



# ZONING

Chapter 181

of the  
Code of the  
City of Fitchburg, Massachusetts

As adopted on July 17, 2001 as Ordinance #272-01  
*With amendments through June 19, 2013*

# Fitchburg Zoning Ordinance

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# **CHAPTER 181 ZONING ORDINANCE**

## **SECTION 181.1 PURPOSE AND AUTHORITY**

### **181.11 PURPOSE**

This Zoning Ordinance is enacted for the purpose of promoting the health, safety, convenience and general welfare of the present and future inhabitants of the City of Fitchburg and to:

1. Lessen congestion in the streets.
2. Secure safety from fire, flood, panic and other dangers.
3. Provide adequate light and air.
4. Prevent overcrowding of land.
5. Avoid undue concentration of population.
6. Encourage housing for persons of all income levels.
7. Facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
8. Conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
9. Encourage the most appropriate use of land throughout the city.
10. Preserve and increase amenities by the promulgation of regulations to fulfill said objectives.
11. Facilitate the safe, convenient and meaningful provision of adequate vehicular and utility access to all lots intended for building purposes in the City.

**181.12 AUTHORITY.** This Zoning Ordinance is authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, the Charter of the City of Fitchburg, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

**181.13 SCOPE.** For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the City are regulated as hereinafter provided.

**181.14 APPLICABILITY.** All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the City, shall be in conformity with the provisions of the Zoning Ordinance. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this Ordinance imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Ordinance shall control.

**181.15 AMENDMENTS.** This Ordinance may from time to time be changed by amendment, addition, or repeal by the City Council in the manner provided in G.L. c. 40A, s. 5, and any amendments thereto.

**181.16 SEPARABILITY.** The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision herein.



**SECTION 181.2 DISTRICTS**

**181.21 ESTABLISHMENT**

**181.211 General.** For the purposes of this Ordinance, the City of Fitchburg is hereby divided into the following districts:

181.2111. *Residential Districts:*

Rural Residential	RR
Residential A-1	RA-1
Residential A-2	RA-2
Residential B	RB
Residential C	RC

181.2112. *Business Districts:*

Central Business	CBD
Neighborhood Business	NBD
Commercial & Automotive	C&A

181.2113. *Industrial Districts:*

Industrial	I
Limited Industrial	LI

181.2114. *Institutional Districts:*

Medical Services	MS
College District	FSC

**181.22 OVERLAY DISTRICTS.** In addition, the following overlay districts are also hereby established:

Floodplain Protection Overlay	FP
Watershed Resource Protection	WP
Mill Conversion Overlay	MCOD
Municipal Parking Overlay	MPOD
Smart Growth Overlay	SG
<i>Added 3-17-10</i>	
Student Housing Overlay	SHOD
<i>Added 4-6-11</i>	

**181.23 MAP.** These districts are shown, defined and bounded on the map accompanying this Ordinance entitled “City of Fitchburg Zoning Map Adopted July 17, 2001,” as amended. This map, including overlays, shall be on file in the City Clerk’s office. Said Zoning Map and amendments thereto as shall be duly adopted shall be considered an integral part of this Ordinance.

**181.231 Rules for Interpretation of Zoning District Boundaries.** Where uncertainties exist as to the boundaries of districts as shown on the official zoning maps the following shall apply:

181.2311. Where the boundary lines as shown upon said map as approximately following the street lines, of public and private ways or railways, the centerlines of such ways shall be the boundary lines.

181.2312. Where the boundary lines are shown approximately on the location of property lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.

181.2313. Boundary lines located outside of street lines and shown approximately parallel thereto shall be regarded as parallel to such street lines, and dimensions shown in figures placed upon said map between such boundary lines and street lines are the distance in feet of such boundary lines from such street lines; such distances being measured at right angles to such street lines unless otherwise indicated.

181.2314. 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.

181.2315. Where the district boundary line follows a stream, lake or other body of water, said boundary line shall be constructed to be at the thread or channel of the stream; or at the limit of the jurisdiction of the City, unless otherwise indicated.

181.2316. Where physical or cultural features existing on the ground are at variance with those shown on the official map, or in other circumstances not covered by the above subsections, the Building Commissioner shall interpret the district boundaries.

### **181.3 USE REGULATIONS**

**181.31 PRINCIPAL USES.** No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations (Section 181.313), including the notes to the Schedule, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited. Not more than one principal use shall be allowed on any lot, except as otherwise may be provided herein.

**181.311 Symbols.** Symbols employed in the Table of Use Regulations shall mean the following:

- Y -- A permitted use.
- N -- An excluded or prohibited use.
- CC -- A use authorized under special permit from the City Council as provided under Section 181.93.
- PB -- A use authorized under special permit from the Planning Board as provided under Section 181.93.
- BA -- A use authorized under special permit from the Board of Appeals as provided under Section 181.93.

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

**181.313 Table of Principal Use Regulations.**

**TABLE OF PRINCIPAL USE REGULATIONS**  
*[SEE SECTION 181.10, FOR DEFINITIONS OF USES]*

**SYMBOLS:**

*Y = Permitted Use*

*CC = Special Permit from City Council*

*N = Prohibited Use*

*PB = Special Permit from Planning Board*

*BA = Special Permit from Board of Appeals*

**D I S T R I C T S**

<i>PRINCIPAL USE:</i>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
<b>A. RESIDENTIAL USES</b>												
1. Single-family dwelling	Y	Y	Y	Y	Y	PB	PB	PB	N	N	N	Y
2. Two-family dwelling	N	N	N	Y	Y	PB	PB	PB	N	N	N	PB
3. Three-family dwelling	N	N	N	∕ PB*	∕ PB*	PB	PB	PB	N	N	N	PB
4. Multifamily housing	N	N	N	PB	∕ PB**	PB	PB	PB	N	N	N	PB
5. Lodging or boarding house	N	N	N	N	BA	N	N	N	N	N	N	PB
6. Assisted or Independent Living Facility	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
7. Flexible development	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
8. Planned Unit Development	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB

*\*Amended July 7, 2004*

*\*\*Amended September 21, 2005*

<i>PRINCIPAL USE:</i>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
<b>B. EXEMPT AND INSTITUTIONAL USES</b>												
1. Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3. Family day care home, small	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Family day care home, large	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	Y
5. Adult day care facility	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
6. Child care facility	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
7. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
8. Cemetery	BA	BA	BA	BA	BA	N	N	N	N	N	N	N
9. Municipal facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
10 Airport	PB	N	N	N	N	N	N	N	PB	PB	N	N

<b>PRINCIPAL USE:</b>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
11 Essential services	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
12. Hospital	BA	BA	BA	BA	BA	BA	BA	N	BA	N	Y	BA
<b>C. COMMERCIAL USES</b>												
1. Nonexempt agricultural use	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
2. Nonexempt farm stand for wholesale or retail sale of products	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
3. Nonexempt educational use	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
4. Veterinary care	BA	N	N	N	N	N	N	Y	N	N	N	N
5. Commercial kennel	N	N	N	N	N	BA	BA	BA	BA	BA	N	N
6. Lodge or club	N	N	N	N	N	Y	Y	Y	PB	N	N	Y
7. Nursing home	PB	PB	PB	PB	Y	PB	PB	N	N	N	Y	Y
8. Funeral home	N	N	N	PB	PB	Y	Y	Y	N	N	N	Y
9. Hotel, Inn or Motel	N	N	N	N	N	Y	N	Y	PB	PB	N	Y
10. Retail stores and services not elsewhere set forth	N	N	N	BA	BA	Y	Y	Y	N	N	N	PB
10A Garden Center, florist or commercial greenhouse with or without open-air display of products	N	N	N	Y	Y	Y	N	N	N	N	N	PB
10B. Other open-air retail sales	N	N	N	BA	BA	BA	N	N	N	N	N	PB

<b><i>PRINCIPAL USE:</i></b>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
11. Motor vehicle and equipment sales	N	N	N	N	N	BA	N	Y	N	N	N	N
12. Motor vehicle repair or body shop	N	N	N	N	N	BA	N	Y	N	N	N	N
13. Motor vehicle service station or car wash	N	N	N	N	N	BA	N	Y	BA	BA	N	N
13A. Motor vehicle fuel dispensing station	N	N	N	N	N	BA	BA	Y	BA	BA	N	N
14. Restaurant	N	N	N	BA	BA	Y	Y	Y	PB	PB	N	PB
14A. Seasonal outdoor dining	N	N	N	Y	Y	Y	Y	N	N	N	N	PB
15. Restaurant, fast-food	N	N	N	N	N	PB	PB	PB	PB	PB	N	PB
16. Business or professional office, including medical	N	N	N	BA	BA	Y	Y	Y	Y	Y	PB	Y
17. Bank, financial agency	N	N	N	BA	BA	Y	Y	Y	Y	Y	N	Y
18. Amusement facility	N	N	N	N	N	CC	N	CC	N	N	N	PB
19. Commercial recreation	N	N	N	N	N	CC	CC	CC	CC	CC	N	PB
20. Golf course	BA	BA	BA	BA	BA	BA	N	N	BA	BA	BA	N
21. Personal service establishment	N	N	N	N	BA	Y	Y	Y	N	N	PB	PB
22. General service establishment	N	N	N	N	N	Y	Y	Y	BA	BA	N	PB
23. Adult use	N	N	N	N	N	CC	N	CC	CC	CC	N	N

<b>PRINCIPAL USE:</b>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
24. Wireless Communications Facility ( <i>SEE SECTION 181.62</i> )												
25. Building trade shop	N	N	N	N	N	Y	Y	Y	Y	Y	N	N
26. Commercial parking facility	N	N	N	PB	PB	Y	Y	Y	PB	PB	N	Y
27. Bed and Breakfast	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
<b>D. INDUSTRIAL USES</b>												
1. Earth removal or timber harvesting	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	N
2. Light manufacturing	N	N	N	N	N	PB	PB	PB	Y	Y	N	N
3. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	N	N	N	N	N	N	N	PB	Y	Y	N	N
4. Manufacturing	N	N	N	N	N	PB	N	PB	Y	Y	N	N
5. Construction yard	N	N	N	N	N	N	N	BA	N	BA	N	N
6. Vehicle salvage yard	N	N	N	N	N	N	N	BA	N	BA	N	N
7. Transportation terminal	N	N	N	N	N	N	N	Y	N	CC	Y	N
8. Lumberyard	N	N	N	N	N	N	N	Y	N	Y	N	N
9. Research and testing	N	N	N	N	N	PB	PB	PB	PB	Y	Y	N
10. Publishing and printing	N	N	N	N	N	Y	Y	Y	Y	Y	N	BA



<b>PRINCIPAL USE:</b>	<b>RR</b>	<b>RA-1</b>	<b>RA-2</b>	<b>RB</b>	<b>RC</b>	<b>CBD</b>	<b>NBD</b>	<b>C&amp;A</b>	<b>LI</b>	<b>I</b>	<b>MS</b>	<b>FSC</b>
11. Computer software development	N	N	N	PB	PB	Y	Y	Y	Y	Y	N	Y
12. Computer hardware development	N	N	N	N	N	PB	PB	Y	Y	Y	N	Y
13. Antenna transmission	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
<b>E. OTHER USES</b>												
1. Open air storage	N	N	N	N	N	N	N	BA	Y	Y	N	N
2. Open-air storage of junk, including inoperable motor vehicles, except in an approved auto salvage yard, except that the Zoning Board of Appeals may issue a special permit for the storage of bona fide antique vehicles if such storage is not visible from abutting properties or public ways	N	N	N	N	N	N	N	N	N	N	N	N
3. Dumping of residential, commercial or industrial waste	N	N	N	N	N	N	N	N	N	N	N	N
4. Access through more restricted district to reach portion of same lot located in less restricted district	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
5. Mobile Homes unless legally existing at the time of adoption of this chapter or exempt under MGL C.40A, Section 3	N	N	N	N	N	N	N	N	N	N	N	N

## **181.32 ACCESSORY USES**

Accessory uses shall be permitted in all districts on the same lot with the principal use, subject to the following sections.

**181.321 Residential Districts.** The following regulations govern accessory uses in the residential districts:

181.3211. *Private Garage.* A private garage or carport for not more than four (4) motor vehicles per unit, solar system, greenhouse, tool shed, barn, patio, garden, swimming pool or tennis court, provided that such facilities are used only by the residents and their guests.

181.3212. *Home Occupation.* See Section 181.33.

181.3213. *Renting of Rooms or Boarding.* The renting of rooms or boarding for not more than two (2) persons, except that, by special permit from the Board of Appeals, the renting of rooms or boarding to more than two (2) persons may be allowed. In either case, the service shall be operated by a resident owner of the premises.

181.3214. *Small Family Day Care.* Family child-care home for six (6) or fewer children if licensed by the Commonwealth of Massachusetts Office for Children.

181.3215. *Large Family Day Care.* A child-care center of more than six (6) children may be authorized by a special permit from the Zoning Board of Appeals.

181.3216. *Prohibited Residential Accessory Uses.* The following accessory uses are prohibited:

- a. Contractor's yard.
- b. Landscaping business.
- c. Motor vehicle repair or service.

**181.322 Institutional Districts.** Accessory uses permitted in the Institutional districts (MS & FSC) shall be as follows:

181.3221. *Parking.* Parking for employers, employees, customers and other users of the institution.

181.3222. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that the trucks or trailers are necessary for the conduct of the use.

181.3223. *Employee Facility.* Restaurant, cafeteria, recreational facility, or similar facility for the convenience of, and use by, the employees or users of the institution.

181.3224. *Gift Shop.* Gift shop for use by the general public.

181.3225. *Medical Laboratory.* A medical laboratory or facility for testing, analytical, diagnostic evaluation, pharmaceutical or other health care support services, equipment or procedures, whether or not owned by or affiliated with a hospital.

181.3226. *Medical Offices.* Medical offices of one or more providers of medical, dental, surgical, mental health, rehabilitation or other medical services or health care support services, equipment or procedures, whether or not owned by or affiliated with a hospital.

181.3227. *Out-Patient Clinic.* Out-patient clinic for the provision of ambulatory health care, licensed for the provision of such services by an appropriate governmental authority if and to the extent required by applicable law, including the sale, servicing or repair of medical devices and equipment to the general public whether or not owned by or affiliated with a Hospital, Out-Patient Clinic or Nursing or Convalescent Home.

181.3228. *Pharmacy.* A pharmacy for the sale of prescription and/or non-prescription drugs, medications, and medical supplies.

