 6-5-2007; Ord. No. 2008-14, 9-16-2008; Ord. No. 2008-19, 11-18-2008; Ord. No. 2012-3, 4-17-2012; Ord. No. 2013-1, 2-26-2013; Ord. No. 2013-3, 2-26-2013; Ord. No. 2013-52, 12-17-2013; Ord. No. 2016-3, 5-3-2016; Ord. No. 2017-3, 2-28-2017; Ord. No. 2017-4, 2-28-2017; Ord. No. 2018-24, 9-4-2018; Ord. No. 2021-7, 6-15-2021)

Section 4. Division into districts.

- 4.1 *District boundaries.* The boundaries of said zoning use districts are hereby established as shown on the town zoning map which is adopted as part of this ordinance and which is on file with office of the town clerk and the building inspector.

4.1.1 Residential districts.

Residence 10 (R-10) formerly residence AA.

Residence 8 (R-8) formerly residence A.

Residence 7.5 (R-7.5) formerly residence B.

Residence 6 (R-6) formerly residence C.

4.1.2 Nonresidential districts.

Business (B) formerly business D.

Commercial industrial (CI) formerly industrial E.

Business park (BP).

- 4.2 *Split lots.* Wherever a district boundary splits a lot into two or more separate zoning districts, a prospective use may be processed only if it is listed in the table of uses for the district. The dimensional requirements for such use shall be determined by the district in which it is located. Where a proposed use is permitted in two or more districts on the same lot, the dimensional requirements, other than density, shall be determined by the district's dimensional regulations which contains the most usable lot area. For density requirements, all portions of the lot shall be calculated proportionately, by usable lot area within each district.

- 4.3 *Interpretation.* Where, due to the scale, lack of detail or illegibility of the zoning map of the town of West Warwick, it shall be determined that the boundary lines of districts are lot lines, centerlines of streets or such lines extended, railroad right-of-way lines, or the centerlines of watercourses. Interpretations concerning the text of this ordinance and the exact location of district boundary lines as shown on the zoning map shall be made by the building inspector. Any person aggrieved by such interpretation of the building inspector may appeal such interpretation to the zoning board of review.

- 4.4 *Zoning affects every structure and use.* No structure shall be constructed, erected, placed, moved or maintained nor shall the exterior be altered, and no land use shall be commenced or continued within the town unless in conforming with the regulations wherein specified for the district in which it is located, except as provided for in sections 7 and 8 herein.

~~4.5 Unlisted uses. Any use not listed in the table of uses shall be permitted upon favorable recommendation to the zoning board by the planning board and the granting of a special use permit by the zoning board upon the affirmative finding of each board that the proposed use:~~

- ~~(1) Is in conformance with the purposes and intent of the town comprehensive plan and the applicable standards of this ordinance; and~~
- ~~(2) Is either a use of the same type and nature that is generally permitted in the zone in which the use is proposed or that the proposed use is a use of less intense nature than the uses presently permitted in the zone in which the use is proposed; and~~
- ~~(3) Will not alter the general character of the surrounding area; and~~
- ~~(4) Meets the standards required for the granting of a special use permit in section 10.2.1 of this zoning code.~~

4.6 *Area requirements dedicated.* No part of a lot, yard, parking space, or other dimension required for any building or use for the purposes of complying with the provisions of this ordinance shall be included as part of a lot, yard, parking space, or other dimension required under this ordinance for another use or building except as provided in section 5.9.8, joint use.

4.7 *Only one dwelling on any lot.* In no case shall there be more than one dwelling and its accessory buildings on one lot, except that two-family and/or multiple-family developments may permit more than one residential structure per lot in conformity with this ordinance.

4.8 *More than one nonresidential use or building on a lot.* More than one nonresidential structure may be allowed on a single lot within a nonresidential district if devoted to the same use. Upon application to the zoning board of review, a special use permit may be issued in accordance with this ordinance, where more than one use on a lot may be petitioned; provided, however, that such uses shall be only those that are listed within the district.

4.9 *Street access.* No structure shall be erected on or moved onto a lot which does not have frontage equal to or greater than the required minimum frontage as required in this ordinance, for the district in which it is located except as permitted in subsections 7 and 8.

4.10 *Corner visibility.* Within any required front or corner side yard on any corner lot or any driveway or curb cut, no wall, fence, sign, hedge, shrub or other obstruction to visibility shall be permitted between the heights of 2½ and ten feet above the existing street grade within an area 50 feet long and five feet wide measured along the street line and in either direction from such intersection or driveway or curb cut.

4.11 *Temporary uses permitted.* A temporary building or yard for construction materials and/or equipment, a temporary office for the sale or rental of real property, if in connection with an incidental and necessary to a real estate development, and a temporary trailer used for residential occupancy necessitated by any loss or damage of a principal structure by fire, or natural disaster shall be permitted in any district subject to approval by the building inspector; provided that any building permit for any such temporary use shall be valid for not more than six months unless such time period is extended by the building inspector. All other temporary and/or mobile facilities for residential, commercial or industrial use are prohibited in any district; provided, however, that this prohibition shall not apply to such temporary and/or mobile facilities which are owned and/or operated by federal, state, or municipal agencies or by any hospital, school, charitable, nonprofit, or religious institution.

4.12 Reserved.

4.13 *Overlay district regulations, hotel/motel, multi-family, transient and office business category.*

Commented [KMS2]: Moved to 5.3.3.

Commented [KMS3]: Choices: (1) allow more than one non-residential structure on a non-residentially zoned lot; (2) provide S&OC for more than one non-residential structure.

- 4.13.1 *Intent.* The overlay district is established to provide for additional uses now prohibited in the commercial/industrial zone, while maintaining all the dimensional and other requirements associated with the underlying commercial/industrial zone.
- 4.13.2 *Establishment of the district.* The hotel/motel, multi-family and business overlay district is hereby established for the following parcels with the current commercial/industrial zone lying south of I-95: Assessor's Plat 30, Lots 1, 7, 13, 14, 15, 18, 22, 32, 34, 36, 39, 41.
- 4.13.3 *Permitted uses.* All uses permitted in the underlying CI district remain permitted, but in addition pursuant to the existing zoning ordinance, the following uses are permitted:
- 4.13.3.1 Office business category.
 - 4.13.3.2 Other business uses (hotel/motel, transient).
 - 4.13.3.3 Residential uses (multi-family dwellings).
- 4.13.4 *Qualifier.* In the case of conflict among regulations, the stricter standards shall apply.

(Ord. of 3-5-1996, § 1; Res. No. 2000-154, 7-11-2000; Ord. No. 2010-6, 9-21-2010; Ord. No. 2011-25, 1-3-2012; Ord. No. 2014-12, 6-17-2014)

Section 5. Use regulations.

The Town of West Warwick is divided into the following mapped districts to implement this ordinance and may include, but are not limited to, the separation of residential from nonresidential uses and the division of nonresidential uses into appropriate areas of the town to achieve the purposes stated in section 2 hereinbefore:

- 5.1 *Reserved.*
- 5.2 *Reserved.*
- 5.3 *Table of use regulations.*
 Y = Permitted.
 X = Prohibited.
 S = Special Use Permit.

	RESIDENTIAL DISTRICTS			
	R-10	R-8	R-7.5	R-6
A. Residential uses				
1. Dwelling, single-family	Y	Y	Y	Y
2. Dwelling, two-family	S-X	S-X	Y	Y
3. Dwelling, multiple-family	S-X	S-X	S	S
4. Dwelling lawfully existing prior to adoption of this ordinance	Y	Y	Y	Y
5. Mobile homes	X	X	X	S
6. Residential mobile home parks	S-X	S-X	S-X	S-X
7. Rooming house	S-X	S-X	S-X	S-X
8. Bed and breakfast	S-X	S-X	S-X	S-X
9. Congregate living facility	S-X	S-X	S-X	S-X
B. Residential community facilities				

	<u>R-10</u>	<u>R-8</u>	<u>R-7.5</u>	<u>R-6</u>
1. Church, or similar place of worship or religious instruction	Y	Y	Y	Y
2. School, public or private elementary, junior/middle, or high	Y	Y	Y	Y
3. College, university or similar higher educational institution	S-X	Y	S-X	S-X
4. Community residence	Y	Y	Y	Y
5. Family day care home	Y	Y	Y	Y
6. Nursing home	S-X	S-X	S-X	S-X
C. General community facilities				
1. Public park or playground	Y	Y	Y	Y
2. Library or museum	Y	Y	Y	Y
3. Public or private golf course, course, or country club	Y	Y	Y	Y
4. Public utility structure or right-of-way, sewage treatment plant, water treatment plant but not including an electric generating plant	S-X	S-X	S-X	S-X
5. Government building not including a public utility structure or right-of-way	Y-X	Y-X	Y-X	Y-X
6. Watershed or wellhead supply or protection	Y	Y	Y	Y
7. Transit passenger shelter	Y	Y	Y	Y
8. Cemetery	S-X	S-X	S-X	S-X
9. Clinic	S-X	S-X	S-X	S-X
10. Hospital, sanitarium, auxiliary and accessory uses	S-X	S-X	S-X	S-X
11. Philanthropic, fraternal, social or educational office, club or meeting room	S-X	S-X	S-X	S-X
12. Donation collection recycling bins	X	X	X	X
D. Agricultural uses				
1. Agriculture (excluding medical marijuana)	Y	Y	Y	Y
2. Plant nursery	Y	Y	Y	Y
3. Wood lot	Y	Y	Y	Y
4. Conservation area, wildlife refuge	Y	Y	Y	Y
E. Residential accessory uses				
1. Accessory family dwelling unit	S	S	S	S
2. Accessory use	Y	Y	Y	Y
3. Home occupation	Y	Y	Y	Y
4. Private garage	Y	Y	Y	Y
5. Storage of campers, travel trailers, boats and other recreational vehicles	Y	Y	Y	Y
6. Swimming pool	Y	Y	Y	Y
7. Sign: one face or ground describing one of the following messages:	Y	Y	Y	Y

Commented [JP4]: Other Section - Permitted Uses

	R-10	R-8	R-7.5	R-6
Real estate				
Jobsite improvement				
Bulletin board				
Professional				
Nameplate				
Instructional or directional				
8. Temporary structure	Y	Y	Y	Y
F. Telecommunications facilities				
1. Underground facilities	S-X	S-X	S-X	S-X
2. Overhead facilities	S-X	S-X	S-X	S-X
3. Monopoles/towers	X	X	X	X
G. Medical Marijuana				
1. Compassion centers	X	X	X	X
2. Cardholder medical marijuana	Y	Y	Y	Y
3. Cooperative cultivation	Y	Y	Y	Y
4. Licensed cultivators	X	X	X	X

Y = Permitted.

X = Prohibited.

S = Special use permit.

~~Y/S = May be permitted or special use permit subject to section 5.6.20.~~

Commented [KM55]: See comment at 5.6.20

	NONRESIDENTIAL DISTRICTS			
	B	CI	BP	VC*
A. Residential Uses				
1. Dwelling lawfully existing prior to adoption of this ordinance	Y	Y	X	Y
2. Dwelling, two-family	X	X	X	S-X
3. Dwelling, multi-family	X	X	X	S
B. Residential Community Facilities				
1. Church, or similar place of worship or religious institution	Y	Y	X	Y
2. School, public or private elementary, junior/middle, or high	Y	Y	S-X	Y
3. College, university or similar higher educational institution	S-X	Y	S-X	S
C. General Community Facilities				
1. Public park or playground	Y	Y	Y	Y
2. Library or museum	Y	Y	X	Y
3. Public or private golf course, country club	Y	Y	Y	X

	<u>B</u>	<u>Cl</u>	<u>BP</u>	<u>VC</u>
4. Public utility structure or right-of-way, sewage treatment plant, water treatment plant or electric generating plant	Y	Y	X	X
5. Government building, not including a public utility structure or right-of-way	Y	Y	X	Y
6. Watershed or wellhead supply or protection	Y	Y	<u>S-Y</u>	X
7. Cemetery	Y	Y	X	X
8. Clinic	Y	Y	Y	Y
9. Hospital, sanitarium, auxiliary and accessory uses	S	S	Y	S
10. Philanthropic, fraternal, social or educational office, club or meeting	Y	Y	X	Y
D. Agricultural Uses				
Uses 1 through 4 in Residential Districts inclusive (excluding medical marijuana)	Y	Y	X	Y
5. Animal shelter, kennel, aviary	Y	Y	Y	X
6. Veterinarian, veterinary hospital	Y	Y	X	Y
7. Landscape and horticultural services	Y	Y	Y	X
8. Commercial greenhouse	Y	Y	Y	S
9. Garden center, lawn supplies	Y	Y	Y	Y
E. Retail Business				
1. Lumber and building materials dealers	Y	Y	Y/S	Y/S
2. Paint, glass and wallpaper stores	Y	X	Y/S	Y
3. Hardware stores	Y	X	Y/S	Y
4. Mobile home dealers	Y	X	Y/S	X
5. Department and variety stores	Y	X	Y/S	Y/S
5a. Sale or trading of firearms	Y/S	Y/S	X	Y
6. General merchandise stores	Y	X	Y/S	Y
7. Food and grocery stores	Y	X	Y/S	Y
8. Meat and fish stores	Y	X	Y/S	Y
9. Fruit and vegetable markets	Y	X	Y/S	Y
10. Candy, nut and confectionery stores	Y	X	Y/S	Y
11. Dairy products stores	Y	X	Y/S	Y
12. Retail bakery, baking, and selling	Y	X	Y/S	Y
13. Motor vehicle dealers (new and used)	Y	X	Y/S	X
14. Auto and home supply stores	Y	X	Y/S	S
15. Gas stations and service stations	Y	Y	S	X
16. Boat dealers	Y	X	Y/S	X
17. Recreational vehicle dealers	Y	X	Y/S	X
18. Motorcycle dealers	Y	X	Y/S	Y/S
19. Clothing, personal furnishings and accessories	Y	X	Y/S	Y
20. Shoe stores	Y	X	Y/S	Y

Commented [JP6]: What does this mean?

Commented [JP7]: Size?

Commented [JP8]: Add criteria

21. Furniture and home furnishings	Y	X	Y/S	Y
22. Household appliance stores	Y	X	Y/S	Y
23. Radio, television and related stores	Y	X	Y/S	Y
24. Music stores	Y	X	Y/S	Y
25. Restaurant, standard	Y	Y	Y/S	Y
26. Restaurant, fast-food	Y	Y	Y/S	Y
27. Bar, tavern or nightclub	Y	Y	X	Y
28. Drugstores	Y	X	Y/S	Y
29. Liquor stores	Y	X	Y/S	Y
30. Antique and used merchandise stores	Y	X	Y/S	Y
31. Sporting goods and bicycle shops	Y	X	Y/S	Y
32. Bookstores	Y	X	Y/S	Y
33. Stationery stores	Y	X	Y/S	Y
34. Jewelry stores	Y	X	Y/S	Y
35. Hobby, game and toy stores	Y	X	Y/S	Y
36. Camera and photographic supply stores	Y	X	Y/S	Y
37. Gift, novelty and souvenir shops	Y	X	Y/S	Y
38. Luggage and leather goods	Y	X	Y/S	Y
39. Sewing, needlework and piece goods stores	Y	X	Y/S	Y
40. Mail-order houses and other non-store retail	Y	X	Y/S	Y
41. Fuel oil dealers, no on-site storage	Y	Y	S-X	X
42. Fuel oil dealers with onsite storage	X	Y	S-X	X
43. Liquefied gas dealers (fuel storage in tanks)	X	Y	S-X	X
44. Florists	Y	X	Y/S	Y
45. Cigar stores and tobacconists	Y	X	Y/S	Y
46. News dealers and newsstands	Y	X	Y/S	Y
47. Optical goods	Y	X	Y/S	Y
48. Other retail, not elsewhere classified	Y	X	S-X	Y/S
F. Office Business Category				
1. Banks and credit agencies	Y	X	Y/S	Y
2. Security and commodity brokers	Y	X	Y/S	Y
3. Exchanges and services	Y	X	Y/S	Y
4. Insurance offices	Y	X	Y/S	Y
5. Real estate offices	Y	X	Y/S	Y
6. Other investment offices	Y	X	Y/S	Y
7. Advertising services	Y	X	Y/S	Y
8. Advertising	Y	X	Y/S	Y
9. Credit/mercantile reporting and collection agencies	Y	X	Y/S	Y
10. Mailing, reproduction, commercial art and steno services	Y	X	Y/S	Y
11. Services to buildings	Y	X	Y/S	Y/S
12. Miscellaneous equipment rental	Y	X	S	Y/S
13. Personnel supply agencies	Y	X	Y/S	Y

Commented [JP9]: Screening of outdoor equip.

14. Computer and data processing services	Y	X	Y/S	Y
15. Management, consulting and public relations services	Y	X	Y/S	Y
16. Miscellaneous business services	Y	X	S-X	Y
17. Offices of physicians, dentists and other health practitioners and medical arts buildings	Y	X	Y/S	Y
18. Medical and dental laboratories	Y	X	Y/S	Y
19. Outpatient care facilities	Y	X	Y/S	Y
20. Other health services	Y	X	S	Y
21. Legal Services	Y	X	Y/S	Y
22. Correspondence, vocational and job training schools	Y	Y	Y/S	Y
23. Other schools and educational services	Y	X	Y	Y
24. Business, professional, and labor organizations	Y	X	S	Y
25. Civic, social and fraternal associations	Y	X	S	Y
26. Political organizations	Y	X	S	Y
27. Other membership organizations	Y	X	S	Y
28. Engineering, architectural and surveying services	Y	X	Y/S	Y
29. Noncommercial educational, scientific and research organizations	Y	Y	Y/S	Y
30. Accounting, auditing and booking services	Y	X	Y/S	Y
31. Other services	Y	X	S	Y
G. Personal and Other Service Categories				
1. Building construction, general and special trade contractors	Y	Y	Y/S	Y/S
2. Laundry, dry-cleaning plants and garment services		Y	S	S
3. Laundry, dry cleaning and garment services (self-service only)	Y	X	X	Y
4. Photographic studios	Y	X	Y/S	Y
5. Beauty or barber shops	Y	X	Y/S	Y
6. Shoe repair	Y	X	Y/S	Y
7. Funeral services, crematory	Y	X	S	Y/S
8. Other personal services	Y	X	S	Y/S
9. Appliance, furniture and equipment rental and leasing	Y	X	Y/S	Y
10. Auto, truck and trailer rental and leasing	Y	Y	Y/S	X
11. Automotive and auto body repair and service	X	Y	S	X
12. Automobile parking lots or garages	Y	Y	X	S
13. Auto cleaning and carwashes	Y	Y	S	X
14. General electrical repair shops	Y	Y	Y/S	Y
15. Watch, clock and jewelry repair	Y	X	Y/S	Y
16. Re-upholstery and furniture repair	Y	Y	Y/S	Y
17. Other repair services, welding	X	Y	S-X	S-X

Commented [JP10]: Can seek determination.

Commented [JP11]: Office? Or do you mean meeting space, event space?

Commented [JP12]: Can seek determination.

Commented [JP13]: Queuing? Determination.

H. Wholesale Business Category				
1. Wholesale business office or showroom: display of wares and sales transactions only	Y	Y	Y	Y
2. Wholesale trade or transfer of durable goods, not elsewhere classified	X	Y	S	S
3. Wholesale trade or transfer of nondurable goods, not elsewhere classified	X	Y	S	S
I. Amusement and Recreational Business Category				
1. Motion-picture, film, tape and disk distribution	Y	Y	Y/S	Y
2. Motion-picture theaters	Y	Y	Y/S	Y
3. Dance halls, studios or schools	Y	Y	Y/S	Y
4. Bowling alleys or billiards	Y	Y	Y/S	Y
5. Other indoor recreation	Y	Y	Y	Y/S
6. Amusement park or other outdoor recreation	S	Y	Y/S	Y/S
7. Art galleries	Y	Y	Y/S	Y
J. Other Business Uses				
1. Hotels and motels	Y	X	S	S
2. Donation collection recycling bins	Y	X	X	X**
K. Transportation, Telecommunications Facilities				
1. Local and intercity bus transportation	Y	Y	Y/S	Y/S
2. Bus charter service	Y	Y	Y/S	Y/S
3. Taxicab establishment	Y	Y	Y/S	Y
4. Trucking service and/or terminal	X	Y	Y/S	X
5. Courier service	X	Y	Y/S	Y/S
6. Warehousing: general and/or refrigerated	X	Y	Y/S	X
6a. Warehousing: public	X	Y	S	X
7. Communications: services and broadcasting offices	Y	Y	Y/S	Y
8a. Underground facilities	S	S	S	S
8b. Overhead facilities	S	S	S	S
8c. Monopoles/towers	S	S	S	S
9. Sanitary services (not including waste storage, treatment or disposal)	X	Y	S	X
L. Manufacturing				
1. Food and kindred manufacturing processing or packaging	Y	S	S	X
2. Textile mill products and production	X	Y	Y	X
3. Apparel and finished products	X	Y	Y	X
4. Lumber and wood products	X	Y	Y	X
5. Furniture and fixtures	X	Y	Y	X
6. Paper and allied products	X	S	S	X
7. Printing, publishing and allied industries	X	Y	Y	X
8. Chemicals and allied products	X	S	S	X
9. Petroleum refining and related industries	X	X	X	X

Commented [JP14]: Number of rooms?

10. Rubber and miscellaneous plastics products	X	S	S	X
11. Leather and leather products	X	S	S	X
12. Stone, clay, glass and concrete products	X	S	S	X
13. Primary metals industries (except blast furnaces, steel works, foundries and primary smelting)	X	S	S	X
14. Fabricated metal products, (except machinery and transportation equipment)	X	S	S	X
15. Industrial and commercial machinery and computer equipment	X	Y	Y	X
16. Electronic and other electrical equipment, except computers	X	Y	Y	X
17. Transportation equipment	X	Y	Y	X
18. Instruments: photographic, medical and optical goods, chronographs	X	Y	Y	X
19. Miscellaneous manufacturing	X	S	S	X
M. Mining				
1. Nonmetallic mineral extraction or quarrying	X	S	S	X
2. Crushing, processing, grading, washing of material	X	S	S	X
N. Accessory Uses				
1. Residential accessory uses for dwellings lawfully existing prior to the adoption of this ordinance; accessory uses 1 through 8 inclusive as permitted in, prohibited, or regulated by special use permit in residential districts	—	—	—	—
2. Signs	Y	Y	Y	Y
3. Incidental temporary structure	Y	Y	Y	Y
(a)(i) If a construction trailer or similar building on site only during the time period a building is being constructed;				
(a)(ii) Other temporary structures used on a given parcel of land for no more than one continuous period of not more than 90 days during any one calendar year				
3a. Other temporary structure	Y	Y	X	Y
4. Private garage	Y	Y	Y	Y
O. Medical Marijuana Generally				
1. Compassion centers	X	S	X	X
2. Cardholder medical marijuana	Y	Y	Y	Y
3. Cooperative cultivation	Y	Y	Y	Y
4. Licensed cultivator	X	S	X	X

Commented [KMS15]: I don't understand this. What is 1 through 8? Everything is permitted 1 through 4.

Commented [JP16]: SUP.

* In the case of conflict among regulations, the stricter standards of the Business District shall apply.

** Donation collection recycling bins shall be a permitted use in any area of a VC district in which the underlying district is a B district.

5.3.1 *Wind energy systems.* Wind energy systems (WES) shall be permitted only in R-10, CI and BP districts by Special Use Permit.

5.3.2 *Adult entertainment uses.* Adult entertainment uses shall be permitted in the CI (commercial industrial) zoning district only by a special use permit from the ZBR.

5.3.3 *Permitted Uses.*

(a) The ordinance may provide for a procedure under which a proposed land use that is not specifically listed may be presented by the property owner to the zoning board of review for an evaluation and determination of whether the proposed use is of a similar type, character, and intensity as a listed permitted use. Upon such determination, the proposed use may be considered to be a permitted use.

(b) Notwithstanding any other provision herein, the following uses are permitted uses within all residential zoning use districts and all industrial and commercial zoning use districts except where residential use is prohibited for public health or safety reasons:

- (1) Households;
- (2) Community residences; and
- (3) Family daycare homes.

(c) Any time a building or other structure used for residential purposes, or a portion of a building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured home, or homes, as the need may be, elsewhere upon the land, for use and occupancy of the former occupants for a period of up to twelve (12) months, or until the building or structure is rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated agent of the owner, is only allowed to cause the mobile and manufactured home, or homes, to remain temporarily upon the land by making timely application to the local building official for the purposes of obtaining the necessary permits to repair or rebuild the structure.

(d) Notwithstanding any other provision herein, appropriate access for people with disabilities to residential structures is allowed as a reasonable accommodation for any person(s) residing, or intending to reside, in the residential structure.

(e) Notwithstanding any other provision herein, an accessory dwelling unit in an owner-occupied residence that complies with §§ 45-24-31 and 45-24-73 shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members.

(f) When used in this section the terms “people with disabilities” or “member, or members, with disabilities” means a person(s) who has a physical or mental impairment that substantially limits one or more major life activities, as defined in § 42-87-1(7).

(g) Notwithstanding any other provisions herein, plant agriculture is a permitted use within all zoning districts, including all industrial and commercial zoning districts, except where prohibited for public health or safety reasons or the protection of wildlife habitat.

Commented [KMS17]: Need S&O criteria or delete.

Commented [KMS18]: This is required by the ZEA; adaptive reuse is a new section.

Commented [KMS19]: The Town includes this type of review in its definitions and is moved here. The reviewing authority can be the zoning official, but I used ZBR because that is the current reviewing authority in the definitions.

(h) Adaptive Reuse. Notwithstanding any other provisions herein, adaptive reuse for the conversion of any commercial building, including offices, schools, religious facilities, medical buildings, and malls into residential units or mixed-use developments is a permitted use, under the criteria described below under Eligibility.

(i) Eligibility.

a. Adaptive reuse development must include at least 50% of existing gross floor area developed into residential units.

b. There are no environmental land use restrictions recorded on the property preventing the conversion to residential use by RIDEM or the US EPA.

(ii) Density calculations.

a. For projects that meet the following criteria, the residential density shall be fifteen (15) dwelling units per acre:

ii. Where the project is limited to the existing footprint, except that the footprint is allowed to be expanded to accommodate upgrades related to the building fire code, and utility requirements.

iii. The development includes at least twenty percent (20%) low- and moderate-income housing.

iv. The development has access to public sewer and water service or has access to adequate private water, such as well and/or wastewater treatment systems approved by the relevant state agency for the entire development as applicable.

b. For all other adaptive reuse projects, the residential density permitted in the converted structure shall be the maximum allowed that otherwise meets all standards of minimum housing and has access to public sewer and water services or has access to adequate private water, such as well and wastewater treatment systems approved by the relevant state agency for the entire development, as applicable.

c. The density proposed for any adaptive reuse project shall be determined to meet all public health and safety standards.

(iii) Dimensional requirements.

a. Notwithstanding any other provisions of this section, existing building setbacks shall remain and are considered legal nonconforming.

b. No additional encroachments shall be permitted into any nonconforming setback unless relief is granted by the permitting authority.

c. Notwithstanding other provisions of this section, the height of the structure shall be considered legal nonconforming if it exceeds the maximum height of the zoning district in which the structure is located.

i. Any rooftop construction necessary for building or fire code compliance, or utility infrastructure is included in the height exemption.

(iv) Parking requirements.

- a. Adaptive reuse developments shall provide one parking space per dwelling unit. The applicant may propose additional parking in excess of one space per dwelling unit.
 - b. The parking requirements and design standards in [INSERT LOCAL ORDINANCE AND/OR REGULATION SECTION REFERENCE] shall apply to all uses proposed as part of the project unless otherwise approved by the applicable authority. The number of parking spaces required shall apply for uses other than residential.
- (v) Allowed uses within an adaptive reuse project.
- a. Residential dwelling units are a permitted use in an adaptive reuse project regardless of the zoning district in which the structure is located, in accordance with the provisions of this section.
 - b. Any nonresidential uses proposed as part of an adaptive reuse project must comply with the provisions of Section 5 for the zoning district in which the structure is located.
- (vi) Development and Design Standards. Site design shall be in accordance with the Regulations.
- (vii) Procedural requirements.
- a. Adaptive reuse project shall be subject to the procedural requirements of [INSERT LOCAL SECTION REFERENCE] and undergo [development plan review, minor, or major land development review] as determined in that section.
 - b. In addition to the checklist requirements for the applicable review process, the applicant shall provide the following information:
 1. The proposed residential density and the square footage of nonresidential uses.
 2. A floor plan to scale for each building indicating, as applicable, the use of floor space, number of units, number of bedrooms, and the square footage of each unit.
- a-c. Specific and objective provisions²
- a. The specific and objective criteria for adaptive reuse projects are found in the following sections of the regulations [LIST SECTIONS like landscaping, parking design, etc.]

5.4 *Standard dimensional regulations table.*

DIMENSION	DISTRICT							
	R-10	R-8	R-7.5	R-6	B	CI	BP	VC
Minima:								
Lot area in sq. ft.:								
[Single]1-family	10,000	8,000	7,500	6,000	10,000	40,000	40,000	x

² Specific and objective provisions are required to be within the zoning ordinance per §45-24-37(h)(1). Municipalities should consult with their solicitor to determine if a reference to the regulations will satisfy this requirement.

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Two-family	15,000	12,000	10,000	8,000	x	x	x	x
Lot width (feet)	100	80	75	60	100	150	150	x
Lot depth (feet)	100	100	100	100	100	200	200	x
Lot frontage (feet)	80	70	70	55	x	x	x	x
Yards (feet):								
Front (principal bldg.)	30	25	20	20	5	50	50	5
Interior side, (principal bldg.)	10	10	7	6	15	20	20	x
Corner side, (principal bldg.)	30	25	20	20	15	50	50	x
Rear, (principal bldg.)	30	25	20	20	30	50	50	x
Front (accessory use)	30	25	20	20	5	50	50	x
Interior side, (accessory use)	10	10	7	6	10	20	20	x
Corner side, (accessory use)	20	20	20	20	20	50	50	x
Rear (accessory use)	10	10	7	6	10	50	50	x
Maxima:								
Stories	2	2	3	3	x	x	x	x
Height (feet)	30	25	35	35	90	90	90	90
Building lot coverage (%)	20	25	25	30	50	30	50	80

S.F. = square feet

Notes:

(1) Residences permitted in conjunction with all agricultural uses.

(2) Not applicable.

5.5 *Minimum residential floor area.* No single-family, two-family or multifamily dwelling shall be erected or shall be reconstructed, remodeled or altered, which has living space per family of less than:

5.5.1 720 square feet on one floor in a single-family one-story structure.

5.5.2 1,000 square feet on two floors in a detached single-family two- or more story structure with a minimum of 600 square feet on the first floor.

5.5.3 720 square feet per family in a two- or multifamily structure.

5.5.4 400 square feet for an accessory family dwelling unit.

5.5.5 600 square feet for a mobile home.

5.6. *Supplemental use regulations.*

5.6.1 Accessory buildings and uses. Accessory buildings and uses are subject to all the requirements of this ordinance in addition to the following regulations: Accessory buildings and uses in all zoning districts are permitted which are clearly incidental to and subordinate and customarily associated with the principal use; are operated and maintained under the same ownership and on the same lot as the principal use; and for dimensional purposes, do not exceed the principal building by more than 50 percent of the square footage of the principal building. Accessory uses shall be restricted to the same lot as the principal use and shall not be an extension or enlargement of the principal use to which it is related. All other dimensional and use restrictions of the zoning ordinances which are more limited than the foregoing shall apply.

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- 5.6.2 Location of accessory buildings and uses. A building or accessory use, including an attached or detached garage, carport, or any vehicles or recreational items listed in section 5.6.10, shall be located so as to meet all the dimensional requirements for accessory uses as set forth in the zoning ordinance. Moreover, no accessory use shall be permitted which would create a sediment control or erosion hazard to any surrounding properties.
- 5.6.3 Accessory buildings, including garages, if detached from a principal building or if connected only by an open breezeway-type structure, shall be not less than five feet from the principal building, nor more than 20 feet in height.
- 5.6.4 A private garage may be constructed as a structural part of a main building, provided that when so constructed the garage walls shall be regarded as the walls of the main building in applying the front, rear and side yard regulations of this ordinance.
- 5.6.5 No accessory building or temporary structure shall be constructed upon a lot unless a main or principal building already exists on said lot and has a valid zoning certificate or a valid building permit has been issued and is in effect for the construction or erection of a main or principal building. This restriction shall not apply to agricultural or farm buildings.
- 5.6.6 An access driveway for the lot may be located within its required yard.
- 5.6.7 Accessory off-street parking or truck loading areas shall be improved in accordance with town specifications.
- 5.6.8 Required accessory off-street parking areas or truck loading space shall not be encroached upon by buildings, open storage or any other use.
- 5.6.9 Accessory off-street parking areas shall not be located in a required front yard or side yard and shall be not less than ten feet from any property line in a required rear yard.
- 5.6.10 No commercial vehicle nor any camper, travel trailer, mobile home, boat, boat trailer, storage unit, dumpster or similar equipment used for storage of the vehicle, camper, travel trailer, mobile home, boat or boat trailer, storage unit, dumpster or similar equipment, shall be stored within the setback of any front or interior side or corner side property line as provided in section 5.4 hereof. No such equipment shall be used for living, sleeping or housekeeping purposes. For purposes of this section[, the term] "shall be stored" shall refer to the location of such items on the property for more than 31 days in any 120-day period of time. Provided however, any time a building or other structure used for residential purposes, or a portion of a building containing residential units, is uninhabitable by virtue of a casualty such as fire or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured home or homes, as the need may be, elsewhere upon the land, for use and occupancy of the former occupants for a period up to 12 months, or until the building or structure is rehabilitated and otherwise made fit for occupancy. The property owner, or properly designated agent of the owner, is only allowed to cause the mobile and manufactured home or homes, to remain temporarily upon the land by making timely application to the building official for the purposes of obtaining necessary permits to repair or rebuild of the structure.
- 5.6.11 Any private garage in a residence district shall be occupied by boats or vehicles owned and operated only by the residents of the dwellings on the same lot. Except that one parking space may be occupied by the boat or the vehicle of a nonresident owner, if that space is in excess of the minimum requirements for the lot.
- 5.6.12 No commercial vehicles having three or more axles shall be stored, parked or garaged in a residential district, and the parking, storage or garaging of vans, trailers or semitrailers or similar vehicles designed to be propelled by a separate means of locomotion, or vehicles designed to be used for moving said vans, trailers or semitrailers, and all self-propelled

machinery designed for commercial use shall be prohibited in residence districts. Vehicles used principally as pleasure or recreational vehicles registered to an occupant of the premises shall be exempt from the provisions of this section.

