ZONING BY-LAWS

OF

THE TOWN OF

BERNARDSTON
MASSACHUSETTS

ADOPTED MAY 26, 1987

Amended April 27, 2016
Town Meeting
Amended May 21, 2014
Town Meeting
Amended September 23, 2013
Special Town Meeting
Amended May 29, 2013
Town Meeting
Amended October 13, 2010
Special Town Meeting
Amended April 20, 2010
Special Town Meeting

TABLE OF CONTENTS

Page

ARTICLE I. Purpose ……..... 2

ARTICLE II. Use and Dimensional Regulations…… 2
2100 Districts……. 2
2200 Use Regulations……....3
2300 Dimensional Requirements…….....7
2400 Accessory Building and Use……8

ARTICLE III. General Regulations…….. 10
3100 General Regulations……. 10
3200 Sight Obstruction…… 11
3300 Signs……..…….....11
3400 Environmental Controls……..……..13
3500 Floodplain Overlay District……..……15
3600 Solar Bylaw Allowing By-Right Siting of Large-Scale Ground-Mounted Solar Photovoltaic Installations……23

ARTICLE IV. Special Regulations……... 30
4100 Mobile Homes and Campers……. 30
4200 Earth Removal…… 31
4300 Water Resource Protection District…… 32
4400 Site Plan Review……..... 40
4500 Major Residential Development……..... 42
4600 Expedited Permitting Districts……... 45
4700 Performance Standards for Manufacturing or Research & Development for Renewable Energy or Alternative Energy Facilities…….....52
4800 Planned Unit Development……..55
4900 Temporary Moratorium on Medical Marijuana Treatment Centers/ Registered Marijuana Dispensaries…….....60

ARTICLE V. Administration…… 60
5100 Administration……..... 60
5200 Board of Appeals……..... 60
5300 Special Permits…… 61
5400 Amendments……63
5500 Applicability…… 63
5600 Separability…….. 63

ARTICLE VI. Definitions…… 64

ARTICLE I. PURPOSE.

These regulations are enacted to promote the welfare of the inhabitants of the Town of Bernardston, to protect, conserve, and increase the value of land and buildings, to encourage the most appropriate use of land throughout the town, and to preserve and increase its amenities, all as authorized by the provisions of the Zoning Act, M.G.L.A. ch. 40A, as amended, and by Article 89 of the Amendments to the Constitution.

ARTICLE II. USE AND DIMENSIONAL REGULATIONS

2100. Districts.

2110. Establishment. For the purpose of this By-Law, the Town of Bernardston is hereby divided into the following districts:

Residential/Agricultural	R/A
Residence/One Acre.....	R1
Center Village	CV
Business	B
Industrial	I
Expedited Permitting District	EPD

Two additional "overlay" districts are also hereby created, a Floodplain Overlay District, pursuant to Section 3500, and a Water Resource Protection District, pursuant to Section 4300.

The boundaries of these districts are defined and set forth on the map entitled, Official Zoning Map, Town of Bernardston dated June 23, 2013 as may be subsequently amended by vote of Town Meeting. This map is on file with the Town Clerk. These maps and all explanatory matter therein is hereby made a part of this Zoning By-Law.

2120. Boundary Definition. Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad, or utility easement center or layout lines, boundary or lot lines at water body shoreline or the channel of a stream, shall be construed to be actually at those lines; when shown approximately parallel, perpendicular, or radial to such lines shall be construed to be actually parallel, perpendicular, or radial thereto. When not located in any other way, boundaries shall be determined by scale from the map.

2130. Existing Lots. Where a district boundary line divides any lot existing at the time such line is adopted, the use regulations for any district in which the lot has frontage on a street may be extended not more than thirty (30) feet into the other district, and dimensional regulations may be extended not more than two hundred (200) feet.

2200. Use Regulations

2210. General. No structure shall be erected or used or land used except as set forth in Section 2230, "Use Regulation Schedule," or in Section 2400, "Accessory Buildings and Uses," unless exempted by Section 2240, or by statute. No more than one (1) principal structure may be erected on a lot, unless otherwise specified in this By-Law.

Symbols employed below shall mean the following:

Y - A permitted use.
N - An excluded or prohibited use.
SP - A use authorized under Special Permit as provided under Section 5300.
SPR - Site Plan Review required (see Section 4400 for other uses requiring Site Plan Review)
SPP - Special Permit from the Planning Board required following procedures and criteria of Section 5300

2220. Applicability. When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2230. Use Regulation Schedule. *(Amended April 27, 2016)*

2231. Residential Uses.	**R/A**	**R1**	**CV**	**B**	**I**	**EPD**
One-family dwelling	Y	Y	Y	N	N	N
Two-family dwelling	SP/SPR	SP/SPR	Y	N	N	N
Multi-family dwelling in Major Residential	SPP	SPP	SPP	N	N	N
Multi-family dwelling by conversion of an Existing Structure	SP/SPR	SP/SPR	SP	N	N	N
Other Multi-family Dwelling not to exceed four units per structure	N	N	SP	N	N	N
Major Residential Development	SPP	SPP	SPP	N	N	N
Non-family accommodations (boarding house, etc.)	SP/SPR	SP/SPR	Y	N	N	N
2232. Extensive Uses.						
Agriculture or forestry	Y	Y	Y	Y	Y	Y
Private commercial campgrounds	SP/SPR	SP/SPR	N	N	N	N

Commercial earth removal	N	N	N	SP/SPR	SP/SPR	N
Conservation Area, Public Park	Y	Y	Y	Y	Y	SPP

	R/A	**R1**	**CV**	**B**	**I**	**EPD**
Golf Club, Riding Club	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SPP
Aircraft Landing Field	N	N	N	N	N	N
Commercial Piggery on 5 acres or less	SP	N	N	N	N	N
2233. Community Service Uses						
Public Service Corporation Facility not exempted from zoning regulation by M.G.L. Ch.40A	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SPP
School Exempted from Zoning Regulations M.G.L. ch.40A, s.3	Y	Y	Y	Y	Y	Y
Other Educational Uses	SP	SP	SP	SP	SP	SPP
Church, Other Religious Use	Y	Y	Y	Y	Y	Y
Cemeteries	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	N
Other non-commercial community service use	SP/SPR	SP/SPR	SP	SP	SP	N
2234. Business/Industrial Uses						
Hotel or motel	N	N	N	Y	SP/SPR	SPP
Inn	N	N	SP	Y	SP	SPP
B&B	SP	SP	SP	N	N	N
Restaurant, drive-in or drive-thru service	N	N	N	SP	SP	SPP
Restaurant	N	N	SP/SPR	Y	SP/SPR	SPP
Kiosk	N	N	SP* (*walk-up only)	SP	SP	SPP
Junkyard, salvage yard	N	N	N	N	N	N
Gasoline service stations and auto repair	N	N	SP/SPR	SP/SPR	SP/SPR	SPP
Business or professional offices	N	N	SP	Y	SP	Y
Retail uses (by square feet of enclosed floor area with or without outside storage)						
Less than 2,500 sq. ft	N	N	SP	SPR	SPR	SPP

2,500 – 7,500 sq. ft	N	N	SP	SPR	SPR	SPP
7.500 – 12,500 sq. ft	N	N	N	SP	N	SPP
12,500 – 50,000 sq. ft	N	N	N	N	N	SPP
Large-Scale Ground-Mounted Solar Photovoltaic installations (<5 acres)	SPR	SPR	SPR	SPR	SPR	SPR
Large-Scale Ground-Mounted Solar Photovoltaic installations (>5 acres)	SPP/SPR	SPP/SPR	SPP/SPR	SPP/SPR	SPP/SPR	SPP/SPR
	R/A	**R1**	**CV**	**B**	**I**	**EPD**
Manufacturing or Research & Development facilities up to 20,000 square feet of enclosed floor area for Solar, Wind, Geothermal, or Biomass renewable energy that meet the Performance Standards of Section 4700	N	N	N	SP/SPR	SP/SPR	SPR
Manufacturing or Research & Development facilities for Solar, Wind, Geothermal, or Biomass renewable energy that do not meet the Performance Standards of Section 4700 or are greater than 20,000 square feet of enclosed floor area	N	N	N	SP/SPR	SP/SPR	SPP
Other Manufacturing, production, assembly, processing or research facility	N	N	N	SP/SPR	SP/SPR	SPP
Solar Electric Generating Facilities	SP/SPR	SP/SPR	SP/SPR	SPR	SPR	SPR
Wind or Hydroelectric Generating Facilities	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SPP
Biomass or Other Electric Generating Facilities	N	N	N	N	N	N
Bulk Storage, Warehousing & Distribution	N	N	N	SP/SPR	SP/SPR	SPP
Farm stand, seasonal	Y	Y	Y	Y	Y	Y
Commercial non-motorized recreation	SP/SPR	N	N	SP/SPR	SP/SPR	SPP
Kennels	SP/SPR	SP/SPR	N	SP/SPR	SP/SPR	N
Nursing home, funeral home	N	SP/SPR	SP/SPR	SP/SPR	N	SPP
MMTC	N	N	N	N	N	SPP

2235. Other Principal Uses.						
Having externally observable attributes similar to a use permitted (Y SP, or SPP) above	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SPP
Other Principal Use	N	N	N	N	N	N

2240. Nonconforming uses. Any use or structure not conforming with this By-Law may be continued if the use or structure was lawfully existing at the time it became nonconforming, subject to the following:

2241. Alteration, Extension, or Change. As provided in M.G.L.A. ch. 40A, s.6, a nonconforming single or two-family dwelling may be altered or extended provided that the Building Inspector determines that doing so does not increase the nonconforming nature of said structure. Other pre-existing nonconforming structures or uses may be extended, altered, or changed in use on Special Permit from the Board of Appeals. Prior to filing with the Board of Appeals, the applicant must obtain an approved Site Plan Review from the Planning Board. The Board of Appeals must find that such alteration, extension, or change will not be substantially more detrimental to the neighborhood than the existing nonconforming use. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

2242. Abandonment. A nonconforming use which has been abandoned, discontinued for a period of two years (five years for agriculture, horticulture, floriculture, or viticulture), or changed to a conforming use, shall not be reestablished, and any future use of the premises shall conform to this Zoning ByLaw.

2243. Restoration. Any legally existing nonconforming building or structure may be reconstructed if destroyed by fire or other accidental or natural cause if such reconstruction is begun within twelve (12) months and completed within twenty-four (24) months from the date of the catastrophe (unless a longer period is granted by Special Permit by the Board of Appeals).

2244. Premises may be changed from one category on non-conforming use to another only on Special Permit from the Board of Appeals. Such Special Permit shall be granted only for uses no more damaging or inharmonious with the environs than the use being replaced.

2250. Radioactive waste prohibition. No land within any use district in the Town of Bernardston may be used for collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

2260. Occupancy of Dwelling during Construction. A dwelling on the premises may be occupied by the owner or his family during the construction of the permanent residence, providing construction starts within six months of the issuance of the building permit, and is completed in conformance with these By-Laws within two years from the date of issuance.

2300. Dimensional Requirements.

2310. General. No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless exempted by this By-Law or by statute (see especially M.G.L.A. ch.40A, s.6).

2320. Multiple Principal Uses. Not more than one principal structure shall be erected on a lot, unless otherwise authorized in this By-Law.

2330. Rear Lots. Individual lots in Residence Districts need not have the required amount of street frontage, provided that all of the following conditions can be met for each individual lot lacking such frontage:

2331. The area of said lot is at least double the minimum area normally required for the district.

2332. A building line is designated on the plan, and the width of the lot at that line equals or exceeds the number of feet normally required for street frontage.

2333. Lot width is at no point less than 40 feet, and lot frontage is not less than 40 feet.

2334. No more than one (1) rear lot shall be created from a property, or a set of contiguous properties in common ownership as of May 26, 1987, unless the Planning Board issues a Special Permit for such additional rear lot(s).

