

**Section 8****GENERAL PROVISIONS****(A) Cornices**

Cornices may extend not more than one and one-half (1 ½) feet over or into any required front, side or rear yard.

**(B) Unsafe Buildings**

This By-Law shall not be considered as preventing the strengthening or the restoration to a safe or sanitary condition of any building or wall, declared unsafe or unsanitary by the Building Commissioner.

**(C) Minimum Open Space**

No lot shall be so reduced in size or area that any required yard, court or open space will be smaller than is prescribed by this By-Law for the district in which it is located.

**(D) Visual Clearance**

Between the lines of streets intersecting at an angle of less than one hundred and thirty-five (135) degrees and a line jointing points on such lines of ten (10) feet distant from that point of intersection, no building or structure may be erected and no vegetation maintained between a height of two and one-half (2 ½) feet and a height of eight (8) feet above the plane through their curb grades.

**(E) Earth Removal, Extraction, and Fill Regulations**

*(Adopted May 12, 2001 Annual Town Mtg.)*

1. **Permit Required.** In any zoning district, removal or addition of sod, loam, clay, gravel, quarried stone, or kindred materials shall not be undertaken if such removal or addition results in a change in the contours of the land, except by an Earth Removal, Excavation, and/or Fill Permit from the Building Commissioner.

- a. **Exemptions.** The fore mentioned permit shall not be required when the removal, excavation and/or fill activity is incidental to and in connection with any of the following activities:

- 1.) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is

limited to the area within a distance not more than one hundred (100) feet from the building or improvements authorized under said permit.

- 2.) Development of site improvements for a subdivision for which Definitive Plans have been approved, and endorsed by the Planning Board.

2. Classification of Activities. Earth removal, excavation, and fill activities are classified as either:

- a. Major Earth Removal, Excavation, and/or Fill Activities. These activities involve the removal, excavation, and/or addition of 5,000 or more cubic yards of material for use on parcels of land other than the parcel(s) from which the materials were removed or extracted.
- b. Other Earth Removal, Excavation, and/or Fill Activities. These activities involve the removal, excavation and/or addition of materials not otherwise classified as Major earth removal, excavation and/or fill activities.

3. Planning Board Approval Required and Application Requirements.

- a. Major Earth Removal, Excavation, and/or Fill Activities. Prior to applying for a Permit from the Building Commissioner, the applicant must apply for and receive a Special Permit from the Planning Board. Applications for such a Special Permit must include all items required for a Special Permit application and items required under this Section.
- b. Other Earth Removal, Excavation, and/or Fill Activities. Prior to applying for a Permit from the Building Commissioner, the applicant must receive approval of the plans for removal, excavation, and fill from the Planning Board. Applications must include all items required under this Section of the Zoning By-Law.
- c. Application Requirements. Each application for Planning Board approval shall include the following items:
  - 1.) A map prepared at the expense of the applicant showing the property boundaries, the existing contours of the land, and the contours as they are proposed after completion of the operations. Such map or plan shall be accurately drawn on reproducible paper or cloth, the contour interval

being two (2) feet, and shall contain complete information to make the physical characteristics clear.

- 2.) Application fee.
- 3.) Pictures of the existing conditions of the site.
- 4.) Description of proposed source of fill material to be added to the site and use of excavated materials.
- 5.) An estimate of the cost to restore the site to its proposed finished condition.
- 6.) Timetable for completion of the operations.

d. Supplemental Application Requirements. For Major activities, the following items must also be included in the application:

- 1.) A detailed cost estimate certified by a qualified engineer to restore the site to its proposed finished condition.
- 2.) Description of the proposed financial security to cover the cost of restoring the site to its proposed finished condition.
- 3.) Documentation of the elevation of the seasonal high water table.

e. No permit shall be issued until such plan has been filed with the Planning Board, the approval of said Planning Board recorded on the plan, and a copy of said approved plan submitted to the Building Commissioner.

