

ZONING BYLAWS
OF THE
TOWN OF CLARKSBURG
MASSACHUSETTS



Amended at a Special Town Meeting on December 28, 2017

Adopted Special Town Meeting May 20, 1993

Approved by the Attorney General of the Commonwealth of Massachusetts

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1.1 TITLE

This By-Law shall be known as the “Zoning By-Laws of the Town of Clarksburg Massachusetts”, hereinafter referred to as “this By-Law”.

1.2 AUTHORITY

This By-Law is adopted in accordance with the provisions of Chapter 40A of the General Laws as amended to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns.

1.3 PURPOSE

The purpose of this By-Law is to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments of the Constitution of the Commonwealth in the general interests of public health, safety and welfare, including but not limited to the following objectives:

- a) To prevent overcrowding of land, to secure safety from fire, flood, panic and other dangers, to conserve health, to lessen congestion in the street;
- b) To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- c) To conserve the value of land and buildings, including the conservation of of natural resources and the prevention of blight and pollution of the Environment;
- d) To preserve and increase amenities by the promulgation of regulations designed to:
 - Protect the Town’s areas of scenic beauty, it’s brooks, ponds, Wetlands and water resources, and other significant environmental features.
 - Minimize the adverse effects of development on natural resources and municipal facilities.
 - Employ cooperatively the various measures taken by the Town’s Agencies, under diverse legislative authority, including the State Sanitary Code, Wetlands Protection Act, Subdivision Control Law, and the State Building Code, for the preservation of the Town’s existing rural character, and in the interests of the Town’s orderly growth.

In this By-Law, the singular shall include the plural and the plural shall include the singular. Terms not defined in this section shall be defined as in the State Building Code, Article 2, as amended, or, if they are not defined there, they shall be defined as in the (Merriam) Webster's Third New International Dictionary.

- 2.1 **Accessory Building:** Any building which is subordinate to and whose use is incidental to the use of the principal building on the same lot or on an adjoining lot under the same ownership. A detached accessory building shall be one which is not attached to the principal building by any covered porch, breezeway or other roofed structure.
- 2.2 **Accessory Use:** An accessory use is one which is subordinate to a principal permitted use and customarily incidental to the main use on a lot.
- 2.3 **Agricultural Use:** Any parcel of land which is used in the raising of agricultural products, including, fruits, vegetables, livestock, poultry, or dairy products, including necessary farm structures, vehicles and equipment. This term does not include riding stables, kennels, or facilities for the commercial raising of fur-bearing animals.
- 2.4 **Apartment:** A portion of a building used as a separate dwelling unit with its own sanitary facilities, kitchen and private access.
- 2.5 **Building:** Any structure having a roof and designed for either shelter, housing or enclosure of persons, animals, or materials.
- 2.6 **Building Area:** The ground area enclosed by the walls of a building together with the area of all covered porches and other roofed portions.
- 2.7 **Building Height:** The vertical distance from the average finished grade within 10 ft. of the walls of the building to the highest point of flat or mansard roofs including the top of a parapet or to the main level between the eaves and ridge for gable, hip, or gambrel roofs.
- 2.8 **Building Setback Line:** A line parallel to the street line at a distance set forth for minimum front yards in Section 5.6.
- 2.9 **Buffer strip:** A parcel of land unoccupied by buildings, structures or pavements and maintained as a grass area or for the planting of trees and shrubs.
- 2.10 **Convenience Store:** A facility which combines the sale of gasoline and other automobile related products with a limited variety of grocery products, typically characterized as a small single story building with two or more sets of gasoline pumps with an overhead canopy and two or more access points.

- 2.11 **Cottage Industry:** An occupation or business activity which results in a product or service for financial gain which is conducted within a dwelling or accessory building zoned only for residential use. A Cottage industry may utilize as much as 50% of the gross floor area of the building(s) and may employ as many as three (3) employees who are not residents of the property.
- 2.12 **Driveway:** A portion of a lot which is prepared for vehicular traffic and which provides access from a road to or towards a structure on a lot.
- 2.13 **Driveway, Common:** A driveway which, in providing access onto a lot, occupies a portion of another lot, and is used by two or more lot owners.
- 2.14 **Dwelling:** A building or part of a building which contains living, sleeping and and housekeeping accommodations for permanent occupancy on one or more families.
- 2.15 **Dwelling, Single-Family:** A detached building designated for or occupied solely as a dwelling by one family.
- 2.16 **Dwelling, Two Family:** A detached building designated for or occupied solely as a dwelling by two families living independently of each other.
- 2.17 **Dwelling, Multi-Family:** A dwelling or group of dwellings on one lot containing separate dwelling units for three or more families, having separate or joined entrances, services or facilities.
- 2.18 **Family:** Any number of individuals living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.
- 2.19 **Fast Food Restaurant:** An establishment whose primary business is the sale of food for consumption on or off the premises and which has generally the following characteristics:
- a. The food is served over a service counter or through a drive-up window.
 - b. The food is available immediately or after a very brief timeframe.
 - c. The food is packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.
 - d. The food is intended for immediate consumption rather than for use as an ingredient or component of meals.
 - e. The food is served in disposable containers and with disposable utensils.
 - f. The food is of a specialized nature.
- 2.20 **Home Occupation:** An occupation or business activity which results in a product or service for financial gain, which is conducted in whole or in part within a dwelling or accessory building zoned only for residential use. A home occupation is incidental to, and clearly subordinate to the residential use of the property. A home occupation may use of to 30% of the gross floor area of the building(s) and may employ one (1) employee who is not a resident of the property.

- 2.21 **Hotel:** A facility offering transient or permanent lodging accommodations on a daily rate to the general public providing additional services, such as restaurants, meeting rooms, and recreational facilities.
- 2.22 **Hunting Camp:** A private recreational hunting or fishing camp consisting of a building or tent not suitable for use as a dwelling but used occasionally or seasonally for temporary shelter in connection with a recreational activity but not operated as a business provided that such camp is located on a separate lot not less than five (5) acres and that only chemical incinerator or privy type toilet facilities are used.
- 2.23 **Kennel:** The raising or keeping of more than three dogs or cats or other household pets and where grooming, breeding, boarding, training or selling of animals is conducted as a business.
- 2.24 **Light Industry:** A used engaged in the manufacture, predominately from previously prepared materials, of finished products or parts, including processing fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.
- 2.25 **Lot, Building:** A clearly defined parcel of land in one ownership of sufficient area and dimensions to meet this By-Law's minimum requirements for area, frontage, width, yards, and other open spaces.
- 2.26 **Lot Coverage:** The percentage which the footprints of all buildings on the lot bears to the area to the lot.
- 2.27 **Lot Frontage:** The uninterrupted distance between lot sides along the road line, which provides direct access to the lot. A private street approved by the Planning board under the Subdivision Control Law may provide frontage only for lots which are contained within the approved subdivision. For the purpose of determining yard requirements on corner lots, all sides of a lot adjacent to two streets shall be considered frontage, and yards shall be provided as indicated under yards in this section.
- 2.28 **Mobile Home:** A completely enclosed structure built on a chassis, designed as a dwelling unit to be transported after fabrication on its own wheels or detachable wheels, or on a flatbed or trailer. For the purposes of this By-Law, the term "mobile home" includes also trailers incorporating the characteristics of mobile homes as defined herein.
- 2.29 **Motel:** A building or group of buildings containing apartments and/or rooming units, each of which maintains separate outside entrances. Such building or group of buildings is designed, intended, or used primarily for the accommodation of transient automobile travelers and provides automobile parking conveniently located on the premises.
- 2.30 **Municipal Use:** Any use of land in accordance with the General Laws governing municipal powers and functions including participation in regional use.

- 2.31 Wind Energy Generation System - Large: A Wind Energy Generation System that exceeds 100' in height or has a rated nameplate capacity of greater than 10 kW.**
- 2.32 Wind Energy Generation System – Small: A Wind Energy Generation System that does not exceed 100' in height and has a rated nameplate capacity of 10 kW or less.**
- 2.33 Wind Energy Generation System: All equipment, machinery and structures utilized in connection with the conversion of wind energy to electricity including, but not limited to, wind turbines and towers for the primary purpose of supporting wind turbines.**

3.1 NUMBER AND TYPE OF DISTRICTS

For the purpose of this By-Law the Town of Clarksburg is divided into the following zoning districts:

U – C	Upland Conservation District
A – R	Agricultural – Residential District
R – 30	Residential District
C – I	Commercial District
I – 1	Industrial District
I – S	Industrial Service District

3.2 ZONING MAP AND BOUNDARIES

The location and boundaries of said districts are hereby established as show on the Map entitled “Zoning Map of the Town of Clarksburg, Massachusetts, dated _12/28/2017 which map with all explanatory matter thereon is made a part of this By-Law, and is on file in the office of the Town Clerk.

- a) **Boundary lines located outside of street lines are shown approximately parallel to such street lines; and figures placed upon said map between such boundary lines and street lines are the distances in feet of such boundary lines from such street lines, such distances being measured at right angles to such street lines unless otherwise indicated.**
- b) **In all cases which are not covered by the other provisions of this Section, the location of the boundary lines shall be determined by the distance in feet, it given, from other lines upon said map, by the use of identifications as shown on the map, or if none are given, then by the scale of said map.**
- c) **Where a district line divides a lot in a single ownership at the time such district is established, the Planning Board may allow by Special Permit the extension of the regulations for either portion of the lot not to exceed twenty (20) feet beyond the district line into the remaining portion of the lot.**

3.3 FLOODPLAIN DISTRICTS

The Floodplain District shall be considered as overlaying other districts. This district shall include zones A, A1 – 30, and the Floodway as shown on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency and dated July 5, 1982, which are hereby made a part of this By-Law and are on file in the Office of the Town Clerk, Planning Board and Building Inspector.

SECTION 4.	USE REGULATIONS
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- 4.1 Except as provided by law or in this By-Law, no building or structure shall be erected and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses set forth in the accompanying Table of use Regulations, Section 4.8 as permitted by right in the district in which such building structure or land is located, or which may be permitted in said district and so authorized by the Special Permit Granting Authority as designated in Section 4.8 herein.
- 4.2 Symbols used in the Table of Use Regulations, Section 4.8 herein shall mean the following:
- Y - Use permitted by right
 - SPA - Use permitted by right, but which requires Site Plan Approval From the Planning Board in accordance with the provisions of Section 7 herein.
 - SPZ - Use which may be authorized by Special Permit from the Zoning Board of Appeals, in accordance with the provisions Of Section 6 herein.
 - SPP - Use which my be authorized by Special Permit from the Planning Board in accordance with the provisions of Section 6.
 - N - Prohibited Use
- 4.3 Every use permitted by right or authorized by Special Permit under the provisions of this By-Law shall be subject to the State Building Code, State Sanitary Code, and the Town’s Board of Health Regulations and all other applicable statutes, by-laws and regulations.
- 4.4 Any use permitted and as regulated in the portion of any zoning district overlaid by Floodplain District shall be permitted subject to the restrictions set forth in Section 7.1.
- 4.5 Where a structure or use might be classified under more than one of the listed uses,

the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern as determined by the Planning Board.

- 4.6 Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of this By-Law. Such buildings and structures may be located on the same lot with the principal permitted use or on separate lots.**

4.7 EARTH REMOVAL REGULATIONS

The removal of earth, including soil, loam, sand, gravel, clay, stone, or other earth material in any District from land in the Town of Clarksburg is prohibited except as follows:

- 4.7.1 When entirely incidental to a principal permitted use or in connection of a street or roadway, or with an approved subdivision.**
- 4.7.2 When a special permit for such removal is granted by the Board of Selectmen under the provisions of Section 9, Chapter 40A (G.L.), after a public hearing. Said permit shall require a condition that after completion of the operation, the land shall be left in a useable condition, that during operations adequate safety protection of workings shall be provided. Also that temporary and permanent drainage will be provided at the site.**
- 4.7.3 Each applicant must submit a diagram or plan showing the predetermined grade to which the land shall be brought at the completion of the operations, including buffer strips, property line distance setbacks and land grades. A copy of said diagram or plan shall be submitted to the Planning Board for advisory opinion prior to the public hearing. Said diagram or plan shall include all of the following:**
- a. A map or plan, showing the existing contours of the land.**
 - b. The location of structures on adjacent property**
 - c. A statement indicating the nature and extent of the operation**
 - d. A plan showing or explaining details of proposals for landscaping the site during and after the completion of the operation.**
- 4.7.4 Except in those Districts designated as Industrial (I-1) no stone crusher or other device, except screens, not required for the actual removal of the materials shall be used and the use of explosive or explosives devices shall also be prohibited. exceptions to the above restrictions can be made by the Board of Selectmen upon application for a limited period of time, with reference to the following:**
- a. Stone crusher or other device.**
 - b. The use of explosives, or explosive devices.**

- 4.7.5** Before a permit is granted, the applicant may be required to post a bond or escrow account with the Town of Clarksburg, in form and amount approved by the Board of Selectmen, to guarantee conformity with provisions of the regulations under this section and any conditions under which the special permit shall have been granted.
- 4.7.6** Such permits shall be issued for a period not to exceed two (2) years. When it is considered necessary for the protection of surrounding property, the Board of Selectmen shall require that the area disturbed be covered to the original depth of or six (6) inches, whichever is less, of topsoil and seeded with a suitable cover crop, planted with trees or shrubs or otherwise treated in a manner satisfactory to the Board of Selectmen. The bond shall not be released until this cover crop has been established, and all debris removed.
- 4.7.7** Topsoil: Permits shall be obtained from the Board of Selectmen, should any such removal exceed ten (10) cubic yards. In any district, topsoil or loam removed from the area to be covered by building, road or other construction, must be spread on the surrounding premises, until the depth reaches a minimum of six (6) inches. A permit for the removal of any such excess shall be obtained from the Board of Selectmen.
- 4.7.8** Grading: Areas exposed during grading operations shall be covered with topsoil to the original depth or six (6) inches of topsoil, whichever is less. No person shall cause to remain for a period exceeding one (1) year any unsightly piles of rock, subsoil, soil or other material. Applications may be made to the Board for an extension of this period.