2340. Dimensional Schedule. (For accessory buildings, see Section 2420.)

	CVR	R1	R/A	B	I	EPD
Minimum lot area (sq. ft.)[1]	20,000	40,000	60,000	20,000	80,000[5]	20,000
Minimum lot frontage (ft.)[2]	125	150	200	150	200	150
Minimum front yard (ft.)	20[2]	30[3]	35[3]	20[3]	50	20
Minimum side & rear yards (ft.)	15	20	35	20	20	20
Maximum building height (ft.)[3] [4]	35	35	35	35	35	35
Maximum lot coverage (%) by Buildings	40	40	40	40	40	50
Maximum lot coverage (%) by Buildings, Structures and Paving	60	60	50	60	60	70

2400. Accessory Buildings and Uses.

2410. Use Regulation. Any use permitted as a principal use is also allowed as an accessory use, as are others customarily accessory and incidental to permitted principal uses.

2411. Home Occupations. A business or profession may be engaged in as an accessory use of a dwelling by a resident of that dwelling, upon issuance of a Special Permit by the Planning Board, if conforming to the following conditions:

---

[1] Increase by 25% for two-family units, by 50% for three-family or four-family units. [2] Increase by 25% for two-family units; by 50% for three-family or four-family units.

[2] Or aligned with existing buildings on adjacent properties.

[3] The height provisions of these regulations shall not apply to the erection of churches, belfries, and towers designed exclusively for ornamental purposes, flagstaffs, chimneys, silos, antenna, water tanks, or similar structures.

[4] Construction on lots of less than 80,000 sq. ft. may be approved on Special Permit when lot is adjacent to an existing parcel in the same ownership of at least 80,000 sq. ft.

a. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

b. No more than twenty-five percent of the floor area of the residence shall be used for the purpose of the home occupation, nor more than fifty percent of the combined floor area of the residence and any accessory structures used in the home occupation. The floor area shall be determined by the square footage stated by the Town of Bernardston Tax Assessor. Day care facilities licensed under the provisions of M.G.L.A. ch. 28A, s.10 shall be exempt from this limitation.

c. The home occupation shall be accommodated within an existing structure without extension thereof.

d. Not more than three persons not a member of the household shall be employed on the premises in the home occupation.

e. Except for a permitted sign, there shall be no exterior display, no exterior storage of materials, and no other exterior indication of the home occupation, or other variation from the residential character of the premises.

f. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced detectable without instruments off of the premises.

g. Traffic generated shall not exceed volumes normally expected in a residential neighborhood.

h. Parking generated shall be accommodated off-street, other than in a required front yard, and shall not occupy more than 35% of lot area.

i. Home occupations in a Water Resource District shall not use or store, above or below ground, hazardous materials, as defined in Section 4300 herein, in quantities greater than normally associated with household use.

2412. Animals. Horses and other animals, including pigs, chickens, and other farm animals, used for non-commercial or non-agricultural purposes, may be stabled (as an accessory use) within the R1 and R/A districts, provided that such animals are stabled at least 25 feet from all property lines.

2413. Accessory Scientific Uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may

be permitted upon the issuance of a Special Permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.

2420. Dimensional Regulation: Accessory Uses. Accessory structures may not be placed within required yards, except that permitted signs may be located within a required front yard, and a permitted one-story accessory structure may be located within a required rear yard provided that it occupies not more than 25% of either the required or the actual yard, and provided that it is not located within 10 feet of any property line.

ARTICLE III. GENERAL REGULATIONS.

3100. Parking and Loading Requirements.

3110. General. Adequate off-street parking must be provided to service all parking demand created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Such parking shall be on the same premises as the activity it serves, or within 300 feet on a separate parcel, which may be jointly used with other premises for this purpose, provided that the continued joint use of such parcel be ensured through an agreement recorded in the Registry of Deeds.

3120. Schedule of Parking Area Requirements. In applying for a building or occupancy permit, the applicant must demonstrate that the following minimums will be met for the new demand without counting existing parking:

Dwellings: Two spaces per dwelling unit.

Motels, hotels, lodging houses: One space per guest unit plus one additional space per eight guest units or fraction thereof.

Retail stores, offices: One space per 150 square feet of leasable floor area.

Industrial or wholesale: Four spaces per five employees on the largest shift.

Places of assembly: One space per three seats, or one space per 12 square feet of seating area, whichever is greater.

Hospitals: One space per bed.

Nursing homes: One space per four beds.

Bowling alleys: Four spaces per lane.

All others: As determined by the Building Inspector.

3130. Parking Area Design. No off-street parking area shall be maintained within 20 feet of a street right-of-way line. All required parking areas except those serving singlefamily or two-family residences shall be paved. For parking areas of eight (8) cars or more, Sections 3131-3133 shall apply:

3131. Parking area use shall not require backing onto a public way.

3132. Parking lots for 8 or more cars shall be screened from any residential use or district which is abutting or separated from it only by a street. Screening shall
be by a four foot planting strip maintained with densely planted shrubs, or by a fence of not less than four feet in height, and shall be landscaped as required by Section 3461.

3140. Loading Requirements. Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or off of a public way, or be parked on a public way while loading, unloading, or waiting to do so.

3200. Sight Obstruction.

At corners, no sign (except signs erected by a public agency), fence, wall, hedge, or other obstruction shall be allowed to block vision between 2-1/2 and 8 feet above the street grade within an area formed by the intersecting street lines and a straight line joining the points of said street lines 20 feet back from their point of intersection.

3300. Signs.

3310. In Residence Districts, the following signs are permitted.

3311. For a residence or permitted accessory use, one sign not over two square feet in area is allowed.

3312. For permitted buildings, structures and uses of the premises, other than one or two family dwellings and their accessory uses, one sign not over ten square feet in area is allowed.

3313. Temporary, unlighted signs pertaining to the construction, lease or sale of the premises are allowed provided such signs do not exceed 16 square feet in total area.

3320. In Business and Industrial Districts, signs advertising the name of the firm and the products and services produced or available on the premises are permitted only as follows:

3321. Signs or other advertising devices attached flat against the wall of a building, which do not project above the wall to which they are attached and which do not project more than 24 inches from the building. One such sign shall be allowed for each firm on the premises, but no single sign shall exceed 35 square feet in area. One additional sign for each firm may be attached to a marquee which is an integral part of the building provided the total area of each such sign does not exceed six square feet.

3322. In the alternative to Section 3321, one sign or other advertising device of a free-standing nature may be erected for each firm or such signs may be combined into one or more units provided that in all cases the sign area per firm does not exceed 32 square feet in area. All such signs shall be located at least 10 feet from the public right-of-way and no free-standing sign shall exceed 15 feet in height unless a Special Permit has been granted by the Board of Appeals. In lieu of this free-standing sign, one sign may be placed above a one-story commercial or industrial building provided the top of the sign is not more than 35 feet above the ground and the area of said sign does not exceed 32 square feet.

3330. General Sign Restrictions.

3331. Signs, announcements, or bulletin boards not exceeding 16 square feet in area are allowed in all zoning districts in connection with public, charitable or religious uses.

3332. No sign or advertising device shall project over any pedestrian or vehicular way customarily used by the public.

3333. No exterior sign or advertising device shall incorporate motion or be lighted by flashing or blinking lights or utilize a change in light intensity.

3334. All illumination of signs or other advertising devices shall be shielded or indirect.

3335. No non-accessory sign or billboard shall be allowed.

3336. Signs required by federal or state law are allowed in all districts. Signs posting land against trespassing, hunting, or fishing, are also allowed in all districts.

3340. Signs Allowed on Special Permit. The Board of Appeals may grant Special Permits as follows:

3341. For changes in existing signs on nonconforming uses in Residence Districts provided such changes are within the limits established for Business and Industrial Districts, and not detrimental to the neighborhood.

3342. For a directional or identification sign in any district where such sign will serve the public convenience and not be detrimental to the neighborhood with respect to size, location, or design.

3350. Temporary Signs. Temporary signs are allowed only if conforming to the requirements for permanent signs, except for signs relating to sale, rental, or construction on the premises, or to a political, or religious, or charitable campaign or event. Such signs may be allowed in excess of the usual limits, but shall be removed within 30 days of the completion of the activity to which they relate.

3400. Environmental Controls.

3410. Erosion Control. Site design and materials and construction processes shall be designed to avoid erosion damage, sedimentation, or uncontrolled surface water runoff.

3411. Grading or construction which will result in slopes of 25% or greater on 50% or more lot area, or on 40,000 square feet or more on a single parcel, even if less than half the lot area, shall be allowed only under Special Permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. Applications and plans for such Special Permits shall be referred to the Conservation Commission for their advisory review.

3412. All slopes exceeding 25% from site grading shall either be covered with topsoil to a depth of 4" and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber, or be covered with any construction materials.

3413. No area or areas totaling 2 acres or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be

filled 6" or more such as to destroy existing vegetation unless in conjunction with agricultural activity, or unless necessarily incidental to construction on the premises under a currently valid building permit, or unless within streets which are either public or designated on an approved subdivision plan, or unless a Special Permit is approved by the Planning Board on condition that runoff will be controlled, erosion avoided, and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by Special Permit shall remain through the winter without a temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity where such temporary cover would be infeasible.

3414. The Inspector of Buildings shall require information of the applicant, in addition to that specified in Section 3411-3413, as necessary for him to ensure compliance with these requirements, including, if necessary, elevations at key locations, description of vegetative cover, and the nature of impoundment basins proposed, if any.

3415. Hillside areas shall be retained with vegetative cover as follows:

Average percentage slope	Minimum percentage of land to remain in vegetation
10.0 – 14.9	25
15.0 – 19.9	40
20.0 – 24.9	55
25.0 – 29.9	70
30.0 and above	85

3420. (Reserved)

3460. Landscaping.

3461. Parking lots for 8 or more cars shall contain or be bordered within 5 feet by at least one tree per 10 cars, trees to be of 2" caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree.

3462. All outdoor sales display areas, and all commercial outdoor recreation must be screened from any adjacent residential use or district by a wall, fence, or be equivalently obscured by natural vegetation. Contractor's yards, open storage and loading, or service yards shall be similarly screened from any

adjacent residential district or use and from any public way from which they would otherwise be visible, and shall not be located within any required front yard.

3500. Floodplain Overlay District (*added May 29, 2013*)

3510. Purpose. The purposes of the Floodplain Overlay District are to:

a. Ensure public safety through reducing the threats to life and personal injury;

b. Eliminate new hazards to emergency response officials;

c. Prevent the occurrence of public emergencies resulting from a reduction in water quality, contamination, and/or pollution due to flooding;

d. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; e. Reduce costs associated with the response and cleanup of flooding conditions;

f. Reduce damage to public and private property resulting from flooding waters.

3520. Floodplain District Boundaries **a**nd Base Flood Elevation and Floodway Data

a. The Floodplain District is herein established as an overlay district. The District includes special flood hazard areas designated on the Bernardston Flood Insurance Rate Map FIRM), Panels 1-7, issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated July 2, 1980, as Zones A, A1, A2, A3, A4, A5, A7 and A10, and the FEMA Flood Boundary & Floodway Map dated July 2, 1980, both maps which indicate the 100-year regulatory floodplain. 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 Flood Insurance Study (FIS) report dated January 2, 1980. The FIRM, Flood Boundary & Floodway Map, and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Inspector.

b. Floodway Data: In Zones A, A1, A2, A3, A4, A5, A7 and A10 along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used as outlined in the State Building Code 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.

c. Base Flood Elevation Data: Base flood elevation data is required for subdivision proposals or other developments greater than three lots or five (5) acres, whichever is

less, where a portion of the proposed development would be located within any unnumbered A Zone flood hazard area.