181.3229. Any accessory use listed in Section 181.323 below.

**181.323 Business Districts.** Accessory uses permitted in the business districts shall be as follows:

181.3231. *Parking.* Parking for employers, employees, customers and other users of the business.

181.3232. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that trucks or trailers are necessary for the conduct of the principal use.

181.3233. *Drive-up and Walk-up Facilities.* Drive-up and walk-up facilities for banks, restaurants and other businesses may be authorized after site plan review pursuant to Section 181.94.

181.3234. *Seasonal Outdoor Dining.* Seasonal outdoor dining, such as a sidewalk cafe, if an accessory use to a lunchroom, restaurant, cafeteria or similar place, provided that if situated upon publicly owned land, evidence of a lease and/or license must be provided to the Building Commissioner.

**181.324 Industrial Districts.** Accessory uses permitted in the industrial districts shall be as follows:

181.3241. *Parking.* Parking for employers, employees, customers and other users of the business.

181.3242. *Truck or Trailer Parking.* Truck or trailer parking, cleaning and washing, provided that trucks or trailers are necessary for the conduct of the principal use.

181.3243. *Parking.* Parking for employers, employees, customers and other users of the business.

181.3244. *Employee Facility.* Restaurant, cafeteria, recreational facility, or similar facility for the convenience of, and use by, the employees or users of the institution.

181.3245. *Salesroom.* A salesroom for selling at retail to the general public of any goods assembled, packaged, finished, processed or otherwise manufactured on the premises.

181.3246. *Drive-up and Walk-up Facilities.* Drive-up and walk-up facilities for banks, restaurants and other businesses may be authorized after site plan review pursuant to Section 181.94.

**181.325 Nonresidential Accessory Uses.** Except as otherwise set forth herein, any use permitted as a principal use is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land; any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land; any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 181.94, shall also require site plan review and approval.

## **181.326 Miscellaneous Accessory Uses.**

181.3261. *Accessory Scientific Uses.* Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.

181.3262. *Major Recreational Equipment.* No major recreational equipment shall be used for living or housekeeping purposes when stored on a residential lot, or in any location not approved for such use.

181.3263. *Adult Day Care.* Adult day care facilities are allowed as an accessory use by special permit from the Board of Appeals in all districts.

181.3264. *Commercial Motor Vehicle Parking.* No commercial vehicle having more than 12,500 pounds manufacturer's GVW rating may be parked on any residential premises except in an enclosed garage or building. The Board of Appeals may grant a special permit to vary this requirement.

181.3265. *Small Wind Energy System.* Small Wind Energy Systems, also referred to as "SWES" are permitted as an accessory use in any zoning district by Special Permit in accordance with Section 181.63. **Added March 6, 2008**

### **181.33 HOME OCCUPATIONS**

*(amended June 19, 2013)*

Definition: A home occupation is defined as either:

1. A home business, profession or trade conducted entirely by a resident of the premises entirely within the residence, or
2. Home Based Contractor business that is conducted by a resident of the premises accessory to a residential use and consisting of only an office and no external storage of materials.

181.331 Home Occupation - As of Right. A home occupation may be allowed as of right, provided that it:

181.3311 is conducted by the person(s) occupying the dwelling as a primary residence;

181.3312. is clearly incidental and secondary to the use of the premises for residential purposes;

181.3313. does not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution;

181.3314. does not utilize exterior storage of material or equipment;

181.3315. does not exhibit any exterior indication, including signs, of its presence or any variation from residential appearance, provided however a single motor vehicle, not in excess of 10,000 lbs. manufacturer gvw, exhibiting the name and particular of the business, shall be allowed.

181.3316. does not produce any customer, pupil or client trips to the occupation site and has no nonresident employees; and,

181.3317. is registered as a business with the City Clerk.

181.332 Home Occupation – By Special Permit. A home occupation may be allowed by special permit issued by the Board of Appeals, provided that it:

181.3321. fully complies with Sections 181.3312, 181.3313, 181.3314, and 181.3317, above.

181.3322. is conducted by the person(s) occupying the dwelling as primary residence and, in addition to the residents of the premises, by not more than one additional employee;

181.3323. does not exhibit any exterior indication of its presence, or any variation from residential appearance, except for a sign or name plate in compliance with Section 181.53; and,

181.3324. a special permit for such use is granted by the Board of Appeals, subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, off-street parking, and maximum number of daily custom vehicle trips. Such special permit shall be limited to five years, or the transfer of the property, whichever first occurs.

## **181.34 ACCESSORY APARTMENTS**

**181.341 Purpose.** For the purpose of (a) providing small additional dwelling units to rent without adding to the number of buildings in the City, or substantially altering the appearance of the City, (b) providing alternative housing options for elder residents, and (c) enabling owners of single family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership, the Board of Appeals may grant a special permit in accordance with the following requirements.

**181.342 Procedures.** Accessory apartments may be allowed by special permit, which shall lapse every five years, by the Board of Appeals, in accordance with the provisions of Section 181.93, and provided that each of the following additional conditions are met.

### **181.343 Conditions.**

181.3431. A plot plan, prepared by a Registered Land Surveyor, of the existing dwelling unit and proposed accessory apartment shall be submitted to the Board of Appeals, showing the location of the building on the lot, proposed accessory apartment, location of any septic system and required parking. A mortgage inspection survey, properly adapted by a surveyor, shall be sufficient to meet this requirement.

181.3432. Certification by affidavit shall be provided that one of the two dwelling units shall be occupied by the owner of the property, except for *bona fide* temporary absence.

181.3433. Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 800 sq. ft. in floor space and shall be located in the principal residential structure on the premises.

181.3434. The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:

- a. Any accessory apartment construction shall not create more than a 15% increase in the gross floor space of the structure existing as of July 17, 2001.
- b. Any stairways or access and egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.

- c. Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.

181.3435. Conditions for Issuance and Renewal of Special Permits. The initial term and subsequent terms of a special permit for an accessory apartment shall expire after five years. Subsequent special permit issuances for existing accessory apartments shall be granted after certification by affidavit is made by the applicant to the Board of Appeals that the accessory apartment has not been extended, enlarged, or altered to increase its original dimensions, as defined in the initial special permit application, and that the unit is still owner occupied.

181.3436. Decision. Special permits for an accessory apartment may be issued by the Board of Appeals upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 181.93 of this Zoning Ordinance, governing special permits.

### **181.35 NONCONFORMING USES AND STRUCTURES**

**181.351 Applicability.** This Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this Zoning Ordinance, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

**181.352 Nonconforming Uses.** The Board of Appeals may issue a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- 181.3521. Change or substantial extension of the use;
- 181.3522. Change from one nonconforming use to another, less detrimental, nonconforming use.



**181.353 Nonconforming Structures.** The Board of Appeals may issue a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- 181.3531. Reconstructed, extended or structurally changed;
- 181.3532. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

**181.354 Variance Required.** The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals; provided, however, that this provision shall not apply to nonconforming single and two family residential structures, which shall be governed by Section 181.355, below.

**181.355 Nonconforming Single and Two Family Residential Structures.** Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon the issuance of a building permit after a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

181.3551. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient area, where the alteration will also comply with all of said current requirements.

181.3552. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements.

181.3553. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

181.3554. alteration to the side or face of a structure which encroaches upon a required yard or setback area, where the alteration will not encroach upon such area to a distance greater than the existing structure; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

181.3555. alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded.

In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**181.356 Abandonment or Non-Use.** A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Ordinance, unless a special permit is issued pursuant to Section 181.3561, below.

181.3561. *Special Permit for Nonconforming Structures Abandoned or Not Used for More than Two Years.* Notwithstanding the provisions of G.L. c. 40A, s. 6, the City Council may grant a special permit authorizing the reconstruction, alteration, or rehabilitation, and occupancy and use of a nonconforming structure that has been abandoned or not used for a period of more than two years. To be eligible for such special permit, the structure must have architectural or other features deemed appropriate for rehabilitation by the City Council.

**181.357 Reconstruction after Catastrophe or Demolition.** A nonconforming structure may be reconstructed after a catastrophe or after demolition, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two years after such catastrophe or demolition, and provided that the building(s) as reconstructed shall have no greater violation of setback, yards, lots coverage or height as existed on the lot prior to demolition, provided further that in any event the new side yard setbacks shall not be less than five feet. In the event that the proposed reconstruction would cause the structure to exceed these limits, a special permit shall be required from the Board of Appeals.

**181.358 Reversion to Nonconformity.** No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

## 181.4 DIMENSIONAL REGULATIONS

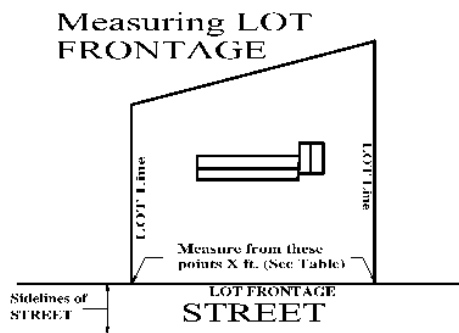
### 181.41 STANDARD DIMENSIONAL PROVISIONS

**181.411 General.** No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless exempted by this Ordinance or by statute.

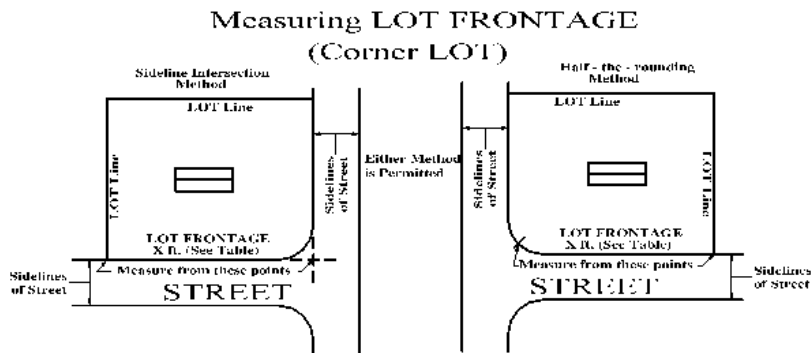
**181.412 Methods for Calculating Dimensional Requirements.** The following shall apply when calculating dimensional requirements:

181.4121. *Lot area.* Lot area shall be determined by calculating the area within a lot, including any area within the lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area.

181.4122. *Frontage.* Frontage shall be measured in a continuous line along the side line of a street between the points of intersection of the side lot lines with the street.

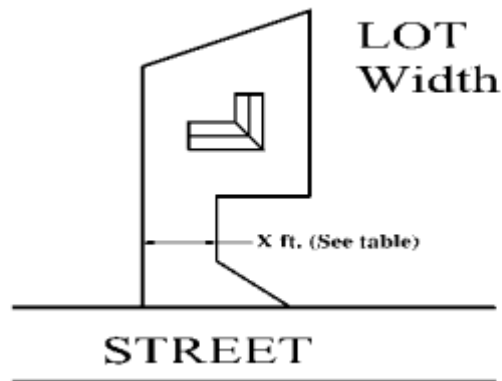


- a. Frontage for a corner lot may be measured either to the point of intersection of the extension of the side line of the rights-of-way or to the middle of the curve connecting the side line of the intersecting streets.



- b. If a lot has frontage on more than one (1) street, the frontage on one (1) street only may be used to satisfy the minimum lot frontage.

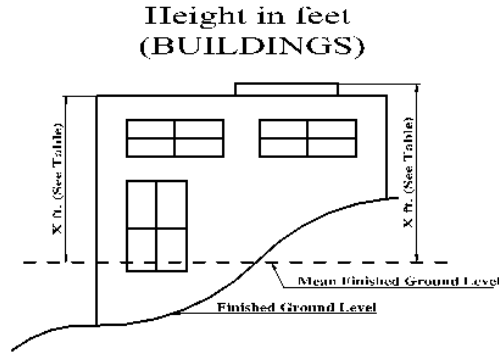
181.4123. *Lot width.* Lot width shall be determined by measuring the diameter of the largest circle which can be located along a continuous but not necessarily straight line from the lot frontage to the principal structure on the lot without the circumference intersecting the side lot lines.



181.4124. *Front yards.* Front yards shall be the distance, measured in a straight line, between the lot frontage and the nearest point of the principal building or any structure attached to the principal building, including garages. A lot having frontage on two (2) or more streets shall have two (2) or more front yards, each of which shall comply with the requirements of the front yard provisions. In no case shall any building or structure be located closer to the side line of a street than the minimum required front yard.

181.4125. *Side and rear yards.* Side and rear yards shall be the distance, measured in a straight line, from the nearest point of the principal building or structure to each side or rear lot line. A side yard shall extend only to the rear of the building.

181.4126. *Height of structures.* Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire structure to the highest extension of any part of the structure.



181.4127. Structures such as smokestacks, chimneys, flagpoles, silos and other similar structures; the architectural elements of a building such as cupolas, steeples; wind energy systems authorized under this ordinance, and temporary testing towers for the purpose of testing the wind speeds to determine the potential for wind energy turbines, are exempt from the height restrictions of this ordinance, except that testing towers shall be allowed for a period not to exceed two (2) years from its installation, except as this time may be extended by Special Permit from the Planning Board.

**Amended March 6, 2008**

**181.413 One Structure per Lot.** Except as otherwise provided herein, not more than one principal structure may be placed on any lot.

**181.414 Table of Dimensional Requirements.**

**TABLE OF DIMENSIONAL REQUIREMENTS**

<b>DISTRICT</b>	<b>MIN. LOT AREA w/o MUNICIPAL SEWER (SQ. FT.)**</b>	<b>MIN. LOT AREA (SQ. FT.)**</b>	<b>MIN. LOT FRONTAGE (FT.)**</b>	<b>MIN. LOT WIDTH (FT.)</b>	<b>MIN. FRONT YARD (FT.)</b>	<b>MIN. SIDE YARD (FT.)</b>	<b>MIN. REAR YARD (FT.)</b>	<b>MAX. HEIGHT (FT.)</b>
<b>RR</b>	65,000	30,000	175	50	40	25	50	36
<b>RA-1</b>	65,000	15,000	125	50	40	20	40	36
<b>RA-2</b>	65,000	12,500	100	50	30	15	35	36
<b>RB</b>	65,000	10,000	80	50	25	15	30	40
<b>RC</b>	65,000	10,000	80	50	25	15	30	40
<b>NBD</b>	65,000	NONE	20	20	NONE	NONE	NONE	36
<b>CBD</b>	65,000	NONE	20	20	NONE	NONE	NONE	NONE
<b>C&amp;A</b>	65,000	NONE	20	20	NONE	NONE	NONE	36
<b>LI</b>	65,000	43,560	20	20	50	50	50	75*
<b>I</b>	65,000	NONE	20	20	20	25	20	75*
<b>MS</b>	65,000	15,000	125	50	40	50	50	65
<b>FSC</b>	65,000	5,000	50	50	15	10	10	36

\* A greater height may be authorized by Special Permit. See Section 181.427

\*\* Note increased Lot size & Lot Frontage requirements in Water Resource Protection Overlay District. See Section 181.827

## **181.42 SPECIAL PROVISIONS AND EXCEPTIONS**

### **181.421 Yard Exceptions in Residential Districts.**

181.4211. Tool sheds, patios, gardens and similar facilities and structures not exceeding one hundred twenty (120) square feet may be located in any portion of a rear yard, provided that they are set back three (3) feet from the side or rear lot line and, further, provided that not more than twenty five percent (25%) of the total side or rear area is covered by buildings.