4. Limitations on Operations. No applicant shall carry on operations above or below such a grade as may be fixed by the Planning Board without, on each occasion, obtaining the permission of said Board in writing, but a tolerance of six inches shall be permitted during or at the termination of operations. Further, operations must be carried out in accordance with the conditions of the Planning Board approval.

a.) Prohibited Area. No Major earth removal, excavation, or fill activity shall be permitted in the area bounded as follows: on the south by Route 47, Pearl Street, and Route 116; on the east by Route 116 and the Granby Town Line; on the north by the Amherst and Hadley Town Lines; and on the west by Route 47 and the Hadley Town Line.

b.) Finished Grade. The finished grade for any Major earth removal, excavation, and fill activity shall be no steeper than a 3:1 slope unless the Planning Board, based upon adequate engineering analysis and certification, determines that sufficient precautions for erosion and runoff are established to ensure the work is consistent with the purposes of the Zoning By-Law.

- c.) Depth to Water Table. No excavation activity shall be nearer than five feet (5') of the seasonal high water table.
5. Extension of Time Limit. A permit issued for the removal or addition of materials shall state the time within which work is to be carried on and finished and the land is brought to the predetermined grade, but the Building Commissioner with the approval of the Planning Board, and without consent of any surety, may extend the permit from time to time.
6. Surety Requirement. The Planning Board may require a bond in a sufficient penal sum with sufficient surety or sureties conditioned on the performance of the requirements herein set forth and of the conditions of the permit.

**(F) Signs**

*(Amended June 7, 2005 Special Town Mtg. In paragraph 1)*

*(Amended June, 2009 Special Town Mtg. In paragraph 7)*

*(Amended Nov. 15, 2012 Special Town Mtg. In paragraphs 1 and 2)*

1. Signs in Business and Industrial Districts. Signs pertaining to the occupant of the premises or to the type of goods sold or services rendered on the premises are permitted in the Business A-1, Business A, Business B, Business C, Industrial A, Industrial B, and Industrial Garden Districts, provided the following requirements are adhered to:
- a. The sign or signs shall be attached parallel to the wall of the principal building; the aggregate area of such a sign or signs on any one face of a building shall be less than ten percent (10%) of the area of such building face including openings; and such signs do not extend above a flat roof or eave line of a pitched roof more than ten percent (10%) of the average height of the front elevation of such building. No sign shall be painted on the wall of any building.
  - b. One free-standing sign is permitted per lot if located at least thirty (30) feet from an adjoining lot line and ten (10) feet from the street line and does not exceed an area of one (1) square foot for each four (4) lineal feet of lot frontage occupied by the premises, or sixty (60) square feet, whichever is the smaller.
  - c. Signs with any moving or flashing part, all signs of the traveling light or animated type, and all beacons and flashing devices, whether a part of, attached to, or apart from a sign are prohibited. All illumination of signs must be arranged and shielded so that the source shall not be visible from a public way or adjacent property.

- d. Notwithstanding the limitation of item 8(F)1.b, facilities with multiple tenants including separate tenants on free-standing parcels which were created as a plan for such facility (i.e., shopping centers, industrial parks, and office parks) are permitted to also have a single free-standing sign to identify the name and location of said center or park and list the names of the several businesses located in said center or park.
    1. This free-standing sign must be located at least thirty (30) feet from an adjoining lot line and ten (10) feet from the street line and does not exceed an area of one (1) square foot for each four (4) lineal feet of lot frontage occupied by the premises, or sixty (60) square feet, whichever is the smaller.
    2. Names of businesses located on individual parcels which were depicted as individual parcels on the site plan approved by the Planning Board and subsequently divided from the original parcel on which the center or park was developed, may be listed on the free-standing sign of the center or park; however, 50% of the area of the center or park sign which is occupied by the name of the business is to be deducted from the maximum size of the free-standing sign allowed on the individual parcel on which the business is located.
    3. The space allotted for the name of a business not located on the parcel on which the sign structure is located may not exceed twenty (20) square feet.
2. Signs in Residence and Agricultural Districts. All signs are prohibited in Residence and Agricultural districts, except the following:
- a. Signs for home occupations, as provided in Section 7, Part (A), of this By-Law.
  - b. A single sign, not more than four (4) square feet in area, located flat on a building or dwelling in a Residence C district, identifying the name of the building. Any illumination of such sign shall be continuous indirect lighting.
  - c. Real estate signs having an area of not more than five (5) square feet advertising the sale, rental or lease of the premises on which they are maintained.
  - d. To provide for the identification of public facilities, to convey activities and events associated with such facilities, and

temporary and emergency messages, one (1) free-standing sign may be permitted on a parcel occupied by a municipal (Town of South Hadley, South Hadley Fire District Number One, and/or South Hadley Fire District Number Two), State, or Federal facility. Said sign shall be located at least thirty (30) feet from an adjoining lot line and ten (10) feet from the street line and does not exceed an area of 0.75 square foot for each four (4) lineal feet of lot frontage occupied by the premises, or twenty (20) square feet, whichever is the smaller. Further, the height of such signs shall not exceed six (6) feet at any point.