SECTION 4. TABLE OF USE REGULATIONS

PRINCIPAL USES	U-C	A-R	R-30	C - 1	I - 1	I-S
A. RESIDENTIAL USES						
1. Single Family Detached Dwelling	Y	Y	Y	Y	N	N
2. Two Family Dwelling	N	Y	Y	Y	N	N
3. Townhouse	N	SPP	SPA	SPA	N	N
4. Elderly Housing	N	SPA	SPA	SPA	Y	Y
5. Multi-Family Dwelling (max. six attached units)	N	SPP	SPA	SPA	N	N
B. INSTITUTIONAL, RECREATIONAL AND EDUCATIONAL USES						
1. Religious Purposes	Y	Y	Y	Y	Y	Y
2. Educational Purposes	Y	Y	Y	Y	Y	N
3. Cemeteries	Y	Y	Y	N	N	N
4. Recreation Facility Owned or Operated by a Government Agency	SPP	Y	Y	SPP	SPP	N
5. Public Utilities	SPP	SPP	SPP	SPP	SPP	SPP
6. Public Utility Easements	SPP	SPP	SPP	SPP	SPP	SPP
7. Municipal/Government Use	N	SPP	SPA	SPA	N	Y
8. Private Nonprofit Library or Museum	N	Y	Y	Y	N	N
9. Nursing Home/Assisted Care/Memory Care	Y	Y	Y	Y	Y	Y
10. Day Care Center or Nursery School	Y	Y	Y	Y	N	N
11. Private Nonprofit Club or Lounge	SPP	SPP	SPP	SPP	SPP	SPP
12. Sports facilities such as: golf course tennis clubs or riding stables	N	SPP	SPP	SPP	N	N
13. Resorts	SPP	SPP	SPP	SPP	N	N
14. Hunting Camps	Y	N	N	N	N	N
15. Senior/Elderly Center	Y	N	N	N	Y	Y
C. AGRICULTURAL USES						
1. Farms, Livestock, Dairy, Orchard, Agriculture, Horticulture or Silviculture	Y	Y	Y	Y	Y	Y
2. Forestry and the harvesting of forest products of more than 25,000 board feet or 50 cord wood excluding cutting of firewood for personal use	SPP	SPP	SPP	SPP	SPP	SPP
3. Roadside stand where the majority of the products are produced on the premises	Y	Y	Y	Y	Y	Y
4. Nurseries, Retail & Wholesale	N	SPA	SPP	Y	SPP	SPP
5. Commercial Greenhouses/non marijuana	N	SPA	SPP	Y	SPP	SPP
6. Marijuana Cultivator	N	N	N	N	SPP	SPP

PRINCIPAL USES	U-C	A-R	R-30	C-1	I-1	I-S
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D. OFFICE AND LABORATORY

1. Business, Professional or Govern- mental offices, Offices of Physicians, Dentists, Attorneys, Engineers, Architects and Accountants	N	SPP	SPA	Y	N	Y
2. Clinics for Medical Psychiatric or other Out- patient health services including laboratories that serve only such clinics	N	SPP	SPP	Y	N	Y
3. Laboratory or Research Facility Including marijuana	N	N	N	SPA	Y	Y
4. General office or date center	N	N	N	SPA	Y	Y
5. Marijuana Testing Laboratory	N	N	N	N	SPP	SPP

E. RETAIL BUSINESS & CUSTOMER SERVICE

1. Store(s) serving retail business needs including but not limited to: bakery, grocery, meat market, fruit market, hardware, or paint store, news, tobacco shop, drug store providing that display, sales and storage are conducted within a building	N	SPZ	SPZ	SPA	N	N
1.(A) Marijuana related businesses	N	N	N	N	Y	Y
2. Service business including; barber shop, beauty salon, tailor shop, shoe repair, pick-up agency, job printing, electrical, plumbing or carpentry shop-all indoor operation	N	SPZ	SPZ	Y	N	Y
3. Restaurant serving food and beverage to be consumed only on the premises	N	SPZ	SPZ	Y	N	SPP
4. Fast-Food restaurant	N	N	N	SPZ	N	SPP
5. Hotels and Motels	N	N	N	SPA	N	N
6. Bed and Breakfast	N	Y	Y	Y	N	N
7. Mortuary or Funeral establishment	N	N	N	SPA	N	N
8. Lumber yards, building supply	N	N	N	SPA	N	N

yards, and fuel storage plants

PRINCIPAL USES	U-C	A-R	R-30	C-1	I-1	I-S
9. Gasoline service station	N	N	N	SPZ	N	Y
10. Sale or rental of new or used automobiles, recreation vehicles, trailers or mobile homes	N	N	N	SPA	N	N
11. Marijuana Retailer	N	N	N	N	SPP	SPP
12. Convenience Store	N	N	N	SPZ	N	N
13. Motor vehicle repair stations	N	N	N	Y	N	Y
14. Kennels	Y	SPZ	N	SPZ	N	N
15. Veterinary Hospitals	N	N	N	SPA	N	Y
16. Gift, craft or antique shop or art gallery	N	SPZ	SPZ	Y	N	N
17. Auction gallery and flea market	N	SPZ	SPZ	Y	N	N
18. Banks or credit unions	N	N	N	SPA	Y	Y
<u>F. LIGHT INDUSTRY & WHOLESALE</u>						

1. Printing, binding, publishing, and related arts and trades	N	N	N	SPZ	Y	Y
2. Light industrial uses for the manufacturing, assembly, processing, or packaging of goods	N	N	N	N	Y	Y
3. Wholesale business and businesses that engage in both wholesale and retail	N	N	N	SPA	SPZ	SPZ
4. Public utility facility including windmill electric generation facilities	SPZ	SPZ	SPZ	SPZ	SPZ	SPZ
5. Small Scale Solar Photovoltaic Installation	SPP	SPP	SPP	SPP	SPP	SPP
6. Carpentry, woodworking, millwork, furniture manufacture, upholstery shop sawmill, and the manufacture processing or fabrication of wood products	N	N	N	N	Y	Y
7. Large Scale Solar Photovoltaic Installation		**see	section	8.11	Solar overlay	Map
8. Laundry, cleaning and dyeing establishments	N	N	N	SPZ	SPZ	SPZ
9. Manufacture of bricks, terra cotta,	N	N	N	N	Y	Y

or cement products

10. Machine shops, tool and die making	N	N	N	N	Y	Y
11. Marijuana Product Manufacturer	N	N	N	N	SPP	SPP
12. Building Mounted Solar Photovoltaic	Y	Y	Y	Y	Y	Y

PRINCIPAL USES	U-C	A-R	R-30	C-1	I-1	I-S
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G. ACCESSORY USES

1. Any minor use which is customarily incidental or clearly subordinate to any principal use on the same lot or adjoining lot in common ownership, provided that it does not alter the character of the premises nor be detrimental to the neighborhood	Y	Y	Y	Y	Y	Y
2. The display and sale by a resident of the premises at a roadside stand or otherwise, of natural products the major portion of which are produced on the premises	Y	Y	Y	Y	Y	Y
3. Greenhouse, tennis court, private garage, sheds, swimming pools, or any such other accessory facility not for commercial purposes. Such accessory structures shall be limited in height to 20 feet excluding agricultural buildings	Y	Y	Y	Y	Y	Y
4. Home occupations as regulated in Section 8.2 of the By-Law	Y	Y	Y	Y	Y	Y
5. Display of signs as regulated in Section 8.2 of this By-Law	Y	Y	Y	Y	Y	Y
6. The removal of earth materials, including stripping of topsoil only when incidental to or required in connection with any of the following operations:						
a. The erection of a building or structure on the lot for which a building permit has been properly issued, and the construction of a private driveway	Y	Y	Y	Y	Y	Y

b. Any accessory use incidental to a permitted use, including cultivation, planting, or drainage of land or landscaping	Y	Y	Y	Y	Y	Y
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PRINCIPAL USES	U-C	A-R	R-30	C-1	I-1	I-S
c. The construction of a private street in a subdivision approved by the Planning Board under the Subdivision Control Laws.	Y	Y	Y	Y	Y	Y
d. Municipal or other governmental construction or operation	Y	Y	Y	Y	Y	Y
7. The raising or keeping of domestic animals for use by the resident of the premises, not as a commercial venture, provided all grounds uses for pasturing or other purposes involving unrestrained animals shall be properly fenced.	Y	Y	Y	Y	Y	Y
8. The raising or keeping of household pets, not as a commercial venture	Y	Y	Y	Y	Y	Y
9. Temporary use of a trailer or mobile home for living purposes while a permanent dwelling is actively under construction on the same lot, for a period not exceeding twelve (12) months, subject to the approval by the Board of Health prior to occupation.	SPP	SPP	SPP	SPP	SPP	SPP
10. Outdoor storage of a trailer intended only for camping purposes, provided that such is owned by the occupants of the premises	Y	Y	Y	Y	Y	Y
11. Any accessory use to a by-right use whether or not on the same parcel, which is necessary in connection with scientific research and development	SPZ	SPZ	SPZ	SPZ	SPZ	Y
12. Drive-thru accessory uses	N	N	N	SPP	SPP	SPP
13. Windmills	SPZ	SPZ	SPZ	SPZ	SPZ	SPZ

SECTION 5.**INTENSITY REGULATIONS**

- 5.1 Any building used for dwelling purposes, and any building or structure housing a principal permitted, use, including any use authorized by special permit, shall be so constructed and located on a lot as to meet the minimum requirements of lot area, frontage, width, front -, side-, and rear yards, and the maximum height of building and structures as set forth in Sections 5.6 and 5.7 herein, except as specifically otherwise provided in this By-Law.
- 5.2 The land and yard spaces required for any new building or structure, or use, shall not include any land or yard required by any other building, structure or use to meet the minimum requirements of this By-Law.
- 5.3 No lot, nor any building or structure thereon shall be changed in size so as to violate lot area, frontage, width or yard requirements of this By-Law.
- 5.4 The height regulations of buildings and structures shall not apply to agricultural buildings and structures, churches, spires, chimneys, antennae, or other appurtenance usually required to be placed above roof level and not intended for human occupancy.
- 5.5 In any district more than one building or structure housing a principal permitted use may be erected on the same parcel of land provided that lot area, width, frontage, yard and other requirements of this By-Law shall be met for each such building or structure as though it were on an individual lot.
- 5.6 **Minimum Front Yard:** To facilitate street widening and improvement, the minimum setback from the street line of roadways shall conform to the following schedule:

State Highway (River Road)	60 Feet
Major Town Roads: Cross Road Middle Road Henderson Road East Road	40 Feet
All Other Roads	30 Feet

5.7 TABLE OF DIMENSIONAL REQUIREMENTS

ZONING DISTRICT	MIN. LOT SIZE	FRONTAGE	SETBACKS			MAX. LOT COV. %	MAX BUILD HEIGHT
			F	S	R		
U-C	5 ACRES	250'	*	20	50	10	30
A-R	2 ACRES	125'	*	20	40	15	30
R-30	No S/W - 1 A S or W - ¾ A S & W - ½ A	100'	*	20	30	25	30
C-1	No. S/W - 1 A S or W - ¾ A S & W - ½ A	100'	*	15	20	30	40
I-1	1 ACRE	125'	*	30	50	50	50
I-S	1 ACRE	75'		25	20	20	75

* Front setbacks shall conform to the requirements established in Section 5/6

R-30 = Any area that is able to hook into the Town's Public Sewer System

A-R = Any area that is not able to hook into the Town's Public Sewer System

S = PUBLIC SEWAGE SYSTEM

W = PUBLIC WATER SUPPLY

FRONTAGE FROM ROADS:

State Highway	(River Road)	60 feet
Major Roads		40 feet
Cross Road		
Middle Road		
Henderson Road		
East Road		
All Other Roads		30 feet

**ALL ACCESSORY BUILDINGS HAVE THE SAME SET-BACKS AS PRIMARY BUILDINGS
HEIGHT REQUIREMENTS OF ACCESSORY BUILDING IS NOT TO EXCEED 20 FEET.**

SECTION 6.	SPECIAL PERMITS
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6.1 SPECIAL PERMIT GRANTING AUTHORITY

Any Board designated as Special Permit Granting Authority (SPGA) in this By-Law may hear and decide applications for Special Permit upon which such Board is specifically authorized to act under this By-Law in accordance with the provisions of Section 9, Chapter 40A of the Massachusetts General Laws. See Section 4.2 for designation and use table.

6.2 REQUIRED HEARING AND NOTICE

Special Permits may be issued only following public hearings held within Sixty-five (65) days after filing of an application with the SPGA. Notice of public hearing shall be given by publication in a newspaper of general circulation in the town. Once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days of such hearing, and by mailing it to "Parties in Interest" as provided in Section 11, Ch. 40A M.G.L., which include the Planning Board and the Planning Board of every abutting municipality, the petitioner, abutters, owners of land directly opposite on any public or private street or way, and owners of land within three hundred feet of the property line, all as they appear on the most recent applicable tax list.

6.3 REVIEW BY OTHER BOARDS AND AGENCIES

The SPGA, within ten (10) days after receipt of an application for a Special Permit shall transmit, for review, copies thereof to the Board of Health, Planning Board, Board of Selectmen, Zoning Board of Appeals and Conservation Commission, and any other town board or agency at the discretion of the SPGA.

6.4 FINDING REQUIRED

Before granting a Special Permit for any use requiring such permit under the provisions of this By-Law, the SPGA shall find that the proposed use:

- a. Is in compliance with all provisions and requirements of this By-Law, and in harmony with its general intent and purpose;
- b. Is essential or desirable to the public convenience or welfare at the proposed location.
- c. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood.