- 5.6.13 Overnight parking of buses. Overnight parking of buses shall not be permitted in a residence district.
- 5.6.14 Accessory buildings and or structures to be located or constructed in any residential zone in the required rear yard for a main or principal building shall not occupy more than 20 percent of such required rear yard. The total lot coverage shall not exceed the maximum lot coverage provided in the table of standard dimensional regulations.
- 5.6.15 The following accessory uses shall be permitted in residential districts provided that they shall conform to all other provisions of this ordinance and that they shall not be detrimental to or impair adjacent properties or the neighborhood:
- 5.6.15.1 The raising or growing of horticultural products for home use by a residential family thereon.
- 5.6.15.2 A hen house, barn, stable, kennel or dairy incidental to a permitted farming use.
- 5.6.15.3 A garden or tool shed used only for the storage of garden implements and light home maintenance tools.
- 5.6.15.4 A greenhouse not used for commercial purposes.
- 5.6.15.5 Swimming pools, including appurtenant structures such as dressing and shower rooms and equipment houses, enclosed by a fence not less than five feet in height.
- ~~5.6.16 An accessory family dwelling unit shall be permitted upon application by the owner in an owner-occupied single-family dwelling for a special-use permit pursuant to section 10 provided the following conditions are met:~~
- ~~5.6.16.1 A valid zoning certificate shall be in existence.~~
- ~~5.6.16.2 The dwelling to which the accessory family dwelling unit is to be added shall be the only dwelling on the lot.~~
- ~~5.6.16.3 No more than one accessory family dwelling unit shall be permitted.~~
- ~~5.6.16.4 No violations of any of the town's codes or ordinances shall exist on the lot at the time of the application.~~
- ~~5.6.16.5 The accessory family dwelling unit shall not contain more than two bedrooms.~~
- ~~5.6.16.6 At least one additional off-street parking space shall be provided for on the lot for the accessory family dwelling unit.~~
- ~~5.6.16.7 The accessory family dwelling unit shall be constructed in accordance with the plans approved by the zoning board of review.~~
- ~~5.6.16.8 The accessory family dwelling shall be located entirely within or be directly attached to the owner-occupied single-family dwelling and no breeze-way shall be allowed between the accessory family dwelling and the principal dwelling.~~
- ~~5.6.16.9 The accessory family dwelling shall occupy no more than 50 percent of the total living space of the total owner-occupied dwelling unit, exclusive of a basement, and shall contain no less than 400 square feet and no more than 800 square feet of living space.~~

~~5.6.16.10 — No accessory dwelling unit shall be allowed above the second floor of the principal single family dwelling unit.~~

~~5.6.16.11 — The accessory dwelling unit shall have direct access for ingress and egress from the principal single family dwelling and separate access for ingress and egress to the outside.~~

~~5.6.16.12 — All minimum dimensional and set back requirements of the zoning code must be complied with unless a dimensional variance is granted by the zoning board of review.~~

~~5.6.16.13 — The accessory dwelling unit shall not have separate connections to any utilities servicing the accessory family dwelling unit.~~

~~5.6.16.14 — A kitchen area of an accessory dwelling unit be not less than 50 square feet and shall not exceed 75 square feet.~~

~~5.6.16.15 — There shall be no enlargement of the principal single family dwelling unit or of the accessory dwelling unit without prior approval of the zoning board of review.~~

~~The granting of a special use permit for an accessory dwelling unit shall be subject to the following:~~

~~5.6.16.16 — The use as an accessory dwelling unit shall automatically cease and no longer be valid upon (1) such accessory dwelling unit being occupied by any person other than an immediate family member of the owner occupant of the principal single family dwelling unit or (2) conveyance of the principal single family dwelling unit to any person other than the present owner, whichever shall first occur, provided however, in the event if conveyance of the principal single family dwelling unit to any person other than the present owner and the transferee of such conveyance shall desire to continue that approved accessory dwelling unit without making any changes thereto, such accessory dwelling family dwelling unit approval may be continued subject to all prior conditions and stipulations and specifically subject to sections 5.6.19.20, 5.6.19.21 and 5.6.16.22 such continuation of the approval of the accessory dwelling you may be approved administratively in the discretion of the town planner.~~

~~5.6.16.17 — Payment of a fee in lieu pursuant to the provisions of section 17-21 of the town land development and subdivision review regulations.~~

~~5.6.16.18 — The decision granting approval of the accessory dwelling unit shall be recorded in the records of land evidence.~~

~~5.6.16.19 — The owner applicant of the principal single family dwelling shall biennially apply for a certificate of compliance with the provisions of the granting of the special use permit for and accessory family dwelling unit from the building official which shall also include an affidavit of residency stating the relationship of the occupant of the accessory family dwelling unit. Additionally, any owner of a single family dwelling unit granted and/or operating under a special use permit, as an accessory family dwelling unit prior to June 5, 2007, shall biennially apply for a certificate of compliance and affidavit of residency to ensure their continued use as an accessory family dwelling unit.~~

~~5.6.16.20 — The building official shall have authority to enter the premises at all reasonable times upon reasonable notice to determine compliance with the provisions of the granting of the special use permit.~~

~~5.6.16.21 — Notwithstanding any other provision of this zoning code, an accessory family dwelling unit in an owner occupied, single family residence shall be permitted as a reasonable accommodation for family members who are 62 years of age or older. The~~

~~appearance of the structure shall remain that of a single family residence and there shall be an internal means of egress between the principal unit and the accessory family dwelling unit. If possible, no additional exterior entrances shall be added. Where additional entrances required, placement should be generally in the rear or side of the structure. When the structure is serviced by an individual sewage disposal system, the applicant shall have the existing or any new system approved by the Department of Environmental Management. The zoning enforcement officer shall require that a declaration of the accessory family dwelling unit for the family member or members and its restrictions be recorded in the records of land evidence and filed with the zoning enforcement officer and the building official. Once the family member or members with disabilities or 62 years of age or older, no longer reside(s) in the premises on a permanent basis, or the title is transferred, the property owner shall notify the zoning officials in writing, and the accessory family dwelling unit shall no longer be permitted, unless there is a subsequent valid application.~~

- 5.6.17 Home occupations as defined in section 3.38 shall be permitted as accessory uses in all zones, provided however, all such home occupations shall meet the following standards:
- 5.6.17.1 *Application.* An application for such occupation shall be submitted to and approved by the building official, which application shall include such information as the building official shall determine reasonable and which may include, but not be limited to, a site inspection by such town officials as the building official designates.
- 5.6.17.2 *Outward appearance.* The exterior appearance of the residential structure shall not be changed. There shall be no outside storage or window display. Noise, dust, odors, noxious fumes or vibrations emanating from the premises shall not exceed that which is normally produced by a single dwelling unit. Mechanical or electronic equipment which is incidental to the home occupation may be used provided it does not create visible or audible interference in radio or television receivers or cause fluctuation in line voltage of the premises. The home occupation shall not interfere with the delivery of utilities or other services to the area.
- 5.6.17.3 *Traffic.* The home occupation should not generate significantly greater traffic volume than would normally be expected in the particular zone in which the home occupation is conducted. Delivery and pick-up of materials and commodities to and from the premises by a commercial vehicle shall not exceed more than two trips per week. A commercial vehicle for the purpose of this section is any motor vehicle having a gross vehicle weight of more than 14,000 pounds.
- 5.6.17.4 *Parking.* The parking of customer's or client's vehicles shall not create safety hazards or congestion. At any one time only one commercial vehicle associated with the activities of the home occupation may be parked near the premises for more than two consecutive hours. One additional on-site parking space shall be required above the normal parking requirements for the residential use for any home occupation where students or clients visit the premises. One additional on-site parking space shall be required above the normal parking requirements for the residential use for any home occupation where a nonresident employee's method of transportation to and from the site of the home occupation is a motor vehicle which would normally be parked on or near the site of the home occupation. Two additional on-site parking spaces shall be required above the normal parking requirements for the residential use for any home occupation where both:
- (1) Students or clients may visit the premises; and

-
- (2) Where a nonresident employee's method of transportation to and from the site of the home occupation is a motor vehicle which would normally be parked on or near the site of the home occupation.

5.6.17.5 *Employees.* The home occupation is to be conducted only by members of the family residing in the dwelling unit plus no more than one nonresident employee or assistant. Persons engaged in building trades or similar fields, using their dwelling units or residential premises as an office for business activities conducted off the premises, may have more employees than the limitations set forth in this subsection if they are not employed on the premises.

5.6.17.6 *Signage.* The intent of signage at home occupations is to identify the location of the property and not to garner or advertise additional business which would have the effect of increasing traffic in the neighborhood, therefore only one sign, not over two square feet in area, flush mounted to the building, shall be permitted per dwelling unit. The sign shall only show the name of the occupant and the type of occupation. The sign shall not be internally or externally lit. A permit for the sign is required in accordance with section 5.10.

5.6.17.7 *Limits on class/instruction.* If the home occupation is the type in which classes are held or instruction given, there shall be no more than six students or pupils in the dwelling unit or on the premises at any one time. More than six students or pupils shall require a special use permit. These requirements limiting class size shall not be construed to prohibit occasional exceptions for events such as recitals, demonstrations and other similar gatherings.

5.6.17.8 *Limits on clients/customers.* If the home occupation is the type in which customers or clients visit the premises, there shall be no more than six customers or clients in the dwelling unit or on the premises during any period of 60 consecutive minutes. Motor vehicle traffic generated by customers or clients of a home occupation shall be prohibited from visiting the premises between the hours of 10:00 p.m. and 8:00 a.m.

5.6.17.9 *Allowable number of home occupations.* The total number of home occupations conducted within a dwelling unit is not limited, except that the cumulative impact of all home occupations conducted within the dwelling unit or on the premises thereof shall not be greater than the impact of one home occupation as set forth herein.

5.6.17.10 *Compliance.* Home occupations shall comply with all local, state and federal requirements pertinent to the activity pursued, and the requirements of or permission granted by this section shall not be construed as an exemption from such regulations.

5.6.18 Dormitory or living quarters for churches or other places of worship, educational or religious institutions, hospitals, sanitariums, and other similar uses.

5.6.19 Accessory buildings and uses are permitted as follows in nonresidential districts.

5.6.19.1 Accessory off-street parking areas may be located in required front, side, corner side, or rear yards, provided that they are set back at least ten feet from all property lines, and further provided that they do not encroach on corner clearance requirements established in accordance with this ordinance. The planning board may allow accessory off-street parking areas to be set back less than the above-required ten feet, so long as the planning board finds that the location of such off-street parking areas facilitates the coordination of joint access driveways and/or joint parking areas with abutting nonresidential properties.

5.6.19.2 Dormitory or living quarters for educational or religious institutions, hospitals, sanitariums, and other similar uses.

5.6.19.3 Repair facilities when conducted entirely within a building incidental to the principal use.

5.6.19.4 Accessory buildings and uses other than for surface off-street parking shall not be located in any required front, side, corner side, or rear yard.

5.6.20 Special provisions applicable to the BP business park zoning district.

5.6.20.1 *Purpose, intent, and applicability of zoning district.* In addition to the general purposes of this zoning ordinance as established in article I, section 2 of this zoning ordinance, this district is specifically created to promote private investment to expand the tax base and development of employment-intensive businesses and those associated businesses which provide beneficial goods and services to such employment centers and therefore, need to be near such employment centers. As such, access to major roadways and noninterference with residential neighborhoods are essential to fulfillment of the purpose of this district. Therefore, only property which meets the following conditions should be classified as a BP business park zoning district: 1) no street access to a roadway with residential development located thereon, and 2) no property with existing residential or enterprises exempt from town taxes located thereon, and 3) access onto a major arterial which has immediate access to the interstate highway system.

5.6.20.2 *Prohibition on nonprofit/tax exempt businesses.* Within the planned business park zoning district, there shall not be permitted any enterprise which by its tax exempt or nonprofit nature would make the property on which the enterprise is situated exempt from the property or other taxes of the town. This is not to be construed as to prohibit such nonprofit or tax-exempt entities from establishing offices in the BP zoning district unless such actions would make the property exempt from such taxes.

5.6.20.3 *Preexisting zoning conditions.* Whenever a parcel of land within a BP zoning district was rezoned with special conditions prior to being zoned BP, those conditions shall continue in effect without alteration by the zoning to BP.

5.6.20.4 *Variance notification procedures.* In addition to the notification provisions established in section 9 of this ordinance as they pertain to variances, the actions required under subsections 9.4.2 and 9.5 shall include listing and notification of all owners of property in the BP zoning district in the same manner and with the same information as the notifications required of all owners of property within 200 feet radius of the subject site.

5.6.20.5 *Special use permit notification procedures.* In addition to the notification provisions established in section 10 of this ordinance as they pertain to special use permits, the actions required under subsections 10.5.2 and 10.7 shall include listing and notification of all owners of property in the BP zoning district in the same manner and with the same information as the notifications required of all owners of property within 200 feet radius of the subject site.

~~5.6.20.6 *Uses designated as Y/S in subsection 5.3, table of use regulations.* Those uses designated [designated] as Y/S are permitted uses or special use permit uses depending on the following:~~

~~a. For those uses designated as Y/S, the use is considered permitted only if the space occupied by the specified use is over 50,000 square feet in contiguous, undivided floor area. If the space occupied by the specified use is 50,000 or less square feet in contiguous, undivided floor area, the use is subject to a special use permit.~~

Commented [KMS20]: Uses under 50K SF must have specific and objective criteria; either amend use to state "over 50K SF contiguous undivided floor area" which would prohibit under 50K SF . . ."

5.6.20.7 *Limits on building heights in proximity to residential structures.* Where a parcel of land adjoins property zoned R-10 and the R-10 zoned property is developed with a single-family home and no accessory apartments or nonconforming structures, the maximum height for the structure on the BP zoned parcel shall be limited as follows:

(a) No structure on the BP zoned parcel shall exceed the following limits:

30 feet in height within 60 feet of the property line common to the BP and R-10 zoned parcels; and

45 feet in height in the portion of the BP zoned parcel, which is 60 feet away from, but within 90 feet of, the property line common to the BP and R-10 zoned parcels; and

60 feet in height in the portion of the BP zoned parcel, which is 90 feet away from, but within 120 feet of, the property line common to the BP and R-10 zoned parcels; and

75 feet in height in the portion of the BP zoned [parcel] which is 120 feet away from, but within 150 feet of, the property line common to the BP and R-10 zoned parcels; and

After 150 feet from the property line common to the BP and R-10 zoned parcels, the building height for structures on the BP zoned parcels may reach their normal legal limit.

(b) Exceptions to the height limits established in subsection 5.6.20.6(a) above.

(1) Where the residential structure on the adjoining property receives a height variance (or has received such a variance), the height limits on the structure on the BP zoned property may be increased by an equal amount but shall not exceed the established maximum limit for the BP district without a variance for the specific BP zoned parcel.

(2) The board of zoning review may increase the height limits in the incremental areas established in subsection 5.6.20.6(a) above up to the established limit for the BP district where the planning board has, as part of the development plan review process, requested creation of a buffer on the BP zoned parcel along the common property line between the R-10 and BP zoned parcels. This variance shall be conditioned upon the creation of the buffer. Any such buffer must be in addition to any buffer established on the subject property as a condition of prior rezoning action.

(3) The special height limits established in subsection 5.6.20.6(a) above shall only apply to uses which are not permitted in the CI zoning district.

5.6.20.8 *Hotels and motels.* Any hotel or motel developed within the BP district must have an average height of at least three floors of rooms for occupancy. Sites must also be extensively landscaped with natural undisturbed vegetation and/or planted landscaping elements.

5.7 *Supplementary dimensional regulations.*

5.7.1 *Lot frontage.* Lot frontage shall be measured along the street right-of-way line between the side lot lines. Where all frontage is not contiguous, then only the largest single frontage will be considered with regard to minimum frontage requirements; in cases of equal noncontiguous frontage, minimum frontage will be determined by the building official.

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- 5.7.2 *Lot depth.* Lot depth shall be measured from the midpoint of the lot frontage by a line perpendicular to the street or private right-of-way. If a curved frontage, lot depth shall be measured by a radial line from the midpoint of the lot frontage. If a corner lot, lot depth shall be measured by the perpendicular or radial line from the lot frontage, whichever is applicable, that will result in the longest lot depth line.
- 5.7.3 *Lot width.* Lot width shall be measured perpendicular to the lot depth line at the existing front setback if a building exists or at the minimum front set back if no building exists.
- 5.7.4 *Corner clearance at corner lots.* On a corner lot in any district, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision between a height of 2½ and ten feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along the street lines 30 feet from the point of the intersection.
- 5.7.5 *Yards.*
- 5.7.5.1 The following accessory structures may be located in any required front or rear yard:
- 5.7.5.1.1 Awning or movable canopy not exceeding ten feet in height.
 - 5.7.5.1.2 Open arbor or trellis.
 - 5.7.5.1.3 Retaining wall, fence or masonry wall, pursuant to subsection 5.7.7 of this ordinance.
 - 5.7.5.1.4 Reserved.
 - 5.7.5.1.5 Walkway or driveway sign.
 - 5.7.5.1.6 Light post.
- 5.7.5.2 The space in a required front yard shall be open and unobstructed, except for structures provided for in subsection 5.7.5.1 and the following:
- 5.7.5.2.1 An unroofed balcony projecting not more than eight feet into the yard.
 - 5.7.5.2.2 Other projections specifically authorized in subsections 5.7.6 and 5.7.7.
- 5.7.5.3 Every part of a required yard shall be open to the sky, unobstructed except for retaining walls, accessory buildings in a rear yard, and the ordinary projection of sills, belt courses and ornamental features projecting not to exceed six inches. Cornices and eaves shall not project more than 24 inches. Exterior cellar entrances (commonly known as "bilco doors"), shall not encroach more than four feet into the required rear yard and shall not encroach at all into any other required yard.
- 5.7.5.4 Open or lattice-enclosed fireproof fire escapes or stairways required by law, projecting into a yard not more than four feet, and the ordinary projections of chimneys and pilasters shall be permitted by the building inspector when placed so as not to obstruct light and ventilation.
- 5.7.5.5 Where a lot extends through from street to street, the applicable front yard regulations shall apply on both street frontages.
- 5.7.5.6 Yard extension for gasoline pumps. A gasoline pump or pumps may be located no less than 20 feet from any front lot line.

5.7.5.7 Required front yards in developed block. In a block in which 25 percent or more of the frontage within 200 feet of a lot and on the same side of the street is developed with structures, the required front yard for a structure hereafter erected on that lot shall extend to average alignment of the two nearest existing structures instead of the minimum in the district. No residence shall have a front yard of less than five feet in depth or be required to have a front yard of greater depth than required by the district.

5.7.6 Height.

5.7.6.1 Nothing herein contained shall restrict the height of the following architectural and structural features:

- 5.7.6.1.1 On any public or semipublic building, a spire, cupola, dome, belfry, or clock tower;
- 5.7.6.1.2 A flagpole, chimney flue, elevator or stair bulkhead, water tank, stage tower, or scenery loft as accessory facilities to permitted or special permitted uses in a given district;
- 5.7.6.1.3 Barns, silos, or similar farm structures as accessory structures to agriculture; and
- 5.7.6.1.4 A telecommunications tower, transmission line or tower of similar structure only if approved as a special use by the zoning board of review.

5.7.6.2 No building or structure erected pursuant to subsection 5.7.6 to a height in excess of the height limit for the district in which it is situated shall:

- 5.7.6.2.1 Have a lot coverage in excess of ten percent of the lot area;
- 5.7.6.2.2 Be used for residence or tenancy purposes;
- 5.7.6.2.3 Have any sign, nameplate, display or advertising device of any kind whatsoever inscribed upon or attached to such building or structure.

5.7.7 Fences and walls.

5.7.7.1 In residence districts. No fence or wall constructed wholly or in part of barbed wire or other protruding or sharp objects shall be permitted in residence districts, except upon approval of the zoning board of review. No fence may exceed six feet in height.

5.7.7.2 In all districts. No electrically charged fence or portion of a fence or wall shall be permitted in any district unless the owner of the property shall have obtained a variance from the zoning board, in accordance with section 9 of this ordinance. In making its written findings, the zoning board shall also consider the character of the district, the location of the fence, the likelihood of injury or shock to persons and animals from the fence, and the purpose of the fence and that the fence does not constitute a nuisance or hazard. This regulation shall apply to existing as well as proposed fences.

5.7.7.3 In nonresidential districts, no fence or wall shall exceed six feet in height.

5.7.7.4 Method of measurement of a fence or wall. The height of a fence or wall shall be measured from existing or natural ground level at the base of the fence, except that, where there is a retaining wall, the height measured from the average of the ground levels at each side of the retaining wall, and further except that any fence or wall on the uphill side of such retaining wall may be at least four feet high, notwithstanding provisions 5.7.7.1 and 5.7.7.3 above.

5.8. Performance standards.

5.8.1 *Performance standards for all uses.* All uses shall be subject to the following performance standards. To ensure compliance, detailed plans may be required by the building inspector before the issuance of a building permit. Where parameters listed below are already regulated by a regional, state, or federal authority, the stricter regulation shall prevail.

5.8.2 *Particulates.* Any handling, transfer or storage of materials shall use best available technology to control fugitive emissions of dust or other particulate matter migrating to off-site locations in any amount which is injurious to human health, animals, vegetation or other forms of property or which causes any excessive soiling at any point beyond the property lines. Such technology may include dust collection/suppression systems, wind guards and spraying of stockpiles with surfactants.

5.8.3 *Odor.* No odorous emission shall be permitted which is determined to be obnoxious or which unduly transfers with or prevents the comfortable enjoyment of life or property. No emission of odorous gases noticeable to the human sense of smell or other odorous matter in such quantities as are at the property line shall be permitted.

5.8.4 *Noise.* All noise emissions shall comply with ordinance 93-28 section 1-1, and section 11-32[45] (unnecessary vehicle)) of the Code of Ordinances of the town.

5.8.5 *Vibration.*

5.8.5.1 Vibration shall be measured from the nearest property line.

5.8.5.2 No vibration is permitted which is discernible to the human sense of feeling for three minutes or more duration in any hour of the day between 7:00 a.m. and 7:00 p.m. or of 30 seconds or more duration in any one hour between 7:00 p.m. and 7:00 a.m.

5.8.6 *Heat and glare.* No use shall carry on any operation that would produce heat or glare beyond its property line. No activity shall use any lighting in a manner that produces glare on adjacent property, or on public or private roads.

5.8.7 *Wastewater.* All wastewaters shall be collected by a public sewage system when available. Such wastes, if treated by a private treatment plant, may be collected by other than a public sewage system provided that approval has been obtained from the appropriate state and federal agencies.

5.8.8 *Storm and surface water runoff.* Storm drainage systems shall be designed by a Rhode Island registered professional engineer and all storm and surface water runoff control systems shall be approved by the town director of public works, before the issuance of a building permit. A zero-net increase in runoff over existing conditions shall be required.

5.9 *Off-street parking and loading regulations.*

5.9.1 *Requirements.* In any district where permitted, no use of premises shall be authorized or extended, no land shall be used or occupied and no building or structure shall be erected, altered, used or enlarged unless there is provided for such use, extension, erection, alteration or enlargement off-street automobile parking spaces as hereinafter required. Any building or use of premises existing at the time of the adoption of this ordinance with parking space that does not meet the requirements of this ordinance will not be required to do so, provided that any enlargement, extension or alteration of the building or use of the premises shall provide off-street parking spaces as herein and hereinafter required. Such off-street parking space may be provided in the open or under cover.

5.9.2 *Continuation of requirements.* The off-street parking spaces associated with uses as provided for and required by this ordinance shall be a continuing obligation of the present or future owner of any premises and shall not be reduced, changed, encroached upon in any manner or

discontinued unless a change in the parking requirements of such associated uses occurs to permit a corresponding change in the size of the required off-street parking area.

5.9.3 *Fractional measurements.* When units or measurements determining the number of required off-street parking spaces result in a requirement of a fractional space, any fraction up to but not including one-half shall be disregarded, and fractions including and over one-half shall require one additional off-street parking space.

5.9.4 *Minimum size.* Each parking space shall contain an unobstructed area of not less than 162 square feet or appropriate dimensions for the parking of one vehicle, exclusive of necessary drives or aisles. Accordingly, the minimum width and length of each space shall be:

Nine feet by 18 feet.

Further, to provide sufficient vehicle maneuvering space, the minimum unobstructed aisle width shall be determined by the angle of the parking spaces to the layout of the parking aisle as delineated below:

<i>Angle of parking space</i>	<i>Minimum aisle width</i>
90-degree angle parking	24 feet
60-degree angle parking	18 feet
45-degree angle parking	13 feet
30-degree angle parking	11 feet
0-degree angle (parallel) parking	12 feet

Except for a single-family detached dwelling, each parking space shall be marked by pavement lines. A driveway may be considered a required parking space only for a detached single-family dwelling.

All parking spaces and areas shall comply with the requirements of the Americans with Disabilities Act, as amended.

5.9.5 *Location of required parking spaces.* Off-street parking spaces shall be on the same lot as the structure or use they are intended to serve or on an abutting lot. Upon application to the zoning board of review, a variance pursuant to section 9 of this ordinance may be granted by the board to allow off-street parking on other off-site lots in the same district as the subject lot provided that the following conditions are met in addition to the requirements of section 9:

5.9.5.1 Other allowable off-site parking is a location that is within 100 feet of the boundary of the lot of the principal use or structure; and reasonably and safely accessible, in the opinion of the zoning board, by pedestrians provided, however, that such off-site locations shall be compatible with the use, value [of] neighboring property, and that the approval of the off-site location will not be detrimental to the general health and welfare of the community and be consistent with the comprehensive plan.

5.9.6 *Setbacks of parking spaces.* No parking space or aisle shall be closer than ten feet to any front or corner side yard property line. No parking space or aisle shall be closer than five feet to any building or as required by the West Warwick Fire Department. Parking spaces less than ten feet from any building shall be separated from such building by raised curb, bumper or wheel guards. The requirement of this subsection shall not apply to detached single-family dwellings.

5.9.7 *Entrance and exit.* Each parking space shall be designed with the adequate off-street area for approach, turning and exit without the need or ability to use any part of a street or sidewalk. All

driveways shall be a minimum of 12 feet in width for maneuvering each lane of traffic using such driveway. All corners shall provide a turning radius of 45 feet. There shall be no architectural, landscaping, or natural barriers to prevent access to any side of a building by an emergency vehicle. The requirements of this subsection shall not apply to detached single-family dwellings.

5.9.8 *Joint use.*

5.9.8.1 No part of an off-street parking space required for any building, structure, or use for the purpose of complying with the provisions of this ordinance shall be included as part of an off-street parking space similarly required for another building, structure or use unless the type of use indicates that the period of usage of such buildings, structures, or uses will not be simultaneously with each other as determined by the planning board.

5.9.8.2 Nothing in this ordinance shall be construed to prevent the joint use of off-street parking space for two or more buildings, structures or uses if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with the provisions of this ordinance.

5.9.9 *Mixed uses.* In the case of mixed uses on a premise, the total requirements for off-street parking spaces shall be the sum of the requirements of the various uses computed separately as hereinafter required and the off-street parking space for one use shall not be considered as providing the required off-street parking space of any other use.

5.9.10 *Plans, construction and maintenance of off-street parking areas.*

5.9.10.1 *Plans.* For the purpose of constructing the required parking area, plans for parking areas shall be submitted to the planning board to show how the required parking shall be arranged in the area supplied for such purposes and to indicate sufficient space for parking maneuvers as well as adequate ingress and egress to the parking area. Such plans shall also indicate the location and design of required landscaping. The planning board may make such referrals and require additional studies as it deems warranted.

5.9.10.2 *Construction.* Every parcel of land on which after the effective date of the ordinance a parking area is constructed shall be developed as follows, subject to the review and approval of hereinabove required plans by the town Engineer and subject to approval of the planning board:

5.9.10.2.1 Such area where subject to wheeled traffic shall be paved with an impervious surface, drained, lighted and arranged for convenience access and safety of pedestrians and vehicles;

5.9.10.2.2 Any light used to illuminate the parking area shall be so arranged as to reflect the light away from adjoining premises and streets;

5.9.10.2.3 Suitable separation shall be made between the pedestrian sidewalk and the vehicular parking or moving area with the use of appropriate bumper or wheel guards, traffic islands or raised sidewalk;

5.9.10.2.4 The location and extent of the appropriate curb cuts shall be determined by the town Engineer, subject to the approval of the planning board and wherever state jurisdiction exists, all curb cuts shall be subject to the approval of the Rhode Island department of Transportation. In order to minimize vehicular conflicts, curb cuts shall be placed at the maximum feasible distance from intersections or from curb cuts for adjacent properties except where they are combined. Except unless traffic site or safety conditions warrant, only one curb cut shall be permitted for development.

5.9.10.3 *Buffers; Nonresidential parking.* Where any parking area containing five parking spaces or more and located in a nonresidential district adjoins or abuts a residential district or a lot or premises used for residential, educational, recreational, or religious purposes, there shall be provided a five-foot wide landscaped strip containing a wall or fence of solid appearance or tight evergreen hedge having a height of not less than 5½ feet maintained in a neat and attractive manner between the parking area and the residential district or residential, educational, recreational or religious premises.

5.9.10.4 *Buffers; Residential parking.* Where any parking area containing five parking spaces or more and located in a residential district adjoins or abuts a lot or premises used for residential purposes, a wall or fence of solid appearance or tight evergreen hedge of minimum four-foot width having a height of not less than 5½ feet shall be erected and maintained in a neat and attractive manner between the parking area and the lot or premises, subject to the approval of the planning board.

5.9.10.5 *Landscaping.* Any parking area established, expanded, or required to be altered because of building alteration or reuse of premises, after the effective date of this ordinance shall provide a minimum of five-foot wide planting strip between the parking area and the street. The planting strip may be interrupted to allow for entrances and exits but in no portion may the planting strip be less than ten feet in length. The planting strip shall be planted with trees or vegetation not exceeding 2½ feet in height. Such other landscaping treatment to enhance the premises and make the parking area acceptable and attractive to the adjoining neighborhood shall be provided, subject to the approval of the planning board.

The interior of the parking areas shall be suitably landscaped with trees, shrubs, vegetation or ground cover. At least one landscaped area shall be provided for every parking area containing 20 parking spaces or more, which in the aggregate shall be at least 15 square feet per parking space. Such areas shall be appropriately located to prevent long, uninterrupted rows of parking spaces. Landscaped areas shall be separated and protected from parking areas by curbing or other means.

5.9.10.6 *Maintenance.* Any parking space or area shall be kept by the owner in a neat and attractive manner in accordance with specifications and ordinances of the town. The owner shall be responsible for maintenance of landscaping, including the removal and replacement of all dead or diseased plantings. The parking area shall be plowed and/or sanded within 24 hours after the end of any snow, ice, or sleet storm.

5.9.10.7 *Off-street parking space requirements.* The number of off-street parking spaces for each use shall be required as follows:

Parking Space Per Unit or Gross Floor Area	
Use	Minimum Requirement(GFA)
Residential:	
Single-family	2/dwelling unit (DU)
Two-family	2/DU
Multiple-family	2/DU
Elderly housing	1/DU
Rooming house	1/room
Home occupation	1/100 square feet of home occupation
Accessory family dwelling unit	1/DU
Mobile home	1/DUOffice:

Banks and other financial institutions	1/200 square feet GFA
Medical office and clinic	1/150 square feet
Business and other educational service	1/instructor plus 1/employee or staff peak shift plus 1/4 students
Service:	
Business and commercial service	1/200 square feet (GFA)
Hotel/motel	1/bedroom plus 1/employee peak shift
Funeral home	1/3 seats plus 1/employee peak shift plus 1/hearse
Theater and auditorium	1/3 seats
Indoor commercial recreation and coin-operated amusement establishments	1/200 square feet (GFA)
Golf course	3/hole plus 1/employee peak shift
Driving range	1/tee
Outdoor commercial recreation	1/1000 square feet of lot area
Gas or service station	1/employee plus 4/bay
Retail:	
Restaurant	1/90 square feet GFA plus 1/employee peak shift
Fast food restaurant	1/50 square feet GFA plus 1/employee peak shift plus 10 car queuing line
New and used vehicle and boat sales	1/200 square feet GFA
Furniture, appliance or carpet sales	1/400 square feet GFA
Other retail uses	1/200 square feet GFATransportation and utility:
Passenger terminal	1/200 square feet GFA plus 1/employee peak shift
Public and private utilities	1/300 square feet GFA
Commercial vehicle terminal	1/400 square feet GFA
Community facilities:	
Place of worship	1/5 seats
Preschool	1/500 square feet GFA
Primary or junior high school	5/classroom plus 1/staff member and employee peak shift
High school	1/5 students plus 1/staff member and employee peak shift
Junior college, college university, vocational, or business school	1/3 students
Resident dormitory, fraternity or sorority	1/bed
Nursing, convalescent home	1/2 beds plus 1/employee peak shift
Library, museum	1/400 square feet GFA
Hospital, sanitarium	1/2 beds plus 1/2 employees and staff peak shift
Clinics	4/doctor plus 1/employee peak shift
Clubs, civic, social and fraternal	1/5 members or 1/5 seats whichever is greater plus 1/2 employees peak shift

Clubs, country, swimming and similar uses	1/3 members plus 1/employee peak shift
Other uses	Space in accordance with the parking needs as may be reasonably determined by the town engineer, subject to the approval of the building inspector

In addition to the hereinabove required off-street parking spaces, adequate provisions shall be made for the off-street parking of all company-owned vehicles operating out of the premises as determined by the town engineer, subject to the approval of the planning board.