181.4212. Uncovered steps, ramps or terraces, bulkheads, chimneys, eaves, roof overhangs, cornices, signposts, pedestrian lighting and driveways shall be exempt from the setback requirements.

181.4213. Swimming pools and uncovered decks shall be set back at least six (6) feet from any side or rear lot line.

181.4214. Walls or fences are permitted, provided that no wall or fence shall exceed six (6) feet in height in a front yard; stockade-type fences shall not exceed six (6) feet in height and chain-link-type fences shall not exceed eight (8) feet in height; and the height of a fence may gradually increase to the limits of six (6) or eight (8) feet from the fence in the front yard at the minimum setback; provided, however, that exceptions to this Section may be authorized by Special Permit from the Board of Appeals.

181.4215. Corner clearance. On a corner lot in any district, in order that visibility is unobstructed at intersections, no sign fence, wall, tree, hedge, or other vegetation between three (3) and eight (8) feet above the established street grades shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line adjoining such street lines at points which are twenty (20) feet distance from the point of intersection measured along such street lines.

181.4216. *Front yard exception.* In the RB and RC districts, the Board of Appeals may authorize by Special Permit a front setback less than that required in Section 181.414, where at least 50% of the existing buildings fronting on the same street on the same block and within a distance of one hundred fifty (150) feet of the applicant's lot have less than the required front yard depth. The Board of Appeals may authorize the average front yard depth in this area, but in no case shall a structure be set back less than 10 feet. The burden of showing that a lesser setback is justified under this section shall be on the applicant.

**181.422 Frontage Exceptions for Cul-de-sac Lots.** The minimum lot frontage for a lot may be reduced to fifty (50) feet per lot, provided that each lot front is entirely on a cul-de-sac with a side line radius of sixty-seven and five-tenths (67.5) feet or greater and, further, provided that no more than five (5) such reduced-frontage lots shall have frontage on a cul-de-sac and, further, provided that each such lot shall have twice the lot area required.

*(See also Section 181.74, "Rear Lots")*

**181.423 Multiple Principal Structures.** Except in the residential districts, more than one principal nonresidential structure may be erected on a lot, subject to the following conditions:

181.4231. No principal building shall be located in relation to another principal building on the same lot, or on an adjacent lot, so as to cause danger from fire;

181.4232. All principal buildings on the lot shall be served by access ways suitable for fire, police, and emergency vehicles;

181.4233. All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

**181.424 Split Lots.** Where a district boundary line divides any lot existing at the time such line is adopted, the regulations of any district in which the lot has frontage on a street may be extended by special permit from the board of appeals not more than thirty (30) feet into the other district; provided, however, that residential uses may be extended as of right into the other district not more than thirty (30) feet.

**181.425 Certain Undersized (Infill) Lots.** In the RB, RC, ~~CBD~~<sup>\*</sup> and College Districts, by special permit from the Planning Board, a lot with at least 5,000 square feet may serve as the location for a single-family dwelling. Any of the dimensional requirements of this Ordinance, such as lot frontage, width, building setbacks, etc. may also be reduced or eliminated by this Special Permit, provided that the Planning Board makes a determination that the proposed dwellings are consistent in scale and setbacks with abutting structures, and those in the immediate neighborhood. The Planning Board may impose conditions for the use of such infill lots, including, but not limited to, landscaping, and maximum lot coverage.

*Amended July 7, 2004*

**181.426 Residential Uses by Right on Main Street.** Notwithstanding the provisions of the Table of Principal Use Regulations, residential uses are permitted by right in the CBD-zoned portion of the Urban Renewal Area provided they are located above the first floor of the structure, as viewed from Main Street.



**181.427 Height Exception in Industrial Districts.** Notwithstanding the provisions of Section 181.414, Table of Dimensional Requirements, structures in the Industrial and Limited Industrial districts with a height of greater than 75 feet may be allowed by Special Permit from the Board of Appeals, provided the Board makes a finding that the additional height is necessary to accomplish the intended industrial process.

**181.428 Height and Dimensional Exceptions in FSC District.** *Added October 9, 2008.*

The Planning Board may grant a Special Permit allowing the exceptions from the provisions of the Zoning Ordinance described in subsections 181.4281 through 181.4283 for principal and accessory uses and structures proposed on lots in the College District (FSC) if such lots have an area of greater than 40,000 square feet. The Planning Board may grant the Special Permit upon written findings, in its decision, that the lot and the exceptions applied for meet the criteria for issuance of a Special Permit described in Section 181.93. In granting the Special Permit, the Planning Board may impose conditions on building and on site design in order to ensure that the site and the building, on completion of the proposed project, is compatible with the architectural and landscape design of properties in the surrounding neighborhood and consistent with the improvement of the FSC District.

181.4281. Notwithstanding the provisions of Section 181.31, Principal Uses, the Planning Board may permit more than one principal use, including residential use on a single lot and more than one principal use in a single structure.

181.4282. Notwithstanding the provisions of Section 181.413, One Structure per Lot, the Planning Board may permit more than one principal structure on a single lot.

181.4283. Notwithstanding the provisions of Section 181.414, Table of Dimensional Requirements, the Planning Board may permit structures with a front setback of less than 15 feet and a height greater than 36 feet but no more than 60 feet.

## **SECTION 181.5 GENERAL REGULATIONS**

### **181.51 OFF-STREET PARKING**

**181.511 General Requirements.** In all districts except the Municipal Parking Overlay District, (*see Section 181.85*) there shall be provided and maintained off-street automobile parking spaces in connection with the new construction, expansion or increase, by units or dimensions, of buildings, structures and use, in accordance with the Table of Off-Street Parking Requirements, Section 181.512

181.5111. Off-street parking spaces required herein shall be provided either on the lot with the principal use or on any other associated premises within eight hundred (800) feet.

**181.512 Table of Off-Street Parking Requirements.**

**TABLE OF OFF-STREET PARKING REQUIREMENTS**

<b>PRINCIPAL USE</b>	<b>PARKING REQUIREMENT</b>
A. RESIDENTIAL USES	
1. Single-family dwelling	Two parking spaces for each dwelling unit
2. Two-family dwelling	Two parking spaces for each dwelling unit
3. Three-family dwelling	Two parking spaces for each dwelling unit
4. Multifamily housing	Two parking spaces for each dwelling unit
5. Lodging or boarding house	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
6. Assisted or Independent Living Facility	As set forth in Section 181.73
7. Flexible development	As set forth in Section 181.71
8. Planned Unit Development	As set forth in Section 181.72

<b>B. EXEMPT AND INSTITUTIONAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Use of land or structures for religious purposes	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space
3. Family day care home, small	One space per each non-resident employee, plus one space per each four children, plus spaces required for dwelling unit(s)
4. Family day care home, large	One space per each non-resident employee, plus one space per each four children, plus spaces required for dwelling unit(s)
5. Adult day care facility	One space per each non-resident employee, plus one space per each four adults, plus spaces required for dwelling unit(s)
6. Child care facility	One space per each employee, plus one space per each four children
7. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Not applicable

<b>B. EXEMPT AND INSTITUTIONAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
8. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	As determined by the Building Commissioner.
9. Cemetery	Not applicable
10. Municipal facilities	As determined by the Building Commissioner
11. Airport	As determined by the Building Commissioner
12. Essential services	As determined by the Building Commissioner
13. Hospital	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
<b>C. COMMERCIAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Nonexempt agricultural use	Not applicable
2. Nonexempt farm stand for wholesale or retail sale of products	Not applicable
3. Nonexempt educational use	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space

<b>C. COMMERCIAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
4. Veterinary care	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
5. Commercial kennel	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
6. Lodge or club	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space
7. Nursing home	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
8. Funeral home	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space

<b>C. COMMERCIAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
9. Motel or hotel	One (1) parking space for each sleeping room for single or double occupancy; or, where not divided into such rooms (as in a dormitory or ward): one (1) space for each two (2) beds
10. Retail stores and services not elsewhere set forth	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
10A. Garden center, florist or commercial greenhouse with or without open-air display of products	See retail
10B. Other open-air retail sales	See retail
11. Motor vehicle and equipment sales	See retail
12. Motor vehicle repair or body shop	As determined by the Building Commissioner
13. Motor vehicle service station or car wash	As determined by the Building Commissioner
14. Restaurant	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space
14A. Seasonal outdoor dining	Not applicable
15. Restaurant, fast-food	See restaurant

<b>C. COMMERCIAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
16. Business or professional office, including medical	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
17. Bank, financial agency	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
18. Amusement facility	One (1) parking space for each four (4) seats or, where benches are used, one (1) space for each eight (8) linear feet of bench. Where no fixed seats are used (as in a museum), for each eighty (80) square feet of public floor area, there shall be one (1) parking space
19. Commercial recreation	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
20. Golf course	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board

<b>C. COMMERCIAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
21. Personal service establishment	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
22. General service establishment	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
23. Adult use	As set forth in Section 181.61
24. Wireless Communications Facility	One space
25. Building trade shop	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
26. Commercial parking facility	Not applicable
27. Bed and Breakfast	One space for each room for guests, plus required spaces for dwelling unit(s)
28. Drive-up or walk-up facility for the dispensation of goods or services	Not applicable



<b>D. INDUSTRIAL USES</b>	<b>PARKING REQUIREMENT</b>
1. Earth removal or timber harvesting	Not applicable
2. Light manufacturing	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
3. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	See Light Manufacturing
4. Manufacturing	See Light Manufacturing
5. Construction yard	As determined by the Building Commissioner
6. Vehicle salvage yard	Not applicable
7. Transportation terminal	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board
8. Lumberyard	Adequate parking spaces to accommodate, under normal conditions, the cars of occupants, employees, members, customers, clients, and visitors to the premises, as may be determined by the Planning Board

<b>D. INDUSTRIAL USES (cont.)</b>	<b>PARKING REQUIREMENT</b>
9. Research and testing	One (1) parking space for each three hundred (300) square feet of gross floor area, exclusive of storage space, on the ground floor plus one (1) additional space for each four hundred (400) square feet of gross floor area, exclusive of storage space, on all other floors
10. Publishing and printing	See Research and Testing
11. Computer software development	See Research and Testing
12. Computer hardware development	See Research and Testing
13. Antenna transmission	Not applicable
<b>E. OTHER USES</b>	<b>PARKING REQUIREMENT</b>
1. Open air storage	Not applicable
2. Open-air storage of junk, including inoperable motor vehicles, except in an approved auto salvage yard, except that the Zoning Board of Appeals may issue a special permit for the storage of bona fide antique vehicles if such storage is not visible from abutting properties or public ways	Not applicable
3. Dumping of residential, commercial or industrial waste	Not applicable
4. Mobile Homes unless legally existing at the time of adoption of this chapter or exempt under MGL C.40A, Section 3	Not applicable

**181.513 Special Permit.** Any parking requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board upon a finding that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit. Such cases might include:

181.5131. Use of a common parking lot for separate uses having peak demands occurring at different times;

181.5132. Age or other characteristics of occupants of the facility requiring parking which reduces auto usage;

181.5133. Peculiarities of the use which make usual measures of demand invalid;

181.5134. Availability of on-street parking or parking at nearby municipally or publicly owned facilities including, without limitation, the parking facilities owned by the Montachusett Regional Transit Authority (MART) although located nearby in an abutting district. *Amended October 9, 2008.*

181.5135. Where a special permit is granted, a reserve area, to be maintained indefinitely as landscaped open space, may be required sufficient to accommodate the difference between the spaces otherwise required and the spaces reduced by special permit. The parking/site plan shall show (in dotted outline) how the reserve area would be laid out in to provide the otherwise required number of spaces.

**181.514 Design Standards.**

181.5141. Parking areas shall be clearly delineated and shall be provided with a permanent dust free surface and adequate drainage.

181.5142. All parking stalls shall be standard dimension and shall be laid out and striped in compliance with the following minimum provisions.

<b>ANGLE OF PARKING (in degrees)</b>	<b>WIDTH OF PARKING STALL (feet)</b>	<b>PARKING STALL LENGTH OF LINE (feet)</b>	<b>WIDTH OF MANEUVERING AISLE (feet)</b>
90° (2-way)	9.0	18.5	24.0
60° (1-way)	10.4	22.0	18.0
45° (1-way)	12.7	25.0	14.0
Parallel (1-way)	8.0	22.0	14.0
Parallel (2-way)	8.0	22.0	18.0

181.5143. Each off-street lot shall have an access driveway of at least twenty-four (24) feet but no more than thirty-six (36) feet.

181.5144. Off-street parking shall be set back at least three (3) feet from any property line, building and sidewalk.

**181.515 Common Parking Areas.** Common parking areas may be permitted for the purpose of servicing two (2) or more principal uses on the same or separate lots, provided that:

181.5151. Evidence is submitted that parking is available within five hundred (500) feet of the premises, which satisfies the requirements of this ordinance and has excess capacity during all or part of the day, which excess capacity shall be demonstrated by competent parking survey conducted by a traffic engineer registered in the Commonwealth of Massachusetts.

181.5152. A contract, agreement, or suitable legal instrument acceptable to legal counsel, shall be filed with the application for building permit, occupancy permit, or special permit for exception which shall specify the location of all spaces to be jointly used, the number of such spaces, the hours during the day that such parking shall be available, and the duration or limit, if any on such parking.

181.5153. Any reduction in area required for parking because of these joint use provisions may be required as reserved landscaped open space; such area shall be computed at the rate of four hundred (400) square feet per parking space.

181.5154. Nothing in this section shall relieve the owner from providing parking facilities in accordance with this ordinance if subsequently the joint use of parking facilities shall terminate.

**181.516 Landscaping Requirements for Parking Areas.**

181.5161. Parking areas with more than 10 spaces shall contain 150 square feet of planted areas for every 1,000 square feet of parking proposed, including aisles, appropriately situated within the parking area. Such planted area shall contain an appropriate mix of shade trees and other plants.