- d. **Will not create undue traffic congestion, or unduly impair pedestrian safety.**
- e. **Will not overload any public water, drainage or sewer system or any other Municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting public health, safety or general welfare.**
- f. **Will not constitute a nuisance due to air or water pollution, flood dust, noise Vibration, lights or visually offensive structures and accessories;**

6.5 CONDITIONS, SAFEGUARDS AND LIMITATIONS

Special Permits may be issued subject to such conditions, safeguards or limitations as the SPGA may impose for the protection of neighboring uses or otherwise serving the purposes of this By-law. Such conditions, safeguards or limitations may include, but are not limited to, the following

- a. **Front, side and rear yards greater than the minimum required by this By-Law; screening buffers or plantings strips, fences or walls as specified by the SPGA.**
- b. **Limitations upon the size, number and occupants, method and time of operation, time duration of the permit, or extent of facilities;**
- c. **Regulation of number or location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this By-Law.**

Any conditions, safeguards or limitations imposed shall be in writing and shall be made a part of the Special Permit and of the Building Permit, if any.

6.6 SITE PLAN REQUIRED

Each application for a Special Permit shall be accompanied by six (6) copies of detailed Site Plan submitted to the SPGA by the current owner of record.

6.6.1 The applicant is encouraged to review any prospective proposals with the SPGA prior to actually submitting a site plan.

6.6.2 The SPGA may waive any information requirements it judges to be unnecessary to the review of a particular plan.

6.6.3 REQUIRED SITE PLAN

All site plans shall be prepared by a registered architect, landscape architect, Professional engineer or registered land surveyor, as appropriate, and certified by same with their seal stamp and signature unless this requirement is waived by the Planning Board because of unusually simple circumstances. All site plans shall be on standard 24" X 36" sheets and shall be prepared at a sufficient scale to show:

- a. Name of project, date, north arrow and scale of the plan;**
- b. The location and boundaries of the lot, any proposed lot lines, easements, and rights-of-way, adjacent properties, area in acres or square feet, abutting land uses, and location and use of structures within three hundred (300) feet of the site;**
- c. Existing and proposed topography including contours, location of wetlands streams, water bodies, drainage swales, 100 year floodplain, and unique natural features.**
- d. Location, size and height of all proposed and existing structures and buildings together with schematic elevations;**
- e. Location, dimensions, height, and characteristics of all signs,**
- f. Complete proposed landscaping, including but not limited to a grading and planting plan and the location and description of screening and fencing;**
- g. Location and extent of any proposed open space;**
- h. Location, size and type of all utilities, sewage disposal systems, water supply storm drainage systems, and refuse and other waste disposal methods;**
- i. Location, size and number of parking spaces of parking lots and loading areas, of entrances, exits, aisles, circulation patterns, directional signage, and walkways including:**
 - 1. A written statement describing in detail the parking generating characteristics of the land use, including the number of employees expected on the largest work shift, and the number of customers, patrons and other visitors expected to be served.**
 - 2. A plan drawn to scale showing the various uses within respective floor areas of the building or structure.**
 - 3. Any other statements to show the actual extent of off-street parking space required or generated by the particular use;**
- j. Location, height, intensity, and bulb type (e.g., fluorescent, sodium,**

incandescent) of all external lighting features. Methods to eliminate glare onto adjoining properties must also be shown;

6.7 DECISIONS AND VOTE REQUIREMENTS

- a. The SPGA shall act within ninety (90) days following the date of the public hearing. Failure to take final action upon an application for Special Permit within ninety (90) days shall be deemed to be a grant of the permit applied for.
- b. Special Permits issued by the SPGA shall require a two-thirds vote of boards with more than five (5) members, a vote of at least four (4) members of a five member board, and a unanimous vote of three – member boards.

6.8 EXPIRATION OF SPECIAL PERMIT

A Special Permit shall lapse in two (2) years if a substantial use or construction has not begun under the permit by such a date.

SECTION 7	SITE PLAN APPROVAL
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7.1 PURPOSE

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for the approval of plans for uses and structures which may have impacts, both within the site and in relation to adjacent properties and streets, on pedestrian and vehicular traffic; public services and infrastructure; environmental, unique and historic resources; abutting properties, and community needs.

7.2 APPLICABILITY

Notwithstanding anything contained in this By-Law to the contrary, no building permit for construction, exterior alteration, relocation, or change in use except where noted, shall be granted for any use requiring Site Plan Approval under Section 4. Use Regulations, until the provisions of this section have been fulfilled and an application approved by the Planning Board.

7.3 APPLICATION PROCEDURE

- 7.3.1 Each application for Site Plan Approval shall be submitted to the Planning Board And accompanied by seven (7) copies of a detailed Site Plan which shall conform to the standards established for Special Permits in Section 6.6.3.

- 7.3.2** The applicant is encouraged to review any prospective proposals with the Planning Board prior to actually submitting a site plan, as the Planning Board may waive any information requirements it judges to be unnecessary to the review of a particular plan.
- 7.3.3** The Planning Board shall transmit copies of the application and site plan to the Fire Chief, Conservation Commission, Board of Health, Zoning Board of Appeals, Highway Superintendent, Board of Selectmen, and others as necessary. These Boards and departments shall have thirty-five (35) days to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval by that board or department of the application submitted.
- 7.3.4** Notice, including notice to parties of interest, and public hearing shall be done in accordance with the procedures required for Special Permits, as found in Section 6.2. The Planning Board, shall schedule a viewing of the property for the purpose of making an informed decision.

7.4 **SITE PLAN APPROVAL CRITERIA AND DESIGN GUIDELINES**

The following criteria and guidelines shall be used by the Planning Board in evaluating the site plan and all information submitted as part of the application.

7.4.1 **GENERAL**

- a. Conformance with all appropriate provisions of the Zoning By-Law.
- b. Protection of the Town amenities and abutting properties through minimizing of detrimental or offensive actions.
- c. Protection of abutting properties from detrimental site characteristics.

7.4.2 **ENVIRONMENTAL**

- a. Protection of unique or important natural, historic or scenic features.
- b. Adequacy of proposed methods of refuse disposal.
- c. Ability of proposed sewage disposal and water supply systems on the site to serve the proposed use.
- d. Adequacy of the proposed drainage system within and adjacent to the site to handle the increased runoff resulting from the project.
- e. Provision of adequate landscaping, including screening and buffers.

- f. Adequacy of the soil erosion plan and any plan for the protection of steep slopes, both during and after construction.
- g. Protection of wetlands by building in accordance with the provisions of the Wetlands Protection Act, Chapter 131, Section 40.

7.4.3 DESIGN

- a. The project shall be reasonably consistent with surrounding building and development with respect to setbacks, placement of parking, landscaping and entrances and exits.
- b. The project shall avoid, to the extent feasible, any impact on steep slopes, floodplains, scenic views, grade changes and wetlands.
- c. If there is more than one building on the site, the buildings shall relate harmoniously to each other in architectural style, site location and building exits and entrances.
- d. Screening shall be provided for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

7.4.4 TRAFFIC/PARKING

- a. The site shall be designed to provide for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties.
- b. The location and number of curb cuts shall be such to minimize turning movements, and hazardous exits and entrances.
- c. The location and design of parking spaces, drive aisles, loading areas and walkways shall be provided in a safe and convenient manner.
- d. Joint access driveways between adjoining properties shall be encouraged.
- e. Safety hazards shall not be created or added to as a result of traffic generated by the proposed project.

7.5 DECISIONS AND VOTE REQUIREMENTS

- 5.5.1 The concurring vote of a majority of the membership of the Planning Board shall be required for any decision on a site plan application.
- 7.5.2 The Board's written decision shall consist of either:

- a. **Approval of the site plan based on a determination that the proposed project meets all of the requirements of Section 7.**
- b. **Denial of the site plan based on a determination that either insufficient information was submitted with the application in order for the Board to adequately review the proposal, or; a determination that the project does not meet the requirements of Section 7.**
- c. **Approval of the site plan subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with the requirements of Section 7.**

7.5.3 The Planning Board shall render a decision within ninety (90) days of the public hearing and shall file its written decision with the Town Clerk’s office and other appropriate parties in accordance with the provisions of M.G.L. Chapter 40.

7.5.4 For the purpose of securing the performance of all proposed work, the Board may require any of the following: a performance bond, deposit of money, bank passbook, or letter of credit in an amount determined by the Board to be sufficient to cover the cost of all or any part of the improvements required.

7.5.5 Any site plan approval granted under this Section shall expire in two years if substantial construction has not begun by such date.

7.5.6 Violations of the approved site plan or any conditions of approval shall be subject to the provisions of Section 11 or the Zoning By-Law

SECTION 8	SPECIAL PROVISIONS
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8.1 FLOODPLAIN DISTRICT

8.1.1 PURPOSE

The purposes of the Floodplain District are to protect public health, safety, and welfare, to protect human life and property from the hazards of periodic flooding, to preserve natural flood control characteristics and the flood storage capacity of the floodplain, and to preserve and maintain the groundwater table and water recharge area within the floodplain.

8.1.2 DISTRICT DELINEATION

The general boundaries of the Floodplain District are shown on the Clarksburg Flood Insurance Rate Map (FIRM), dated July 5, 1982 as Zones A, I-30 to indicate the 100 year floodplain. The exact boundaries of the district are defined by the 100 year surface elevations shown on the FIRM, and further defined by the Flood Profiles contained in the Flood Insurance Study dated July 5, 1982. The floodway boundaries are delineated on the FIRM, dated July 5, 1982 and further defined by the Floodway Date tables contained in the

Flood Insurance Study. These two maps as well as the accompanying Study, are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Inspector.

8.1.3 FLOODWAY DATE

In Zone A the best available floodway data shall be used to prohibit encroachments in floodways which would result in any increase in the base flood discharge. In Zones A1 – 30, and AE along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvement or other development shall be permitted, unless it is demonstrated that the cumulative effect of the proposed development will not increase the water surface elevation of the base flood more than one (1) at any point within, the community. In the regulatory floodways (if designated by FEMA) indicated on the Clarksburg FIRM or Flood Boundary Map, encroachment shall be prohibited in the regulatory floodway which would result in any increase in the base flood discharge.

8.1.4 USE REGULATIONS

The Floodplain Districts established as a over lay district to all other districts, All development, including structural and non-structural activities whether permitted by right or Special Permit must be in compliance with Chapter 131, Section 40 of the Mass General Laws, and with the requirements of the Mass State Building Code pertaining to construction in the floodplains (currently Section 744.0 Design Requirements for Floodplain and Costal High Hazard Areas).

8.1.5 PERMITTED USES

There shall be allowed the following uses, which create a minimal risk or damage due to flooding and will not constitute obstructions to flood flow, provided that they are permitted in the underlying district and that they do not require structures, fill, or storage of material or equipment:

- a. Agricultural uses such as farming, grazing, truck farming and horticulture**
- b. Forestry and nursery uses**
- c. Outdoor recreational uses, including fishing, boating and play areas**
- d. Conservation of water, plants and wildlife**
- e. Wildlife management areas, foot, bicycle, and 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**

8.1.6 SPECIAL PERMITS IN FLOODPLAIN DISTRICTS

No structure or building shall be erected, construction, substantially improved, or otherwise created or moved, and no earth or other materials sumped, filled, excavated, or transferred, unless a Special Permit is granted by the Planning Board in accordance with Section 6 of this By-Law.

8.1.7 ADDITIONAL CRITERIA

The Planning Board may issue a Special Permit if the application complies with the following provisions:

- a. The proposed use shall comply in all respects with the provisions of the underlying zoning district
- b. All encroachments including fill, new construction, substantial development improvements to existing structures, and other development are prohibited unless there is a certification by a registered professional engineer provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood
- c. The land is shown to be neither subject to flooding produced by the 100 year occurrence, nor unsuitable for the proposed use because of hydrological and/or topographical conditions
- d. The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use and to further the purposes of this By-Law

8.2 HOME OCCUPATIONS

8.2.1 PURPOSE

- a) Permit the residents of Clarksburg a broad choice in the use of their homes as a place of livelihood and the production or supplementing of personal and family income.
- b) Protect residential property values
- c) Protect residential areas from any adverse impacts associated with home occupations and cottage industries.
- d) Establish performance criteria and standards for home occupations and cottage industries conducted in dwelling units and accessory structures in residential zones.

8.2.2 APPLICABILITY

Home occupation are permitted by right as accessory uses in all residential zones provided that they do not detract from the residential character of the neighborhood.

Cottage Industries are permitted by right as accessory uses only in the Residential – Agricultural Zone. In all other residential zones, cottage industries may be allowed by a special permit.