- 5.9.11 *Off-street loading and unloading; required areas.* In order to avoid undue interference with the public use of the street, adequate space for the standing, loading, and unloading of delivery vehicles shall be provided and maintained. No land or premises shall be used or occupied, and no buildings or structures shall be erected or used unless off-street loading space as required by this ordinance is provided. Such off-street space is not required for any building, structure or use of premises existing on the effective date of the ordinance with off-street loading spaces that do not meet the requirements of this chapter [ordinance]; provided, however, that off-street loading space as required by this ordinance shall be provided for by any enlargement, extension or alteration to any such existing structure or use.
- 5.9.12 *Continuation of requirements.* Off-street spaces with permitted uses as required by this ordinance shall be a continuing obligation of the present or future owner of any premises and shall not be reduced, changed, encroached upon in any manner or discontinued unless a change in the loading requirements of such associated permitted uses occurs to permit a corresponding change in the number of off-street loading spaces.
- 5.9.13 *Joint use.* Nothing in this ordinance shall be construed to prevent the joint use of off-street loading space for two or more buildings, structures, or uses on the same or contiguous premises if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with the provisions [of] this ordinance.
- 5.9.14 *Location and street access.* The off-street loading spaces required by this ordinance shall be in all cases on the same premises as the use, building or structure they are intended to serve and shall have vehicular access to a street. In no case shall any required off-street loading space be part of an area used to satisfy the off-street parking requirements of this ordinance. The use of such off-street loading space shall not hinder the free movement of vehicles and pedestrians over a street, sidewalk or alley and shall be located to the rear of the building serviced.
- 5.9.15 *Space requirements.* For each club of any type, business, educational institution, commercial recreation, cultural center, educational institution, motel, hotel, or motor inn, hospital or sanitarium, office, place of public assembly, elementary, junior or high school or other similar use not herein provided for, off-street loading and unloading space of at least 480 square feet in area with a minimum width of 14 feet, a minimum length of 60 feet and, where covered, a minimum overhead clearance of 15 feet shall be provided according to the following schedule:

Gross Floor Area in Square Feet	Required Number of Off-street Loading Spaces
0 to 1,000	0
10,000 to 49,999	1

50,000 to 999,099	2
Each additional 100,000	1

5.9.16 *Plans, construction and maintenance of off-street loading areas.*

5.9.16.1 *Plans.* Detailed plans shall be submitted to the planning board to show how the off-street loading space shall be arranged and to indicate sufficient space for maneuvering as well as adequate ingress and egress to and from the street, subject to review of the town engineer before any permits are issued or approved by the building inspector.

5.9.16.2 *Construction.* Off-street loading space and access drives shall be paved, drained and lighted and shall have appropriate bumper or wheel guards where needed, and any light used for illumination shall be so arranged as to reflect the light away from adjoining premises and streets. Where any off-street loading space adjoins or abuts a residential district or a lot or premises used for residential, educational, recreational or religious purposes, there shall be provided a wall or fence of solid appearance or tight evergreen hedge having a height of not less than 5½ feet maintained in a neat and attractive manner between the off-street loading space and the residential district or residential, educational or religious premises, subject to the approval of the planning board, provided that when the provisions in the judgment of the planning board are impossible or impractical of performance, they may be waived by the planning board.

5.9.17 *Relief from application of gross floor area (GFA) standards.* The term "gross floor area" includes all floor spaces within an existing or proposed structure. When an existing building is being modified, altered, or expanded, or the use therein is being so modified or altered, the planning board may, upon request by the property owner or developer, exclude from the calculation of the gross floor area that portion of the building which may not be occupied in such a way as to affect the building's parking demand. Examples of such areas may include, but need not include, such areas as basements, attics, machinery and equipment rooms, etc. The planning board may only grant such relief where the following conditions are met:

- a. The planning board finds that granting such relief will not be injurious to the public health, safety, and welfare;
- b. The planning board finds that not granting such relief will place an undue burden on the property owner/developer;
- c. The town engineer has reviewed the proposed request and provided the planning board with comments on the request;
- d. The relief is solely for the benefit of a proposed nonresidential development and any associated existing or proposed residential development will be in strict conformance with the parking requirements unless a variance has been duly granted by the zoning board of review.

5.10 *Signs.*

5.10.1 *[Authority; purpose.]*

- (a) Authority for this chapter [ordinance] is granted under the Rhode Island Zoning Enabling Act, Chapter 45-24. Additional authority for this article is granted by G.L. 1956, tit. 24, Ch. 7 [G.L. 1956, § 24-7-1] (Power of towns to establish and regulate sidewalks).
- (b) The purpose of this sign ordinance is to: Encourage the effective use of signs as a means of communications in the town; to maintain and enhance the aesthetic environment and the

town's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of this sign ordinance.

5.10.2 *Definitions.* Sign definitions are provided to clarify and distinguish the range of possible structures and formats associated with signage. Defined signs are permitted in all zones as provided herein, unless restricted geographically by zone in the sign table. Words and phrases used in this chapter [ordinance] shall have the meanings set forth in this chapter [subsection]. Words and phrases not defined in this chapter [subsection] but defined in other ordinances of the town shall be given the meanings set forth in such ordinance. Principles for computing sign areas and sign heights are contained in sections 5.10.3(2) and 5.10.3(3). All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise. Chapter and section headings or captions are for reference purposes only and shall not be used in the interpretation of this chapter [ordinance].

Animated sign. Any sign that uses movement or change or lighting to depict action or create a special effect and/or scene. Electronic message display devices are considered animated signs unless the message is fixed and does not flash, move, or change message text on an intermittent basis.

Awning. Any temporary or retractable covering or shelter which is supported entirely by the exterior wall of a building (see also "canopy sign").

Awning sign. See *Canopy sign*.

Balloon/inflatable object. Any object and/or sign filled with helium or other gas or air used to expand its shape and/or form. Such objects are considered advertising devices and are prohibited.

Banner. Any sign or fabric or similar material that is mounted to a pole, building, or other structural support. Street banners are those banners installed so as to hang across a public road or thoroughfare for governmental sponsored and nonprofit purposes and may be installed for a period not to exceed 30 days within a six-month period per organization. Such installation may only be made following written notification to the building official. Storefront banners are any kind of banner installed on private property.

Billboards. Any off-premises sign exceeding 15 square feet in area.

Bracket. The device used to attach and support a sign face to a building or freestanding structure.

Building marker. Any sign indicating the name of a building and/or date and/or incidental information about its history or construction, which sign is incombustible material and is attached parallel to the surface of the building. Building markers may not exceed four square feet in height.

Bulletin board. A board or wall area on which bulletins, notices, or displays are temporarily posted. Such signs may not exceed five square feet in area for public, charitable or religious institutions when located upon the premises of said institutions.

Canopy. A roof-like projection, or portico, over a door, entrance, window or outdoor service area, including, but not limited to, industry standard gas station roofs independent of an enclosed structure.

Canopy sign. Any sign that is part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outside service area. (A

marquee is not a canopy sign). Where canopy signs are permitted, they shall be allowed in lieu of wall signs. The maximum width of the area of a sign display shall be 70 percent of the linear frontage associated with the business. The maximum height of the sign display shall be 36 inches.

Commercial message. Any sign, wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service, or other commercial activity.

Construction sign. Any sign whose purpose is to display the name of the contractor and/or subcontractors employed on a work site, and/or the consultants and/or financial institutions participating in the project, such signs shall be either freestanding or attached to the structure and shall not exceed 12 square feet in residential zones or 30 square feet in all other zones. Such signs shall be temporary in nature and shall be removed upon completion of construction. This definition does not include signs located on the premises of the general offices of a contractor.

Directional sign. Any sign whose purpose is to direct vehicles and/or pedestrians onto, around, and off of premises.

Directory sign. A wall sign which provides dedicated space for listings of two or more professional, service, business and/or commercial activities and is designed and constructed with provision to allow changes of occupancy to be reflected on the sign. One such sign shall be permitted per building, either as a wall directory sign or as a freestanding directory sign. Wall sign directions are permitted in lieu of individual wall signs, but such sign areas shall be no greater than 40 square feet. Freestanding directory signs are permitted in lieu of freestanding signs or monument signs and shall not exceed 15 feet in height or 60 square feet in sign area.

Electronic message display device. An electronic device that utilizes LED (light emitting diodes), or other similar technology to display scripted messages or displays on a display panel. Such signs are allowed by special permit, except for "menu" system signs, and are limited as a component of freestanding signs and wall signs and cannot exceed 25 percent of the total allowed area of each type of sign.

Externally illuminated sign. Any sign whose light source is located outside of the sign. This includes, but is not limited to, spotlights.

Financing sign. See *Construction sign*.

Flag. Any fabric, banner, or bunting containing distinctive colors, patterns, words and/or symbols. Up to three flags shall be permitted per business or residence. Flags attached to a building shall be displayed at a height where the lowest portion of flag material is a minimum of seven feet off the ground if hanging over a public right-of-way. Standing flags shall be allowed in existing flag holes in the sidewalk within the village commercial (VC) district without a minimum clearance restriction.

Flashing sign. See *Animated sign*.

Freestanding sign. Any sign supported by a structural device or devices that is placed on, or anchored into, the ground and that is independent from any building. One freestanding sign shall be permitted per lot (as provided for in the sign table), with a maximum visible sign area of 40 square feet (see also section 20-3, Computations) and a minimum sign clearance of eight feet between the grade and the base of the lowest part of the sign to ensure adequate site clearance for pedestrians and vehicles. Maximum sign height shall be 15 feet. Freestanding signs may contain an electronic message display device that is limited to 25 percent of the total allowed sign area, by special permit.

Gas filled sign. Any sign internally colored by gases not specifically prohibited in section 5.10.5(j) of this chapter [ordinance].

Gas station signs. Signs necessary to the operation of filling and service stations limited to the following:

- (1) Lettering on buildings displayed over individual entrance doors consisting of the words "washing," "lubrication," "repairing," and/or words of similar relevance, provided that there shall not be more than one such sign centered over each entrance, and that the sign area shall not exceed 12 inches in height.
- (2) Lettering or other insignia which are part of a gasoline pump, consisting only of a brand name, lead warning sign, price and other signs required by law.
- (3) A credit card signs not exceeding one square foot in area, affixed to the building or window.
- (4) Other signs as permitted by this chapter [ordinance].

Government signs. Signs erected by or on behalf of the United States of America, the state and the town, traffic controls, legal notices, or other signs required by law including all signs erected under the authority of the town on town owned or controlled land. The town shall have the ability to erect such signs without sign approval.

Internally illuminated sign. Any sign, exclusive of gas filled signs, whose light source is located behind and/or within the sign itself or behind and/or within any individual element(s) of a sign.

Incidental sign. A sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking," "loading zone," "telephone," and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

Legal nonconforming sign.

- (1) A sign which was erected legally prior to the enactment of this chapter [ordinance];
- (2) A sign which does not conform to the sign code requirement, for which zoning relief has been granted through the zoning board of review.

Lot frontage. Roadway frontage on a local access road.

Marquee. Any permanent roof-like structure projecting beyond a building which is used as a theater.

Marquee sign. Any sign attached to, in any manner, or made part of a marquee.

Monument sign. Any freestanding sign whose base is in contact with or within one foot of the ground. Where permitted, only one monument sign shall be allowed per lot in lieu of a freestanding sign and shall have a maximum sign area of 50 square feet and shall be set back a minimum of ten feet from all property lines. Maximum sign height shall be eight feet.

Moving sign. Any sign moved by mechanical or natural means, such as wind.

Murals. A picture or painting applied directly to a wall or roof of a structure containing no written copy or text.

Nameplate. Material on which a name and/or professional designation is inscribed or painted. Professional nameplates shall indicate a name and/or professional designation and/or affiliation and shall not exceed one square foot per professional occupant. Residential

nameplates shall display the name and address or resident and shall not exceed one square foot in area. All such nameplates shall be affixed either to a door, adjacent wall of the premises or a lamp post/mailbox.

Neon. See *Gas filled sign*.

Nonconforming sign. Any sign that does not conform to the requirements of this chapter [ordinance]. Off-premises sign, any sign advertising or calling attention to an activity, product or service not available within a building or upon the parcel of land where it is located. Temporary off-premises signs for nonprofit events are permitted for a period of seven days prior to the scheduled event and shall be removed within two days following the event. Such signs are prohibited from public property including rights-of-way and may not exceed six square feet in total sign area. Written notification shall be made to the building official and planning department prior to installation of the signs. Such notification shall include, but not be limited to, written permission or private property owner(s), location of signs, size of signs, dates of display and removal.

Peddler's signs. Any wall sign or perpendicular sign which is a part of and affixed to a permitted peddler's vehicle.

Pennant. Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, string, or line usually in series, designed to move in the wind.

Political sign. Any sign displayed so as to advise voters of a candidate or position in a forthcoming election. Each lot shall be allowed without permit one sign per candidate or issue, each sign not to exceed eight square feet. Off-premises political signs are prohibited. All political signs must be removed within seven days of the political election or event.

Portable sign. Any mobile sign not permanently attached to the ground or permanent structure, or a sign which may be transported, including, but not limited to, signs designed to be transported by means of wheels; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business. Sandwich board signs as described and regulated elsewhere in this chapter[ordinance] shall not be considered portable.

Principal building. The building in which the principal use of the lot is conducted. Lots with multiple principal uses may have multiple principal buildings, but storage buildings, garages, and other clearly accessory uses shall not be considered principal buildings.

Projecting sign. Any sign affixed to a building or wall in such a manner that it extends more than ten inches beyond the surface of such building or wall. Such signs shall be permitted in lieu of freestanding signs or monument signs. Only one projecting sign shall be permitted per business and shall be perpendicular to the wall to which it is attached, its nearest edge being no less than three inches and its furthest edge projecting no greater than 48 inches from the wall. The projecting sign shall have a maximum sign area of ten square feet and its lowest edge shall be a minimum of eight feet from the ground.

Real estate sign. Any temporary sign advertising the real estate upon which the sign is located as being for rent, lease or sale. Residential real estate signs shall be permitted for individual residential properties and shall not exceed six square feet in area. Only one residential real estate sign per lot shall be permitted. Commercial and industrial real estate signs shall be permitted for industrial and commercial properties and shall not exceed 32 square feet in area. All residential, commercial and industrial signs shall be removed within two weeks of the sale or lease of the property or unit. Subdivision real estate signs shall be permitted for subdivisions of

five or more lots. One common sign with a maximum sign area of 32 square feet shall be permitted.

Residential sign. Any single faced wall sign or freestanding sign in a residential zone including, but not limited to, preservation plaques, bed and breakfast signs, and political signs. Freestanding signs of this nature shall have an area not exceeding four square feet, shall be no greater than four feet in height overall and shall be located a minimum of five feet from all property lines.

Residential zone use sign. A wall sign or freestanding sign whose sign display is not to exceed 12 square feet and is used on premises for church, hospital, library, museum, art gallery or charitable purposes.

Roof sign. Any sign erected over or on the roof of a building and which is supported by the roof structure.

Sandwich board sign. Any double-sided portable sign designed as an "A" or "T" frame, typically hinged or joined at one or more points. One such sign shall be permitted in the village commercial zone only and shall be located so as to provide a public passage of a minimum of three feet on any public right-of-way. Each face of the double-sided sign shall not exceed six square feet in area. No driveways, doorways, walkways or handicap ramps may be blocked by the sign. Sandwich board signs shall not be attached to any public structure or street furniture.

Searchlight. Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.

Sign. Any device, fixture, display, placard or structure that uses any color, form, graphic, illumination, symbol, and/or writing to advertise, announce the purposes of, or identify the purpose of a person or entity, or to communicate the information of any kind to the public. A wall sign shall consist of both a sign face and bracket.

Subdivision identification sign. One freestanding permanent sign may be installed at all exclusive entrances to a development. Each sign shall have a maximum sign area of 16 square feet. These signs shall not be located within the public right-of-way or on town owned or controlled land.

Temporary sign. Any sign that is used for a limited time and is not permanently installed or erected.

Town. All governmental entities of the Town of West Warwick, including, but not limited to, town municipal offices and the school department.

Wall sign. Any sign attached parallel to, but within ten inches of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface, and is attached flush with such wall or building. One such sign shall be permitted per business per building face. The maximum width of the sign display shall not exceed 70 percent of the linear frontage associated with the business unit and may either be a total of 30 square feet in area or a maximum of 36 inches in height and no greater than six inches from the wall in the village commercial zone, or a maximum of 48 inches in height and not greater than ten inches from the wall in the business, commercial-industrial and business park zones.

Window sign. Any sign that is placed inside a window, upon the windowpanes or glass, or within 12 inches of the window (exclusive of merchandise display). Permanent window signs may be applied to, painted on or attached to the inside of each window associated with a business.

Temporary interior paper signs advertising business openings, specials, sales, events and greetings shall be permitted for a period not to exceed 30 days. All window signs shall not exceed 25 percent of the total window area. Each window shall be counted separately. Electronic message display devices are prohibited as a window sign.

5.10.3. *Computations.* The following principles shall control the computation of sign area and sign height:

- (1) *Sign display.* The sign display is a portion of the permitted sign area. The area of a sign display shall be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem or other display.
- (2) *Sign area, single-faced signs.* The area of a sign face (which is also the sign area of a wall sign or other sign with only one face), shall be computed as the area of sign display together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.
- (3) *Sign height.* The height of a freestanding or monument sign shall be computed as the distance from the base of the sign at normal grade to the top of the sign area. Normal grade shall be construed to be the lower of (1) existing grade prior to the construction, or (2) the newly established grade, after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign.
- (4) *Zones.* For the purpose of this sign ordinance, the districts shall be defined as tabulated on the sign table included herein as part of this chapter [ordinance].

SIGN TABLE								
Type	R-10	R-8	R-7.5	R-6	B	CI	BP	VC
Addresses	Y	Y	Y	Y	Y	Y	Y	Y
Animated signs	N	N	N	N	N	N	N	N
Balloons/Inflated objects	N	N	N	N	N	N	N	N
Banners: Street	N	N	N	N	N	N	N	Y
Storefront	N	N	N	N	N	N	N	Y
Billboards	N	N	N	N	N	N	N	N
Bulletin board	Y	Y	Y	Y	Y	Y	Y	Y
Canopy signs	Y	Y	Y	Y	Y	Y	Y	Y
Construction signs	Y	Y	Y	Y	Y	Y	Y	Y
Directional signs	Y	Y	Y	Y	Y	Y	Y	Y
Electronic message display device	N	N	N	N	S	S	S	S
Directory signs	Y	Y	Y	Y	Y	Y	Y	Y
Flags	Y	Y	Y	Y	Y	Y	Y	Y
Freestanding signs	N	N	N	N	Y/S	Y/S	Y/S	Y/S
Government signs	Y	Y	Y	Y	Y	Y	Y	Y
Marquee signs	N	N	N	N	Y	Y	N	Y
Memorial sign/tablet	Y	Y	Y	Y	Y	Y	Y	Y
Monument signs	Y	Y	Y	Y	Y	Y	Y	Y

Murals	Y	Y	Y	Y	Y	Y	Y	Y
Nameplates: Professional	Y	Y	Y	Y	Y	Y	Y	Y
Residential	Y	Y	Y	Y	Y	Y	Y	Y
Off-premises: Private	N	N	N	N	N	N	N	N
Nonprofit	N	N	N	N	Y	Y	Y	N
Pennants	N	N	N	N	Y	N	N	Y
Political signs	Y	Y	Y	Y	Y	Y	Y	Y
Portable signs	N	N	N	N	N	N	N	N
Private parking lot sign	Y	Y	Y	Y	Y	Y	Y	Y
Real estate:								
Residential	Y	Y	Y	Y	Y	Y	Y	Y
Commercial	Y	Y	Y	Y	Y	Y	Y	Y
Industrial	Y	Y	Y	Y	Y	Y	Y	Y
Roof signs	N	N	N	N	N	N	N	N
Sandwich board signs	N	N	N	N	N	N	N	Y
Wall Sign	N	N	N	N	Y/S	Y/S	Y/S	Y/S

5.10.4. *General provisions.*

- (a) *Permitted signs.* The installation, enlargement, reduction or relocation of (permitted) signs in all zones are allowed as indicated in the sign table following approval by the building official.
- (b) *Changes to nonconforming signs.* Enlargement or relocation of legal nonconforming signs require additional approval from the zoning board of review as described elsewhere in the zoning ordinance.
- (c) *State building code.* Within all zones and districts, all signs shall comply with applicable provisions of the state building code and the National Electric[a] Code.
- (d) *Sign maintenance.* Within all zones, all signs shall be maintained in good structural condition, and in conformance with this chapter [ordinance] (unless otherwise allowed through the zoning board of review) at all times.
- (e) *Illumination.* Within all zones, all signs may be illuminated under the following criteria:
 - (1) Internal illumination or back lighting of signs is permitted in all zones, except that in the village commercial zone restrictions are (a) the background is darker than the letters placed against it; (b) the background is opaqued; (c) the background is ivory or similar shade to give the impression of opaquing.
 - (2) Signs may be illuminated by a stationary white or off-white steady light only. These lights shall not provide glare, nor shall they direct lights or shine off the premises.
- (f) *Alteration of sign faces.* Any legally existing sign faces (including legal nonconforming sign faces) may be altered either to update the sign content or to reflect new information provided the alteration does not result in any change in the sign's size, extent, location or illumination.

(g) *Criteria for review.* All sign proposals shall be evaluated under the following guidelines:

- (1) Compliance with ordinances;
- (2) Clarity of design and message;
- (3) In addition to the criteria listed in subsections (1) and (2), all proposals will be subject to any design district guidelines adopted subsequent to this chapter [ordinance].

(h) *Brackets.* All sign brackets which have been abandoned for a period of one year shall be removed. (See also section 20-5 regarding sign abandonment.)

5.10.5. *Prohibitions.* In addition to the signs described as prohibited under the sign table, the following signs and sign materials are also expressly prohibited by this chapter [section]:

- (a) Off-premises signs unless otherwise permitted under provisions of this chapter [ordinance].
- (b) Signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. No such sign shall remain in place or on vacated premises for more than one year from the date the vacancy commenced.
- (c) Signs which are attached to natural features, stone walls, utility poles, utility boxes, traffic signs, fences or highway structures.
- (d) Signs placed on or against trailers or vehicles, whether registered or unregistered.
- (e) Signs in the public right-of-way, except as provided for elsewhere in this chapter [ordinance] and except for those installed by the government.
- (f) Signs which imitate, and may be confused with, an official traffic control sign or signal, or an emergency or road equipment vehicle.
- (g) All other signs which have not been expressly permitted within this article.
- (h) All existing signs erected without the necessary approvals and/or permits.
- (i) Sign materials identified as pennants, streamers, spinners and other moving devices are prohibited in all zones with the exception of village commercial.
- (j) Sign material identified as exposed polycarbonate, fluorescent and phosphorescent signs are prohibited in all zones, except that traditional "neon" signs shall be permitted in all zones and districts.

5.10.6. *Nonconforming signs.*

- (a) A sign shall immediately lose its legal nonconforming status when:
 - (1) The sign is enlarged or reduced without approvals.
 - (2) The sign is relocated without approvals.
 - (3) The sign advertises or calls attention to any products, businesses or activities which have not been carried on or sold at the premises for the past one year.
 - (4) The sign shall not have been repaired or properly maintained within 30 days after written notice to that effect has been given by the building official.
 - (5) The sign is removed and replaced with another nonconforming sign, regardless of its size.

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- (b) A sign shall not lose its legal nonconforming status when:
 - (1) A wall sign is removed for construction, painting and/or restoration of the building provided that the sign is returned to its location within 30 days of completion of the building work.
 - (2) The sign is removed to facilitate repair, maintenance and/or repainting and replaced immediately upon completion of such work.
 - (c) No sign that had been erected in violation of any previously existing sign provisions of the town zoning ordinance shall, by virtue of adoption of the ordinance from which this chapter [section] derives, become legal nonconforming.
 - (d) The town reserves the right to remove any signs located in a public right-of-way that are in violation of: (1) zoning provisions preceding the ordinance from which this chapter [section] derives; (2) provisions of this chapter [ordinance]. Such removal cost will be charged to the business or party responsible for placement of the nonconforming sign.

5.10.7. *Exempt signs.* The following signs are exempt from the provisions of this chapter [ordinance], and may be installed without a permit from the building official:

- (a) Residence signs, not exceeding a total of two square feet, displaying the name and address of the occupant or resident of the premises.
- (b) Real estate signs advertising sale or rent, or signs naming the builder, architect, developer, or engineer of a project in progress, placed on the premises and in conformance with dimensions under section 20-1 of this appendix, Definitions.
- (c) Notices of tag, yard or garage sales may be erected. A maximum of four signs per sale, not to exceed a total of two square feet per sign, may be erected on their own post, provided the sale is licensed by the town clerk. All signs must be removed within 48 hours of the sale.
- (d) Signs prohibiting trespass, hunting and the like, signs warning of danger, such as "high voltage," and necessary public utility signs, not to exceed a total area of two square feet.
- (e) Temporary window signs, such as advertising a sale. Normal displays of merchandise in windows shall not be considered to be signs.
- (f) Traffic and other governmental signs, erected by any public safety agency in the discharge of any governmental function. Such signs may be illuminated in accordance with section 20-4(e) of this chapter [ordinance].
- (g) Signs designating historical places or points of interest, erected by governmental authority or the like, not to exceed a total area of 12 square feet.
- (h) Signs indicating entrance, exit, parking, erected on a premise for the direction of people and vehicles, not to exceed a total area of one and one-half square feet. Such signs shall incorporate conventional instructions and symbols but shall be integrated by style and materials with other signage and landscape elements in the development.
- (i) Church, school, or other public use may have one sign, not to exceed a total area of 12 square feet. Such signs may be illuminated in accordance with section 20-4(e) of this chapter [ordinance].
- (j) Temporary political signs where attached to/or erected on a mobile trailer or other mechanical/vehicular device.

5.10.8. *Owner, permittee indemnification.* Any permit granted or permission given pursuant to this chapter [section], or provisions under section 5.10 of the town zoning ordinance in effect prior to adoption of the ordinance from which this chapter [section] derives, shall be upon the express condition that the permittee and/or grantee and every owner, person or entity maintaining any such sign shall be liable for and save the town harmless from and indemnify said town against any and all liability, costs and expenses incurred and any damages sustained by persons or property caused by the construction, existence or maintenance of any such sign.

5.10.9. *Administration and enforcement.*

- (a) A permit shall be applied for and received from the building and zoning department prior to erecting, re(placing), re(building), re(constructing), or re(locating) any sign. A permit is not necessary for sign repair and maintenance provided the work is done in conformity with this chapter [ordinance].
- (b) The application for a sign permit shall be accompanied by a sketch plan of site and elevation drawings of the proposed sign, caption of the proposed sign, and such other data as are pertinent to the application and consistent with this chapter [ordinance] as determined by the building official.

~~5.10.10. Appeals. The zoning board of review may hear and grant relief from the provisions of this section 5.10 by way of special use permit as provided in section 10. In addition, any person who has been denied a sign permit for any reason may appeal the decision of the building official to the zoning board of review as provided in section 32 hereof.~~

5.11 *Residential mobile home parks.* The purpose of this section is to continue to permit the creation of residential mobile (RMH) parks and to continue the procedures for RMH park creation existing as of the date of adoption of this ordinance. It is the intent of this section to regulate the location and design of RMH's in such a manner as to create neighborhoods designed for long-term occupancy, to ensure compatibility with surrounding areas and with the natural environment and to provide safe, sanitary and attractive living conditions for occupants of mobile homes located in such parks.

5.11.1 Procedure.

5.11.2 Application for special use permit to create an RMH park shall be made according to section 10 of this ordinance. The fee for such application shall be set by the town council, plus advertising costs. A site plan, prepared by a registered architect or engineer, shall be required that, as a minimum, shows the following, together with appropriate dimensions and descriptive material, as necessary:

- 5.11.2.1 Items in town subdivision regulations;
- 5.11.2.2 Proposed location of riser pipes;
- 5.11.2.3 Refuse disposal facilities;
- 5.11.2.4 Location of electrical system;
- 5.11.2.5 Location and details of underground gas and oil systems;
- 5.11.2.6 Plans and specifications of all buildings constructed, or to be constructed in the park;
- 5.11.2.7 Number, location, dimensions and size of lots;
- 5.11.2.8 An impact analysis of the proposed development, which shall contain detailed economic, social and physical studies of the area and a proposed population analysis. The zoning board may request additional information if it desires.
- 5.11.2.9 Type and size of home to be used in the development;

- 5.11.2.10 Applicable rules and regulations for the development.
- 5.11.3 Development plan review.
- 5.11.3.1 All applications for an RMH park shall be referred to the planning board by the zoning board.
- 5.11.3.2 The applicant shall demonstrate to the satisfaction of the planning board that:
- The granting of approval will be in the best interest of the public health, safety, morals and welfare;
 - The granting of such approval will not adversely affect the use of property in the surrounding area or district;
 - The plans for such project will comply with all of the requirements of this ordinance; and
 - The plans for such project are in conformance with the comprehensive plan of the town.
- 5.11.3.3 In recommending an action to the zoning board, the planning board shall enumerate its reasons for approval or denial and any special conditions.
- 5.11.3.4 After receipt of the planning board recommendation, the zoning board of review shall hold a public hearing and shall act on the special use permit within 45 days of the hearing and may attach conditions to ensure the public health, safety, and welfare. Approval of the permit shall require that the final development plan shall conform to the permit as approved by the board. Any changes to the plan after approval shall require a resubmittal of the application, following all procedures of this section.
- 5.11.3.5 The development plan as finally approved with any conditions stipulated thereon shall be recorded in the town clerk's office within 14 days of the zoning board approval.
- 5.11.4 Permitted uses. In an RMH park, the following uses shall be permitted:
- 5.11.4.1 Mobile homes.
- 5.11.4.2 Accessory uses. Uses directly accessory to a mobile home, including parking areas, carports, patios and semi-enclosed outdoor living areas not intended for overnight occupancy. Service building, recreation areas and facilities for the exclusive use of occupants of the mobile home park as further provided herein; offices intended for management and/or service to the mobile home park; and central laundry facilities designed for residents.
- 5.11.5 Prohibited uses.
- 5.11.5.1 Garages.
- 5.11.5.2 The addition to or expansion of a mobile home, so as to make it a permanent structure, shall not be permitted.
- 5.11.6 Site standards.
- 5.11.6.1 *Lot coverage.* Maximum lot coverage by a mobile home on an individual mobile home lot shall not exceed 30 percent of the gross area of the lot.
- 5.11.6.2 *Width and depth.* For portions of the tract used for general vehicular entrances and exits only, the lot width shall be a minimum of 50 feet; for portions containing mobile home lots and buildings open generally to occupants, the width of the lot shall be a minimum of 50 feet. The ratio of width to depth shall not exceed one to five.

Commented [KMS21]: This section requires S&OC or delete entire section (for now).

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- 5.11.6.3 *Buffering*. Along all exterior property lines of a mobile home park, a landscaped buffer strip shall be maintained. Such buffer strip shall be no less than 100 feet wide. Such buffer strip shall be planted screened and maintained in order to provide year-round visual obstruction of the mobile home lots from abutting land and streets. Such buffer strip may be used for recreation of a nonintensive character; provided, however, that no structure be located thereon.
- 5.11.6.4 *Recreation and Open Space*. At least ten percent of the usable land area of the mobile home park shall be reserved for recreational and open space uses. Such recreation and open space may be located within the required buffer strip. However, this figure is in addition to any other open areas required by yard provisions or other sections of this ordinance. Recreation areas shall be so located as to be free of traffic hazards and should, where the topography permits, be centrally located.
- 5.11.6.5 *Access*. All mobile home parks shall have a minimum lot frontage of 50 feet on a public street.
- 5.11.6.6 *Distance from boundary*. All mobile homes shall be a minimum distance of 100 feet from any park boundary line abutting a public street.
- 5.11.7 Lot requirements. Individual mobile home lots in a RMH park shall conform to the following requirements:
- 5.11.7.1 *Lot size*. Each individual mobile home lot shall contain a minimum of area of 5,000 square feet. Lot size shall be increased by five square feet for each square foot that the mobile home and accessory buildings exceed the allowable size of 1,500 square feet.
- 5.11.7.2 *Lot width and depth*. The minimum lot width shall be 50 feet. The minimum lot depth shall be 100 feet.
- 5.11.7.3 *Required separation between mobile homes*. Mobile homes shall be separated from each other and from other buildings and structures by at least 30 feet. Any accessory structure which has a horizontal area exceeding 25 square feet is attached to a mobile home and has an opaque top or roof that is higher than the nearest window shall, for purposes of all separation requirements, be considered to be part of the mobile home.
- 5.11.7.4 *Setback*. No mobile home shall be located closer than 15 feet to a lot line abutting an internal street, common parking area or other common areas.
- 5.11.7.5 *Frontage*. Each mobile home lot shall have frontage on an internal street.
- 5.11.8 Streets. All streets shall be constructed in accordance with the requirements of [town subdivision regulations] of the code of ordinances of the town. Storm drainage and sewerage plans must be provided and approved by the town Engineer.
- 5.11.9 RMH Park Size. There shall be a maximum of 200 mobile homes per RMH park.
- 5.11.10 Occupancy. No lot shall be rented for residential use in an RMH park, except for periods of 30 days or more; and no mobile home shall be admitted to any park, unless it can be demonstrated that it meets the requirements of the BOCA Basic Building code, as amended.
- 5.11.11 Service building. All mobile home parks shall be provided with a service building consolidating all sanitary, laundry, management and other service facilities. The floor area of such service building shall not exceed 2,500 square feet.
- 5.11.12 Sale of mobile homes. No mobile home shall be sold in an RMH park unless it is located on a mobile home stand and connected to permanent utilities.

