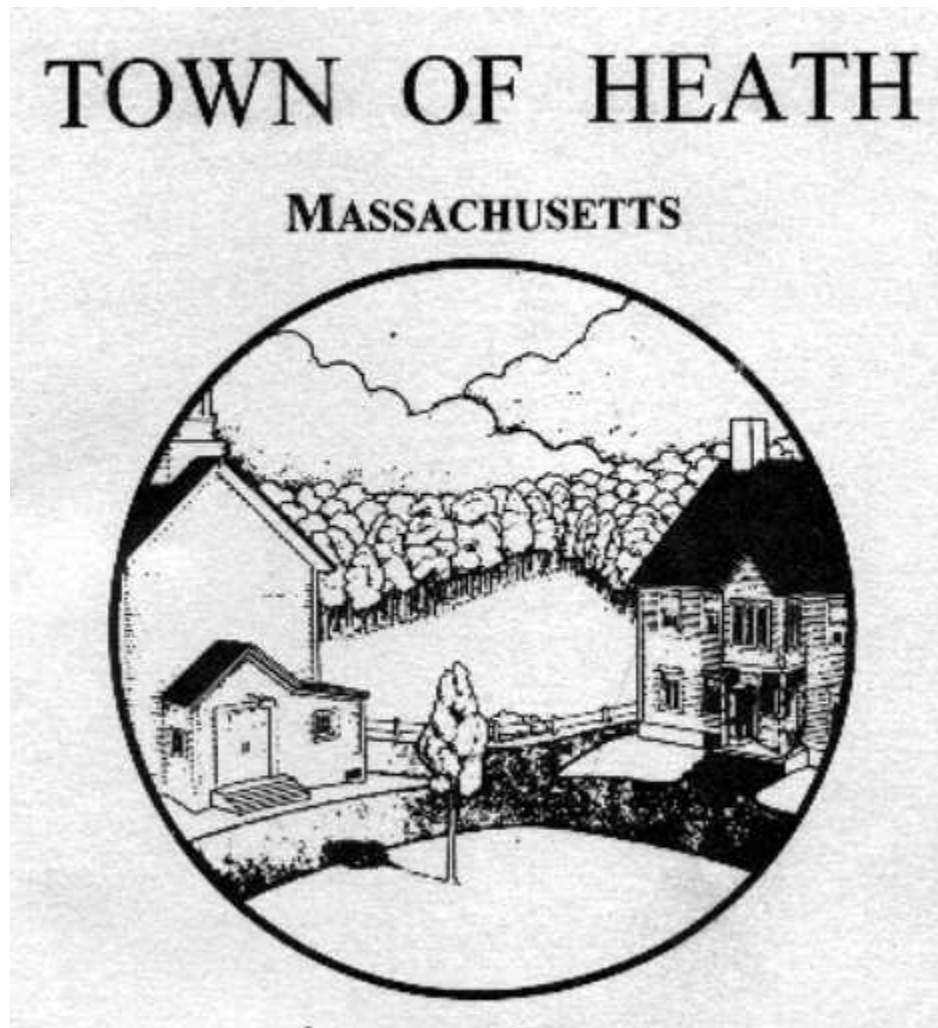
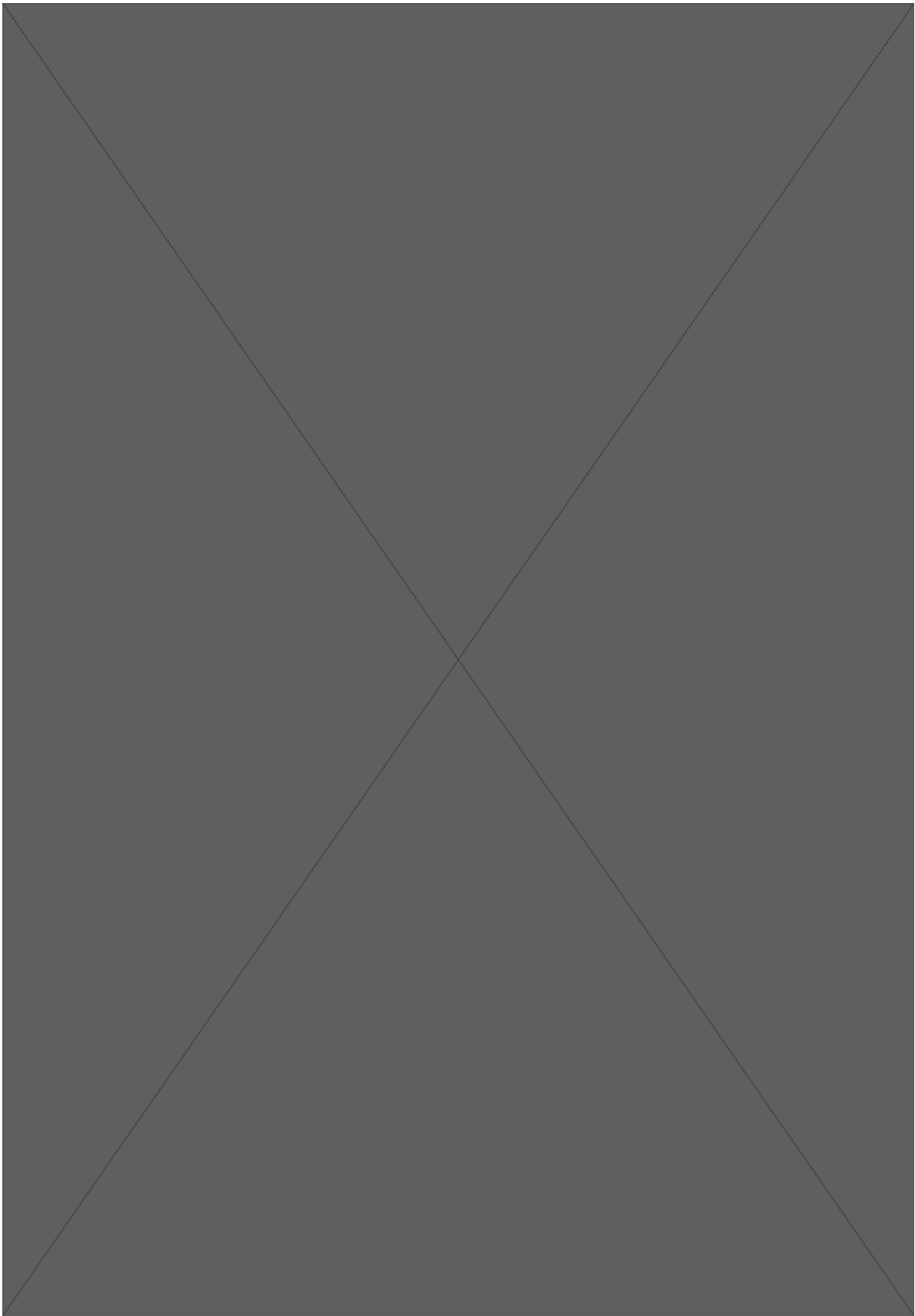


# PROTECTIVE ZONING BYLAWS





# TOWN OF HEATH, MASSACHUSETTS

Adopted by Town Meeting  
April 29, 1989

Amended 5/12/90	Section 4.5.3 D parking setbacks, Section 5.2 Corner lot frontage
Amended 5/7/94	Section 4.2 & 9 Storage Sheds, Section 7.1 Phased Growth Regulations.
Amended 6/25/94	Section 4.9.1 & 2 Shared drive maintenance and setbacks
Amended 5/10/97	Section 5.1 Dimensional Requirements; Section 4.2 & 9 Sludge
Amended 5/8/99	Section 7.2.1 Phased Growth Regulations
Amended 5/6/00	Section 6.3 Cell Tower Bylaw
Amended 5/8/04	Section 7.2.1 Phased Growth Regulations
Amended 5/7/06	Section 9 Frontage; Section 4.10 Camper/Trailer
Amended 5/12/07	Section 6.4 Small Wind Energy Systems, Section 9 Storage Sheds, Bldg. Height, Duplex, Section 4.2 Accessory Uses, and Section 5.1 Intensity Regulations
Amended 5/10/08	Section 6.5 Mobile homes also known as manufactured housing, also modified 4.2, 4.4.3, 4.10.2, section 9 mobile home definitions.
Amended 5/09/09	Section 7.2.1 Mohawk Estates, Section 3.3.2 Mohawk Definition, Section 4.10.3.a camper/trailers
Amended 6/20/11	Sections 3.1, 3.3, 4.2, 4.10, 5.1, 6.2, 8.1, 8.3 & 9 – Added “District D” to Zoning Deleted section 7 and reserved it for future use.
Amended 5/12/12	Sections 6.6 Purpose and 6.7 Temporary Moratorium
Amended 10/23/12	Section 6.8 Large – Scale Ground Mounted Solar Electric Generating Installations
Amended 2/26/13	Section 6.9 Industrial – Scale Wind Turbine Installations
Amended 5/11/13	Section 6.10 Fixed Wireless Broadband
Amended 3/27/18	Section 10: Temporary Moratorium on Recreational Marijuana ( <i>expired 11/28/18</i> )
Amended 5/12/18	Solar updates in Section 4: Industrial Use Regulations& Section 6.6.2 Special Permits
Amended 9/18/18	Section 4.10 Clerical revision
Amended 11/28/18	Section 7: Adult Recreation Marijuana
Amended 5/9/21	Section 1.4 Filing Fees; Section 4.2 Residential Accessory Apartments; Section 6.6.2.1 Private Ways; Section 6.5 Mobile Homes; Section 5.1 Dimensional Requirements; Section 9 Definitions.



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## **SECTION 1      PURPOSE AND ADMINISTRATION**

**1.1 Purpose.** The purpose of this Bylaw is to plan for the orderly growth of the Town of Heath and to that end this Bylaw purports to: promote the prosperity and well-being of its inhabitants while retaining the rural character of the town; conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment; encourage the appropriate use of land throughout the town; conserve health and safety; prevent overcrowding and undue concentration of population while providing building guidelines appropriate for residents of all income levels; support the development of adequate municipal services consistent with managed growth of the town; maintain the scenic characteristics of the area as an attraction to recreational and tourist activities; preserve historical and other cultural resources; preserve and increase amenities, e.g., the attractiveness and value of real estate, by the promulgation of regulations to fulfill said purposes, in accordance with the provisions of Chapter 40A, MGL, and Article 89 of the Amendments of the Constitution.

**1.2 Enforcement.** The Building Inspector shall administer and enforce this Zoning Bylaw. Buildings or structures may be constructed, altered, or changed in use only upon certification by the Building Inspector that such action is in compliance with the then applicable Bylaw and that all necessary permits have been received from those agencies from which approval is required by Local, State, and Federal Law.

Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the State Building Code, and a Special Permit if required by this Bylaw, shall serve as such certification. Applications for such certification shall be made to the Building Inspector who shall determine whether the proposal is eligible to proceed, requires a Special Permit, or is not in compliance with the Bylaw.

**1.3 Penalty.** Any person violating any of the provisions of this Bylaw may be fined not more than Three Hundred Dollars (\$300) for each offense. Each day that such violation continues shall constitute a separate offense.

**1.4 Filing Fees.** Any application for a Special Permit, variance and/or appeal shall be accompanied by a filing fee plus any additional expenses as specified in Section 6.1.4. This fee may be waived by the board to which the application is addressed.

**1.5 Zoning Board of Appeals (ZBA).** There is hereby established a Zoning Board of Appeals of five members, to be appointed by the Selectmen, each member to be appointed for a term of five years, terms to be so arranged that the term of one member expires each year. The Selectmen shall appoint two associate members so that the Chairman of the ZBA may designate any such associate member to sit on the board in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board.

The Board of Appeals shall act in all matters authorized by this Bylaw and by MGL Chapter 40A, including the allowance of zoning variances and exceptions, use variances, and hearing of denials of Special Permits and licenses, but excluding the granting of Special Permits, which shall be under the jurisdiction of the Planning Board.

**1.6 Special Permit Granting Authority.** The Special Permit Granting Authority (SPGA) shall be the Planning Board. Special Permits shall be granted only for proposals in compliance with the provisions of this Bylaw, and of MGL Chapter 40A, and upon written determination by the Planning Board that the proposal will not have adverse effects which overbalance its beneficial effects on the Town, as measured by the purposes of the Bylaw. In acting on Special Permits the Planning Board shall consider the Special Permit Criteria listed in Section 6.

**1.7 Validity.** The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

**1.8 Applicability.** Where the application of this Bylaw imposes greater restrictions than those imposed by

any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

- 1.9 Amendments.** These Bylaws may be amended from time to time in the manner described in MGL, Chapter 40A.

## **SECTION 2 - GENERAL REGULATIONS**

The following regulations shall apply throughout the Town of Heath and to all land uses, unless otherwise specified herein:

### **2.1 Pre-existing Uses, Structures, and Lots.**

- 2.1.1 Continuation and Restoration. Any use or building, whether conforming to this Bylaw or not, may be continued if that use or building was lawfully existing at the time that it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause, but if discontinued or abandoned for more than 24 months, subsequent use shall comply with this Bylaw.
- 2.1.2 Alteration. Legally nonconforming buildings may be altered if without extension or change of use. Nonconforming buildings or nonconforming uses of buildings or land may be extended or changed to another nonconforming use only if granted a Special Permit by the Planning Board, upon the Board's determination that the extension or change of use will not be substantially more detrimental to the neighborhood than the existing nonconforming use.
- 2.1.3 Nonconforming Lots. Requirements for lot size, frontage, and front, side, and rear yards shall not apply to a lot for single-family or two-family residential use which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with other adjoining land, conformed to the then existing requirements, and had less than the requirements of this Bylaw but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.
- 2.1.4 Conformance. Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. (MGL, Chapter 40A e6)

**2.2 Removal of Natural Materials.** The removal of sod, earth, mineral aggregates, stone or rock from a parcel of land hereafter shall require a Special Permit except where it is incidental to the construction of an approved building or is a routine part of normal farming or house maintenance operations.

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

- 2.3.1 Grading or construction which will result in slopes of twenty-five percent or greater on fifty percent or more of the lot area, or on thirty-two thousand square feet or more on a single parcel, whichever is smaller, even if less than half of the lot area, shall be allowed only under Special Permit. This shall be granted only upon demonstration that adequate provisions have been made to protect against erosion and soil instability.
- 2.3.2 All slopes exceeding fifteen percent resulting from site grading shall be covered with topsoil to a depth of four inches and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber.
- 2.3.3 No areas totaling two acres or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity or unless necessarily incidental to construction on the premises under a currently valid building permit or unless within roads which are either public or designated on an approved subdivision plan or unless a Special



Permit is approved by the Planning Board on the condition that runoff will be controlled, erosion avoided and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by Special Permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control.

- 2.3.4 The Building Inspector shall require information of the applicant as necessary to ensure compliance with these requirements, including if necessary, elevations at key locations, description of vegetation cover and the nature of impoundment basins proposed, if any.
- 2.3.5 Where resultant site grades will exceed fifteen percent the town may require a performance bond to ensure compliance with these requirements.
- 2.3.6 Hillside areas shall be retained with vegetative cover as follows:

Average Slope by %	Minimum % of the Slope that must remain covered with Vegetation
10.0 - 14.9	25
15.0 – 19.9	40
20.0 – 24.9	55
25.0 – 29.9	70
30+	85

## **SECTION 3 - DISTRICTS**

**3.1 Establishment of Districts.** The entire Town of Heath is hereby divided into the following types of districts:

- Agricultural and Residential - District 'A'
- Residential/Recreational: Mohawk Estates - District 'B'
- Heath Center - District 'C'
- Agricultural and Forestry – District 'D'

**3.2** In addition, two **overlay districts** are hereby created:

- Water Supply Protection
- Floodplain

**3.3 Location of Districts.** The boundaries of the said districts are hereby established as defined in this section, and illustrated a set of maps including the "Official Zoning Map, Heath, Massachusetts" dated March 8, 2011, and the maps referenced in Section 4.3.3 Water Supply Protection District and Section 4.4.4 Floodplain District with all explanations thereon, is hereby made part of this Bylaw.

- 3.3.1 The boundaries of the Heath Center District shall be as defined in this section, quoting parcel boundaries and numbers as recorded on the "Tax Map of Heath, Massachusetts, prepared by Edw. T. Calver, Revised 1987".

The district boundary shall commence at the southeastern corner of Parcel #4 (now or formerly owned by David Griswold) at its intersection with the right-of-way of South Road. The boundary shall proceed from that point in a westerly direction along the southern boundary of Parcel #4 to the southwestern corner of Parcel #4, from which point it shall proceed in a northerly direction along the western boundary of Parcel #4. It shall continue along approximately that same bearing across Parcel #14 (now or formerly owned by Elizabeth Witzgall) until it intersects with the southwestern corner of Parcel #14a (now or formerly owned by Elizabeth Witzgall) at its intersection with the right-of-way of West Main Street. From that point the district boundary shall follow along the western and northern boundaries of Parcel #14a until it intersects with the right-of-way of Ledges Road. The district boundary shall then cross Ledges Road and continue along the northern and eastern boundaries of Parcel #6 (now or formerly owned by George Harris) until reaching the point where the eastern boundary of Parcel #6 intersects with the right-of-way of Bray Road. The district boundary shall then cross Bray Road and proceed along the northern and eastern boundaries of Parcel #10 (now or formerly owned by Caleb Kissling) to the point where the eastern boundary of Parcel #10 intersects the right-of-way of East Main Street. The district boundary shall then cross East Main Street and proceed along the western edge of the right-of-way of Avery Brook Road until it reaches the point of intersection with the southern boundary of Parcel #2 (now or formerly owned by Dorothy Hulbert). The district boundary shall then proceed in a westerly direction along the southern boundary of Parcel #2 and continue along the southern boundary of Parcel #2a (now or formerly owned by Dorothy Hulbert) to the southwestern corner of Parcel #2a. From that point the district boundary shall proceed in a northerly direction along the western boundary of Parcel #2a until it reaches the southeastern corner of Parcel #3 (now or formerly owned by Helen Nichols) from which point it shall proceed in a westerly direction along the southern boundary of Parcel #3 until it intersects the right-of-way of South Road. The district boundary shall then cross South Road to the southeastern corner of Parcel #4.