3. Political Signs. Political signs, including but not limited to signs advertising or promoting candidates for public office or urging positions on questions appearing on the ballot of a regular or special election, are permitted in all districts, in excess of the usual limits, for a period of forty-five (45) calendar days prior to the election and shall be removed within ten (10) calendar days following the election.
4. Traffic Control. Traffic control and directional signs by Municipal, State and Federal agencies are permitted in all districts.
5. Directional Signs. Directional signs by private nonprofit institutions or nonprofit organizations shall also be allowed in all districts, provided however that such signs shall be subject to the following limitations:
  - a. The maximum size of such signs shall be three hundred (300) square inches.
  - b. No more than three (3) such signs shall be permitted for any institution or organization.
  - c. Any such sign erected or installed within the boundaries of a street must be approved by the Town Engineer in order to insure that it does not constitute a safety hazard.
6. Temporary Signs. A temporary real estate sign, advertising the availability of the property for sale, may be erected for a period extending only until such property is sold. Such sign shall not exceed twenty (20) square feet in area and shall be located at least ten (10) feet from the street line or on a building if in closer proximity to the street line.
7. Illumination of Signs. No illuminated signs shall be permitted unless first approved by the Planning Board. Prior to approving an illuminated sign, the Planning Board must make a determination that the sign will not be adverse to the character of the surrounding neighborhood or the community. The Planning Board shall notify, by mail, abutters of the date,

time, and place of the Planning Board meeting at which the request for an illuminated sign is to be considered.

- a. Exception. Traffic control and directional signs by Municipal, State and Federal agencies shall be excepted from this requirement.
- b. Adverse to surrounding neighborhood or community. Signs which illuminate more than what is necessary to convey the message or name being promoted or create glare which may impact motorists are generally considered to have an adverse impact on the community. Such adverse impact arises from excessive light pollution. Therefore, in determining whether to approve the illumination of a sign, the Planning Board shall:
  - 1.) consider and minimize the illumination impact of the signage illumination on the surrounding properties; and,
  - 2.) only approve internally-illuminated signs where only the lettering or logo of the enterprise or message being promoted are illuminated; and,
  - 3.) ensure that the illuminated sign does not illuminate adjoining or nearby residential properties or pose a danger to motorists on adjoining or nearby roadways which might arise from glare from the illumination source; and,
  - 4.) not approve exposed or illuminated neon signs; and,
  - 5.) require that illumination sources not illuminate the background or field of a sign except to the extent that the background or field (due to the shape of the sign area) is clearly a logo of the company or enterprise being advertised.

### **(G) Off-Street Parking**

1. Findings and Purpose. The Town finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots damage the historic layout and architectural fabric of traditional settlements, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However, the Town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The Town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking, and to avoid the negative impacts of excessive parking lot construction.
2. Minimum Parking Required for Residential Uses
  - a. For single-family or two-family dwelling: Two spaces per dwelling unit.

- b. For multi-family dwelling: One-and-one-half spaces per dwelling unit. This number may be increased by the Planning Board for dwelling units with two or more bedrooms.
- c. These requirements may be reduced for dwelling units with less than 1,000 square feet of floor area, senior citizen housing, mixed use development, or other appropriate circumstances if the Planning Board determines that such reductions are warranted.
- d. Parking spaces in driveways shall count toward the fulfillment of the minimum parking requirements, provided that they do not interfere with pedestrian circulation or encroach into the public right-of-way.

3. Parking Requirements for Non-residential Uses

The number and layout of parking spaces for non-residential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic, and scenic resources. Since non-residential uses vary widely in their need for off-street parking, parking requirements shall be based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection (3)(a) below shall be applied and may be increased or reduced by the Planning Board according to the criteria in Subsection (3)(b) below.

a. Provisional Parking Standards

(1) Retail or personal services uses: Four spaces per 1,000 square feet of enclosed floor space, excluding space used for storage.