3530. Definitions

ANIMAL FEEDLOT is any site used regularly for the feeding of ten (10) or more animals for agricultural/commercial purposes.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, or A99.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year (also known as the "one-hundred-year flood").

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National
Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the Areas of Special Flood Hazard and the Risk Premium Zones applicable to the community.

FLOODWAY means 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.

HAZARDOUS MATERIALS means any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c.21C and 21E and 310 CMR 30.00.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). 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 the applicable non-elevation design requirements of National Flood Insurance Program (NFIP) Regulations 60.3.

MANUFACTURED HOME means 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 connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for longer than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means 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.

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

REGULATORY FLOODWAY - see FLOODWAY.

RIVER means a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.

RIVERINE means relating to or resembling a river, or located beside a river.

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AH, A1-30, AE, or A99.

STRUCTURE means, 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. Structure, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of

any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data as outlined in the State Building Code.

ZONE A1-A10 means the 100-year floodplain area where the base flood elevation (BFE) has been determined.

ZONE B AND C are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

3540. NOTIFICATION OF WATERCOURSE ALTERATION

In a riverine situation, the Bernardston Conservation Commission or Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- Bordering States
- NFIP State Coordinator
  Massachusetts Department of Conservation and Recreation
  251 Causeway Street, Suite 600-700
  Boston, MA 02114-2104
- NFIP Program Specialist
  Federal Emergency Management Agency, Region I
  99 High Street, 6th Floor
  Boston, MA 02110

3550. Use Regulations

3551. Reference to Existing Regulations.

All development in the Floodplain District, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws (the Wetlands Protection Act) and with the following:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); and

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

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

3552. Permitted Uses.

The following uses with low flood damage potential and causing no obstructions to flood flows are allowed provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

a. Agricultural uses such as farming, grazing, truck farming, horticulture, aquaculture, etc.

b. Forestry and nursery uses.

c. Outdoor recreational uses not requiring structures, including fishing, boating, soccer fields, etc.

d. Conservation of water, plants, wildlife.

e. Wildlife management areas, foot, bicycle, and/or horse paths.

f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.

g. Buildings lawfully existing prior to the adoption of these provisions.

3553. Prohibited Uses

a. No altering, dumping, filling, or removal of riverine materials or dredging is permitted. Maintenance of the floodway may be done under requirements of M.G.L. Ch. 131, Sec. 40, and any other applicable laws, by-laws, and regulations, and must be done using best management practices.

b. No new impoundments, dams, or other water obstructions may be constructed within the district.

c. Commercial or industrial uses are prohibited in the district.

d. Manufactured homes placed on a site for longer than 180 consecutive days and manufactured home parks or subdivisions are prohibited in the district.

e. Storage of vehicles or equipment within the floodway is prohibited. The Zoning Board of Appeals may consider whether a variance from this prohibition is warranted, where a hardship exists due to lot size or configuration.

f. Dumping of trash, garbage or other materials in the floodway is prohibited.

g. Construction of any kind on slopes of greater than 25% within the district is prohibited.

h. Storage or processing of hazardous materials is prohibited.

i. All other uses not specifically permitted (or allowed by site plan approval or Special Permit) within the floodplain district are prohibited.

3554. Restricted Uses

a. No cutting of forest or vegetation shall occur within fifty (50) feet of the floodway. In the area between fifty (50) and one hundred (100) feet from the floodway, no more than 50% of existing forest shall be cut. Exempted from the requirements in this section are: the cutting or management of state-listed invasive species; removal of woody or flood debris; or restoration activities permitted by the Conservation Commission.

b. Fenced animal grazing areas must be located at least fifty (50) feet from the floodway, with a naturally vegetated fifty-foot (50-foot) buffer strip to reduce runoff, and a fence to prevent animals from encroaching on the buffer strip.

3555. Uses Allowed by Special Permit

a. No structure or building in the Floodplain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Planning Board.

b. The following uses may be allowed by Special Permit in accordance with the Special Permit regulations of this Zoning Bylaw, Section 5300, and all requirements of Section 3500:

1. Single family residences or residential subdivisions.

2. Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.

3. Manufactured homes for not more than 180 consecutive days between May 1 and October 31 of each year.

3556. Special Permit Procedures

a. The following Special Permit requirements apply in the Floodplain District:

1. Within Zone A, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data as outlined in the State Building Code.

2. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.

3. Construction on slopes of 10-25% within the floodplain district shall require the preparation and submittal of an erosion and sedimentation control plan describing best management practices which will be employed to prevent construction-related impacts to water quality.

4. Utilities and facilities shall be so located and constructed in order to minimize or eliminate flood damage.

5. Adequate methods shall be provided for the periodic disposal of sewage, refuse and other wastes resulting from the uses permitted on the site.

6. The proposed use shall comply in all respects to the provisions of the underlying district in which the land is located.

7. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

8. There shall be established a "routing procedure" such that within 10 days of the receipt of the application, the Town Clerk will transmit one copy of the development plan to the Planning Board, Conservation Commission, Board of Health, Zoning Board of Appeals, and Building Inspector. The reviewing parties should forward recommendations to the Planning Board within thirty-five (35) from the date of transmission of the application from the Town Clerk to the reviewing parties.

9. Existing and proposed contour intervals of the site and elevations of existing and proposed structures must be included on plan proposal. To the maximum extent feasible, structures shall be located outside of the Floodplain District.

10. All plans submitted for development in the Floodplain District must be prepared by a registered professional engineer, registered architect, registered landscape architect, or registered land surveyor.

b. In addition to complying with the provisions of Section 5300 Special Permits of the Bernardston Zoning Bylaws, in order to issue a Special Permit, the Planning Board shall find that the proposed use and any associated public utilities or facilities in the Floodplain District must:

1. Not create flood hazards which are detrimental to the public health, safety and welfare and will minimize flood damage.
2. Comply in all respects to the provisions of the underlying District within which the land is located.
3. Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).
4. Be situated in a portion of the site that will most likely conserve wetland vegetation.
5. Be integrated into the existing landscape through features such as vegetative buffers.
6. Be located outside of the Floodplain District to the maximum extent feasible.
7. Not result in erosion or sedimentation.
8. Not result in water pollution.
9. Not result in drainage onto abutting properties and must provide adequate drainage on-site to reduce exposure to flood hazards.

3560. Enforcement and Penalties

a. Violations

Any development activity that has commenced or is conducted contrary to this bylaw may be restrained by injunction or otherwise abated in a manner provided by law.

b. Notice of Violation

When the Building Inspector determines that an activity is not being carried out in accordance with the requirements of this bylaw, he/she shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

1. the name and address of the owner applicant;
2. the address when available or the description of the building, structure, or land upon which the violation is occurring;
3. a statement specifying the nature of the violation;
4. a description of the remedial measures necessary to bring the development activity into compliance with this bylaw and a time schedule for the completion of such remedial action;
5. a statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed;

6. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

c. Restoration of Lands
Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Bernardston may take necessary corrective action at the owner's expense, the cost for which will be secured by a lien in accordance with M.G.L. Chapter 40, Section 58 (Municipal Charges Lien Statute).

3600. Solar Bylaw Allowing By-Right Siting of Large-Scale Ground-Mounted Solar Photovoltaic Installations (*added April 27, 2016*)

3610. Purpose

The purpose of Section 3600 of the Zoning Bylaws of the Town of Bernardston is to allow by-right the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations. These standards are designed to address public safety, minimize impacts on scenic, natural and historic resources and provide adequate financial assurance for the potential eventual removal of such installations.

The provisions set forth in this section of the Zoning Bylaws of the Town of Bernardston shall apply to the construction, operation, removal, alteration and/or/repair of large-scale ground-mounted solar photovoltaic installations which are allowed without a Special Permit. Specification for installations not met within the parameters of Section 3600 are not allowed by-right.

3620. Intent

To promote the responsible use of solar energy production and collection in the town of Bernardston while protecting the safety, health and welfare of the public.

3630. Applicability

Section 3600 of the Bernardston Zoning Bylaw applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the approval date of this bylaw by Town Meeting, and also applies to any physical modifications of such installations that materially alter the type, configuration, or size of these installations or related equipment, structures and buildings. A large-scale ground-mounted solar photovoltaic installation, for the purpose(s) of the bylaw is a solar photovoltaic system

that is structurally mounted on the ground (not roof-mounted), as well as any accessory structures and buildings.

A large-scale ground-mounted solar photovoltaic installation shall occupy a minimum size of one (1) acre and a maximum size of five (5) acres. Any other proposed ground-mounted solar photovoltaic installations are subject to the Special Permit process.

3640. Site Plan Review

Ground-mounted large-scale solar photovoltaic installations shall undergo Site Plan Review by the Planning Board prior to construction, installation or modification as provided in Section 3600. Site Plan Review is the review by the Bernardston Planning Board of a proposed project to ensure that it is in conformity with the Bernardston Zoning Bylaws, and the authority to grant if in conformity, deny the Site Plan Review if the site plans do not conform with the Bernardston Zoning bylaws, or to grant Site Plan Review with conditions so that the final site plans conform with the Bernardston Zoning bylaws.

3641. General

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

B. No large-scale ground-mounted solar photovoltaic installation may be proposed where it may be visible from any local, State, or Federally designated historic district or scenic byway in the Town of Bernardston, with the exception that if mature vegetative screening, which will completely shield visibility from such historic district or scenic byway, is planted prior to any construction, such construction may be allowed at the discretion of the Bernardston Site Plan Review Authority.

C. Large-scale ground-mounted solar photovoltaic installations are prohibited on hilltops and ridge lines, as well as any hillsides where they will be visible from any public ways or neighboring properties, or could be considered to alter the scenic beauty of the hillside.

D. Solar arrays shall be constructed on slopes less than 15% grade.

3642. Required Documents

The project applicant shall provide the following documents to the Bernardston Site Plan Review Authority:

A. Site plan clearly demonstrating:

1. Property lines and physical features, including roads, lot area, setbacks, open space, parking and structure coverage for the project site;

2. All proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, structures or vegetative screening;

3. Plans of the solar photovoltaic installation and accessory structures signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, lighting, signage, utility connections, transformers and any potential shading from nearby structures or natural features and vegetation;

4. Electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant components, disconnects, and over current devices;

5. Documentation by means of manufacturers' specifications of the major system components to be used, including, but not limited to, the photovoltaic panels, mounting system(s), and inverter(s);

6. Name, address, license verification and contact information for proposed system installer(s);

7. Name, address, phone number and signature of the project applicant and co-applicant (s), if any;

8. The name, contact information and signature of any agents representing the project applicant(s)

B. Documentation as outlined under Section 3650(A) Site Control

C. An operation and maintenance plan as outlined under Section 3650(B) Operation & Maintenance Plan.

D. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

E. Proof of liability insurance and description of acceptable financial surety as specified under Section 3692: Financial Security. The Bernardston Site Plan Review Authority may waive documentary requirements as it deems appropriate, by unanimous vote.

F. Plans must comply with all other requirements of the Site Plan Review provisions of this bylaw not provided for herein.

3650. General Requirements for all Large-Scale Solar Photovoltaic Installations

The following requirements shall apply to all large scale solar photovoltaic installations:

A. Site Control: The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation, as well as accessibility by Public Safety Officials and their vehicles, should it be necessary.

B. Operation & Maintenance Plan: The project applicant shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for maintenance of the installation.

C. Compliance with Laws, Ordinances and Regulations: The construction and operation of all large-scale ground-mounted solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to, all applicable safety, construction, electrical, environmental and communications requirements. All photovoltaic installations shall be consistent and meet the requirements of all local, state and federal bylaws, laws, and regulations including but not limited to the Bernardston Zoning Bylaw; all applicable safety, construction, electrical, environmental and communications requirements. All buildings and structures (including solar arrays) forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code, as well as the Bernardston Zoning Bylaw.