181.5162. Parking lots loading areas, and service areas shall be screened from view, to the extent feasible, from all adjacent residentially zoned properties, by the use of planted areas, berms, natural contours or natural vegetation, fences or a combination of the above.

181.5163. Buffer strips between any parking lot serving a multifamily or nonresidential use and the rear or side lot lines of property in a Residential District shall meet the following specifications:

<b>Number of Spaces in Lot</b>	<b>Depth of Buffer Strip</b>
Up to 10	10 feet
11-24	10 feet plus one foot for each space in excess of 10 spaces
25 or more	25 feet

## **181.52 OFF-STREET LOADING**

**181.521 General.** All buildings, requiring the delivery of goods, supplies, or materials, or shipments of the same shall have bays and suitable maneuvering space for off-street loading of vehicles in accordance with the following regulations.

**181.522 Retail Stores and Services.** For each establishment with a net floor area from five thousand (5,000) to eight thousand (8,000) square feet, at least one (1) berth. Additional space is required at the rate of one (1) berth per eight thousand (8,000) square feet or nearest multiple thereof. Where two (2) or more such establishments are connected by a common wall such as in a shopping center, common berths may be permitted for the use of all establishments at the rate of one (1) berth space per eight thousand (8,000) square feet in the entire shopping center.

**181.523 Office Buildings.** For each office building with net area of four thousand (4,000) square feet or more, at least one (1) berth shall be provided.

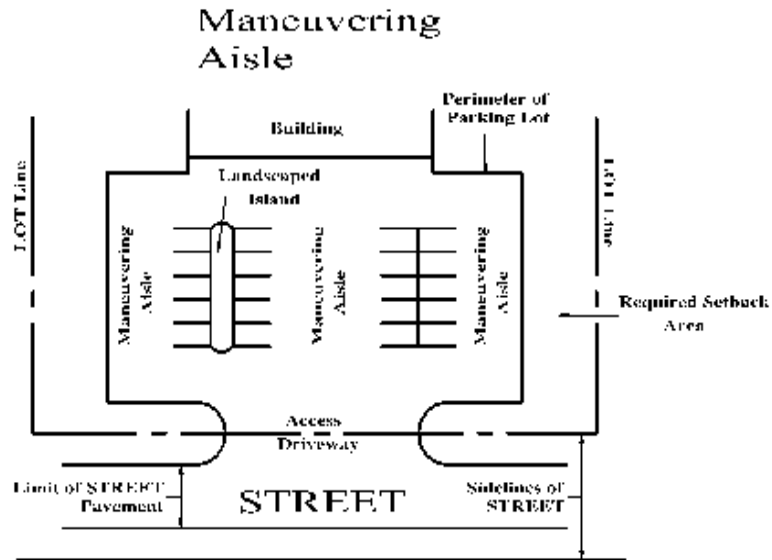
**181.524 Manufacturing, Industrial Uses or Warehousing.** For manufacturing, industrial uses or warehousing and similar uses up to eight thousand (8,000) square feet of net floor area, at least one (1) berth shall be provided. For larger floor areas, additional berths shall be provided as required by the inspector of buildings adequate for off-street loading and unloading.

**181.525 Screening.** Loading areas shall provide screening in accordance with Section 181.54.

**181.526 Size.** Loading bays shall not be less than twelve (12) feet in width, sixty-five (65) feet in length, and fourteen (14) feet in height, exclusive of driveway and maneuvering space. Required off-street loading bays and maneuvering spaces shall be located entirely on the same lot as the building being served.

**181.527 On-Premises.** No loading facility shall be designed to require trucks to queue on a public way while awaiting off-loading. No loading facility shall be designed to require vehicles to back onto a public way; all turning maneuvers shall be accommodated on the premises.

**181.528 Special Permit.** Any loading requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit.



## **181.53 SIGNS AND ADVERTISING DEVICES**

**181.531 General Regulations.** The following regulations shall apply in all districts.

181.5311. No exterior sign or advertising device shall be erected, except as provided herein.

181.5312. No sign which requires a sign permit shall be erected, except in the exact location and manner described in the permit.

181.5313. No sign shall be erected that in any way creates a traffic hazard or obscures or confuses traffic control.

181.5314. Any sign which advertises or identifies products, businesses, services or activities which are no longer sold, located or carried on at the premises shall be removed by the permit holder or property owner within six (6) days after notice by the Building Commissioner.

181.5315. *Special Permit.* Notwithstanding the provisions set forth in this Section 181.53, the Planning Board may authorize larger signs or a greater number of signs by the grant of a special permit, where site conditions warrant such relief which shall not be detrimental to the area.

**181.532 Sign Permits.** No sign which requires a sign permit shall hereafter be constructed, except in conformity with a sign permit from the Building Commissioner. All signs shall require sign permits except as provided in Section 181.533.

181.5321. *Application.* All applications for signs requiring sign permits shall be obtained from the Building Commissioner and shall include at least the location, by street number, of the proposed sign; the name and address of the sign owner and the owner of the premises, or his or her agent, where the sign is to be located, if other than the sign owner; a scale drawing showing the proposed construction, method of installation or support, colors, dimensions, location of the sign on the site and method of illumination; such other pertinent information as the Building Commissioner may require to ensure compliance with the chapter and any other applicable law; and the application must be signed by the owner of the sign and the owner of the premises, or his or her agent, where the sign is to be located. The Building Commissioner shall have the authority to reject any sign permit application that is not complete when submitted.

181.5322. *Fees.* The City Council shall establish and from time to time review a sign permit fee which shall be paid as part of the sign permit application.



### **181.533 Signs Not Requiring Permits.**

181.5331. *Resident identification sign.* For single and two-family residential uses in any district, one (1) identification sign upon a lot identifying the occupants of the dwelling or one (1) sign identifying an authorized home occupation shall not require a sign permit. In the residential districts, one (1) sign identifying any other use which is conducted on the premises and is permitted in the residential districts shall not require a sign permit. All such signs shall not exceed eight (8) square feet of display area and, if lighted, shall use indirect white light only.

181.5332. *Governmental signs.* Signs erected and maintained by the City of Fitchburg, the Commonwealth of Massachusetts, or the federal government on any land, building or structure used by such agencies and any other signs at any location required by such agencies for public health or safety purposes shall not require sign permits.

181.5333. *Temporary construction signs.* Temporary construction signs for a new project, identifying the building, the owner or the intended occupant and the contractor, architect and engineers, which shall not be illuminated nor in excess of sixty-four (64) square feet of display area, shall not require sign permits. Such signs shall not be erected prior to the issuance of a building permit and shall be removed within seven (7) days of completion of the construction or issuance of the occupancy permit, whichever occurs first.

181.5334. *Fuel pump signs.* Fuel pump signs on service station fuel pumps identifying the name or type of fuel and price thereof shall not require sign permits.

181.5335. *Window signs.* Window signs in the business or industrial districts shall not require permits and shall not be included in calculating the total allowable signage.

181.5336. *Real estate signs.* Real estate signs pertaining to the lease or sale of a building or of the premises shall not require sign permits, provided that such signs are six (6) square feet or less in area in residential areas and thirty-two (32) square feet in business and industrial areas.

181.5337. *Temporary off-premise signs.* Temporary off-premise signs which are used for the purpose of promoting a charitable event, a nonprofit event, a religious event, a public holiday or a civic event shall be permitted only by the written approval of the Building Commissioner, subject to the following minimum requirements. Such signs shall not be illuminated nor in excess of thirty-two (32) square feet. Such signs may only be erected fourteen (14) days prior to the promoted event and shall be completely removed within three (3) days following the conclusion of the promoted event. Such signs shall not exceed six (6) in number per promoted event, including any signs that may be placed on premise. The applicant for such temporary off-premise signs must secure in writing the permission of the property owner(s) on which the signs are proposed to be located. Approval shall be subject to the Building Commissioner finding that such sign(s) will not be detrimental or injurious to the neighborhood in which it takes place.

181.5338 *Political signs.* Political signs on private property shall not be regulated.

### **181.534 Signs in Residential Districts.**

181.5341. One (1) sign not exceeding six (6) square feet is allowed in connection with a lawfully maintained nonconforming use.

181.5342. One (1) bulletin or announcement board or identification sign for a permitted nonresidential building or use, not exceeding twelve (12) square feet in area, is permitted. For churches and institutions, two (2) bulletin or announcement boards or identification signs are permitted for each building, neither of which may exceed thirty-two (32) square feet in area. Such sign may be located within the required front yard, but no closer to the front lot line than one-half (½) the depth of said required front yard.

181.5343. No sign or other advertising device shall be of the exposed neon-tube type or exposed gas-illuminated-tube type; and any lighting of a sign or other advertising device shall be continuous, indirect light, installed in a manner that will prevent objectionable direct light from shining onto any street or adjacent property. No sign or advertising device shall be illuminated after 11:00 p.m., unless such sign or device is determined by the Building Commissioner to be designed to deter theft or vandalism.

**181.535 Signs in Business, Institutional, and Industrial Districts.** Any non-residential principal use permitted in the business, institutional or industrial districts may erect a sign or signs, subject to the following:

181.5351. *Height regulations.* The top of any freestanding sign shall not exceed twenty-four (24) feet nor, for any sign within two hundred (200) feet of center lines of intersecting streets, the bottom less than eight (8) feet above the mean ground level at its base.

181.5352. *Number of signs.*

- a. One (1) freestanding sign shall be allowed for each two hundred (200) feet of street frontage under single ownership.
- b. The number of attached signs on the premises is not restricted; however, the total area of all such signs shall conform to appropriate area requirements below.

181.5353. *Location requirements.*

- a. No freestanding sign shall be located nearer to the street line than one-half ( $\frac{1}{2}$ ) the distance of the required front yard and shall in no instance be closer than ten (10) feet from the street line.
- b. No sign shall be located in the required side or rear yard.
- c. No attached sign shall project more than twelve (12) inches out from the wall to which it is attached, except in the Central Business District where such signs may be authorized after site plan review. No part of any such overhanging sign shall be less than ten (10) feet from the ground.
- d. No sign shall be posted directly on the exterior surface of any wall, but rather shall be affixed to a substantial intermediary removable surface securely affixed to the structure.
- e. No sign shall be posted upon any tree, bridge, guidepost or pole.

181.5354. *Area requirements.*

- a. The area of a freestanding sign shall consist of the sum total of the area of all sides, except in the case of parallel back-to-back signs, where the area shall be computed as that of one (1) side.
- b. Freestanding signs shall not exceed one hundred (100) square feet in area.
- c. Attached signs mounted parallel to the face of the building are permitted, provided that they shall not exceed twenty percent (20%) of the building face they are viewed upon.
- d. The aggregate area of all signs, either attached or freestanding, shall not exceed two and one-half ( $2\frac{1}{2}$ ) square feet for each linear foot of building face parallel or substantially parallel to and visible from a public way. Where a building face fronts on and is visible from more than one (1) public way, the aggregate sign area facing each street frontage shall be computed separately. For open-lot uses, where a calculation of aggregate sign area based on building face dimensions would result in inequitable deprivation of identification, the Board of Appeals, by special permit, may authorize an aggregate sign area up to but not more than one (1) square foot for each one and one-half ( $1\frac{1}{2}$ ) linear feet of street lot line.
- e. No sign shall devote more than fifty percent (50%) of its area to an advertisement relating to any particular product, except establishments selling one (1) principal brand of product, such as gasoline stations and new car dealers.

**181.536 Prohibited Signs in All Districts.** The following signs are prohibited in all districts:

181.5361. Signs on utility poles or trees.

181.5362. All signs consisting of pennants, ribbons, streamers, spinners, strings of lights (unless associated with a specific holiday), revolving beacons, searchlights or animated signs.

181.5363. No sign shall, flash, rotate or make noise. No sign shall move or give the illusion of moving, except for indicators of time and temperature or barber poles.

181.5363. Off-premises Signs. Off-premises signs are prohibited in the City of Fitchburg.

**181.537 Maintenance of signs.** All signs shall be maintained by the owner of the property on which the sign is located in a safe, clean, sanitary and inoffensive condition, and all freestanding signs shall be kept free and clear of all obnoxious substances, rubbish and weeds. All signs requiring permanent insurance shall be inspected every two (2) years to assure their structural integrity. The owner of the property on which any sign is located shall cause this inspection by a sign installer and shall submit the results of such inspection to the Building Commissioner.

**181.538 Compliance with other regulations.** All signs shall comply with applicable requirement of the Building Code, the provisions of G.L. c. 93, ss. 29 through 33, inclusive, and to G.L. c. 93D, ss. 42-132 and 42-133 of this chapter and the rules and regulations of the Superintendent of Wires, in accordance with Article 600 of the Massachusetts Electrical Code. Whenever the requirements of such regulations differ from those prescribed in this chapter, those requirements which impose the greater restriction or higher standard shall govern.

## 181.54 GENERAL LANDSCAPING REQUIREMENTS

**181.541 Purpose.** This section is designed to accomplish the following objectives: to provide a suitable boundary or buffer between residential uses and districts and nearby nonresidential uses; to define the street edge and provide visual connection between nonresidential uses of different architectural styles; to separate different and otherwise incompatible land uses from each other in order to partially or completely reduce potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, intrusion from artificial light (including ambient glare), or view of signs, unsightly buildings or parking lots; to provide visual relief and a source of shade in parking lots and other areas, and protection from wind in open areas; to preserve or improve the visual and environmental character of the city, as generally viewed from residential or publicly accessible locations; and to offer property owners protection against diminution of property values due to adjacent nonresidential use.

**181.542 Applicability.** The requirements of this section shall apply to any nonresidential use and to multifamily dwellings.

181.5421. *Special Permit.* The Planning Board may vary any requirement of this Section 181.54 upon the grant of a special permit, after a finding that such variation will not result in substantial detriment to the area.

**181.543 Landscaping Requirements for Property Lines.** Residential districts shall be screened from nonresidential uses by means of plantings or maintenance of trees of a species hardy to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property used for nonresidential purposes. The buffer area may contain walks, sewerage, and wells, but no part of any building structure, or paved space intended for or used a parking area may be located within the buffer area. Planted buffer areas along property lines with residential districts shall be of the following minimum depth in each district, which may be reduced by special permit issued by the Planning Board upon a finding that such reduction will not detract from the objectives of this Section:

DISTRICT	CBD	NBD	C&A	I	LI	MS
Buffer Width (feet)	10	10	10	20	20	20

**181.544 Landscaping Requirements for Street Frontage of Nonresidential Uses.** A landscaped buffer area, except for approved access ways, at least twenty feet in width as measured from the layout of the roadway providing frontage, shall be established. The buffer area shall be planted with grass, medium height shrubs, and shade trees. Shade trees shall be planted at least every 35 feet along the road frontage.