(2) Industrial/warehouse uses: One space per 1,000 square feet of enclosed floor space or one space per anticipated employee, customer, and company vehicle.

(3) Office uses: Three spaces per 1,000 square feet of floor space.

(4) Hotel, motel: One space for each guest room plus one space for each non-resident employee and one space for every 200 square feet of floor space for meetings and functions.

(5) Restaurants, theaters, and other places of public assembly: One space for every three seats.

(6) Uses not listed above: As appropriate to the circumstances based upon information submitted by the applicant and obtained by the Planning Board based upon its knowledge of the community, conditions in the surrounding area, and information provided from other sources.

b. Criteria for Applying Provisional Standards

In applying or modifying the provisional parking standards for any proposed use, the Planning Board shall consider:

(1) The maximum number of vehicles that would actually be parked at the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking, bicycling, or carpooling to the proposed use shall be taken into consideration.

(2) The size of the structure(s) and the site.

(3) The environmental, scenic, or historic sensitivity of the site (including applicable limitations on impervious surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning Board may require a reduction in the size of the structure so that the available parking will be sufficient.

(4) The availability of safely usable on-street parking.

(5) The availability of off-site off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant dedicates such off-site land for public parking or demonstrates a legal right to shared use.

(6) The requirements for parking for the disabled as prescribed by the Americans with Disabilities Act.

c. Set-aside for Future Parking

The Planning Board may, as a condition of reducing the provisional parking standards, require an applicant to set aside land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being developed for parking in the future. Parking by patrons, customers, or employees on a public or private street or way that is not along the street frontage of the premises (“spillover parking”) shall be considered evidence of the inadequacy of the off-street parking provided for both new uses and the conversion or expansion of existing uses. Such spillover parking shall trigger the requirement that land set aside for future parking shall be improved for use as off-street parking. Such requirement shall be enforced by the Building Commissioner in consultation with the Town Planner.

4. Design, Layout, and Construction of Parking Areas for Non-Residential and Multi-family Residential Uses

a. Location and Screening

(1) All off-street parking shall be located behind, underneath, or to the side of the principal building, except as provided in Subsections (2) and (3) below. The Planning Board may modify or waive this requirement on lots that are located in the Business and Industrial Districts where unusual lot configurations such as corner lots, narrow lots, or through lots make compliance with this requirement impractical or impossible, where parking visible from the road is a commercial necessity for the business, or where most surrounding development already has parking in front of buildings, provided that the applicant mitigates the visual impacts of such parking areas using appropriate landscaped buffers. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads. Wherever feasible due to topographic conditions, parking shall be located underneath buildings.

(2) Within any district, parking may be located anywhere on the site if it is screened from public roads and adjoining properties, or if it is part of a commercial or institutional development which is not visible from any public road, public recreation area, public building, or residential property.

(3) Within the Business A and Business B Districts, a maximum of one row of on-site parallel, perpendicular, or diagonal parking may be located in front of the principal building, but not within the area required for the front setback. If parking spaces are located in front of the principal building, a minimum of 20 feet of the front setback area shall be planted with a row of street trees or an appropriate combination of street trees and shrubs spaced at intervals sufficient to provide suitable screening. This tree-planting requirement may be modified or waived where parking visible from the road is a commercial necessity for the business. The shrub layer shall not be required within the South Hadley Falls Overlay District.

(4) If a parking lot containing ten or more spaces lies within or borders a Residential District, a buffer zone at least 30 feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in non-residential districts or contain a non-residential use.

b. Construction of Parking Areas

Parking areas shall be surfaced with a suitable durable surface appropriate for the use of the land, with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impervious pavement and run-off. Overflow or peak period parking surfaces shall be permeable. Pervious pavement shall be counted only partially toward the maximum allowable impervious surface requirements contained in Section 6(B). (See definition of “Impervious Surface Coverage.”) Oil traps may be required for larger paved parking lots. Parking areas shall comply with all applicable requirements of the Americans with Disabilities Act.

c. Landscaping and Lighting

Parking areas shall be landscaped and lighted in compliance with Section 12.

d. Non-conforming parking lots shall be brought into conformity with this Section G to the extent practicable whenever a Site Plan or Special Permit application is filed for an expansion or change of the use. In applying this requirement, the Planning Board may require reasonable improvements in landscaping, access, drainage, lighting, and buffers that are proportionate in scope to the impact of the change in use, provided that such required improvements do not make the proposed change in use economically infeasible.

e. The Planning Board may promulgate rules, regulations, or guidelines for the dimensions of parking spaces, parking lot aisles, striping, and other design features internal to parking lots, consistent with the regulations herein.