5.11.13 Change of lot size. The size of mobile homes in an approved park shall not be changed to a larger home, unless the size of the mobile home lot is increased. For any changes in an RMH park that would differ in any respect from the approved site plan or from any of the special use permit conditions, the proposed changes shall be submitted to the zoning board as an amendment thereto. The zoning board shall consider said amendment in the same manner and procedures as an original application.

5.12 *Multifamily dwellings.* All multifamily dwellings and multifamily dwelling development plans proposed and constructed shall comply with the requirements listed below in addition to other requirements of this ordinance.

5.12.1 *Density.*

- (A) Density shall be 7,500 square feet per dwelling unit for all multifamily development projects located on any development site containing five acres or less of usable lot area.
- (B) Density shall be 5,000 square feet per dwelling unit for all multifamily development projects located on any development site containing more than five acres of usable lot area; provided that all multifamily development projects containing more than five acres of usable lot area shall provide a minimum of 2500 square feet per dwelling unit of usable open space for active and passive recreational use by the residents of the development or provided to the town for use by the general population. Such usable open space cannot include roadways, driveways, parking areas, wetlands, slopes greater than 12 percent, or any required landscape buffer zones.

5.12.2 *Wastewater treatment.* Prior to granting final development plan approval, for sites not connected to the town's wastewater collection system, approval by the Rhode Island Department of Environmental Management of an on-site treatment system shall be required.

5.13 *Village design control district (VDCD) zone.*

5.13.1 *Purpose and intent.* The purpose and the intent of the village design control district zoning is to follow the long held urban planning philosophy of the doctrine of appropriateness, and by that, encourage the responsible growth and vitality of the traditional town villages (i.e., Natick, Crompton, Phenix, etc.). Development in this zoning district should meet the following objectives:

- (A) Provide areas within and adjacent to residential neighborhoods where groups of small businesses may be located to:
 - Serve the frequent small commercial and service needs of residents within convenient traveling distances.
 - Serve as a transitional zone between more intensive business areas and residential neighborhoods.
 - Provide a district for small business and community activities which do not generate the traffic, noise, glare, or parking gluts associated with larger-scale business use.
- (B) Encourage traditional development design and mixed-use development appropriate to village centers.
- (C) Serve the traffic-carrying capacity of the town's road system by concentrating certain uses within village centers, thereby reducing the overall traffic burden.
- (D) Preserve the residential and historic characteristics of the community by encouraging responsible new development to its village centers.

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- (E) Strengthen the role of the neighborhood as a support for the village center and in turn to keep each village center to a scale that services its neighborhood without an undue dependence on automobile-borne customers.
 - (F) Provide for a visual center or village green for each traditional village.
 - (G) Promote unified physical, visual and spatial characteristics that are compatible with each villages' traditional development pattern.

5.13.2 *Permitted uses.* The uses which will be considered in a design control district shall include but not be limited to the following:

- (A) Residential, retail, commercial, non-retail, or industrial uses lawfully existing prior to adoption of this ordinance.
- (B) New one- [or] two-family residential dwellings.
- (C) Public parks and recreation facilities.
- (D) Libraries and museums.
- (E) Government buildings including public utility structures or right-of-way.
- (F) Churches or similar places of worship.
- (G) Public or private elementary, middle, and high school.
- (H) Any other use approved by the planning board as being harmonious with the spirit and the intent of the design control district. A finding of appropriateness for a requested use will consider, but not be limited to, uses that will not disrupt the general limited retail and service standard as well as the residential character and function of the village center and its more pedestrian orientation. Quasi-industrial, commercial, or large retail-oriented uses, or uses traditionally reliant upon high truck and auto traffic, as determined by the planning board as being not appropriate, are prohibited. Solicitation of public comment is an integral component of this decision-making process.

5.13.3 *Dimensional requirements.* Yard, setback, lot size, height, and frontage requirements are hereby waived, provided that the spirit and the intent of this section are complied with in the development plans as determined by the planning board. In consultation with the town planner and technical review committee, the planning board may determine that certain dimensional requirements shall be required within all of or a portion of the perimeter of the site and shall exercise ultimate discretion as to whether the development plan does comply with the spirit and the intent of this section.

5.13.4 *Parking requirements (non-residential developments).* The planning board in consultation with the town planner and technical review committee, may reduce or waive the parking requirement if they determine that the proposed uses, location of the site, and the related facilities existing or proposed by the applicant will result in the generation of pedestrian, bicycle, and mass transit trips in sufficient volume to warrant the parking reduction. All other parking requirements in section 5.9.10.7 of these zoning regulations, excluding the required number of spaces for each use, shall be met. Parking or vehicle access shall be avoided in front of any structure within the VDCD and off-street parking to the rear of the structure will be emphasized. The parking requirement shall be two spaces per dwelling unit.

5.13.5 *Signs.* The planning board in consultation with the town planner and the technical review committee may impose stricter requirements than are required in the town zoning code for signage when, in their judgment, the specific proposal and site so necessitates. All exterior lighting and signs shall be shown on the development plan and detailed design (i.e., material,

illumination, etc.) shall also be provided. The reasons for the stricter requirements shall be part of the motion to approve any development.

5.13.6 *Residential density.* In the case of other than a single-family dwelling on an individual lot, residential density may be approved for up to four dwelling units per acre, provided that all requirements and standards for the proposed residential use or for other proposed uses are met.

5.13.7 *Expansion of legal non-conforming non-residential uses.*

- (A) Any non-residential use lawfully existing prior to adoption of this ordinance may be permitted expansion on the existing lot only. However, if expansion is to take place on a parcel of land that is contiguous to the existing developed lot, and owned by the applicant at the time of a request for expansion is filed, said new lot shall be considered as part of the existing developed lot for the purposes of this section of the zoning regulations only. Requests for expansion may be declined if, in the determination of the planning board in consultation with the town planner and technical review committee, said expansion proposal is found to be detrimental to the spirit and the intent of the VDCD and/or the uses adjacent to the subject existing lot.
- (B) Commercial or industrial uses permitted prior to adoption of this ordinance may continue under new ownership provided the use of the property does not change. Failure to submit a development plan for determination as to whether a potential change in use could exist may result in a finding, by the planning board in consultation with the town planner and technical review committee, of the existence of an illegal, non-conforming use. Requests for a change in use may be permitted if, in the determination of the planning board in consultation with the town planner and technical review committee, said change is found to be consistent with the spirit and intent of the VDCD.

5.13.8 *Architectural controls and review process.*

- (A) An intention of the VDCD zoning classification is to preserve the character and the charm of the village motif as found in the town just after the turn of the 20th Century.
- (B) The planning board reviews proposals for any construction within the VDCD zone including new renovations, alterations, repairs, removal, and/or demolition of buildings. The review includes proposed changes to major buildings, structures (gazebos, walls), secondary buildings (garages, sheds), and appurtenances (pavings, signs, fences, lighting, landscaping), roofing material, exterior siding, windows, doors, accessories (shutters, sidelights, transoms, crossheads, door pediments), dormers, eaves, trim, gutters and downspouts, fences, walkways, paving, and foundations.
- (C) When authentic building materials are unavailable, synthetic and/or engineered products that emulate and replicate the architectural style may be substituted. Authentic restoration is not a requirement of development with the VDCD; however, replication of the authentic materials/features/styles is required for development plans submitted following adoption of this ordinance.
- (D) Prior to the start of any work, proposed changes to major buildings, structures, secondary buildings, and appurtenances must be submitted by the owner or the owner's agent to the town planner, who will determine whether the proposed work is major or minor, as defined below. If the work is determined to be "major," the town planner will submit the completed application packet to the planning board in the form of a site development plan, which shall include architectural elevations and/or construction details. A site development plan is required for all proposed developments except single family residences. All site development plans shall meet the requirements of sections 17.7 and 17.8 inclusive of the

town zoning code. This site development plan must receive a certificate of appropriateness within the VDCD even if a building permit from the local building official is not required.

- (E) If the town planner deems the proposed work to be "minor," he will consult with the technical review committee and the building official and either grant approval, require changes for approval or refer the application to the planning board. Approval from either the planning board or the town planner shall be required even if a building permit from the local building official is not required.
- (F) "Major" work is defined as proposed changes to major buildings, secondary structures (garages, sheds, gazebos, etc.), structural walls and expansion and changes in use of any buildings and structures, removal and/or demolition of buildings.
- (G) "Minor" work is defined as changes in paving materials, new signage, new outdoor decks, above ground pools, new fencing, landscaping and other appurtenances.
- (H) No review is required for ordinary exterior maintenance and repair provided there is no significant change in design, architectural features, or type of materials used. Interior alterations do not require review for appropriateness within the VDCD, however, type of use, standard building laws and codes, etc. still exist and must be adhered to.
- (I) The VDCD may or may not include historical areas. In the case where the structure in question is located within a historical designation area, historical building regulations take precedence over VDCD requirements provided that those historical building regulations are determined by the planning board to be more strict than VDCD requirements.
- (J) As part of the application process, an informational packet providing greater detail on architectural controls will be provided.

5.13.9 *Other provisions.*

- (A) The geographic footprint for the VDCD boundaries for the various districts will be as from time to time recommended by the planning board and adopted by the town council and as shown on the town zoning map.
- (B) The geographic footprint may be expanded or reduced as deemed appropriate by the planning board with the recommendation of the zoning board of review and approved by the town council.
- (C) Any lot that falls within two or more zones will be considered to be subject to the provisions of the design control district.
- (D) All other questions, disputes, etc. not specifically covered within this regulation shall be resolved [resolved] by the determination of the planning board, acting in consultation with the town planner and technical review committee and shall focus on the appropriateness of the subject vis-a-vis the spirit and the intent of the VDCD zone.

5.13.10 *Public hearing.* The review process by the planning board shall be at a public hearing for all applications for "major" activities as defined by this ordinance. Public notice of the date of the hearing shall be given at least 14 days prior to the date of the hearing in a newspaper of general circulation in the town. Notice shall be sent by the applicant to each record owner within 200 feet of the subject property, by certified mail, return receipt requested, of the time and place of the hearing not less than ten days prior to the date of the hearing. Said notice shall also include the street address of the subject property. The cost of all such notice shall be borne by the applicant.

5.13.11 *Fees.* There will be an application fee, of \$500.00 for each application for approval for major work, and an application fee of \$50.00 for minor work as defined in this zoning code. The application fee shall be paid with five days from the date of notification to the applicant as to whether the application is a major or minor. No further processing of the application shall be done until the application fee is paid in full.

5.13.12 *Expiration dates.* Any approval granted by the planning board of any application submitted pursuant to section 5.13 of this zoning code shall expire one year from the date of issuance, unless the applicant shall within that one-year period exercise the right granted by the decision. Exercise of the right as stated herein shall mean that the applicant shall commence work on the project approved and that there shall be no interruption of such work for a period in excess of six months at any time until completion of the project. The board may upon application filed within the one-year period and for good cause shown, extend the limitation for one additional one-year period. The application for an extension need not be advertised.

5.14 Vacant historical mill structures.

5.14.1 *Purpose.* It is the purpose of this section to recognize that certain existing mill structures and properties in various zoning districts are desirable for conversion to mixed use and occupancy. However, uncontrolled conversion may lead to potential adverse impact on adjacent areas. These properties can be permitted to convert to a variety of limited housing, business and professional office uses. The full range of potentially acceptable uses and the limits of size and intensity that are acceptable are not able to be predetermined and therefore the final determination of acceptability must be made on an individual basis, predicated upon a definitive statement of proposed use and operation.

This regulation is established to facilitate the most harmonious relationship possible between the development, the site and the surrounding area than is possible under conventional zoning regulations while maintaining the protection to the community and abutting properties. A Re-Use Development is an optional development which is a change in use and may be permitted instead of development under the requirements of the underlying zone(s). Permission to develop property under this section of the zoning regulations is at the discretion of the planning board.

A "major" re-use development is defined as proposed changes to the major buildings and secondary structures which shall constitute a major change in the use and/or construction or configuration of the structures.

A "minor" re-use development is defined as proposed changes in use to secondary structures which do not require any major change in the construction of the particular structure.

5.14.2 *General provisions.* In recognition of the potential complexities of development under this section, and to provide the planning board (hereinafter "Board") with timely and appropriate information, data and plans to ensure adequate control, review and compliance with the intent of the comprehensive plan of development and these regulations, the following requirements are established for all re-use developments.

5.14.3 *Application procedure.* A detailed plan application shall be submitted for review and consideration for any re-use development. In considering the detailed plan application, the board shall:

- (A) Hold a public information hearing for each plan application in accordance with the procedures listed below:

Public notice for the public informational hearing is required and shall be given at least seven days prior to the date of the meeting in the newspaper of general circulation within the municipality. The town planner shall instruct the town clerk to advertise.

Postcard notice shall be mailed by the applicant to all property owners within a 200-foot radius of the subject parcel. A list of property owners within the notice area, certified by the tax assessor, shall be provided by the applicant to the town planner.

At the public informational meeting, the applicant shall present the proposed development project. The board shall allow oral and written comments from the general public. All public comments shall be made part of the public record of the project application.

- (B) Consider reports and recommendations from the technical review committee and other agencies deemed relevant by the board.
- (C) Render a decision within 45 days of the public hearing. The board may decide either at its regular or special meeting, to approve, disapprove or approve with modification the proposed plan. If a decision is not rendered within 45 days of the public information hearing, the proposal shall be considered approved, however, the board may, with the written concurrence of the applicant, extend the time for its decision an additional 30 days.
- (D) Prescribe rules and forms as it deems necessary for: the filing of re-use development applications, postponement and extension of time, rehearing and any other matters. The board shall not be required to hear the same application more than once during any period of 12 consecutive months, provided however, that such re-application may be heard in less than 12 consecutive months if the town planner determines there has been a substantial change to such application.
- (E) In considering the detailed plan application, the board shall apply the same procedures and standards as for development plan review (hereafter referred to as site plan review).

5.14.4 *Application approval.* In order to approve any re-use development application, the board shall make the following determinations:

- (A) That the proposal is in harmony with the overall objectives, spirit and intent of the zoning regulations and comprehensive plan.
- (B) That the proposal will not detrimentally affect development in the surrounding area nor excessively impact existing roads, and other municipal facilities, public utilities and drainage systems.

5.14.5 *Application modifications.* Any proposed non-technical modification to an approved application shall be considered by the board at a public hearing unless the town planner finds that the proposed modification is minor in nature, in which case a public hearing will not be required. When unforeseen field conditions require technical modifications, such as material changes or pipe locations, etc., an amended plan shall be submitted to the town planner for consideration and approval, and a copy shall be filed in the planning office file.

5.14.6 *Bulk requirements for new construction.* Yard, setback, lot size, height, and frontage requirements are hereby waived, provided that the intent of this section are complied with in the development plans as determined by the board. In consultation with the technical review committee, the board may determine that certain setbacks, etc. for new construction be required within all of or a portion of the perimeter of the site and shall exercise ultimate discretion as to whether the development plan does comply with the spirit and the intent of this section.

5.14.7 *Additional requirements.* An existing principal building(s) may be rehabilitated, modernized and/or expanded provided that such construction shall reflect the architectural design and scale of the original building and that the exterior building material, color, roof line and building elevations shall be compatible with the original building. New construction shall

reflect the original building design. Both existing reconstruction and/or new construction shall adhere to the following design guidelines:

- (A) New buildings shall be designed to achieve a similar appearance to the original building.
- (B) New roof-top mechanical equipment, other than solar energy panels, shall be concealed from all sides.
- (C) Buildings shall be designed and located on the site so as to retain the existing topography and natural features of the land to the greatest extent possible.
- (D) To the extent possible, parking areas shall be so located and designed as to be screened from the public road to the extent possible.
- (E) Every effort will be made to locate new parking facilities or drives at least ten feet from any property line. Where reasonable and economically reasonable the ten-foot areas shall be planted by evergreen and deciduous plantings and/or fences and/or walls to screen the parking area and block auto headlight glare to adjacent properties.
- (F) The applicant shall be required to show to the extent possible and the board shall find that the building will be in acceptable exterior and interior condition. Acceptable exterior condition shall mean that the building will have no physical evidence from the exterior of cracks in walls, foundations or chimneys; no peeling or peeled paint; or no broken, misplaced or damaged parts, members, siding, or shingles. Acceptable interior condition shall mean, in part, that interior spaces will be subdivided to appropriately provide for the intended uses and that reasonable equipment, appliances, etc., will be installed.
- (G) There shall be no exterior storage of material and no other exterior indication of nonresidential use except for those expressly permitted by the board, under the town sign ordinance.
- (H) Off-street parking shall be required as follows (unless otherwise permitted by the board): One parking space for every 250 square feet of net of non-residential floor area. Net floor area shall be deemed to be 85 percent of gross floor area. 1.5 parking spaces for each residential unit.
- (I) Any building addition proposed in conjunction with an application for a conversion shall not exceed 25 percent of existing gross floor space.
- (J) Estimates of the peak hour traffic generation derived from the proposed development and the relation of the peak traffic to surrounding roads and intersections, including methods developed for alleviating traffic problems created by the re-development.
- (K) All exterior lighting shall be located and arranged so as not to cause off-site glare onto adjacent properties.

5.14.8 *Fees.* Every application for a major re-use development shall be accompanied by a fee of \$1,000.00 to help defray the costs of processing the application. Every application for a minor re-use development shall be accompanied by a fee of \$50.00 to help defray the costs of processing the application.

5.14.9 *Plan requirements.* The applicant shall submit an appropriate application, including but not limited to maps, sketch plans and other relevant data to adequately describe and illustrate the proposed development and its appropriateness for the proposed location; to indicate its effects and impact on the surrounding area and development, roads, and other municipal facilities, public utilities and transportation, and drainage systems, and to indicate compliance

with the intent of the comprehensive plan of development and these regulations. The requirements of the plan are:

- (A) Locality map, no smaller than one = 1,000, showing zone(s) of parcel and surrounding area.
- (B) Map at appropriate scale, no smaller than one = 200, showing property lines, names of adjacent owners, existing and proposed contours at 2 intervals, special flood hazard areas (as per federal flood hazard maps), designated wetlands and Watercourses, existing public utility lines, and public facilities (schools, fire houses, etc.), existing street widths, street classifications, mass transit systems and stops within 100 of the site, the layout of proposed buildings, roads, parking areas, open spaces, etc., as well as any proposed improvements to existing facilities which might be overburdened by the proposed development and thereby endanger the public health, safety, and welfare.
- (C) Site plans as required by these regulations, site sections, elevations and sections of buildings, models and renderings, and any other material requested by the board.
- (D) Drawings shall be stamped by relevant design professionals licensed in the State of Rhode Island (i.e., land surveyor, engineer, landscape architect, and architect). All surveys for a major Re-Use Development shall be Class I surveys. The drawings shall show in detail all data relevant to the design of the site and buildings including site and building working drawings, elevations, sections, models, etc. Unless otherwise specified, the standards established for site plans (Section 17.7-17.7.7 and 17.8.3—17.8.3.27). The land proposed for a re-use development may be owned by one or more persons or corporations but shall be presented as a single, contiguous parcel of land at the time the Plan Application is filed. The application shall be jointly filed by all owners and, if approved, shall be jointly binding on all of them as well as on any additional and/or future or partial owners.
- (E) If the applicant fails to commence and proceed with actual construction within 12 months of the date of endorsement of approval of the development plan, or within any time extension granted in writing by the town planner, the approval of the application shall become null and void.
- (F) Developments may be phased. If the approved development phase is not completed within two years of plan approval and if an extension has not been granted, the plan approvals shall be null and void, and construction shall cease until the board reviews and reapproves the project to ensure compliance with current standards.
- (G) Prior to the issuance of any building permits, an appropriate performance bond for public improvements shall have been received and accepted by the board in order to insure to the town, the construction and installation of all site improvements such as storm drainage, water and sewer systems, landscaping, and any other items on the plan deemed for the benefit of public health, safety and convenience. The amount and time period of the bond shall be established by the town engineer. A maintenance bond in the amount of ten percent of all bonded or bondable improvements shall be submitted and held for a period of one year after completion of all bonded improvements.
- (H) Notwithstanding the requirements and provisions of subsection (G) above, no building permit shall be issued until sewer and water system plans have been approved by the town sewer authority and Kent County Water Authority all other requirements of the water pollution control authority have been met. All re-use developments shall be served by water and sewer. If possible, all new utility lines within the project shall be underground.
- (I) The applicant shall show and the board must find that the physical characteristics of the particular property (including site location, size and geometry) and the building size and

design can be used as proposed within the intent of these regulations and that it will not result in excessive impact on adjacent properties.

1. In reviewing the plan, the board may impose such other controls and restrictions as it deems necessary to protect adjacent properties and to assure compatibility with the adjoining residential neighborhood and the intent and objective of the re-use development section of these regulations.
2. Any change of use or occupancy permitted under the provisions of this section shall be subject to the review by the board for approval.

5.14.10 *Expiration dates.* Any approval granted by the planning board of any application submitted pursuant to section 5.14 of this zoning code shall expire one year from the date of issuance, unless the applicant shall within that one-year period exercise the right granted by the decision. Exercise of the right as stated herein shall mean that the applicant shall commence work on the project approved and that there shall be no interruption of such work for a period in excess of six months at any time until completion of the project. The board may upon application filed within the one-year period and for good cause shown, extend the limitation for one additional one-year period. The application for an extension need not be advertised.

5.15 *Arctic Design Control District (ADCD).*

5.15.1 *Purpose and intent.* The purpose of the ADCD is to encourage the revitalization of the historic downtown area while maintaining the traditional development characteristics of the historic village center through rehabilitation and new construction, by providing unified physical, spatial, visual, and architectural design standards to guide all future changes to the district.

5.15.2 *Permitted uses.* The uses which will be considered in the ADCD shall include but not be limited to the following:

- (A) Residential, retail, commercial, non-retail, or industrial uses lawfully existing prior to the adoption of this ordinance;
- (B) Retail, except for mobile homes and auto dealers, gas stations, fuel dealers and storage;
- (C) Commercial/office uses except motor vehicle rental, auto repair and service, car detailing and washing, truck repair, service or terminals;
- (D) Government facilities, including public utility structures or rights-of-way;
- (E) Libraries and museums;
- (F) Public parks and recreation facilities;
- (G) Restaurants;
- (H) Multifamily residential;
- (I) Medical facilities;
- (J) Private amusement and recreation facilities;
- (K) Hotels and motels;
- (L) Private parking lots or garages;
- (M) Personal services;
- (N) Churches or similar places of worship;
- (O) Public or private elementary, middle and high schools;

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- (P) Any other use approved by the planning board as being harmonious with the spirit and the intent of the ADCD. A finding of appropriateness for the requested use will consider, but not be limited to, uses that will not disrupt the general retail/commercial/residential mixed use as well as the downtown village character and function of the Arctic Revitalization District as a pedestrian oriented area.

5.15.3 *Dimensional requirements.* Yard, setback, lot size, height, and frontage requirements are hereby waived, providing that the spirit and the intent of this section are complied with in the development plans as determined by the planning board. In consultation with the town planner and the technical review committee, the planning board may determine that certain dimensional requirements shall be required within all or a portion of the site and shall exercise ultimate discretion as to whether the development plan does comply with the spirit and the intent of this section.

5.15.4 *Parking requirements.* The planning board, in consultation with the town planner and the technical review committee, may reduce or waive the parking requirement if they determine that the proposed use, location of the site, and proximity to existing public parking or other private parking facilities, will result in the generation of pedestrian trips in sufficient volume to warrant the parking reduction. All other parking requirements in section 5.9.10.7 of the zoning ordinance, excluding required number of spaces for each use, shall be met. Parking location and access shall be consistent with the design guidelines listed in appendix A*. The residential parking requirement will remain at two spaces per unit unless waived by the planning board.

NOTE: *Appendix A is not included herein but is available at the town planning office for public inspection. The planning board shall have authority, from time to time, to amend the appendix A design guidelines without the necessity to amend this ordinance.

5.15.5 *Signage.* The Planning Board, in consultation with the town planner and technical review committee, may impose stricter requirements than are required in the zoning ordinance for signage when, in their judgment, the specific proposal and site so necessitates in order to comply with the intent and spirit of the design guidelines contained in appendix A. All exterior lighting and signs shall be shown on the development plan and detailed design (i.e., material, illumination, etc.) shall also be provided. The reasons for the stricter requirements shall be part of the motion to approve any development.

5.15.6 *Density.* The planning board, in consultation with the town planner and the technical review committee, may waive density requirements for multifamily housing, provided that all requirements and standards for the proposed residential use is met, and the proposal, in the judgment of the planning board, is consistent with the design guidelines in appendix A.

5.15.7 *Expansion of legal nonconforming uses.* Any nonconforming use lawfully existing prior to the adoption of this ordinance may not be expanded. However, in all cases, any use change proposal should be submitted to the planning board for determination as to whether a proposed change of use, after consultation with the town planner and the technical review committee, is consistent with the allowed uses in this ordinance.

5.15.8 *Architectural controls and review process.*

- (A) An intention of the ADCD zoning classification is to preserve the character and the charm of the village commercial district character of the Arctic area.
- (B) The planning board reviews proposals for any construction within the ADCD zone including new renovations, alterations, repairs, removal, and/or demolition of buildings. The review includes proposed changes to major buildings, structures (gazebos, walls), secondary buildings (garages, sheds), and appurtenances (pavings, signs, fences, lighting,

landscaping), roofing material, exterior siding, windows, doors, accessories (shutters, sidelights, transoms, crossheads, door pediments), dormers, eaves, trim, gutters and downspouts, fences, walkways, paving, and foundations. The planning board, in consultation with the town planner and the technical review committee, will determine the appropriateness and consistency of the architectural design of all new development or rehabilitation of existing structures as it relates to the design guidelines outlined in appendix A. The planning board has sole discretion to disapprove of any architectural design that does not comply with the intent and spirit of the design guidelines outlined in appendix A.

- (C) When authentic building materials are unavailable, synthetic and/or engineered products that emulate and replicate the architectural style may be substituted. Authentic restoration is not a requirement of development with the ADCD; however, replication of the authentic materials/features/styles is required for development plans submitted following adoption of this ordinance.
- (D) Prior to the start of any work, proposed changes to major buildings, structures, secondary buildings, and appurtenances must be submitted by the owner or the owner's agent to the town planner, who will determine whether the proposed work is major or minor, as defined below. If the work is determined to be "major," the town planner will submit the completed application packet to the planning board in the form of a site development plan, which shall include architectural elevations and/or construction details. A site development plan is required for all proposed developments. All site development plans shall meet the requirements of sections 17.7 and 17.8 inclusive of the town zoning code. This site development plan must receive a certificate of appropriateness within the ADCD even if a building permit from the local building official is not required.
- (E) If the town planner deems the proposed work to be "minor," he will consult with the technical review committee and the building official and either grant approval, require changes for approval or refer the application to the planning board. Approval from either by the planning board or the town planner shall be required even if a building permit from the local building official is not required.
- (F) "Major" work is defined as proposed changes to major buildings, secondary structures (garages, sheds, gazebos, etc.), structural walls and expansion and changes in use of any buildings and structures, removal and/or demolition of buildings.
- (G) "Minor" work is defined as changes in paving materials, new signage, new outdoor decks, above ground pools, new fencing, landscaping and other appurtenances.
- (H) No review is required for ordinary exterior maintenance and repair provided there is no significant change in design, architectural features, or type of materials used. Interior alterations do not require review for appropriateness within the ADCD, however, type of use, standard building laws and codes, etc. still exist and must be adhered to.
- (I) The ADCD may or may not include historical areas. In the case where the structure in question is located within a historical designation area, historical building regulations take precedence over ADCD requirements provided that those historical building regulations are determined by the planning board to be more strict than ADCD requirements.
- (J) As part of the application process, an informational packet providing greater detail on architectural controls will be provided.

5.15.9 *Other provisions.*

- (A) The geographic footprint for the ADCD boundaries for the Village of Arctic will be as follows, as shown on the town zoning map.
- (B) The geographic footprint may be expanded or reduced as deemed appropriate by the planning board with the recommendation of zoning board of review and approved by the town council.
- (C) Any lot that falls within two or more zones will be considered to be subject to the provisions of the design control district.
- (D) All other questions, disputes, etc. not specifically covered within this regulation shall be resolved [resolved] by the determination of the planning board, acting in consultation with the town planner and the technical review committee and shall focus on the appropriateness of the subject vis-a-vis the spirit and the intent of the ADCD zone.

5.15.10. *Public hearing.* The review process by the planning board shall be at a public hearing for all applications for "major" activities as defined by this ordinance. Public notice of the date of the hearing shall be given at least 14 days prior to the date of the hearing in a newspaper of general circulation in the town. Notice shall be sent by the applicant to each record owner within 200 feet of the subject property, by certified mail, return receipt requested, of the time and place of the hearing not less than ten days prior to the date of the hearing. Said notice shall also include the street address of the subject property. The cost of all such notice shall be borne by the applicant.

5.15.11. *Fees.* There will be an application fee, of \$500.00 for each application for approval for major work, and an application fee of \$50.00 for minor work as defined in this zoning code. The application fee shall be paid with five days from the date of notification to the applicant as to whether the application is a major or minor. No further processing of the application shall be done until the application fee is paid in full.

5.15.12. *Expiration dates.* Any approval granted by the planning board of any application submitted pursuant to section [5.15] of this zoning code shall expire one year from the date of issuance, unless the applicant shall within that one-year period exercise the right granted by the decision. Exercise of the right as stated herein shall mean that the applicant shall commence work on the project approved and that there shall be no interruption of such work for a period in excess of six months at any time until completion of the project. The board may upon application filed within the one-year period and for good cause shown, extend the limitation for one additional one-year period. The application for an extension need not be advertised.

5.16 Telecommunications tower ordinance.

5.16.1 *Purpose.* It is the purpose of this section to recognize that telecommunication towers are necessary to provide the consumer with adequate service and coverage by the cellular communications industry. However, uncontrolled location and design of telecommunication towers may lead to an adverse impact on residential neighborhoods and the visual environment of the town.

This regulation is established both in a manner to be consistent with the Federal Telecommunications Act of 1996, and to facilitate the most harmonious relationship possible between the telecommunications industry, the visual environment, and the residents of the town. However, any provision of this ordinance that is found to be in conflict with the Federal Telecommunications Act of 1996, it is the Federal Telecommunications Act of 1996 that will be controlling.

5.16.2 *General provisions.* The ordinance hereby establishes standards for the siting of telecommunications towers and antennas; protects residential areas and land uses from

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potential adverse impacts; minimizes the total number of towers throughout the community; encourages the use of existing structures as an alternative to new tower construction; encourages the joint use of towers; encourages the design and construction of towers and antennae which minimize adverse visual impacts; ensures compliance of all proposed facilities with current federal, state, and local regulations; facilitates the provision of wireless telecommunication services; and prevents harm to the health, welfare, and visual environment of the town and its citizens.

- 5.16.3 *Definitions.* [The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this [sub)section, except where the context clearly indicates a different meaning:]

Antenna. Any exterior transmitting or receiving device mounted in or on a tower; building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

FAA. Federal Aviation Administration.

FCC. Federal Communications Commission.

Height. When referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point of the tower or other structure, including the base pad and any antenna.

Pre-existing towers and pre-existing antennas. Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance ~~[Aug. 12, 2006]~~, including permitted towers and antennas that have not yet been constructed so long as approval is current and not expired.

Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and other communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like. The term includes the structure and any support thereto.

- 5.16.4 *Applicability.*

5.16.4.1 *New towers and antennas.* All new towers and antennas in the town shall be subject to these regulations.

5.16.4.2 *Amateur radio station operators/receive only antennas.* This ordinance shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

5.15.3.3[5.16.4.3] *Pre-existing towers or antennas.* Pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this ordinance, other than the requirements of section 5.16.5.7 and 5.16.5.8.

5.16.4.4 *AM array.* For the purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the array by right.

5.16.5 *General requirements.*

5.16.5.1 Permitted zoning districts. Telecommunication towers shall be permitted by special use permit issued after public hearing by the zoning board of review in Business B), Commercial/Industrial (CI), and Business Park (BP) districts subject to the provisions of this ordinance and the underlying zoning district. Telecommunications towers shall be prohibited in all other zoning districts except by use variance from the zoning board of review.

5.16.5.2 *Antennas.* Telecommunication antennas not attached to a telecommunications tower may be permitted by special use permit issued after public hearing by the zoning board of review to any commercial, industrial, office, institutional or public utility structure provided that:

- a. Any communication equipment or accessory building complies with all other applicable zoning requirements and building codes.
- b. All requirements for public notice and public hearing as otherwise required by this ordinance and by any other section(s) of the zoning ordinance.

5.16.5.3 *Public notice.* For the purposes of this ordinance, any special use permit request or use or dimensional variance request shall require public notice to all abutting property owners within 200 feet of the perimeter of the applicant's site, in addition to any other notice required by the zoning ordinance. It is the responsibility of the petitioner to provide any and all notice to the abutters in conformance with the requirements of the zoning code.