- 3.3.2 District "B", the area known as Mohawk Estates shall be bounded and described as shown on the maps recorded in the Franklin County Registry of Deeds, Plan Book 28, pages 90 and 91, and Plan Book 29 pages 2, 3, 4, 5, 34, 35, 38 & 39," as shown on the map on file and available for inspection in the Town Clerk's office.

- 3.3.3 The Water Supply Protection District shall be bounded as specified in Section 4.3.3.

- 3.3.4 The Floodplain District shall be bounded as specified in Section 4.4.4.
- 3.3.5 The boundary of the Agricultural and Forestry District ('D') shall start 650 feet back from the edge of the road Right of Way as shown on the Official Zoning Map for the Town of Heath.

### **3.4 Boundaries of Districts.**

- 3.4.1 Where the boundary lines are shown upon the Zoning Map approximately on the location of lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, the lot lines shall be the boundary lines.
- 3.4.2 Boundary lines located outside of public and private ways and shown approximately parallel to their rights of way shall be regarded as parallel to them, with distances separating them being measured at right angles to the rights of way unless otherwise indicated.
- 3.4.3 In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said Map, by the use of identifications as shown on the Map, or by the scale of the Map.
- 3.4.4 Where a district boundary line (other than an overlay district) divides any lot existing at the time such line is adopted, the following conditions shall apply:
  - A. If the Lot has frontage within only one district, the requirements of that district shall govern the entire lot.
  - B. If the lot has frontage within two or more districts, the owner may either:
    - 1. Follow the requirements of the more restrictive district in the entire lot, or
    - 2. Follow the requirements of the less restrictive district into the more restrictive district for a distance no greater than one hundred (100) feet.
- 3.4.5 Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.
- 3.4.6 Any change of the Zoning Map shall constitute an amendment of this Bylaw and the procedure for making such a change shall conform to the requirements for amending this Bylaw.

## **SECTION 4 - USE REGULATIONS**

**4.1 General Regulations.** No building or structure shall be constructed, 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 uses hereinafter set forth as permissible. Any uses not listed in the Use Regulations Schedule, Section 4.2, shall be considered prohibited.

### **4.2 Use Regulations Schedule:**

- "Y" shall mean permitted use by right
- "N" shall mean use is not allowed
- "SP" shall mean use is allowed by Special Permit
- "SPR" shall mean Site Plan Review
- "A" shall mean Agricultural and Residential District
- "B" shall mean Residential/Recreational: Mohawk Estates District"
- "C" shall mean Heath Center District
- "D" shall mean Agricultural and Forestry District

<b>RESIDENTIAL</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
One-family dwelling on public way	Y	Y	Y	Y
One-family dwelling on private way in compliance with MGLA c 47 s 81L (see section 6.1.2.1).	SP	SP	SP	SP
Accessory apartment attached, no more than 800 square feet of living area and to be occupied by no more than two people	Y	N	Y	Y
Accessory Apartment detached- no more than 800 square feet of living area and to be occupied by no more than two people	SP	N	SP	SP
Duplex	SP	N	SP	SP
Multi-family dwellings of 3 or 4 units (See Section 4.7.for standards)	SP	N	N	SP
Travel Trailer, Camping Trailer or Motor Home (See Section 4.10 for use standards)	Y	Y	N	Y
Mobile homes other than emergency shelter during rebuilding of a damaged or destroyed home (See MGL Ch.40A)	SP	SP	N	SP
Mobile home parks	N	N	N	N
Campgrounds (use not to exceed 90 days)	SP	N	N	N
Conservation Development	SPR	N	SP	SPR
Bed and Breakfast with up to six rooms	Y	N	Y	Y

<b>OPEN USE</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Farms	Y	Y	Y	Y
Commercial Greenhouses	Y	SP	SP	Y
Riding Schools, private stables provided that lot area is not less than five acres	Y	N	SP	Y
Golf courses or driving ranges	SP	N	N	SP
Ski trails, hiking trails and similar commercial outdoor recreation	SP	SP	SP	SP
Reservation, wildlife preserve, or other conservation use	Y	Y	Y	Y
Municipal, commercial, or industrial wastewater treatment plant sludge, stabilized sludge, or septage to be stockpiled or spread	N	N	N	N

<b>COMMUNITY SERVICES</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
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Day care facility for 10 or more children or adults	SP	SP	SP	SP
Day care facility for fewer than 10 children or adults	Y	Y	Y	Y
Day care center for children exempt from zoning regulation by MGL Ch.40A, Section 3	Y	Y	Y	Y
Educational uses exempt from zoning regulation by MGL Ch.40A, Section 3	Y	Y	Y	Y
Other educational uses	SP	SP	SP	SP
Public utility facility	SP	N	N	SP
Cemetery in compliance with MGL, Ch. 114	SP	N	SP	SP
Club or lodge, except one whose chief activity is customarily carried on as a business	SP	SP	SP	SP
Animal Hospital	Y	N	SP	Y
Dog kennel provided that the lot area is not less than 5 acres and no structure is placed within 75 feet of a road or lot lines	SP	SP	N	SP
Airport or heliport	SP	N	N	SP
Hospital, sanitarium, nursing, rest or convalescent home, or orphanage	SP	N	SP	SP
Sewage treatment plant	SP	SP	SP	SP
Municipal use not covered elsewhere	SP	SP	SP	SP
Municipal, commercial, or industrial wastewater treatment plant sludge, stabilized sludge, or septage to be stockpiled or spread	N	N	N	N

<b>BUSINESS USES (see Sections 4.5 &amp; 4.8)</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Business or Professional Office building containing 2,500 square feet or less of enclosed floor space	Y	Y	Y	Y
Business or Professional Office building containing more than 2,500 square feet of enclosed floor space	SP	SP	SP	SP
Banks, other monetary institutions	SP	SP	SP	SP
Funeral home	SP	SP	SP	SP
Restaurant, drive-in or thru	SP	SP	SP	SP
Other restaurant	SP	SP	SP	SP
Gift shops, sporting goods	SP	SP	SP	SP
Motor vehicle sales, service, rental, storage	SP	N	N	SP
Building tradesmen and contractors (6 or fewer employees)	Y	SP	SP	Y
Building tradesmen and contractors (more than 6 employees)	SP	N	N	SP
Fuel, feed, ice, building materials establishments	SP	SP	SP	SP
Laundry, Laundromat	SP	SP	SP	SP
Theatres	SP	SP	SP	SP
Retail other than above	SP	SP	SP	SP
Building containing 2 or more dwelling units in combination with stores or other permitted business use	SP	SP	SP	SP
Caterer or other cottage industry	Y	SP	SP	Y
Boarding, lodging or tourist homes (six or less boarders)	Y	SP	Y	Y
Boarding, lodging or tourist homes (more than six boarders)	SP	SP	SP	SP
Hotel, motel	SP	N	N	SP
Inn	SP	N	SP	SP
Business non-industrial uses other than above	SP	SP	SP	SP
<b>INDUSTRIAL USES (see Sections 4.5 &amp; 4.8 for standards)</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>

Junk yards, dumps and landfills	N	N	N	N
Manufacturing, processing and laboratories	SP	SP	SP	SP
Research	Y	Y	Y	Y
Freight or transportation terminal facilities	SP	N	N	SP
Bulk storage, warehousing	SP	N	N	SP
Commercial radio transmission	SP	SP	N	SP
Quarrying	SP	N	N	SP
Sawmill	SP	SP	N	SP
The collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to low level radioactive waste	N	N	N	N
Industrial uses other than above	SP	N	N	SP
Municipal, commercial, or industrial wastewater treatment plant sludge, stabilized sludge, or septage to be stockpiled or spread	N	N	N	N
Small-Scale Ground-Mounted Solar Electric Generating Installations of 10 kW or less .1*,3*, 4*	SPR	SPR	SP	SPR
Small-Scale Ground-Mounted Solar Electric Generating Installations greater than 10 kW up to 25 kW or less. 1*,3*, 4*	SPR	SPR	SP	SPR
Large-Scale Ground-Mounted Solar Electric Generating Installations greater than 25 kW up to 1 MW. 1*, 2*, 4* (see Section 6.7)	N	N	N	SP
Large-Scale Ground-Mounted Solar Electric Generating Installations greater than 1 MW. 1*, 4*	N	N	N	N
Industrial-Scale Wind Turbine Installations	N	N	N	N
Licensed Marijuana Establishment – Cultivation, Processing, Distribution or other Licensed Marijuana related business	SP	N	N	SP
Licensed Marijuana Establishment –Retail	SP	N	SP	SP
<b>ACCESSORY USES</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Garage, parking accessory to permitted use	Y	Y	Y	Y
Parking four or more commercial vehicles accessory to permitted business or industrial use	SP	SP	SP	SP
Parking, storage of agricultural machinery	Y	Y	Y	Y
Cottage industry with no more than 3 employees and requiring no significant exterior changes	Y	Y	Y	Y
Building or structure accessory to permitted use	Y	Y	Y	Y
Decks, accessory to permitted use	Y	Y	Y	Y
Protective structures, accessory to permitted use	Y	Y	Y	Y
Municipal, commercial, or industrial wastewater treatment plant sludge, stabilized sludge, or septage to be stockpiled or spread.	N	N	N	N
Wind energy conversion system for residential use (See Section 6.4 for use guidelines)	SP	SP	N	SP

1 – Roof mounted solar power generating facilities are allowed “by-right” but require a building permit and must comply with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements.

2 – Ground-Mounted Solar Electric Generating Installations greater than 25 kW up to 250 kW that meet the requirements of Section 6.7 and are located in a Solar Overlay District (see Official Zoning Map) are allowed by-right (Yes) but are subject to Site Plan Review.

3- Small-Scale Ground- Mounted systems of 25 kW or less shall be 25 feet in height or less.

4 – All references to power output in this bylaw are Alternating Current (AC)

### **4.3 Water Supply Protection District.**

4.3.1 Purpose: The purpose of this Water Supply Protection District is:

- A. To protect, preserve and maintain present and potential sources of water supply for the public health and safety;
- B. To protect, preserve and maintain the existing and potential groundwater recharge areas within the town;
- C. To reduce erosion of topsoil and the subsequent sedimentation of surface water bodies;

4.3.2 Scope and Authority: The Water Supply Protection District shall be considered as overlaying other zoning districts. Any uses permitted in the portions of the district so overlaid shall be permitted subject to all the provisions of this district.

4.3.3 Water Supply Protection District Delineation: The Water Supply Protection District is defined as all lands within the Town of Heath lying within the primary and secondary recharge areas of groundwater aquifers which could provide public water supply. These areas are designated as the "Heath Water Supply Protection District," as depicted on the map entitled "Potential Groundwater Map," prepared for the Heath Planning Board, and on file in the Town Clerk's office. The Water Supply Protection District is hereby incorporated as part of the Zoning Map of Heath, Massachusetts dated April 29, 1989, on file in the Town Clerk's office.

Where the bounds as delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. However, the Planning Board retains its authority to determine property location with regard to said Water Supply Protection District.

In the case of a development proposed within the Water Supply Protection District, the Town may engage a professional geologist, soil scientist, or engineer trained in hydrogeology to determine more accurately the location and extent of a protection area, and charge the owner(s) for the cost of the investigation.

4.3.4 Water Supply Protection Use Regulations.

- A. Whenever the requirements of this article differ from those prescribed in other laws, ordinances and codes, the stricter requirements designated to protect water supplies will take precedence.
- B. The following uses shall be permitted within the Water Supply Protection District as a matter of right where allowed by law or regulation in the underlying zone.
  - 1. Conservation of soil, water, plants and wildlife;
  - 2. Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted;
  - 3. Foot and bicycle paths;
  - 4. Proper operation and maintenance of existing water bodies and dams, flash boards and other water control, supply and conservation devices;
  - 5. Maintenance and repair of any existing structure provided there is no increase in impermeable areas;

6. Agricultural uses provided that fertilizers, herbicides and other leachable chemical materials are not stored outdoors;
7. Necessary public utilities and facilities designed so as to prevent contamination of surface water and groundwater;
8. Leach fields must be 50% larger than Title V specifications or local regulations adopted by the Board of Health pursuant to Title V.

NOTE: Where the application of fertilizers, pesticides, herbicides or other potential contaminants is being made, the Town may install test wells for the purpose of monitoring groundwater quality. Such installation and sampling will be conducted by a qualified agent of the Board of Health.

4.3.5 The following uses are prohibited within the Water Supply Protection District:

- A. The disposal of leachable wastes, except residential subsurface waste disposal systems and except normal agricultural operations but not excepting outdoor storage or disposal of fertilizers, herbicides and other leachable chemical materials;
- B. The rendering impervious of more than 5000 sq. ft. of any lot, except by Special Permit;
- C. Industrial uses which discharge process wastewater including any commercial and service uses discharging wastewater containing contaminants;
- D. Use of chemicals for deicing unless deemed necessary for public safety by the Town Highway Superintendent;
- E. The disposal of hazardous or toxic wastes by household or other uses;
- F. Improper storage of hazardous or toxic material;
- G. "Clustered" structures, as in Conservation Development;
- H. Automotive service stations and motor repair shops, junk and salvage yards, trucking and bus terminals, car and truck washes, and airports.

4.3.6 The following restrictions exist within the Water Supply Protection District:

- A. Petroleum products stored shall be placed in a diked, impermeable surface to prevent spills or leaks from reaching groundwater.
- B. All runoff from impervious surfaces shall be recharged on the site by being diverted to storm water infiltration basins covered with natural vegetation. Storm water infiltration basins must be designed to handle a 100-year storm. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

4.3.7 In the Water Supply Protection District, the following uses may be permitted by Special Permit in accordance with the criteria in Section 6:

- A. Commercial and industrial uses permitted in the underlying district, except for those uses expressly prohibited in Section 4.3.5.



B. Disposal of solid wastes, other than brush and stumps.

4.3.8 In addition to meeting the Special Permit Requirements of Section 6 of the Heath Zoning Bylaw, each application for a Special Permit in the Water Supply Protection District shall be accompanied by five copies of a site plan. The site plan, to be prepared by an Engineer registered in the Commonwealth of Massachusetts, shall include, at the minimum, the following:

A. Provisions to prevent contamination of groundwater by petroleum products, hazardous materials or wastes;

B. Drainage recharge features and provisions to prevent loss of recharge;

C. Provisions to prevent soil compaction;

D. Provisions to prevent seepage from sewer pipes;

E. A complete list of chemicals, pesticides, fuels and other hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Those businesses using or storing hazardous materials shall file a definitive operating plan;

F. A plot plan showing:

1. Location of wetlands, streams, water bodies and flood plain;
2. Existing drainage patterns;
3. Existing woodland;
4. Areas having slopes exceeding 15 degrees;
5. Areas to be disturbed by construction;
6. Areas where earth and other material subject to erosion will be temporarily stockpiled;
7. Areas to be used for disposal or storage of construction debris, stones, stumps, etc. if within the district;
8. Areas to be rendered impermeable;
9. Temporary and permanent erosion control measures planned, such as sediment basins, storm water basins, diversions, riprap, stabilization seeding, etc;
10. Temporary work roads to be used during projects;
11. Locations and sizes of septic system;
12. Suitable method to contain spillage in fuel filling area;
13. Existing wellheads and zones of influence.

G. A storm drainage plan showing:

1. Locations of drains and culverts, and names of streams, rivers, ponds or reservoirs in the town into which they flow;
2. Discharge peaks and expected velocities at drain or culvert outlets;
3. Conditions above and below outlets and expected flow velocities;
4. Supporting computations for the above.

H. A grading plan showing existing topography and planned grade along existing and/or proposed road or highway profiles.

I. A siltation and sedimentation control plan including:

1. Sediment and erosion control structures such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation together with referenced standards for soil erosion and sediment as

- appropriate, and design calculations as required for each structure;
- 2. Seeding and/or sodding requirements for all exposed areas including seedbed preparation, seed mixtures, lime, fertilizer, and mulching requirements with referenced standards;
- 3. Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate dates when critical area stabilization, paving, seeding, mulching or sodding is to be completed;
- 4. General notes for sediment control that spell out the procedures for implementing the plan.

4.3.9 Upon receipt of an application, the Planning Board shall transmit one copy of the Site Plan to the Conservation Commission, Board of Health and Building Inspector. Final action shall not be taken until written reports have been received from the above Boards or until 35 days have elapsed. The reports of the Conservation Commission, Board of Health and Building Inspector shall make specific references to the site plan and their recommendations shall weigh heavily in the granting of a Special Permit by the Planning Board. The Planning Board may, after notice and public hearing as required, grant such a Special Permit if the proposed construction and use meet the following criteria.

- A. Is in harmony with the purpose and intent of this ordinance and will promote the purposes of the Water Supply Protection District;
- B.. Is appropriate to the natural topography, soils, and other characteristics of the site to be developed;
- C. Will not, during construction or thereafter, have an adverse environmental impact on any surface water, aquifer or recharge area;
- D. Will not adversely affect an existing or potential water supply;
- E. Is consistent with the existing and probably future development of surrounding areas;
- F. Specific guidelines to be used include, but are not limited to:
  - 1. Limit grading to only those areas actively undergoing current construction;
  - 2. The smallest practical area of land should be exposed at one time during development;
  - 3. Limit the length of time graded areas are exposed;
  - 4. Provide temporary or permanent stabilization of disturbed areas at the earliest opportunity. Limit exposure to less than 60 days;
  - 5. Retain and protect as much of the natural vegetation as possible;
  - 6. Permanent improvements such as roads, utilities, storm sewers, vegetated waterways, and other features of the development should be scheduled for installation to the greatest extent possible before removing the vegetative cover from an area scheduled for building construction;
  - 7. Protect all fill slopes and cut slopes exceeding five feet in height and storm run-off through the use of diversion berms, drop chutes or other acceptable means;
  - 8. Rough-graded rights-of-way awaiting installation of utilities and/or pavement should be protected by the installation of interceptor berms pavement should be protected by the installation of interceptor berms across the right-of-way as to reduce the length of slope between berms to not more than 240 feet;
  - 9. On sites where the above procedures are impractical or not acceptable where the topography permits, install sediment basins, desilting basins, or silt traps to remove sediment from runoff waters.