5. Commercial Vehicles in Residence Districts.

In Residence or Agricultural Districts, no commercial vehicle other than Class 1 Commercial Vehicles, as defined by the Massachusetts Department of Transportation, at the DOT website (<http://www.massdot.state.ma.us/highway/TrafficTravelResources/VehicleClassTypeClassifications.aspx>), may be parked on any lot, except in the case of a farm that is partially exempted from zoning regulation under M.G.L. Chapter 40A, Section 3.

6. South Hadley Falls Overlay District.

The requirements of this Section G may be waived by the Planning Board based upon a showing that they are inappropriate or otherwise unreasonable under the provisions of Section 7X, South Hadley Falls Overlay District.

**(H) Mobile Homes and Recreational Vehicles**

Mobile homes, house trailers and recreational vehicles are prohibited as structures for residential use in all zoning districts. Not more than one (1) mobile home, house trailer or recreational vehicle per family may be kept or stored on any lot where the principal use of said lot is residential in nature, and such mobile home, house trailer or recreational vehicle shall not be used for living quarters.

**(I) Unregistered Motor Vehicles**

The keeping of more than one unregistered vehicle, assembled or disassembled, except by a person licensed under Mass. General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said motor vehicle is stored in an enclosed building or otherwise out of sight of all abutters and public ways.

Whoever violates any provisions of this article shall be liable to a penalty for each day of violation, commencing ten days following date of receipt of written notice from the Board of Selectmen. This article shall not apply to motor vehicles which are designated and used for farming purposes.

**(J) Private Swimming Pools**

Private swimming pools, as defined herein, shall be permitted as accessory uses to residential dwellings provided that they conform to the following standards:

1. Location. The location on a lot of a pool and its appurtenant structures shall conform to the minimum front, side and rear yard requirements of the respective zoning district, but in no case shall the pool be located nearer than ten (10) feet to any side or rear lot line.
2. Fencing. All in-ground pools shall be enclosed by a fence of at least four (4) feet high and of a type not readily climbed by children. Above-ground pools shall have a removable ladder which is removed at all times when the swimming pool is not in use.
3. Operation. The operation and maintenance of all pools shall comply with the rules and regulations of the Board of Health.

**(K) Minimum Floor Area Requirements**

Each dwelling unit in a two-family (new or converted), three-family, or multi-family structure shall contain a minimum floor area of four hundred twenty (420) square feet. In computing the required minimum floor area, only the area devoted to the exclusive use of the dwelling unit for living purposes shall be considered. Storage areas, hallways, breezeways, balconies, foyers, and other areas in common with other tenants shall not be included.

**(L) Flood Plain Regulations**

*(Amended May, 2009 Annual Town Mtg. In paragraph 3)*

1. Purposes. These flood plain regulations are intended to provide standards for the use of those lands deemed subject to seasonal or periodic flooding, and are enacted for the following purposes:
  - a. To eliminate potential dangers to the health and safety of occupants of said lands, or of the public generally;
  - b. To prevent loss and damage to property, and relieve the burden from the public of costs resulting from the unwise use of said lands; and
  - c. To retain the natural storage capacity of the water-shed, and assure the continuation of the natural flow pattern of water courses within the Town, in order to avoid encroachment on the floodplain which would increase the extent and severity of flooding up- and downstream.
  
2. Flood Plain District. The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the South Hadley Flood Insurance Rate Maps (FIRM), and all areas within the limits of the 100 year flood boundary indicated on the Flood Boundary and Floodway map, said maps dated August 15, 1979 having been prepared by the U.S. Dept. of Housing and Urban Development (HUD) and having been placed on file with the Town Clerk, Planning Board and Building Commissioner. These maps as well as the accompanying South Hadley Flood Insurance Study are incorporated herein by reference.