D. Building Permit and Building Inspection: No large-scale ground-mounted solar photovoltaic installation shall be constructed, installed, modified or removed without first obtaining a building permit.

E. Fees: Building permits issued for the construction, alteration, enlargement or demolition of large-scale ground-mounted solar photovoltaic installations shall be subject to permit fees, as well as Site Plan Review application fees, and consultation fees, as established by the Town of Bernardston. No building permit shall be deemed valid until such fees are paid. Any additional expenses, in addition to the SPR fee and the Building Permit fee, shall be bourne by the applicant.

F. Utility Notification: No large-scale scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Building Inspector that the utility company operating the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator’s intent to install an interconnected customer-owned generator, and has approved said operation. Off-grid systems shall be exempt from this requirement.

G. These projects must comply with Sections 3400 (Environmental Controls) and 4700 (Renewable Energy Facilities) of the zoning bylaws as well as Massachusetts Storm water regulations.

3651. Dimensional and Density Requirements

For all large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

A. Front, side, and rear setbacks shall all be at least 50 feet.

B. Access roads shall be set back at least 20 feet from front, side, and rear lot lines.

C. All large-scale ground-mounted solar photovoltaic installations shall be constructed on parcels meeting the minimum dimensional zoning requirements for the zone in which it is proposed as specified in Appendix A: Table of Dimensional Requirements in the Bernardston Zoning Bylaw.

3652. Segmentation

In determining whether a project complies with the lot size restriction in Section 3650(A) Site Control, the developer and the Site Plan Review Authority shall consider the entirety of the development, including:

A. Any likely future expansion of the project on the subject property or on any property which is contiguous to the subject property or under related ownership;

B. Any past, related development on any property, which is contiguous to the subject property, or any property that is under related ownership with the subject property at the time that this bylaw was adopted. A developer shall not phase or segment a project or transfer ownership of contiguous properties to evade, defer, or curtail the requirements set forth in this bylaw.

3653. Accessory Structures

All accessory structures to large-scale ground-mounted solar photovoltaic installations shall comply with the Town of Bernardston Zoning Bylaw and all requirements of Section 3600, and the Massachusetts State Building Code. All components and accessory structures shall be screened from view from public ways and neighboring properties by vegetative screening with varieties indigenous to Bernardston, and approved by the Planning Board during the site plan review process. Said vegetative screening shall reach a mature form to effectively screen the installation within five years of installation. Planting of the vegetative screening shall be completed prior to final approval of the photovoltaic installation by the Building Inspector.

3654. Size

A large-scale ground-mounted solar photovoltaic installation shall occupy a minimum size of one (1) acre and a maximum size of five (5) acres. No large-scale ground-mounted solar photovoltaic installation, as defined in this section, shall occupy more than five acres, in aggregate of all arrays, structures and buildings. All large-scale ground-mounted

solar photovoltaic installations larger than five acres, including all accessory components, buildings, and structures, shall require a Special Permit, if such use is permitted within the Bernardston Zoning Bylaws. Refer to Section 2340 Dimensional Schedule.

3660. Design Standards

3661. Lighting

Lighting of large-scale photovoltaic installations and accessory structures and buildings shall be limited to that required for safety and operational purposes, and shall be shielded from abutting properties with appropriate fencing or vegetative screening, or as specified by the Bernardston Site Plan Review Authority. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

3662. Signage

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with the Town of Bernardston Zoning Bylaw Section 3300. A sign shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable (as defined by the Bernardston Site Plan Review Authority or the Planning Board) including identification of the manufacturer, owner and/or operator of the solar photovoltaic installation.

3663. Utility Connections

Reasonable efforts, as determined by the Bernardston Site Plan Review Authority during the Site Plan Review process, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Connection components may be located above ground if required by the utility provider.

3664. Screening & Landscaping

The solar installation shall be screened from view from public ways and neighboring properties, as specified under Section 3667: Landscape Maintenance, in order to protect the rural character of the town.

3665. Height

No component of a solar installation shall exceed 15’ from the grade of each base to its highest point without prior approval of the Planning Board.

3666. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws. Solar photovoltaic systems shall be installed on water permeable surfaces, or as approved by the Site Plan Review Committee during the site plan review.

3667. Landscape Maintenance

When possible, a diversity of plant species shall be used, with all species native to New England. Use of exotic plants, as identified by the most recent copy of the "Massachusetts Prohibited Plant List" maintained by the Massachusetts Department of Agricultural Resources, is prohibited. Vegetative screening shall be of a height upon maturity to shield visibility of all components from view off-site. Use of herbicides are prohibited.

3670. Emergency Services

The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Bernardston Fire Chief and Bernardston Police Chief. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. Twenty-four hour access to the site shall be provided to the fire department and police department by means approved by the chief of police and fire chief.

3680. Monitoring and Maintenance

Solar Photovoltaic Installation Conditions

The large-scale ground-mounted solar photovoltaic installation owner shall be responsible for maintenance of the facility. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. The owner shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted at Bernardston Town Meeting as a public way. Landscaping, replanting and re-seeding, if necessary, shall be included as part of the maintenance for stormwater management and vegetative control.

3681. Modifications

All substantial modifications to a large-scale solar-photovoltaic installation made after final inspection by the Building Inspector shall require approval by the Planning Board prior to the issuance of a building permit for said modifications.

3690. Abandonment or Decommissioning

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Building Inspector or his designee may enter the property and physically remove the installation.

3691. Removal Requirements

The owner shall notify the Planning Board by Certified Mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

A. Removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.

B. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

C. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

3692. Financial Surety

Applicants of large-scale ground-mounted solar photovoltaic installations shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape. A plan shall be submitted, as part of the application for a large-scale ground-mounted solar photovoltaic installation to return the site to a pre-existing condition, as determined reasonable by the Site Plan Review Authority, with the form of surety to be held by the Town in the amount of 125% of the applicant-provided estimate (RS Means or equivalent) for such work. The amount shall include a mechanism for calculating increased removal costs due to inflation. The surety shall be submitted to the Planning Board prior to the issuance of the Building Permit, as well as prior to any disturbance, including tree cutting, at the site.

3695. Severability Provision

If any part of this bylaw is found not to be legal the rest will remain intact.

ARTICLE IV. SPECIAL REGULATIONS.

4100. Mobile Homes and Campers.

4110. Mobile Homes. Mobile homes or similar mobile structures designed for business use shall not be parked, stored or occupied for living or business purposes, except:

4111. In a lawfully existing mobile home park.

4112. A mobile home may be occupied, for a period not to exceed 30 days in any calendar year, in conjunction with a carnival, blood bank, or similar function.

4113. The owner or occupier of a residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site of such residence and reside in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the state sanitary code.

4120. Campers and Campgrounds.

4121. Campers may be occupied either in a campground, or by non-paying guests accessory to a residence for up to 30 days in any calendar year. Campers may be stored accessory to a residence.

4122. Campgrounds. Campgrounds are allowed only on Special Permit from the Board of Appeals, and following approval from the Board of Health, and shall conform to the following minimum requirements:

a. parcel minimum area to be ten (10) acres.
b. each rental plot shall be at least 5,000 sq.ft., and not more than 80 plots shall be allowed per campground.
c. campers shall not be placed within 80 feet of a street or a lot line.

4200. Earth Removal. The removal from any premises of more than 50 cubic yards of sand, gravel, stone, topsoil, loam or similar materials within any twelve-month period shall be allowed only on Special Permit from the Board of Appeals, unless such removal is incidental to construction on the premises under a current building permit, or routine to farming operations and noncommercial. A Special Permit may be granted subject to the following conditions, and subject to the Special Permit criteria of Section 5300, below.

4210. Plan. The application shall be accompanied by a plan or plans indicating existing topography, base grades below which no excavation will take place, existing and proposed cover vegetation, and proposed topography upon completion.

4220. Screening and Noise. Excavation areas and processing equipment shall be screened by buffer strips or other means, and noise and dust shall be controlled to meet the requirements of Section 3450.

4230. Restoration. Following removal, all excavated areas shall be restored by grading to provide for drainage and for slopes not to exceed one foot vertical to two feet horizontal, and by covering with four inches of topsoil, and by planting with cover vegetation, all of which shall have been established prior to release of the bond.

4240. Bond. A performance bond shall be posted in an amount sufficient to assure satisfactory fulfillment of all of the above requirements.

4300. Water Resource Protection District[s]. *(added May 29, 2013)*

4310. Purpose. The purpose of the Water Resource Protection District is to protect the public health by preventing contamination of the ground and surface water resources providing public water supply *now and in the future*.

4320. Definitions Pertaining to the Water Resource Protection District[s]:

Animal Feedlot: Any site used regularly for the feeding of ten (10) or more animals for agricultural/commercial purposes.

Aquifer**:** Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

CMR: Code of Massachusetts Regulations.

DEP: Massachusetts Department of Environmental Protection.

Groundwater**:** All water found beneath the surface of the ground.

Hazardous Materials: [Any substance or combination of substances which, because of quantity, concentration, or physical, chemical, or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed into or on any land or water in the Town of Bernardston. Any substance deemed a hazardous waste under Section 3001 of the Resource Conservation and Recovery Act of 1976, as amended, 40
CFR, Part 261, shall also be deemed a hazardous material for the purposes of this Zoning ByLaw. A copy of 40 CFR, Subpart 261.30-261.33 is on file with the Town Clerk.] Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in

quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c.21C and 21E and 310 CMR 30.00.

Hazardous Waste: Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

Impervious Surfaces: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Landfill: A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

Low Impact Development - Low Impact Development (LID) is an approach to land development that uses land planning and design practices and technologies to simultaneously conserve and protect natural resource systems and reduce infrastructure costs. LID seeks to design the built environment to remain a functioning part of an ecosystem rather than exist apart from it. LID tools are used to plan and engineer urban and rural sites to maintain or restore the hydrologic and ecological functions of their watersheds. M.G.L.: Massachusetts General Law.

Non-sanitary wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

Open Dump: A facility operated or maintained in violation of the Resource Conservation and Recovery Act (42 U.S.C. 4004(a)(b)), or state regulations and criteria for solid waste disposal.

Petroleum Product: Petroleum or petroleum by-product including, but not limited to: fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas including, but not limited to, liquefied natural gas, propane or butane.

Potential Drinking Water Sources: Areas that could provide significant potable water in the future.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include DEP approved Zone I, Zone II, or Zone III areas.

Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material that is a hazardous waste as defined by 310 CMR 30.000.

Sludge: The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the head-works of a facility.

Solid Wastes **:** Useless, unwanted, or discarded solid materials with insufficient liquid content to be free-flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk, refuse, contained liquid or gaseous materials, inert fill material and landscape refuse.

Treatment Works: Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

Very Small Quantity Generator: Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M.G.L. c.21. s.52A.

Water Resource Protection District Map: As shown on the Official Zoning Map filed with the Town Clerk [dated April, 1987].

Zone I**:** The DEP designated protective radius around a public water system well or wellfield.

Zone II: The DEP approved area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as defined in 310 CMR 22.00.

4340. Use Regulations.

4341. Within a Water Resource Protection District, the requirements of the underlying districts continue to apply, except that uses are prohibited where indicated by "N" in the following schedule, and require a Special Permit where indicated by "SP", even where the underlying district requirements are more permissive. Uses permitted in the underlying districts are otherwise allowed in a Water Resource Protection District.