8.2.3 PERFORMANCE CRITERIA

All home occupations and cottage industries must fully comply with the following relevant criteria:

- a. A home occupation shall be incidental to the use of a dwelling unit for residential purposes. No more than 30% of the gross floor area of the building(s) may be used in connection with a home occupation or for storage purposes in connection with the home occupation. Floor area, in this case, shall include the gross floor area of all heated and ventilated and thereby habitable rooms on the property including basements, attic space and accessory buildings.**
- b. A cottage industry may utilize as much as 50% of the gross floor area of the building(s). Floor area shall include the gross floor area of all heated and ventilated and thereby habitable rooms on the property including basements, attic space and accessory buildings.**
- c. A home occupation shall be limited in employment to residents of the property and not more than (1) additional employee.**
- d. A cottage industry shall be limited in employment to residents of the property and not more than (3) additional employees.**
- e. A home occupation or cottage industry shall not produce any noise, odors, vibrations, glare, dust, heat, fumes or electrical interference detectable to normal sensory perception beyond the confines of the subject dwelling or accessory building, including, transmittal through vertical or horizontal party walls.**
- f. There shall be no sales of products or services on the premises that are not produced on the premises.**
- g. Home occupations and cottage industries should not generate significantly greater traffic volumes than would otherwise be expected in the particular residential area in which the home occupation or cottage industry is located.**
- h. Parking needs generated by the home occupation or cottage industry shall be met only with additional off-street spaces, preferably located at the side or rear of the dwelling unit.**

- i. No outdoor display or storage of materials, goods, supplies or equipment shall be permitted.**
- j. No highly toxic, explosive, flammable, combustible, corrosive, radioactive or similar hazardous materials are to be used or stored on the premises in amounts that exceed those that are typically found in normal residential use.**
- k. The home occupation or cottage industry shall not involve the use or storage of heavy vehicles or heavy equipment or involve trucking or warehousing activities.**
- l. Signage will be limited in size to Two (2) square feet. In all other respects, signs will conform to Section 7.8 of this By-Law.**
- m. No external structural alterations will be made which are not customary in residential buildings.**

8.3 PERFORMANCE STANDARDS

- 8.3.1 No land, building or structure in any district shall be used or occupies for manufacturing or other non-residential purposes in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion or other hazard or noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare, noxious fumes or gases, radiation, or any other dangerous or objectionable substance, condition or element in such amount as to affect adversely the surrounding area or adjacent premises or groundwater supply.**
- 8.3.2 No exterior lighting, other than properly shielded street lighting, shall shine directly on adjacent properties or toward any street.**
- 8.3.3 No noise shall be detectable beyond the property line in excess of the average level of street and traffic noise generally heard at the point of observation, and no noise below such level shall be objectionable with respect to intermittence, beat frequency, or shrillness. No external loud speakers shall be permitted.**
- 8.3.4 The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Any use already established on the effective date of this By-Law shall not be altered or modified as to conflict with, or further conflict with these performance standards.**
- 8.3.5 Fuel or raw, partially processed, finished or other material, machinery, supplies and equipment shall not be stored between the street line and the front line of structures on the subject lot, or if there is no structure, within forty (40) feet of the street line, and shall in no case be viable from the street.**
- 8.3.6 No materials or wastes shall be deposited or stored upon a lot in such form or manner that may be transferred off the lot or into the ground by natural causes or forces.**

- a) All materials or wastes which constitute a fire hazard or which may be edible by or attractive to rodents or insects, or which may pollute groundwater supplies shall be stored outdoors only in sealed lawful containers.
- b) No discharge at any point into any public sewer, private sewage disposal system, or stream, lake or pond or into the ground of any material of such nature or temperature as can contaminate any water supply, or cause the emission of dangerous elements, will be permitted, except in accordance with the standards approved by the Massachusetts Department of Environmental Protection and in accordance with the Town's Board of Health Regulations

8.4 DRIVEWAY DESIGN STANDARDS

- 8.4.1 Maximum Grade: Unpaved = 8% Paves = 12%
- 8.4.2 Whenever feasible, the driveway should be level for a distance of at least 12 feet from its intersection with the roadway.
- 8.4.3 In no instance shall the edges of the driveway, as it enters into the public way, interfere with the existing drainage pattern.
- 8.4.4 Driveways shall be so constructed, that water from the driveway shall not drain onto the traveled way of the road.
- 8.4.5 Culverts taking the place of roadside ditches shall have a diameter of not less than twelve (12) inches. Larger diameters may be required dependent upon storm water flow volumes.
- 8.4.6 Driveway entrances are to be set back a minimum of 100 feet from an intersection, measured between the nearest edge of the driveway and the crossroad edge of pavement.
- 8.4.7 Driveways should be located to the best advantage to alignment with the way, profile, and sight distance.

8.4.8 COMMON DRIVEWAY STANDARDS

- a) Common driveways shall meet all the standards established in Section 8.4.1 – 8.4.7
- b) A common driveway will provide access to no more than three (3) dwelling units. For a common driveway to serve more than three (3) dwellings, a Special Permit is required from the Planning Board.
- c) The traveled way shall have a minimum width according to the following schedule:
 - If less than 500 feet in length, a minimum of width of twelve (12) feet
 - If more than 500 feet in length, a minimum width of sixteen (16) feet

- d) **Common driveways can never be used to satisfy zoning frontage requirements. Each lot served shall have frontage on ways which serve to satisfy frontage requirements under this By-Law.**
- e) **Common driveways must be setback 25 feet from the boundary line of a lot not served by the common driveway.**
- f) **The design shall in the opinion of the Planning Board assure adequate safety and access for any type of emergency vehicle.**
- g) **Common driveways shall be paved for their entire length with a minimum 3” rough and 1” finish.**
- h) **The Town of Clarksburg shall not be required to maintain the common driveway.**

8.5 OFF-STREET PARKING REQUIREMENTS

8.5.1 After the effective date of this By-Law, off-street parking spaces shall be provided for every new structure, the enlargement of an existing structure, the development of a new use or any change in an existing use, in accordance with the following schedule:

- a) **Hotel, Motel or Guest House – One (1) parking space for each sleeping room.**
- b) **Home Occupation – Office or Roadside Stand – One (1) space for each non-resident employee plus adequate off-street parking for clients or customers.**
- c) **Commercial District – One (1) parking space for each 500 feet of gross floor area plus adequate space for employees, service and supply vehicles.**
- d) **Manufacturing and Wholesale Establishments - One (1) parking space for each four (4) employees plus adequate space for customers, service and supply vehicles.**
- e) **Multi-Family Dwelling – One and a half (1 ½) parking for each dwelling unit and adequate space for service and supply vehicles.**
- f) **Eating Establishments – One (1) space for each three (3) seats based on the legal capacity of the facility plus two (2) spaces of each three employees.**

8.5.2 The minimum number of required off-street parking spaces as set forth in Section 8.5.1 may be reduced by Special Permit from the planning Board upon determination that special circumstances render a lesser provision adequate for the parking needs in any particular case.

- 8.5.3** An area of 162 square feet (9 x 13 feet) of appropriate dimensions for this parking of an automobile, exclusive of drives or aisles, shall be considered as one (1) off – street parking space.
- 8.5.4** All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such a manner as to permit them to be used at all times.
- 8.5.5** Any parking area of more than five (5) parking spaces shall be located to the rear of the building setback line and at least thirty (30) feet from any side or rear property line, unless specifically otherwise authorized by Special Permit from the Planning Board. Such parking area shall be suitably screened on any property line which abuts upon a residential district or a site in residential use.
- 8.5.6** Wherever feasible, parking areas shall be located to the side or rear of the building.

8.6 **SIGN REGULATIONS**

8.6.1 Permitted Signs:

- a) Signs not exceeding two (2) square feet in total area and bearing only names of residents or other identification of premises not having commercial connotations.
- b) One sign, not exceeding six (6) square feet in area, for a permitted accessory use on the premises, with a Special Permit from the Planning Board.
- c) Signs for principal commercial or other nonresidential uses not exceeding sixteen (16) square feet in total area with a Special Permit from the Planning Board.

8.6.2 **SIGN RESTRICTIONS**

- a) No sign shall use moving parts, noise-making devices or blinking, rotating or flashing neon lights, or lights changing in intensity, and no sign shall be placed on the roof of any building or structure, or extending above the parapet or eave line.
- b) No illuminated sign or lighting device shall be so placed or directed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- c) No sign shall be located off the premises to which it applies, except that directional, informational, or identifications signs may be allowed by Special Permit from the Planning Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design.
- d) A free-standing sign may not be closer to the front property line than one-half the depth of the required front yard, and in Residential Districts may not exceed four (4)

feet in height above grade, and in nonresidential districts twenty-five feet above grade.

- e) All billboards are prohibited

THE FOLLOWING SECTION AND AMENDMENT TO THE ZONING BY-LAWS ACCEPTED AS A SPECIAL TOWN MEETING NOVEMBER 1, 2000 AND ACCEPTED BY THE ATTORNEY GENERAL ON FEBURARY 9, 2001

8.7 UNREGISTERED OR JUNK MOTOR VEHICLES

- 8.7.1 No person or entity, corporate or otherwise, as owner or as one in control on premise, shall keep in the open in any zoning district of the Town of Clarksburg, any junk or unregistered vehicle except as outlined in this amendment to the Zoning By-Laws.
- 8.7.2 A junk vehicle, is any motor vehicle which in inoperable, worn out, cast off, or discarded and which is ready for dismantling or destruction, or which has been collected or stored for salvage, or be stripping in order to make use of parts thereof.
- 8.7.3 Any unregistered vehicle is a motor vehicle currently not registered with the State Registry of Motor Vehicles
- 8.7.4 Any residential property owner may have no more that Two (2) junk vehicles housed behind fencing or natural screening out of view of the public and abutting property owners. No junk vehicle shall be kept in view of any residential property. No more than One (1) unregistered vehicle shall be kept in view of the public or abutting property owner. No more than Two (2) unregistered vehicles shall be kept behind fencing or natural screening.
- 8.7.5 Any commercial or industrial property owner may have up to Four (4) unregistered or junk vehicles housed behind fencing out of public view and abutting property owners.
- 8.7.6 In addition to any other remedies provided for in law or equity, the Zoning Officer may ticket any vehicle in violation of this article, and after a period of Fourteen (14) days, shall enforce this By-Law. Penalty for violation shall be \$50.00 or each day that the violation continues, constituting a separate offense. In the event of violation, the Zoning Officer may give to the offender a written notice to either appear before the Clerk of the District Court at any time during office hours, no later than Twenty-one (21) days after the date of such notice, or to mail the stipulated penalty to said clerk, provided under Section D of Chapter 40 General Laws.

8.8 TRAILERS AND MOBILE HOMES

A mobile home shall be permitted only on locations occupied by a mobile home on the Date this by-law is adopted: subject to the following conditions:

- a. Written application shall be made to the Planning Board to establish, station, or park a mobile home in the Town of Clarksburg.**
- b. The proposed mobile home and the lot on which it is proposed to be maintained shall comply with these regulations in the same manner as any other residential use permitted by these regulations.**
- c. Mobile homes shall comply with all public sanitary codes in the same manner as stationary homes.**
- d. The Board may issue a permit upon sufficient and satisfactory proof that the provisions of these regulations have been met.**

No mobile home shall have attached to it at any time any cabanas, awnings, or other additions unless such cabanas, awnings, or other addition are a product specifically manufactured for mobile home use or the plans for the same have been approved by the Board.

Notwithstanding the provisions of these regulations, the Board may grant a temporary permit for a fixed duration for the use of a trailer or mobile home as a field office, tool shop, or storage shed in connection with a bona fide construction operation and provided the same shall not be used for sleeping or living quarters.

No lot occupied by a mobile home at the time of the adoption of these regulations which shall become vacant for more than 12 months shall be re-occupied by another mobile home.

A mobile home or camp trailer of 100 sq. ft. or less and belonging to the occupant of a house may be parked or stored on the house lot provided that it is located within a structure or in a rear yard and not less than 30 feet from a property line and suitably screened, and this same shall not be used for residential purposes.

Temporary Use: Not more than one trailer or mobile home may be placed upon a lot otherwise occupied containing an area of one acre or more by a guest of the occupant of said lot, and not for compensation, for a period not exceeding four weeks during any calendar year and provided further, the Board may issue a temporary permit to an owner of a mobile home or trailer used for dwelling who is engaged in construction his own dwelling for which a building permit has been secured, to place one trailer on the site of construction for a period of six months, which permit may be extended for a period of three months. No permit will be issued by the Board until it has been determined that

proper water and sanitary arrangements have been made.

Trailer Camps or Mobile Home Parks: No parcel of land or premises in any district shall be used as a trailer camp or mobile home park for the parking of two or more trailers, whether occupied or not.

A trailer camp or mobile home park existing at the time of the adoption of this by-law may not be expanded to permit the parking of a greater number of trailers or mobile homes than at the time of the adoption of this by-law.

Building on Existing Lots: Nothing in these by-laws shall prevent the construction of permitted building or the establishment of a permitted use in the relevant zoning district on a lot which at the time of the adoption of these regulations and continuously thereafter was owned separately from an adjoining lot, as evidenced by deed recorded in the Registry of Deeds, provided however that the following requirements are met:

All requirements of Section 6 regarding height, yards, setbacks, parking and signs for the appropriate district in which such lot is situated shall be met.

No such construction shall be permitted on any lot containing less than 15,000 sq. ft. unless public water and sewers are available, or on any lot containing less than 20,000 sq. ft. unless a public or district water supply is available.

8.9 Wireless Telecommunication Facilities

8.9.1 Purpose. The purpose of this bylaw is to mitigate the impacts of wireless telecommunication facilities in order to preserve the character and appearance of the Town; to protect the scenic, historic, environmental, natural, and man-made resources of the Town; and to protect property values, while providing for the responsible use of wireless technologies.

8.9.2 Consistency with Federal Law. This bylaw is intended to be consistent with the Telecommunications Act of 1996 and the Middle Class Tax Relief and Job Creation Act of 2012. In accordance with these Acts, this bylaw is not intended to 1) prohibit or have the effect of prohibiting the provision of personal wireless service; 2) unreasonably discriminate among providers of functionally equivalent services; or 3) regulate personal wireless services on the basis of the environmental effects of radio frequency emission to the extent that such facilities and emissions comply with the Federal Communication Commission's (FCC) regulations concerning such emission.

8.9.3 Definitions.

Base Station: In accordance with FCC 14-153, any structure that currently supports or houses an antenna, transceiver, or other associated equipment.

Eligible Facilities Request: In accordance with 47 U.S.C. § 1455 (a), any request for modification of an existing wireless tower or base station that involves:

- (1) collocation of new transmission equipment;
- (2) removal of transmission equipment;
- (3) replacement of transmission equipment.

FCC: Federal Communications Commission.

FCC 14-153: A report and order issued by the FCC on October 17, 2014.

FCC 09-99: A declaratory ruling and order issued by the FCC on November 18, 2009.

Substantial Change to the Physical Dimensions of a Tower or Base Station: In accordance with FCC 14-153, a modification that meets any of the following criteria shall be considered a substantial change to the physical dimension of a tower or base station:

- (1) For towers outside of public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
- (2) For towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- (4) It entails any excavation or deployment outside the current site of the tower or base station;
- (5) It would defeat the existing concealment elements of the tower or base station; or
- (6) It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds;

Transmission Equipment: In accordance with FCC 14-153, any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

Wireless Telecommunication Facility: A facility that consists of a Wireless Tower, Base Station, Transmission Equipment and any other associated equipment or structures.

Wireless Telecommunication Service: Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service, specialized mobile radio service, paging service, wireless data service, fixed wireless broadband internet service, or public or private radio dispatch.

Wireless Telecommunication Service Provider: Any person or entity providing wireless telecommunication services.