5.16.5.4 *Planning board review.* The application shall be reviewed by the town planning board and a recommendation shall be submitted to the zoning board of review prior to their public hearing on any variance or special permit requested under this ordinance. After any approvals, the planning board shall review and approve the proposed development under the normal site plan or development plan review requirement of the zoning ordinance.

5.16.5.5 *Location of facilities on or near historic structures, historic districts, scenic corridors, or residential areas.* Telecommunication towers shall be prohibited in any local historic district, and within 500 feet of any individual structure or site identified by the town, and/or the Rhode Island Historic Preservation and Heritage Commission as historically significant to the town or the state. Towers and antennas may be approved within 200 feet of designated scenic corridors and any residential property by dimensional variance, and only if so constructed as to be substantially concealed. The views of, and vistas from, such structures, corridors, and residential areas shall not be impaired or diminished by the placement of telecommunications tower or antenna.

5.16.5.6 *Evidence.* Applications for a use or dimensional variance or a special use permit as required by section 5.16.5.5 shall be accompanied by evidence that shall consist of the following information for a minimum of three sites:

Site plans.

Photographs of the site and surrounding areas.

Written documentation of the lack of a site in a permitted district.

5.16.5.7 *Removal of abandoned towers.* Any telecommunication tower that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the abandoned tower is required to remove the same within 90 days of receipt of notice from the town notifying the owner of the abandonment. The owner of the facility shall establish a \$10,000.00 cash security fund or provide the town with an irrevocable letter of credit in

the same amount to secure the cost of removing the antenna, antennas array, or tower that has been abandoned. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the town of the transfer. Failure to remove an abandoned tower shall be grounds for the town to utilize the cash surety to remove the tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users shall cease using the tower.

5.16.5.8 *Inventory of existing sites.* Each applicant for an antenna and/or tower shall provide to the building official and the town planner an inventory of its existing towers, antennas, and/or sites approved for towers or antennas, that are either within the jurisdiction of the town or within one mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The building official and town planner may share such information with other applicants applying for special use permits or use variances under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the town provided, however, that the building official or town planner are not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

5.16.5.9 *State or federal regulations.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the towers and antennas at the owner's expense.

5.16.5.10 *Building codes and safety standards.* To ensure the structural integrity of towers and antennas, the owner of the tower or antenna shall ensure that it is constructed and maintained in compliance with standards contained in applicable state and local building codes and the applicable standards for towers and antennas that are published by the Electronic Industries Association, as amended from time to time. Construction and maintenance of the towers and antenna in compliance with said standards shall be certified by a professional engineer registered with the state at the time of construction. The certification shall be filed with the town building official. If, upon inspection, the town concludes that the tower or antenna fails to comply with such codes and standards, and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower or antenna, the owner shall have 30 days to bring such tower or antenna into compliance with such standards. Failure to bring such tower or antenna into compliance with such standards within said 30 days shall constitute grounds for the removal of the towers and antennas at the owner's expense.

5.16.5.11 *Municipal use.* Towers shall provide space for town municipal use at no cost to the town.

5.16.6 *Development standards.* The following standards shall apply to all applications:

5.16.6.1 *Town owned locations.* Town owned sites or facilities that are located in the prospective development area which could potentially accommodate the new tower and/or antenna shall be considered first and given priority for locations of said tower and/or antenna.

5.16.6.2 *Co-location*. In all applications for a special use permit or use variance for the construction of a new facility, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove that it has made all reasonable efforts to procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least 50 percent.

- a. The applicant requesting the special use permit or use or dimensional variance shall submit evidence to the town demonstrating that a genuine effort has been made to solicit additional users for the proposed new tower. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within the town, adjacent communities, and the county, advising of the intent to construct a new tower, identifying the location, inviting joint use and sharing of costs, and requesting a written response within 15 business days.

5.16.6.3 *Setbacks*. No new tower shall be constructed without a setback from the tower's base of at least one and one-half times the tower height to the public or private road and at least two times the tower height to the nearest property line. All tower supports, guy wires, and peripheral anchors shall be located entirely within the boundaries of the development site and shall be set back from the property lines the minimum of the zoning district in which the tower is located, but no less than 25 feet. All guy wires and guyed towers shall be clearly marked so as to be visible at all times. When located in or abutting a residential district or historic district, the minimum setback distance shall be 35 feet. All supports and anchors shall have, at a minimum, a ten-foot horizontal setback from any overhead utility line.

5.16.6.4 *Height restrictions*. No new telecommunications facility shall exceed 90 feet in height. Telecommunication facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structures height without the facility or the maximum height allowed in the zoning district in which the structure is allowed and located, whichever is less.

5.16.6.5 *Equipment buildings*. Equipment structures for a telecommunications facility shall not exceed 400 square feet in area and 12 feet in height. All such structures shall be erected with vegetation or other aesthetically pleasing materials. Furthermore, all such structures shall be secured with approved fencing and a locked gate. The applicant shall submit to the planning board and zoning board a landscaped site plan, prepared by a Rhode Island registered landscape architect for the entire property.

5.16.6.6 *Screening and landscaping*. Communication towers shall be constructed and situated to fit in with the topography and features of the surrounding environment. Plantings shall be of a height and density to provide screening approved by the zoning board. Screening shall consist of plants and/or trees accepted by the town's subdivision regulations, or as accepted by the town planner. Screening shall comprise ten percent of the minimum established setback requirement but shall not be less than five feet in width unless located in or abutting a residential district or historic district which will require that it not be less than ten feet in width. Screening may be waived by the zoning board of review on those sides or sections that are adjacent to undeveloped land or land not in public view. Existing vegetation shall be preserved to the maximum extent possible and may be used as a substitute for or supplement towards meeting the landscaped screening requirement. The

owner of the property shall be responsible for all maintenance and shall replace any dead plantings within 30 days.

5.16.6.7 *Security and lighting.* Communication towers shall be enclosed by a fence no less than eight feet in height and no more than ten feet in height from finished grade. Access shall be through a locked gate. Communication towers in or abutting a residential district or historic district shall have opaque fencing made of wood or stone. The town reserves the right to choose the color of the tower. Communication towers shall not be artificially lighted except as required for public safety purposes, by the FAA, or by the town. Written proof of FAA requirement must be provided to the town.

5.16.6.8 *Tower location.* Communication towers shall be located so as to comply with the following standards for the minimum separation distance from existing communications towers and/or communications towers that have received a valid special use permit:

<i>Proposed Tower Type</i>	<i>Self-Supporting</i>	<i>Guyed</i>	<i>Monopole 75+ Feet in Height</i>	<i>Monopole <75 Feet in Height</i>
Self-Supporting	3 Miles	3 Miles	1.5 Miles	2,500 Feet
Guyed	3 Miles	3 Miles	1.5 Miles	2,500 Feet
Monopole 75+ Foot Height	1.5 Miles	1.5 Miles	1.5 Miles	2,500 Feet
Monopole <75 Foot Height	2500 Feet	2500 Feet	2,500 Feet	2,500 Feet

Separation distances shall be calculated and applied irrespective of jurisdictional boundaries.

5.16.6.9 *Signage.* No signs shall be allowed on any communication tower except as required for public safety purposes, by the FCC, or by the town. An identification sign of not greater than six square feet shall be placed on the site of any tower facility.

5.16.7 *Nonconforming uses.*

5.16.7.1 *Not expansion of nonconforming use.* Towers that are constructed and antennas that are installed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

5.16.7.2 *Pre-existing towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this ordinance.

5.16.7.3 *Rebuilding damaged or destroyed nonconforming towers or antennas.* Notwithstanding section 5.16.4.3, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain a special use permit. The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approved. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in section 5.16.5.6.

5.16.8 *Electronic emissions and electromagnetic radiation.* Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission (FCC) regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.

All facility operators and owners must sign an agreement, to be maintained by the town, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.

5.16.9 *Fees.* Every application for a special permit under this ordinance shall be accompanied by a fee of \$500.00 to help defray the costs of processing the application. The applicant shall also be required to bear the expense of any outside technical assistance which the town deems necessary to assist the town in the review of the technical aspects of the telecommunications tower or antenna proposal up to a maximum amount of \$50,00.00.

5.17 *Wind energy systems (WES).*

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5.17.1 *Purpose.* It is the purpose of this section to recognize that WES are becoming a more popular alternative energy source for both the public and private sector. However, uncontrolled location and design of the WES and components may lead to an adverse impact on residential neighborhoods and the visual environment of the Town of West Warwick.

This regulation is established both in a manner to be consistent with applicable federal and state laws and regulations and to facilitate the most harmonious relationship possible between the alternative energy industry, the visual environment, and the residents of West Warwick. However, any provision of this section that is found to be in conflict with any federal or state law or regulation, it is the federal and state law and regulation that will be controlling.

5.17.2 *Applicability.* This section applies to all WES proposed to be constructed after the effective date of this section.

5.17.3 *Definitions.*

Capacity factor. A capacity factor is a ratio or percentage that represents a wind turbine's actual energy output versus its maximum potential energy output. The value is typically reported as an annual figure, not monthly, hourly or instantaneously. The maximum potential energy output assumes that the turbine can operate at its maximum nameplate capacity continuously throughout one year.

Critical electric infrastructure (CEI). The electric utility transmission and distribution infrastructure, including but not limited to substations, transmission towers, transmission and distribution poles, supporting structures, guywires, cables, lines and conductors operating at voltages of 13.8 kV and above and associated with telecommunications infrastructure. CEI also includes all infrastructure defined by any federal regulatory agency or body as transmission facilities on which fault or disturbances can have a significant adverse impact outside of the local area, and transmission lines and associated equipment generally operated at voltages of 100 kV or higher.

Decibel (d/BA). The decibel is a unit used to measure the intensity of sound. Specifically, it is a logarithmic measure of sound pressure levels. An A-weighted decibel measurement has been filtered to better represent how humans sense sound. It discounts frequencies near the top and bottom of the human range of hearing.

FAA. Federal Aviation Administration.

Fall zone. The calculated area of the land surrounding a wind turbine that may be affected by debris should the supporting structure collapse or any component of the wind turbine or anything attached to it fall to the ground.

Height. The distance measured from the natural grade surrounding the support pad to the tip of the blade in a vertical position measured along the vertical axis of the tower. This measure is commonly referred to as the maximum tip height (MTH).

Nacelle. The housing component located at the top of the tower that contains much of the turbine's mechanical systems. It is connected to the turbine's rotor.

Occupied building. Any building regularly occupied by one or more persons on a daily basis. Buildings ordinarily used for storage, such as garages, sheds and the like, are not considered occupied buildings even though they may be entered for brief periods on a daily basis.

Rated nameplate capacity. The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a nameplate on the equipment.

Setback. The distance measured from the closest edge of the wind turbine base to the closest point of the boundaries of the site parcel, to a private or public road or way, and to an occupied building not located on the site parcel.

Shadow flicker. The moving shadows on an observer's location caused by the rotating blades of the wind turbine located between the sun and the observer.

Site parcel. The parcel of land or lot, including contiguous lots owned by the same party on which the WES is erected.

Small WES. A wind energy system that is designed and intended to generate electrical output primarily for the use or benefit of the structures on the same lot or on contiguous commonly owned lots. Small wind energy systems have a rated nameplate capacity of 80 kW or less and a total height not exceeding 160 feet.

Utility-scale WES. A commercial wind energy system, where the primary use of the facility is electrical generation to be sold to an electric distribution company, commercial net-metered renewable wind energy systems and/or wind energy systems that sell a portion of the energy produced back to National Grid under the Renewable Energy Growth Program.

Wind energy system (WES). All of the equipment, machinery and structures together utilized to convert wind into electricity. This includes, but is not limited to, developer-owned electrical equipment, storage, collection and supply equipment, service and access roads, and one or more wind turbines.

Wind turbine. A device that converts kinetic wind energy into rotational energy to drive an electrical generator. A wind turbine typically consists of a structural support system, tower, nacelle, and a rotor with two or more blades.

5.17.4 *General requirements for all WES.*

5.17.4.1. The construction and operation of all such proposed WES shall be consistent with all applicable West Warwick Ordinances and federal and state laws and regulations, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

5.17.4.2 No WES may be constructed or substantially modified without obtaining a special use permit from the zoning board of review.

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- 5.17.4.3 WES shall be constructed and operated in a manner that minimizes any adverse visual, safety and environmental impacts.
- 5.17.4.4 Wind turbines shall have automatic braking, governing or feathering systems to prevent uncontrolled rotation, over speeding or excessive pressure on the wind turbine structure, rotor blades and other turbine components.
- 5.17.4.5 WES shall comply with all applicable requirements of the FAA.
- 5.17.4.6 The fall zone for all wind turbines shall be measured at ground level below the center of the wind turbine as a circular area with a radius of 150 percent of the MTH or the manufacturer recommended fall zone, whichever is greater, and no occupied building shall be located within the fall zone of the wind turbine.
- 5.17.4.7 Wind turbine shall be set back:
- A. 200 percent of the MTH from the site parcel property lines; and
 - B. 200 percent of the MTH from any public or private roadway, excluding and access driveway or roadway to the wind turbine; [and]
 - C. From any occupied building located within a 200-foot radius of the site parcel boundary lines.
- 5.17.4.8 The minimum ground clearance for the wind turbine blades shall be 20 feet.
- 5.17.4.9 At all times from the installation of a WES until its removal the owner shall maintain liability insurance in an amount to be determined by the town manager and planning director. The insurance policy shall provide for notification to the department of building and zoning and the town manager a minimum of 30 days prior to its expiration or cancellation.

5.17.5 *Design standards.*

- 5.17.5.1 *Monopole.* All WES shall be of monopole design.
- 5.17.5.2 *Color and finish.* All components of the wind turbine shall be painted a neutral, non-reflective exterior color designed to blend with the surrounding environment, such as white, light gray or light blue.
- 5.17.5.3 *Lighting.* Wind turbines shall be lighted only if required by the FAA. Lighting of non-tower parts of the wind turbine, such as appurtenant structures, shall be limited to that required for safety, security, and operational purposes, and shall be reasonably shielded from abutting properties. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward and directed away from and/or shielded from abutting properties with full cut-off fixtures to reduce light pollution.
- 5.17.5.4 *Shadow/flicker.* Wind turbines shall be sited to minimize the shadowing or flicker effect on neighboring property. The applicant has the burden of proving that the wind turbine will not produce significant adverse impacts by shadowing or flicker on neighboring property. A failure to meet this burden of proof shall result in denial of the wind turbine application.
- 5.17.5.5 *Noise.* Noise levels resulting from operation of a wind turbine shall not exceed 50 dB(A) as measured at the property line and averaged over a ten-minute time period. This provision is to be considered a minimum standard, and the zoning board of review may impose more restrictive requirements as deemed necessary. The applicant shall present appropriate documentation and/or analysis from a qualified acoustics professional to

demonstrate to the satisfaction of the zoning board of review that the proposed installation will comply with this requirement.

5.17.5.6 *Signs.* A clearly visible warning sign concerning voltage shall be placed at the base of all wind turbines. No other signs shall be permitted on any wind turbine, except signs necessary to identify the owner, provide emergency contact information, and warn of other dangers associated with the wind turbine.

5.17.5.7 *Prior approvals.* Before issuance of any permits for the WES and/or wind turbines:

- A. An applicant for a utility-scale WES shall submit documentation from the electric distribution company to whom the electrical generation is to be sold, approving the proposed connection. All electrical connections, including transformers, shall be installed underground unless the utility, as shown by the documentation, requires the electrical connections to be installed above-ground.
- B. An applicant for a small WES shall submit documentation from an electrical engineer licensed by the State of Rhode Island approving the proposed connections.

5.17.5.8 *Unauthorized access.* WES shall be designed to prevent unauthorized access. When deemed reasonably necessary because of the location of the wind turbine on the site and the surrounding neighborhood, the zoning board of review may require protective fencing.

5.17.5.9 *Accessory structures.* Accessory structures, such as equipment shelters, storage facilities, transformers, and substations, shall be contained within the WES site whenever technically and economically feasible; shall be used only for housing of equipment for this particular site; and, whenever reasonable, shall be shielded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts. Accessory structures to wind turbines are subject to regulations pertaining to accessory buildings in section 5.6. Supplemental use regulations, of the Zoning Code.

5.17.5.10 *Other considerations.* In deciding whether to grant a special use permit for a WES, the zoning board of review may consider all relevant matters not expressly mentioned in this section 5.17, such as the potential adverse impacts of the wind turbine on wildlife habitats and scenic vistas, and interference with electromagnetic communications, such as telephone, radio, and television. Wind turbines shall not interfere with any telecommunications transmissions, including local emergency responders, military and civilian personal radio use.

5.17.6 *Site plan review.*

5.17.6.1 No WES shall be erected, constructed, installed or modified as provided in this section without first having been filed with the planning director a site plan as hereinafter provided. The planning director shall within 45 days from receipt of the site plan file a report of his or her findings regarding the site plan with the applicant. The application for site plan approval shall be accompanied by a site plan review fee.

5.17.6.2 All plans and maps shall be prepared, stamped and signed by a professional surveyor licensed to practice in State of Rhode Island.

5.17.6.3 Pursuant to the site plan review process, the project applicant shall provide the following documents:

- (A) A Class I survey showing:

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- (1) Property lines and physical dimensions of the site parcel and adjacent parcels within a radius of 200 feet from the boundaries of the site parcel;
 - (2) Outline of all existing buildings, including purpose (e.g., residence, garage, etc.) on the site parcel and all adjacent parcels within a radius of 200 feet from the boundaries of the site parcel, including distances from the wind turbine to each building shown;
 - (3) Location of the proposed wind turbine, foundations, access roads, and associated equipment;
 - (4) Location of all existing and proposed roads and ways, both public and private, and including temporary roads or driveways, on the site parcel and adjacent parcels within a radius of 200 percent of the MTH from the boundaries of the site parcel;
 - (5) Location of all existing above ground or overhead gas or electric infrastructure, including CEI, and utility rights-of-way (ROW) and easements, whether fully cleared of vegetation or only partially cleared, within a radius of 200 feet from the boundaries of the site parcel;
 - (6) Existing areas of tree cover, including average height of trees, on the site parcel and any adjacent parcels within a within a radius of 200 feet from the boundaries of the site parcel;
 - (7) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting (other than FAA lights), screening vegetation or structures.
- (B) Color photos of the wind turbine site and color photo simulations, by a qualified graphics professional of said site parcel and surroundings with the proposed WES super-imposed thereon;
 - (C) Wind turbine foundation blueprints or drawings signed by a professional engineer licensed to practice in the State of Rhode Island;
 - (D) Wind turbine blueprints or drawings signed by a Professional Engineer licensed to practice in the State of Rhode Island;
 - (E) One- or three-line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all National Electrical Code and National Electrical Safety Code compliant disconnects and overcurrent devices;
 - (F) Documentation of the wind turbine's manufacturer and model, rotor diameter, tower height, and foundation type/dimensions;
 - (G) Name, address, phone number and signature of the applicant, as well as all co-applicants and/or property owners;
 - (H) The name, contact information and signature of any agents representing the applicant;
 - (I) An operation and maintenance plan for the WES;
 - (J) Documentation of actual or prospective access and control of the project site together with documentation of all applicable title encumbrances (e.g., utility ROW easements);

- (K) An operation and maintenance plan for the WES indicating that such plan is in accordance with the manufacturer's recommendations for the operation of the WES;
- (L) Zoning district designation for the subject parcel and all property located within a radius of 200 percent of the height of the wind turbine from the boundaries of the site parcel;
- (M) A current zoning certificate from the building official;
- (N) A current municipal lien certificate;
- (O) Proof of liability insurance, in an amount to be determined by the town as recommended by the town engineer, planning director and building official;
- (P) Certification of height approval from the FAA.

5.17.7 Special use permit.

5.17.7.1 Upon receipt of the report of the planning director as provided in section 6.17.6.1 an application for a special use permit shall be filed with the zoning board of review.

5.17.7.2 The provisions of section 10, Special use permits, shall govern the application for a special use permit for a WES in addition to all other requirements stated in this section 5.17.4 and section 5.17.5 hereof.

5.17.7.3 Upon receipt of the report of the planning director as provided in section 6.17.6.1 the documentation as submitted to the planning director for site plan review in accordance with section 5.17.6 and the report of the planning director shall be submitted with the application for the special use permit in as many copies as the zoning board of review shall from time to time be determined as required.

5.17.8 Monitoring/decommissioning/abandonment.

5.17.8.1 All permitted wind turbines shall be maintained in good working condition. Maintenance shall include painting, structural repairs, and the integrity of security and life safety measures. A report demonstrating compliance with an acceptable maintenance schedule shall be submitted annually to the building official on the anniversary of the date on which final approval of construction of the wind turbine was given by all town officials as part of an annual safety certification process.

5.17.8.2 An applicant for a WES project shall be required to post a bond of a type, of a duration, and in an amount to be determined by the town as recommended by the town engineer, planning director and building official.

5.17.8.3 When a WES is scheduled for decommissioning, the applicant shall notify the town manager, building official and planning director by certified mail of the proposed date of discontinued operation and plans for removal. The owner/operator shall remove the entire WES within 150 days after the discontinuation.

5.17.8.5[5.17.8.4]The owner/operator of a WES shall implement current industry practices during removal to ensure minimal adverse impacts on the public health, safety and welfare. Environmental impacts shall also be minimized with appropriate notice to state regulatory agencies as required.

5.17.8.4[5.17.8.5]At the time of removal, the site parcel shall be restored to its state from before the WES was constructed. Removal shall include all associated equipment with appropriate disposal of any hazardous materials. Stabilization and re-vegetation of the parcel site shall

occur as necessary to minimize erosion. The building official and planning director may allow the owner to leave established vegetation and possibly below-grade foundations where they would minimize erosion and limit site disturbance.

5.17.8.8[5.17.8.6]The owner of an abandoned or de-commissioned WES shall remove the turbines, towers, bases and associated structures and components. After 12 months or one year of inoperability of any WES, the building official may reasonably determine the WES to be abandoned and shall issue a notice of abandonment to the property owner. The owner shall have the right to respond to the notice within 30 days of receipt. If the owner fails to do so, the town, through the zoning official, shall pursue all legal remedies available to it and/or seek satisfaction through the posted bond and/or place a lien against the property. The town reserves the right to salvage the WES demolition debris to defray the cost of demolition and site stabilization.

5.17.9 *Building permit.*

5.17.9.1 No WES shall be erected, constructed, installed or modified as provided in this section without first obtaining all permits required by federal or state law or regulation or West Warwick Ordinance.

5.17.9.2 The application for such permits must be accompanied by the fees required for such permits.

5.18 *Adult entertainment uses ordinance.*

5.18.1 *Purpose.* It is the purpose of this ordinance to address and mitigate the secondary effects of adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impact on the public health, adverse impact on the business climate, adverse impact on the property values of residential and commercial properties, and adverse impact on the quality of life. All of said secondary impacts are adverse to the health, safety, and general welfare of the town.

This ordinance has neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matters and materials. Similarly, it is not the purpose or intent of this ordinance to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that is protected by the Constitution of the United States or of the state, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matters or materials. Neither is it the purpose or intent of this ordinance to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

It is the purpose of this ordinance to conclusively state that the live performance of sex acts which are obscene or illegal are not made allowable by virtue of this ordinance.

5.18.2 *Definitions.* Adult entertainment uses shall include:

Adult arcade. An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines or devices, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides or any other type of photographic or image reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult bookstore. An establishment having as a substantial or significant portion of its stock in trade and offering for sale or review, for any form of consideration, books, magazines,

periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, CDs, DVDs or any other visual representations and other materials which are distinguished or characterized by its emphasis depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult motion picture theater. An establishment used for presenting material distinguished by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult paraphernalia store. An establishment having as a substantial portion of its stock and offering for sale or review, for any form of consideration devices, objects, tools or toys, which are distinguished or characterized by their association with specified sexual activities.

Adult video store. An establishment having as a substantial or significant portion of its stock in trade and offering for sale or review, for any form of consideration, videos, movies or other film, material which is distinguished or characterized by its emphasis depicting, describing or relating to specified sexual activities or specified anatomical areas.

Establishments which display live nudity. Any establishment which provides live entertainment for its patrons, which include the display of nudity which shall include specified anatomical areas. Certain uses under this category are also regulated by chapter 12, article II of the Code of Ordinances.

RIGL. Rhode Island General Laws, as amended.

Specified anatomical areas. This term means and includes any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, anal cleft or female breasts below a point immediately above the top of the areolas; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities. This term means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth as noted above.

ZBR. The West Warwick Zoning Board of Review.

5.18.3 *General requirements.*

5.18.3.1 *Adult entertainment uses.*

~~A.~~ Adult entertainment uses shall be prohibited in all zoning districts in town, except by special use permit in the CI (Commercial Industrial) zoning district.

Specific and Objective Criteria required for special use permit:

~~B.A.~~ All uses granted under this ordinance shall not be located within:

1. 1,500 feet from the nearest residential zoning district;

Commented [KMS24]: These criteria appear to be S&O enough to pass muster.

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2. 1,500 feet from the nearest house of worship, school (public or private), park, playground, play field, youth center licensed day care center, or other location where groups of minors regularly congregate or any establishment rendering funeral or crematory services;
 3. 2,000 feet from the nearest adult entertainment or sexually oriented business use as defined herein;
 4. 500 feet from any establishment having a liquor license granted by the town or any other municipality;
 5. 1,000 feet from the entrance to the West Warwick Business Park (John P Murphy Highway).

All distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment or sexually oriented business use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any of the other designated uses set forth above.

- BE.** All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- CE.** No use shall be allowed to display for advertisement or other purposes any signs, placards, or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any explicit figures, words or symbols concerning specified anatomical areas or sexual activities.
- DE.** No use permitted under this ordinance shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- EF.** The proprietor, owner, or personnel of the establishment shall prohibit access to the premises by any person who is under 18 years of age.
- EG.** No use permitted under this Ordinance shall be allowed within a building containing other retail, consumer, or residential uses.
- GH.** All uses permitted under this ordinance shall comply with the off-street parking and loading requirements and regulations of the zoning ordinance.
- HI.** No use permitted under this ordinance shall be allowed to have any flashing lights or electronic message boards or other devices visible from outside the establishment.
- IJ.** No use permitted under this ordinance shall be allowed a freestanding accessory sign.
- JK.** No use permitted under this ordinance shall be established prior to submission and approval of a site plan by the planning board with input from the technical review committee and the building official.
- KL.** The site plan shall show all existing and proposed buildings, parking spaces, driveways, service areas and other open uses as well as the distances between the proposed use and the boundary of the nearest residential zone and the property line of all other abutting uses. The site plan shall also locate by

dimension the distance from the proposed use to any other use defined in B above.

~~LM.~~ All uses permitted under this ordinance shall comply fully with all licensing requirements of the town, including but not limited to all business and entertainment license requirements.

~~MM.~~ Any and all rubbish, boxes, containers, packages, trash, waste or other debris generated from the operation of such permitted adult entertainment business shall be disposed of in a manner which is discreet and invisible to passers-by. Furthermore, such debris shall be stored in a padlocked container until time of final disposal.

5.18.3.2 *Conditions.* In addition to the conditions stated in section 5.18.3.1 hereof, the permitting authority ZBR may impose reasonable conditions, safeguards and limitation on time or use of any special use permit granted under this ordinance and shall require that any such special use permit granted herein be personal to the applicant, shall not run with the land and shall expire upon the sale, conveyance or transfer of the ownership of the adult entertainment use or of the property on which it is located.

5.18.3.3 *Expiration.* A special use permit granted under this ordinance shall expire after a period of one calendar year from its date of issuance and shall be automatically renewable for successive one-year periods thereafter, provided that a written request is made to the ZBR and that no objection to said renewal is made and sustained by the ZBR based upon the public safety factors at the time that the original special use permit was granted pursuant to section 5.18.1 above. The request for renewal shall require public notice in the same manner as is provided for in section 5.18.3.4 hereafter.

5.18.3.4 *Public notice.* For the purposes of this ordinance, any application for a special use permit shall require public notice to all property owners within 200 feet of the perimeter of the applicant's site, as required by section 9.5 and 10.7.3 of the town zoning ordinance. It is the responsibility of the petitioner to provide any and all required notice.

5.18.3.5 *Application process.* The application shall, in addition to the application for a special use permit, include a site plan. The site plan shall be drawn to a scale of one-inch equals 40 feet and shall be a Class One survey.

The application shall first be reviewed by the technical review committee (TRC), which shall comment and make recommendations to the town planning board no later than 14 days prior to the date scheduled for the planning board meeting at which application is to be considered. When reviewed by the TRC, the report to the planning board shall state the reasons for a favorable or unfavorable recommendation.

The application shall be reviewed by the town planning board. The planning board shall review the site plan in accordance with the provisions of section 17.7 of the town zoning ordinance. Upon completion of review, the planning board shall submit a written recommendation, stating whether the application is consistent with the town comprehensive plan and the zoning ordinance, to the ZBR prior to their public hearing on any special use permit requested under this ordinance.

5.18.4 *Submission requirements.* The application for the special use permit shall provide and be signed by the name(s), address(es) and telephone number(s) of the legal owner(s) of the adult entertainment use, the legal owner(s) of the property where the adult entertainment use is to be located and the manager(s) of the adult entertainment use and shall include the following:

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1. A class 1 survey of the property prepared by a Rhode Island registered land surveyor indicating all existing structures and the proposed location of the adult entertainment establishment.
 2. Map showing all principal structures on properties within 200 feet of the adult entertainment establishment location.
 3. The plan must show minimum distances from all designated uses described in section 5.18.4.1 B[sic] of this ordinance.
 4. A current zoning certificate from the building official.

5.18.5 *Nonconforming uses.*

5.18.5.1 *Pre-existing adult entertainment establishments.* Pre-existing adult entertainment establishments shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted. Any expansion of a pre-existing adult entertainment establishment shall comply with the requirements of this ordinance. Any sale or change in ownership of the establishment shall require a new request for a special use permit under the terms of this ordinance.

5.18.5.2 *Rebuilding damaged or destroyed adult entertainment establishments.* Notwithstanding section 5.18.5.1, bona fide nonconforming adult entertainment establishments that are damaged or destroyed may be rebuilt without having to first obtain a special use permit. The type, height, and location of the adult entertainment establishment shall be of the same type, height and intensity as the original establishment approved. Building permits to rebuild the establishment shall comply with applicable building codes and shall be obtained within 180 days from the date the adult entertainment establishment is damaged or destroyed. If no permit is obtained, or if said permit expires, the adult entertainment establishment shall be deemed abandoned as specified in this ordinance.

5.18.5.3 *Abandoned establishments.* Any existing establishments defined under this ordinance that are not operated for a continuous period of 12 months shall be considered abandoned. The owner of the property that contained the abandoned establishment must remove any and all remaining material related to the establishment within 90 days of receipt of notice from the town notifying the owner of the abandonment. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the town of the transfer.

5.18.6 *Fees.* Every application for a special use permit under this ordinance shall be accompanied by a fee of \$500.00 to help defray the costs of processing the application.

5.18.7 *Severability.* The provisions of this ordinance are severable and, in the event that any provision of this ordinance is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

5.19 *Floodplain hazard areas.*

5.19.1 *Statement of purpose.* The purpose of this ordinance is to ensure public safety; minimize hazards to persons and property from flooding, to protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. The town elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

5.19.2 *Applicability.*

5.19.2.1 *Special flood hazard areas.* The special flood hazard areas are herein established as a floodplain overlay district. The district includes all special flood hazard areas within the town designated as zone A, AE and AO on the Kent County Flood Insurance Rate Map (FIRM) and digital FIRM issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Kent County FIRM that are wholly or partially within the town, community number 44007, are panel numbers 0106H, 0107H, 0108H, 0109H, 0116H, 0117H, 0126H, 0128H, and 0136H dated October 2, 2015. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Kent County Flood Insurance Study (FIS) report dated October 2, 2015. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the building official and in the office of the town planner.

5.19.2.2 *Administrative procedures.*

5.19.2.2.1 *Building permit.* All proposed construction or other development within a special flood hazard area shall require a permit.

The National Flood Insurance Program Special Flood Hazard Area requires permits for all projects that meet the definition of development, not just "building" projects. Development projects include any filling, grading, excavation, mining, drilling, storage of materials, temporary stream crossings. If the construction or other development within a Special Flood Hazard Area is not covered by a building permit, all other non-structural activities shall be permitted by either the Rhode Island Coastal Resources Management Council and/or the Rhode Island Department of Environmental Management as applicable. Therefore, if another State agency issues a permit, the local building official must have the opportunity for input and keep a copy of the respective permit in their files.

If the construction or other development within a Special Flood Hazard Area is not covered by a building or other approved permit application, a flood hazard development permit shall be required. The application for a flood hazard development permit shall be submitted to the Building Official and shall include:

- a. The name and address of the applicant;
- b. An address or a map indicating the location of the construction site;
- c. A site plan showing location of existing and proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
- d. A statement of the intended use of the structure;
- e. A statement as to the type of sewage system proposed;
- f. Specification of dimensions of the proposed structures;
- g. The specific datum used for all elevations;
- h. The elevation (in relation to mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above;
- i. Base flood elevation data for all new, relocated or substantially improved structures;

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- j. The elevation (in relation to mean sea level) to which the structure will be floodproofed;
 - k. The description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

Prior to the issuance of a building or development permit, the applicant shall submit evidence that all necessary permits and approvals have been received from all government agencies from which approval is required by federal or state law.

A permit fee (based on the cost of the construction) may be required to be paid to the town and a copy of a receipt for the same shall accompany the application. An additional fee may be charged if the code enforcement officer and/or board of appeals need the assistance of a professional engineer.

5.19.2.2.2 *Disclaimer of liability.* The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.

5.19.2.2.3 *Severability.* If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

5.19.2.2.4 *Abrogation and greater restriction.* This ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall control.