SCHEDULE

---

1. PRINCIPAL USES

(a) Manufacture, use storage, transport or disposal of hazardous materials or petroleum products as a principal activity N

(b) Landfills and open dumps as defined in 310 CMR 19.006; landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L. c. 21 s.26 through s.53; M.G.L. c. 111 s.17; M.G.L.c.83, s.6 and s.7, and regulations promulgated thereunder; septage lagoon, wastewater treatment facility other than municipal wastewater N

(c) Road salt stockpile N

(d) Junkyard; salvage yard; automobile graveyards and junkyards, as defined in M.G.L. c.140B, s.1; truck terminal or school bus parking facility with more than 10 parking Spaces N

(e) Gasoline station, car wash, auto repair of auto body shop N

N

(f) facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L. c.21C and 310 CMR 30.00, except for:

1. very small quantity generators as defined under 310 CMR 30.000;

2. household hazardous waste centers and events under 310 CMR 30.390;

3. waste oil retention facilities required by M.G.L. c. 21, s.52A;

4. water remediation treatment works approved by DEP for the treatment of contaminated waters

(g) discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:

1. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works; treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and

2. publicly owned treatment works	N
(h) stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the district	N
(i) storage of commercial fertilizers, as defined in M.G.L. c.128, s.64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate	N

2. ACCESSORY USES

(a) Underground storage of hazardous materials including fuel oil and gasoline	N
(b) Above ground storage of hazardous materials in quantities greater than associated with normal household use, other than fuel oil for residential heating purposes	SP
(c) Any use generating hazardous wastes in quantities greater than associated with normal household use	SP
(d) Animal feedlots, manure storage	SP

3. OTHER USES

(a) Rendering impervious more than 15 percent of total lot area, regardless of size	SP
(b) Any use, regardless of lot size, other than a single-family dwelling, retaining less than *50* percent of lot area in its natural vegetative state	SP
(c) Removal of earth, loam, sand, and gravel, or any other mineral, in excess of 50 yards, not incidental to construction of a building	SP
(d) Any use, other than single-family dwelling, having on-site disposal system for *sanitary* wastes with a design capacity greater than 1500 gallons per day, as required by 310 CMR 15.00	SP

4342. Nonconforming Uses in the Water Resource Protection District. Nonconforming uses which were lawfully existing, begun or in receipt of a building or Special Permit prior to the first publication of notice of public hearing for this bylaw may be continued. Such nonconforming uses may be extended or altered, as specified in M.G.L. Ch. 40A, Sec. 6, and in compliance with the regulations of this overlay district herein, provided that there is a finding by the Planning Board that such change does not increase the danger of surface or groundwater pollution from such use.

4350. Special Permit Granting Authority. The Special Permit Granting Authority (SPGA) shall be the Planning Board. Such Special Permit shall be granted if the SPGA determines that the intent of this Section 4300, as well as the specific criteria of Section 4370 are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to groundwater quality which would result if the control measures failed.
Any Special Permit required under this Section 4300 shall be in addition to, and separate from, any other Special Permit required under any section of this Zoning By-Law.

4360. Applicants shall file nine (9) copies of applications with all documentation, including required documentation, for Special Permits with the Planning Board. Whenever an application for a Special Permit is filed with the Planning Board under Section 4350, the Planning Board shall transmit within 14 working days of the filing of the completed application, copies of the application and other documentation, to the Board of Health, Conservation Commission, Bernardston Fire & Water District and the Building Inspector for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. [Failure of these reviewing parties to make recommendations within 35 days after having received copies of all such required materials shall be deemed a lack of opposition thereto.] The reviewing parties should forward recommendations to the
Planning Board within thirty-five (35) from the date of receipt of the application and documentation. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

4370. Special Permit Criteria. Special Permits hereunder shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated in Section 4360, that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other town boards, departments or commissions in its decision.

The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Sections 4340 and 4390 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:

1. not, during construction or site work or thereafter, have an adverse environmental impact on any watershed or watercourse in the district. A commercial forestry operation shall present a plan for cutting which provides safe temporary equipment storage, and follows the Massachusetts Forest Cutting Practices Act 304 CMR 11.00;
2. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed
3. not adversely affect the existing or potential quality and quantity of water in the Water Resource Protection District;
4. where required, provided the mechanism to assure on-site quality recharge, including demonstrating that LID was considered for use and incorporated in the design when it was environmentally feasible, beneficial, and cost-effective; and
5. not promote the intensive use of pesticides. Golf courses must present an application schedule and list of pesticides to be used which will not contaminate the aquifer.

4380. Submittals. In applying for a Special Permit hereunder, the SPGA shall require the information listed below, unless waived or modified by the SPGA, with reasons therefor. Any application shall not be deemed filed until all required information is submitted to the Planning Board.

4381. A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.

4382. A description of all potentially hazardous wastes to be generated in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage facilities from vandalism, corrosion, and leakage, and to provide for control of spills.

4383. For above ground storage of hazardous materials or waste, certification by a Registered Professional Engineer that such storage facilities or containers are (i) in compliance with all applicable federal or state regulations, (ii) that the storage

facilities or containers are free standing and located within a building, or in a freestanding container above ground level with protection to contain a spill the size of the container's total storage capacity, and (iii) in compliance with design specifications, as prepared by a Registered Professional Engineer.

4384. For any proposed activity on a lot which will render more than 15 percent of the total lot area impervious, the application shall be accompanied by drainage calculations, prepared by a Registered Professional Engineer, demonstrating that any increase in the volume of runoff shall be recharged on-site using LID techniques [and diverted towards areas with vegetation for surface infiltration] to the maximum extent feasible. The plan shall be accompanied by a narrative statement explaining the use of any dry wells, which shall be allowed only upon a showing that other methods of drainage are infeasible, and that such dry wells are preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

4385. For any use retaining less than 50 percent of lot area in its natural vegetative state, the application shall be accompanied by evidence, prepared by a Registered Professional Engineer, to demonstrate that such removal of vegetative cover shall not result in decreased recharge of the groundwater deposit, or increased sedimentation of surface waters. The application shall also indicate proposed restoration plans, if any, or erosion control methods proposed for the premises.

4386. For any use, other than a single-family dwelling, with an on-site disposal system for sanitary wastes with a design capacity of greater than 1,500 gpd, as required by 310 CMR 15.00, certification by a Registered Professional Engineer that the disposal system has been installed in compliance with design specifications, accompanied by a narrative statement assessing the impact, if any, of the sanitary *wastes (*nitrates, coliform bacteria, and hazardous materials*)* from the disposal system on any Town wells downgradient from the proposed disposal system.

4387. Applications for removal of earth, loam, sand, and gravel, or any other mineral in excess of ten cubic yards, shall be accompanied by a narrative statement, prepared by a Registered Professional Engineer, assessing the impact, if any, of the proposed activity on aquifer recharge rates and downgradient groundwater quality. No excavation or removal shall be conducted within ten (10) feet of the historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works.

4388. All new animal feedlots and animal manure storage areas shall be covered and/or contained in accordance with the Natural Resource Conservation Service standards to prevent the generation and escape of contaminated run-off or leachate.

4390. All uses, whether allowed by Special Permit or by right, must meet the Performance Standards for the Water Resource Protection District. By right uses shall require Site Plan approval in accordance with Section 4400. Site Plan Review to ensure that the Performance Standards are met.

1. Sodium chloride for ice control shall be used at the minimum salt to sand ratio which is consistent with the public highway safety requirements, and its use shall be eliminated on roads which may be closed to the public in winter. Alternative deicing materials, such as calcium chloride, shall be used to the extent feasible for winter road maintenance.

2. The storage of commercial fertilizers and soil conditioners shall be within structures designed to prevent the generation and escape of contaminated runoff or leachate.

3. All subsurface stormwater infiltration systems shall be constructed with a two (2) foot minimum separation between the bottom of the system and maximum groundwater elevation.

4. All uses other than single family residential uses shall incorporate Low Impact Development techniques for stormwater management and other appropriate Best Management Practices to remove pollutants from stormwater, incorporate natural drainage patterns and vegetation, and maintain pre-development stormwater patterns and water quality to the greatest extent feasible. The Planning Board, or engineering consultant as applicable, will use the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Standards and Handbook to execute the provisions of this section of the bylaw. The Handbook includes a list of acceptable stormwater treatment practices, including specific design criteria. The Standards and Handbook may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically revised in the zoning bylaw, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts' water quality standards.

4400. Site Plan Review.

4410. Applications for permits for nonresidential or nonagricultural construction shall be referred by the Building Inspector to the Planning Board, within seven days of filing. All above applicants will be subject to a Site Plan Review by the Planning

Board prior to being issued a building permit by the Building Inspector. The Building Inspector shall not approve any application subject to such review without receipt of written plan approval by the Planning Board, unless 45 days elapse from the date of the application without written notice of action by the Planning Board. Applicants shall submit three (3) prints of plans of the proposal to the Building Inspector, who shall forward two (2) copies to the Planning Board as specified above.

4420. Plans subject to this section shall show:

a. existing and proposed topography;
b. boundaries of the parcel;
c. adjacent streets or ways;
d. existing and proposed structures;
e. water provision;
f. sanitary sewerage;
g. storm drainage;
h. parking and egress;
i. planting and screening;
j. information pertaining to buildings as required in State Building Code.

4430. Site Plan approval shall be granted upon determination by the Planning Board that the following conditions are complied with. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage, consistent with functional requirements of the Planning Board's Subdivision Rules and Regulations. New building shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

a. minimize the volume of cut and fill, the number of removed trees 6" caliper or
larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, threat of air or water pollution, and noise emanating from the site;

b. maximize pedestrian and vehicular safety both on the site and egressing from it;

c. minimize obstruction of scenic views from publicly accessible locations;

d. minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

e. minimize glare from headlights through plantings or other screening;

f. minimize lighting intrusion through use of such devices as cut-off luminares confining direct rays to the site, with fixture mounting not higher than 15 feet;

g. minimize unreasonable departure from the character and scale of building in the vicinity, as viewed from public ways.

4440. The Planning Board may adopt and from time to time amend reasonable regulations for administration of these site plan guidelines.

4500. Major Residential Development.

4510. Applicability. Major Residential Development, that is, the creation of more than four lots (whether a subdivision or not), or construction of more than four dwelling units within a two-year period from or on a property or set of contiguous properties in common ownership as of May 26, 1987, is allowed only on Special Permit, as indicated in Section 2230, the Use Regulation Schedule. Such Special Permits shall be acted upon in accordance with the following. In addition, small developments may, at the owner's option, be considered as if a Major Residential Development, and employ the following provisions.

4520. Procedures. Applicants for Major Residential Development shall file with the Planning Board four copies of the following:

4521. A Development Plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. Such plan shall also indicate proposed topography, and, unless the development is to be sewered, the results of deep soil test pits and percolation tests at the rate of one per every three acres, but in no case fewer than two per Major Residential Development.

4522. An Environmental Analysis, if required by the Subdivision Regulations.

4523. Any additional information required by the Planning Board to make the determinations and assessments cited in Sections 4530 and 4540, below.

4530. Flexible Development. The Planning Board may authorize Flexible Development within a Major Residential Development, subject to the following requirements, subject to the conditions set forth below:

4531. Any lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.

4532. Each lot shall contain not less than one-quarter that required in the district in which the lot is located, and have frontage of not less than 50 feet.

4433. Any proposed open land, unless conveyed to the Town or its Conservation Commission, shall be covered by a recorded restriction enforceable by the Town, providing that such land shall be kept in an open state, or that it shall be preserved for exclusively agricultural purposes. Any such land proposed as open land shall be served by suitable public access for purposes of recreational use, forest management, or agricultural cultivation.

4540. Number of Dwelling Units.

4541. The Basic Maximum number of dwelling units allowed shall be equal to the number of lots which could reasonably be expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision, health, and other applicable regulations.