Wireless Tower: In accordance with FCC 14-153, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

8.9.4 Exemptions. The following wireless telecommunication facilities are exempt from this bylaw: municipal radio dispatch service; emergency radio dispatch service; amateur radio; citizens band radio; AM/FM radio; or broadcast television. Otherwise non-exempt wireless telecommunication facilities shall not be considered an exempt use merely because it is installed on an exempt tower or structure.

8.9.5 Eligible Facilities Request in accordance with 47 U.S.C. § 1455 (a) and FCC 14-153.

According to 47 U.S.C. § 1455 (a) "... a local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

- a) An applicant that believes its proposed modification qualifies as an eligible facilities request that does not substantially change the physical dimensions of such tower or base station in accordance with 47 U.S.C. § 1455 (a) and FCC 14-153 shall submit such application, plans and information to the Planning Board sufficient for the Planning Board to make a determination as to whether the physical dimensions of the tower or base station will be substantially changed.
- b) The Planning Board shall determine whether the proposed modifications substantially change the physical dimensions of such tower or base station.
 - (i) If the Planning Board determines that the proposed modifications do not substantially change the physical dimensions of such tower or base station the Planning Board shall review and approve the application within 60 days from the date of filing, unless the time period to issue a decision is tolled in accordance with FCC 14-153.

- (ii) If the Planning Board determines that the proposed modification does substantially change the physical dimensions of such tower or base station the applicant shall comply with all the requirements set forth in this bylaw, including but not limited to the requirement to obtain a special permit and to submit the additional information as required herein.

8.9.6 Special Permit Required. No wireless telecommunication facility shall be installed, constructed or modified until a special permit has been issued by the Special Permit Granting Authority (SPGA) in accordance with Section 6 “Special Permits” and the requirements set forth therein. The modifications allowed in Section 8.9.5 are exempt from this requirement.

8.9.7 Review Period & Time Limits. The SPGA shall adhere to the review and decision time limits set forth in M.G.L. Chapter 40A § 9, except where superseded by the time limits set forth in FCC 09-99 and FCC 14-153.

8.9.8 General Requirements.

- a) Wireless telecommunication facilities shall not be built on speculation. If the applicant is not a wireless telecommunications service provider then the applicant shall submit a contract or letter of intent showing that a wireless telecommunication service provider intends to install a wireless telecommunication facility on land owned or leased by the applicant.
- b) Wireless telecommunication facilities shall be installed on existing towers or structures whenever feasible.
- c) All wireless telecommunication facilities shall be installed so that the facility is able to accommodate additional wireless telecommunication equipment.
- d) The wireless telecommunication facility shall comply with all FCC and Massachusetts Department of Public Health (MDPH) standards and requirements regarding radio frequency radiation.
- e) The wireless telecommunication facilities, access road, stormwater controls, vegetative screening and accessory storage building(s) shall be maintained in good condition.
- f) The applicant and subsequent operator(s) shall submit and maintain at all times adequate liability insurance, as determined by the SPGA, against loss or damage to persons or property, including personal injury or death resulting from the wireless telecommunication facility. The operator shall submit proof of a valid certificate of liability insurance on a yearly basis to the Building Inspector.

- g) The applicant shall submit a removal plan prepared by a professional engineer licensed to practice in Massachusetts that includes a cost estimate and detailed plan for the removal of the wireless telecommunication facility and for the restoration of the site to its pre-existing condition. The cost estimate must account for inflation.
- h) The applicant and subsequent operator(s) shall submit and maintain at all times a form of surety in a form and amount approved by the SPGA to cover the cost of remediation of the site if damage occurs during construction and for the removal of the wireless telecommunication facility should it become abandoned.
- i) The applicant shall submit a letter of determination from the Massachusetts Natural Heritage & Endangered Species Program verifying that no rare or endangered species or species of special concern are present at the proposed site.

8.9.9 Design Standards.

- a) The wireless telecommunication facility shall not exceed twenty (20) feet above the average elevation of the tree line measured within a fifty (50) foot radius from the base of the proposed tower, unless the applicant proves that additional height is necessary to provide adequate coverage or capacity.
- b) The minimum distance from the base of the tower to any property line shall be 150% of the total height of the tower.
- c) Any access road to be constructed shall be constructed in a manner that minimizes cut and fill, minimizes erosion, minimizes construction on unstable soils and steep slopes, and minimizes impacts on wetlands. The access road shall be constructed to allow access to the site by emergency vehicles.
- d) Stormwater controls shall be installed at the site and on the access road in accordance with the Massachusetts Department of Environmental Protection's Stormwater Policy.
- e) Whenever feasible all utilities shall be located underground to minimize visual impacts.
- f) The accessory storage building shall be no larger than five-hundred (500) square feet and shall not exceed twelve (12) feet in height. The accessory storage building and all other appurtenant structures and equipment shall meet the setback requirements for primary structures set forth in Sections 5.6 & 5.7.
- g) A sign listing the emergency contact information of the wireless telecommunication facility operator shall be posted at all times in an easily accessible and noticeable location. The SPGA may require additional warning signs. No other signs or advertisements are allowed.
- h) The SPGA shall determine the type of tower to be constructed in order to mitigate its visual impact on the community.

- i) The SPGA may require that the wireless telecommunication facility be camouflaged to mitigate its visual impact on the community.
- j) No night lighting of the wireless telecommunication facility and tower is allowed, unless required by the Federal Aviation Administration, except for manually operated emergency lights for use only when operating personnel are on the site.
- k) The wireless telecommunication facility shall be constructed to prevent unauthorized persons from accessing the wireless telecommunication facility.
- l) Mature vegetative screening shall be used to screen the ground level structures and equipment from abutting properties and roadways.

8.9.10 Prohibited Areas. No wireless telecommunication facility shall be located within any of the following prohibited areas:

- a) A federal, state or locally regulated wetland or vernal pool;
- b) One-hundred (100) feet from a wetland or two hundred (200) feet from a river or perennial stream; or
- c) A designated critical wildlife habitat area for endangered, threatened or species of special concern.

8.9.11 Visual Impact Analysis. The applicant shall conduct a balloon test within thirty (30) days of submission of a complete special permit application. The applicant shall advertise the date, time and location of the balloon test in a newspaper with a general circulation in the town at least seven (7) days prior to the test. The applicant shall also send notice of the balloon test via certified mail to all abutters entitled to notice of the special permit hearing.

- a) The applicant shall fly a four-foot diameter brightly colored balloon at the location and maximum elevation of the tower.
- b) The balloon shall be flown for at least eight consecutive daylight hours on two days.
- c) If visibility and weather conditions are inadequate for observers to clearly see the balloon, further tests may be required by the SPGA.

8.9.12 Continuing Obligations for Tower and Wireless Telecommunication Facility Owners.

- a) Every two years, the owner of a wireless telecommunication facility shall pay for an independent consultant, hired by the town, to determine whether the wireless telecommunication facility is in compliance with all FCC and MDPH standards and requirements for radio frequency radiation during peak operation. The independent consultant shall prepare and submit a report of the inspection results to the Building Inspector within thirty (30) days of the inspection.

- b) Every five years, the owner of a tower constructed to support wireless telecommunication facilities shall pay for an independent professional engineer licensed to practice in Massachusetts, hired by the town, to assess the structural integrity of the tower. The independent professional engineer shall prepare and submit a report of the inspection results to the Building Inspector within thirty (30) days of the inspection.

8.9.13 Application Requirements. Applicants shall submit the following required information as part of its special permit application for a wireless telecommunication facility.

- a) Contact information for the applicant, including name, address and telephone number. If the applicant is not the property owner, provide the written consent of the property owner on which the proposed tower and/or wireless telecommunication facility will be located.
- b) The most recent USGS Topographical Map (7.5-minute map) showing the proposed wireless telecommunication facility site and the surrounding area within at least two miles of the proposed site.
- c) A vicinity map showing the entire area within a 1,000 foot radius of the proposed tower and/or wireless telecommunication facility, including topography, public and private roads, driveways, buildings and structures, utilities, wetlands, critical wildlife habitat areas, historic sites, location of the tower and the property lines of the proposed site.
- d) Site plans at a scale of 1"= 40' or similar scale, prepared, sealed and signed by a professional engineer licensed to practice in Massachusetts, which show the following information:
 - (i) Contour intervals no greater than two feet.
 - (ii) Existing property lines, utilities, structures, stonewalls, fences and wooded areas.
 - (iii) Wetlands, floodplains and certified vernal pools within 200 feet from the proposed wireless telecommunication facility, tower and access road.
 - (iv) Location of critical wildlife habitat areas, if any.
 - (v) All proposed changes to the existing site, including but not limited to areas of temporary or permanent clearing, areas of grading and areas of cut and fill.
 - (vi) Detailed plans for the drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
 - (vii) Location of the proposed tower, appurtenant equipment and accessory buildings
 - (viii) Location of proposed screening, landscaping, fencing, signage and exterior lighting.
 - (ix) Proposed spot elevation at the base of the proposed tower
 - (x) Proposed utilities, including the distance from the source of power and whether underground or above ground.

- (xi) Plans for the proposed access road, including but not limited to grading, drainage, width, depth of gravel and surface material.
 - (xii) Plans for the accessory storage building, including a floor plan and representative elevation views, indicating the roof, facades, doors and other exterior materials.
- e) A project narrative, including plans and elevations, prepared by a professional engineer licensed to practice in Massachusetts that:
- (i) Describes any tower's design, elevation and compliance with the state building code
 - (ii) Describes a tower's capacity, including the number, elevation and types of antennas that the tower is proposed to accommodate.
 - (iii) Documents the elevation above grade for all proposed mounting positions for antennas to be installed on a tower and the minimum distances between the antennas.
 - (iv) Details the tower foundation and anchoring system
 - (v) Details the proposed exterior finish and camouflaging of the tower and wireless telecommunication facility
 - (vi) Demonstrates that existing towers, structures, wireless telecommunication facilities and repeaters within five miles of the proposed site cannot reasonably be modified to provide adequate coverage and capacity to the community.
 - (vii) Describes potential changes or additions to existing towers or structures that would enable them to provide adequate coverage.
 - (viii) Describes the output frequency, number of channels, and the power output per channel for each antenna. Include a coverage map.
 - (ix) Demonstrates the proposed wireless telecommunication facility's compliance with the standards set forth in this bylaw.
 - (x) Proves that the proposed wireless telecommunication facility and the cumulative effect of all the wireless telecommunication facilities at the site will be in compliance with all FCC and Massachusetts Department of Public Health (MDPH) regulations, standards and requirements and includes a statement that the applicant commits to continue to maintain compliance with all FCC and MDPH regulations, standards and requirements for radio frequency radiation (RFR).
- f) A letter of intent committing the applicant and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC and MDPH regulations, standards and requirements and the provisions of this bylaw.
- g) To the extent required by the National Environmental Policy Act as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the

probable impacts of the proposed wireless telecommunication facility, or a written statement by the applicant that an EA is not required.

h) Other information as requested by the SPGA.

8.9.14 Waiver of Application Requirements. Upon the written request of the applicant, the SPGA may waive any of the application requirements set forth in paragraph (l) above that the SPGA deems appropriate for the circumstances and type of wireless telecommunication facility or tower that is being proposed.

8.9.15 Approval Criteria. A special permit to construct, install or modify a wireless telecommunication facility or tower shall not be issued unless the SPGA finds that the following criteria will be met:

- a) The proposed wireless telecommunication facility will not have an undue adverse impact on historic resources, scenic views, residential property values and natural and man-made resources.
- b) The proposed wireless telecommunication facility will comply with all requirements set forth in this bylaw.
- c) The proposed wireless telecommunication facility will comply with all federal, state and local laws, regulations and standards.
- d) The applicant has proven that it cannot provide adequate coverage or capacity by installing its equipment on an existing tower or structure or by using repeaters in conjunction with existing facilities.
- e) The proposed tower provides reasonable opportunity for collocation of other equipment
- f) The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the wireless telecommunication facility.
- g) The proposed wireless telecommunication facility will comply with FCC 96-326 and 105 CMR 120 and any other applicable FCC or MDPH regulations, regarding emissions of electromagnetic radiation and that the required monitoring program is in place and will be paid for by the applicant.

8.9.16 Independent Consultants. Upon submission of an application for a special permit, the SPGA will be authorized to hire independent consultants at the applicant's expense, to assist the SPGA with the review of the application materials and to monitor the project to ensure that all work is conducted in accordance with the approved plans and conditions. The independent consultant may be hired pursuant to M.G.L. Chapter 44 § 53G.

8.9.17 Abandonment & Removal of Wireless Telecommunication Facilities

- a) A wireless telecommunication facility shall be deemed abandoned when the wireless telecommunication facility has not been in operation for a period of twelve (12) months.
- b) After twelve (12) months of non-operation, the Building Inspector shall provide written notification to the owner/operator that such wireless telecommunication facility is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the wireless telecommunication facility has been in operation during the relevant twelve (12) month period.
- c) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the wireless telecommunication facility has been in operation for the relevant twelve (12) month period, then the wireless telecommunication facility shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
- d) The owner/operator of the wireless telecommunication facility shall remove the wireless telecommunication facility and restore the site to its pre-existing condition within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the wireless telecommunication facility and restore the site within one-hundred eighty (180) days, the town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the wireless telecommunication facility and restore the site at the sole expense of the owner/operator.

8.9.18 Lapse. Any special permit for a wireless telecommunication facility shall lapse if the wireless telecommunication facility is not installed and operating within one (1) year from the date of approval or the wireless telecommunication facility is determined to be abandoned in accordance with Section 8.9.17.