5.19.3 *Notification of watercourse alteration.* In a riverine situation, building official shall notify the following of any alteration or relocation of a watercourse:

Adjacent communities.

NFIP state coordinator
Rhode Island Emergency Management Agency
645 New London Avenue
Cranston, RI 02920

Risk Analysis Branch
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor Boston, MA 02110

The carrying capacity of the altered or relocated watercourse shall be maintained.

5.19.4 *Use regulations.*

5.19.4.1 *Reference to Existing Regulations.* The special flood hazard areas are established as a floodplain overlay district. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the following:

Rhode Island State Building Code (as established under G.L. § 23-27.3[G.L. 1956, ch. 23-27.3]);

Coastal Resources Management Program, Coastal Resource Management Council (G.L. § 46-23[G.L. 1956, ch. 46-23]);

Endangered Species Act, Department of Environmental Management (G.L. [1956,] § 20-1-2);

Freshwater Wetlands Act, Department of Environmental Management (G.L. [1956, § 2-1-18]);

Minimum Standards Related to Individual Sewage Disposal Systems, Department of Environmental Management (G.L. § 5-56, 5-56.1, 23-19.15, 23-24.3, 42-17.1 and 46-13.2[G.L. 1956, chs. 5-56, 5-56.1, 23-19.15, 23.24.3, 42-17.1, and 46-13.2]);

Water Quality Regulations, Department of Environmental Management (G.L. § 42-17.1, 42-17.6 and 46-12[G.L. 1956, chs. 42-17.1, 42-17.6 and 46-12]).

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

5.19.4.2 *Other use regulations.*

1. Within zone AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
2. Within zone AO on the FIRM, new and substantially improved residential structures shall have their lowest floor at least as high as the FIRM'S depth number above the highest adjacent grade and non-residential structures shall be elevated or flood-proofed above the highest adjacent grade to at least as high as the depth number on the FIRM. On FIRMs without a depth number for the AO zone, structures shall be elevated or flood-proofed to at least two feet above the highest adjacent grade.
3. In zones A and AE, along watercourses that have a regulatory floodway designated on the town FIRM or flood boundary and floodway maps encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
4. All subdivision proposals must be designed to assure that:
 - a.) Such proposals minimize flood damage;
 - b.) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c.) Adequate drainage is provided to reduce exposure to flood hazards.
5. Detached accessory structures in zones A, AE and AO (i.e., garages, sheds) do not have to meet the elevation or dry flood-proofing requirement if the following standards are met:
 - a.) The structure is no more than 100 square feet in size and has a value less than \$1,000.00.
 - b.) The structure has unfinished interiors and must not be used for human habitation. An apartment, office or other finished space over a detached garage is considered human habitation and would require the structure to be elevated.
 - c.) The structure is used solely for parking of vehicles and/or limited storage.
 - d.) The accessory must be wet floodproofed and designed to allow for the automatic entry and exit of flood water.

- e.) The accessory structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
 - f.) Service facilities such as electrical, mechanical and heating equipment must be elevated or floodproofed to or above the base flood elevation.
 - g.) The structure must not increase the flood levels in the floodway.
 - h.) The structure is not in a floodway.
 - i.) The structure is not used for hazardous materials.
6. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
 7. No person shall change from business/commercial to residential use of any structure located in a floodway of a Special Flood Hazard Area so as to result in a use or expansion that could increase the risk to the occupants.

5.19.4.3 *Base flood elevation and floodway data.*

1. *Floodway data.* In zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. *Base flood elevation data.* Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A zones.
3. *Base flood elevations in A zones.* In the absence of FEMA BFE data and floodway data, the best available federal, state, local, or other BFE or floodway data shall be used as the basis for elevating residential and non-residential structures to or above the base flood level and for floodproofing non-residential structures to or above the base flood level.

5.19.5 *Definitions.* Unless specifically defined below, words and phrases used in this ordinance pertain to floodplain management, have the same meaning as they have in common usage and to give this ordinance it's most reasonable application.

Accessory structure. A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding. A designated AO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard. See definition for *Special flood hazard area*.

Base flood. The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE). The elevation of the crest of the base flood or 100-year flood. The height, as established in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified), in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Building. See definition for *Structure*.

Cost. As related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to, the cost of materials (interior finishing elements, structural elements, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include cost of plans and specifications, survey costs, permit fees, costs to correct code violations subsequent to a violation notice, outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

Development. Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment.

Existing manufactured home park or manufactured home subdivision. A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured home[s] are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or existing manufactured home subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that administers the National Flood Insurance Program (NFIP).

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM). The official map of a community on which the Federal Emergency Federal Insurance Administrator has delineated both the special flood hazard areas and the insurance risk premium zones applicable to a community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood insurance study (FIS). The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The flood insurance rate maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

Flood proofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. For the purposes of these regulations, the term "regulatory floodway" is synonymous in meaning with the term "floodway."

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Highest adjacent grade (HAG). The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure. Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of any applicable non-elevation design requirements of section 5.20.3.

Manufactured home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or manufactured home subdivision. A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Market value. Market value is the price of a structure that a willing buyer and seller agree upon. This can be determined by an independent appraisal by a professional appraiser; the property's tax assessment, minus land value; the replacement cost minus depreciation of the structure; the structure's actual cash value.

New construction. Structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or manufactured home subdivision. A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including[,] at a minimum, the

installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by the community.

Recreational vehicle. A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway. See definition for *Floodway*.

Sheet flow area. See definition for *Area of shallow flooding*.

Special flood hazard area (SFHA). The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zoning A usually is refined into Zone A, AO, AH, A1-30, AE, A 99, AR, AR/A 1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE or V. For purpose of these regulations, the [phrase] "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard."

Start of construction. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

For insurance purposes, means:

1. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
2. A manufactured home ("a manufactured home," also known as a mobile home, is a structure; built on permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, [the term] "structure" does not mean recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial damage. Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, additions or other improvements to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include:

1. Any project to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance. A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

Violation. Failure of a structure or other development to be fully compliant with the community's floodplain management ordinance. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is resumed to be in violation until such time as that documentation is provided.

5.20 *Compassion center/licensed cultivator.*

5.20.1 *Definitions.*

- A. "Compassion center" means a not-for-profit person subject to the provisions of G.L. Chapter 6 of Title 7[G.L. 1956, Title 7, Chapter 6], registered under G.L. [1956,] § 21-28.6-12 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies or dispenses marijuana, and/or related supplies and educational materials, to patient cardholders and/to registered caregiver cardholder or authorized purchaser.
- B. "Licensed cultivator" means a person, as identified in G.L. [1956,] § 43-3-6 who has been licensed by the Department of Business Regulation to cultivate marijuana pursuant to G.L. [1956,] § 21-28.6-16.
- C. "Person" means any natural person, partnership, firm, joint stock company, corporation, any employee thereof or any other legal entity.

5.20.2 *Permitted zone.* Compassion center and license cultivator uses, as established under G.L. [1956,] § 21-28.6-1 et seq., shall be prohibited in all zoning districts in the town except in the commercial industrial districts (CI) of the town and only upon:

- (1) Approval by the town planning board (PB); and
- (2) The granting of a special use permit by the town zoning board of review (ZBR) in accordance with section 10 of this zoning code;

provided however, that a person who at the time of the effective date of this amendment shall have obtained approval from the West Warwick Fire Marshal and building official and is in receipt of a valid certificate of occupancy (C.O.) to maintain a cooperative cultivation, shall upon presentation to the West Warwick Planning Director verification of such approvals and certificate of occupancy (C.O.), shall be issued a letter of authorization to be filed with the West Warwick

Commented [KMS25]: Did Town voters pass retail marijuana?

zoning official and provided for submission to the department of business regulation pursuant to G.L. [1956,] § 21-28.6-16, approving the establishment as a licensed cultivator in the zoning district in which the cooperative cultivation exists any other provisions of this zoning code notwithstanding.

5.20.3 *Approval standards; specific and objective criteria for issuance of special use permit.*

Except as provided in 5.20.2(2) such PB and ZBR approvals shall not be granted unless each of the following standards has been met:

- A. The application pursuant to this section shall include and provide the legal name and address of the compassion center and/or of the licensed cultivator, a copy of the registration documents on file with the Secretary of State of the compassion center and/or the licensed cultivator, and the name, address and date of birth of each individual and/or the principal officer and board member or partner of the compassion center and/or the license and the address and tax assessors plat and lot number of the location of the compassion center or the license cultivator's grow.
- B. Location.
 - (1) All uses granted under this article shall not be located within:
 - (a) Five hundred feet from the nearest residential zoning district or lot line of a residence which is a nonconforming use in a non-residential zone in existence as of the effective date of the section; or
 - (b) One thousand feet from the nearest pre-existing house of worship, school, public or private, park, playground, youth center licensed day-care center or other locations where groups of minors regularly congregate; or
 - (c) No compassion center shall be located within 2,000 feet from any other compassion center.
 - (2) The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed compassion center or license cultivator's grow is to be located to the nearest boundary line of the residential zoning district or the nearest property line of any of the other designated uses set forth above.
- C. The proposed compassion center or license cultivator hours of operation shall be limited to the hours of 8:00 a.m. to 8:00 p.m.
- D. Lighting shall adequately illuminate the compassion center or freestanding license cultivator grow area, its immediate surrounding area, and accessory uses including storage areas, the parking lots, the front facade and any adjoining sidewalks and shall be hooded or oriented so as to deflect light away from adjacent properties.
- E. The proposed compassion center or license cultivator grow areas shall implement the appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and shall ensure that each location has an operational security alarm system as approved by the West Warwick Police Chief or his/her designee.
- F. All uses permitted under this article shall comply with the off-street parking requirements and regulations in section 5.9 of this zoning code.

G. ~~All signs for a use permitted under this article shall be approved by the PB at the hearing held pursuant to section 5.20.2, provided however, that a~~ No freestanding accessory sign shall be permitted at any such permitted use.

H. ~~C. That the requested use at the proposed location is sufficiently buffered by~~ fee of evergreen vegetation or opaque fencing along adjacent residentially-zoned lots. ~~in relation to any residential area in the immediate vicinity so as not to adversely affect said area.~~

I. ~~That the exterior appearance of the structure will be consistent with the exterior appearance of structures already constructed or under construction within the immediate neighborhood.~~

~~5.20.4. Findings to be made by PB and ZBR.~~

A. ~~That the requested use at the proposed location will not adversely affect the economic welfare of the nearby community.~~

B. ~~That the requested use at the proposed location will not adversely affect the use of any property used for school, public or private, park, playground, play field, youth center, licensed day care center, or other location where groups of minors regularly congregate existing on the effective date of this section.~~

C. ~~That the requested use at the proposed location is sufficiently buffered in relation to any residential area in the immediate vicinity so as not to adversely affect said area.~~

D. ~~That the exterior appearance of the structure will be consistent with the exterior appearance of structures already constructed or under construction within the immediate neighborhood, so as to prevent blight or deterioration or substantial diminishment or impairment of property values within the neighborhood.~~

Commented [KMS26]: See moved to above with S&OC; add X feet of buffer.

Commented [KMS27]: Ditto.

5.20.5 *Site plan.* No use permitted under the section shall be established prior to submission and approval of a site plan and building plan, prepared by the appropriate Rhode Island licensed individual in each discipline, by the PB with the technical advice of the technical review committee. The site plan shall 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 use and the boundary of the nearest residential zoning district and the property line of all other abutting uses including those uses stated in section 5.20.3.B.d(a), (b) and (c); provided, however, all site plans filed with any application to the PB or ZBR shall include only the exterior boundaries of the structure in which the compassion center and licensed cultivator grow area shall be located. For security purposes in the interior layout of the compassion center or license cultivator grow area shall not be required with any such application.

5.20.6 *Licensing.* All uses permitted under this section shall comply fully with all licensing requirements of the town and the laws of the state.

5.21. Green, renewable or alternative energy installations and facilities, (green project).

5.21.1 *Purpose.* The purpose of this section is to promote the creation of new green projects by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such green projects that address public safety, minimize impacts on scenic, natural and historic resources, are compatible with the general neighborhood in which they are located and are compatible with comprehensive plan of the town.

5.21.2 *Applicability.* The provisions of this section shall apply to construction, operation and/or repair of all green projects proposed to be constructed after the effective date of this section.

This section also applies to physical modifications that materially alter the type, configuration or size of these green projects or related equipment. All green projects shall be considered major land developments and approval of all green projects shall be in accordance with the provisions of subdivision regulations related to major land developments.

5.21.3 *Definitions.*

5.21.3.1 *Green, renewable or alternative energy installation and facilities (green project).* For purposes of this section 5.21[,] green, renewable or alternative energy installation and facilities (green project) [means] any installation or facility, excluding wind energy systems, at which electrical or any other type of energy is produced by a source other than fossil fuels, is renewable and which is safe for people and the environment.

5.21.3.2 *Major plan review.* Review by the town planning board in accordance with the town subdivision regulations to determine conformance with the town comprehensive plan and zoning ordinance.

5.21.4 *General requirements.*

5.21.4.1 *Location.* All green projects shall be located in a CI or BP zone.

5.21.4.2 *Required area.* Each green project shall be located on a parcel of land of a square footage of not less than shall be determined by the planning board as shall be required pursuant to engineering, scientific or such other expert advice received by the planning board for the efficient, safe and reasonably necessary for the operation of the green project.

5.21.4.3 *Compliance with laws, ordinances and regulations.* The construction and operation of all green projects shall be consistent with all applicable local, state and federal laws, ordinances, regulations and requirements, including but not limited to, all applicable safety, construction, electrical and communications requirements. All buildings and fixtures forming part of a green project shall be constructed and maintained in accordance with the Rhode Island Building Code.

5.21.4.4 *Site plan review.* All green projects shall receive final plan approval from the town planning board prior to issuance of any [a] building permit or construction, installation or modification of the green project as provided for herein.

5.21.4.5 *Building permit and building inspection.* No green project shall be constructed, installed or modified without first obtaining a building permit and being subject to such periodic inspections as shall be deemed necessary in the discretion of the building official.

5.21.4.6 *Fees and surety.* All applicable fees, including but not limited to a building permit fee, as provided for herein or in this Code shall be paid and all surety bonds as required by section 5.21.14.4 shall be posted, prior to the issuance of any building permits.

5.21.4.7 *Plans and surveys.* All plans submitted in any way related to construction, installation or modification of a green project shall be prepared, signed and stamped by a professional engineer licensed to practice in the state. All surveys submitted in any way related to the construction, installation or modification of a green project shall be Class I surveys prepared, signed and stamped by a professional surveyor licensed to practice in the state. All architecture or landscaping architecture submitted in any way related to the construction, installation or modification of a green project shall be prepared, signed and stamped by an architect or landscape architect licensed to practice in the state.

5.21.5 *Required documents.* Pursuant to the major plan review process, the applicant shall provide the following documents; provided, however, the planning board may in its uncontrolled discretion, waive any document requirement that that it deems appropriate:

5.21.5.1.A Class I survey site plan showing:

- (a) Property lines and all physical features for the project site;
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting and screening vegetation or structures.

5.21.5.2. Blueprints or drawings of the green project showing the proposed layout of all buildings and structures related to the green project.

5.21.5.3. Engineering documentation regarding all equipment, components or facilities to be used in the conversion of the source of energy into usable energy, electrical or otherwise.

5.21.5.4. A report from any outside technical or expert consultant, who shall be chosen by the planning board, which the planning board or technical review committee deems necessary to assist the planning board or technical review committee in the review of the application.

5.21.5.5. Name, address and contact information for proposed green project proponent.

5.21.5.6. Names, addresses, phone numbers and signatures of all persons with an interest of any type in the real estate on which the green project will be located.

5.21.5.7. Names, addresses, contact information and signatures of all agents and/or attorneys representing the green project proponents.

5.21.5.8. Documentation of actual or prospective access and control of the project site pursuant to the provisions of section 5.21.6.

5.21.5.9. An operation and maintenance plan pursuant to the provisions of section 5.21.7.

5.21.5.10 Proof of liability insurance in an amount approved by the planning board.

5.21.5.11. Description of financial surety that satisfies the requirements of section 5.21.14.4.

5.21.6 *Site control.* The green 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 green project.

5.21.7. *Operation and maintenance plan.* The green project proponent shall submit a plan for the operation and maintenance of the green project which shall include measures for maintaining safe access to the green project, as well as general procedures for operational maintenance of the green project.

5.21.8 *Utility notification.* No green project shall be constructed until evidence has been given to the planning board that national grid or any other utility company that operates the electrical grid or other related energy source where the green project is located has been informed of the green projects owner or operator's intent to install an energy producing facility and that national grid or any other related or energy utility company has granted any and all approvals the [that] may be required by law or otherwise. Any off-grid green project shall be exempt from this requirement.

5.21.9 *Dimensional requirements.* All green projects shall be subject to lot size requirements as provided in section 5.21.4.2 and all other dimensional requirements for the CI or BP zone in

which the green project is located as provided by section 5.4 standard dimensional regulations table.

5.21.10 *Appurtenant structures.* All appurtenant structures to the green project shall be subject to all zoning regulations for structures as provided for structures located in the CI or BP zone in which green project is located. 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 shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts as shall be determined by the planning board. Any required variances must be approved by the planning board as part of the major land development process.

5.21.11 *Design standards.*

5.21.11.1 *Lighting.* Lighting of all green projects shall comply with all requirements and regulations of the town zoning code and subdivision regulations. Lighting shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of all green projects shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

5.21.11.2 *Signage.* All signs on green project shall comply with the town zoning code. There shall be a sign identifying the owner and the operator of the green project and provide a 24-hour emergency contact phone number. There shall be no signs displaying any advertising except for reasonable identification of the manufacturer and operator of the green project.

5.21.11.3 *Utility connections.* Reasonable efforts, as determined by the planning board, shall be made to place all utility connections from the green project underground, depending on appropriate soil conditions, shape and topography of the site and any requirements of the utility provider. Electrical or other connections for utility interconnections may be above ground if required by the utility provider.

5.21.12 *Safety and environmental standards.*

5.21.12.1 *Emergency services.* The owner or operator of all green projects shall provide a copy of the project summary, schematic and site plan to the town fire chief, police chief and building official (hereinafter local officials). The owner and operator shall cooperate with local officials in developing an emergency response plan, which plan shall include, but not be limited to, means of emergency access to the green project for local officials. All means of shutting down the green project shall be clearly marked. The name, address and contact information for a person responsible for public inquires shall be on file at all times with local officials and the town clerk.

5.21.12.2 *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 all green projects and shall comply with all applicable laws, ordinances and regulations.

5.21.13 *Monitoring and maintenance.*

5.21.13.1 *Green project conditions.* The green project shall be maintained in good condition. Maintenance shall include, but not be limited to, painting, structural repairs and integrity of security measures. Site access shall be maintained as required by local officials and emergency medical services.

5.21.13.2 *Modifications.* All material modifications to the green project after issuance of the required building permit shall require either minor land development plan or major

land development plan approval by the planning board prior to being made. The town planner shall determine whether minor or major land development approval is required.

5.21.14. *Abandonment or decommissioning.*

5.21.14.1 *Removal requirements.* Any green project which has reached the end of its useful life or has been abandoned consistent with the provisions of section 5.21.14.2 shall be removed. The green project shall be removed within 180 days after the date of discontinued operations. Notice shall be given to the town planner and local officials by certified mail of the proposed date of discontinued operations and a detailed set of the removal plans. Decommissioning shall consist of:

- (1) Physical removal of all green project structures, equipment, security barriers and transmission or other utility lines, pipes or conduits of ever nature and kind from the site.
- (2) Disposal of all solid and hazardous waste in accordance with all federal, state and local laws, regulations and ordinances.
- (3) Stabilization or re-vegetation of the site as necessary to minimize erosion and in compliance with all state and local laws, regulations and ordinance and shall be approved by the town building official or his/her designee.

5.21.14.2 *Abandonment.* Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the green project shall be considered abandoned when it fails to operate for a continuous period of 365 days without prior approval of the planning board. The green project shall be removed within 90 days after the 365th day.

5.21.14.3 *Failure to remove.* If the owner and operator shall fail to remove the green project in accordance with the provisions of sections 5.21.14.1 and 5.21.14.2 the town may enter the property and physically remove the green project in the same manner as provided for in section 5.21.14.1. The cost of such removal shall be the responsibility of the owner and operator of the green project.

5.21.14.4 *Financial surety.* Prior to the issuance of any building permit for a green project a surety bond to cover the cost of removal in the event of removal and remediation by the town, in an amount determined to be reasonable during major land development plan review by the planning board shall be posted with the town. In no event shall the amount of the bond be more than 125 percent of the cost of removal and remediation as determined by the town engineer.

(Ord. of 3-5-1996, §§ 2—6; Res. No. 96-217, §§ 1, 2, 9-17-1996; Res. No. 99-18, § 1, 1-19-1999; Res. No. 99-207, § 1, 8-3-1999; Res. No. 2000-66, §§ 1—3, 4-4-2000; Res. No. 2000-220, 9-5-2000; Ord. No. 2000-24, 2-2-2001; Ord. No. 2001-18, 9-18-2001; Ord. No. 2004-11, 8-11-2004; Ord. No. 2004-12, 8-11-2004; Ord. No. 2005-4, 3-1-2005, eff. 3-23-2005; Ord. No. 2006-2, 4-24-2006, eff. 5-13-2006; Ord. No. 2006-3, 3-21-2006; Ord. No. 2006-5, 3-24-2006, eff. 4-12-2006; Ord. No. 2006-13, 7-11-2006, eff. 8-12-2006; Ord. No. 2006-14, 7-11-2006; Ord. No. 2006-28, 12-5-2006; Ord. No. 2007-2, 6-5-2007; Ord. No. 2007-3, 6-5-2007; Ord. No. 2007-4, 6-5-2007; Ord. No. 2007-15, 9-18-2007; Ord. No. 2007-21, 1-8-2008; Ord. No. 2007-22, 2-19-2008; Ord. No. 2007-23, 1-8-2008; Ord. No. 2008-1, 2-5-2008; Ord. No. 2008-4, 3-18-2008; Ord. No. 2008-5, 4-1-2008; Ord. No. 2008-14, 9-16-2008; Ord. No. 2008-19, 11-18-2008; Ord. No. 2008-20, 11-18-2008; Ord. No. 2009-09, 11-3-2009; Ord. No. 2009-13, 11-3-2009; Ord. No. 2010-5, 9-21-2010; Ord. No. 2010-6, 9-21-2010; Ord. No. 2010-7, 10-5-2010; Ord. No. 2011-13, 6-27-2011; Ord. No. 2011-20, 8-2-2011; Ord. No. 2011-23, 10-18-2011; Ord. No. 2012-3, 4-17-2012; Ord. No. 2013-2, 2-26-2013; Ord. No. 2013-3, 2-26-2013; Ord. No. 2013-49, 11-19-2013; Ord. No. 2013-52, 12-17-2013; Ord. No. 2014-1, 2-25-2014; Ord. No. 2015-4, 6-23-2015; Ord. No. 2015-7, 8-11-2015; Ord. No. 2015-13, 10-6-2015; Ord. No. 2015-14,

10-1-2015; Ord. No. 2017-3 , 2-28-2017; Ord. No. 2017-4 , 2-28-2017; Ord. No. 2017-25 , 10-3-2017; Ord. No. 2018-23 , 9-4-2018; Ord. No. 2018-24 , 9-4-2018; Ord. No. 2020-7 , 6-16-2020; Ord. No. 2021-7 , 6-15-2021)

Section 6. Substandard lots of record.

- 6.0 *[Generally.]* Except as required herein, a lot or group of contiguous lots having dimensions and/or area of lesser amounts than required in the table of standard dimension regulations for the district in which such lot is located, or which does not meet road frontage or other access requirements, may be considered as coming within the minimum lot requirements of same, provided that such lot or group of contiguous lots was shown on a recorded plat or on a recorded deed on the original effective date of this ordinance which rendered the lot(s) nonconforming and singly and separately owned and not adjoining any lot or land in the same ownership at any time subsequent to such date, may be used, or a building or structure may be erected on such lot for use, in accordance with all other applicable provisions of this ordinance, provided that proof of such separate ownership is submitted in the form of a certified abstract or chain of title showing that no contiguous property was owned by an owner of the lot(s) since the date of any previously applicable zoning ordinance.
- 6.1 *Merger with contiguous lots under common ownership.* It is the intent of this section to require merger of contiguous unimproved or improved substandard lots of record in the same ownership in order to create dimensionally conforming lots or to reduce the extent of dimensional nonconformance and to remove lots that fail to meet road frontage or other access requirements. Accordingly, except as provided in subparagraphs 6.1.1 through 6.1.3, if two or more contiguous lots having continuous frontage are under common ownership after August 10, 1965 (the effective date of the Zoning Ordinance) and one or more of these lots fails to meet the requirements of the Table of Standard Dimensional Regulations with regard to minimum lot area or minimum lot width, such lots shall be considered to be an individual lot of land for the purpose of this ordinance, and any lot that does not meet road frontage or access requirements that is contiguous with a lot having sufficient road frontage or access under common ownership, such lots shall be considered to be an individual lot of land for the purpose of this ordinance. Contiguous lots or parcels shall:
- a. Share common and abutting boundary lines;
 - b. Not be separated by a street or other property.

No single lot shall be used in violation of the requirements with regard to minimum lot area or minimum lot width, except as hereinafter provided:

- 6.1.1 Where the substandard lots of record are each occupied by principal structures, the lots are not to be considered to have merged.
- 6.1.2 Where the principal structures exist on multiple substandard lots of records, the owner may submit and the Town Planner may approve an Administrative Subdivision Plat pursuant to the Town of West Warwick Land Development and Subdivision Review Regulations which merges all or portions of the various lots into two or more undersized lots for the purpose of providing each principal structure with a separate and distinct lot; provided, however, no undeveloped substandard lot of record owned by the parties to the Administrative Subdivision shall be allowed to remain. In approving the Administrative Subdivision Plat as permitted in this subparagraph, the Town Planner may disregard any setback encroachments by preexisting buildings where the encroachments a.) arise through the creation of the new lots by the new subdivision plat or b.) are preexisting; provided no building is located on a property line. However, any new development which occurs on the lots after the date of approval of the Administrative Subdivision Plat shall be required to conform to the setback requirements of the Zoning Ordinance unless a Variance is granted pursuant to Section 9 of the Zoning Ordinance. This provision does not permit waiver of the requirement that all lots have frontage on a town-accepted public road.

6.1.3 Lots subject to 6.1.1 or 6.1.2 shall be considered as being subject to Section 6.2 of the Town of West Warwick Zoning Ordinance.

6.1.4 Merger by death. Notwithstanding the provisions of subsection 6.1 above, where a legally existing substandard lot comes into the same record ownership as one or more adjacent lots solely by reason of death of a previous record owner, the owner of said lots in the same record ownership shall have three years from the date of death of the previous owner causing the lots to be in the same ownership to reconvey the lots into single and separate ownership. Failure to reconvey the lots into single and separate ownership shall result in the automatic merger of substandard lots for purposes of this ordinance.

6.1.4 Merger prohibited for certain lots. Notwithstanding the requirements herein, the merger of lots shall not be required when the substandard lot of record has an area equal to or greater than the area of fifty percent (50%) of the lots within two hundred feet (200 ft) of the subject lot, as confirmed by the zoning enforcement officer.

6.2 *Residential use of nonconforming lots.* In R-10 and R-8 residential districts, a dwelling may be erected, enlarged or altered on a nonconforming lot or on two or more abutting nonconforming lots under common ownership. R-7.5 and R-6 residential districts are specifically excluded from the below listed provisions, except in those instances where involuntary destruction or damage occurs. The use of the provisions in R-10 and R-8 residential districts is subject to the following:

6.2.1 Where such lot or lots contain less than 75 percent of the required minimum lot area or have less than 70 feet of continuous frontage, it shall be necessary for the owner thereof to receive a variance from the zoning board in order to construct a new dwelling thereon. The zoning board shall stipulate the maximum size of the dwelling to be placed thereon and its location on said lot or lots and any other conditions it deems reasonably necessary to promote the purposes of this ordinance taking into consideration in its findings the availability of infrastructure, the character of the neighborhood, and consistency with the comprehensive plan.

6.2.2 Where such lot or lots contain a minimum of 75 percent of the lot area and have a minimum continuous frontage of at least 70 feet, a new dwelling may be constructed thereon, without approval from the zoning board being necessary; provided that such construction complies with the front and corner side yard, side yard, rear yard height and lot coverage requirements of the table of standard dimensional regulations for the district in which such lot is located.

6.2.3 Where there is an existing dwelling on a nonconforming lot prior to the original effective date of this ordinance or any amendment thereof, such dwelling may be enlarged or altered without approval from the zoning board being necessary; provided, that such alteration or enlargement complies with the front and corner side yard, side yard, rear yard, height and lot coverage requirements of the table of standard dimensional regulations for the district in which such lot is located.

6.3 *Nonresidential use of nonconforming lots.* In any nonresidential district, a structure may be erected, enlarged or altered on a nonconforming lot with at least 70 feet of frontage; provided, that such alteration, enlargement or construction complies with the front and corner side yard, side yard, rear yard, height and lot coverage requirements of the Table of Standard Dimensional Regulations for the district in which such lot is located; and further provided, that the requirements of subsection 6.1 are met, if applicable.

~~6.4 Merger by death. Notwithstanding the provisions of subsection 6.1 above, where a legally existing substandard lot comes into the same record ownership as one or more adjacent lots solely by reason of death of a previous record owner, the owner of said lots in the same record ownership shall have three years from the date of death of the previous owner causing the lots to be in the same ownership to reconvey the lots into single and separate ownership. Failure to reconvey the lots into single and separate ownership shall result in the automatic merger of substandard lots for purposes of this ordinance.~~

~~(Res. No. 99-19, § 1, 1-19-1999; Ord. No. 2001-19, 10-2-2001; Ord. No. 2010-5, 9-21-2010)~~ **MOVED TO ABOVE**

6.4 Proportionate reductions of dimensional regulations for substandard lots of record. Notwithstanding the failure of a single substandard lot of record or contiguous lots of record to meet the dimensional and /or quantitative requirements of this zoning ordinance, and/or road frontage or other access requirements applicable to the district as stated in the ordinance, a substandard lot of record shall not be required to seek any zoning relief based solely on the failure to meet minimum lot size requirements of the district in which such lot is located. The setback, frontage, and/or lot width requirements for a structure under this section shall be reduced and the maximum building coverage requirements shall be increased by the same proportion as the lot area of the substandard lot is to the minimum lot area requirement of the zoning district in which the lot is located. All proposals exceeding such reduced requirement shall proceed with a modification request or a dimensional variance request, whichever is applicable.

Section 7. Nonconforming development.

- 7.1 *Purpose.* Buildings, structures or land nonconforming by use and/or nonconforming by dimension as defined in section 7.3 herein are incompatible with and detrimental to permitted uses in the zoning districts in which they are located, cause disruption of the comprehensive land use pattern of the town, inhibit present and future development of nearby properties, and confer upon their owners and uses a position of unfair advantage. It is a fundamental principal of this chapter [ordinance] that nonconformities may be continued but shall not be increased and should be eventually abolished or reduced to conformity according to the fair interests of the parties involved. It is also intended that existing nonconformities shall not cause further departures from this ordinance for any properties.
- 7.2 *Application.* These provisions shall apply to all uses of land, buildings or structures or lots lawfully existing prior to the original effective date of this ordinance or of subsequent amendments, revisions or reenactments of this ordinance, which uses, buildings, structures or lots do not conform to the provisions of said original zoning ordinance or to such amendments, revisions or reenactments on their effective dates.
- 7.3 *Unlawful conditions.* No unlawful use, building, structure or lot existing at the original effective date of this ordinance or any subsequent amendment, revision or reenactment shall be deemed to be a nonconforming building, structure or use.
- 7.4 *Continuation.* The lawful uses of any building, structure, sign, premises, or land existing on the original effective date of the ordinance or as of any subsequent amendment of this ordinance may be continued although such use or structure or sign does not conform with the provision of this chapter [ordinance]. This shall not, however, be interpreted to prevent the regulation of nuisances or other conditions associated with their continuation.
- 7.5 *Lot size reduction exceptions.* Existing lots on which a primary structure is situated, whether conforming or non-conforming by dimension or use, may be further reduced in area even if such lot is smaller than is hereby required in the table of standard dimension regulations for each zoning district if such reduction is the result of a taking by eminent domain or by a conveyance for a public purpose.

(Res. No. 2000-66, § 4, 4-4-2000; Ord. No. 2006-19, 9-5-2006)

Section 8. Alteration to nonconforming development.

~~7.68-1~~ *Alteration of nonconforming use.* No addition, enlargement, expansion or intensification in the extent of the nonconforming use of premises or land shall be made. Except as provided herein, a nonconforming use, if changed, shall be changed to a permitted use and once changed to a permitted use shall not thereafter be changed to a nonconforming use. A nonconforming use of land or of a structure shall not otherwise be changed to another nonconforming use that is substantially different in nature and purpose ~~unless a Special Use Permit is granted by the zoning board which shall find that the proposed use will have a lesser undesirable impact upon the surrounding area than the preceding nonconforming use before granting same.~~

~~7.78-2~~ *Alteration of structure nonconforming by dimension.* No addition, enlargement, or expansion to a structure or building nonconforming by dimension shall be made except in conformance with the provisions of this chapter [ordinance]. This shall not apply to second story additions, providing that there is no projection into a required yard. A conforming use within a building or structure which is nonconforming by dimension may be changed to any other conforming use.

~~7.88-3~~ *Moving.* A building or structure nonconforming by use or dimension shall not be moved in whole or in part unless such building or structure is made to conform to all of the regulations of the district.