#### **4.4 Floodplain District.**

4.4.1 The purposes of the Floodplain District are to protect the public health, safety, and

general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the floodplain.

4.4.2 Relation to Other Regulations. The Floodplain District is established as an overlay district to all other districts. All development in the district including structural and non-structural activities whether permitted by right or by Special Permit must be in compliance with the following:

- A. 780 CMR 744.0, of the Massachusetts State Building Code which addresses floodplain areas.
- B. 310 CMR 10.00, Wetlands Protection, Department of Environmental Quality Engineering. (DEQE)
- C. 302 CMR 6.00, Inland Wetlands Restriction. (DEQE)
- D. Title V, minimum requirements for the subsurface disposal of sanitary sewage. (DEQE)
- E. MGL, Ch. 131 e 40.

4.4.3 Definitions.

"AREA OF SPECIAL FLOOD HAZARD" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, VO or V1-30, VE or V.

"BASE FLOOD" means the flood having a one percent chance of being equaled or exceeded in any given year.

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

"DISTRICT" means floodplain district.

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

"FLOOD HAZARD BOUNDARY MAP (FHBM)" means an official map of a community issued by FEMA where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

"FLOOD INSURANCE STUDY" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"FLOODWAY" - see "Regulatory Floodway".

"FUNCTIONALLY INDEPENDENT USE" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading

and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"LOWEST FLOOR" means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements.

"MANUFACTURED HOME" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

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

"NEW CONSTRUCTION" means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.

"100-YEAR FLOODPLAIN" see "Base Flood".

"REGULATORY FLOODWAY" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

"SPECIAL HAZARD AREA" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, E.

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

"SUBSTANTIAL IMPROVEMENT" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

- 4.4.4 Floodplain District Boundaries. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the "Heath Floodplain Map" dated 1989.
- 4.4.5 Floodway Data. In Zones A the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in 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, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood. In the regulatory floodways designated on the Heath FIRM or Flood Boundary Map (D only), prohibit encroachments in the regulatory floodway which would result in any increase in the base flood discharge.
- 4.4.6 Permitted Uses. The following uses of low flood damage potential and causing no obstructions to flood flows shall be allowed provided they are permitted in the underlying district and they do not require structures, fill, or storage or materials or equipment:
- A. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
  - B. Forestry and nursery uses.
  - C. Outdoor recreational uses, including fishing, boating, play areas, etc.
  - D. Conservation of water, plants, wildlife.
  - E. Wildlife management areas, foot, bicycle and/or horse paths.
  - F. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
  - G. Buildings lawfully existing prior to the adoption of these provisions.

#### **4.5 Parking and Loading Requirements.**

- 4.5.1. Number of Spaces. Adequate off-road parking must be provided to service all increases in parking demand created by new structures, additions or change of use. The number and location of parking spaces must conform to the standards described in Section 4.5.2, unless the Planning Board, acting as the Special Permit Granting Authority, determines that an alternate provision would be adequate for all parking needs because of special circumstances such as shared parking or uses having peak parking demands at different times, unusual age or
- 4.5.2 Table of Requirements.
- A. Dwelling: 2 parking spaces per dwelling unit.
  - B. Hotel, motel, guest house, lodging house: 1 space per guest unit.
  - C. Offices, stores: 2 spaces per 180 sq. ft. of floor area, but not fewer than 2 spaces per separate enterprise.
  - D. Restaurant, place of assembly: 1 space per 3 persons maximum occupancy as allowed under the State Building Code.

- E. Industrial, wholesale, or warehouse: 1 space per employee per shift.
- F. Required spaces must be on the same lot as the use they serve, except that spaces on a separate lot in the same ownership may be credited if not further than 350 feet from the building entrance of the activity they serve.
- G. Adequate off-road parking must be provided for commercial vehicles.
- H. Other uses: individually determined by the Building Inspector, except that determination will be by the Planning Board in cases requiring Special Permit review.

4.5.3 Parking Areas for 10 or More Vehicles. The following shall apply:

- A. Their use shall not require backing onto a public way.
- B. There shall be not more than one entrance and one exit from such lots per 300 feet of frontage or fraction thereof. If necessary to meet this requirement, arrangements shall be made for shared egress.
- C. Such lots may be required to be screened from any abutting residential use by dense shrubs and trees or opaque fencing not inconsistent with the neighborhood character.
- D. Fifteen (15) feet set back required from the front lot line.

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

#### 4.6 Sign Regulations.

- 4.6.1 No non-residential sign, whether temporary or permanent, shall be erected, altered or relocated without a permit issued by the Building Inspector. The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, and frame around the sign and any extensions. The supporting structure is not included and only one side of a sign shall be counted in computing the total square feet of signs.
- 4.6.2 Lighting. Lighting shall be arranged so that no glare is visible from any way or from any property residentially zoned or occupied. No sign shall flash or move. The lighting for any sign shall be white light and the lighting shall not be from within the sign. Interior illumination may be allowed only by Special Permit granted by the Planning Board. To reduce glare, a sign with interior illumination must have an opaque background and sides. Only lettering may be translucent. All lights illuminating any sign shall be of steady illumination and shall be properly shielded and meet safety requirements to the satisfaction of the Building Inspector and the police chief. Signs may be illuminated only during normal business hours.
- 4.6.3 The following signs, and no others, are permitted. This bylaw includes signs affixed to, suspended from, or incorporated as part of a building:
  - A. Any residential dwelling or its accessory uses may have a single sign of not more

than four square feet.

- B. Any non-residential building or its accessory uses may have a single on-premises sign of not more than eighteen square feet.
- C. In special instances, the Planning Board may issue a Special Permit for more than the number of signs herein before specified, which have an aggregate total of not more than thirty square feet, upon the Board's determination that the sign will serve the informational needs of the motoring public, will not obscure the legibility of existing signs on adjacent premises, will not obstruct sight distance of traffic on the highway, employs minimum wording to enhance legibility, and is consistent with the rural character of the neighborhood and Town. The Special Permit shall specify the size and location of the sign(s) (with a minimum standard sign setback of (10) feet from the front property line) and impose other terms and regulations as the Planning Board may deem to be in the public interest.
- D. Internal signs which are not visible from the road are exempt from the provisions of this Section.

4.6.4 Off-Premises Signs. Off-premise signs are prohibited in the Town of Heath, with the following exceptions:

The only off premise signs permitted in the Rural Residential District shall be "Tourist-Oriented Directional Signs" and associated "trailblazing signs", as defined by the Massachusetts Department of Public Works (MDPW) in the Rules and Standards for Tourist Oriented Directional Signing on Conventional Roads", MGL, Ch. 85 e 2. Such signs shall conform to both MDPW regulations and the following local regulation:

A Special Permit granted by the Planning Board shall be required as evidence of community approval for "trailblazing signs". Approval of Special Permit for "trailblazing signs" shall be subject to finding by the Planning Board that such signs will promote the public interest, will not endanger the public safety, and will be of such size, location and design as will not be detrimental to the neighborhood. The Planning Board shall have the authority to establish and amend rules and regulations pertaining to the design and placement of "trailblazing signs" within the Town of Heath.

4.6.5 Nonconforming Signs.

- A. Continuance. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this Bylaw may continue although such sign does not conform to the provisions of this section, but if discontinued for a period of two years or more, shall not be resumed.
- B. Maintenance. Any lawfully existing sign may be maintained, repaired or repainted, but shall not be expanded, extended or enlarged, in dimension or use, except in conformance with the provisions of this section.
- C. Replacement. Any sign replacing a nonconforming sign shall conform to the provisions of this section, and the nonconforming sign shall not thereafter be displayed. If a nonconforming sign is destroyed by vandalism, act of God or other reason beyond the control of the owner, it may be restored or replaced within two years.

4.6.6 Prohibited Signs. The following signs are prohibited:

- A. Projecting Signs.

- B. Flashing or moving signs.
- C. Signs placed or erected near a town street intersection in such a manner as to be a hazard to the safe flow of traffic.

4.6.7 Signs exempt from this section's regulations.

- A. Legal notices: identification, informational, or directional signs created or required by governmental bodies.
- B. Signs directing and guiding traffic and parking, but bearing no advertising matter, including name or products.
- C. Signs of up to four square feet advertising rental or sale of the premises. Such signs shall be promptly removed within five days after the sale, rental or lease is consummated.

4.6.8 Temporary Signs. These are not to exceed 12 square feet per sign per location nor a total of 16 square feet per location for each of the types of signs listed immediately below. Temporary signs may be used in addition to the other signs, but may not stay up for longer than one month except for C, D and F below.

- A. Public Event Signs. For an event sponsored by a not-for-profit organization and open to the public. Must be removed within five days after the event.
- B. Tag Sale Signs. Allowed only during the period that the sale is in progress. Allowed only for tag sales that occur no more often than once each month.
- C. Seasonal Farm Stand Signs. Limited to a period of not more than six months in a calendar year.
- D. Contractor's Signs. Remove within five days after the work is completed.
- E. Traffic Control Signs for special events. Remove at the end of the event.
- F. Political Signs. Allowed for no longer than a 60 day maximum length of time and must be removed within five days after the election.

**4.7 Standards for Multi-Family Dwellings and Accessory Use Apartments.**

Special Permits authorizing multi-family dwellings shall be granted by the Planning Board only for proposals complying with the location and intensity requirements of Sections 4 and 5, and with requirements of Section 6, and if the Planning Board determines that the following are met:

- A. No structure shall contain more than four (4) dwelling units.
- B. Analysis must be done in conjunction with Board of Health and Conservation Committee to determine ability of soils to support level of density proposed.
- C. Site design shall minimize topographic changes and removal of existing trees or other important natural features.
- D. Visibility of parking area from public ways shall be minimized through use of building placement, topography or vegetative screening.



- E. Accessory Apartments are subject to the following rules:
  - a. Only one apartment per 2-acre or greater building lot;
  - b. Size of apartment is limited to 800 square feet;
  - c. Property owner must reside in one of the two residences;
  - d. Occupancy of apartment is limited to two persons.

#### **4.8 Standards for Business and Industrial Use.**

- 4.8.1 No building shall be converted to or constructed for, business or industrial use, and no permit shall be granted for such use unless the following standards are met.
  - A. The business or industry shall comply with the use and intensity requirements of Section 4 and 5.
  - B. The use shall comply with the parking and sign regulations of Section 4.
  - C. No building or outdoor storage facility of materials or products shall be closer than 25 feet from the side or rear lot line, nor closer than 50 feet from the frontage.
  - D. Parking and outdoor storage of materials or products shall be screened from the view of neighbors and the view of public ways by vegetative screens, opaque fencing or topography.
  - E. Lighting shall not illuminate neighboring properties or public ways.
  - F. The business or industry shall not produce noxious fumes or odors, unnecessary vibrations, noise or airborne particles.

#### **4.9 Driveway Regulations.**

- 4.9.1 Standards.
  - A. Culverts and Drainage. Existing drainage ditches parallel to public or private roads from which building lots are to be accessed shall not be obstructed by new driveway construction. Culverts of appropriate size and a durable material (such as asphalt coated galvanized steel) shall be installed at no expense to the municipality. Culvert diameter shall be determined by the Highway Superintendent; in no case shall the diameter be less than twelve inches (12"). Where appropriate in the judgment of the Highway Superintendent, driveways shall be provided with parallel drainage swales and with culverts allowing storm water to cross the driveway without creating erosion or washouts.
  - B. Turnarounds. All new driveways shall be provided with the means for reversing the direction of a standard-sized automobile, so that the vehicle may enter the public road facing forward.
  - C. Sight Distances. All new driveways must be located where the minimum sight distance in both directions along the public or private way from which it is accessed is not less than 100 feet. This distance shall be measured at a height of not more than four feet above the elevation of the driveway at its point of intersection with the way (typical eye-level of car drivers).
  - D. Gradients. Maximum gradient of any new driveway shall be 10% within 25 feet of the edge of the public way (when the driveway is sloping down to the way) and 20% between that point and the structure it is accessing.
  - E. Construction Material. All new driveways must be provided with a minimum of

eight inches (8") of sand and gravel ("bank run" or better) in which there are no stones greater than four inches (4") in diameter. On slopes of between 5% and 8% within 35 feet of the edge of the way, the driveway shall be overlain by at least four inches (4") of graded crushed gravel or "trap rock gravel", in which the chip size does not exceed 3/4" to prevent un-stabilized driveway material from washing out onto the public way.

- F. Width of Driveway. The width of the travelled surface shall be proportional to the number of dwelling units served: 1-2 units, 12 feet; 3-5 units, 18 feet; 6 or more units shall be served by a way constructed to all the same standards as required for subdivision roads.
- G. Safety of the Public during Construction. Persons securing road opening permits are responsible for insuring the safety of the public in the excavated area. Adequate safety and warning devices must be placed at appropriate locations to adequately warn and protect the motoring and pedestrian public. Such devices might include, but not necessarily be limited to reflective signs, barricades, and barrels along with lights. Any liability arising from improper safeguards shall be borne by the person/s securing the permit. The Town of Heath is not responsible for providing devices mentioned above to persons performing the excavation.
- H. The driveway of any building located 150 feet from a public way shall be designed and maintained so as to allow emergency vehicles to turn around before departing.
- I. The driveway must be set back at least ten (10) feet from side and rear lot lines, with the exception of the common lot lines served by shared driveways.

#### 4.9.2 Common Driveways.

Shared (Common) Driveways. At most, 3 lots may be connected to or otherwise share the same driveway. The driveway shall lie entirely within the lots being served. This subsection shall apply only to shared driveways constructed after April 29, 1989 and to lawfully existing driveways changed after that date to connect with or serve one or more additional lots. There shall be a clearly worded provision recorded with the deed for all shared access drives running with the land. Establishing clear responsibilities for maintenance and snow removal is required.

#### 4.9.3 Driveway Site Plan Approval.

For lots or uses for which a Special Permit is required by this bylaw, the installation or extension of a driveway to serve a new main building or a new use shall be in accordance with a driveway construction site plan approved by the Planning Board, with advice from the Highway Superintendent with respect to driveway connection to the road. Such driveway construction site plan approval shall expire if the work there under is not begun and diligently pursued to completion within one year after issuance.

#### 4.10 Camping Trailers, Travel Trailers, or Motor homes; Industrial Semi-Trailers

4.10.1 Purpose: To regulate the use of camper/trailers and semi-trailers within all districts in Heath. The specific intent, consistent with the general purpose of the Protective Zoning Bylaws, is to maintain the appropriate use of camper/trailers and semi-trailers by ensuring all necessary safety, environmental, sanitary and building code protections.

##### 4.10.2 Definitions:

**Camping Trailers, Travel Trailers, and Motor Homes:** A self-contained mobile unit supported on its own wheels or those of another vehicle designed to be used for travel, recreational and vacation uses, but not for permanent residence. Herein referred to as Camper/Trailers. Camper/Trailers shall not be considered permanent structures. This definition does not include Mobile Homes defined herein.

**Camper/Trailer Occupancy Permit:** Permit issued by the Town of Heath through the Board of Health pursuant to Heath Board of Health Regulations.

**Industrial Semi-Trailers:** A trailer without motive power designed for carrying property and used in combination with a truck tractor of a Class 8 or more, and where some part of the weight of such trailer and that of its load rests upon and is carried by, the truck tractor. This definition does not include livestock, farming, utility or recreational trailers pulled by a vehicle below a Class 8 classification.

**Mobile Homes:** Also known as Manufactured Housing. A dwelling unit intended for full-time occupancy built on a chassis that contains complete electrical, plumbing and sanitary facilities, and designed for year-round living and issued a (HUD) certification. This definition shall not include those vehicles as known camping or travel trailers, or motor homes.

**Mohawk Estates Lots:** Lots within the development known as “Mohawk Estates” which have been assigned Unit, Block and Lot numbers.

**Property Owner:** The owner(s) of record with the Registry of Deeds of any lot or parcel of land. For the purposes of this bylaw, multiple owners are considered one property owner.

**Protective Structures:** Freestanding, non-enclosed structures, which are constructed to provide protection from the weather elements and not for additional living space. For the purposes of this bylaw, camper/trailers stored under protective structures are considered stored outside.

**Temporary Occupancy:** Occupancy of a temporary structure, such as a camper/trailer, not intended as a permanent residence.

**Visiting Camper/Trailer:** A state-registered camper/trailer not owned by the property owner, but which is located on the lot or parcel of a Heath property owner.

##### 4.10.3 Camper/Trailer Regulations

A. Camper/trailers are considered structures for temporary occupancy and are prohibited from year-round occupancy use or for business purposes. No permanent structure (as defined in the Protective Zoning Bylaws) or service, including but not limited to electrical, gas or septic, may be attached to a camper/trailer. Temporary electrical service may be permitted for use with a camper/trailer as approved by the Electrical Inspector. All camper/trailers must meet state and local health and sanitary regulations. All camper/trailers must meet state and local health and sanitary regulations. Owners of existing camper/trailers with attached permanent services such as septic and water will only be allowed to replace the existing camper/trailer with a permanent structure.1. An exception to the business use exclusion would be during the annual Heath Fair where camper/trailers contract with the Heath Agricultural Society as vendors.

B. A Camper/Trailer Occupancy Permit will be required for occupancy in accordance with the Heath Board of Health Regulations.

C. All camper/trailers, whether stored or used for living purposes, must maintain mobility and be immediately portable. Camper/trailers are allowed to be stored on blocks as long as the wheels and tires remain immediately available and mountable. Camper/trailers stored within a protective structure, must be stored in such a way as to allow the camper/trailer to be moved in and out of said protective structure.

D. All camper/trailers must meet the appropriate setbacks, whether occupied or stored, as set forth in Section 5.1—Dimensional Requirements of the Heath Protective Zoning Bylaw, or Massachusetts General Laws.