8.10 Solar Photovoltaic Facilities

8.10 10	Zone Districts					
Principal Uses	U-C	A-R	R-30	C-1	I-1	I-S*
Small-Scale Solar Photovoltaic Installation						
10 not protruding above the highest point of the roofline	Y	Y	Y	Y	Y	Y
Small-Scale Solar Photovoltaic Installation protruding above the highest point of the roofline						
11	SPZ	SPZ	SPZ	Y	Y	Y

	but less than 6 feet above the highest point of the roofline Small-Scale Solar Photovoltaic Installation to						
12		Y	Y	Y	Y	Y	Y
	be ground-mounted but no greater than 20' high Small-Scale Solar Photovoltaic Installation to						
13		N	N	N	SPZ	SPZ	SPZ
	be ground-mounted but greater than 20' high Large-Scale Solar						
14	Photovoltaic Installation	N	N	N	SPP	SPP	SPP

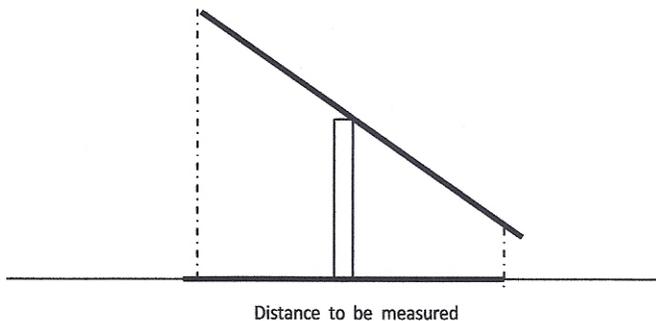
*The I-S zone district column will only be added if Article 3 passes.

8.10.1 Purpose. The purpose of this bylaw is to provide a permitting process for solar photovoltaic installations for cost-effective, efficient, and timely implementation to increase the use of distributed generation; to integrate these installations into the Town in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety.

8.10.2 Applicability. This section applies to solar photovoltaic installations proposed to be constructed after the effective date of this bylaw. This section also applies to modifications that alter the type, number, configuration, or size of the solar photovoltaic installation.

8.10.3 Definitions.

- a) **Impervious Area of a Solar Panel:** The area of impervious surface of a solar panel shall be calculated as if the solar panel projects straight down to the ground on each side, as illustrated in the figure below.



- b) **Large-Scale Solar Photovoltaic Installation:** A ground-mounted solar photovoltaic and installation that occupies one thirty-second ($1/32$) of an acre or more or occupies and less than one thirty-second ($1/32$) of an acre and generates electricity for the purpose of off-site use.
- c) **Small-Scale Solar Photovoltaic Installation:** Any size roof mounted or building-mounted solar photovoltaic installation or a ground-mounted solar photovoltaic and installation that occupies one thirty-second ($1/32$) of an acre or less and generates electricity for the purpose of on-site use.

d) Solar Photovoltaic Installation: A device, structure, or structural design feature, the substantial purpose of which is to provide for the generation, collection, storage and distribution of solar energy.

8.10.4 Small-Scale Solar Photovoltaic Installations.

a) A small-scale solar photovoltaic installation may be allowed as a primary use or an accessory use in all zoning districts, with the exception of ground-mounted installations exceeding 20' tall in the U-C, A-R and R-30 zone districts.

b) Except as specified in 8.10.4 c) (i) and 8.10.4 d), a small-scale solar photovoltaic installation may only be constructed or modified after the issuance of a building permit by the Building Inspector.

c) A small-scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude no higher than the highest point of the roofline in the U-C, A-R and R-30 zone districts, except as provided below.

(i) A small-scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude above the highest point of the roofline, up to six (6) feet above the highest point of the roofline, only by Special Permit upon a finding by the Zoning Board of Appeals that the waiver is in the public interest and that the waiver is consistent with the intent of the Zoning By-laws.

d) A small-scale solar photovoltaic installation proposed to be ground-mounted may exceed a height of twenty feet (20'), only by Special Permit upon a finding by the Zoning Board

- (iii) Property lines of the site.**
- (iv) Outlines of all existing buildings and structures on the site, including the proposed small scale solar photovoltaic installation.**
- (v) The location and dimensions of the proposed solar photovoltaic installation.**
- (vi) Distances measured in feet from the proposed photovoltaic installation to the nearest front, side and rear property lines.**
- (vii) Proposed addition or removal of trees and vegetation.**

h) Abandonment & Removal.

- (i) A small-scale solar photovoltaic installation shall be deemed abandoned when the installation has not been in operation for a period of twelve (12) months.**
- (ii) After twelve (12) months of non-operation, the Building Inspector, or his designee, shall provide written notification to the owner/operator that such solar photovoltaic installation is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence that the solar photovoltaic installation has been in operation during the relevant twelve (12) month period.**
- (iii) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, or his designee, proves that the solar photovoltaic installation has been in operation for the relevant twelve (12) month period, then the solar photovoltaic installation shall be deemed abandoned. The Building Inspector, or his designee, shall provide written notification of abandonment to the owner/operator.**
- (iv) The owner/operator of the solar photovoltaic installation shall remove all related equipment and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the solar photovoltaic installation within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the solar photovoltaic installation and restore the site at the sole expense of the owner/operator.**

- i) Lapse of Approval. Any Special Permit shall automatically lapse if the small-scale solar photovoltaic installation is not installed and functioning within two (2) years.**

8.10.5. Large-Scale Solar Photovoltaic Installations.

- a) A large-scale solar photovoltaic installation may only be constructed or modified after the issuance of a Special Permit from the Special Permit Granting Authority in accordance with this section, Section 6, Special Permits and Section 4.8, Table of Use Regulations.**

- b) The Special Permit Granting Authority for large-scale solar photovoltaic installations shall be the Board of Selectmen.**
- c) The Planning Board shall first review the information filed with the Town for the proposed large-scale installation and shall forward a recommendation to the Board of Selectmen for final approval or denial of the Special Permit.**
- d) The construction, maintenance, operation, modification, and removal of the large-scale solar photovoltaic installation shall comply with all applicable local, state, and federal requirements.**
- e) The applicant shall demonstrate ownership of the proposed site sufficient to allow for the construction and operation of the large-scale solar photovoltaic installation.**
- f) The applicant shall demonstrate that it has received conditional approval to connect the large-scale solar photovoltaic installation to the electric grid from the utility provider. Off-grid installations are exempt from this requirement.**
- g) The owner/operator of the large-scale solar photovoltaic installation shall maintain the site, at their own expense, according to an Operation and Maintenance Plan (OMP) to be submitted with the Special Permit application. The OMP shall be reviewed and approved by the local Fire Chief and Emergency Medical Service, or their designee(s). The OMP shall also specify whether the owner or the operator is responsible for compliance with the plan. While the Special Permit Granting Authority may impose site-specific requirements to be addressed by the OMP, the OMP shall describe the method of maintenance and party responsible for each of the following:
 - (i) Access roads**
 - (ii) Site access****

- (iii) Stormwater control measures**
- (iv) Security measures**
- (v) Signage**
- (vi) Site lighting**
- (vii) Structural repairs**
- (viii) Vegetation and vegetation screening**

h) Proof of liability insurance in an amount and form acceptable to the Special Permit Granting Authority shall be maintained until the large-scale solar photovoltaic installation has been removed. All subsequent owners/operators shall continue to provide proof of liability insurance in the form and amount approved by such authority to the Building Inspector, or their designee, on an annual basis.

i) Financial Surety.

(i) Prior to construction, applicants seeking to construct a large-scale solar photovoltaic installation shall provide a form of surety to cover the cost of removal and restoration

of the site in the event the site is abandoned. The amount and form of surety shall be determined by the Special Permit Granting Authority, but in no instance shall the amount exceed one-hundred twenty-five (125%) percent of the estimated cost of removal. Applicants shall submit a fully inclusive cost estimate, which accounts for inflation, of the costs associated with the removal of the large-scale solar photovoltaic installation prepared by a registered professional engineer. Said cost estimate shall be reviewed by the applicant, or any successor, every five (5) years from the date of the final installation and adjusted as necessary. This updated cost estimate shall be transmitted to such authority.

(ii) No less than ninety (90) days prior to the expiration of any financial surety required by this bylaw, the current operator of the large-scale solar photovoltaic installation shall provide the Building Inspector, or their designee, with renewed, extended or

replacement financial surety in an amount and form determined by the Special Permit Granting Authority in accordance with this bylaw.

- j) Design Requirements for large-scale solar photovoltaic installations.**
 - (i) Height.** A large-scale solar photovoltaic installation shall not exceed twenty feet (20') in overall height.
 - (ii) Setbacks.** A large-scale solar photovoltaic installation shall comply with the setback requirements set forth in Sections 5.6 and 5.7.
 - (iii) Lighting.** No lighting of the solar photovoltaic installation is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
 - (iv) Screening.** The large-scale solar photovoltaic installations shall be screened year-round with dense native vegetation from all adjoining properties and public and private ways, to the fullest extent possible as determined by the Special Permit Granting Authority.
 - (v) Vegetation Clearing.** The clearing of vegetation shall be limited to that which is necessary for the construction, operation, maintenance, modification, and removal of the large-scale solar photovoltaic installation.
 - (vi) Habitat Fragmentation.** A large-scale solar photovoltaic installation shall, to the fullest extent practicable, be clustered and located in or adjacent to areas of the site where the land has already been cleared to avoid habitat fragmentation.
 - (vii) Security Measures.** A large-scale solar photovoltaic installation shall be secured with a seven (7) foot high fence constructed to prevent unauthorized persons from accessing the large-scale solar photovoltaic installation.
 - (viii) Signs.** The owner/operator shall install signs at the large-scale solar photovoltaic installation as determined by the Special Permit Granting Authority in order to protect public safety and shall include emergency contact number(s).
 - (ix) Emergency Access.** A large-scale solar photovoltaic installation and access roads shall be constructed and maintained to allow for safe access by emergency vehicles.

- (x) Underground Utilities.** All on-site utilities shall be located underground except

where the utilities connect into the electric grid at the property boundary.

- (xi) **Maximum % Coverage.** All impervious surfaces of the large-scale solar photovoltaic installation, including solar photovoltaic panels shall be included in the maximum % lot coverage requirement in Sections 5.6 and 5.7, unless the large-scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.
 - (xii) **The Special Permit Granting Authority may waive compliance with some or all of these Design Requirements.**
- k) Filing Requirements.** Applications to construct or modify a large-scale solar photovoltaic installation must be submitted to the Planning Board in the form of a site plan(s). The application package must include seven (7) physical copies and one (1) electronic copy in PDF format provided on a flash drive, CD or similar electronic version, or transmitted via email. All site plans must be drawn at an appropriate scale and signed by a registered professional engineer or licensed surveyor. The site plan(s) must include the following information, unless waived by the Planning Board:
- (i) **The names, mailing addresses, phone numbers, email addresses and signatures for the applicant, owner and operator.**
 - (ii) **Physical address (if one exists) and the map, lot and block number of the proposed site.**
 - (iii) **Property lines of the proposed site and all those within six hundred (600) feet of the property.**
 - (iv) **Elevation contour lines at two-foot intervals.**
 - (v) **Outlines of all existing and proposed buildings and structures on the proposed site and those within six hundred (600) feet of the proposed site, including distances from the proposed large-scale solar photovoltaic installation to the nearest front, side and rear property lines.**
 - (vi) **Existing and proposed access roads, driveways, public ways, private ways and recreational trails on the proposed site.**
 - (vii) **Detailed layout of the proposed large-scale solar photovoltaic installation, including, but not limited to, panel mounts, foundations, appurtenant equipment and fencing type and height.**
 - (viii) **Detailed layout of the electric infrastructure to connect the large-scale solar photovoltaic installation to the electric grid or net metering equipment.**
 - (ix) **Delineation of all wetland resources and associated buffer areas, in accordance with the Massachusetts Environmental Policy Act (MEPA) guidelines and regulations.**
 - (x) **Locations of rare, threatened or endangered species existing on the site, in accordance with the Natural Heritage Endangered Species Program (NHESP) guidelines and regulations.**

- (xi) Proposed changes to the site, including grading, cut and fill, landscaping, native vegetation for screening and vegetation to be removed or altered.**
- (xii) Engineering controls at the site and on the access road to control erosion and sedimentation bot during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of Environmental Protection’s Stormwater Policy.**
- (xiii) Technical Information:**
 - a. Blueprints or drawings of a large-scale solar photovoltaic installation signed by a registered professional engineer showing the proposed layout of the installation.**
 - b. One or three-line electrical diagram detailing the solar photovoltaic installation, appurtenant equipment and electrical interconnection methods with all National Electric Code compliant devices.**
 - c. Documentation of the major large-scale solar photovoltaic installation components to be used, including but not limited to solar photovoltaic panels, panel mounts and inverter.**

- l) Technical Review. Upon receipt of an application for a large-scale solar photovoltaic installation, the Planning Board may engage professional and technical consultants, at the applicant’s expense, pursuant to M.G.L. Chapter 44 § 53G to assist the Planning Board with its review of application materials. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this section shall be good grounds for recommending denial of the Special Permit request. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued, shall be refunded to the applicant.**

- m) Abandonment & Removal.**

- (i) A large-scale solar photovoltaic installation shall be deemed abandoned when the large-scale solar photovoltaic installation has not been in operation for a period of twelve (12) months.**
- (ii) After twelve (12) months of non-operation, the Building Inspector, or their designee, shall provide written notification to the owner/operator that such large-scale solar photovoltaic installation is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence that the large-scale solar photovoltaic installation has been in operation during the relevant twelve (12) month period.**
- (iii) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, or their designee, proves that the large-scale solar photovoltaic installation has been in**

operation for the relevant twelve (12) month period, then the large-scale solar photovoltaic installation shall be deemed abandoned. The Building Inspector, or their designee, shall provide written notification of abandonment to the owner/operator.

- (iv) The owner/operator of the large-scale solar photovoltaic installation shall remove the installation and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the large-scale solar photovoltaic installation within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large-scale solar photovoltaic installation and restore the site at the sole expense of the owner/operator.**

l) Lapse of Approval. Any Special Permit shall automatically lapse if the large-scale solar photovoltaic installation is not installed and functioning within two (2) years or the large scale solar photovoltaic installation is abandoned as defined in Section 8.10.5 (k).

Clarksburg - Solar Overlay District (SOD)



- b) A large-scale solar photovoltaic installation must obtain a special permit from the Special Permit Granting Authority in accordance with this Section and Section 6, Special Permits.
- c) The Special Permit Granting Authority for large-scale solar photovoltaic installations shall be the Select Board.
- d) Applications for large-scale solar photovoltaic installations shall be submitted to the Planning Board for preliminary review. The Planning Board shall then forward all materials to the Select Board, along with a recommendation to approve, approve with conditions or deny the Special Permit.