~~7.98-4~~ *Restoration of damaged structures.* A structure nonconforming by dimension which is involuntarily destroyed or damaged in any manner or from any cause may be repaired or rebuilt within the limits of the original dimensions and upon the original location of such structure without conforming to the provision of this ordinance, provided that a reasonable attempt has been made to comply with this ordinance.

~~7.108-5~~ *Abandonment.* If a nonconforming use is abandoned, it may not be reestablished. Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless said owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one year, the owner of such nonconforming use will be presumed to have abandoned such nonconforming use, unless such presumption is rebutted by presentation of sufficient evidence of intent not to abandon the use.

~~7.118-6~~ *Demolition.* If a building or structure nonconforming by dimension or a building or structure housing a nonconforming use, is demolished at the direction of the owner or other authorized parties, the building or structure or nonconforming use shall not be reestablished, and any future building, structure or use of the lot, or premises shall conform to the provisions of this ordinance.

~~7.128-7~~ *Maintenance and repair.* A structure nonconforming by dimension or a building or structure containing a nonconforming use shall be properly maintained in good repair as may be required by any other ordinance or statute, provided that any such work does not enlarge or extend any nonconforming use or otherwise increase any nonconformity.

~~7.138-8~~ *Prior building permits.* Any building permit issued prior to the effective date of this ordinance or any amendment thereto shall be activated within one year from the date of issuance or otherwise automatically become null and void. Any such permit for use which by virtue of the adoption of this ordinance or any amendment thereto would become nonconforming shall become null and void and shall not be renewed if not activated within one year from the date of original issuance.

~~7.148-9~~ *Destruction exceeding 50 percent of replacement cost.* Any structure containing a nonconforming use or located on a nonconforming lot, including a nonconforming structure which is damaged by fire, or natural disaster to the extent that the cost of reconstruction or repair exceeds 50 percent of the replacement cost of such structure as determined by the building inspector, shall not be reestablished as a nonconformance unless granted a variance by the zoning board. It is the intent of this subsection that the zoning board, if

granting such variance, shall require that any reestablishment of nonconformance conform to the terms of this ordinance to the greatest extent possible.

~~7.158-10~~ Destruction equal to or less than 50 percent of replacement cost. Any structure containing a nonconforming use or located on a nonconforming lot, including a nonconforming structure which is damaged by fire, or natural disaster to the extent that the cost of reconstruction or repair equals or is less than 50 percent of the replacement cost of such structure, as determined by the building inspector, shall be permitted to reestablish its nonconformance status; provided that reconstruction and repairs be fully completed within one year of the date of the destructive event and that such reestablishment of nonconformance shall not exceed the extent of nonconformance existing prior to the damage.

(Ord. No. 2021-7 , 6-15-2021)

~~7.16~~ Existence by variance or special use permit. A non-conforming building, structure, sign, or parcel of land or the use thereof, which exists by virtue of a [variance or special use permit]³ shall be considered a nonconforming use or dimension, as the case may be, and shall acquire the rights of this section.

Commented [KMS28]: This is discretionary. Municipalities may allow only for use variances, dimensional variances or special use permits or a combination of any.

Section 8. Unified Development Review.

~~8.1~~ Unified development review established. There shall be unified development review for the issuance of variances and special use permits for properties undergoing review by development plan review and/or land development or subdivision review.

~~8.2~~ Public hearing. All land development and subdivision applications, and development plan review applications that include requests for variances and/or special-use permits submitted pursuant to this section, shall require a public hearing that meets the requirements of [Section 9.3](#).

~~8.3~~ In granting requests for dimensional and use variances, the planning board shall be bound to the requirements of [Section 9.3](#) relative to entering evidence into the record in satisfaction of the applicable standards.

~~8.4~~ In reviewing requests for special use permits the planning board shall be bound to the conditions and procedures under which a special use permit may be issued and the criteria for the issuance of such permits, as found within the zoning ordinance at [Section 10](#), and shall be required to provide for the recording of findings of fact and written decisions.

~~8.5~~ Appeals. An appeal from any decision made pursuant to this section may be taken pursuant to R.I.G.L. § 45-23-71.

Section 9. Variances.

9.1 An application for relief from the literal requirements of the zoning ordinance because of hardship may be made by any person, group, agency, or corporation by filing with the ~~town clerk~~ zoning enforcement officer an application describing the request and supported by such data and evidence as may be required by the zoning board of review or by the terms of this ordinance. The ~~town clerk~~ zoning enforcement officer shall immediately transmit each application received fully completed to the zoning board of review and shall transmit a copy of each application to the planning board.

9.2 In granting a variance, the zoning board of review may apply special conditions as provided for in this ordinance as provided in R.I.G.L. § 45-24-43.

9.3 The zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance may request that the **planning board or staff town planner** report its findings and recommendations, including a statement on the general consistence of the application with the goals and purposes of the comprehensive plan of the town, in writing to the zoning board of review within 30 days of receipt of the application from that board. The zoning board shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice at least fourteen (14) days prior to the date of the hearing in a newspaper of local circulation in the town. Notice of hearing shall be sent by first-class mail to the applicant, and to at least all those who would require notice under RIGL §45-24-53; see Section 21 of Article III. The notice shall also include the street address of the subject property. **OPTIONAL: A supplemental notice, that an application for a variance is under consideration, shall be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing.** The same notice shall be posted in the town clerk's office and one other municipal building in the town and the the notice shall be posted on the town's home page of its website at least fourteen (14) days prior to the hearing. For any notice sent by first-class mail, the sender of the notice shall submit a notarized affidavit to attest to such mailing. The cost of notification shall be borne by the applicant. The zoning board of review may refer a copy of the application to any other town departments, such as the public works department or fire department, for findings and recommendations on matters related to public health, safety and welfare.

9.4 Twelve complete copies of the application must be submitted. The application shall include the following completed data in order to be placed on a hearing agenda:

9.4.1 A completed variance form indicating the variance sought and the grounds for the variance;

9.4.2 Names and addresses of all owners of the property within a 200-foot radius as measured from the perimeter of the subject property and as shown on the current real estate tax assessment records of the town;

9.4.2.1 If the subject property for which the variance is being requested lies within the BP business park zoning district, then the applicant shall also include the names and addresses of all owners of the property within said zoning district;

9.4.3 An accurate site map drawn at a scale of 1" = 20' (or 1" = 40') on a sheet(s) 24 inches by 36 inches showing the following for the subject property:

9.4.3.1 The shape, dimension, area and street number of the subject property;

9.4.3.2 The location, size and use of all existing and proposed conditions;

9.4.3.3 The zoning use district boundaries;

9.4.3.4 North arrow;

9.4.3.5 Title block in the lower right hand corner showing names(s) of the property owners; Assessor's plat and lot number of the subject property; date of plan; and a blank signature space for the Chairperson of the zoning board of review;

9.4.3.6 Parking areas and all existing and proposed impervious surfaces, groundcover, and topography to a two-foot contour (existing and proposed) if any change in lot coverage, change in topography or impervious surface is proposed; and

9.4.3.7 Such other information as may be necessary for the execution and enforcement of this chapter [section].

9.4.4 An accurate radius map drawn at a scale of 1" = 100' which includes:

9.4.4.1 A title block in the lower right hand corner showing name(s) of the property owner; assessor's plat and lot number of the subject property; and, date of plan;

9.4.4.2 For all property within a 200-foot radius as measured from the perimeter of the subject property;

The shape, dimension and area of the property;

The location of all zoning use district boundary lines; and

The street numbers and assessor's plat and lot numbers.

9.4.4.3 The general location, shape and use of all existing buildings and structures within a 200-foot radius of the subject property;

9.4.4.4 Such other information as may be necessary for the execution and enforcement of this ordinance;

9.4.4.5 The application fee as set by the town council, to cover the costs associated with review, hearing, notice, and recording fee.

9.5 Requests for dimensional and use variances submitted under a unified development review provision of this zoning ordinance shall be submitted as part of the subdivision or land-development application to the administrative officer of the planning board. All subdivision or land-development applications submitted under the unified development review provisions of this zoning ordinance shall have a public hearing, which shall meet the requirements of RIGL §45-23-50.1(c).

The zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance, may request that the planning board and/or staff report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan, in writing, to the zoning board of review within thirty (30) days of receipt of the application from that board.

When the application is reviewed by the zoning board, it shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first-class mail to the applicant, and to at least all those who would require notice under RIGL §45-24-53. The notice shall also include the street address of the subject property. [OPTIONAL: A supplemental notice, that an application for a variance is under consideration, shall be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing]. The cost of notification shall be borne by the applicant.

Variance procedure. The zoning board shall hold a public hearing on any application for variance in an expeditious manner after receipt in proper form of an application and shall give public notice thereof at least 14 days prior to the date of the hearing in a newspaper of general circulation in the town.

9.5.1 Notification, including the date, time, place, purpose of the hearing, and street address of the subject property shall:

9.5.1.1 Be sent by first class mail to the applicant.

9.5.1.2 Be sent registered mail, return receipt requested, to all owners of real property whose property is located at or within a 200-foot radius of the perimeter of the subject area, as measured from the corners of the subject area; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town.

~~9.5.1.3 Be sent by first class mail to the city or town council of any city or town which is located at or within 200 feet of the perimeter of the subject area.~~

~~9.5.1.4 Be sent first class mail to the city or town council of any city or town where there is a public or quasi-public water source or private water source that is used or is suitable for use as a public water source, at or within 2,000 feet of the subject property, regardless of the municipal boundaries.~~

~~9.5.1.5 Be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or watersheds and parcels of land within 2,000 feet thereof.~~

~~9.5.1.6 If the subject property for which the variance is being requested lies within the BP business park zoning district, then the notification is to[sic] also be sent registered or certified mail to all owners of real property whose property is located within the BP business park zoning district; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town.~~

~~9.5.1.7 The cost of notification shall be borne by the applicant.~~

Commented [KMS29]: Moved to Procedural Section above.

9.6 Determination. Any party may appear at the hearing in person or by attorney. The hearing held by the zoning board of review is a public meeting and all decisions reached by the zoning board of review shall be made and voted upon at a public meeting. The board shall hear all evidence on the variance request and consider the written reports of town staff when reaching a decision on the findings required.

9.7 Implementation, appeal.

9.7.1 The town clerk, acting in capacity as clerk for the zoning board of review, shall be responsible for the recording in the land evidence records of the town of West Warwick, all decisions on variance applications. The decision shall also be posted in a location visible to the public in the town Hall for a period of 20 days following the recording of the decision.

9.7.2 Any variance granted by the zoning board of review shall expire one year from the date of issuance, unless the applicant shall within that one-year period exercise the right granted by the decision. The board may upon application filed within the one-year period and for good cause shown, extend the limitation for one additional one-year period. The application for an extension need not be advertised.

9.7.3 No application for a variance involving the same parcel and same request, which was denied or withdrawn with prejudice may be resubmitted for a variance for a period of one-year from the date of such denial or withdrawal with prejudice, unless the zoning board of review determines there is substantial change of circumstances, which justifies a variance application.

9.7.4 If the board allows an amendment to an original application which changes the terms under which the application as advertised or which alters the basic facts upon which the application was presented, the amended application shall be readvertised and referred to the planning board.

9.7.5 Any aggrieved party may appeal decisions of the zoning board of review to the superior court for Kent County.

9.7.6 All work approved by the issuance of a variance shall be carried out only in conformity with the application and any conditions, modifications and restrictions set by the zoning board of review. Minor changes, not exceeding six inches, shall be submitted to the building inspector for approval. Changes exceeding six inches shall be resubmitted to the zoning board of review in the form of a new application. Any work carried out in violation of this provision shall be ordered halted and fully removed.

9.8 Findings required. In granting a variance, the zoning board of review, or the planning board under unified development review as appropriate, shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

9.8.1 That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disability addressed in R.I.G.L. § 45-24-30(a)(16);

9.8.2 That the hardship is not the result of any prior action of the applicant ~~and does not result primarily from the desire of the applicant to realize greater financial gain;~~

9.8.3 That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based, ~~and~~

~~9.8.4 That the relief to be granted is the least relief necessary.~~

9.9 In granting a variance, ~~the~~ zoning board of review, or the planning board under unified development review as appropriate, shall, in addition to the above standards, require that evidence be entered into the record of the proceedings ~~showing~~ that:

9.9.1 In granting a use variance, ~~the~~ subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

9.9.2 In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted ~~shall amount~~ to more than a mere inconvenience, ~~which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property meaning that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted.~~ The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief. The zoning board of review, or the planning board under unified development review has the power to grant dimensional variances where the use is permitted by special use permit.

9.10 Decisions shall be recorded and filed in the office of the zoning board of review within 30 working days from the date when the decision was rendered and shall be a public record.

(Ord. of 3-5-1996, § 7; Ord. No. 2007-5, 6-5-2007; Ord. No. 2008-17, 10-7-2008; Ord. No. 2012-4, 6-19-2012; Ord. No. 2013-43, 8-20-2013; Ord. No. 2017-23, 10-3-2017; Ord. No. 2019-13, 11-19-2019)

Section 10. Special use permits.

10.1 The zoning board of review is designated the approval authority for special use permits.

10.2 In granting a special use permit, the ~~zoning board of review~~ permitting authority shall require that evidence to the satisfaction of the standards provided for the use as provided in this Ordinance ~~following standards~~ be entered into the record of the proceedings:

~~10.2.1 The special use permit shall:~~

~~10.2.1.1 Be compatible with neighboring land uses;~~

~~10.2.2.2 Not create a nuisance in the neighborhood;~~

~~10.2.2.3 Not hinder the future development of the town;~~

~~10.2.2.4 — Conform to all applicable sections of this ordinance; and~~

~~10.2.2.5 — Be in conformance with the purposes and intent of the West Warwick comprehensive plan and applicable standards of this ordinance.~~

10.3 In granting a special use permit, the zoning board of review may apply such special conditions as provided in ~~this ordinance~~ RIGL § 45-24-43.

10.4 ~~Reserved. Intent and eligibility. Within the town generally and in particular some zoning districts, certain uses are specified in the table of use regulations as allowed by special use permit only. These uses are of a nature requiring review, in accordance with the General Laws of Rhode Island, to determine whether they should be permitted in specific locations; if they meet special conditions and safeguards; and what additional conditions may be required if permission is granted.~~

10.5 Application process. Applications for special use permits shall be filed with the town clerk acting in capacity as clerk for the zoning board of review. Twelve complete copies of the application must be submitted. The application shall include the following completed data in order to be placed on a hearing agenda:

10.5.1 A completed special use permit form indicating the special use permit sought, the grounds for the permit, and information on the scale and size of the proposed use as applicable.

10.5.2 ~~Names and addresses of all owners of property within a 200-foot radius as measured from the perimeter of the subject property, and as shown on the current real estate tax assessment records of the town.~~

~~10.5.2.1 — If the subject property for which the special use permit is being requested lies within the BP business park zoning district, then the applicant shall also include the names and addresses of all owners of property within said zoning district, and as shown on the current real estate tax assessment records of the town.~~

~~10.5.3 — An accurate site map drawn at a scale of one inch equals 20 feet (or one inch equals 40 feet) on a sheet(s) 24 by 36 inches showing for the subject property the same information as is required by subsections 9.4.3 and 9.4.4.~~

~~10.5.4 — Such other information as may be necessary for the execution and enforcement of this chapter [section].~~

~~10.5.5 — The application fee as set by the town council, to cover the costs associated with review, hearing, notice, and recording fee.~~

Requests for dimensional and use variances submitted under a unified development review provision of this zoning ordinance shall be submitted as part of the subdivision or land-development application to the administrative officer of the planning board. All subdivision or land-development applications submitted under the unified development review provisions of this zoning ordinance shall have a public hearing, which shall meet the requirements of RIGL §45-23-50.1(c).

The zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance, may request that the planning board and/or staff report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan, in writing, to the zoning board of review within thirty (30) days of receipt of the application from that board.

When the application is reviewed by the zoning board, it shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first-class mail to the applicant, and to at least all those who would

require notice under RIGL §45-24-53. The notice shall also include the street address of the subject property. [OPTIONAL: A supplemental notice, that an application for a variance is under consideration, shall be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing]. The cost of notification shall be borne by the applicant.

10.6 An applicant may apply for, and be issued, a dimensional variance in conjunction with a special use permit. If the special use could not exist without the dimensional variance, the zoning board of review shall consider the special use permit and the dimensional variance together to determine if the granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.

10.7 Review process.

10.7.1 Reserved.

10.7.2 Upon receipt of a special use permit application, fully completed, in proper form, the town clerk shall refer a copy to the technical review committee for findings and recommendations ~~on matters related to public safety, health and welfare.~~

10.7.3 The ~~permitting authority board~~ shall in an expeditious manner fix a date and time for a public hearing on a special use permit application. Notification including the date, time, place, purpose of the hearing, and street address of the subject property shall:

10.7.3.1 Be published at least 14 days prior to the date of such hearing in a newspaper of general circulation in the city;

10.7.3.2 Be sent by first class mail to the applicant;

10.7.3.3 Be sent registered mail, return receipt requested, by the applicant, to all owners of real property whose property is located at or within a 200-foot radius of the perimeter of the subject area, as measured from the corners of the subject area; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town;

10.7.3.4 Be sent by first class mail, by the applicant, to the city or town council of any city or town which is located at or within 200 feet of the perimeter of the subject area;

10.7.3.5 Be sent first class mail, by the applicant, to the city or town council of any city or town where there is a public or quasi-public water source or private water source that is used or is suitable for use as a public water source, at or within 2,000 feet of the subject property, regardless of the municipal boundaries;

10.7.3.6 Be sent, by the applicant, to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as public water source and that is at or within 2,000 feet of the subject property; provided, however, that the governing body of any state or municipal water department or agency, special water district or private water company has filed with the building inspector in the town a map survey which shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land at or within 2,000 feet thereof;

10.7.3.7 If the subject property for which the special use permit is being requested lies within the BP business park zoning district, then the notification is to[sic] also be sent registered or certified mail, by the applicant, to all owners of real property whose property is located within the BP business park zoning district; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town;

10.7.3.8 The cost of notification shall be borne by the applicant.

10.8 Determination.

10.8.1 Any party may appear at the hearing in person, or by attorney. The hearing held by the zoning board of review is a public meeting and all decisions reached by the board shall be made and voted upon at public meeting. The board shall hear all evidence on the special use permit request; and consider the written reports of town staff when reaching a decision on the findings required.

10.8.2 Decisions shall be recorded and filed in the office of the zoning board of review within 30 working days from the date when the decision was rendered and shall be a public record.

10.9 Implementation, appeal.

10.9.1 The town clerk, acting in capacity as clerk for the zoning board of review, shall be responsible for the recording in the land evidence records of the town of West Warwick, decisions on special use permits. The decision shall also be posted in a location visible to the public in town hall for a period of 20 days following the recording of the decision.

10.9.2 Any special use permit granted by the zoning board of review shall expire within one year from the date of its issuance, unless the applicant shall within that one-year period exercise the right granted by the decision. The board may upon application filed within the one-year period and for good cause shown, extend the limitation for one additional one-year period. The application for an extension need not be advertised.

10.9.3 No application for special use permit involving the same parcel and same request, which was denied or withdrawn with prejudice, may be resubmitted for a special use permit for a period of one-year from the date of such denial or withdrawal with prejudice, unless the zoning board of review determines there is a substantial change of circumstances, which justifies a special use permit application.

10.9.4 If the board allows an amendment to an original application which changes the terms under which the application was advertised or which alters the basic facts upon which the application was presented, the amended application shall be readvertised and referred to the planning board.

10.9.5 Any aggrieved party may appeal decisions of the zoning board of review to the superior court for Kent County.

10.9.6 All work approved by the issuance of a special use permit shall be carried out only in conformity with the application and any conditions, modifications and restrictions set by the zoning board of review. Minor changes, not exceeding six inches, shall be submitted to the building inspector for approval. Changes exceeding six inches shall be resubmitted to the zoning board of review in the form of a new application. Any work carried out in violation of this provision shall be ordered halted and fully removed.

(Ord. of 3-5-1996, § 8; Ord. No. 2007-5, 6-5-2007; Ord. No. 2008-17, 10-7-2008; Ord. No. 2012-4, 6-19-2012; Ord. No. 2013-43, 8-20-2013; Ord. No. 2017-23, 10-3-2017; Ord. No. 2019-13, 11-19-2019)

Section 11. Special conditions.

11.1 In making any determination upon which it is required to pass after public hearing under the zoning ordinance, the zoning board of review or planning board may apply such special conditions that may in the opinion of the board, be required to promote the intent and purposes of the West Warwick comprehensive plan and the zoning ordinance. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Such special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include but are not limited to provisions for:

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- 11.1.1 Minimizing adverse impacts of the development upon other land, including the type, intensity, design and performance of activities;
 - 11.1.2 Controlling the sequence of development, including when it must be commenced and completed;
 - 11.1.3 Controlling the duration of use or development and the time within which any temporary structure must be removed;
 - 11.1.4 Assuring satisfactory installation and maintenance of required public improvements;
 - 11.1.5 Designating the exact location and nature of development; and
 - 11.1.6 Establishing detailed records by submission of drawings, maps, plats, or specifications.

Section 12. Vested rights.

- 12.1 Any application for development under this ordinance including an application for a special use permit, variance, land development project, or development plan review, shall be considered vested when the submitted application is deemed to be substantially complete by the proper administrator and/or official(s) designated to receive such applications. To be considered substantially complete, an application shall include all required forms, plans, supporting documentation, and required fees. Any application considered by the town under the provisions of this section shall be reviewed according to the regulations applicable in this ordinance in force at the time the application was deemed substantially complete.
- 12.2 If an application for development under the provisions of this section is approved, the applicant shall initiate and substantially complete development of the property within the time limit established for each of these actions in the appropriate section of this ordinance.
- 12.3 Failure to initiate development of the property prior to the time limit established at approval, shall render the approval null and void. Any development of the property proposed after the lapse of the time limit established at approval, shall require a resubmission of development plans by the applicant subject to the regulations in the appropriate section of this ordinance.

Section 13. Publication and availability of the zoning ordinance and zoning map.

- 13.1 Printed copies of this ordinance and zoning map of the town shall be available to the general public and shall be revised to include all amendments. A reasonable charge shall be made for copies to reflect printing and distribution costs. The town clerk shall be responsible for providing these copies and collecting fees.
- 13.2 Upon publication of a zoning ordinance and zoning map and any amendments thereto, the town clerk shall send a copy, without charge, to the associate director of the division of planning of the department of administration of the State of Rhode Island and the state law library.

ARTICLE II. SPECIAL PROVISIONS

Section 14. Modification.

~~14.1 The building inspector is authorized to issue modifications or adjustments from the literal dimensional requirements of the zoning ordinance in the instance of the construction, alteration, or structural modification of a structure of record in the form of modification permits. The maximum percent allowed for a modification shall not exceed 25 percent of any of the dimensional requirements specified below. A modification shall not permit moving of lot lines. Vacant lots shall not be eligible for the application of a modification.~~

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14.2 [Minimum dimension schedule.]

MINIMUM DIMENSION UPON MODIFICATION

(X—No Modification Permitted)

Dimension (Feet)	District					
	R-10	R-8	R-7.5	R-6	B	CI
Minima						
Yards						
Front	25	20	15	15	X	40
Principal bldg.:						
Interior side	X	X	X	X	X	15
Corner side	25	20	15	15	X	40
Rear	25	20	X	X	X	40
Accessory bldg.:						
Interior side	X	X	X	X	X	15
Corner side	15	15	15	15	15	40
Rear side	X	X	X	X	X	40
Maxima						
Height	35	30	40	40	X	X
Lot coverage (%)	25	30	30	35	X	35

14.3 Within ten days of receipt of a request for a modification, the building inspector shall make a decision as to the suitability of the requested modification based on the following determinations:

14.3.1 The modification requested is reasonably necessary for the full enjoyment of the permitted use;

14.3.2 If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

14.3.3 The modification requested is in harmony with the purposes and intent of the comprehensive plan and zoning ordinance; and

14.3.4 The modification requested does not require a variance of a flood hazard requirement.

14.4 Upon an affirmative determination, the building inspector shall notify, by registered or certified mail, all property owners abutting the property, which is the subject of the modification request, and shall indicate the street address of the subject property in the notice and shall publish in a newspaper of general circulation within the town that the modification will be granted unless written objection is received within 30 days of the public notice. If written objection is received within 30 days, the request for a modification shall be denied. In that case the changes requested will be considered a request for a variance and may only be issued by the zoning board of review following the standard procedures for variances. If no written objections are received within 30 days, the building inspector shall grant the modification. The building inspector may apply such special conditions to the permit as may, in the opinion of the inspector, be required to conform to the intent and purposes of the zoning ordinance. The building inspector shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

14.1 The zoning officer is authorized to grant modification permits of up to and including fifteen percent (15%) of the literal dimensional requirements of this ordinance as follows:

- a. Within ten (10) days of the receipt of a request for a modification, the zoning enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:
 - (1) The modification is reasonably necessary for the full enjoyment of the permitted use;
 - (2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;
 - (3) The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations;
 - (4) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands.
- b. Upon an affirmative determination, in the case of a modification of five percent (5%) or less, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements. In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received within fourteen (14) days of the public notice. If written objection is received within fourteen (14) days, the request for modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for such variances, including notice requirements provided for under this chapter. If no written objections are received within fourteen (14) days, the zoning enforcement officer shall grant the modification.
- c. The zoning enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be requested to conform to the intent and purposes of the zoning ordinance.
- d. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received.
- e. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

Section 15. ~~Reserved.~~

~~Section 16.~~ Pre-application conference.

~~156.1~~**1 Applicability.** Applicants for multifamily residential development, residential community facilities, general community facilities, and all proposed principal uses in nonresidential districts shall request a pre-application conference with the planning board, or its designated representative(s). A pre-application conference is intended to allow the designated agency to:

- 156.1.1 Acquaint the applicant with the comprehensive plan and any specific plans that apply to the parcel, as well as the zoning and other ordinances that affect the proposed development;
- 156.1.2 Suggest improvements to the proposed design on the basis of a review of the sketch plan;
- 156.1.3 Advise the applicant to consult appropriate authorities on the character and placement of the public utility services; and
- 156.1.4 Help the applicant to understand the steps to be taken to receive approval.

Section 16. Land Development Projects.

16.1 Land Development Projects established.

- 16.1.1. Review of land development projects, as defined by RIGL § 45-23-32 are required as provided herein.
- 16.1.2 Procedures and requirements for land development projects are provided in the Regulations.

Section 17. Development plan review.

17.1 Development plan review established.

- 17.1.1 There shall be development plan review for uses that are permitted by right under the zoning ordinance.
- 17.1.2 Permitting authority. The permitting authority shall be [administrative officer, technical review committee, planning board]
- 17.1.3 Specific and objective guidelines. Design of all projects shall be consistent with the provisions of the Regulations.
- 17.1.4 Waivers. The authorized [permitting authority] may grant waivers of design standards as set forth in the Regulations.
- 17.1.5 Appeal. A rejection of the decision shall be an appealable decision pursuant to RIGL §45-23-71.

Commented [KMS30]: The specific and objective guidelines are required to be in the zoning ordinance. The municipality should discuss with their solicitor if a reference can be made to the regulations for those guidelines.

Commented [KMS31]: It is not clear whether the legislation relates to waivers or the design standards to be set forth in both the local regulations and zoning ordinance. The municipality should discuss this with their solicitor.

~~17.1 Purpose. The purpose of the development plan review process is to establish procedures pursuant to the permitting process which will enable the town to perform a comprehensive review of certain proposed developments. The development plan review (DPR) procedure shall not be used to deny an applicant a permitted use of the property as established by the zoning ordinance. The development plan review requirements are designed to assure safe, orderly and harmonious development of property in a manner that shall:~~

- ~~17.1.1 Provide suitable safeguard and consideration for land use and site and architectural design that is compatible with adjacent districts and uses, and to avoid adverse impacts on the public health, safety and welfare of the Town of West Warwick;~~
- ~~17.1.2 Permit development to an extent commensurate with the availability and capacity of public facilities and services and promote the safe circulation of traffic throughout the town;~~
- ~~17.1.3 Encourage the provision of open space and public access and give due consideration to the quality and design of landscaping;~~

~~17.1.4 — Encourage adequate consideration for the proper control of erosion, surface and subsurface drainage and pollution;~~

~~17.1.5 — Facilitate orderly and harmonious site development including safe and convenient provision and design of egress and ingress, off street parking, truck loading, internal circulation, emergency access, refuse disposal, outdoor storage, signage, and lighting;~~

~~17.1.6 — Permit the development of business, commercial and industrial uses in designated districts, subject to the standards delineated in the applicable sections of this ordinance and the findings of the development plan review procedure;~~

~~17.1.7 — Give developers reasonable assurance of ultimate approval before incurring the cost of final design and engineering while providing assurances to the town and the general public that the approved project will meet the approved objectives and standards;~~

~~17.1.8 — Preserve natural, historical, and cultural resources to the maximum extent feasible;~~

~~17.1.9 — Protect appropriate vistas and environmental qualities of the town;~~

~~17.1.10 — Assure consideration of the various elements of the comprehensive plan of the town.~~

~~17.2 Sequence. No permit to build, alter or expand any of the uses requiring development plan review as outlined below shall be issued by the building official, until final approval in accordance with this section has been received. The applicant is responsible for obtaining a building permit as is required by the town ordinances. The applicant must submit all plans and documents normally required for a building permit. The approved final plan shall be part of this submission. The development plan review process will not preclude the need to meet other town requirements as they may apply to a particular development. No other town permit requirements, or any necessity to gain approval by another legal jurisdiction shall be deemed to be authority by virtue of the development plan approval under this ordinance. No prior issuance of approval by another legal jurisdiction shall have any influence whatsoever over the development plan review required by this ordinance.~~

~~17.3 Coordination with the zoning board of review. The development plan review process shall take place prior to consideration of a variance and/or special use permit. The zoning board of review shall not consider an application for a variance and/or special use permit until the applicant has received a decision from the planning board, if required in accordance with these regulations. In the event a variance and/or a special use permit is granted by the zoning board of review, its decision shall not impinge upon the ability of the planning board to establish and enforce all standards and objectives of development plan review. The decision of the planning board shall be considered by the zoning board of review in its decision of the matter before it. In the event of a variance, the report of the planning board is only advisory to the zoning board of review.~~

~~17.4 The development plan review process is intended to complement information provided to the zoning board of review in its deliberations and should not require further plan preparation therewith, except as necessary to meet legal requirements set forth under state statute or the town zoning ordinance for the consideration of any special use permit and/or variance.~~

~~17.5 Uses requiring development plan review. Any application for a building permit for any use, building or structure, shall require development plan review. Development plan review is intended to ensure that all proposed development is in compliance with the applicable provisions of the Town of West Warwick Zoning Ordinance and that there shall be no adverse impact on the public health, safety and welfare of the Town of West Warwick. No building permit shall be issued by the building official except upon the authorization of and in conformity with plans approved through the development plan review process.~~

~~There are hereby established two classifications of development plan review (DPR):~~

Commented [KMS32]: This section is moved to Regulations.