E. The number of camper/trailers that can be stored or used as temporary dwellings on the property owner's land in District A is limited to one. In District B, the number of camper/trailers that can be stored or used as temporary dwellings on the property owner's land is limited to one per Mohawk Estates Lot. For contiguous lots of five or more owned by one property owner in District B, the maximum number of camper/trailers on such property is limited to four.

1. An exception to this limitation in both districts would be a Visiting Camper/Trailer, not owned by the property owner, use of which is not to exceed two weeks in a calendar year in either district and cannot remain on the land after the allotted time. A Camper/Trailer Occupancy Permit would not be required, but a state registration would be required.

F. Temporary occupancy of camper/trailers, in accordance with the Heath Board of Health Regulations, is limited to the following:

District A & D: (Agricultural/Residential/Forestry)--Temporary occupancy use is limited to no more than two weeks per calendar year and in accordance with the Heath Board of Health Regulations.

1. An exception to this limitation can be made by the Board of Health in accordance with their regulations.

District B: (Mohawk Estates, Residential/Recreational)--Temporary occupancy is allowed for a maximum of 150 days per year, but for no more than 30 consecutive days, and in accordance with the Heath Board of Health Regulations.

1. An exception to this limitation can be made by the Board of Health in accordance with their regulations.

2. Property owners with permanent dwellings or mobile homes are allowed to have a Camper/Trailer on their property for temporary occupancy for no more than two weeks per calendar year and in accordance with the Heath Board of Health Regulations.

District C: (Town Center)--Temporary use or outside storage of camper/trailers are not allowed in the Town Center as indicated in Section 4.2 – Use Regulations in the Heath Protective Zoning Bylaws, except for emergency purposes, as noted in Section 4.91.3.I below.

G. In the event of an emergency circumstance due to fire or other hardship, a camper/trailer may be used as a temporary residence upon Board of Health approval, on or near the site of a permanent residence that has been destroyed by fire or other natural disaster. The owner or occupier of the residence in this situation may place a camper/trailer on the site and reside in such dwelling for a period not to exceed twelve (12) months or as otherwise determined by the Board of Health as long as sanitary codes are met. Owner is required to get a Camper/Trailer Occupancy Permit.

H. Protective structures for registered and compliant camper/trailers are allowed in Districts A & B provided proper building permit requirements have been followed and approved by the Building

Inspector. Protective structures are limited to one per each camper/trailer allowed under Section 4.10.3.F. Decks that are not attached to the camper/trailer in any way are allowed with proper permits from the Building Inspector. As campers/trailers are considered temporary structures, they are not allowed to have permanent structures attached to them. They must be stored in such a way as to remain immediately mobile; the protective structure cannot be completely enclosed thereby eliminating the mobility of the camper/trailer. Protective structures and decks do not include the authority to create separate accessory rooms or additional enclosed living space. Violations will require the removal of these additions.

I. Camper/trailers that have been removed from the property owner's land without a replacement for more than two years will be considered a discontinued or an abandoned use of the land in accordance with Massachusetts General Laws Chapter 40A, Section 6.

J. Camper/Trailers are prohibited from being used as a storage facility in all districts or for purposes not originally intended in their manufacture.

K. Industrial Semi-Trailers are prohibited from being stored on the land in all districts. Temporary use of mobile storage containers is allowed for 9 months for construction or moving purposes. In the event of town-sanctioned construction work, commercial trailers will be allowed as long as sanitary codes are met.

L. Any violations to Section 4.10.3 will be enforced by the Board of Health and/or the Building Inspector using the Town's non-criminal disposition system or by fines pursuant to Section 1.3 of the Zoning Bylaws when appropriate.

## **SECTION 5 - INTENSITY REGULATIONS**

**5.1 Dimensional Requirements.** A building and/or structure shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following requirements, and no more than one (1) dwelling or principal building shall be built upon any such lot.

A minimum of 50% of the area of the lot shall be uplands, and shall not be wetland resource areas as defined in the Wetland Protection Act, M.G.L. Ch. 131 Sec. 40. "Riverfront areas," defined in 310 CMR 10.58, which do not also include other wetland resource areas, may be calculated in their entirety (100%) toward the minimum lot size.

Districts	Minimum Lot Size Area * (sq. ft.)	Lot Frontage (feet)	Front Setback (feet)	Side Setback (feet)	Rear Setback feet	Maximum Height (feet)
Agricultural and Residential District A	87,120' 2 acres	250'	50'	25'	25'	40'
Residential/Recreational Mohawk Estates District B **	87,120' 2 acres	250'	50'	25'	25'	40'
Heath Center District C	87,120' 2 acres	250'	50'	25'	25'	40'
Agricultural & Forestry District D	174,240' 4 acres	350'	50'	25'	25'	40'
Water Protection District	87,120' 2 acres	250'	50'	25'	25'	40'

\* - Increase by 50% for two-family units, increase by 100% for a dwelling containing 3 dwelling units and 150% for a dwelling containing 4 dwelling units. For example in the A District the minimum lot area would be: 130,680 sq. ft. for a Two-Family Dwelling; 174,240sq. ft. for a dwelling with 3 dwelling units; and 217,800 sq. ft. for a dwelling with 4 dwelling units.

\*\* - For Temporary campers in the Residential/ Recreational Mohawk Estates District see Chart on page 29.

District A	Area (Sq. Ft.) Acreage	Minimum Lot Dimensions Setback in Feet				Maximum Height
		Frontage	Front	Side	Rear	
Primarily Agricultural and Residential						
Single Family	87,120 2 Acres	250'	50'	25'	25'	40'
Duplex other than accessory apartment	87,120 2 Acres	250'	100'	25'	25'	40'
Other 2- family and 3 or 4-family	87,120 plus 65,340 per dwelling unit in excess of 2	300'	150'	50'	50'	40'
Business or industry other than cottage industry	65,340	200'	50'	25'	25'	40'

District B	Area (Sq. Ft.) Acreage	Minimum Lot Dimensions Setback in Feet				Maximum Height
		Frontage	Front	Side	Rear	
Residential / Recreational: Mohawk Estates						
Single Family	87,120 2 Acres	250'	50'	25'	25'	40'
Single Family ***	4 contiguous lots & 1 acre	250'	50'	25'	25'	40'
Mobile homes Stick built homes under 1000 sq.ft.	4 contiguous lots & 1 acre	125'	25'	25'	25'	20'
Travel Trailer, Camp Trailer	5,000	25'	15'	15'	15'	20'
Use accessory to travel trailer/ camp trailer	5,000	25'	15'	15'	15'	20'
Business or industry	65,340	200'	50'	25'	25'	40'

other than cottage industry						
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\*\*\*- For Stick Built homes, all of which are limited to 1,000 sq. ft. see Section 6.5.5.G

District C	Area (Sq. Ft.) Acreage	Minimum Lot Dimensions Setback in Feet				Maximum Height
Heath Center Historic District		Frontage	Front	Side	Rear	
Single Family	87,120 2 Acres	250'	50'	25'	25'	40'
Duplex other than accessory apartment	87,120 2 Acres	250'	100'	25'	25'	40'
Business or industry other than cottage industry	65,340	200'	50'	25'	25'	40'

District D	Area (Sq. Ft.) Acreage	Minimum Lot Dimensions Setback in Feet				Maximum Height
Primarily Agricultural and Residential		Frontage	Front	Side	Rear	
Single Family	4 Acres	350'	50'	25'	25'	40'
Duplex other than accessory apartment	4 Acres	350'	100'	25'	25'	40'
Other 2- family and 3 or 4-family	4 Acres	350'	150'	50'	50'	40'
Business or industry other than cottage industry	4 Acres	350'	50'	25'	25'	40'



District WP (water protection)	Area (Sq. Ft.) Acreage	Minimum Lot Dimensions Setback in Feet				Maximum Height
Primarily Agricultural and Residential		Frontage	Front	Side	Rear	
Single Family	87,120 2 Acres	250’	50’	25’	25’	40’
Duplex other than accessory apartment	87,120 2 Acres	250’	150’	50’	50’	40’
Business or industry other than cottage industry	87,120 2 Acres	250’	150’	50’	50’	40’

**5.2 Corner Lot:** A corner lot in any district is required to have at least the minimum frontage dimensions on each intersecting private or public way.

## **SECTION 6 - SPECIAL PERMIT AND SITE PLAN REVIEW**

### **6.1 Special Permits.**

- 6.1.1 Purpose. Special Permits are intended to provide detailed review of certain uses and structures which may have substantial impact upon traffic, municipal services, and the community character of the Town among other considerations. The Special Permit review process is intended to insure a harmonious relationship between proposed development and its surroundings, and to insure that proposals are consistent with the purpose and intent of this bylaw.
- 6.1.2 Procedure for Issuing Special Permits. Special Permits shall be issued, denied, or issued with conditions by the Planning Board according to the provisions of Chapter 40A of the Massachusetts General Laws.
- 6.1.2.1 Private Ways. Special permits will only be issued by the Planning Board if conditions of Massachusetts General Laws Chapter 41 Section 81L are met. Specifically, when the subject lot has its legal frontage on a private way, the private way was in existence when the subdivision control law became effective in Heath and has, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby. Such frontage shall be of at least such distances as is then required by Heath's Protective Zoning Bylaw.
- 6.1.3 SPGA Rules and Regulations. Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the Planning Board shall adopt rules relative to the issuance of Special Permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this bylaw. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.
- 6.1.4 Application Fee: A fee shall be collected by the Town Clerk at the time that an application for a Special Permit is submitted. Said fee shall reflect the cost of printing, advertising and mailing for the permitting process. Additional expenses in excess of the filing fee shall be assessed to the applicant and must be paid in order for the application to be processed by the special permit granting authority.
- 6.1.5 Upon written request from the applicant prior to the filing of an application, the Planning Board may waive the submission of such materials, plans, studies, and analyses or parts thereof, as may not be needed for, or germane to, consideration of the application, if the potential impact of the development is minimal, in the opinion of the Planning Board.
- 6.1.6 Except as waived under Section 6.1.5, above, the Special Permit application must be accompanied by an impact statement which details the probable effects of the subdivision or development on the following aspects of concern to the Town:
  - A. attendance at public schools;
  - B. increases in vehicular traffic;
  - C. changes in the number of legal residences;
  - D. provision of housing for Town residents and for persons of low and moderate income;
  - E. increases in municipal services;
  - F. load on public utilities or future demand for them;
  - G. public safety;

- H. changes in tax revenue;
- I. changes in surface drainage;
- J. increased consumption of groundwater;
- K. increased refuse disposal;
- L. pollution of water and air;
- M. land erosion or loss of tree cover;
- N. disturbance of other aspects of the natural ecology;
- O. blocking of views;
- P. harmony with the character of surrounding development;
- Q. preservation of historic and other cultural resources.

- 6.1.7 The Planning Board will review both the site plan and the impact statement, giving weight to the factors outlined above as they affect the future of the Town and of the neighborhood adjacent to the site. It may ask for further information where necessary to review the application adequately, and may make recommendations for modifications to the development as it thinks proper to protect the Town.
- 6.1.8 Public Hearing. After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of MGL, Ch. 40A, Section 11. The decision of the board, and any extension, modification or renewal thereof, shall be filed with the board and clerk within 90 days following the closing of the public hearing. Failure of the board to act within 90 days shall be deemed a grant of the permit applied for.
- 6.1.9 Criteria. In acting upon Special Permits, the Planning Board shall consider whether:
  - A. There is sufficient town capacity to service the premises, considering existing roads, Town equipment, and other municipal services.
  - B. The impact of adjoining premises of sound, light, odor, noise, and other disturbances is avoided or minimized.
  - C. The proposal will avoid or minimize topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.
  - D. The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.
  - E. There is adequate sight distance and traffic safety at the entrance to public ways
  - F. The proposal is compatible with the neighborhood character.
  - G. The proposal minimizes adverse effects upon historic and other cultural resources.
  - H. There are positive employment and fiscal consequences.
  - I. The activity, traffic, site plan, and building design will influence positively the Town's community character.
  - J. The activity, site plan, and building design are consistent with development of tourist activity in Heath.
  - K. The proposed use influences the continued successful operation of existing like establishments.

- 6.1.10 Application Withdrawal. Any application for a Special Permit may be withdrawn without prejudice by the applicant prior to the publication of the public hearing notice. Once the notice has been published, a withdrawal without prejudice may be permitted only with the approval of the Planning Board.
- 6.1.11 Lapse of Special Permit. If substantial use or construction under a Special Permit has not commenced within one year of the date of issuance of the Special Permit, that permit shall be considered to have lapsed.(MGL, Ch. 40A e 9)
- 6.1.12 Conformance with Bylaw Amendments. When subsequent amendments to the Bylaws are made, operations or construction under a Special Permit shall conform to the amendments unless use or construction is commenced within 6 months after issuance of the permit.

## **6.2 Site Plan Review.**

- 6.2.1 Purpose. Site Plan Review is intended to allow the Planning Board to discuss with how the proposed utilization of the might be planned so as to achieve a harmonious relationship between the proposed changes and their surroundings. Site Plan Review enables the Planning Board to review plans for the proposed development and to set reasonable conditions to protect the environment, scenic qualities, and the character of the neighborhood and the Town. Site Plan Review will also be conducted to assess the consistency of the proposed site plan with the goals of the Town's Open Space & Recreation Plan (OSRP).
- 6.2.2 Applicability. Site Plan Review shall be required:
  - A. for any creation of lots, whether a subdivision or not, that results in the creation of four (4) or more lots.
  - B. for a development that proposes construction of four (4) or more dwelling units within a two-year period from or on a property or set of contiguous properties in common ownership as of April 29, 1989.
  - C. when a non-residential development on a single lot or contiguous lots under common ownership will create 1,000 square feet or more of enclosed floor area.
  - D. for Large-Scale Ground-Mounted Solar Electric Generating Installations (see Section 6.7).
  - E. for Small-Scale Ground-Mounted Solar Electric Generating Installations up to 25 kW or less in Zoning Districts A, B, and D.
- 6.2.3 Procedures. At a regularly scheduled meeting of the Planning Board the landowner or his or her designee will present documentation of the location of the parcel(s) in question, will describe the proposed utilization of the site and will present a site plan as required in Section 6.2.4. The Planning Board will comment based upon the Town's growth management objectives and OSRP, making special note of relevant sections of this bylaw, to include standards for development, optimal development methods, and phasing of growth (if applicable)
- 6.2.4 Required Contents of Preliminary Site Plan. The Preliminary Site Plan shall contain the following:
  - A. Name of project, boundaries, and locus map showing site's location in town, date, north arrow and scale of plan.
  - B. Name(s) and address(s) of the owner(s) of the land, the developer (if applicable), and/or their designee. Name, title, and address of person(s) who prepared the plan.

- C. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line.
- D. All existing lot lines, easements and rights of way.
- E. Location and use of buildings and structures within 300 feet of the site.
- F. Location and use of all existing and proposed buildings and structures. Include approximate height and floor area.
- G. Location of wetlands and critical habitat areas on site and within 300 feet of the property line.
- H. Location and date of all registered "perk" tests.
- I. Location of all proposed new lot lines.
- J. Existing and proposed topography at a two-foot contour interval.
- K. Location of proposed public and private ways on the site.
- L. Location and size of proposed parking and loading areas.
- M. Size and location of existing and proposed sign(s).
- N. Surface drainage strategy that prevents pollution and increased drainage off-site.
- O. Existing vegetation that will be left undisturbed and proposed planting areas.
- P. Other proposed methods to screen development.
- Q. Location of any existing or proposed protected open space, farmland, wildlife corridors or prime forestland.

6.2.5 Sequence. When applicable, the Site Plan Review may be accomplished as part of the Planning Board's review of a Preliminary Subdivision Plan. When applicable, the Building Inspector will receive an application for a building permit as complete only when the application is accompanied by the record of the Site Plan Review.

6.2.6 Administration. The Planning Board may adopt and from time to time amend regulations for the submission and approval of site plans. The Planning Board may waive any of the requirements for site plan submittal and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision. For large or complex projects, the Planning Board shall have the right to retain outside consultants, such as registered engineers, planners, designers, legal counsel, or other professionals, to advise the Board regarding any or all aspects of the site plan. The applicant shall be responsible for the costs of such advice. The Board may also require the posting of a Bond, or other security satisfactory to the Board, to assure compliance with the approved site plan and stated conditions for approval. Site Plan approval shall lapse within one year unless substantial use or construction has commenced however, such time period may be extended if necessary to pursue or wait for a determination of an appeal in accordance with M.G.L. Chapter 40A Section 17.

6.2.7 Standards for Review. 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:

A. The site plan conforms to all appropriate provisions of the Zoning Bylaw including but not limited to parking, loading, dimensional requirements and environmental controls.

B. The site plan minimizes traffic and safety impacts of the proposed development on adjacent highways or roads, and maximizes the convenience and safety of vehicular and pedestrian movement within the site including off-street parking and loading needs.

C. The architectural design, lighting, layout and landscaping of the proposed development is in harmony with the rural character of the neighborhood and the Town of Heath.

D. The site plan shows adequate measures to prevent pollution of surface or groundwater and to minimize erosion, flooding and sedimentation; it includes a storm water management plan prepared in accordance with good engineering, hydrologic and pollution control practices.

E. The proposed development, to the extent feasible:

1. Is integrated into the existing landscape and relates harmoniously to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity;
2. Provides a solar and wind orientation that encourages use of renewable energy and energy conservation;
3. Minimizes obstruction of scenic views;
4. Preserves unique natural or historical features;
5. Minimizes removal of trees, vegetation, and soil and grade changes,
6. Maximizes open space retention; and
7. Screens objectionable features from neighboring properties and roadways through trees, shrubs and other landscaping features to constitute a visual buffer as well as a buffer for noise, light and odor.