8.11 Marijuana Facilities

Licensed Marijuana Establishments.

A. Purpose. The purpose of this section is to provide for the placement of Licensed Marijuana Establishments in suitable locations in Clarksburg, in recognition of and in accordance with “The Regulation and Taxation of Marijuana Act,” G.L. c. 94G, in order to minimize potential adverse impacts of marijuana establishments. The specific purpose of this section is to safeguard the built environment by permitting compliance with state law in a manner consistent with community and neighborhood concerns, while also ensuring that those entities permitted to operate a licensed marijuana establishment, as defined herein, comply with all of the provisions of Chapter 334 of the Acts of 2016.

B. Definitions.

LICENSED MARIJUANA ESTABLISHMENT – a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

MARIJUANA CULTIVATOR – an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments, and to transfer marijuana to other marijuana establishments but not consumers.

MARIJUANA PRODUCT MANUFACTURER – an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments, and to transfer marijuana and marijuana products to other marijuana establishments but not consumers.

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

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

MARIJUANA TESTING LABORATORY – a third-party entity licensed to test and research marijuana and marijuana products, able to perform work completely independent from any marijuana cultivator, processor, retailer or local government body within the Commonwealth.

C. Designated Locations for Marijuana Establishments. The locations designated by the Town of Clarksburg where licensed marijuana establishments may be sited are as follows:

Licensed marijuana establishments may be sited in the Industrial (I-1) zone district, as shown on the Zoning Map, pursuant to G.L. c. 40A, §4, upon the issuance of a special permit from the Planning Board (SPP) and subject to site plan approval in accordance with Section 7 of the Zoning Bylaw for the Town of Clarksburg.

- 2) Licensed marijuana establishments, both recreational and medical marijuana establishments, are prohibited in all other zone districts within the Town of Clarksburg.

D. General Requirements. The following general requirements are established for all proposed operations of Licensed Marijuana Establishments, consisted with Subsection C.

Permanent location. Each licensed marijuana establishment and any part of its operation, including but not limited to, cultivation, processing, packaging, and sales, shall be operated from a fixed location within a fully enclosed building and shall not be visible from the exterior of the premises. No marijuana establishment, including any recreational and medical retailer, shall be permitted to operate from a moveable, mobile or transitory location.

- 2) **Outside storage.** No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.
- 3) **Hours of operation.** A marijuana retailer may open no earlier than 8:00 AM and shall close no later than 8:00 PM the same day, Monday through Saturday, unless other hours of operation are set by the Town's Special Permit Granting Authority. Hours of operation shall apply to all sales, delivery and dispensing activities for the business. There shall be no hourly restrictions on marijuana testing, manufacturing or cultivation facilities, unless imposed by the Planning Board as part of site plan approval.
- 4) **Signage.** All signage must comply with the regulations set forth in Section 8.6 of the Zoning Bylaw for the Town of Clarksburg.

- 5) **On-site consumption of marijuana.** The use, consumption, ingestion or inhalation of marijuana or marijuana products on or within the premises of any Licensed Marijuana Establishment is prohibited.
- 6) **Visibility of activities.** All activities of any licensed marijuana establishment, including any marijuana retailer, testing laboratory or manufacturer shall be conducted indoors.
- 7) **Paraphernalia.** Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at marijuana retailer. No retail marijuana, marijuana products or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside of the licensed premises.
- 8) **Lighting.** Outdoor light levels shall not exceed 1 foot-candle along property lines, nor 10 foot-candles for any location on the property. Any light poles, new or existing, may not exceed 18' in overall height. All outdoor light fixtures must be shielded and aimed down in order to prevent light trespass onto adjacent properties. The Planning Board may modify this requirement if, upon recommendation by the Police Chief, modification is required for adequate safety and security.
- 9) **Landscaping.** The proposed plan will provide landscaping to harmonize the facility with abutting uses. Landscaping must be provided in the form of one canopy tree for every 20' of lineal road frontage, placed within 15' of the property line, and 1 shrub for every 10' of building frontage facing a public street, placed within 10' of the building envelope. Canopy trees must measure at least 2.5" in diameter upon planting. Shrubs must measure at least 2' tall upon planting.
- 10) **Parking.** Off-street parking must be provided as specified in Section 8.5.

E. Special Permit Required. No licensed marijuana retailer in an Industrial (I-1) District shall be operated without first obtaining a special permit from the Clarksburg Planning Board in accordance with this Section and Section 6 "Special Permits".

A special permit shall only be valid for use by the Applicant and will become null and void upon the sale or transfer of the license of a marijuana retailer or change in the location of the business.

- 2) In the event that the Commonwealth's licensing authority suspends the license or registration of a marijuana retailer, the Special Permit shall be so

suspended by the Town until the matter is resolved to the satisfaction of said licensing authority.

F. Site Plan Required. All proposed uses under this Section shall be subject to the Town's Site Plan review process as set forth in Section 7. In addition to the standard application requirements for site plan approval, such applications for Licensed Marijuana Establishments shall include the following:

The name and address of each owner of the facility/operation.

A copy of the license or registration as a licensed marijuana establishment from the Massachusetts Cannabis Control Commission or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a Certification of Registration and meet all of the requirements of a licensed marijuana establishment in accordance with the regulations adopted by the Commission, as amended.

- 3) Evidence that the Applicant has site control and the right to use the site for a Licensed Marijuana Establishment in the form of a deed, valid lease, or purchase & sale agreement or a notarized statement from the property owner certifying the Applicant has firm site control.
- 4) As part of the Applicant's site plan, details showing all proposed exterior security measures for the premises, including lighting, fencing, gates and alarms, etc. Ensuring the safety of employees, patrons and the public to protect the premises from theft or other criminal activity.
- 5) A letter from the Clarksburg Police Chief certifying the department has reviewed and deemed acceptable the Applicant's full Security Plan for the proposed facility. Should the Police Chief recommend additional security provisions, the Planning Board may incorporate additional recommendations as part of site plan approval.
- 6) The Planning Board may require a traffic study that includes an analysis of on-site circulation and parking demand to determine sufficient off-street parking and optimum configuration for site ingress and egress.

G. Discontinuance of Use. Any licensed marijuana establishment under this Section shall be required to remove all material, plants, equipment, and other paraphernalia

in compliance with regulations established by the Cannabis Control Commission within 30 days after the expiration or voiding of its license.

H. No Town liability; indemnification.

- 1) The Applicant and all licensees waive and release the Town, its elected officials, employees and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of the licensed marijuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.
- 2) The Applicant, in receiving approvals issued pursuant to this chapter, and all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the Town, its elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without

limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of the licensed marijuana establishment that is subject of the approval/license.

I. Other laws remain applicable.

Business License Required. At all times while a permit is in effect the licensee shall possess a valid license as required by the Clarksburg Town Code.

- 2) To the extent that the state has adopted or adopts in the future any additional or stricter law or regulation governing the cultivation, processing, testing or sale of marijuana or marijuana products, the additional or stricter regulation shall control the establishment or operation of any marijuana retailer in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
- 3) Any licensed marijuana establishment may be required to demonstrate, upon demand by law enforcement officers of the Town of Clarksburg and/or the

local licensing authority, the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

- 4) The issuance of any license pursuant to this chapter shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.
- 5) Prior to the issuance of a special permit or site plan approval, the licensed marijuana establishment must have entered into a host community agreement (HCA) with the Town. If, upon review by the Board of Selectmen, the licensed marijuana establishment is found to not be fully in compliance with the HCA, the special permit and/or the local license may be suspended or rescinded.

2. Add to Section 4.8(F), “Licensed Marijuana Establishments” by inserting the following new use to the Table of Use Regulations:

A. Light Industry and Wholesale	U-C	A-R	R-30	C-1	I-1	I-S
Licensed Marijuana Establishments	N	N	N	N	SPP	SPP

SECTION 9 NONCONFORMING STRUCTURES, USES AND LOTS

9.1 EXEMPTIONS

Except as herein provided this By-Law shall not apply to:

- a) Structures and uses lawfully in existence prior to the effective date of this By-Law.
- b) A structure lawfully begun under a building permit or Special Permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning By-Law or amendment.
- c) The alteration, reconstruction, extension or structural change to a one-family or two-family dwelling provided this does not increase the nonconforming nature of such structure.

Ch. 40A (G. L), taken by any person aggrieved by reason of their ability to obtain a permit or enforcement action from any administrative officer under the provisions of Ch. 40A (G.L.), the Berkshire County Regional Planning Commission, or by any person including an officer or board of the Town or of an abutting town, aggrieved by an order or decision of the building Inspector, or other administrative official, in violation of any provisions of Ch. 40 A (G.L.) or of this By-Law. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in section 15, Ch. 40A (G.L.).

102.2 VARIANCES

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this By-Law where the Board specifically finds that:

- a) owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially such land or structures but not affecting generally the zoning district in which it is located, and**
- b) a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and**
- c) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law.**

10.2.2.1 EXPIRATION OF VARIANCE

If the rights authorized by a variance are not exercised within one year of the date of such variance they shall lapse, and may be reestablished only after notice and a new hearing as provided by Section 9.5 herein.

10.3 SPECIAL PERMITS

The Board of Appeals may hear and decide on applications for Special Permits upon which the Board of Appeals is specifically authorized to act under this By-Law in accordance with all the applicable provision of Section 6. herein.

10.4 CONDITIONS, SAFEGUARDS AND LIMITATIONS

The Board of Appeals may impose conditions, safeguards or limitations both of time and use, including the continued existence of any particular structures but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structure in question by the same person.

10.5 APPEALS, APPLICATIONS AND PETITIONS TO THE BOARD OF APPEALS

Any appeal, application or petition to the Board of Appeals must be filed with the Town Clerk who shall forthwith transmit a copy thereof to the Board of Appeals.

10.6 REQUIRED PUBLIC HEARING

The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within 65 days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in Sec. 11, Ch. 40A (G.L.), and after having notified the town's Planning Board and the Planning Boards of adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the Board of Appeals as provided in Sec. 15, Ch. 40A (G.L.)

10.7 REVIEW BY OTHER BOARDS AND AGENCIES

Within 14 days after receipt of an appeal, application or petition, the Board shall transmit, for review, copies thereof to the Board of Health, Planning Board, the Board of Selectmen, the Conservation and any other town agency at the discretion of the Zoning Board of Appeals. All boards or agencies to which such matters are referred for review shall make, in writing, to the Zoning Board of Appeals such recommendations as they deem appropriate. Failure of the board or agency to make such recommendations within 35 days of receipt of matter for review shall be deemed lack of opposition thereto.

10.8 DECISIONS BY THE BOARD OF APPEALS

The decision of the Board of Appeals shall be made within 100 days after the date of the filing of an application or petition with the Town Clerk, except in regard to Special Permits as provided in Section 6. herein. Failure by the Board to act within said 100 days shall be deemed to be the grant of the relief, application or petition sought.

SECTION 11 ADMINISTRATION AND ENFORCEMENT

11.1 ADMINISTRATION

This By-Law shall be administrated by the Board of Selectmen. A Zoning Enforcement Officer (ZEO) (who may also be the Building Inspector shall be appointed by the Board of Selectmen) and shall serve at their pleasure and under their authority and supervision. Enforcement of this By-Law is vested in the ZEO.

11.1.1 No permit shall be issued by the Inspector of Buildings until the Zoning Enforcement Officer has issued a Zoning Permit certifying the application for a building permit is in compliance with this By-Law and any other applicable Town By-Laws and regulations, the State

Sanitary Code and the Board of Health Regulations, the Planning Board's Subdivision Control Regulations, and the Wetlands Protection Act, if applicable. If the Zoning Enforcement Officer does not respond within 14 days from the date of the application for a Zoning Permit, it shall be deemed approved.

11.1.2 No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this By-Law.

11.1.3 Any home occupation or other permitted accessory use established hereafter under this By-Law, involving on-premises sale of articles or services, shall require a certificate of occupancy from the Inspector of Buildings. Such certificate shall be issued to any applicant provided the proposed home occupation or accessory use is in compliance with the provisions of this By-Law and with all applicable statutes and regulations.

11.2 CONSTRUCTION AND USE TO BE PROVIDED IN PERMITS

11.2.1 Special Permits or Building Permits on the basis of plans and applications hereafter under this By-law, involving on-premises sale of articles or services, shall require a certificate of occupancy from the Inspector of Buildings. Such certificate shall be issued to any applicant provided the proposed home occupation or accessory use is in compliance with the provisions of this By-Law and with all applicable status and regulations.

11.2.2 Construction or operation under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and the use or construction is commenced within a period of not more than six (6) 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.

11.3 VIOLATION

11.3.1 If the Zoning Enforcement Officer and/or the Inspector of Buildings is requested in writing to enforce this By-Law against any person allegedly in violation of it and the Zoning Enforcement Officer and/or the Inspector of Buildings declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore within fourteen (14) days of receipt of such request.

11.3.2 Whoever shall violate any provision of this By-Law or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than three hundred dollars (\$300.00) for each offense. Each day such violation continues shall constitute a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it deems necessary to prevent or remedy any violations.

11.3.3 In addition to the procedures for enforcement as described above, the provisions of this By-Law, the conditions of a permit granted under this By-Law, or in decisions rendered by the Zoning Board of Appeals, Board of Selectmen, or Planning Board under this By-Law, may be enforced, by the Building Inspector, by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be three hundred dollars (\$300.00) for each offense. Each day such violation occurs shall be deemed a separate offense.

SECTION 12. AMENDMENT AND VALIDITY

12.1 AMENDMENT

12.1.1 This By-Law may be amended from time to time in an annual or special town meeting in accordance with Chapter 40 A, Section 5 of the General Laws.

12.1.2 No zoning by-law or amendment thereto shall be adopted until after the Planning Board has held a public hearing thereon, for which a notice has been published, posted and mailed as provided in Section 5, Chapter 40A (M.G.L.) and has made a report with recommendations to the town meeting or after twenty one (21) days have elapsed after such hearing without submission of a report.