4542. The Planning Board may approve a Major Residential Development containing more than the Basic Maximum number of dwelling units, upon the Board's determination that the proposed development is in conformance with the required Site Plan Review, and upon the condition that any increase over the Basic Maximum number of dwelling units allowed shall be limited by the following:

a. One additional dwelling unit or lot may be added for each dwelling unit assured for at least 20 years through covenant, repurchase agreement, or other means to be sold or leased on terms affordable to households or individuals with incomes not exceeding those defined as "Moderate Income" by the Massachusetts Executive Office of Communities and Development.

b. One additional dwelling unit or lot may be added for each dwelling unit that could have otherwise been developed, in full conformance with all zoning, subdivision, health, and other applicable regulations, on that portion of the parcel, or other land, to be restricted under a

Conservation Restriction, or Agricultural Preservation Restriction, or deeded to the Town, provided that such land must be:

1. Land abutting and within 200 feet of a street, other than a street created by the subdivision, or

2. Land determined by the Planning Board, after consultation with the Conservation Commission, to be non-wetlands, as defined by M.G.L.A. ch. 131, and not flood prone land, as defined in Section 3321 and 3322 herein, and served by suitable access as defined in Section 4533.

c. The total number of additional units to be constructed, or additional lots, under section 4541 and 4542, above, shall not exceed 30% of the Basic Maximum number of dwelling units or lots.

d. No bonus development units shall be allowed in a Water Resource Protection District.

4550. Multifamily Development. Multifamily dwellings may be allowed in a Major Residential Development, subject to the following:

4551. Departure from the visual scale of single-family development shall be minimized through including not more than 4 dwelling units in a single structure.

4552. On-site sewage disposal systems for multifamily dwellings shall not be allowed at locations classified as having severe limitations for on-site sewage disposal by the United States Department of Agriculture, Soil Conservation Service, survey for the area.

4553. The Site Plan for multifamily dwellings shall be so designed that access via minor streets, otherwise servicing single-family homes, is minimized.

4554. More than one dwelling may be placed on a lot, but no principal structures shall be closer to each other than the height of the taller structure. Each dwelling must be provided with access, drainage, and utilities functionally equivalent to that provided under the Planning Board's Subdivision Rules and Regulations.

4555. Parking areas shall not be located within a required front yard or within ten feet of a lot line. Parking areas shall be screened from public ways

by building location, grading, fencing, or plantings. No individual parking area shall contain more than 10 spaces.

4556. No building shall be floodlit. Drives and parking areas shall be illuminated only by shielded lights not higher than 15 feet.

4560. Decision. The Planning Board shall approve, approve with conditions, or deny an application for a Major Residential Development that is governed, in any manner, by the provisions of:

Section 4530 in its entirety, or
Section 4542, or
Section 4550 in its entirety

in accordance with Section 5300 of the Zoning By-Law (governing special permits). Any Major Residential Development proposal governed, in any manner, by the above specified provisions, shall not be approved unless it is in conformance with at least one objective of this By-Law; conservation of open space, preservation of agricultural land, preservation of rural character, the promotion of affordable housing, and development of residential units that maximize scenic and visual value in the town.

All other Major Residential Development applications shall be approved or approved with conditions after all requirements under the Board's subdivision regulations, health regulations, and other applicable requirements have been met.

4600. Expedited Permitting Districts *(added April 20, 2010)*

4610. Purposes. The purposes of the Expedited Permitting Districts are:

(1) To promote commercial and industrial development and redevelopment in Bernardston that is located in an appropriate location adjacent to existing highways and transportation infrastructure.

(2) To ensure high quality site planning, architecture and landscape design that enhances the character of the development and provides safety, convenience and other amenities.

(3) To generate positive tax revenue for the Town, and to benefit from the financial incentives provided by Commonwealth, while providing the opportunity for new business growth and additional local jobs.

4620. Definitions. As used in this Section, the following terms shall have the meanings set forth below:

APPLICANT – A landowner or other petitioner who files a plan for a Development Project subject to the provisions of this By-Law, Section 4600.

APPROVING AUTHORITY – The Planning Board of the Town of Bernardston acting as the authority designated to review projects and issue approvals under this Section 4600.

DESIGN STANDARDS – To ensure that new development shall be of high quality, and shall be compatible with the character of building types, streetscapes, and other community features traditionally found in Bernardston, the Planning Board may adopt Design Standards provided separately.

DEVELOPMENT PROJECT or PROJECT – A commercial, industrial or mixed use development undertaken pursuant to Section 4600. A Development Project shall be identified as such on the Plan which is submitted to the Planning Board for Plan Review in accordance with this Section 4600 and Section 4400 Site Plan Review.

ENCLOSED FLOOR AREA – The sum of the gross areas of all floors of a building, measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings.

EXPEDITED PERMITTING DISTRICT (EPD) – The zoning district created to meet the requirements of Mass. Gen. Law Ch. 43D, in accordance with the procedures for zoning adoption and amendment as set forth in Mass. Gen. Law Ch. 40A.

MIXED-USE DEVELOPMENT PROJECT – A Development Project containing industrial uses and/or one or more Non-Residential Uses.

NON-RESIDENTIAL USE – Office, Retail, Restaurant, Service or Institutional Use, Renewable Energy manufacturing or research and development, or some combination of the same.

OFFICE – A place for the regular performance of business transactions and services, generally intended for administrative, professional and clerical activities, including a medical or dental office or health clinic.

PLAN – A plan depicting a proposed Development Project for all or a portion of the Expedited Permitting District and which is submitted to the Planning Board for its review and approval in accordance with the provisions of Expedited Permitting District and with the other provisions of the Zoning By-law.

PLAN APPROVAL – The Planning Board's authorization for a proposed Development Project based on a finding of compliance with this Article and other applicable sections of these Zoning By-laws.

PLAN REVIEW – The review procedure established by this Article and administered by the Planning Board.

PLANNING BOARD REGULATIONS – The administrative rules and regulations adopted by the Planning Board.

RESTAURANT – Any business establishment principally engaged in serving food, drink, or refreshments, whether prepared on or off the premises provided, however, that drive through windows are not allowed.

RETAIL USE – Business establishments selling goods and/or services, generally for personal, business or household consumption. A reasonable amount of storage consistent with Massachusetts Building Codes of said goods shall also be assumed to be an incidental part of Retail Use.

USE, ACCESSORY – A use subordinate to the Principal Use on the same lot or in the same structure and serving a purpose customarily incidental to the Principal Use, and which does not, in effect, constitute conversion of the Principal Use of the lot, site or structure to a use not otherwise permitted in the Priority Development District.

USE, PRINCIPAL – The main or primary purpose for which a structure, building, or lot is designed, arranged, licensed, or intended, or for which it may be used, occupied, or maintained under this Section 4600.

USE, SECONDARY – A use located on the same lot as a Principal Use but which is of equal or lesser scale, impact, and visibility than the Principal Use. A Secondary Use is not an Accessory Use, as it is largely independent from the Principal Use.

4630. Scope and Authority.

The Expedited Permitting District is established pursuant to the authority of Mass. Gen. Laws. Ch. 43D and applicable regulations and is shown on the Official Zoning Map of the Town of Bernardston, as amended. The Applicant shall apply for Plan Approval pursuant to the zoning controls set forth in this article and comply with all applicable zoning controls set forth in the Zoning By-laws of the Town of Bernardston. Development Projects proceeding under this Article shall be governed by the provisions of this Article and shall meet the time requirements of the M.G.L. Chapter 43D.

4640. Establishment and Delineation of the EPD. The boundaries are delineated as the "Expedited Permitting Districts" on the Official Zoning Map of the Town of Bernardston on file in the office of the Town Clerk, said map is hereby made a part of the Zoning By-law.

4650. Allowed and Prohibited Uses. The uses which are allowed By-Right or by Special Permit, or that are Prohibited are shown in Section 2200, Use Regulations.

4660. Dimensional and Other Requirements.

Applications for Plan Approval shall be governed by the provisions of Section 2300 for the Expedited Permitting District, adopted pursuant to this Bylaw.

Parking shall be designed and constructed in accordance with these Zoning By-law and shall comply with all applicable disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and 521 CMR.

4670. Plan Approval Procedures.

The Planning Board shall adopt and file with the Town Clerk and Administrative Assistant an application package and instructions with the requirements and contents for Plan Review. Plan approval procedures shall be as described below.

4671. Pre-Application Procedure

Prior to the submittal of a Plan for Plan Approval, a "Concept Plan" may be submitted to help guide the development of the definitive submission for project build out. Such Concept Plan shall reflect the following:

(a) Overall building envelope areas

(b) Open space and natural resource areas

(c) General site improvements, groupings of buildings and proposed land uses

(d) Anticipated parking spaces and locations

(e) Site vehicular access

The Concept Plan is intended to be used as a tool for both the applicant and the Planning
Board to ensure that the proposed Project design will be consistent with the Design Standards, provided separately as part of the application package, and other requirements of the EPD.

4672. Application Procedures

All Projects are subject to Plan Approval and Site Plan Review in accordance with Section 4400.

(1) Submittal

An application for Plan Approval in accordance with this section and any other requirements of the Zoning By-law shall be submitted to the Planning Board on the forms provided by the Planning Board, along with the application fees set forth in the administrative regulations.
The application shall be accompanied by such plans and other documents as required by the Planning Board as well as any materials required to verify compliance with any of the above provisions of this Section 4600 and other relevant sections of the Zoning Bylaws. All plans shall be

prepared by registered architects, registered landscape architects, or professional engineers.

(a) An application for Plan Approval shall be filed by the Applicant with the Town Clerk. In addition, a copy of the application, including the date of filing certified by the Town Clerk, as well as the required number of copies of the application, shall be filed forthwith by the Applicant with the Planning Board and Administrative Assistant. Application submissions must include an original and eight (8) hard copies as well as an electronic copy in PDF or CAD format. Said filing shall include any required forms provided by the Planning Board. The Planning Board will review application and within 20 business days of receipt will notify Applicant whether application is complete or whether additional information is needed (see M.G.L. 43D Section 5). If incomplete, Planning Board shall send a written notice by certified mail to the applicant identifying any deficiencies in the application necessary to complete it.

(b) The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application consistent with M.G.L Ch. 44 Section 53G. Such fees shall be held by the Town of Bernardston in a separate account and shall be used only for expenses associated with the use of outside consultants employed by the Planning Board in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any unused interest accrued, shall be returned to the Applicant forthwith.

(2) Circulation to Other Boards

Upon receipt of the application, the Town Clerk shall immediately provide a copy of the application materials to all municipal Boards, Departments, Commissions, and officials. These boards shall provide written notice to the Planning Board and Administrative Assistant within 15 business days of receipt whether or not they deem the application complete (see Application Form). These entities shall also provide any written comments on the application to the Planning Board and Administrative Assistant within 60 days of receipt of the completed plan and application.

(3) Public Hearing

The Planning Board shall hold a public hearing and review all applications according to the procedure specified in Mass. Gen. Laws Ch. 40A § 11.

(4) Criteria for Plan Approval

The Planning Board may approve the Site Plan for the Development Project upon the following findings:

(a) The Applicant has submitted the required fees and information as set forth in applicable Regulations; and

(b) The proposed Development Project as described in the application meets all of the requirements and standards set forth in this article, Section 4400 Site Plan Review, Section 5300 Special Permits if required, and any applicable Design Standards, or a waiver has been granted therefrom; and

(c) Any adverse potential impacts of the Project on nearby properties have been adequately mitigated.

(5) Criteria for Plan Denial

A Plan Approval application may be disapproved where the Planning Board finds that:

(a) The applicant has not submitted the required fees and information as set forth in the regulations or has not paid all reasonable consulting fees; or

(b) The project as described in the application does not meet all the requirements and standards set forth in this Section, Section 4400, Section 5300 if applicable, or the Planning Board Regulations, or that a required waiver therefrom has not been granted; or

(c) It is not possible to adequately mitigate significant project impacts on nearby properties by means of suitable conditions.