6.2.8 Decision. The Planning Board will make a decision which requires a simple majority vote. The Planning Board's action shall consist of either:

A. Approval of the site plan based upon the determination that the proposed project is in compliance and consistent with the criteria set forth in this Zoning Bylaw;

B. Approval of the site plan subject to conditions, modifications, requirements or restrictions as the Planning Board may deem necessary to ensure compliance with the Zoning Bylaw; or

C. Denial of the site plan based only upon specific findings that: (i) the applicant failed to provide information required by this Zoning Bylaw necessary to adequately review the application; or (ii) that the project is inconsistent with the requirements of this Zoning Bylaw and no conditions, modifications, requirements, or restrictions can be imposed that would ensure compliance with this Zoning Bylaw. If the subject of the Site Plan Review is a proposed conventional subdivision, the Planning Board may grant site plan approval, notwithstanding one or more of the plans shortcomings, but shall note these failings to advise the applicant that such failings must be remedied on their proposed Subdivision Plan to be reviewed under the Subdivision Control Law.

## **SECTION 6.3 – PERSONAL WIRELESS SERVICE FACILITIES**

### **6.3.1 PURPOSE AND INTENT**

6.3.1.1 Provide additional requirements to Section 6 related to personal wireless service facilities.

6.3.1.2 Minimize the adverse visual and environmental impacts of personal wireless service facilities.

6.3.1.3 Preserve the rural quality, character and overall appearance (i.e. lack of development) of the Town while simultaneously allowing adequate wireless communication services to be developed.

6.3.1.4 Regulate the siting of towers in an effort to aid the provision of communication services.

- 6.3.1.5 Insure that no discrimination occurs among competing providers.
- 6.3.1.6 This section is intended to be applied in addition to the provisions of the other sections of the Protective Zoning Bylaw and regulations of the Town including but not limited to historic district regulations, site plan review and other local bylaws designed to encourage appropriate land use and environmental protection.
- 6.3.1.7 A personal wireless service facility may be located in any zoning district in the Town, upon the issuance of a special permit by the Planning Board, subject to the provisions of this section and other applicable bylaws and regulations of the Town.

#### 6.3.2 DEFINITIONS

- 6.3.2.1 Camouflaged. A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "camouflaged."
- 6.3.2.2 Co-location. The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.
- 6.3.2.3 Guyed Tower. A type of mount that is tied to the ground or other surface by diagonal cables.
- 6.3.2.4 Lattice Tower. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- 6.3.2.5 Monopole. The type of mount that is self-supporting with a single shaft of wood, steel or concrete with one or more platforms (or racks) for panel antennas.
- 6.3.2.6 Mount. The structure or surface upon which antennas are mounted, including the following four types of mounts:
  - A. Roof-mounted. Mounted on the roof of a building.
  - B. Side-mounted. Mounted on the side of a building.
  - C. Ground-mounted. Mounted on the ground.
  - D. Structure-mounted. Mounted on a structure other than a building.
- 6.3.2.7 Personal Wireless Service Facility. Facility for the provision of personal wireless services, as defined by the Federal Telecommunications Act of 1996.
- 6.3.2.8 Security Barrier. A locked wall, fence, or berm that completely surrounds an area from unauthorized entry or trespass.
- 6.3.2.9 Wireless antenna. A device that is attached to a support structure for transmitting and receiving electromagnetic waves. This includes panel antennas, whip antennas, and microwave dishes.

#### 6.3.3 SPECIAL PERMIT, LOCATION AND DIMENSIONAL REGULATIONS

- 6.3.3.1 A personal wireless service facility shall require a special permit in all cases with the following exceptions:
  - A. A personal wireless service facility may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower or water tower, provided that the installation of the new facility does not increase the height of the existing structure. Such installations shall not require a Special Permit but shall require site plan approval by the Planning Board.
  - B. An amateur radio communications tower by a federally licensed amateur radio operator under G.L. c40A section 3.

6.3.3.2 Location. Applicants seeking approval for personal wireless service facilities shall comply with the following:

A. If feasible, personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

B. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

C. The use of municipal land which complies with the requirements of this bylaw and where visual impact can be minimized would be a preferred location for siting a personal wireless communication facility.

6.3.3.3 Scenic Landscapes and Vistas

A. Ground-mounted personal wireless service facilities which are not camouflaged by existing buildings or structures shall be surrounded by a buffer of dense tree growth. Personal wireless service facilities shall not be located within open areas.

B. Personal wireless service facilities shall be sited off ridgelines and where their visual impact is least detrimental to scenic areas.

C. Personal wireless service facilities shall not be located in designated scenic view areas.

6.3.3.4 Dimensional Requirements. Personal wireless service facilities shall comply with the following requirements:

A. Height, Ground-Mounted Facilities. All ground-mounted personal wireless service facilities shall be surrounded by dense tree growth to a distance of 300 feet in all directions with the objective of screening views of the facility. These trees may be existing on the subject property or planted on site. The Planning Board may reduce this distance where, in its judgment, such action is in the public interest and not inconsistent with the intent of the Protective Zoning Bylaw. A Guyed Tower, Lattice Tower, Monopole, and any other ground-mounted facilities shall not be higher than 110 feet above ground level. The Planning Board may approve a greater height for a specific site if the Planning Board finds that such greater height is warranted due to the site's topography, is in the public interest, and is not inconsistent with the intent of the Protective Zoning Bylaw.

B. Town Center and any designated Historic District. Any personal wireless facility must be completely camouflaged such as within a flagpole, steeple or similar structure.

C. C. Setbacks

1. In order to minimize visual impact, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be 300 feet. The



Planning Board may reduce this distance where, in its judgment, such action is in the public interest and not inconsistent with the intent of the Protective Zoning Bylaw.

2. The base of any personal wireless service facility shall not be allowed nearer than 800 feet to any residential structure. The Planning Board reserves the right to require a setback distance of greater than 800 feet in cases where the location of personal wireless service on the applicant's property would result in adverse visual or environmental impacts and/or would be necessary to preserve the historical character or rural appearance of the town as determined by the Planning Board.

3. For security reasons, all personal wireless service facilities shall be at least 1500 feet from the property line of any school.

#### 6.3.4 PERFORMANCE STANDARDS

All personal wireless facilities shall comply with the Performance Standards set forth in this section:

##### 6.3.4.1 Design Standards

###### A. Camouflage by Existing Buildings or Structures:

1. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

2. Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if over 5 square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.

###### B. Camouflage by Vegetation:

If personal wireless service facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless service facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

###### C. Color:

1. Personal wireless service facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

2. To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be painted in a light grey or light blue hue, which blends with sky and clouds.

###### D. Tower Construction type:

The Planning Board shall reserve the right to indicate a preference for the type of tower construction.

#### 6.3.4.2 Environmental Standards

A. Radio Frequency Radiation (RFR). All equipment proposed for a personal wireless service facility must comply with the Telecommunications Act of 1996 and shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation (FCC Guidelines).

B. Environmental

1. Personal wireless service facilities shall not be located in wetlands as protected by the Massachusetts Wetland Protection Act 131 Section 40, the Federal Clean Water Act, and the Heath Wetlands Protection Bylaw. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.

2. No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.

3. Storm water run-off shall be contained on-site.

C. Noise Standards

Ground mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db within 100 feet of the building or tower.

D. Equipment Shelters

Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood.

E. Security Barrier. All ground mounted personal wireless service facilities shall be surrounded by a security barrier.

F. Access Road Maintenance.

Applicant shall maintain in good order a maintenance road to any ground-mounted personal wireless service facilities buildings and tower.

#### 6.3.4.3 Evaluation by Independent Consultant

The Planning Board retains the right to select an independent consultant, at reasonable cost, to review the application for a special permit. The cost is to be paid for by the applicant. This Consultant should have expertise in areas including, but not limited to the following: a) Telecommunications engineering, b) structural engineering, c) monitoring of electromagnetic fields.

#### 6.3.5 APPLICATION PROCEDURES

6.3.5.1 Refer to special permit requirements in Section 6 that are applicable to all special permits.

6.3.5.2 Except as provided below, an applicant must be a provider of personal wireless services as defined by the federal Communications Act of 1996 or must furnish the Planning board with written notice from such a provider of the provider's intent to locate on the personal wireless facility or mount. The Planning Board may waive this requirement if the Board finds that municipal or other public safety communication services are to be located on the facility or mount. The Planning Board may accept an application that does not comply with the first sentence of this section and may issue a special permit if the applicant agrees to permit the location of public safety communication services on the facility at no cost to the Town.

6.3.5.3 Location Filing Requirements

A. A line map to scale showing the location and lot lines of the subject property and all properties within 800 feet and the location of all buildings, including accessory structures, on all properties shown.

B. Proposed locations of all existing and future personal wireless service facilities in the Town on a Town-wide map for this provider of personal wireless services.

6.3.5.4 Siting Filing Requirements

A. A one-inch-equals-40 feet vicinity plan showing the following:

1. Property lines for the subject property.
2. Property lines of all properties adjacent to the subject property within 300 feet.
3. Tree cover on the subject property within 300 feet.
4. Outline of all existing buildings on subject property and all adjacent properties within 800 feet.
5. Proposed location of antenna, mount and equipment shelter(s).
6. Proposed security barrier, indicating type and extent as well as point of controlled entry.
7. Location of all roads, public and private, on the subject property within 300 feet including driveways proposed to serve the personal wireless service facility.
8. Distances, at grade, from the proposed personal wireless service facility to each building on the vicinity plan.
9. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
10. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, and parking areas.
11. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" sub-section below.
12. The applicant must locate wetland boundaries as specified in the Heath Wetlands Protection Bylaw.

B. Sight lines and photographs as described below:

1. Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 800 feet to the highest point (visible point) of the personal wireless service facility
2. Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road and building within 800 feet.
3. Proposed (after condition). Each of the existing condition photographs shall have the proposed personal wireless service facility superimposed on it to show what will be

seen from public roads and buildings if the proposed personal wireless service facility is built.

- C. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed personal wireless service facility plus from all existing public roads that serves the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:
  - 1. Antennas, mounts and equipment shelter(s), with total elevation dimensions.
  - 2. Any and all structures on the subject property.
  - 3. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation.
- D. Propagation maps for both digital and analog service, showing the range of wireless coverage throughout the town shall be provided. The propagation maps will show coverage at both the highest and lowest proposed antenna array locations.

#### 6.3.5.5 Design Filing Requirements

- A. Equipment brochures or specification sheets for the proposed personal wireless service facility shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- B. Materials of the proposed personal wireless service facility specified by generic type and specific treatment.
- C. Colors of the proposed personal wireless service facility represented by a color board showing actual colors proposed.
- D. Dimensions of the personal wireless service facility specified for all three directions: height, width and breadth.
- E. Appearance shown by at least two photographic superimpositions of the personal wireless service facility within the subject property.
- F. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size.
- G. Within 40 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 7 days prior to the test.

#### 6.3.5.6 Radio frequency Radiation (RFR) Filing Requirements

Certification, signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radio frequency Radiation Standards sub-section (6.3.4.2A) of this Bylaw.

#### 6.3.5.7 Noise Level Filing Requirements

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless facilities measured in decibels LDN (logarithmic scale, accounting for greater sensitivity at night). Such statements shall be signed by an acoustical engineer stating that noise measurements are accurate and meet the noise standards (6.3.4.2C) of this bylaw.

#### 6.3.5.8 Co-location

- A. Licensed carriers shall share personal wireless service facilities and sites where feasible and appropriate. All applicants for a Special Permit for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

1. A survey of all existing structures that may be feasible sites for co-locating personal wireless service facilities;
2. Contact with all the other licensed carriers for commercial mobile radio services operating in the County; and
3. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

B. In the event that co-location is found to be not feasible, a written statement of the reasons shall be submitted to the Planning Board. The Town may deny a Special Permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

#### 6.3.5.9 Modifications

A modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a Special Permit when the permit holder adds additional height not specified in the original design filing.

### 6.3.6 MONITORING AND MAINTENANCE

6.3.6.1 After the personal wireless service facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the personal wireless service facility. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radio frequency Standards section (6.3.4.2A) of this Bylaw.

6.3.6.2 The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

#### 6.3.6.3 Abandonment or Discontinuation of Use

A. At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town Clerk by certified

U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

B. Upon abandonment or discontinuation of use, the carrier shall physically remove the personal wireless service facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
3. Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

C. If a carrier fails to remove a personal wireless service facility in accordance with this section of this Bylaw, the town shall have the authority to enter the subject property and physically remove the facility. The Planning Board shall require the applicant to post a bond with the Town Treasurer at the time of construction to cover costs for the removal of the personal wireless

service facility in the event the Town must remove the facility. The amount of the bond will be appropriate to this objective and will be determined by the Planning Board.

#### 6.3.6.4 Term of Special Permit

A Special Permit issued for any personal wireless service facility over fifty (50) feet in height shall be valid for fifteen (15) years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new Special Permit shall be required.

### **6.4 RESIDENTIAL WIND ENERGY SYSTEMS, ALSO KNOWN AS WINDMILLS AND WIND TURBINES.**

#### 6.4.1 PURPOSE AND INTENT

The purpose of this section is to provide for the development and personal use of residential wind power as an alternative energy source, while protecting public health, safety and welfare; and in addition, to preserve the rural character, environment, historic and scenic resources of the town.

#### 6.4.2 DEFINITIONS

**WIND ENERGY CONVERSION SYSTEM (WECS)** – All equipment, machinery and structures utilized in the connection of the conversion of wind to other forms of energy.

**RESIDENTIAL WIND ENERGY SYSTEM** – A wind energy conversion system consisting of a wind turbine and associated control or conversion electronics, intended as an accessory use and shall not be for the generation of power for commercial purposes. This provision shall not be interpreted to prohibit the sale of excess power generated from time to time from a WECS designed to meet the energy needs of the principal user.

**TOTAL HEIGHT** – The height of the tower plus the farthest vertical extension of the WECS.

#### 6.4.3 SPECIAL PERMIT GRANTING AUTHORITY: The Planning Board is designated the Special Permit Granting Authority (SPGA) in connection with the construction of Wind Energy Conversion Systems (WESC). The SPGA shall grant a Special Permit only if it finds that the proposal complies with the provisions of this bylaw and is consistent with the applicable criteria for granting Special Permits (Section 6.0 of the Zoning Bylaws).

#### 6.4.4 LOCATION AND PERFORMANCE REQUIREMENTS

A. Proposed WECS shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.

B. A RESIDENTIAL WECS may be located in zoning districts A and B, upon issuance of a special permit by the Planning Board, subject to the provisions of this section and other applicable bylaws and regulations of the Town. Use is limited to one (1) tower per lot or on contiguous lots held in common ownership.

C. Contiguous property owners may construct one WECS for use in common, provided that the required setback is maintained relative to the property lines of non-participant owners.

D. The WECS shall be situated to minimize a negative impact on the view from an adjoining residential structure.

E. The WECS shall be set back from all boundaries a distance equal to or greater than the sum of the tower height plus one rotor radius.

F. Monopole towers are the preferred type of support. Anchor points for the use of guy wires for a WECS tower shall be located within owner's property lines and not on or across any aboveground utility lines.

G. Maximum height is 100 feet. This height may be exceeded as part of the special permit process if the applicant can demonstrate that additional height is needed and that the additional benefits of the higher wind turbine do not increase any adverse impacts.

H. The WECS and its location on the property shall be designed to eliminate any nuisances to surrounding properties and the maximum allowable noise, measured from the nearest property line, shall not exceed 30 decibels or 5 decibels above ambient level, whichever is greater, with ambient levels measured at the quietest time of the day in accordance with the standards established under Section G of the capital towns Large Scale Ground – Mounted Solar Electric Generating Bylaw.

I. WECS must be equipped with controls to limit the rotational speed of the blade to remain below the design limits of the rotor. An automated braking, governing or feathering system shall be required to prevent uncontrolled rotation.

J. The tower shall have either a locked anti-climbing device installed in the tower or be completely enclosed by a locked, protective fence at least six feet high.

K. The WECS shall be operated such that no disruptive electromagnetic interference is caused.

L. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage.

M. The minimum height of the lowest part of the WECS shall be 15 feet above the ground.

N. A WECS may include telecommunication equipment provided the applicant complies with Section 6.3 of the Heath Protective Zoning Bylaw.

#### 6.4.5 APPLICATION PROCEDURES

A. A site plan must be submitted, prepared to scale showing the location of the proposed WECS, distances to all property lines, existing and proposed structures, existing and proposed elevations, public and private roads, above-ground utility lines and any other significant features.

B. Standard drawings by a Massachusetts registered engineer of the structural components of the WECS, including support structures, tower, base and footings.

C. A line drawing identifying the electrical components of the WECS. A certificate stating that the electrical system complies with the National Electric Code is required from the manufacturer.

D. A recommendation by the Planning Board shall be made regarding the height and siting of the WECS. The committee may require that the applicant erect temporary poles, to a height designated by the building inspector, to mark the proposed location.

#### 6.4.6 MONITORING, MAINTENANCE & ENFORCEMENT

A. Complaints of violations to this bylaw will be made to the Building Inspector. Any designated safety hazard or nuisance (i.e. excessive noise, radio or television interference) shall be corrected within 60 days or, failing that, dismantled within 60 days. Such action may be subject to review by the Board of Appeals.

B. If a WECS is not maintained in operational condition for a period of one year and poses a potential safety hazard, the owner shall take expeditious action to remedy the situation. The Town of Heath reserves the authority to abate any hazardous situation and to pass the cost of such abatement on to the owner of the system. If the Town determines that the WECS has been abandoned and poses a safety hazard, the system shall be removed within 45 days of written notice to the owner of the

system

## **6.5 MOBILE HOMES, ALSO KNOWN AS MANUFACTURED HOUSING, AND STICK BUILT HOMES LIMITED TO 1000 SQUARE FEET**

### **6.5.1 Purpose and Intent:**

The purpose of this section is to regulate the residential use of Mobile Homes/ Manufactured Housing as permanent dwellings with regard to their sustainability, public health, safety, density and site placement concerns.

### **6.5.2 Definitions**

Mobile Homes - Also known as Manufactured Housing – A dwelling unit intended for full-time occupancy built on a chassis that contains complete electrical, plumbing and sanitary facilities and issued a HUD (U.S. Department of Housing and Urban Development) certification. This definition does not include dwellings known as Modular Homes, Panelized Homes or Pre-Cut Homes which must meet state and local building codes.