**181.545 Planted Area Requirements.** Planted Areas shall contain an appropriate mix of the following types of plants. Plant species shall be appropriate to proposed use, siting, soils, and other environmental conditions. Where the Planning Board determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.

181.5451. Shrubs and hedges shall be at least 2½ feet in height at the time of planting, and have a spread of at least 18 inches.

181.5452. Grass is preferable to mulch where practical.

181.5453. Existing trees with a caliper of six inches (6") or more shall be preserved wherever feasible.

181.5454. Deciduous trees shall be at least two inches (2") in caliper as measured six inches (6") above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within ten years after planting. Evergreens shall be a minimum of eight feet (8') in height at the time of planting.

**181.546 Coordination with Site Plan Approval.** The Planning Board may require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at a scale sufficient to determine compliance with the specifications set forth in this Section.

**181.547 Maintenance of Landscaped Areas.** The owner of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section. All plant materials required by this chapter shall be maintained in a healthful condition. Dead limbs, refuse and debris shall be promptly removed. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Bark mulch and non-plant ground surface materials shall be maintained so as to control weed growth.

## **181.55 ENVIRONMENTAL PERFORMANCE STANDARDS**

**181.551 General.** No activity shall be permitted in any district unless it shall be in conformity with the standards for environmental protection included herein. The Building Commissioner may require an applicant for a building or occupancy permit to supply, at his expense, such technical evidence as is necessary in support of the application, and may, in connection therewith, and at the applicant's expense, obtain expert advice as necessary to review the plans and proposals of the applicant. After a permit is issued in accordance with this section, continuing compliance is required. When the Building Commissioner suspects a subsequent violation he may, as necessary obtain expert advice, which if the violation is established, shall be paid for by the violator, otherwise, by the city. The following standards are hereby established.

**181.552 Noise.** No use shall be permitted within the City which, by reason of excessive noise generated therefrom, would cause nuisance or hazard to persons or property, as set forth in 310 CMR 7.01.

**181.553 Solid Waste Storage.** Any accessory receptacle or structure with holding capacity of at least one hundred (100) cubic feet for temporary storage or solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be screened from all adjacent premises, lot lines and streets in accordance with Section 181.54 of this ordinance. No such accessory receptacle or structure shall be placed on a sidewalk without written authorization from the Department of Public Works.

### **181.554 Miscellaneous Standards.**

181.5541. No vibration, odor, light overspill, glare, or flashing shall be detectable without instruments at any lot line of a residential or institutional use.

181.5542. Cinders, dust, fumes, gases, odors, smoke, radiation, refuse or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state, federal, and city laws and regulations.

181.5543. No process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in excess of ten (10) percent in line voltage off the premises.

181.5544. All activities involving, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against hazards from fire and explosion, and with adequate fire fighting and fire suppression equipment standard in this industry. Burning of waste materials in the open contrary to state law is prohibited.

181.5545. All materials which may be edible by or attractive to rodents or insects shall, when stored in or outdoors, be stored in tightly closed containers.

**181.555 Stormwater Management and Erosion Control.** Stormwater management and erosion control shall be conducted in a manner consistent with the requirements of Chapter 154 of the Code of the City of Fitchburg.

**181.556 Illumination.**

181.5561. Overspill. Illuminated signs, parking lot lighting, building floodlighting, or other exterior lighting shall be so designed and arranged that their collective result does not create so much light overspill onto adjacent premises that it casts observable shadows, and so that it does not create glare from unshielded light sources.

181.5562. Unless all the following are met, it will be presumed that the above performance requirements are not satisfied. The Planning Board may grant a special permit for lighting which does not comply with these specifications if it determines that the performance standards of Section 181.5561 will still be met, and if the applicant documents that brightness of any sign or building element will not exceed twenty (20) foot lamberts in residence districts or fifty (50) foot lamberts in other districts.

- a. Internally illuminated signs on the premises collectively total not more than two hundred (200) watts unless not exceeding fifteen thousand (15,000) lumens.
- b. Externally illuminated signs employ only shielded lights fixed within three (3) feet of the surface they illuminate.
- c. Building floodlighting totals not more than two thousand (2,000) watts unless not exceeding fifty thousand (50,000) lumens.
- d. Exterior lighting fixtures other than signs are mounted not more than twenty (20) feet high.



## **SECTION 181.6 SPECIAL REGULATIONS**

### **181.61 SEXUALLY ORIENTED BUSINESSES**

**181.611 Purpose.** It is the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the City of Fitchburg; to promote the health, safety and general welfare of the citizens of the City of Fitchburg; and, to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses. This Section has neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

**181.612 Special Permit Requirement.** Sexually oriented businesses shall be permitted only by special permit granted by the City Council in accordance with the provisions of G.L. c. 40A, Section nine and all of the provisions of Zoning Ordinance and shall be subject to the restrictions, regulations, and standards set forth herein.

181.6121. Any one wishing to obtain a special permit to operate a sexually oriented business shall follow the procedures set forth in this Chapter at Section 181.93; and all rules, regulations and procedures applicable to the granting or denying of special permits or for imposing conditions upon special permits generally shall be applicable to the granting or denying of a special permit for sexually oriented business.

**181.613 Location.** Sexually oriented businesses shall be subject to the following restrictions as to their location:

181.6131. Sexually oriented businesses may only be located in Industrial, Limited Industrial, Commercial & Automotive, and Central Business Districts. Sexually oriented businesses shall comply with all of the regulations, requirements and restrictions for the zoning district in which the sexually oriented business is to be located.

181.6132. No sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business or one for which a building permit has been applied.

181.6133. A sexually oriented business cannot be operated in the same building, structure or portion thereof of, as another sexually oriented business.

181.6134. No sexually oriented business shall be permitted within 750 feet of any residential zone or the property line of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten or city boundary.

181.6135. *Measurement.* The measure of distance for purposes of subsections 181.6132 and 181.6134 shall be in a straight line without regard to intervening structures from the property line of the sexually oriented business to the property line of another sexually oriented business or to the property line of one of the structures described in subsection 181.6132 and 181.6134.

181.6136. *Lawful Preexisting Uses.* A sexually oriented business lawfully operating is not rendered a nonconforming use by the new location of a residential zone, church, place of worship, parish house, convent, public, parochial or private school, kindergarten, or a city boundary.

**181.614 Conditions.** In addition to the requirements generally applicable to special permits, special permits for sexually oriented businesses shall be subject to the following restrictions, standards and conditions.

181.6141. The premises of all sexually oriented businesses shall be constructed so as to include an anteroom, foyer, partition or the physical barrier on all customer entrances that will ensure that the interior of the premises is not observable from the exterior of the building.

181.6142. Exterior overhead lighting shall be provided with sufficient intensity to illuminate every place to which customers are permitted at an illumination of not less than one foot-candle as measured at floor level. This lighting must be maintained at all times during which any customer or patron is present in, or on, the premises. The exterior lighting sources shall be indirect, diffused, or with shielded fixtures, installed to reduce glare and the consequent interference with adjacent properties and streets.

181.6143. Any signs or advertisements placed around or on the building shall not visually depict or describe specified anatomical areas or specified sexual activities as defined herein, or nudity as defined by G.L. c. 272, Section 31.

181.6144. The City Council may impose reasonable restrictions and conditions as described in this zoning ordinance in Section 181.93 and as permitted by G.L. c. 40A, and in addition may impose restrictions or conditions regulating buffering, outdoor lighting, signage, parking, adequate ingress and egress from the site and to and from public roads and/or pedestrian movement. It may impose reasonable conditions to require appropriate landscaping and building aesthetics and it may impose reasonable conditions so as to avoid a site development layout which would result in negative environmental impacts or in a design incompatible with surrounding uses.

## **181.62 WIRELESS COMMUNICATIONS FACILITIES**

*(Note: See Section 181.10 for definitions of terms used in this section.)*

**181.621 Purpose.** The purposes of these regulations include: minimizing adverse impacts of radio communications facilities, satellite dishes, antennas, and their support structures to abutting properties and traveled ways; minimizing the overall number and height of such facilities to only what is essential; and promoting the integration of such facilities with existing buildings and the shared use of existing tower facilities to reduce the need for new individual towers.

**181.622 Special Permit Thresholds.** All Wireless Communications Facilities which exceed the following limits are required to obtain a Special Permit from the Planning Board:

181.6221. For a Building Mounted Antenna Support Structure, any support structure and/or attached Antenna, including satellite dishes:

(1) that protrudes more than five (5) feet vertically from the roof where it is mounted, or, in the case of a flat roof, protrudes more than five (5) feet vertically from the horizontal plane of the top surface of the roof parapet; or

(2) that is set back from a roof edge or structural edge such that the vertical distance from the edge to the top of the antenna support structure, with antenna, is less than two-thirds (2/3) the horizontal distance from the edge to the support structure or antenna; or

(3) that protrudes horizontally from any surface or edge, except that antenna support structures and antennas mounted on building surfaces set back from roof edges, such as elevator house walls, are exempt from this condition if they comply with the two previous conditions with respect to the roof above which the antennas are mounted.

181.6222. For new Free Standing Antenna Support Structures, any new structure with attached Antennas, including satellite dishes, that protrudes more than five (5) feet above ground.

181.6223. Any attachments to a Free Standing Antenna Support Structure existing at the time of adoption of this ordinance that protrudes more than five (5) feet from the top of the structure (excluding existing antennas), or protrudes more than eighteen (18) inches from the side of the structure.

181.6224. In any case, any Wireless Communications Facility which includes a Wireless Communications Accessory Building located in a Residential Zoning District requires a Special Permit.

### **181.623 General Requirements.**

181.6231. Concealed Wireless Communications Facilities shall be allowed by right in all zoning districts.

181.6232. New Free Standing Antenna Support Structures issued Special Permits under this ordinance may have special conditions applied that provide the structure owner with more or less flexibility to add antennas in the future, depending on the structure's purpose, design, location, and appearance. In the absence of such condition on a Special Permit for a Free Standing Antenna Support Structure, any attachment to a Free Standing Antenna Support Structure constructed after adoption of this ordinance may protrude no more than five (5) feet from the top of the structure (excluding existing antennas) nor eighteen (18) inches from the side of the structure.

181.6233. Notwithstanding the provisions of Section 181.32, "Accessory Uses", a Wireless Communications Facility may be sited on a lot which already accommodates a lawful principal use.

181.6234. The granting of a Special Permit, or the designation of certain uses as allowed by right in this section, does not absolve the owner or applicant from the responsibility for acquiring any other permits, including but not limited to building permits, certification from the Board of Health, or Federal Aviation Administration permits.

181.6235. Unless waived by the Planning Board under Section 181.627, only freestanding monopoles, with associated antenna and/or panels, shall be allowed.

181.6236. At the time that a Special Permit holder plans to abandon or discontinue operation of a Wireless Communications Facility, such holder will notify the City of Fitchburg by Certified U.S. mail of the proposed date of abandonment or discontinuance of operations. Within six months from the date of abandonment or discontinuance of use of a permitted Wireless Communications Facility, the Special Permit holder shall physically remove the facility.

181.6237. A Freestanding Antenna Support Structure that is constructed primarily for the purpose of supporting Wireless Communications Facilities shall be removed if it has not supported any active Wireless Communications Facilities for one year. The Planning Board may also require a reduction in height if upper elevations of a Freestanding Antenna Support Structure are not used by a Wireless Communications Facility for one year. The Planning Board may determine that the primary purpose of a Freestanding Antenna Support Structure is to support the operation of specific Wireless Communications Facilities. Upon removal of these specific facilities, the owner of the support structure may be required by the Planning Board to reduce or remove the structure, regardless of whether any other Wireless Communications Facilities are using the structure. In the event that these elements are not removed within the time period specified by this ordinance, the City of Fitchburg (in addition to other remedies) may remove the antenna, structure, and associated facilities and assess the costs of removal against the property.

181.6238. At the discretion of the Planning Board, holders of Special Permits for Wireless Communications Facilities and/or Antenna Support Structures of any type may be required to provide to the Building Commissioner annual certification demonstrating continuing compliance with applicable standards regarding structural integrity, air traffic safety, radio emissions safety, or other issues of importance to the purposes of this regulation.

#### **181.624 Submission Requirements**

181.6241. The following information shall be prepared by a professional registered engineer or other qualified representative and submitted along with the Special Permit application:

- a. A written statement demonstrating that the proposed facility will comply with, or is exempt from, regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), and the Massachusetts Department of Public Health.
- b. A description of the Wireless Communications Facility, including technical, economic and other reasons for the proposed location, height and design.

- c. A description of the Antenna Support Structure including:
  - (1) Plans.
  - (2) Elevation views with proposed antennas, and with an anticipated full load of antennas.
  - (3) Photographs of the site from nearby public ways with accurate simulations of the proposed installation.
  - (4) A Visual Impact Map showing where on public lands and ways any part of the structure or antennas will be visible (mapped by a human observer during a balloon or crane test).
  - (5) The number and type of Antennas that it can accommodate and the basis for these calculations.
  
- d. A description and plans for the placement of the transmit/receive equipment, antenna cables and related equipment. If a Wireless Communications Accessory Building is proposed, include detailed design drawings of the building and its locus.

181.6242. When considering an application for a Wireless Communications Facility or Freestanding Antenna Support Structure the Planning Board shall place great emphasis on the proximity of the facility to abutting properties and streets and its visual impact on the same.

181.6243. New Freestanding Antenna Support Structures shall only be considered after a finding by the Board that an existing Freestanding Antenna Support Structure cannot accommodate the proposed additional facility. Licensed carriers shall share Freestanding Antenna Support Structures where feasible and appropriate, thereby reducing the number of Freestanding Antenna Support Structures. All applicants for a Special Permit shall demonstrate a good faith effort to co-locate on other facilities in circumstances where the visual impact of co-location is equal to or better than that of the alternative. Such good faith effort includes:

- (a) A survey of all existing structures, including Building-Mounted and Freestanding Antenna Support Structures, buildings, and other structures that may be feasible for co-locating Wireless Communications Facilities, including sites that are outside but near the applicants specified search area;
- (b) Contact with relevant owners of Wireless Communications Facilities operating in the City; and
- (c) Sharing information necessary to determine if co-location is feasible.