~~17.5.1 — *Administrative development plan review.* Administrative development plan review shall be conducted by the building official in consultation with the town planner as part of the building permit review process and shall be necessary for all uses requiring a building permit or parking areas as described in section 17.7. A building permit shall be issued upon a finding by the building official in consultation with the town planner that a development is in full compliance with all applicable provisions of the zoning ordinance and that there will be no adverse impact on the public health, safety and welfare of the Town of West Warwick. A finding of noncompliance with applicable zoning and/or a determination of adverse impact will result in the development being referred to the planning board and/or the zoning board of review for the required development plan approval and/or zoning approvals.~~

~~17.5.2 — *Planning board development plan review.* A planning board development plan review shall be required for any nonresidential development project requiring a building permit that does not fully comply with all applicable zoning regulations and/or has been determined to potentially have an adverse impact on the public health, safety and welfare of the Town of West Warwick.~~

~~Planning board development plan review shall also be required for any multi-family development, mixed use development, for the establishment of any residential mobile home park (RMH), any "major development" in a village design control district (VDCD) and/or the arctic design control district (ADCD), for the establishment of any telecommunications tower, wind energy conversion system (WECS), adult entertainment use, compassion center, licensed cultivator, green, renewable or alternative energy installations and facilities (green project) and/or any development requiring a zone change by the town council including but not limited to the establishment of a mill reuse zone.~~

~~17.6 — Reserved.~~

~~17.7 — *Guidelines for planning board development plan review.* The planning board shall review site plans and supporting documentation and shall conduct development plan review within 60 days of receiving a fully completed application (including appropriate revisions and conditions). No more than two extensions of 30 days may be granted by the planning board for reasons of insufficient data previously requested; indication that development plan standards may not be met unless the applicant amends the plan; lack of quorum; request by the applicant for good and sufficient reason and agreement thereto by the planning board. The applicant shall prove to the board that the following standards will be met:~~

~~17.7.1 — That the design of the proposed development will be consistent with the goals of the West Warwick comprehensive plan and will implement the purposes of development plan review.~~

~~17.7.2 — That erosion will be adequately controlled during and after construction and will not adversely affect adjacent or neighboring property or public facilities and services.~~

~~17.7.3 — That provisions have been made for stormwater and drainage facilities, and that increased runoff due to development on the site will not exceed that runoff that would occur under vacant land conditions (zero net increase).~~

~~17.7.4 — That the movement of vehicular and pedestrian traffic within the site and in relation to the access street will be safe and convenient and adequate provision has been made for snow removal.~~

~~17.7.5 — That all utilities, infrastructure, streets, roadways, sidewalks, walkways and parking area improvements will be provided for the development in a manner meeting the applicable requirements and standards of the town. Construction standards for utilities and improvements serving the public, shall comply with the requirements of the department of public works.~~

~~17.7.6 — That the regulation standards as set forth in section 5.8 be complied with in all requests.~~

~~17.7.7 — That the proposed development and all uses and structures therein, shall comply in all respects with this ordinance, and the ordinance of soil erosion and sediment control, chapter 15.5 of the Code.~~

~~17.8 Application requirements.~~

~~17.8.1 — *Generally.* The applicant for planning board development plan review shall file with the planning board ten copies each of the application and the preliminary site plan. The application and plans must be accompanied by the required filing fee and any supporting documentation as determined in the pre-application conference no less than three weeks prior to a regularly scheduled meeting. The application shall be accompanied by a list of the names and addresses of all abutters as of 30 days prior to the date and time of filing.~~

~~17.8.2 — *Fee.* The filing fee as set by resolution of the town council shall accompany the application.~~

~~17.8.3 — *Required contents of the preliminary development plan.*~~

~~17.8.3.1 — All plans shall be drawn to a scale of one inch equals 40 feet. All distances shall be in feet and decimals of a foot and all bearings shall be given to the nearest ten seconds. Plan and survey standards shall meet the criteria set in the handbook entitled "Procedural and Technical Standards for the Practice of Land Surveying in the State of Rhode Island and Providence Plantations," effective April 1, 1994, as amended. Measurement standards for surveys shall be class I surveys.~~

~~17.8.3.2 — A radius map containing the requirements of subsection 9.4.4.~~

~~17.8.3.3 — North arrow, scale of map, assessor's plat information (plat and lot), and name address, license number and seal and signature of the person preparing the plan.~~

~~17.8.3.4 — Date of plan. All revisions must be noted and dated.~~

~~17.8.3.5 — Name of the proposed development, and the name and address of both the record owner and applicant. (If the owner of record is a corporation, the name and address of the president and secretary shall be submitted with the application).~~

~~17.8.3.6 — The assessor's plat information (plat and lot), and names of all owners of record of all properties within 200 feet of the subject property.~~

~~17.8.3.7 — Boundaries of the property and lines of existing streets, lots, reservations, easements and areas dedicated to public use, including grants, restrictions and rights-of-way. The boundaries of the property shall also be marked in the field by survey flags, or some other means acceptable to the planning board to identify the limits of the property.~~

~~17.8.3.8 — Acreage of parcel to the nearest tenth of an acre.~~

~~17.8.3.9 — Zoning district(s) and boundaries.~~

~~17.8.3.10 — A zoning data table showing calculations necessary to determine conformance to zoning regulations.~~

~~17.8.3.11 — All distances as measured along the right-of-way lines and existing streets abutting the property to the nearest intersection with any other public street.~~

~~17.8.3.12 — Existing contours (with intervals of two feet where slopes are more than three percent but less than 15 percent and five feet where slopes are 15 percent or more) referred to town datum, are to be indicated by a dashed line. Where any changes in contours are proposed, finished grades must be shown as solid lines. Spot elevations must also be shown. At least two benchmarks shall be referenced.~~

~~17.8.3.13 — Location of existing environmental features including general soil types, rock outcrops, wooded areas and major street trees 12-inch dbh caliper and over, watercourses, depressions, ponds, marshes, wetlands, floodplains, and other significant environmental features including previous flood elevation of water courses, ponds and marsh areas as determined by survey. If any~~

portion of the proposed development is located within a flood hazard area, base flood elevation data must be provided.

- ~~17.8.3.14~~ — Location and spot elevations of existing buildings, which shall remain and all other existing structures such as walls, fences, culverts, bridges, roadways, etc. Structures to be removed shall be indicated by dashed lines.
- ~~17.8.3.15~~ — A place for the signature of the town planner or planning board chairman must be provided on all plans and/or documents to be approved by the planning board.
- ~~17.8.3.16~~ — The proposed use or uses of land, buildings, structures, and equipment and the proposed location of buildings, structures, and equipment including proposed grades. Such features must be indicated on a separate drawing where required. Floor space of all buildings shall also be indicated.
- ~~17.8.3.17~~ — The location, type and density of land use to be allocated to parts of the site to be developed.
- ~~17.8.3.18~~ — Layout, floor plans, architectural elevations, (with measurements as needed for each interpretation) and height (including relationship to existing and proposed grades) of proposed buildings, structures and equipment.
- ~~17.8.3.19~~ — Sketches as needed to illustrate the visual impact on the community.
- ~~17.8.3.20~~ — Location, size, sketch, and illumination, if any of proposed signs.
- ~~17.8.3.21~~ — A drainage plan that incorporates the change in land use and routes of storm flow through the site to meet requirements set by the town shall be submitted. The drainage plan shall consist of a plan showing existing and proposed drainage structures, drainage basin areas and drainage flow paths. Also included shall be a report summarizing drainage calculations. The rational method, SCS TR55, SCS TR20 or accepted approved method shall be used for runoff calculations. The design storm condition shall be one with a 25-year return period. Where use of aboveground or underground retention or detention basins is proposed, the 25-year design storm shall be used in design calculations, unless such detention or retention system is located in a special flood hazard zone, in which case a 100-year design storm shall be used. Calculations shall include predevelopment and post-development conditions. Predevelopment runoff rates based on assumption of vacant land site conditions on the site shall be maintained, unless approved by the planning board. The planning board may make any referrals it deems necessary to evaluate proposed drainage plans.
- For all retention or detention basins, whether aboveground or underground, percolation tests or test pits shall be performed at the proposed site of the basin. This information will determine the suitability of the subsurface to accommodate the designed basin.
- ~~17.8.3.22~~ — Location of all existing and proposed sanitary sewers, water mains and other utilities, whether publicly or privately owned, above or underground showing pipe sizes, grades and directions of flow. All proposed sanitary sewers, water mains and other utilities shall conform with the applicable requirements and standards of the town and the appropriate utility. Final approval of utility plans by the appropriate utility authority shall be required prior to final development plan approval.
- ~~17.8.3.23~~ — The proposed location, direction of illumination, power and time of proposed outdoor lighting, and the location of any outdoor storage areas and dumpsters.
- ~~17.8.3.24~~ — The proposed screening and landscaping plan, as well as all other landscaping materials and treatments such as paving, lighting and street furniture. Such plan shall indicate the location,

~~type and size of all plantings both at time of planting and maturity. The plan shall be prepared by a registered landscape architect.~~

~~17.9.3.25 — All means of vehicular access to and from the site onto public streets showing the size and location of driveways, curb cuts, parking and loading areas, and other offsite traffic improvements necessary to ensure public safety. The planning board may make any referrals and require of the applicant any studies it deems necessary to evaluate traffic and circulation plans.~~

~~17.9.3.26 — All proposed streets with profiles indicating grading, and cross sections showing width of roadway and location and width of sidewalks. All proposed improvements must be designed and constructed according to the standards and specifications of the town.~~

~~17.9.3.27 — Such other information as may be required to show that the details of the development plan are in accordance with this section and all applicable requirements and standards of this ordinance.~~

17.9 Zoning compliance review.

- (A) There are hereby established zoning compliance review fees for all requests to review issues of zoning compliance by the zoning enforcement officer.
- (B) Said fees shall be set by the West Warwick town council through a resolution that may be amended from time to time.

(Res. No. 97-09, 1-7-1997; Ord. No. 2004-2, 3-10-2004; Ord. No. 2014-20, 12-16-2014; Ord. No. 2017-4, 2-28-2017)

ARTICLE III. ADOPTION

Section 18. Power of town council to adopt; consistency with comprehensive plan.

18.1 For the purpose of promoting the public health, safety, morals, and general welfare, the town council shall have the power, in accordance with the provisions of this chapter [ordinance], to adopt, amend, or repeal, and to provide for the administration, interpretation, and enforcement of this zoning ordinance. The provisions of this zoning ordinance are set forth as contained herein and incorporates the official zoning map of the town. The zoning ordinance, and all amendments thereto, shall be consistent and in accordance with the town's comprehensive plan, and provides for the implementation of the West Warwick comprehensive plan.

Section 19. Procedure for adoption or amendment.

19.1 The town clerk shall be the officer to receive a proposal for adoption, amendment, or repeal of the zoning ordinance or zoning map. Immediately upon receipt of the proposal, the town clerk shall refer the proposal to the town council, and to the planning board for study and recommendation. The planning board shall, in turn, notify and seek the advice of the town planning department, and shall report to the town council within 45 days after receipt of the proposal, giving its findings and recommendations as prescribed in section 21 of this ordinance. Where a proposal for adoption, amendment, or repeal of the zoning ordinance or zoning map is made by the town planning board, the requirements for study by the board may be waived, provided that the proposal by the planning board include its findings and recommendations pursuant to section 21. The town council shall hold a public hearing within 65 days of receipt of a proposal, giving proper notice as prescribed in section 21. The town council shall render a decision on any proposal within 45 days after the date of completion of the public hearing. The provisions of this section pertaining to deadlines shall not be construed to apply to any extension consented to by an applicant.

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Created: 2022-11-02 09:43:46 [EST]

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(Ord. No. 2018-29 , 12-4-2018)

Section 20. Review by planning board or commission.

- 20.0 Among its findings and recommendations to the town council with respect to a proposal for adoption, amendment, or repeal of the zoning ordinance or zoning map, the planning board shall:
- 20.1. Include a statement on the general consistency of the proposal with the West Warwick comprehensive plan, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and
 - 20.2 Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in section 2 herein.

Section 21. Notice and hearing requirements.

- 21.1 The zoning ordinance may be adopted, repealed, or amended after a public hearing has been held upon the question before the town council. The town council shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the town at least once each week for three successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. Written notice, which may be a copy of the newspaper notice, shall be mailed to the Associate Director of the Division of Planning of the Rhode Island department of Administration, and, where applicable, to the parties specified in subsections 21.2, 21.3, 21.4, and 21.5 of this section, at least two weeks prior to the hearing. The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:
- 21.1.1 Specify the place of the hearing and the date and time of its commencement;
 - 21.1.2 Indicate that adoption, amendment, or repeal of a zoning ordinance is under consideration;
 - 21.1.3 Contain a statement of the proposed amendments to the ordinance that may be printed once in its entirety, or summarize and describe the matter under consideration;
 - 21.1.4 Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
 - 21.1.5 State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.
- 21.2 Where a proposed general amendment to the existing zoning ordinance includes changes in an existing zoning map, public notice shall be given as required by subsection 21.1 of this section.
- 21.3 Where a proposed amendment to an existing ordinance includes a specific change in the zoning district map, but does not affect districts generally, public notice shall be given as required by subsection 21.1 of this section, with the additional requirements that:
- 21.3.1 Notice shall include a map showing the existing and proposed boundaries, zoning district boundaries, and existing streets and roads and their names, and town boundaries where appropriate; and
 - 21.3.2 Written notice of the date, time, and place of the public hearing and the nature and purpose thereof shall be sent to all owners of real property whose property is located in or within not less than 200 feet of the perimeter of the area proposed for change, whether within the town or within an

adjacent city or town. The notice shall be sent by registered or certified mail to the last known address of the owners, as shown on the current real estate tax assessment records of the town.

- 21.4 Notice of a public hearing shall be sent by first class mail to the city or town council of any city or town to which one or more of the following pertain:
- 21.4.1 Which is located in or within not less than 200 feet of the boundary of the area proposed for change; or
 - 21.4.2 Where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, within 2,000 feet of any real property that is the subject of a proposed zoning change, regardless of municipal boundaries.
- 21.5 Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source and that is within 2,000 feet of any real property which is the subject of a proposed zoning change, provided, however, that the governing body of any state or municipal water department or agency, special water district, or private water company has filed with the building inspector in the town a map survey, which shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land within 2,000 feet thereof.
- 21.6 No defect in the form of any notice under this section shall render the ordinance or amendment invalid unless the defect is found to be intentional or misleading.
- 21.7 Costs of any notice required under this section shall be borne by the applicant.
- 21.8 In granting a zoning ordinance amendment, notwithstanding the provisions of section 5 (permitted uses), the town council may limit the change to one of the permitted uses in the zone to which the subject land is rezoned, and impose such limitations, conditions, and restrictions, including, without limitation:
- 21.8.1 Requiring the petitioner to obtain a permit or approval from any and all state or local governmental agencies or instrumentalities having jurisdiction over the land and use which are the subject of the zoning change;
 - 21.8.2 Those relating to the effectiveness or continued effectiveness of the zoning change; and/or
 - 21.8.3 Those relating to the use of the land; as it deems necessary.
- 21.9 The town clerk shall cause the limitations and conditions so imposed to be clearly noted on the zoning map and recorded in the land evidence records, provided, however, in the case of a conditional zone change, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective. If the permitted use for which the land has been rezoned is abandoned or if the land is not used for the requested purpose for a period of two years or more after the zone change becomes effective, the town council may, after a public hearing as hereinbefore set forth, change the land to its original zoning use before the petition was filed. If any limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action, that holding shall not cause the remainder of the ordinance to be invalid.
- 21.10 Repetitive petitions. No petition involving the same lot or parcel of land or any part thereof, including a request for different zoning classification than requested in initial petition for an amendment to this ordinance or zoning map, shall be accepted by the town clerk, if a petition requesting an amendment, for the same lot or parcel of land or any part thereof has been denied or the petitions withdrawn the same within the preceding 24 months. However, such a petition may be accepted at any time with the consent of the town council if in the opinion of the council it sets forth facts indicating a substantial change of circumstances justifying a hearing on the petition.

ARTICLE IV. ADMINISTRATION

Section 22. Administration and enforcement of zoning ordinance.

The provisions of this ordinance shall be enforced by the building inspector, unless otherwise specified. No application, building or zoning permit, plan, specification or intended use which is not in accordance with the provisions of this ordinance shall be approved by the building inspector.

22.1 The building inspector shall:

- 22.1.1 Review and approve for zoning compliance, building permits and certificates of occupancy.
- 22.1.2 Collect required fees in connection with applications under the building inspector's jurisdiction.
- 22.1.3 Receive and review for proper form, all applications for zoning, building and occupancy permits.
- 22.1.4 Transmit all applications to the zoning board of review, or planning board as specified in the ordinance.
- 22.1.5 Keep records on compliance of uses of land.
- 22.1.6 Inspect suspected violations and issue violation notices in cooperation with the town solicitor.
- 22.1.7 Perform other such duties as may be deemed to implement the enforcement of this ordinance.

22.2 Upon written request the building inspector shall, in order to provide guidance or clarification, issue a zoning certificate or provide information to a requesting party as to the determination by the building inspector on issues of compliance, applicability and interpretation of this ordinance. This response shall be issued within 15 days of receipt of the written request. In the event that no written response is provided within such time, the requesting party shall have the right to appeal to the zoning board of review for such determination.

22.3 When in the opinion of the building inspector it is necessary or when required by this ordinance, the building inspector shall seek technical assistance or approval from other town officials in the administration of this ordinance. Such technical assistance or approval, unless otherwise specified, may suffice in whole or in part as the basis for the approval or disapproval of a zoning permit. Any permit or license issued in conflict with the provisions of this ordinance shall be deemed null and void.

22.4 Reserved.

22.5 Minimum qualifications for the building inspector shall include: The building inspector shall have had at least five years' experience in construction, design, or supervision. The building inspector shall be generally informed on the quality and strength of building materials, on the accepted requirements for safe exit facilities and on other items of equipment essential for the safety and comfort of occupants.

22.6 Building permit.

- 22.6.1 No building or structure shall be erected, extended, altered, enlarged or moved, and no use of any land or premises shall be begun or changed without a building permit having been issued by the building inspector. A permit or license issued by any other department of the town shall be in conformity with the provisions of this ordinance. Any application for such a permit shall be accompanied by a site plan, accurately drawn, showing the actual shape and dimensions of the lot or premises to be built upon; the exact location and size of all buildings or structures to be erected, constructed, reconstructed, altered or enlarged together with the lines within which

all buildings or structures are to be erected, constructed, reconstructed, altered or enlarged; the existing or intended use of such building or structure; the location of all zoning district boundary lines as they may affect the lot or premises; the location and size of off-street parking and loading facilities where required, the location and design of trash storage areas and enclosures, including dumpsters, and other information as may be necessary to provide the execution and enforcement of this ordinance. The building permit shall be issued on the basis of the application and accompanying plans, where required, and shall authorize only the use arrangement and construction set forth in approved plans and applications. Any use, arrangement or construction not complying with that authorized under this ordinance shall be deemed in violation.

22.6.2 No site plan shall be required with an application for such a permit involving only alterations of an existing building where the use and exterior surfaces of such buildings are not changed or enlarged in any manner and the use is not affected by any other section of this ordinance.

22.6.3 A record of the applications, plans and permits shall be kept on file in the office of the building inspector and shall be available for public inspection during regular office hours.

22.6.4 In addition, the building inspector may require the submission of plans of any proposed machinery, operations and products and specifications for the mechanisms and techniques to be used for the purpose of restricting the emission of dangerous and objectionable elements referred to in this ordinance. An affidavit may be required from the applicant acknowledging his understanding of the applicable performance standards and his agreement to conform with such standards at all times. No applicant will be required to divulge confidential processes, and all information submitted will be treated confidentially if requested.

22.6.5 In areas of special flood hazard as delineated on the flood maps, a permit shall be required for any land preparation, excavation, grading, filling or removal of earth for any purpose.

22.7 Occupancy permit.

22.7.1 An occupancy permit shall be required for any of the following:

22.7.1.1 Occupancy and use of a building or structure hereafter erected, extended, altered, enlarged or moved;

22.7.1.2 Change in use of an existing building, structure or premises to a use of a different classification;

22.7.1.3 Occupancy and use of vacant land except for farming;

22.7.1.4 Change in use of land to a use of a different classification other than farming;

22.7.1.5 Any change in use of a nonconforming use.

22.7.2 No such occupancy, use or change of use shall take place without the issuance of an occupancy permit approved by the building inspector. The permit shall not be issued until the building, structure, premises or land, its uses and the uses incidental thereto have been inspected and approved by the building inspector and, if required, a business registration certificate has been secured from the town clerk's office. A record of all occupancy permits shall be kept on file in the office of the building inspector and shall be available for public inspection during regular office hours.

22.8 Conflict/construal [interpretation] with other laws.

22.8.1 This chapter [section] shall not repeal, annul or impair any existing provisions of law, other ordinances or any rules or regulations previously adopted or issued, or which shall be

adopted or issued pursuant to law relating to the use of buildings or premises. However, wherever the terms of this ordinance require a greater width or size of yards of other open spaces, a lower height of building or less number of stories or a greater percentage of lots to be left unoccupied or impose other greater standards than are required in any other statute, ordinance or regulation, the provision of this ordinance shall govern. Wherever the provisions of any other statute, ordinance or regulation require a greater width or size of yards, courts or other open spaces, a lower height of building or lesser number of stories, or a greater percentage of lots to be left unoccupied or impose other high standards than are required in this ordinance, the provisions of such statute, ordinance or regulation shall govern.

- 22.8.2 All variances and special use permits heretofore granted by the zoning board of review, shall remain in full force and effect, and all terms, conditions and obligations imposed by the board shall remain in effect and be binding to the same extent as if this ordinance had not been enacted. All violations of previous provisions shall be punishable as if they had not been repealed and shall remain in effect insofar as required for the initiation of any proceedings against such violations and/or the prosecution of any violations heretofore commenced.

Section 23. Maintenance of the zoning ordinance and zoning map.

- 23.1 The town clerk shall be the custodian of the zoning ordinance and zoning map(s) created thereunder. In addition, the town clerk shall be responsible for maintaining and updating the text and zoning map comprising the zoning ordinance. Changes which impact the zoning map shall be depicted on the map within 90 days of such authorized change(s) and changes to the text shall be included in the zoning ordinance within 30 days of such authorized change(s).
- 23.1.1 In the case of a conditional zone change, the limitations, restrictions and conditions shall not be included on the zoning map until the zone change has become effective.
- 23.1.2 It shall be the responsibility of the town clerk to receive, in proper form, petitions for amendments or repeals to the zoning ordinance and/or amendments to the zoning map. The town clerk shall collect the required fees for such petitions as set by the town council.
- 23.2 Annual review. The provision of this ordinance shall be reviewed annually by the planning board for the purpose of considering proposed amendments deemed appropriate in the light of changing conditions or policies. After such annual review, the planning board shall make written report to the town council advising the council of its review and transmitting recommendations the planning board may have, if any, regarding the provisions of the ordinance. In addition, whenever the comprehensive plan is amended, the planning board shall identify any changes necessary to the zoning ordinance, to ensure consistency and forward these changes to the town council.

Section 24. Establishment and procedures of board of review.

- 24.1 There shall be a zoning board of review which shall consist of five members, each to hold office for a term of five years, with one member to be appointed each year by the mayor with the confirmation of the council. The board shall choose its chairperson and said chairperson[,] or an acting chairperson in his or her absence, may administer oaths and compel the attendance of witnesses. All members and alternate members of said board shall be qualified electors and residents of the town during their term of office and shall hold no other office in the service of the town. Each member shall continue in office until his successor has been duly appointed and qualified.
- [24.1.1] In case any vacancy shall occur in the board for any cause, the vacancy shall be filled in the manner provided above, and the appointee shall serve for and during the unexpired term of the predecessor.

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- 24.1.2 Any member of the board may be removed by the town council for due cause including malfeasance, misfeasance, or nonfeasance generally and in particular:
- 24.1.2.1 Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the board.
 - 24.1.2.2 Failure to disclose conflict of interest for purposes of disqualification when a member has personal or monetary interest in the matter involved or will be affected by a decision of the board.
- 24.1.3 In addition to the five standing members, the town council shall annually appoint two alternates to be designated as the first and second alternate members. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. The alternate members shall exercise the same duties and functions of a regular member when serving on the board and may be removed from office by the town council in the same manner as a regular member.
- 24.1.4 Annually in the month of September, the zoning board of review shall organize by electing from its membership a vice chairperson, and secretary. The town clerk shall serve as clerk of the board and shall perform such duties as are provided by this ordinance. Meetings of the board shall be held at the call of the chairperson or as may be fixed by the board.
- 24.1.5 All hearings and meetings of the board shall be open to the public and shall be conducted no earlier in the day than 7:00 p.m. All decisions shall be made and voted upon at a public hearing.
- 24.1.6 No member or alternate may vote on any matter before the board unless they have attended all hearings concerning the matter.
- 24.1.7 No member of the board shall pass on any matter in which he has a business, professional or personal interest. As soon as a conflict occurs for a member, that member shall recuse himself and shall not sit as an active member and shall take no part in the conduct of the hearing.
- 24.1.8 For any proceeding in which the right of appeal lies to the Superior or Supreme court, the zoning board of review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.
- 24.1.9 The chairperson may appoint subcommittees as seem desirable to aid the functioning of the board.
- 24.1.10 Members of the zoning board of review shall receive remuneration for their services on the board, as established by the approved budget.
- 24.1.11 Members of the zoning board of review serving on the effective date of adoption of this zoning ordinance shall be exempt from the provisions of this chapter [ordinance] respecting terms of originally appointed members until the expiration of their current terms.
- 24.1.12 The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

Section 25. Power and duties of the zoning board of review.

- 25.1 The zoning board of review shall have the following powers and duties:

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- 25.1.1 To hear and decide appeals in a timely fashion where it is alleged there is error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement or interpretation of this ordinance, or of any amendment adopted pursuant hereto;
 - 25.1.2 To authorize, upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to section 45-24-41 of the act;
 - 25.1.3 To authorize, upon application, in specific cases, special use permits, pursuant to section 45-24-42(A) of the act, where the zoning board of review is designated as a permit authority for special use permits;
 - 25.1.4 To refer matters to the planning board, or to other boards or agencies of the city or town as the zoning board of review may deem appropriate, for findings and recommendations;
 - 25.1.5 To provide for issuance of conditional zoning approvals where a proposed application would otherwise be approved except that one or more state or federal agency approvals which are necessary are pending. A conditional zoning approval shall be revoked in the instance where any necessary state or federal agency approvals are not received within a specified time period; and
 - 25.1.6 To hear and decide other matters, according to the terms of the ordinance or other statutes, and upon which the board may be authorized to pass under the ordinance or other statutes.
- 25.2 The zoning board of review shall be required to vote as follows:
- 25.2.1 Five active members shall be necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or herself, shall not sit as an active member, and take no part in the conduct of the hearing. Only five active members shall be entitled to vote on any issue;
 - 25.2.2 The concurring vote of three of the five members of the zoning board of review sitting at a hearing shall be necessary to reverse any order, requirement, decision, or determination of the building inspector from whom an appeal was taken; and
 - 25.2.3 The concurring vote of four of the five members of the zoning board of review sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including variances and special use permits.

Section 26. Application procedure.

For each application to the zoning board of review, the applicant shall follow the specific procedures including submission requirements as specified in this ordinance for appeals, special use permits and variances and any other matter. Failure to do so may result in a delay in processing the application. Any application not deemed complete shall not be placed on the hearing agenda.

Section 27. Fees.

- 27.1 The town council shall set and review annually reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the appellant or applicant for the adequate review by the appropriate agency and hearing of applications, the issuance of zoning certificates, and for the recording of the decisions thereon.
- 27.2 The applicant shall also be required to bear the expense of any outside technical assistance which the zoning board deems necessary to assist the zoning board in the review of any application that shall be heard by the zoning board.

(Ord. No. 2009-13, 11-3-2009)

Section 28. Violations.

- 28.1 Any person, whether as principal, agent, employee or otherwise, who violates any of the provision of this ordinance, any of the conditions under which a permit is used or any decision rendered by the zoning board of review, town council, building inspector, or planning board shall be fined not exceeding \$500.00 for each offense, such fine to inure to the town and each day that such violation shall continue shall be deemed to constitute a separate offense. The penalty shall be reasonably related to the seriousness of the offense.
- 28.2 The erection, construction, reconstruction, alteration, enlargement or moving of any building or structure and the use of any land, premises, building or structure and the use of any land, premises, building or structure which is continued, operated or maintained contrary to the provisions of this ordinance is hereby declared to be a violation of this ordinance and unlawful. The town solicitor shall institute appropriate legal action to redress said violations.
- 28.3 The town may also cause suit to be brought in the supreme or superior court or West Warwick municipal court to restrain the violation of, or to compel compliance with, the provision of this ordinance. The town may consolidate an action for injunctive relief and/or fines under the ordinance in the superior court of Kent County.
- 28.4 Extension of deadlines by consent. The provisions of this ordinance pertaining to decision deadlines, shall not be construed to apply to any extension for good cause, consented to by an applicant.

Section 29. Decisions and records of the zoning board of review.

- 29.1 Following a public hearing, the zoning board of review shall render a decision within 60 days of the conclusion of the hearing. The zoning board of review shall include in its decision all findings of fact and conditions, showing the vote of each member participating thereon, and the absence of a member or his or her failure to vote. Decisions shall be recorded and filed in the office of the zoning board of review within 30 working days from the date when the decision was rendered and shall be a public record. The zoning board of review shall keep written minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the zoning board of review in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court, the zoning board of review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.
- 29.2 Any decision by the zoning board of review, including any special conditions attached thereto shall be mailed to the applicant, and to the associate director of the division of planning of the Rhode Island Department of Administration. In addition, a copy of the decision shall be sent to the office of the building inspector.
- 29.3 All decisions of the zoning board of review shall be posted in a location visible to the public in the town hall for a period of 20 days following the recording of the decision.

Section 30. Judicial aid in enforcement.

- 30.1 The supreme court and the superior court, within their respective jurisdictions, or any justice of either of those courts in vacation, shall, upon due proceedings in the name of the town, instituted by its town solicitor, have power to issue any extraordinary writ or to proceed according to the course of law or equity or both:
- 30.1.1 To restrain the erection, alteration, or use of any building, structure, sign, or land erected, altered, or used in violation of the provisions of any zoning ordinance enacted under the authority of the act, and to order its removal or abatement as a nuisance;

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- 30.1.2 To compel compliance with the provisions of any zoning ordinance enacted under the authority of the act;
 - 30.1.3 To order the removal by the property owner of any building, structure, sign, or improvement existing in violation of any zoning ordinance enacted under the provisions of the act and to authorize some official of the town, in the default of the removal by the owner, to remove it at the expense of the owner;
 - 30.1.4 To order the reimbursement for any work or materials which shall have been done or furnished by or at the cost of the town;
 - 30.1.5 To order restoration by the owner, where practicable; and/or
 - 30.1.6 To issue fines and other penalties.

Section 31. Right of appeal.

- 31.1 An appeal from any decision of the building inspector may be taken to the zoning board of review by an aggrieved party.
- 31.2 An appeal from a decision of the zoning board of review may be taken by an aggrieved party to the Kent County superior court.

Section 32. Appeals to zoning board of review.

An appeal to the zoning board of review from a decision of the building inspector may be taken by an aggrieved party. The appeal shall be taken with 30 days of the date of the recording of the decision of the building inspector by filing with the building inspector and the zoning board of review a notice of appeal specifying the ground thereof. The building inspector shall forthwith transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board.

Section 33. Stay of proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector certifies to the zoning board of review, after an appeal shall have been duly filed, that by reason of facts stated in the certificate a stay would in the building inspector's opinion cause imminent peril to life or property. In that case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of competent jurisdiction on application thereof and upon notice to the building inspector from whom the appeal is taken on due cause shown.

Section 34. Public hearing by zoning board of review.

The zoning board of review shall fix a reasonable time for the hearing of the appeal, give public notice thereof at least 14 days prior to the date of the hearing in a newspaper of general circulation in the town.

- 34.1 Notification, including the date, time, place, purpose of the hearing, and street address of the subject property shall:
 - 34.1.1 Be sent by first class mail to the applicant;
 - 34.1.2 Be sent registered mail, return receipt requested, to all owners of real property whose property is located at or within a 200-foot radius of the perimeter of the subject area, as

measured from the corners of the subject area; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town;

- 34.1.3 Be sent by first class mail to the city or town council of any city or town which is located at or within 200 feet of the perimeter of the subject area;
- 34.1.4 Be sent first class mail to the city or town council of any city or town where there is a public or quasi-public water source or private water source that is used or is suitable for use as a public water source, at or within 2,000 feet of the subject property, regardless of the municipal boundaries;
- 34.1.5 Be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or watersheds and parcels of land within 2,000 feet thereof;
- 34.1.6 If the subject property for which the variance is being requested lies within the BP business park zoning district, then the notification is to[sic] also be sent registered or certified mail to all owners of real property whose property is located within the BP business park zoning district; such notice shall be sent to the last known address of such owners as shown on the current real estate tax assessment records of the town;
- 34.1.7 The cost of notification shall be borne by the applicant.

(Ord. No. 2019-16 , 12-17-2019)

Section 35. Participation in zoning hearing.

Participation in a zoning hearing or other proceeding by a party shall not be a cause for civil action or liability except for acts not in good faith, intentional misconduct, a knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

Section 36. Decisions and records of zoning board of review.

In exercising its powers, the zoning board of review may, in conformity with the provisions of this ordinance, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make such orders, requirements, decisions, or determinations as ought to be made, and to that end shall have the powers of the building inspector. All decisions and records of the zoning board of review respecting appeals shall conform to the provisions of section 24 of this ordinance.

Section 37. Appeals to superior court.

- 37.1 An aggrieved party may appeal a decision of the zoning board of review to the Kent County superior court by filing a complaint setting forth the reasons of appeal within 20 days after the decision has been recorded and posted in the office of the town clerk. The decision shall be posted in a location visible to the public in the town hall for a period of 20 days following the recording of the decision. The zoning board of review shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court within 30 days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the zoning board shall be made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.

37.2 If, before the date set for hearing in the superior court, an application is made to the court for leave to present additional evidence before the zoning board of review and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the zoning board of review, the court may order that the additional evidence be taken before the zoning board of review upon conditions determined by the court. The zoning board of review may modify its findings and decision by reason of the additional evidence and shall file that evidence and any new findings or decisions with the superior court.

37.3 The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the zoning board of review and, if it shall appear to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present the evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.

37.4 The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- 37.4.1 In violation of constitutional, statutory, or ordinance provisions;
- 37.4.2 In excess of the authority granted to the zoning board of review by statute or ordinance;
- 37.4.3 Made upon unlawful procedure;
- 37.4.4 Affected by other error of law;
- 37.4.5 Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- 37.4.6 Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section 38. Priority in judicial proceedings.

Upon the entry of any case or proceeding brought under the provisions of this ordinance, including pending appeals and appeals hereinafter taken to the court, the court shall, at the request of either party, advance the case, so that the matter shall be afforded precedence on the calendar and shall thereupon be heard and determined with as little delay as possible.

Section 39. Appeal of enactment of or amendment to zoning ordinance.

39.1 An appeal of an enactment of or an amendment to the zoning ordinance may be taken to the Kent County superior court by filing a complaint, as set forth herein, within 30 days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the town or by any association of residents or landowners of the town. The appeal shall not stay the enforcement of the zoning ordinance, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.

39.2 The complaint shall set forth with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.

39.3 The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan. If the

enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not in conformance with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan but may suggest appropriate language as part of the court decision.

- 39.4 In the case of an aggrieved party, where the court has found that the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan, then the court shall next determine whether the enactment or amendment works as a taking of property from the aggrieved party. If the court determines that there has been a taking, the court shall remand the case to the town council, with its findings that a taking has occurred, and order the town to either provide just compensation or rescind the enactment or amendment within 30 days.
- 39.5 The superior court shall retain jurisdiction, in the event that the aggrieved party and the town do not agree on the amount of compensation, in which case the superior court shall hold further hearings to determine and to award compensation. Furthermore, the superior court shall retain jurisdiction to determine the amount of an award of compensation for any temporary taking, if that taking shall exist.
- 39.6 The court may, in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including the town.

Section 40. Severability.

If any provision of this ordinance or of any rule, regulation, or determination made thereunder, or the application thereof to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the ordinance, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of this ordinance shall not affect the validity of the remainder of the ordinance.