Mohawk Estates Building Lot—A building lot as indicated on the original development plan creating Mohawk Estates. Any subsequent subdivision of an original lot does not constitute a Mohawk Estates Building Lot.

### **6.5.3 Special Permit Granting Authority**

The Planning Board is designated the Special Permit Granting Authority (SPGA) in connection with the approval, construction and siting of Mobile Homes. The SPGA shall grant a Special Permit only if it finds that the proposal complies with the provisions of this bylaw and is consistent with the applicable criteria for granting Special Permits (Section 6.0 of the Zoning Bylaws).

### **6.5.4 Replacement of Pre-existing Mobile Homes.**

Residents of pre-existing mobile homes, who intend to replace their dwelling with another mobile home, will not be required to obtain a special permit if they meet the following criteria:

A. The mobile home must be sited on the existing footprint. If the existing footprint is not in conformity with the setbacks set forth in the Heath Protective Zoning Bylaws--Section 5.1 for District A or Section 6.5.5 for District B--then the owner has the option to relocate on the existing footprint or move the location to meet the setback requirements.

B. The mobile home is not more than 25% larger than the original dwelling.

C. Replacement mobile homes must meet the location and performance requirements of Section 6.5.5 A, B and C and obtain the necessary septic, water and building permits.

### **6.5.5 Location and Performance Requirements**

A. Mobile Homes must be fixed to the ground on a concrete slab or footing.

B. The Mobile Home must be no more than 10 years old from the date of the application for a building permit. This restriction may be waived if the applicant can demonstrate that the mobile home is in sound condition and meets current HUD requirements for safety and habitability.

C. Shared septic systems with abutters are not allowed.



D. In District B, also known as Mohawk Estates, Mobile Homes must meet front, side and back setbacks of 25 feet from the property lines.

E. In District B, also known as Mohawk Estates, property owners must have a minimum lot size of 4 contiguous Mohawk Estates Building Lots as defined in Section 6.5.2

F. Once a Special Permit has been approved, applicant must apply for and receive a building permit from the Building Inspector's office complying with Heath's Protective Zoning Bylaws and Board of Health requirements for water and septic systems.

G. In District B, also known as Mohawk Estates, Stick Built homes are limited to 1,000 sq. ft. on a minimum of four contiguous lots and must meet frontage, front, side and back setbacks from the property lines (see Section 5.1).

#### 6.5.6 Application Procedures

A site plan must be submitted, prepared to scale showing the location of the proposed Mobile Home, distances to all property lines, existing and proposed structures, public and private roads and any other significant features.

### 6.6. PURPOSE.

The Town of Heath recently has been the target of interest for the construction of large scale wind and/or photovoltaic (solar) energy systems, which potentially could affect the Town as a whole. The Town of Heath is a rural, undeveloped Town and there currently are no large scale wind or photovoltaic energy systems in the Town. There is an identifiable community need to establish long-term zoning regulations to ensure that such uses and development will be consistent with the Town's long term planning interests. It is crucial that the Town act now to establish a temporary moratorium on the use of land and the construction of structures related to such large scale wind energy systems and photovoltaic installations and the issuance of building permits in connection with same.

### 6.7. TEMPORARY MORATORIUM.

Notwithstanding any other provision in the Town of Heath Zoning Bylaw to the contrary, no building permit may be issued for the construction of any large scale wind energy system or large scale ground-mounted photovoltaic installation, until July 1, 2013. The purpose of this moratorium is to allow sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

## 6.8 LARGE-SCALE GROUND-MOUNTED SOLAR ELECTRIC GENERATING INSTALLATIONS

### 6.8.1. Purpose.

The purpose of this bylaw is to facilitate the creation of new Large-Scale Ground-Mounted Solar Electric Generating Installations (see Section 6.8.3. Definitions) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, repair and/or removal of Large-Scale Ground-Mounted Solar Electric Installations greater than 25 kW nameplate capacity such installations allowed in Zoning District D and in the Solar Overlay Districts as outlined in Section 6.8.2.

### 6.8.2. Applicability

Section 6.8 applies to Large-Scale Ground-Mounted Solar Electric Generating Installations greater than 25 kW. Smaller scale (25 kW or less) ground-mounted solar electric generating installations which are an accessory structure to an existing residential or non-residential use do not need to comply with this section, but require either Site Plan Review (section 6.2) or a Special Permit (Section 6.1) in accordance with Section 4.2, Use Regulations Schedule, as well as a building permit, and must comply with all other provisions of Heath's Zoning Bylaws.

A. Large-Scale Ground-Mounted Solar Electric Generating Installations greater than 25 kW up to 250 kW that occupy no more than 1 acre of land proposed to be constructed in a Solar Electric Overlay District are allowed As-of-Right but are subject to Site Plan Review (see Section 6.2) and the requirements of this section.

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

1. An installation greater than 25 kW up to 250 kW in Zoning District D located outside of the Solar Overlay District; and
2. An installation larger than 250 kW or an installation occupying more than 1 acre of land on one or more adjacent parcels in common ownership as of the date of the adoption of this bylaw (including those separated by a roadway) located inside or outside of a Solar Electric Overlay District in Zoning District D up to a maximum of 1 MW.

C. Large-Scale Ground-Mounted Solar Electric Generating Installations greater than 25 kW are not allowed in Zoning Districts A, B, or C except for those installations located in a Solar Overlay District which are limited in size to 250 kW or less.

D. Large-Scale Ground-Mounted Solar Electric Generating Installations covering more than six acres are not allowed anywhere in Town.

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

### 6.8.3. Definitions

**As-of-Right Siting:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to Site Plan Review to determine conformance with the local zoning bylaws. Projects cannot be prohibited, but can be reasonably regulated by the Building Inspector.

**Large-Scale Ground-Mounted Solar Electric Generating Installation:** A solar electric system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 25 kW.

**Rated Nameplate Capacity:** The maximum rated output of electric power production of the Electric system in Alternating Current (AC) or Direct Current (DC).

**Solar Overlay District:** The Solar Electric Overlay District(s) as designated by the Town of Heath are shown on the Official Zoning Map dated September 7, 2012, in accordance with Massachusetts General Laws Chapter 40A. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Heath Town Clerk.

**Solar Photovoltaic Array:** An arrangement of solar photovoltaic panels.

### 6.8.4. General Requirements for all Large-Scale Solar Ground-Mounted Solar Electric Generating Installations.

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

A. Compliance with Laws, Bylaws and Regulations

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

B. Building Permit and Building Inspection

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

6.8.5 Site Plan Review

Large-Scale Ground-Mounted Solar Electric Installations shall undergo Site Plan Review (see Section 6.2) by the Planning Board prior to construction, installation or modification as provided in this section.

A. General

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

B. Required Documents

The project proponent shall provide the following documents in addition to or in coordination with those required for Site Plan Review (see Section 6.2).

1. A site plan showing:

- a. Property lines, map and lot from the Assessor's records, and physical features, including roads and topography, for the project site;
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening, vegetation or structures including their height;
- c. Locations of wetlands, Priority Habitat Areas and Bio map 2 Critical Natural Core Habitat defined by the Natural Heritage & Endangered Species Program (NHESP), "Important Habitat Areas" defined by the DEP, and Permanently Protected Open Space.
- d. Locations of floodplains or inundation areas for moderate or high hazard dams;
- e. Locations of local or National Historic Districts;
- f. A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate;
- g. Blueprints or drawings of the solar electric installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- h. One or three line electrical diagrams detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;

- i. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.;
- j. Name, address, and contact information for proposed system installer;
- k. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- l. The name, contact information and signature of any agents representing the project proponent; and
- m. Documentation of actual or prospective access and control of the project site;
- n. Provision of water including that needed for fire protection; and
- o. Existing trees 6" caliper or larger and shrubs.

2. An operation and maintenance plan (see Section 6.6.7.A.);

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

4. Proof of liability insurance;

5. Description of financial surety that satisfies Section 6.8.13.C.;

6. Sight line representation. A sight line representation shall be drawn from that portion of any public road within 300 feet that would have the clearest view of the proposed facility, and the closest facade of each residential building (viewpoint) within 300 feet of the highest point (visible point) of the solar electric generating installation. Each sight line shall be depicted in profile, drawn at one-inch equals 40 feet. The profiles shall show all intervening trees and buildings;

7. Existing (before condition) and proposed (after condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet. Each of the existing condition photographs shall have the proposed solar electric generating installation superimposed on it to show what will be seen from public roads if the solar electric generating installation is built; and

8. Landscape plan that satisfies 6.8.7. B.

9. Documentation provided by a licensed professional acoustical engineer, approved by the Planning Board and paid for by the applicant, of projected noise levels to be generated by the installation.

#### 6.8.6 Site Control

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

#### 6.8.7. Operation & Maintenance & Landscape Plans

##### A. Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the Large-Scale Ground-Mounted Solar Electric Generating Installation, which shall include measures for maintaining safe access to the installation, storm water and vegetation controls, as well as general procedures for operational maintenance of the installation.

#### B. Landscape Plan

The project proponent shall submit a Landscape Plan detailing all proposed changes to the landscape of the site including: vegetation removal, temporary or permanent access roads, grading, exterior lighting and screening of structures. The Landscape Plan shall show the type and location of vegetation proposed to screen the installation including appurtenant structures from public ways and adjacent properties. The depth of the vegetative screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained. The owner/operator shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the solar installation.

#### 6.8.8. Utility Notification

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

#### 6.8.9. Dimension and Height Requirements.

##### A. Setbacks

For Large-Scale Ground-Mounted Solar Electric Generating Installations, front, side and rear setbacks and setbacks from property lines shall be as follows:

1. Front yard: The front yard depth shall not be less than 100 feet.
2. Side yard. Each side yard shall have a depth of at least 100 feet.
3. Rear yard. The rear yard depth shall not be less than 100 feet.

The required setback areas should not be included in the 1 acre maximum calculation for By-Right solar electric generating installations (see Section 6.8.2. A.).

##### B. Appurtenant Structures

All appurtenant structures to Large-Scale Ground-Mounted Solar Electric Generating Installations shall be subject to regulations concerning the bulk and height of structures, lot area and setbacks as specified in Section 6.8.9.A., open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

##### C. Height of Structures

The height of any structure associated with a Large-Scale Ground-Mounted Solar Electric Generating Installation shall not exceed 25 feet.

#### 6.8.10. Design and Performance Standards

##### A. Lighting

Lighting of solar electric installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar electric installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution. In addition, such fixtures shall be "dark sky" compliant and meet International Dark Sky FSA certification requirements. The owner/operator shall be responsible for maintenance of lighting systems. Lighting shall not be kept on after 9:00 p.m. unless there is an emergency or is required for safety purposes as determined by the Heath Emergency Management Director.

##### B. Signage

Signs on Large-Scale Ground-Mounted Solar Electric Generating Installations shall comply with Heath's sign regulations, Section 4.6. A sign consistent with Section 4.6 shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar electric installations shall not be used for

displaying any advertising except for reasonable identification of the manufacturer or operator of the solar electric installation.

C. Utility Connections

Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar electric installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

D. Roads

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

E. Control of Vegetation

Herbicides may not be used to control vegetation at the solar electric installation.

Mowing, grazing, or the use of pervious pavers or geotextile materials underneath the solar array are possible alternatives.

F. Hazardous Materials

Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the Massachusetts Department of Environmental Protection (DEP) pursuant to DEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar electric equipment then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required. A list of any hazardous materials proposed to be located on the site and a plan to prevent their release shall be provided to the Planning Board and Fire Chief.

G. Noise

Noise generated by Large-Scale Ground-Mounted Solar Electric Generating Installations and associated equipment and machinery shall conform at a minimum to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10. In addition, for the purposes of this bylaw, a source of sound will be considered in violation of this bylaw if the source:

1. Increases the broadband sound level by more than 5 db(A) above the pre-construction ambient noise level;
2. Increases the broadband sound level by more than 5db(C) above the pre-construction ambient noise level;
3. Produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
4. Results in sound or noise levels greater than 30 dBA.

Said criteria are measured both at the property line and at the nearest inhabited residence.

In addition, the said criteria shall be measured at any property line that is subject to sound elevations higher than ambient sound as a result of higher or lower topography in the opinion of the acoustical engineer paid for by the applicant and approved by the Planning Board. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during the quietest part of the day or night. All testing required by this bylaw shall be done by a licensed professional acoustical engineer chosen by the Planning Board and paid for by the applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies.

H. Visual Impacts

The solar electric generating installation shall be designed to minimize visual impacts including preserving natural vegetation to the maximum extent possible, blending in equipment with the surroundings, and adding vegetative buffers to provide an effective visual barrier from adjacent roads and to screen abutting residential properties, whether developed or not. Landscaping shall be maintained by the owner/operator of the solar electric generating installation. Siting shall be such that the view of the solar electric generating installation from other areas of Town shall be as minimal as possible, in the sole judgment of the Planning Board.

#### 6.8.11 Safety and Environmental Standards

##### A. Emergency Services

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

##### B. Land Clearing, Soil Erosion and Farmland Impacts

The facility shall be designed to minimize impacts to agricultural land and should be compatible with continued agricultural use to the maximum extent possible. The facility shall be designed to minimize impacts to environmentally sensitive land. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Large-Scale Ground-Mounted Solar Electric Installation or otherwise prescribed by applicable laws, regulations, and bylaws. In no event shall clear cutting of forest exceed 6 acres. The design shall minimize the use of concrete and other impervious materials to the maximum extent possible. Locating Large-Scale Ground-Mounted Solar Electric Generating Installations on grades in excess of 10% shall be avoided to the maximum extent feasible.

##### C. Habitat Impacts

Large-Scale Ground-Mounted Solar Electric Generating Installations shall not be located on Permanently Protected Open Space, Priority Habitat and Bio Map 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP.

#### 6.8.12 Monitoring, Maintenance and Reporting

##### A. Solar Electric Generating Installation Conditions

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

##### B. Modifications

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

##### C. Annual Reporting

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

### 6.8.13 Abandonment, Decommissioning, Financial Surety & Indemnification

#### A. Removal Requirements

Any Large-Scale Ground-Mounted Solar Electric Generating Installation which has reached the end of its useful life or has been abandoned consistent with Section 6.8.13.B. of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

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

#### B. Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar electric installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the Large-Scale Ground-Mounted Solar Electric Generating Installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned Large-Scale Ground-Mounted Solar Electric Generating Installation. As a condition of Site Plan or Special Permit approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation. The Town's cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

#### C. Financial Surety

Proponents of Large-Scale Ground-Mounted Solar Electric Generating Installations shall provide a form of surety, either through an escrow account, bond or other form of surety approved by the Planning Board to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent and the Town.

Such surety will not be required for municipal or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

#### D. Indemnification

The owner/operator shall indemnify and hold harmless the Town of Heath and/or any of its citizens from any and all liabilities, losses and/or damages, including reasonable attorney fees, resulting from the failure of the owner/operator to comply with the terms of this by-law and/or negligence in the operations and maintenance of any structures built in accordance with it. Any surety provided for in this by-law shall be available for the aforementioned indemnification. The current owner is obligated to replenish the surety to its original amount. The developer and/or any subsequent owner shall adhere to the reporting requirements for the indemnification funds as stipulated by the Planning Board at the time of the application for a Special Permit. Reporting requirements shall include, but are not limited to, an annual reporting of fund balances and compliance with the type of investments allowed by the Planning Board.

## 6.9 INDUSTRIAL SCALE WIND TURBINE INSTALLATIONS



#### 6.9.1 PURPOSE AND INTENT

The purpose of this section is to limit the scale of wind turbines installations allowed in Heath in order to protect the public health, safety and welfare of the Town, while preserving its rural character, environment, historic and scenic resources, pursuant to section 1.1 of the Heath zoning by-laws.

#### 6.9.2 DEFINITIONS

**WIND TURBINE** - A device which converts the kinetic energy of the wind into rotational energy which drives an electrical generator.

**WIND TURBINE INSTALLATION** - All the equipment, machinery and structures utilized in the conversion of wind to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, storm-water control measures, service roads and other appurtenant structures, facilities and equipment.

**MAXIMUM HEIGHT** - The distance between the natural grade of the land measured vertically up to the tip of the wind turbine blade at its highest point.

**INDUSTRIAL-SCALE WIND TURBINE INSTALLATION** - A wind turbine Installation consisting of one or more wind turbines, any one of which has a maximum height greater than 100 feet, or any wind turbine installation which functions or is intended to function primarily to convey the electricity which it generates to the electric grid, or any Wind Turbine Installation not primarily for use by the residential or non-residential structures (if any) on the lot of the installation, as evidenced by documents confirming the historical or projected electric usage of those structures.

#### 6.9.3 APPLICABILITY

Section 6.9 applies exclusively to Industrial-Scale Wind Turbine installations. Small-Scale Wind Installations as defined in 6.4 are exempt from this section, but shall comply with all other provisions of Heath's zoning by-laws.

#### 6.9.4 DISALLOWANCE

All Industrial-Scale Wind Turbine installations are hereby not allowed in the Town of Heath.

### 6.10 FIXED WIRELESS BROADBAND FACILITIES

**6.10.1 Purpose.** The purpose of this bylaw is to facilitate the provision of wireless broadband services to the residents and business in Heath in order to:

- A. To provide reliable broadband internet services which can foster rural economic development including small business growth and home-based enterprises.
- B. To improve the quality of life for residents of the Town of Heath.
- C. To support broadband services which are critical to education and public safety and to increase civic involvement.

#### 6.10.2 Definitions.

A. Fixed Wireless Transceiver Antenna Array (FWTAA) - is defined as any series of antenna or array of antennas that receives and transmits fixed wireless signals to provide subscribers with high-speed (broadband) internet capabilities.

B. Existing Structure - is defined as a residential or commercial building, barn, silo, steeple, water tower, public utility transmission pole or tower, or other similar structures where fixed wireless broadband technology is to be deployed.

C. Fixed Wireless Transceiver Tower Structure (FWTTS) - is defined as a structure that supports an antenna that receives and transmits fixed wireless signals to provide customers with high-speed broadband internet access capability.