In the event that the applicant claims that co-location is not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Board may retain a technical expert in the field of RF engineering to verify if co-location at a nearby site is or is not feasible, or to otherwise review the application. The cost for such a technical expert will be at the expense of the applicant. The Board may deny a Special Permit to any applicant that has not demonstrated a good faith effort to provide for co-location.

In the event that co-location is not feasible and the applicant is proposing a new Freestanding Antenna Support Structure, the applicant must demonstrate that no existing buildings or other structures can provide a substantial portion of the coverage desired by the applicant. The City may retain a technical expert at the expense of the applicant in the field of RF engineering to verify if existing alternatives have been reasonably eliminated.

**181.625 Design Guidelines.** The following guidelines shall be used for the siting and construction of all wireless communications facilities:

181.6251. All new Freestanding Antenna Support Structures shall be designed to be constructed to the minimum height necessary to accommodate the anticipated and future use of the structure, but in no case shall the height exceed 175 feet as measured from ground level at the base of the structure, except for facilities used by a federally licensed amateur radio operator antenna. No Antenna Support Structure used by an amateur radio operator shall be used to co-locate any facility other than another Residential Communications Facility. Section 181.414, "Table of Dimensional Requirements", shall not apply to Freestanding Antenna Support Structures with regard to the maximum allowable height of a structure.

181.6252. In order to protect public safety, the minimum distance from the base of any Freestanding Antenna Support Structure to any property line or road shall be 50% of the height of the structure, including any Antennas or other appurtenances. This setback is considered a "fall zone." This fall zone requirement is waiveable by the Board per Section 181.627, up to the setback normally permitted in the district, if the topography and land use of the site and surrounding uses warrant it. The minimum distance from the base of any Building Mounted Antenna Support Structure to any lot line, measured horizontally, shall be at least that required in the zoning district by the zoning ordinance, and in no case shall be less than the height of the antenna above the roof.

181.6253. Building Mounted Antenna Support Structures shall not exceed fifteen (15) feet in height above the roof line of the structure. The Planning Board may grant special exceptions in circumstances where irregular roof lines or the configuration of other rooftop structures may be utilized without compromising the intent of this section.

181.6254. All Antenna Support Structures and Antennas, unless roof-mounted, shall be located in the side or rear yard or building mounted in such a manner that the view of the facility from abutting properties and streets shall be as limited as possible. Antenna Support Structures and Antennas shall be camouflaged in a manner appropriate to the application. Where appropriate, vegetative or mechanical screening shall be employed to hide Antennas from public view.

181.6255. Fencing which is compatible with the characteristics of the neighborhood may be required to be provided to control access to Wireless Communications Facilities and Antenna Support Structures. No razor wire shall be permitted.

181.6256. Unless otherwise permitted by this Ordinance or specified in a Special Permit, there shall be no signs posted at Wireless Communications Facilities except for warning signs, no trespassing signs, a sign identifying the facility, the owner and operator and an emergency telephone number, and any required hazard or information sign normally mounted at a Wireless Communications Facility. No sign shall be greater than eight square feet in size and six feet in elevation.

181.6257. Lighting of Antenna Support Structures and Antennas shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA. Lighting on the grounds of a Freestanding Antenna Support Structure or a Wireless Communications Accessory Building shall be kept to the minimum necessary to assure security and shall be in compliance with City lighting regulations.

181.6258. Unless the Wireless Communications Facility is to be located at a building or site with ample parking, a minimum of one (1) dedicated parking space for an Antenna Support Structure. The space shall not be used for the permanent storage of vehicles or other equipment or materials. The Planning Board shall evaluate the application in terms of the number of potential wireless co-locators and determine the minimum parking area to accommodate them at the site.

~~**181.626 Prohibited Area.** All Freestanding, Building Mounted Antenna Support Structures and Wireless Communications Facilities are prohibited from the area known as Rollstone Hill, which for the purposes of this section is defined as the area bounded by the centerline of Leighton Street, Foster Street, Bruce Street, Hazel Street, Pratt Road, Harugari Street, King Street, Pratt Street, Litchfield Street and Beech Street. This section shall not be interpreted to exclude Residential Communications Facilities associated with residential structures and uses in this area. **Eliminated 12-23-08**~~

**181.627 Waivers.** The Special Permit Granting Authority may waive strict adherence to the requirements of this section (with the exception of the height limit and exclusion zones) if it finds the safety and well being of the public will not be adversely affected by such a waiver.



**181.628 Exemptions.** The provisions of this section shall not apply to the following:

181.6281. facilities used by a federally-licensed amateur radio operator (“ham radio”), as referred to in MGL Ch. 40 A, S. 3

181.6282. Any Residential Communications Facility

## **181.63 SMALL WIND ENERGY SYSTEMS** *Added March 6, 2008*

**181.631 Purpose.** The purpose of this section is to promote the safe, effective and efficient use of small wind energy systems which are installed to reduce the on-site consumption of utility supplied electricity, subject to reasonable conditions that will protect the public health, safety and welfare.

**181.632 Findings.** The City of Fitchburg finds that wind energy is an abundant, renewable and non-polluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands and help diversify the state's energy supply portfolio.

### **181.633 Definitions.**

'Small Wind Energy System, also referred to as SWES', shall mean: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which is intended to primarily reduce on-site consumption of utility power.

'Turbine Height' shall mean: The distance from the surface of the tower foundation to the highest point of the turbine rotor plane.

'Occupied Building' shall mean: A residence, or a church, hospital, library, school, or other building used for public gathering that is either actually occupied, in use or held or available for use at the time when the special permit application is submitted.

**181.634 Permitted Use.** No SWES shall be erected, constructed, installed or modified without first obtaining a Special Permit from the Planning Board. A SWES may be permitted in any zoning district as an Accessory Use, subject to the issuance of a Special Permit and further provided that the use is maintained and complies with all requirements set forth herein and as described in the Special Permit. No Special Permit shall be granted unless the Board determines that all such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No Special Permit shall be granted unless the Planning Board finds, in writing, that the proposed SWES complies with the Special Permit criteria under Section 181.932 and:

- (a) the specific site is an appropriate location for such use;
- (b) the use will not adversely affect the neighborhood;
- (c) no nuisance will be created by the use;
- (d) adequate and appropriate facilities will be provided for the proper operation of the use; and

- (e) the application information submitted is adequate, complete and containing sufficient information for the Planning Board to consider approving the special permit request.

If the Board finds that the information is not adequate or complete, it may continue the hearing on the application to allow the applicant to submit additional information which may be needed for a decision.

181.6341. A Special Permit issued for a SWES may impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate reasonably foreseeable adverse impacts of the wind facility.

### **181.635 Application requirements.**

- (a) The applicant and landowner's name and contact information.
- (b) The map, block and lot identifier for the parcel, existing use and acreage of the site parcel.
- (c) Standard engineered drawings of the wind turbine structure, including the tower, base and footings, drawings of access roads, and including an engineering analysis and certification of the tower, showing compliance with the State Building Code.
- (d) Data pertaining to the tower's safety and stability, including safety results from test facilities prepared and stamped by an engineer.
- (e) Site plan. A site plan must be submitted, prepared to scale by a registered land surveyor or civil engineer showing the proposed SWES location, property lines for the site parcel, outline and distances of existing and proposed structures within the allowed tower setbacks including purpose (i.e. residence, garage, etc), public and private ways, drives, access easements, trails, above ground utility lines and other significant features, as well as any proposal for landscaping and screening.
- (f) If deemed necessary by the Planning Board, the applicant shall provide a report estimating current ambient sound at appropriate locations and maximum projected sound from the proposed SWES. Manufacturer's specifications may be accepted when, in the opinion of the Planning Board, the information provided satisfies the above requirements.
- (g) The certification by the applicant's engineer that the SWES complies with applicable regulations of the Federal Aviation Administration (FAA).

181.6351 Waivers. Any portion of the requirements in Section 181.635 may be waived if in the opinion of the Planning Board the materials submitted are sufficient for the Board to make a decision under the criteria for a Special Permit under this section.

### **181.636 General Siting Standards.**

181.6361. Turbine Height. For property sizes between ½ acre and one acre the turbine height shall be limited to 80 feet. For property sizes of one acre or more, there is no limitation on turbine height, except as may be imposed by the Federal Aviation Administration (FAA) regulations, other applicable law and this ordinance.

181.6362. Setbacks. Each SWES structure shall be set back from the property line a distance no less than 1.5 times its total turbine height, unless appropriate easements are secured from adjacent property owners, as described in Section 181.637 below.

181.6363. Guy wires associated with a SWES shall be set back at least ten (10) feet from a property line. Guy wires shall not be secured to trees but shall be secured to stationary anchors and located away from trees or other structures that may interfere with the safe operation of the SWES.

181.6364. Where wind characteristics permit, wind towers shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast from any public access.

**181.637 Waiver of Setbacks.** The Planning Board may waive the setback requirements in Section 181.6362 or 181.6363 if they determine that such waiver does not derogate from the intent of this section, and is in the public interest. In order for the Planning Board to grant such a waiver the applicant must present evidence that the risk is minimal and will not affect public safety or that they have secured a permanent “fall zone easement” from the affected property owner(s) for the setback area referred to in Section 181.6362. The area of the easement shall be shown on all applicable plans submitted to the Board. The terms of the easement shall prohibit the development of occupied buildings within the “fall zone” and advise all subsequent purchasers of the burdened property that the easement shall run with the land and may forever burden the subject property. In addition, the Planning Board may waive the setback requirement in Section 181.6362 for setbacks from a public or private way for good cause, or if adjacent publicly owned land or dedicated open space is determined by the board to be appropriate for use as a setback area.

### **181.638 Design Standards**

181.6381. Support Towers. SWES shall be of a simple design with smallest overall profile. Monopole towers are the recommended type of support.

181.6382. The minimum distance between the ground and any part of a rotor, or turbine blade, shall be thirty (30) feet.

181.6383. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

181.6384. Color. Colors and surface treatment of the installation shall minimize visual disruption ,for example, by painting non-reflective muted colors darker against land, lighter colors against sky, without graphics or other decoration). However, visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.

181.6385. Compliance with FAA Regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

181.6386. No SWES shall be visibly lit, except to the extent required by the FAA, or other governmental authority that regulates air traffic.

181.6387. Small Wind Energy Systems shall not be used for displaying any advertising.

181.6388. Appropriate landscaping shall be provided to screen accessory structures from roads and adjacent residences.

181.6389. Noise. The SWES and associated equipment shall conform with the provisions of the Department of Environmental Protection's (MassDEP) Division of Air Quality Noise Regulations (310 CMR 7.10).

181.63810. Prevention of Access. All related components of the SWES shall be designed and protected to prevent unauthorized access. Fencing serving this purpose but compatible with the characteristics of the neighborhood may be required to control access to the SWES. No razor wire shall be permitted.

181.63811. Facility Conditions. SWES owners and operators shall maintain the SWES in good condition and provide for the ongoing maintenance in accordance with the conditions of the Special Permit, manufacturer's specifications and governmental regulations for all structural, electrical and mechanical operations to ensure safe operation of the SWES.

### **181.639 Additional Provisions.**

181.6391. Safety Determination. Any SWES found to be unsafe by the Zoning Enforcement Officer or the Building Inspector shall be repaired or removed pursuant to his or her direction.

181.6392. No SWES that is interconnected with the electric system may be put in operation prior to execution of an Interconnection Agreement with the local electric utility.

181.6393. If any wind energy system is substantially not operated for a continuous period of 12 months, the Zoning Enforcement Officer may determine the facility to be abandoned.

181.6394. If the SWES owner or operator fails to remove the SWES in accordance with the requirements of this section, the City of Fitchburg shall have all the remedies available under Massachusetts General Laws.

181.6395. If the Zoning Enforcement officer or the board of health or its agent determines that the noises emanating from an SWES creates an unreasonable interference with abutters in the immediate vicinity or that it may be interfering with electromagnetic communication unreasonably, the SWES owner or operator shall be required, at its expense, to have prepared by an independent professional engineer with expertise in the subject matter, a study that measures and demonstrates compliance with the standards in this ordinance.

181.6396. At the discretion of the Planning Board and if required by the Special Permit, the owner of an SWES ,or other responsible appropriate person, may be required to provide to the building commissioner annual certification demonstrating continuing compliance with applicable standards regarding noise, shadow flicker, structural integrity, air traffic safety, radio emissions safety, or other issues of importance to the purposes of this regulation.

181.6397. The Planning Board may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a review will be at the expense of the applicant pursuant to G.L. c. 44, § 53G as may from time to time be amended.

181.6398. Expiration. A permit issued pursuant to this ordinance shall expire if: (a) the SWES is not installed and functioning within 24-months from the date the permit is issued; (b) the SWES is abandoned; or (c) the term stated in the Special Permit expires without renewal or extension; or (d) the holder of the Special Permit or the owner of the SWES is found to have violated the requirements of this ordinance, the conditions of the Special Permit or the enforcement orders of the Zoning Enforcement Officer after hearing on notice to interested persons.

181.6399. Violations. It is unlawful for any person to construct, install, modify or operate a SWES that is not in compliance with this ordinance or with any condition contained in a special permit decision or building permit issued pursuant to this ordinance. SWES installed prior to the adoption of this ordinance are exempt.

## SECTION 181.7 SPECIAL RESIDENTIAL REGULATIONS

### 181.71 FLEXIBLE DEVELOPMENT

**181.711 Purpose.** The purposes of this section are:

1. to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2. to preserve historical and archeological resources; to protect the natural environment, including Fitchburg's varied landscapes and water resources;
3. to protect the value of real property;
4. to promote more sensitive siting of buildings and better overall site planning;
5. to perpetuate the appearance of Fitchburg's traditional New England landscape;
6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. to offer an alternative to standard subdivision development;
8. to promote the development of housing affordable to low, moderate, and median income families; and
9. to promote the development of housing for persons over the age of fifty-five.

**181.712 Applicability.** In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the City.

**181.713 Procedures.** Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board the information required by Section 181.93.

**181.714 Design Process.** Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, houselots, and contiguous open space.

181.7141. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.

181.7142. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.



181.7143. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

181.7144. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with historical development patterns.

181.7145. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

**181.715 Modification of Lot Requirements.** The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

181.7151. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

**181.716 Number of Dwelling Units.** Dwelling units shall be allowed as follows:

181.7161. *Basic Maximum Number.* The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

181.7162. *Density Bonus.* The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed thirty-five (35%) percent of the Basic Maximum Number. All dwelling units awarded as a density bonus shall be two bedroom units. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

- a. For each additional ten percent (10%) of the site (over and above the required ten percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number.
- b. For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.