(6) Time Limit

The decision of the Planning Board shall be made by written notice filed with the Town Clerk within 180 days of the Planning Board's notice to the Applicant that the application is complete. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the Town Clerk. Failure of the Planning Board to take action within said 180 days or the extended time shall be deemed constructive approval of the Plan for the project. The Town Clerk shall provide a copy of the decision to the Applicant.

4673. <u>Waivers.</u>

Upon request of the Applicant, the Planning Board may waive dimensional and other requirements, including design standards, with conditions, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the EPD, or if it finds that such waiver will allow the project to achieve the density, mix of uses and/or

physical character allowed under this Section 4600. The Planning Board may not grant waivers for use (i.e. no use variances).

4674. Plan Changes After Approval by Planning Board

(1) Minor Plan Changes

After Site Plan Approval, an Applicant may apply to make minor changes in a Development Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space. Such minor changes must be submitted to the Planning Board on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the Planning Board. The Planning Board may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Planning Board shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the Town Clerk.

(2) Major Plan Changes

Those changes deemed by the Planning Board to constitute a major change in a Development Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the Planning Board as a new application for Plan Approval pursuant to this Section 4600.

4675. Decisions.

The Planning Board shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected and the plans that were the subject of the decision and certifying that a copy of the decision has been filed with the Town Clerk. If 20 days have elapsed after the decision has been filed with the Town Clerk without an appeal having been filed, or if such appeal having been filed is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. A copy of said decision shall be recorded with the Franklin County Registry of Deeds.

A Plan Approval shall remain valid and run with the land indefinitely, provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate an appeal and which time shall be extended if the project proponent is actively pursuing other required permits or there is other good cause for failure to commence. The

Planning Board may require the posting of a performance bond to secure and/or screen a Development Project site in the event that demolition is undertaken but subsequent work lapses, for any reason within or outside the applicant's control, for a period longer than one year.

4680. Severability.

If any provision of this Section is found to be invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected but remain in full force. The invalidity of any provision of this Section 4600 shall not affect the validity of the remainder of the Town's Zoning By-Law.

4700. Performance Standards for Manufacturing or Research & Development for Renewable Energy or Alternative Energy Facilities *(added April 20, 2010)*

Manufacturing, processing, assembly, or fabrication which may be allowed by right according to Section 2200 must meet all of the Performance Standards of this Section 4700. In order for the Building Inspector to make this determination in consultation with the Planning Board, the following information is required.

4710. Review and Submission Procedures

1. Plan Filing Requirements

The following plans and items shall be submitted to the Building Inspector with an application form and three (3) copies of the drawings. Plans shall be prepared by a registered architect, registered landscape architect or professional engineer licensed in Massachusetts. The Planning Board may waive one or more of the requirements for Plan Filing under Section 4730.

a.) A locus map at a scale of 1"=1,000' inset within the plans noted below to identify the location of the proposed development.

b.) A plan view at a scale not to exceed 1"= 100' showing location and dimensions of all existing and proposed buildings, parking areas and access roads on the site subject to this application. Clearly show the relationship between proposed and existing structures and adjacent lots within a radius of five hundred (500) feet.

c.) A plan view at a scale not to exceed 1"= 40' showing the location and dimensions of all existing and proposed buildings, access points, parking areas, bicycle racks, roads, sidewalks, open spaces and utilities, including underground

utility lines, water, sewer, electric power, telephone, gas, outdoor illumination and cable television.

d.) A narrative identifying the type of business proposed, the hours of operation, and information on the types and quantities of hazardous materials which shall be used or stored on site in excess of household quantities.

e.) A letter from a Professional Engineer certifying that sufficient wastewater treatment capacity exists to accommodate the new use utilizing a septic system or sewer if available.

f.) A letter from the Superintendent of Bernardston Water Supply District certifying that there is sufficient water supply to accommodate the new use if public water is needed.

g.) Provision of traffic generation figures and an explanation of how they were calculated.

h.) Provision of noise levels expected to be generated and an explanation of how they were calculated.

i.) A narrative report that demonstrates that the project meets each performance standard.

4720. Performance Standards

1. Daily traffic generation shall not exceed the greater of:

(i) an average of 150 new passenger vehicle trips per weekday as estimated using the number of employees expected or the average weekday trip rate for the proposed use, whichever is greater, from the Institute for Transportation Engineers Trip Generation Manual and an average of 16 truck trips per day (Note: do not include UPS or FedEx vehicles in truck trip amount) or
(ii) five percent (5%) of the existing daily traffic volumes based on actual traffic counts on the road where vehicles enter and exit the site and no more than 16 truck trips per day (Note: do not include UPS or FedEx vehicles in truck trip amount)

and provided that the forecasted Level of Service (LOS) at all intersections serving the proposed use and the road segment(s) providing access remain at a LOS C or better.

2. Sound or noise levels may not exceed 50 dBA, at the boundary of the property between 6 p.m. and 6 a.m.

3. Sound or noise levels may not exceed 65 dBA, at the boundary of the property between 6 a.m. and 6 p.m.

4. Vibration or flashing at night that is perceptible without instruments may not occur beyond the parcel boundaries of the originating premises, except for warning devices or construction work.

5. Odors should be minimized using latest technologies and should not emanate beyond the parcel boundaries.

6. The hours of operation must be no earlier than 6 a.m. and no later than 9 p.m.

7. There is adequate wastewater treatment capacity and adequate water supply to accommodate the new or expanded use.

8. No increase in stormwater runoff to neighboring properties or roads.

9. Curb cuts are minimized to prevent traffic congestion.

10. On site parking and loading areas sufficient to accommodate employees and truck deliveries must be provided.

11. Adequate screening of parking and storage areas from abutting residential parcels and roadways shall be provided. A minimum five (5) foot wide buffer area shall provide adequate screening of the parking area from abutting residential uses. Such buffer area shall be planted with a combination of evergreen and deciduous shrubs that are at least five (5) feet
in height. Solid wood fencing may also be used which may reduce the buffer area required.

12. Adequate provision for trash disposal and screening of refuse areas containing dumpsters or other containers shall be provided from abutting parcels and roadways. Solid wood fencing should be used unless an alternative acceptable to the Planning Board is approved.

13. Lighting shall be pedestrian in scale with fixtures not exceeding fifteen (15) feet in height and cut-off fixtures that direct light downward should be used.

14. Lighting shall not produce direct illumination or glare beyond the property boundaries.

15. Stormwater Management and erosion and sedimentation control shall be consistent with the DEP's Stormwater Regulations, as may be amended.

16. Hazardous materials stored or generated on site shall not exceed the amount for a Small Quantity
Generator of Hazardous Waste as defined by the DEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building on an impervious surface that is not adjacent to any floor drains or which can discharge to the outdoor environment.

4730. Provision for Waivers

The Planning Board may waive one or more of the requirements for Plan Filing under Section 4710 if the simplicity or scale of the project warrants such action. Request for waivers may be submitted at the time of the application or prior to the application by scheduling a meeting with the Planning Board. The applicant must provide sufficient information about the project to allow the Planning Board to make that determination.

4740. Enforcement

In addition to requiring ongoing compliance, the Building Inspector may ensure compliance with these performance standards at the application stage by requiring evidence of probable compliance, whether by example of similar facilities or by engineering analysis, verified by technical peer review as may be required by the Building Inspector or the Planning Board.

4800. Planned Unit Development *(added October 13, 2010)*

4810. Purpose. The Planned Unit Development bylaw is designed to allow for unified developments in designated areas of Town. Through a comprehensive site plan a unified development containing a mixture of land uses and buildings is developed as a single entity. It is the intent of this provision to ensure sound planning and zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications.

1. Encourage flexibility in the design of development through a carefully controlled review process of particular plans within a particular zoning district.

2. Promote the use of multiple-story buildings and campus-like clustering of buildings to maximize the amount of available open space.

3. Encourage a less sprawling form of development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land.

4. Provide an efficient procedure which will ensure appropriate high-quality design and site planning.

5. Promote high quality coordinated building and site design which buffers adjacent residential uses and protects both scenic and natural features.

4820. Definition. Planned Unit Development (PUD) - A development of land as a single entity under the direction of a comprehensive site plan, in which a mixture of land uses, a variety of building types and designs, and open space are provided for in a coherent manner.

4830. Location. Planned Unit Developments may be located in the Expedited Permitting Districts (EPD).

4840. Dimensional Requirements. To be eligible for a planned unit development, the parcel must have at least 400 feet of frontage and have a minimum lot area of 80,000 square feet. There are no specific setback requirements, except a Perimeter Setback of 25 feet is required from the exterior property line.

4850. Procedural Requirements. All Planned Unit Developments require Site Plan Review
(see Section 4400). The Planning Board shall be the Site Plan Approval Authority for all Planned Unit Developments. In addition to the Site Plan Submittal Requirements in Section 4400, site plans shall include:

1. Color renderings of facade elevations of all sides of all proposed new construction and renovations including proposed mature landscaping.

2. Color photographs showing the proposed building site and adjacent properties.

3. Drawings/cut sheets of all proposed lighting, signs, and pedestrian amenities as they are to be located on the property.

4. A landscaping plan that includes all existing and proposed vegetation with elevation views and a description of all plantings (include common names), size (upon planting and upon maturity), spacing, and numbers of plants.

5. Description of how the project will impact traffic conditions on streets and intersections likely to be affected by the project including the level of service, traffic flow, turning movements, sight distances, traffic controls, pedestrian movement and public transportation. Provide information on the average daily and peak hour traffic projections and directional distribution of site-generated traffic.

4860. Use Regulations.

1. Planned Unit Developments in the Expedited Permitting Districts shall be a combination of non-residential uses allowed as of right or by special permit.

2. Uses in a planned unit development shall comply with all other applicable sections of this Bylaw in addition to the required provisions of this section.

3. More than one principal building and use is permitted on a lot.

4. A building height of 35 feet is permitted. Accessory structures may be higher if approved by the Planning Board up to 48 feet.

5. One or more separate but contiguous parcels may be assembled to create a planned unit development. Proposed planned unit developments may include pre-existing uses and buildings provided they are integrated into the development plan. Planned unit developments may consist of land in more than single ownership and may be subdivided into separate lots provided all current and future owners and lots are bound by restrictive covenant(s) to the planned development permit approvals and to maintain the project as a single planned unit development. Subdivision of lots within a planned unit development after final approval of the site plan shall be considered an amendment to the Site Plan approved and will require approval by the Planning Board.

4870. Access Requirements.

1. Entrances to planned unit developments shall be limited to one access point onto a public way. The Planning Board may grant additional access points to improve traffic circulation if deemed necessary.

2. Common driveways and parallel service drives are encouraged in the planned unit development to consolidate driveway openings to a few widely spaced locations.

4880. Utilities.

1. Planned unit developments shall be connected to the public water and sewer systems, if available, in accordance with the standards and specifications of the Town.

2. All utility lines shall be placed underground where physically feasible.

4890. Design Requirements.

1. Developments shall have an integrated design with respect to building placement, proportion, color, rooflines, and other architectural details.

2. Developments should incorporate human scale features such as landscaping, pedestrian plazas and other public spaces, first floor windows, pedestrian level lighting, benches, awnings and architectural details.

3. New buildings shall relate harmoniously to existing buildings on the site and to the surrounding neighborhood.

4. Boxy buildings should be softened with architectural details and landscaping. Pitched roof lines are encouraged.

5. Long unbroken facades must be avoided. The use of facade offsets, recesses, angular forms, and landscaping rather than ornamentation is encouraged to break up the mass of large or continuous walls.

6. The use of exterior building materials such as masonry, stone, wood, and brick is preferred.

7. Facade details and building elements shall be proportionate to the scale of the building.

8. The building's main entrance shall be clearly defined with architectural details such as raised parapets, peaked roofs, arches, canopies, and overhangs.