#### 6.10.3 Requirements for Fixed Wireless Transceiver Antenna Array

A. Existing Structures - Requirements for attaching FWTAA to existing structures, as defined above, are as follows:

1. Attaching FWTAA technology to any existing public utility transmission towers or poles, or newly installed poles if adjacent to existing public utility transmission poles, shall be allowed by right with Site Plan Review (Section 6.2) if the height of the FWTAA is not over 8 feet in height above the utility transmission tower or pole. If the FWTAA installation exceeds 8 feet in height above the utility transmission tower or pole, then both Site Plan Review and a Special Permit is required in accordance with Sections 6.1 and 6.2 of this Zoning Bylaw.
2. If the FWTAA and associated equipment being installed are concealed inside an existing structure and are not visible from the street, such installation shall be allowed by-right and Site Plan Review or a Special Permit is not required.
3. If the exterior installation of a FWTAA exceeds 8 feet in height above the roofline or top of an existing residential, commercial, agricultural or other structure, both Site Plan Review and a Special Permit are required. If the exterior installation of the FWTAA is 8 feet or less above the roof line or top of the structure, then such installation shall be allowed by right with Site Plan Review, unless the installation is located within the Heath National Historic District in which case a Special Permit will also be required.

B. New Fixed Wireless Transceiver Tower Structure (FWTTS) - Requirements for new FWTTS are as follows:

1. All new FWTTSs require Site Plan Review and a Special Permit from the Planning Board and shall follow the application filing requirements in Sections 6.1 and 6.2.
2. A Special Permit and Site Plan approval for a FWTTS may be granted by the Planning Board, in accordance with Sections 6.1 and 6.2 provided that the proposed FWTTS complies with the following location and performance standards:
  - (a) New FWTTSs shall be considered only upon a finding by the Planning Board that existing structures or towers cannot accommodate the fixed wireless transmitter antenna array and associated equipment.
  - (b) The Applicant shall demonstrate to the satisfaction of the Planning Board that the location of the FWTTS is necessary and that the size and height of the tower structure is the minimum necessary for the purpose. The maximum height shall be 100 feet.
  - (c) Setback standards, measured from the guy wire anchors, are as follows:
    - i. The FWTTS shall be setback from any property line at a distance equal to 1.25x the height of the FWTTS or fifty (50) feet, whichever is greater.
    - ii. The FWTTS shall be setback from any habitable structure(s) at a minimum distance equal to 1.25x the height of the FWTTS.
    - iii. The Planning Board may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a Special Permit and Site Plan approval under the provisions of this section.

iv. For waiver requests involving any habitable structure, such waiver shall not be granted by the Planning Board unless the request includes written permission from the entity with care and control over the affected habitable structure.

(d) Clearing shall be performed in a manner that will maximize preservation of natural beauty and conservation of natural resources and which will minimize impacts to scenic resources. Applicants for new FWTTS shall meet the requirements of Section 2.2, Removal of Natural Materials and Section 2.3 Erosion Control.

(e) Lighting considerations

i. Night lighting at the top of the FWTTS shall be prohibited unless required by law (e.g., FAA).

ii. Lighting for equipment and site access shall be minimized and installed to direct light downward with full cutoff fixtures so that there is no light visible beyond 10 feet of the footprint of the pad at the base of the FWTTS or any accessory structure.

(f) Accessory Structures shall be limited to one (1) structure per FWTTS. Such structure shall not exceed forty (40 sq. ft.) in size and ten (10') in height.

(g) Any back-up power generation shall be solar power unless a waiver is granted by the Planning Board.

(h) Utilities connections shall meet all local, state and federal requirements.

(i) There shall be no more than one (1) parking space for each FWTTS to be used in connection with the maintenance of the FWTTS. Such parking space shall not be used for the permanent storage of a vehicle.

#### 6.10.4 Annual Reporting, Modifications, and Abandonment or Decommissioning

##### A. Annual Reporting & Insurance

The owner or operator of the Fixed Wireless Transceiver Antenna Array shall submit an Annual Report which certifies compliance with the requirements of this bylaw and their approved site plan and Special Permit including control of vegetation, soundness and security of the structure (condition of guy wires, etc.), and adequacy of road access. The Annual Report shall also provide information on the maintenance completed during the course of the year. The Annual Report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Inspector, Board of Health and Conservation Commission (if Wetlands Permit was issued) no later than 45 days after the end of the calendar year. The owner or operator shall provide to the Town Clerk a certificate of insurance providing proof that the project has sufficient property and liability insurance coverage pursuant to industry standards. Such proof of insurance shall be provided on annual basis.

##### B. Modifications

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

##### C. Abandonment or Decommissioning

###### 1. Removal Requirements

Any Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation within ninety (90) days of abandonment or the proposed date of decommissioning and if not the town retains the right, after the receipt of an appropriate court order or as otherwise duly authorized by law, to enter and remove an abandoned, hazardous or decommissioned Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure. As a condition of Site Plan or Special Permit approval, an applicant shall agree to allow entry to remove an abandoned or decommissioned installation. The cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of: Public Hearing Draft

(a) Physical removal of all Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure installations, structures, equipment, and security barriers including any materials used to limit vegetation.

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

## 2. Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure shall be considered abandoned when it fails to provide wireless services for more than one year without the written consent of the Planning Board. If the owner or operator of the Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure fails to remove the installation in accordance with the requirements of this section within 90 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation after the receipt of an appropriate court order or as otherwise duly authorized by law.

## 3. Financial Surety

Proponents of Fixed Wireless Transceiver Antenna Array or Fixed Wireless Transceiver Tower Structure installations shall provide a form of surety, either through escrow account, bond or other form of surety approved by the Planning Board to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent and the Town. Such surety will not be required for municipal or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified independent engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **SECTION 7 – ADULT USE RECREATIONAL LICENSED MARIJUANA ESTABLISHMENTS**

### **7.1. PURPOSE AND INTENT**

7.1.1 The purpose of this Bylaw is to promote public health, safety and general welfare, and to support the availability of recreational marijuana in accordance with Massachusetts General laws (MGL Chapter 94G Section 3) and the regulations of the Cannabis Control Commission (935 CMR 500.000 et seq.).

### **7.2 LICENSED MARIJUANA ESTABLISHMENT PERMITTED LOCATIONS**

7.2.1 A Licensed Marijuana Establishment that involves testing, cultivation, processing, distribution, and/or any other licensed marijuana related business or businesses shall be allowed by Special Permit and Site Plan Review only in Districts A and D. Licensed Marijuana Establishment retail sales are allowed in Districts A, C, and D. (See Section 4 - Use Regulations)

7.2.2 Licensed Marijuana Establishments shall not be located within two hundred-fifty feet (250 feet) from a property used as a preschool with outdoor play areas that is licensed with the Massachusetts Department of Early Education and Care, or town-owned property with an outdoor play area or a private or public school providing education in kindergarten or any of grades 1 through 12 or the Heath Public Library. The distance shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located.

### **7.3 SPECIAL PERMIT AND SITE PLAN REVIEW REQUIREMENTS**

7.3.1 A Licensed Marijuana Establishment shall require a Special Permit and Site Plan Review approval, under Section 6 of the Heath Zoning Bylaw, from the Planning Board. In granting a Special Permit, the Planning Board may impose additional conditions, safeguards and limitations.

7.3.2 No Licensed Marijuana Establishment shall be established prior to submission and approval by the Planning Board of a site plan which meets all applicable requirements pursuant to Section 6.2 – Site Plan Review. The site plan shall, at a minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed Licensed Marijuana Establishment property lines and all existing uses within 1,000 feet.

7.3.3 A Special Permit must be approved for each Licensed Marijuana Establishment location.

7.3.4 Onsite consumption of marijuana is not permitted at any Licensed Marijuana Establishment unless approved by State Law and a Special Permit issued by the Heath Planning Board.

7.3.5 No activity requiring a Special Permit shall be conducted at the Licensed Marijuana Establishment other than that for which a Special Permit has been issued.

7.3.6 Any Special Permit granted for a Licensed Marijuana Establishment shall:

- A. Be specific to the applicant, shall be in effect concurrent with the applicant's ownership or leasehold on the property and shall expire upon expiration of the applicant's lease or upon sale or transfer of the applicant's property or business
- B. Expire upon the expiration or termination of the applicant's License by the Massachusetts Cannabis Control Commission.

7.3.7 A new Special Permit application or an application for renewal of a Special Permit must be submitted and approved by the Planning Board for a Licensed Marijuana Establishment to continue operations in the event of a lapsed Special Permit.

7.3.8 The Owner and Licensee of any Licensed Marijuana Establishment issued a Special Permit under this Bylaw shall report, in writing, within ten (10) business days to the Building Inspector and the Planning Board any change in the name of the legal owner of the Licensed Marijuana Establishment or any expiration or suspension of a license. The new owner shall apply for a new Special Permit within thirty (30) days of the change in ownership.

#### **7.4 STANDARDS AND CONDITIONS**

7.4.1 The following Licensed Marijuana Establishment site improvements and amenities are required to protect public safety and neighboring property values, in addition to the Special Permit and Site Plan Review requirements found in Section 6 of this Bylaw.

7.4.2 The Planning Board is empowered to review and approve Special Permit applications for Licensed Marijuana Establishments and impose requirements including but not limited to: hours of operation; odor and HVAC noise control; outdoor lighting; security; parking; loading; driveways; signage; hazardous materials; site screening; and building size and design. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

7.4.3 Odor and HVAC noise from a Licensed Marijuana Establishment shall be properly mitigated. Licensed Marijuana Establishments engaged in cultivation, processing, product manufacturing, storage and/or transportation shall employ odor control technology such that no odor from the ME can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Licensed Marijuana Establishment or at any adjoining use or property.

7.4.4 No Marijuana Product or any accessory paraphernalia shall be visible to the general public from the street or property line.

7.4.5 A Marijuana Retailer shall be required to have a double door entry system. The first door can be unlocked, but the second door must have a secured entry with persons of only legal age allowed to enter.

7.4.6 All signs for a Licensed Marijuana Establishment must meet the requirements of Cannabis Control Commission Regulations (935 CMR 500.000 et. seq.) and applicable regulations in Section 4.6.

7.4.7 Appearance of buildings for Licensed Marijuana Establishments shall be consistent with the appearance of other buildings in Heath.

7.4.8 Submission is required to the Planning Board, Fire Department, and Police Department of a complete list and MSDS sheets of potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Depending on the quantities proposed to be used or stored on site, the Planning Board may request that a Hazardous Materials Management Plan be prepared to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism. The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.

7.4.9 Any building or structure containing a Licensed Marijuana Establishment shall meet the requirements set forth in Section 5 - Intensity Regulations for lot size, frontage, setbacks and height.

7.4.10 Applicable parking and loading requirements in Section 4.5 Parking and Loading Requirements must be met.

#### **7.5 SPECIAL PERMIT APPLICATION REQUIREMENTS.**

7.5.1 Applications for a Licensed Marijuana Establishment Special Permit shall include all applicable submission requirements in Section 6 - Special Permit and Site Plan Review. For any requirements to be considered non-applicable they must be waived by the Planning Board.

7.5.2 The following additional information is required:

a. Address of the Licensed Marijuana Establishment

b. A statement declaring the activities that will be conducted at the Licensed Marijuana Establishment which shall include one or more of the following:

- i. retail sales of marijuana
- ii. indoor cultivation of marijuana
- iii. processing marijuana
- iv. testing of marijuana
- v. marijuana distribution facility
- vi. other licensed marijuana business or businesses
- vii. outdoor cultivation of marijuana

c. Name, address and phone number of the legal owner of the Licensed Marijuana Establishment - The individual(s) or entity issued, or applying for, the Certificate of Registration from the Massachusetts Cannabis Control Commission.

d. Name, address and phone number of the legal owner of the property

e. Name, address, phone number, and after-hours contact information of the manager of the Licensed Marijuana Establishment.

f. Description and illustration of the physical layout of the premises.

g. Plan and accompanying documentation on how the applicant will address and mitigate noise and odor control at the premises.

h. Submit a copy or proof of receipt of a provisional license from the Cannabis Control Commission.

## **7.6 OPERATIONAL REQUIREMENTS**

7.6.1 Before the Licensed Marijuana Establishment becomes operational, the applicant must provide the Police Department, Board of Health and Building Inspector a copy of the License issued by the Massachusetts Cannabis Control Commission.

7.6.2 The Licensed Marijuana Establishment shall post the License issued by the Massachusetts Cannabis Control Commission in a conspicuous location on the premises.

7.6.3 A Host Community Agreement shall be executed between the Town and the Marijuana Establishment.

## **7.7 OUTDOOR CULTIVATION**

7.7.1 Marijuana establishments functioning as a marijuana cultivator or a craft marijuana cultivator cooperative must abide by the general requirements outlined in 935 CMR 500.050 (1-2-3) and 935 CMR 500. 101 & 120.

7.7.2 If the craft cultivator or lower tier marijuana cultivator cannot fully abide by the general security requirements outlined in 935 CMR 500.110(1) then more specific security and alarm requirements outlined in 935 CMR 500. 10 (5)(6) will be required.

## 7.8 EXPIRATION

7.8.1 A Special Permit to operate a Licensed Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but shall be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the Planning Board at least 90 calendar days prior to said expiration and that no objection to said renewal is made and sustained based upon compliance with all conditions of the Special Permit as well as public safety factors applied at the time the Special Permit renewal is requested.

## 7.9 DEFINITIONS

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

**Host Community Agreement:** An agreement between a Licensed Marijuana Establishment and the Town pursuant to G.L. c.94G, §3(d).

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

**Licensee:** A person or entity licensed by the State Cannabis Control Commission to operate a Licensed Marijuana Establishment.

**Marijuana:** All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. The term also includes marijuana infused product except where the context clearly indicates otherwise.

**Marijuana Cultivator:** An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Licensed Marijuana Establishments, but not to consumers.

**Licensed Marijuana Establishment:** A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, any other type of licensed marijuana-related business or businesses at a single location, or any combination thereof at a single location.

**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 Product Manufacturer:** An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to transfer marijuana and marijuana products to other Licensed Marijuana Establishments, but not to consumers.



**Marijuana Retailer:** An entity licensed to purchase and transport marijuana and marijuana products from Licensed Marijuana Establishments and sell or otherwise transfer marijuana and marijuana products to Licensed Marijuana Establishments and to consumers.

**Marijuana Testing Facility:** An entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

**Marijuana Transportation or Distribution Facility:** An entity with a fixed location or service that delivers marijuana and marijuana products to Licensed Marijuana Establishments and transfers marijuana and marijuana products to other Licensed Marijuana Establishments, but not to consumers. This shall include the temporary storage of marijuana products on premises associated with their transportation and distribution.

## **SECTION 8 - OPTIMAL DEVELOPMENT METHODS**

### **8.1 BACK LOT DEVELOPMENT.**

- 8.1.1 Purpose/Definition – Back Lot Development allows a parcel with no contiguous land in common ownership to be divided into two lots, one of which does not meet the frontage requirements of Section 5, Intensity Regulations, provided that one of the lots meets all dimensional requirements, and the other meets all of the following requirements:
- A. frontage on a public way and a connecting strip at least 50 feet wide and containing no wetlands.
  - B. a shape such that it is capable of containing a circle with a diameter equal to at least 300 feet and within which any building placed shall be at least 60 feet from any lot line.
  - C. lot area, exclusive of connective strip, at least equal to that normally required, see Section 5.
  - D. The distance between any two principal dwellings must not be less than the required lot frontage in the district.
- 8.1.2 Access driveways shall be built according to the following standards:
- A. There shall be a clearly worded provision recorded with the deed for all shared access drives running with the land. Establishing clear responsibilities for maintenance and snow removal is required.
  - B. Each access drive or shared access drive shall be located entirely within one or both of the lots being served.
  - C. The length of the access drive shall be such that the distance along the drive's centerline from the road sideline to the main body of the lot will not exceed 1000 feet.
  - D. The access drive shall have a width of at least 10 feet, with overhead clearance of at least 20 feet.
  - E. Passing turnouts providing a total width of at least 15 feet along a distance of at least 25 feet, spaced with no more than 300 feet between turnouts and with the first such passing turnout at the drive's connection to the road are required.
  - F. Provision for turnaround space available for use in all seasons capable of serving all vehicles including ambulances and fire engines is required.
- 8.1.3 Back lot development may occur only on lots recorded on a plan registered at the Registry of Deeds, or on an approved subdivision plan (subject to the time limitation requirements of Chapter 41 of the MGL), in all cases established on or before the date of acceptance of this section.
- 8.1.4 Only one back lot may be created from applicable lots as defined in Section 8.1.1 above.

## 8.2 FLEXIBLE DEVELOPMENT FOR SMALL PROJECTS.

- 8.2.1 Purpose. Flexible development is an optional development device, not requiring a Special Permit, designed to encourage efficient use of Heath's topography, preserve open space and maintain the overall density allowed through the Town's zoning.
- 8.2.2 Method. Any parcel in the Primarily Agricultural and Residential District may be divided into not more than three (3) lots, whether a subdivision or not, and built upon under the following alternative area and frontage requirements.
- A. The average frontage for all building lots created shall be no smaller than the minimum required under Section 5, Intensity Regulations, but individual lots may have frontage of as little as 2/3 of that requirement.
  - B. The zoning district of the property from which the new lots are created shall be the standard for the number of buildable lots allowable, and the number of building lots created shall be no more than would have been allowed according to Section 5, Intensity Regulations.
  - C. Individual lot area per unit may be as little as 1/2 that required in Section 5.
  - D. Opting to develop under this method does not remove the developer's obligation to conform to all other rules and laws pertaining to construction or subdivision.
  - E. The plan creating the lots shall be endorsed by the Planning Board as Approved for Flexible Development.
  - F. No further increase in the number of lots shall be allowed through subsequent land division, and this restriction shall be recorded on relevant plans and deeds.