## 181.717 Standards.

181.7171. Types of Buildings. The Flexible Development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than five (5) dwellings. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

181.7172. Roads. The principal roadway(s) serving the site shall be designed to conform with the standards of the City where the roadway is or may be ultimately intended for dedication and acceptance by the City. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

181.7173. Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

181.7174. Contiguous Open Space. A minimum of ten percent (10%) of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the City or its Conservation Commission, shall be subject to a recorded restriction enforceable by the City, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

- a. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 181.711, above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.
- b. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
- c. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.
- d. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

181.7175. Ownership of the Contiguous Open Space. The contiguous open space shall, at the Planning Board's election, be conveyed to either:

- a. the City or its Conservation Commission; or
- b. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or
- c. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the City to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the City an easement for this purpose. In such event, the City shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the City may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

181.7176. Buffer Areas. A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50') feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the City for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

181.7177. Drainage. Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

**181.718 Decision.** The Planning Board may approve, approve with conditions, or deny a Special Permit for a Flexible Development after determining whether the Flexible Development better promotes the purposes of this Flexible Development section than would a conventional subdivision development of the same locus.

181.7181. Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

## **181.72 PLANNED UNIT DEVELOPMENT**

**181.721 Purpose.** The Planned Unit Development provision is designed to provide various types of land uses which can be combined in a compatible relationship with each other as part of a totally planned development. It is the intent of this provision to insure compliance with good planning and zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications. The advantages which are intended to result from a planned unit development are to be ensured by the adoption of a precise development plan with a specific time limit for commencement of construction.

181.7211. The objectives of planned unit development are to:

- a. Free the development process from the constraints of conventional lot lines and inflexible zoning standards based upon lot-by-lot development.
- b. Encourage flexibility and creativity in the design of development through a carefully controlled review process of particular plans rather than the strict regulation of all plans within a zone.
- c. Encourage innovation in commercial and residential development so that the growing demand for more and varied housing may be met by a greater variety in type and design of living units.
- d. Encourage a less sprawling form of community development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land.
- e. Permanently preserve existing natural topography and wooded areas within developed areas and to provide usable open space and recreation facilities in close proximity to homes.
- f. Provide an efficient procedure which will insure appropriate, high-quality design and site planning and a high level of environmental amenity.
- g. Provide an opportunity for streamlining the redevelopment process in declining urban areas.

**181.722 Procedures.** Planned unit development may be authorized in any district upon the grant of a special permit by the Planning Board. Applicants for planned unit development shall file with the Planning Board the information required by Section 181.93. Planned unit developments shall comply with all requirements prescribed herein.

**181.723 Use Provisions by District.** The City of Fitchburg has different use and development objectives for different sections of the city. The use provisions by districts, for a planned unit development are as follows:

181.7231. *All Districts Except RR.* In all districts, except Rural Residential (RR), a planned unit development may be allowed but must be limited to those permitted uses that are allowed in the RR, RA-1, RA-2, RB, RC, CBD, NBD and FSC Districts.

- a. Such uses shall be allowed, provided that the use is non-nuisance and not objectionable because of dust, odor, fumes, smoke, refuse, glare, radiation, noise or vibration and provided also that the use is not contrary to the general welfare, safety and health of the City of Fitchburg.
- b. There can be a multiplicity of types of development, provided that, at the boundaries with existing residential development, the form and type of development on the planned unit development site boundary is compatible with the existing or potential development of the surrounding neighborhoods. Furthermore, it may be necessary to include appropriate visual screening to buffer the impact between the proposed development and adjacent properties. The plan for the total property shall be submitted, and the applicant shall clearly detail, by engineering and architectural specifications and drawings, the manner in which the subject area is to be developed and the means that will be employed to protect the abutting property and the health, safety, welfare and privacy enjoyed thereon.
- c. Maximum bulk, density, setbacks, parking and loading requirements shall be established for each planned unit development by the development plan approved by the Planning Board.
- d. Minimum Lot Frontage: To preserve and protect the value of properties adjacent to a proposed planned unit development district and to provide for an orderly and uniform transition, lots which will be adjacent to or across the street from existing residential developments may be required to have an amount of street frontage not less than that of the minimum ordinance requirements for the zone in which they are located.
- e. Minimum lot size: Residential sizes in a planned unit development district may be reduced below the minimum standards required by the Zoning Ordinance. As a prerequisite, the developer shall demonstrate that there is a reasonable relationship between the proposed lot size and the usable and accessible open area within the total development. An individual lot shall be large enough to provide for private open space associated with the living accommodations.

181.7232. *Rural Residence District.* In a Rural Residence District (RR) a planned unit development may be allowed, subject to the above provisions in Section 181.7231 and the following:

- a. In a Rural Residence District, residential development may include single-family and multifamily units in any form of ownership, limited to a height of no more than three (3) stories.
- b. Retail and commercial use may be allowed but restricted to a total floor area not greater than ten percent (10%) of the gross floor area of the proposed residential units. All structures intended for business use shall be of superior design and be similar in architectural type as the proposed residential units. The type of retail or commercial use shall be limited to those that serve the needs of the neighborhood which may include grocery stores, barbershops, professional offices and banks.

**181.724 Open Space.** Provision shall be made so that, when applicable, usable open space shall be owned by a corporation or trust owned or to be owned by the owners of lots or residential units within the development that may be approved by the Planning Board. This land will be protected by legal instruments from future development.

**181.725 Planning Board Approval.** After notice and public hearing, the Planning Board, by a two-thirds vote, may grant a special permit if each of the conditions listed below have been satisfied:

181.7251. The proposed planned unit development is in harmony with the purpose and intent of this chapter and with the stated objectives, and that it will promote the purpose of this section.

181.7252. The mixture of uses in the planned unit development is determined to be sufficiently advantageous to render it appropriate to depart from the normal requirements of the district.

181.7253. The planned unit development would not result in a significant negative environmental impact.

181.7254. The planned unit development will add to the long-term assets of the community and that it will not erode the value of existing and neighboring areas.

**181.726 Additional Conditions.** The Planning Board may, in appropriate cases, as it determines, impose further restrictions upon the planned unit development or parts thereof as a condition to granting the special permit.

## **181.73 ASSISTED AND INDEPENDENT LIVING FACILITIES**

**181.731 Purpose.** The purpose of this section is to provide a mechanism for the approval of: (1) assisted living facilities (ALF) within a residential environment that offer supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and (2) independent living facilities (ILF) that offer congregate living arrangements to persons over the age of fifty five. It is also the purpose of this section to enable the development of ALF and ILF in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and to promote the development of ALF and ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space.

**181.732 Definitions.** For the purposes of this Section 181.73, these words have the following definitions:

**APPLICANT** - The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

**ASSISTED LIVING FACILITY (ALF)** - An Assisted Living Residence as defined in 651 CMR 12.02.

**BEDROOM** - A separate room intended for, or which customarily could be used for, sleeping.

**DWELLING UNIT** - A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

**INDEPENDENT LIVING FACILITY (ILF)** - A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

**LAND** - Land, including areas covered by water.

**REGULATIONS** - The rules and regulations of the Planning Board relative to subdivisions, special permits and site plans.

**WETLANDS** - Land subject to the provisions of M.G.L. c. 131, ss. 40 and 40A.

**181.733 Use Restrictions.** An ALF and/or an ILF may be constructed as set forth in Section 181.313, Table of Principal Uses, subject to the requirements set forth herein, upon the issuance of a special permit, and upon site plan approval pursuant to Section 181.94.

181.7331. No other use or structures shall be permitted, except as specifically provided herein.

181.7332. An ALF or an ILF may consist of a single building or multiple buildings.

181.7333. Structures and uses accessory to the ALF or ILF may also be provided (with the exception of covered parking areas) within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult day health facility; hospice residence; food service; laundry and covered parking areas; provided, however, that such accessory uses and structures shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly within a structure containing residential units, and shall have not exterior advertising display.

181.7334. The facility shall be served by the municipal water and sewer system.

**181.734 Procedures.** The Planning Board shall serve as the special permit granting authority for special permits under this section. The Planning Board may waive the submittal of technical information or documents otherwise required in Section 181.93 where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision. An application for a special permit shall be accompanied, if applicable, by a definitive plan of land pursuant to the provisions of G.L. c. 41, ss. 810 and 81T as the same may be from time to time amended and the Regulations of the Planning Board and a filing fee determined in accordance with the Planning Board's regulations. The applicant shall also submit copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by the City Solicitor.



**181.735 Standards.** In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

181.7351. Open Space Requirement for ALFs and ILFs in Residentially Zoned Areas: As per the requirements of Section 181.71, “Flexible Development”.

181.7352. Buffer. A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement: (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty feet (50') in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the City for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

181.7353. Removal and Replacement of Vegetation. With the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.

181.7354. Roadways and Paths. The principal roadway(s) serving the site shall be designed to conform with the standards of the City where the roadway is or may be ultimately intended for dedication and acceptance by the City. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant. Where the roadway is or may be ultimately intended for dedication and acceptance by the City, granite curbing, gray in color, is required, except in areas of very low traffic volume where no curbing will be required. Rolled asphalt (Cape Cod berm) curbing is unacceptable in all such ways. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways on adjacent sites.

181.7355. Parking. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be 0.3 parking space per dwelling unit in an ALF and 1.0 parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) parking space shall be provided for every three (3) employees during the largest shift. The Planning Board may increase the required parking by up to 10% to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged. Textured paving or grade separated (elevated) walkways are desired on all pedestrian access ways.

181.7356. Loading. Loading areas must be at least 20' x 9' feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

181.7357. Surface Drainage. The surface drainage system shall be designed in accordance with the Regulations of the Planning Board.

181.7358. Utilities. All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances.

181.7359. Emergency Call. The ALF or ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

## **181.736 Design and Architectural Character.**

181.7361. *Massing and Style:* Building massing and style must be distinctively residential in character, drawing on the historical design elements that are contextually consistent with regional New England architecture. Historical and traditional design elements are encouraged. Front yards which use boxwood hedges, evergreen hedges, traditional style picket fences, stone walls, or iron picket fences with granite curb and pilasters is encouraged. Fences or hedges should not exceed three feet in height at the fronts of buildings. Fences and landscaping to screen service areas may exceed this height, consistent with the intent and use of the space.

181.7362. *Roofs.* Preference shall be given to roof pitches consistent with single-family, residential design. New England traditional or vernacular styles are preferred. Material must be consistent with the architecture of the building. Composition shingle material is acceptable, providing that it is of high quality and provides architectural definition to the tab shingle to emulate traditional wood shingle styles. Tile, slate, or metal roofing is permitted, provided it is consistent with the architectural style of the building. Gutters and downspouts are encouraged to provide drainage away from foundations, but must be consistent with the other architectural elements of the building. All buildings should have a chimney to convey the look and feel of residential use.

181.7363. *Facade element.* Design of the facade shall be highly detailed and articulated to be compatible with the scale and sensitivity to the residential uses of the project. Facades should have a well-defined foundation, a modulated wall element, and pitched roof or articulated cornice which defines the character of the building, and provides relation to the human scale of typical family residences.

181.7364. *Entrances.* Building entrances must comply with all current accessibility regulations, however the use of ramps and lifts is discouraged. Buildings should be designed with entrances that are barrier free for the intended residential or commercial uses. The use of sloping entry walks, covered entryways, porticos, arcades, and covered porches is encouraged. Where grade separation of an entrance is required because of site topography, accommodation should be provided in the architectural detail of the entry to allow barrier free use by building residents and visitors.

181.7365. *Door and window openings.* Doors and windows form the transition from public to private space, and should reflect residential detailing in design and placement. The use of cornices, architectural moldings, side lights, transom lights, and raised panels in doors is encouraged. Window openings should vary between buildings, but should not be unbroken and continuous in any circumstance. The use of opening sash windows with true divided lights, or detailing to convey the character of divided lights is encouraged. The use of shutters consistent with the architecture of a building is encouraged. A wide range of material for doors and windows is acceptable, except that the use of commercial, anodized or painted aluminum or steel storefront assemblies is discouraged.

181.7366. *Materials and design elements.* Material chosen for exterior elements should be consistent with the intent and use of materials traditionally found in residential design in New England. Siding materials such as clapboard and shingle are preferred, and the use of new materials which reduce maintenance, but emulate the look and feel of traditional materials is encouraged. The use of a variety of trim material to provide detail at the eaves, comers, gables, pediments, lintels, sills, quoins, and balustrades is encouraged. The use of bays, towers, cupolas, cross gables, and dormers to provide unique character to a building and provide articulation of the facade is encouraged. The color palette chosen for any building should be consistent with colors traditionally found in residential design in New England.

**181.737 Conversion of Structures.** It is the intent of this subsection to permit and encourage the appropriate reuse of land and buildings that are no longer needed or suitable for their original use, and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

181.7371. The Planning Board must find that the proposal protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the City Council on the sale, lease, or transfer of the site.

181.7372. Applicants wishing to convert existing structures to be used as ALFs or ILFS may do so, subject to the following additional conditions: the buffer requirements, minimum open space requirements, and building height requirements shall be those physically existing as of July 21, 2001. Furthermore, in the process of granting a Special Permit hereunder, the Planning Board may permit expansion of the structure to the degree reasonably necessary to construct entryways and features to comply with A.D.A. requirements and fire escape and fire protection features.

**181.738 Action by Planning Board.** The Planning Board may grant a special permit for an ALF where it makes the following findings:

181.7381. The proposed ALF complies with the requirements of this section;

181.7382. The proposed ALF does not cause substantial detriment to the neighborhood after considering the following potential consequences:

- a. noise, during the construction and operational phases;
- b. pedestrian and vehicular traffic;
- c. environmental harm;
- d. visual impact caused by the character and scale of the proposed structure(s).

## 181.74 REAR LOTS

**181.741 General.** Individual lots in the RR, RA-1 and RA-2 districts need not have the required amount of street frontage, provided that all of the following conditions can be met for each individual lot lacking such frontage.

### 181.742 Conditions.

181.7421. A Rear Lot must have at least two (2) times the minimum area required for the zoning district. That portion of the lot used for access from the street (i.e., the “pipestem” or “panhandle” of the lot) may not be used to satisfy this minimum area requirement. *For the purposes of this section the “pipestem” or “panhandle” is determined to be that portion of the lot between the street providing frontage for such lot and the point at which the width of the lot is equal to the required lot frontage for the zoning district*

**Added 10-5-05**

181.7422. A Rear Lot must have an area that contains a circle with a diameter of the “normal” frontage requirement in the applicable zoning district.