The above-described Flood Plain District is hereinafter also referred to as the flood plain. The floodway is hereby defined to include: (1) the area shown as within the floodway on the above-referenced maps, and (2) the area within the flood plain which lies ten (10) feet or more below the elevation of the flood plain limits. The boundaries of the floodway shall be determined by the limits of the more extensive of the aforesaid areas.

Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant for any building permit shall obtain any existing base flood elevation data and it shall be reviewed by the Building Commissioner for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of this Section and of the State Building Code.

3. Permitted Uses. Within the flood plain but outside of the floodway, all uses as permitted in the applicable zoning district are allowed, provided that the lowest floor, including basement or cellar, of any building or structure is constructed at an elevation above the elevation of the flood plain limits as defined in the above-referenced maps.

Within the floodway, only uses not involving a building, such as framing, forest management, nurseries, conservation areas, parks, playgrounds, boat landing ramps, public utility wires and pipe lines, and vehicular parking areas are permitted. Open storage of materials or equipment subject to flotation or washing away, such as lumber storage, is not a permitted use nor is the storage of inflammable liquids such as petroleum.

The addition or filling of soils, gravel, rocks, waste materials or other substances to raise the elevation or contours of land in the floodway is prohibited.

4. Exceptions. The Planning Board, acting as the special permit granting authority, may grant a special permit for the construction of non-residential structures or buildings in the flood plain but not in the floodway, provided that the following conditions are satisfied:
  - a. The building or structure is a permitted use in the applicable zoning district; and
  - b. Such building or structure shall be designed and constructed to meet the structural design requirements for floodproofing as specified in Section 748.2 of the Massachusetts State Building Code, as amended, up to an elevation not less than two (2) feet above the elevation of the flood plain limits. Working plans and specifications bearing the seal of a registered architect or engineer shall be submitted to the Planning Board and the Building Commissioner to verify that the proposed construction will withstand flood conditions as set forth in said State Building Code.

The Planning Board may attach conditions to such special permit to protect the health and safety of the occupants of the premises, to prevent loss and damage to the property, and to insure that construction and improvements on the land will not result in flood channel impoundments creating hazardous conditions for those properties upstream from that of the applicant.

5. Floodway and Base Flood Elevation Data.

- a. Floodway Data. In Zone A and Zones A1-30, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, Local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. Base Flood Elevation Data. Within unnumbered A zones, applicants proposing developments (including but not limited to subdivisions) involving more than 50 lots or 5 acres (whichever is the lesser), must provide base flood elevation data.

6. Notification of Watercourse Alteration.

Any person intending to alter or relocate a watercourse in a riverine situation must notify the following:

- a. Adjacent towns and cities
- b. The National Flood Insurance Program State Coordinator with the Massachusetts Office of Water Resources
- c. The National Flood Insurance Program Specialist with the Federal Emergency Management Agency for Region I.

7. Compliance with Other Regulations. All development and use of land in the Flood Plain District, including structural and non-structural activities, whether permitted by right, Special Permit or Site Plan Review (noted as Y, SP, SPR respectively in Subsection 5(E) of the Zoning By-Law) must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with other state and local regulations including but not limited to, the following:

- a. Applicable section(s) of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas;
- b. Department of Environmental (DEP) regulations regarding:
  - Wetlands Protection
  - Inland Wetlands Protection
  - Subsurface Disposal of Sanitary Sewage

Variances granted by the Town of South Hadley under Chapter 40A, MGL or the Town's Zoning By-Law do not convey a grant of a variance from State Regulations. Accordingly, any variances from the provisions and requirements of the State Regulations referenced in paragraphs 7a or 7b

above may only be granted in accordance with the required variance procedures of the applicable State regulations.

8. Supplemental Requirements and Restrictions.

- a. In Zones A1-30, along watercourses that have a regulatory floodway designated on the South Hadley FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. All Preliminary and Definitive Subdivision Plan and Site Plan proposals must be designed, and are to be reviewed, to assure that:
  - 1.) development and use proposals minimize flood damage; and
  - 2.) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and,
  - 3.) adequate drainage is provided to reduce exposures to flood hazards.