## 8.3 Conservation Development.

8.3.1 Purpose/*Definition*. The purpose of a Conservation Development is to encourage the preservation of common land for conservation, agriculture, open space, forestry and recreational use; to preserve historical or archaeological resources; to protect existing or potential public or private water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the zoning bylaw through a greater flexibility in design; and to allow more efficient provision of municipal services. Conservation development shall mean a single and/or two-family residential development in which the houses are arranged together into one or more groups within the development, and separated from adjacent properties and other groups by undeveloped land. This type of development may occur as either a subdivision or as lots being created on an existing public way. The Planning Board may *approve a Site Plan* [grant a Special Permit] *in accordance with Section 6.2 Site Plan Review* for a Conservation Development subject to the following:

### 8.3.2 Procedures.

- A. Filing an Application. Each application for a Conservation Development shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration. The plan shall to be prepared by a professional architect, engineer, landscape architect, or registered land surveyor. Applicants are encouraged to meet with the Planning Board prior to submitting a formal application.
- B. Contents of Application. Said application and plan shall be prepared in accordance with Section 6.2 Site Plan Review and shall provide the information required for a preliminary subdivision plan in the Rules and Regulations of the Planning Board dated August 3, 1987, governing subdivision

of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:

1. The maximum density of a Conservation Development shall not exceed the allowed density for a conventional subdivision in any zoning district unless a density bonus is granted pursuant to Section 8.3.6H. In a Conservation Development, the maximum number of building lots will be determined by one of the following methods at the Applicant's option. The Applicant shall provide documentation satisfactory to the Planning Board to determine the number of building lots.

a.) Method 1 - The maximum density for the Conservation Development under Method 1 shall be calculated by taking the parcel area and subtracting out any acreage that is wetlands, water bodies, floodplains, existing permanently protected open space, land prohibited from development by legally enforceable restrictions, easements or covenants, land with slopes greater than 25%, and 10% of the total parcel area for roads and drainage to find the Net Parcel Area. The Net Parcel Area shall be divided by the Minimum Lot Area of the zoning district in which the parcel is located to determine the maximum number of lots allowed. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Section 40.

b.) Method 2 - A preliminary plan for a conventional (non-Conservation Development) subdivision for the site shall be submitted illustrating the number of lots that could be created under a conventional subdivision and the results of deep hole and perc tests indicating how many of these lots would be buildable. The perc tests shall be conducted under the supervision of the Board of Health, and in conformance with Title 5, percolation tests. The number of buildable lots will equal the maximum density of the Conservation Development.

2. An analysis of the site, including wetlands, water bodies, slopes, the capability of soils to support the proposed development, areas within the 100-year floodplain, and such other natural features as the Planning Board may request. As well, an existing topographic map and a proposed topographic map at two-foot intervals may be requested.

3. A summary of the environmental concerns relating to the proposed plan.

4. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan on them.

5. Evaluation of the conservation land proposed within the Conservation Development, with respect to use, size, shape, location, natural resource value, and accessibility by residents of the town or of the Conservation Development.

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

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

8. Other reasonable requirements requested by the Planning Board.

C. Review of Other Boards. Before acting upon the application, the board shall submit it with the plan to the chairman of the following boards and departments which may review it jointly or separately: the Selectmen, Zoning Board of Appeals, Board of Health, the Conservation Commission, the Fire Chief, and the Highway Superintendent. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.

D. Public Hearing. After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of MGL Ch. 40A Sec. 9, and of the zoning bylaw and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the board and the clerk. Notice shall be given by publication and posted and by first-class mailings to "parties in interest" as defined in MGL Ch.40A Sec. 11. The decision of the board, and any extension, modification or renewal thereof, shall be filed with the board and clerk within 90 days following the closing of the public hearing

E. Relation to Subdivision Control Law Planning Board approval of a Site Plan hereunder shall not substitute for compliance with the subdivision control law, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the board's regulations under the subdivision control law [act].

#### 8.3.3 Criteria for Approval.

The Board may approve a Site under this section only if it finds that the applicant has demonstrated the following:

- A. that the Conservation Development plan will be in harmony with the general purpose of the bylaw and the requirements of M.G.L. Ch. 40A, and the long range plan and OSRP of the town;
- B. that it will be designed with due consideration for health and safety;
- C. that it minimizes environmental disruption;
- D. that it meets all other requirements of Section 6.2 Site Plan Review

#### 8.3.4 Minimum Requirements.

A. The minimum area of land required for a Conservation Development shall be ten (10) acres for a subdivision or six (6) acres for lots on an existing public way which lots do not require subdivision approval. The parcel shall be held in single ownership or control at the time of application.

B. The maximum number of dwellings for the development shall not exceed that which is normally allowed in the district under a conventional plan, unless a density bonus is granted in accordance with except 8.3.6H.

C. The development shall include lots for single and/or two-family dwellings only.

D. Each lot shall have adequate access on a public or approved subdivision road.

E. Each lot shall comply with the minimum dimensions required in this provision.

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

G. At least thirty-five percent (35%) of the total parcel of land shall be set aside as permanently protected common land. The minimum required common land shall not include wetlands, water bodies, 100-year floodplains, slopes greater than twenty-five (25%), roadways, and land

prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by the Heath Zoning Bylaws, Title 5[V], the [Inland] Wetlands Protection Act, including the Rivers Protection Act and any other relevant laws (“Land with Environmental Constraints”). To the extent possible the preserved common land shall form a contiguous tract to enable continued farming or forestry operations. Land with Environmental Constraints may be included in the protected common land subject to a Conservation Restriction in perpetuity if it increases the amount of protected common land beyond the 35% minimum amount (e.g. agricultural or forested land equals 35% of the total parcel plus Land with Environmental Constraints equals 10% of the total parcel resulting in Protected Open Space of 45% of the total parcel).

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

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

J. Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Control Regulations insofar as is reasonably applicable, but the Board may vary those standards to meet the particular needs of the Conservation Development.

K. No Conservation Development shall be approved unless the applicant can demonstrate that it meets DEP and Board of Health Title 5 requirements for wastewater disposal and Board of Health regulations for drinking water supplies. The burden of proof shall be on the applicant.

#### 8.3.5 Dimensional and Density Requirements.

A. Building site sizes shall not be less than  $\frac{3}{4}$  of an [one-half] acre.

B. In no instance shall a designated lot have less than 125 feet of frontage on a public or approved subdivision road.

C. The Front Yard setback shall not be less than 20 feet for all principal and accessory structures. Side and Rear Yard setbacks shall not be less than 10 feet for all principal and accessory structures, except that attached single family dwelling units may be laid out with one side having no Side Yard setback (zero setback). The other Side Yard of an attached single family unit (the nonattached side) shall be at least 10 feet. Nonattached single family units shall have a minimum Side Yard setback of 10 feet. The maximum height of dwelling units and structures shall be 40 feet.

#### 8.3.6 Required Conservation Land.

A. All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition. As a general guidance, natural resource land such as wetlands or land that is suitable for extensive public recreational use, could be conveyed to the town or to a trust; whereas land which will be principally used by the residents of the Conservation Development should be conveyed to a homeowner's association.

B. Further subdivision of common open land or its use for other than the above listed uses, except for easements for underground utilities, water supplies and septic systems, shall be prohibited. Structures or building accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed 5% coverage of such common open land. Any portions of an underground septic system which are located within the common open land shall be marked with a permanent marker that records their location and depth.

C. Such common open land shall be either:

1. Conveyed to a corporation or trust owned or to be owned by the owners of lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;
2. Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space;
3. Conveyed to the Town of Heath, at no cost, and be accepted by it for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.

D. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be developed for residential use or accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

E. If the common land is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated non-profit homeowner's association, covenant, or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the Development Plan and shall be subject to approval by the Planning Board and Town Counsel. These covenants shall also include provisions for the maintenance of all common facilities and utilities.

F. Such covenants shall specify how the organization will be governed and how costs will be assessed and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.

G. Such covenants shall provide that in the event that the organization established to own and maintain the common open land or any other commonly owned facilities or utilities or any successor organization fails to maintain the common open land or any other commonly owned facilities or utilities in reasonable order and condition in accordance with the Site Analysis/Development Plan, the Town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development and shall become a charge on said properties enforceable as a real estate tax and that such charge shall be paid by the property owners within thirty (30) days after receipt of a statement therefore.

H. To encourage conservation development the following "point incentive system" has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan, the bonus point total.

(1) Any development that increases the amount of land permanently preserved by 5% above the 35% requirement earns 10 points. Each additional 5% increase in preserved land results in an additional 10 points. Such land above the 35% minimum requirement may include Land with Environmental Constraints.

(2) For farmland, proposed to be protected under the Conservation Development plan, sale of the farmland to a person or entity currently engaged in farming, or the lease of

the farmland for five or more years to a person or entity engaged in farming, and/or creation of a homeowner's association and dedication of resources to be provided to that association for the establishment and maintenance of a community farm or gardens, earns 10 points.

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

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

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

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

(7) If a minimum of 20% of the dwelling units will be affordable and will be made available in perpetuity, or the longest time period allowed by law, via sale, lease, or deed restrictions to persons or families qualifying as low or moderate income as defined by the Department of Housing & Community Development of the Commonwealth and such unit(s) count towards the 10% requirement of Chapter 40B, then 20 points will be earned.

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

- a.) The occupancy of units in the Conservation Development shall be restricted to those 55 years of age or older;
- b.) There shall be no more than 2 bedrooms in each unit;
- c.) Units should incorporate renewable energy technologies such as solar hot water heaters and all units should be Energy Star rated or in accordance with the "Stretch Code";
- d.) At least 20% of the dwelling units must be available for rent, for a minimum of thirty (30) years, or for sale, in perpetuity, via a deed restriction to seniors qualifying as low or moderate income households as defined by the Department of Housing & Community Development of the Commonwealth and such units must count towards the 10% requirement of Chapter 40B; and
- e.) At least 50% of the units must be handicapped accessible.

A development plan will earn points and a building lot bonus above the basic number of building lots allowed under Section 8.3.4.B as follows:

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



If the point total results in a building lot bonus of a fractional number less than .5, the bonus building lot total will be rounded down to the next lowest whole number. The total number of bonus building lots under this section cannot exceed 40% of the maximum number of building lots allowed before the addition of bonus units.

I. Further Requirements.

1. There shall be no amendments or changes to an approved Site Plan without review and approval from the Planning Board.
2. No lot within an approved Conservation Development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any Definitive Plan of a subdivision and on the approved Site [Analysis/Development] Plan if not a subdivision under the Subdivision Control Law.
3. No use other than residential, agricultural, forestry or recreational shall be permitted.
4. The Board may approve a Site Plan hereunder for Conservation Development even if the proposed development is not subject to the Subdivision Control Law.

## **SECTION 9 - DEFINITIONS**

In these Regulations the following terms shall have the meanings here assigned to them:

**Accessory Apartment** - Alteration or new construction to create one additional dwelling attached or detached from the primary residence.

**Accessory Building** - - A subordinate building, the use of which is incidental to the main or principal use permitted in the district. Where an accessory building is attached to the main building, such accessory building shall be counted as part of the main building.

**Accessory Use** - - An accessory use is one located on the same lot with (or in) the main building or main use, and is subordinate and customarily incidental to the use of the main building or the land. (Note: Uses accessory to permitted uses for scientific research, development or related production do not have to be located on the same parcel of land as the principal activity. MGL, Chapter 40A, Section 9.)

**Applicant** - - Shall include an owner, or the agent or representative of the owner.

**Bed and Breakfast** - - A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**Building** - - A combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. The word "building" shall be construed where the text requires, as being followed by the words "or part(s) thereof."

**Building Height** (in feet) - - The vertical distance from the average finished exterior grade on the street side of a building to the highest point of the roof or parapet for flat or shed roofs, to the deck line for mansard roof, or the mean level of the highest gable or slope of a hip pitch or sloped roof. Height limitations shall not apply to chimneys, spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space, but will apply to alternative energy devices such as windmills and solar panels.

**Business Office** - - The workplace of computer software, insurance or other business professionals which may include space for appropriate support staff (e.g. administrative assistants, etc.).

**Campground** - - A parcel of land used or intended to be used, let, or rented for temporary short-term occupancy by campers or transient tourists utilizing tents, trailer coaches, or other types of movable or temporary shelter.

**Certified** - - Shall mean certified by a Planning Board, as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, and shall mean bearing a certificate or endorsement signed by a majority of the members of the Planning Board.

**Commercial** - - Of or relating to the buying, selling and trading of goods and services.

**Commercial Recreation** - - Any profit-motivated, recreational activity, indoors or outdoors, for which a fee is charged.

**Condominium** - - Land and building or buildings thereon, containing office or dwelling units and common areas and facilities which are regulated and managed by an organization of unit owners, under a master deed according to the provisions of MGL, Chapter 183A.

**Conservation Development** - - An alternative method of lot development that allows smaller lot sizes and frontage and requires that natural features of the parcel are taken into consideration when placing lot lines.

**Cottage Industry** - - Any home occupation, including professional offices or providing services conducted by a resident of the premises in a room or rooms of a dwelling or accessory building.

**Disposal Facility** - - A place where garbage, refuse, etc, is deposited.

**Drainage** - - The flow of surface and subsurface water.

**Duplex** - - A building of two dwelling units, whether new construction or a conversion from a single family.

**Dwelling Unit** - - Living quarters for a single family with cooking, living, sanitary, and sleeping facilities substantially independent of those of any other unit.

**Exterior Architectural Feature** - - Means such portion of the exterior of a building or structure as is open to view from a public road, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of window, doors, lights, signs, and other appurtenant exterior features.

**Family** - - One or more persons, all of whom are related by birth, marriage or adoption, living as a unit, or no more than five individuals living together.

**Floodway** - - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Frontage** - - The boundary of a lot coinciding with a street line provided that there must be both rights-of-access and potential vehicular access across that boundary to a potential building site and the street is a public way and has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Heath Subdivision Regulations currently in effect. Lot frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius. The portion of a lot fronting on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval Not Required Plans.

**Hotel** - - A building containing rooms intended or designed to be used or which are occupied for sleeping purposes by transient guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

**Industry** - - The production and sale of goods.

**Inn** - -An historic structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. An historic structure for the purposes of this definition shall be a building fifty (50) years or more in age. A guest(s) may not stay at an Inn for more than 90 days in any six-month period.

**Living Area** - - Shall be the outside dimensions of a dwelling unit commonly used as living quarters excluding attached garage, porch and breezeways.

**Lot** - - A plot or parcel of land with frontage on a public way or on an approved subdivision road occupied or capable of being occupied by one principal building and the accessory buildings or use customarily incident to it, including such open spaces as are required by this Bylaw.

**Lot Line (Front)** - - The line separating the lot from the public way line across which access is gained to the property.

**Lot Line (Rear)** - - The lot line opposite to and most distant from the front lot line.

**Lot Line (Side)** - - Any lot line not a front lot line or rear lot line.

**Lumber or Wood Processing Plant** - - Any business that uses logs as a raw material, including sawmills, pulp mills and mechanized cordwood mills.

**Mobile Home or Trailer** - - Also referred to as Manufactured Housing. A dwelling unit intended for full-time occupancy built on a chassis that contains complete electrical, plumbing and sanitary facilities and issued a HUD (U.S. Department of Housing and Urban Development) certification. This definition shall not include those vehicles known as camping or travel trailers or motor homes.

**Motel** - - Attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.

**Multi-Family Dwelling** - - A building containing more than one dwelling unit, other than accessory apartments and duplex dwellings.

**Nonconforming Use or Structure** - - Any use or structure which is lawfully begun, but which does not conform to the most recent effective zoning regulations for the district in which such use or structure exists.

**Occupancy** - - The state of habitation by people.

**Planning Board** - - Shall mean as established under MGL, Chapter 41 e 81A.

**Principal Building** - - The main or most important building on a lot in which is conducted the principal use of the lot. Attached structures such as garages, greenhouses, and similar units are to be considered as part of the principal building.

**Private Way**- - A road or driveway on privately owned property, limited to the use of the owner or a group of owners who share the use and maintain the road without help from the town, city, county, or state.

**Professional Office** - - The workplace of physicians, lawyers, engineers, or other licensed professionals which may include space for appropriate support staff (e.g. administrative assistants, nurses, etc).

**Protective Structure** - - A structure incidental to the main building such as a car ports, half shed, tool shed or woodshed.

**Public Way** - - Publicly controlled way accepted by the Town, County, State or Federal government for use as a road or street.

**Recorded** - - Recorded in the Franklin County Registry of Deeds except that, as affecting registered land, it shall mean filed with the Recorder of the Land Court.

**Sign** - - Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, symbol, trade flag, or representation used as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye, either by its presence or by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way or public park or reservation.

**Sign Area** - - The area of one side of a sign including the frame and any extensions.

**Single-Family Dwelling** - - A building containing one dwelling unit.

**Sludge** - - The semi-solid or liquid residual generated from a municipal, commercial, or industrial wastewater Treatment Plant.

**Stabilized Sludge** - - Liquid or dewatered sludge containing pathogens from a municipal, commercial or industrial wastewater treatment plant that has been treated by P.S.R.P., that is, a process to significantly reduce pathogens. Pathogens being organisms, chiefly micro-organisms, including viruses, bacteria, fungi, and all forms of animal parasites and protozoa, capable of producing an infection, or disease in a susceptible host.

**Store** - - Any place of business where goods or products are sold at wholesale or retail rates.

**Structure** - - Anything constructed or erected, the use of which requires a fixed location on the ground, or attachment to something located on the ground to give support or shelter, including buildings, mobile homes, billboards, tanks, or the like, or the parts thereof, and swimming pools. The word "structure" shall be construed where the text requires, as being followed by the words "or part(s) thereof."

**Subdivision** - - A division of land which creates one or more lots which do not have frontage on an existing public way as further defined in MGL, Chapter 41 e 81-L.

**Travel Trailer, Camp Trailer or Motor Home** - - A mobile unit either supported on its own wheels, or those of another vehicle, which is intended as a temporary dwelling not for permanent residency. This definition does not include mobile homes.

**Wetlands** - - Areas defined on the Town of Heath's Wetlands Map including swamps, marshes, ponds, lakes, water courses, and areas subject to flooding.

## **SECTION 10 – Temporary Moratorium on Recreational Marijuana Establishments** (Expired November 28, 2018)