9. Rear or side facades visible from other uses, parking areas, or streets must be of finished quality and should be landscaped.

10. Parking areas shall be located to the side or rear of buildings to the maximum extent feasible. Large expanses of parking should be broken up with internal landscaping and dedicated pedestrian walkways. The Planning Board may waive any of the requirements of Section 3100, Parking and Loading Requirements, to facilitate the flexible design of a PUD pursuant to this section.

11. All mechanical equipment including, but not limited to, dish antennae, outdoor storage, transformers, HVAC units, and waste disposal areas shall be screened from public view.

12. Lighting fixtures should complement the architectural design of the planned unit development and should utilize full cut-off downlighting.

13. The placement of wall signs on individual buildings should complement the architectural design of the planned unit development. Wall signs in multi-tenanted buildings must be placed within the same sign band.

4895. Phasing Requirements. All applications for planned unit developments shall include sufficient information to evaluate total build-out of the site. The Planning Board may permit a phased schedule in accordance with an approved master site plan.

1. The initial construction phase shall provide sufficient on-site and off-site improvements to adequately serve the constructed portion independent of future phases, encourage completion of the build-out design, and minimize disruptions during future construction phases. Improvements shall include but are not limited to driveways, parking, wastewater treatment, water, stormwater systems, lighting, and landscaping. The Planning Board may permit phased construction of improvements if deemed appropriate.

2. The applicant shall provide the Town with a performance guarantee to cover the costs of construction of the on-site and off-site improvements, subject to approval from the Planning Board, in the form of a performance bond or cash escrow.

3. Any changes in use or amendments to subsequent development phases shall require approval by the Planning Board. Modifications or extensions to an approved phasing timetable shall not be considered substantive amendments.

4896. Provision for Waivers.

The Planning Board may waive one or more of the requirements under Section 4890. Design

Requirements if the design of the development will still meet the purpose and intent of the Planned Unit Development bylaw. Request for waivers should be submitted at the time of the application or prior to the application by scheduling a meeting with the Planning Board. The applicant must provide sufficient information about the project to allow the Planning Board to make a determination.

4900. Temporary Moratorium on Medical Marijuana Treatment Centers/Registered Marijuana Dispensaries *(added September 23, 2013, removed September 30, 2014)*

ARTICLE V. ADMINISTRATION.

5100. Administration. *(Amended May 21, 2014)*

5110. Permits. This By-Law shall be administered by the Building Inspector. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use without certification by the Building Inspector that such action is in compliance with then-applicable zoning, and that all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification.

5120. Enforcement. The Building Inspector shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of non-compliance and request for legal action through the Selectmen to Town Counsel.

5130. Penalties. The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be One Hundred dollars ($100.00) for each offense. Each day that each violation continues shall constitute a separate offense.

5200. Board of Appeals.

5210. Establishment. There is hereby established a Board of Appeals which shall consist of five members and three associate members, who shall be appointed and act in all matters under this By-Law in the manner prescribed in M.G.L.A. ch. 40A.

5220. Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapter 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

5221. To hear and decide applications for Special Permits upon which the Board is empowered to act in this By-Law, in accordance with the provisions of Section 5300.

5222. To hear and decide appeals or petitions for variances from the terms of this By-Law, including variances with respect to particular land or structures. Such variance shall be granted, pursuant to M.G.L.A. c.40A, s.10, as may be amended, only in cases where the Board of Appeals finds <u>all</u> of the following:

a. A literal enforcement of the provisions of this By-Law would involve a substantial hardship, financial or otherwise, to the petitioner or applicant.

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

c. Desirable relief may be granted without either:

1) substantial detriment to the public good; or
2) nullifying or substantially derogating from the intent or purpose of this By-Law.

d. The Zoning Board of Appeals shall not grant variances for uses.

5223. To Hear and Decide Other Appeals. Other appeals will also be heard and decided by the Board of Appeals when taken by:

a. any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provision of M.G.L.A. ch. 40A; or by

b. the Franklin County Planning Board; or by

c. any person including any officer or Board of the Town of Bernardston, or of any abutting town, if aggrieved by any order or decision of the Building Inspector or other administrative official, in violation of any provision of M.G.L.A. ch. 40A, or this By-Law.

5224. To Issue Comprehensive Permits. Comprehensive Permits for construction may be issued by the Board of Appeals for construction of low or moderate income housing by a public agency or limited dividend or non-profit corporation, upon the Board's determination that such construction would be consistent with local needs, whether or not consistent with local zoning, building, health, or subdivision requirements, as authorized under M.G.L.A. ch. 40B.

5225. To Issue Withheld Building Permits. Building Permits withheld by the Building Inspector acting under M.G.L.A. ch. 41, s. 81Y, as a means of enforcing the subdivision control law, may be issued by the Board of Appeals where the Board finds practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on the subdivision plan in question.

5226. To hear and decide appeals, should the Selectmen appoint the Board of Appeals as such an authority, as provided under Section 126 of the Mass. State Building Code.

5230. Public Hearings. The Board of Appeals shall hold public hearings in accordance with the provisions of the General Laws, with regard to all appeals and petitions brought before it.

5300. Special Permits.

5310. Special Permit Granting Authority. Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

5320. Public Hearings. Special Permits shall only be issued following public hearings held within sixty-five (65) days after filing an application with the Special Permit Granting Authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.

5330. Criteria. Special Permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the proposed use will not have adverse effects on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

a. Social, economic, or community needs which are served by the proposal;

b. Traffic flow and safety;

c. Adequacy of utilities and other public services;

d. Neighborhood character and social structure;

e. Impacts on the natural environment;

f. Potential fiscal impact.

5340. Conditions. Special Permits may be granted with such reasonable conditions, safeguards, or limitations on time or use as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

5350. Expiration. Special Permits shall lapse 24 months following Special Permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L.A. ch. 40A, s. 17, from the grant thereof) if a substantial use thereof or construction has not begun, except for good cause.

5360. Expedited Permitting District. Special Permit decisions for applications in the Expedited Permitting Districts must be made within 180 days of the Planning Board's notice to the Applicant that the application is complete. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the Town Clerk. Failure of the Planning Board to take action within said 180 days or the extended time shall be deemed constructive approval of the Plan for the project. The Town Clerk shall provide a copy of the decision to the Applicant.

5400. Amendments. This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in M.G.L.A. ch. 40A, s. 5, and any amendments thereto.

5500. Applicability.

5510. Other Laws. Where the application of this By-Law imposes greater restrictions that those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

5520. Conformance. Conformance or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six months after the issuance of the

permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

5600. Separability. The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

ARTICLE VI. DEFINITIONS. *(Amended May 21, 2014)*

In this By-Law, the following terms shall have the following meaning, unless other meaning is required by the context or is specifically prescribed.

Accessory Building or Use shall mean a building not attached to any principal building, or a use customarily incidental to and located on the same lot with the principal building or use.

Bed & Breakfast shall mean an additional use to an owner-occupied dwelling unit consisting of overnight lodging with breakfast. No meals other than breakfast shall be served

Boarding House shall mean any dwelling in which more than two persons not members of the family are residing on the premises, who are housed or lodged for hire, with or without meals. A rooming house or a furnished rooming house shall be deemed a boarding house.

Building Height shall mean the vertical distance from the mean finish grade of the ground adjoining the building to the highest point of the roof or parapet for flat or shed roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip, and gambrel roofs. Not included are spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space.

Building, principal shall mean the building in which is conducted the principal use of the lot on which the structure is located.

Campground shall mean premises used for travel trailers, campers, tenting, or for any temporary overnight facilities of any kind where a fee is charged.

Consultant Fee Bylaw – expenses for advertising, notices, inspections and professional review will be borne by the applicant.

Dwelling shall mean a building or part of a building used exclusively as the living quarters for one or more groups of associated persons, sharing common kitchen facilities (sink, range, and refrigerator).

Dwelling, Single-family shall mean a dwelling other than a mobile home, singly and apart from any other building, used exclusively for residential purposes for one family or group of associated persons, sharing a common kitchen area.

Dwelling, Multi-family shall mean a dwelling containing three or four families or groups of associated persons, each using a separate, not common, kitchen area.

Hotel or Motel shall mean a building or group of buildings providing accommodations on a transient basis for compensation, not meeting the definition of "Non-family Accommodations". Accommodations having individual kitchen facilities (sink, range, and refrigerator) shall be considered dwelling units.

Inn: a non-owner occupied structure used of designed for overnight lodging for transient guests, and may also provide meals to the lodgers. The structure may not possess more than 8 rooms for transient guests. Accommodations having individual kitchens (sink, range and refrigerator) shall be considered dwelling units. Structures with more than eight rooms shall be considered a “Hotel or Motel.”

Kennel shall mean one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting, or other purposes, and including any shop where dogs are on sale, and also including every pack or collection of more than three (3) dogs, three months old or older, owned by a person on a single premises regardless of the purposes for which they are maintained or kept. No kennel shall be kept or maintained less than fifty (50) feet from any property line where residences are directly adjacent.

Kiosk – a small, free-standing or attached building or structure, by whatever name, providing fully automated walk-up and/or drive through retail service. Services include, but are not limited to the following: banking, movie rental, retail sales.

Lot Area shall mean the horizontal area of the lot exclusive of any area in a street or recorded way open to public use. At least 90% of the lot area required for zoning compliance shall be land other than that under water nine (9) months or more in a normal year, and other than any marsh, swamp, or flat bordering on any inland waters.

Lot Frontage shall mean the boundary of a lot coinciding with a street line if there are both rights of access and potential vehicular access across that boundary to a potential building site, and the street has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Act and the Bernardston Subdivision Rules and Regulations. Lot frontage shall be measured continuously along one street line between side lot lines, or, in the case of corner lots, between one side lot line and the mid-point of the corner radius.

Medical Marijuana Treatment Center means a not-for-profit entity registered under 105 CMR 725.100, known as a registered marijuana dispensary (RMD), that aquires, cultivates, posssess, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified,, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

Mobile Home shall mean a moveable or portable dwelling unit on a chassis, designed for connection to utilities when in use, and designed without necessity of a permanent foundation for year-round living.

Non-family Accommodations shall include boarding houses, bed and breakfast accommodations, lodging houses, guest houses, tourist homes, dormitories, or similar accommodations. Accommodations shall be considered hotels or motels if having a sign in excess of two square feet, or other departure from residential character; or having specified term of residence of less than one week, except where there is a resident managing family on the premises, and accommodations for less than ten non-residents. Accommodations having individual kitchen facilities (sink, range, and refrigerator) shall be considered dwelling units.

Restaurant shall mean a permanent structure at which the principal activity is the preparation and retail sale of food or beverage

Restaurant, drive-in or drive-through shall mean a restaurant where food or drinks are usually served to patrons while they are seated in vehicles

Sign shall mean any device displaying, or any display of, any letter, word, picture, symbol, or object designed to inform or attract the attention of persons not on the premises on which such device or display is located, including billboards and any other internally or decoratively illuminated building surface other than unobstructed window glass.

Sign Area shall mean the surface area within a single continuous perimeter enclosing all of the display area, but not including structural members not bearing advertising matter unless internally or decoratively lighted. One side only of flat, back to back signs shall be counted.

Street shall mean either (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in Bernardston, having in the opinion of the Planning Board sufficient width, suitable grades, and adequate construction in relation to the proposed use of land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Structure shall mean anything constructed or erected, the use of which requires fixed location on the ground, including swimming pools having a capacity of 4,000 gallons or more, and mobile homes.

Yard shall mean an open space, unoccupied and unobstructed by any structure (exceeding 75 sq.ft. floor area) except the following:

a) fences, walls, poles, posts, paving, and other customary tarred accessories, ornaments, and furniture.

b) in front yards only, eaves, steps, and non-covered porches.

361986/bern/0001