12.2 VALIDITY

12.2.1 In their interpretation and application, the provisions of this By-Law shall be held to minimum requirements. Wherever the requirements of this By-Law are at variance with the requirements of any other lawfully adopted regulations or by-laws, or with deed restrictions or covenants, the most restrictive or the one imposing the higher standards shall govern.

12.2.2 This By-Law, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the town meeting.

12.2.3 Upon the effective date of this By-Law, it shall supersede the Clarksburg Zoning By-Law, and all amendments to it previously in effect.

12.2.4 The invalidity of any section of this By-Law shall not invalidate any other section or provision thereof.

SECTION 13 ADULT ENTERTAINMENT USES

A. Purpose and Intent

The purpose of this bylaw is to establish reasonable and uniform regulations of adult entertainment uses with the Town of Clarksburg. The intent of the bylaw is to address and mitigate the negative secondary effect of adult entertainment uses. Studies have documented that the quality of life in a community is degraded by adult entertainment establishments as a result of increased levels of crime; depreciation of property values; adverse impacts on the business climate; adverse impacts on neighborhood character and adverse impacts on public health including noise, litter, unsanitary conditions, traffic and adverse influence on children.

The provisions of this bylaw have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials; and it is neither the intent nor effect of this bylaw to restrict or deny access by adults, to sexually orientated materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment to their intended market. It is neither the intent nor the effect of this bylaw to condone or legitimize the distribution of obscene or other illegal matter or materials.

B. Definitions

1. Substantial or Significant Stock

For purposes herein, **SUBSTANTIAL OR SIGNIFICANT PORTION OF STOCK** Shall mean an amount of stock in trade or sales of books; magazines, videos, peep show booths or other visual or audio material which is greater than 10% of the entire stock of sales.

2. **ADULT ENTERTAINMENT USES** shall include the following uses:

- a. **ADULT BOOKSTORE:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, periodicals, pictures and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.
- b. **ADULT CABARET:** A nightclub, bar, restaurant, tavern, dance hall, similar commercial establishment which features:
 1. Persons who appear in the state of nudity; or
 2. Live performances which are characterized by an emphasis on human depicting anatomical areas specified as less; than completely and opaquely
Covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola, and human genitals in a state of sexual arousal, or relating to sexual conduct or sexual excitement; or
 3. Motion pictures, films, video cassettes, cable television, slides, DVDs or other Photographic reproductions, which are characterized by the depiction or description of anatomical areas, specific as above, or relating to sexual conduct or sexual excitement.
- c. **ADULT MOTION PICTURE THEATER:** An enclosed building or outdoor venue used for public uses, for presenting substantial, or significant portion of material (motion pictures,

films, cassettes, cable television, slides, DVDs or any other such visual or electronic media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement.

- d. **ADULT PARAPHERNALIA STORE:** An establishment having as a substantial, or significant portion of its stock in devices, objects, tools, toys, or electronic media which are distinguished or characterized by their association with sexual activity, including sexual intercourse, sexual conduct or sexual excitement.
- e. **ADULT VIDEO STORE:** An establishment having a substantial, or significant portion of its stock in trade (for sale or rent) motion pictures, films, video cassettes, DVDs and other film material or similar audio/visual and electronic media which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.
- f. **ESTABLISHMENTS WHICH DISPLAY LIVE NUDITY FOR ITS PATRONS:**
An establishment which provides live entertainment for, its patrons, that includes persons in the state of nudity; or live performances which are characterized by an emphasis on depicting anatomical areas specified as less than completely and opaquely covered human genitals, public region, buttock and female breast below a point immediately above the top of the areola, and human genitals in a state of sexual arousal, or relating to sexual conduct or sexual excitement.
- g. The following terms shall be defined as stated in G.L. c272 s. 31:
 - 1. Nudity
 - 2. Sexual conduct
 - 3. Sexual excitement
 - 4. Matter
 - 5. Visual Material

D. Applicability

Adult Entertainment Uses shall be allowed in, the Industrial Zoned District with the granting of a Special Permit by the Zoning Board of Appeals.

E. Application Procedures and Submittal Requirements

- 1. Applications for a special permit under this section shall comply with the Requirements of the Special Permit and Site Plan Approval, Sections VIIID and Section VIIE of this bylaw. In addition to the submittal requirements of Sections VIIID and VIIE, the special permit application and site plan shall include, the following information:
 - a. The name and address of the legal owner of the establishment, the legal owner of the property, and the manager of the proposed establishment.
 - b. The distances between the proposed adult entertainment use and the property

line of all uses listed in Section F.1 of this provision.

- c. A special permit hearing shall be within twenty one (21) days after acceptance by the Town Clerk and a decision rendered within twenty one (21) days thereafter.

F. Criteria for Approval

1. The Zoning Board of Appeals shall issue a special permit or an Adult Entertainment Use if the following minimum criteria are met.
2. Adult Entertainment Use shall not be located within:
 - a. 200 feet from any residence
 - b. 200 feet from any public or private school, state approved childcare facility, or nursery school.
 - c. 200 feet from any church or other facility used for religious purposes.
 - d. 200 feet from any playground
 - e. 200 feet from any other adult entertainment use within the Commercial District
 - f. 200 feet from any establishment licensed under M.G.L. c138, s 12
3. All adult entertainment uses shall be required to operate during the same time period of businesses as set forth by the Town for all liquor license establishments.
4. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
5. No adult entertainment use shall be allowed to display any advertisement, sign, placard, or other matter of visual material containing or depicting nudity, sexual conduct or sexual excitement.
6. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
7. Any special permit granted for an adult entertainment use shall be personal to the applicant, shall not Am with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject's property/business.
8. Any adult entertainment use granted a special permit shall comply with all other Town Bylaws and all statues of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof, MGL, c119 s 63 c 272828.
9. Conditions, Safeguards, Limitations for Adult Entertainment Uses.

In granting a special permit, the Zoning Board of Appeals may impose additional conditions, safeguards and limitations on the permit including but not limited to additional buffer zones, or screening.

10. Expiration

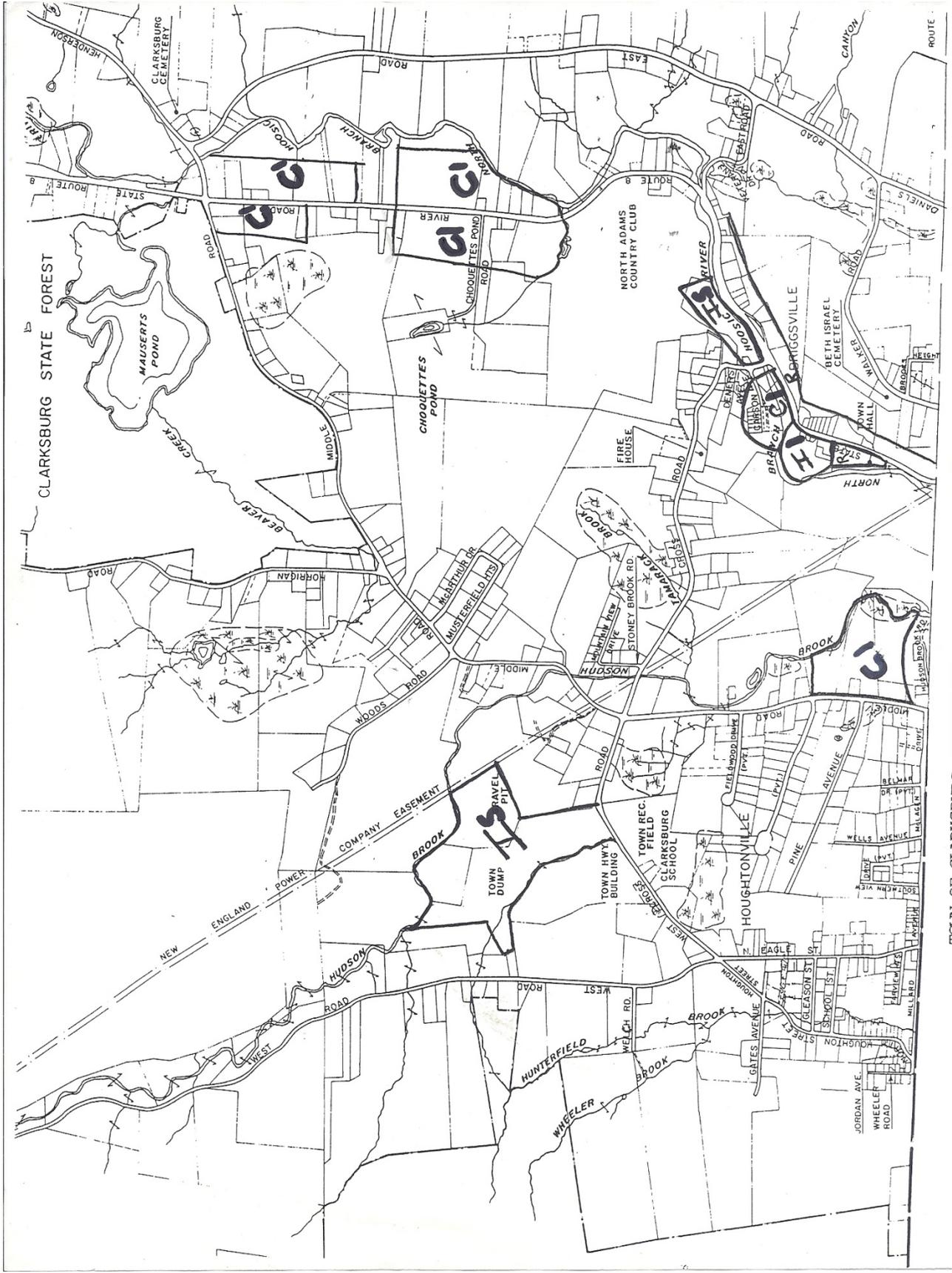
Any adult entertainment use special permit granted shall expire after a period of two calendar years from its date of issuance and shall be automatically renewable for successive two year period thereafter, providing that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objections to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted.

11. Pre-Existing Adult Entertainment Uses

Any existing adult entertainment use shall apply for a special permit from the Zoning Board of Appeals within 90 days following the adoption of the Bylaw, with the exception of those existing establishments that meet the criteria of Section F.1.

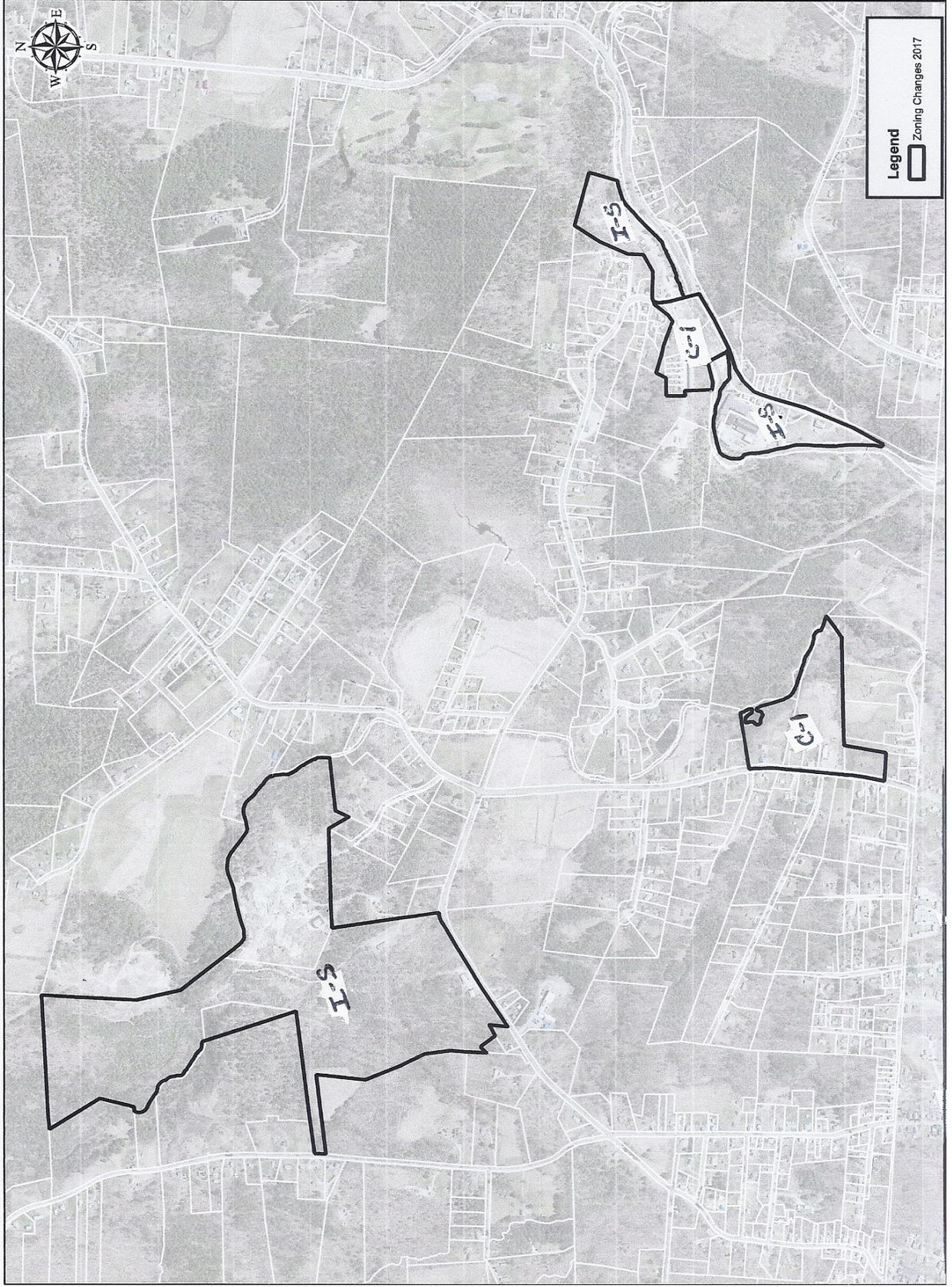
G. Severability

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



TOWN OF CLARKSBURG ZONING MAP

Clarksburg - Zoning Boundary Changes



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