**(M) Solar Access**

1. Purpose. In view of the existing shortage of conventional energy sources, it has been determined to be in the public interest to encourage the use of solar energy for heating and cooling of buildings and providing hot water for use in buildings or swimming pools. The use of solar collectors for this purpose requires adequate access to sunlight by each lot without obstruction by adjacent structures. It is the intent of this section to encourage the use of solar collectors by protecting access to sunlight in a manner consistent with the other purposes of this By-Law.
2. Definitions.
  - a. Solar Collector: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.
  - b. Solar Energy: Radiant energy (direct, diffuse, and reflected) received from the sun.

- c. Solar Skyspace: The space between a solar energy collector and the sun which must be free of obstructions that shade the collector to an extent which precludes its cost-effective operation.
3. Permitted Use. The use of solar energy collectors for the purpose of providing energy for heating and/or cooling is a permitted use within all zoning districts, whether as a part of a structure or incidental to a structure or group of structures in the nearby vicinity. No guarantee is hereby given that the use of solar collectors is economically or technically feasible on all property within the Town.
4. Protection of Solar Collectors' Access To Light. Skyspace easements across contiguous or nearby lots, tracts, or land may be created to establish a window or exposure to the sun so as to protect an existing or intended solar collector's exposure to the sun from obstruction by buildings or trees.
  - a. Solar skyspace easements may be purchased, reserved, granted or otherwise obtained. Adverse possession cannot create such an estate.
  - b. A solar skyspace easement may, at the discretion of the easement owner, be recorded and filed with the Building Commissioner.
5. Variances. The inability of a property owner to site a structure within the confines of the prevailing lot dimensions for the purpose of obtaining unimpaired solar access may constitute a hardship under the provisions of Chapter 40A, Section 10 of the Massachusetts General Laws.

Variances may be granted by the Board of Appeals from dimensional restrictions such as height, setback, and lot density where such variances are necessary to permit unimpaired access to the sun during hours of 9:00 a.m. and 3:00 p.m. so long as such variances do not interfere with an existing solar collector to any degree or preclude the construction of a solar collector on northerly property within the reasonable vicinity and are not otherwise injurious to adjacent property.

#### **(N) Wind Energy Conversion Systems**

*(As Amended Dec. 6, 2004 Special Town Mtg.)*

1. Definition. A wind energy conversion system (WECS) is any device (such as a wind charger, wind turbine, or windmill) that converts windpower to another form of energy such as electricity or heat.
2. Special Permits. The construction of a wind energy conversion system in excess of the height permitted by right in any district shall require a

special permit from the Planning Board. In addition to the procedures and standards for special permits provided in Section 9 of this By-Law, the following additional provisions shall apply to special permits for wind energy conversion systems:

- a. Special permit applicants shall file technical performance and safety data obtained from an appropriate testing facility that illustrate sufficient safety levels in the operation of the system. The Planning Board shall issue a special permit only upon certification by the Town Engineer that the proposed project meets acceptable standards of safety and durability. *(As Amended Dec. 6, 2004 Special Town Mtg.)*
- b. The WECS shall be set back from any property line at least one foot for every foot of the structure's height.
- c. A fence of at least 6 feet in height with a locking portal shall surround any WECS and the climbing apparatus shall stop at least 12 feet short of the ground so as to reduce the potential climbing hazards.
- d. If it is determined by the Town Engineer that a WECS facility is causing interference to television or radio reception, the Town reserves the right to rescind the applicable special permit and to cause such facility to cease operation.

**(O) Temporary Shelter**

Upon application to the Board of Selectmen, an owner of real estate located within the Town of South Hadley may seek permission to be allowed to reside with his or her family in a temporary shelter which shall include but not be limited to a mobile home, on said real estate which proposed habitation is necessitated by a disaster rendering their residence on said property unfit for human habitation. Similarly, a tenant may request such permission providing that he or she has obtained written consent from the owner. If the Board of Selectmen grant such permission it shall not exceed six (6) months in duration from the date of a permit. Application may be made to the Board of Selectmen for an extension of said six (6) month permit be an individual originally granted a permit for a period not exceeding an additional six (6) months. In considering the granting of any such extension(s) the Board of Selectmen shall determine if the restoration and/or reconstruction of said residence on said premises has proceeded in a diligent manner. It is not the intent of this provision that individuals shall have the right to reside within a temporary shelter in conflict with other provisions of the By-Law, but only under the circumstances outlined in this paragraph.