181.7423. Driveway access to a Rear Lot must provide suitable access, as determined by the Building Commissioner, for emergency vehicles.

181.7424. A building line must be designated on the plan of a Rear Lot, and the width of the lot at that line must equal or exceed the number of feet normally required for street frontage in the district.

181.7425. *The “pipestem” or “panhandle” shall be a minimum of 40 feet wide for its entire length from the street to the point at which the width of the lot is equal to the required lot frontage for the zoning district, and the Lot Frontage shall be a minimum of 40 feet. Lot Frontage shall meet all of the requirements contained in the definition of “frontage” in this Ordinance.* **Revised 10-5-05**

181.7426. Not more than one (1) Rear Lot shall be created from a property, or a set of contiguous properties held in common ownership as of July 17, 2001. Documentation to this effect shall be submitted to the Planning Board along with the application for Approval Not Required or Definitive Subdivision Plans under the Subdivision Control Law. *Proposed building lots submitted for such endorsement or approval under this rear lot section must first be reviewed and approved by the Planning Board as to conformance with these provisions. If such lot is found to conform to the requirements of this section, the Planning Board shall endorse the lot as “Approved as a ‘Rear Lot’ under Section 181.74 of the Fitchburg Zoning Ordinance”. This endorsement may be part of the “Approval Not Required” endorsement. The Building Commissioner shall not issue a building permit for any rear lot without first establishing that compliance with this provision has been determined by the Planning Board, and that proof of recording of the plan has been provided to the Building Commissioner.* **Revised 10-5-05**

181.7427. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.

181.7428. The applicant shall submit a plan to the Planning Board under the Subdivision Control Law depicting both the rear lot and the front lot from which the rear lot was created.

181.7429. Rear lots serving single-family structures shall have front, rear, and side setbacks in compliance with those required in the district.

## **181.75 RESIDENTIAL DRIVEWAY REGULATIONS**

**181.751 General.** For the purpose of promoting the safety of the residents of the City of Fitchburg, an application for a building permit for a residential structure shall include a plan, at a reasonable scale, not to exceed 1 inch = 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at 10 foot or 3 meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100 feet or less from the building site of the residential structure on the premises, for all vehicles, including, but not limited to, emergency, fire, and police vehicles. The Building Inspector shall not issue a building permit for the principal structure on the premises unless all of the following conditions have been met:

181.7511. Except in access strips of less than fifty (50) feet width to rear lots, or in the case of a common driveway as set forth below, no driveway shall be located within ten (10) feet of any side or rear lot line except by special permit issued by the Planning Board after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

181.7512. The distance of any driveway measured from the edge of travelled portion of the way providing access to the lot to the point where the principal building is proposed shall not exceed a distance of five hundred (500) feet, unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

181.7513. The grade of each driveway where it intersects with the edge way providing access to the lot shall not exceed five percent (5%) for a distance of 20 feet from the travelled surface of such way unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

**181.752 Common Driveways.** Common driveways serving not more than two (2) lots may be allowed by special permit from the Planning Board. A common driveway shall be designed in accordance with all Planning Board Rules and Regulations, the requirements of Section 181.751, and all of the following conditions:

181.7521. The centerline intersection with the centerline of the way providing access to the lot shall not be less than 45 degrees;

181.7522. A minimum width of 12 feet shall be maintained over its entire length;

181.7523. A roadway surface of a minimum of four inches (4") of graded gravel shall be installed, placed over a properly prepared base, graded and compacted to drain from the crown;

181.7524. The driveway shall be located entirely within the boundaries of the lots being served by the driveway;

181.7525. Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest.

## **SECTION 181.8 SPECIAL DISTRICTS**

### **181.81 FLOODPLAIN PROTECTION OVERLAY DISTRICT**

**181.811 Purpose.** The purposes of the Floodplain Protection Overlay District are to ensure public safety through reducing the threats to life and personal injury; eliminate new hazards to emergency response officials; prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding; avoid the loss of utility services; eliminate costs associated with the response and cleanup of flooding conditions; reduce damage to public and private property resulting from flooding waters.

**181.812 General.** The Floodplain Protection Overlay District (FPOD) shall be in all portions of the city as indicated on the Flood Insurance Rate Maps as the Floodplain District. The Building Commissioner shall maintain the maps and records and administer, interpret and enforce the provisions of this Section. Where there is a conflict between a mapped boundary and actual field conditions, the Building Commissioner shall determine the boundaries of the Floodplain District.

**181.813 Overlay District.** The FPOD is herein established as an overlay district. The underlying permitted uses are allowed, provided that they meet the following additional requirements as well as those of the Massachusetts State Building Code dealing with construction in floodplains.

**181.814 Location.** The FPOD includes all special flood hazard areas designated as Zone A, A1-A30 on the Fitchburg Flood Insurance Rate Maps (FIRMs), and the Flood Boundary and Floodway Maps, dated September 18, 1991 on file with the City Clerk, Office of the Planning Coordinator and Building Commissioner. These maps, as well as the accompanying Fitchburg Flood Insurance Study, are incorporated herein by reference.



**181.815 Development Regulations.** The following requirements apply in the FPOD:

181.8151. Within Zone A where the base flood elevation is not provided on the FIRM, the applicant 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 of flood-proofing requirements, as appropriate, of the Massachusetts State Building Code.

181.8152. Within Zone A1-A30, all residential and nonresidential construction and substantial improvements shall comply with the following:

- Provisions of the Massachusetts State Building Code which address floodplain areas (currently 780 CMR 3107.0, "Flood Resistant Construction"),
- Wetlands Protection Regulations (currently 310 CMR 10.00)
- Minimum Requirement for the Subsurface Disposal of Sanitary Sewage (currently 310 CMR 15, Title V).

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

181.8153. In the floodway designated on the Flood Boundary and Floodway Map the following provisions shall apply:

- a. All encroachment, including fill, new construction, substantial improvements to existing structures and other development, is prohibited unless certification by a registered professional engineer or architect is provided by the applicant, demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood. No new construction, substantial improvements 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 more than one (1) foot at any point within the City of Fitchburg.
- b. Any encroachment meeting the above standard shall comply with the floodplain requirements of the Massachusetts State Building Code.
- c. The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.

181.8154. Within Zone A1-A30, all mobile homes shall comply with the provisions of the Massachusetts State Building Code in addition to providing that:

- a. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
- b. Adequate surface drainage and access for a hauler are provided; and
- c. In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart and reinforcement is provided for piers more than six (6) feet above ground level.

**181.816 Floodplain District Special Permit.** The Board of Appeals may vary the requirements of this section (other than the provisions of the state regulations referenced above) upon the issuance of a special permit. Special permits may be issued for new construction and substantial improvements on lots one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. Special permits for larger lots shall require increased technical justification.

The Board of Appeals may grant such special permit after considering the following:

181.8161. A showing of good and sufficient cause;

181.8162. A determination that failure to grant the special permit would result in hardship to the applicant;

181.8163. A determination that the granting of a special permit will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances; and

181.8164. A determination that the special permit is the minimum necessary, considering the flood hazards, to afford relief.

**181.817 Special Permit Conditions.**

181.8171. A special permit shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

181.8172. If a special permit is granted, the Board of Appeals shall notify the applicant, in writing over its signature, that:

- a. The issuance of such special permit to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage; and
- b. Such construction below the base flood level increases risks to life and property.
- c. The Board of Appeals will maintain a record of all special permit actions, including justification for their issuance and report such special permits issued in the annual report submitted to the Federal Insurance Administration.

Special permits may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or on the State Inventory of Historic Places, without regard to the procedures set forth above.

## **181.82 WATER RESOURCE PROTECTION OVERLAY DISTRICT**

**181.821 Purpose.** The Water Resource Protection Overlay District (WRPOD) is adopted pursuant to authority provided by G.L. c. 40A and the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the Commonwealth. The purpose of the WRPOD is:

181.8211. to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses;

181.8212. to preserve and protect existing and potential sources of drinking water supplies;

181.8213. to conserve the natural resources of the City; and

181.8214. to prevent temporary and permanent contamination of the environment.

**181.822 Definitions.** For the purposes of this Section, these words and phrases have the following definitions:

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

*Automobile Graveyards And Junkyards* - An establishment or place of business which is used, maintained, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, as defined in G.L. c. 140B, s. 1.

*Commercial Fertilizers* - Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in G.L. c. 128, s. 64.

*De-Icing Chemicals* - Sodium chloride, chemically treated abrasives, or other chemicals used for snow and ice removal.

*Earth Removal* - The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

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

*Impervious Surface* - Material or structure on, above, or below the ground that does not allow precipitation to penetrate directly into the soil.

*Landfills And Open Dumps* - A facility or part of a facility for solid waste disposal (excluding transfer facilities) established in accordance with the provisions of 310 CMR 19.006.

*Sanitary Wastewater* - Any water-carried putrescible waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, showers, dishwashers, or any other source.

*Soil Conditioner* - Any manipulated substance or mixture of substances whose primary function is to modify the physical structure of soils so as to favorably influence plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in G.L. c. 128, s. 64.

*Storage or Landfilling of Sludge And Septage* - Use of land to store sludge or septage as those terms are defined in 310 CMR 32.00.

*Wastewater Treatment Works* - Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, all as defined and regulated by 314 CMR 5.00.

*Water Resource Protection Overlay District (WRPOD)* - That area of land from which surface water and groundwater drain into the City's drinking water supply reservoirs.

**181.823 Establishment of District.** The WRPOD is herein established as an overlay district. The WRPOD is described on a map entitled “City of Fitchburg Zoning Map, Adopted July 17, 2001” with district boundary lines prepared by the Office of the Planning Coordinator. All maps are hereby made a part of this Zoning Ordinance and are on file in the office of the City Clerk.

181.8231. *Boundary Disputes.* Where the bounds of the WRPOD are in dispute, as delineated on the Zoning Map, the burden of proof shall be upon the owners of the land in question to show where they should properly be located. Resolution of boundary disputes shall be through a special permit application to the Planning Board. The applicant shall provide information in substantial conformance with the criteria set forth in 310 CMR 22.00 for the delineation of “Zone III”, as administered by the Massachusetts Department of Environmental Protection, to show where the boundary should properly be located.

181.8232. The Planning Board shall not grant a special permit under this section unless the applicant demonstrates that the provisions governing the WRPOD may be waived without detrimental effect to water quality as specified herein.

**181.824 Use Regulations.** The WRPOD are overlay districts superimposed over the underlying districts set forth in this Zoning Ordinance. Within a WRPOD, the requirements of the underlying district continue to apply, except where the requirements of the WRPOD are more stringent. Uses are prohibited where indicated by “N” in the following schedule, and require a special permit from the Planning Board where indicated by “SP”, even where the underlying district requirements are more permissive. Uses permitted are indicated by “Y”. Where a portion of the lot is located partially within WRPOD and partially outside the WRPOD, site design shall, to the extent feasible, locate potential pollution sources outside the WRPOD boundaries.

1. PRINCIPAL USES	WRPOD
(a) Manufacture, use, storage, transport, or disposal of hazardous materials as a principal activity	N
(b) Landfills and open dumps	N
(c) Automobile graveyards and junkyards	N
(d) Wastewater treatment works for non-sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities, except the following: (1) replacement or repair of existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s)	SP
(e) Wastewater treatment works for sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities	SP
(f) Landfilling of sludge and septage	N
(g) Storage of sludge and septage	SP
(h) Road salt stockpile or storage of other de-icing chemicals in the following manner: (1) outside a structure (2) within a structure designed to prevent the generation and escape of contaminated runoff or leachate	N SP
(i) Motor vehicle service station, motor vehicle repair or body shop, marine repair shop, car wash	SP
(j) Earth removal; provided, however, that no earth removal shall take place within 6 feet of historical high groundwater as determined from monitoring wells and historical table fluctuation data compiled by the USGS, except for excavations for building foundations, roads or utility works, unless the substances removed are redeposited within 45 days of removal to achieve a final grading greater than 6 feet above the historical high groundwater mark	SP
(k) Any building, structure, or use, other than single family dwelling with accessory structures and uses, to be served by on-site wastewater disposal system with a design capacity of greater than 10,000 gallons per day	SP

<b>2. ACCESSORY USES</b>	<b>WRPOD</b>
(a) Underground storage of hazardous materials, including fuel oil and gasoline	SP
(b) Aboveground storage of hazardous materials in quantities greater than associated with normal household use, other than fuel oil for residential heating purposes,	SP
(c) Any use generating hazardous wastes in quantities greater than associated with normal household use, except the following, which are permitted by right. <ul style="list-style-type: none"> <li>(1) very small quantity generators, as defined by 310 CMR 30.00;</li> <li>(2) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;</li> <li>(3) waste oil retention facilities required by G.L. c. 21, s. 52A;</li> <li>(4) treatment works approved by the DEP for treatment of contaminated ground or surface waters.</li> </ul>	SP
(d) Storage of animal manure. Such storage must be within an enclosed building or contained in accordance with the specifications of the U.S. Soil Conservation Service	Y
(e) Storage of commercial fertilizers and soil conditioners. Such storage must be within a structure designed to prevent the generation and escape of contaminated runoff or leachate	Y
<b>3. OTHER USES</b>	<b>WRPOD</b>
(a) Rendering impervious more than 15 percent of the lot, or 2,500 sq. ft., whichever is greater, excluding operations associated with the construction or occupancy of a single-family dwelling	SP
(b) Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the district	SP
(c) Industrial and commercial uses which discharge process wastewater on-site	SP

**181.825 Special Permit Procedures.** The Special Permit Granting Authority (SPGA) for this section shall be the Planning Board. Such special permit may be granted if the SPGA determines that the intent of this Section as well as the specific criteria herein are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to groundwater quality which would result if the control measures failed. Any special permit required hereunder shall be in addition to, and separate from, any other special permit required under this Ordinance. An application for a special permit under this section shall be governed by the Planning Board's regulations and Section 181.93. In addition, the applicant shall submit, unless waived or modified by the SPGA, with reasons therefor, the following:

181.8251. A narrative statement detailing all of the information set forth below, if applicable:

- a. A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials, including but not limited to road salt or de-icing chemicals, manure, and fertilizers or soil conditioners, to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.
- b. A description of all potentially hazardous wastes to be generated in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.
- c. For underground or aboveground storage of hazardous materials, certification by a Registered Professional Engineer that such storage facilities or containers are (i) in compliance with all applicable federal or state regulations, (ii) in compliance with design specifications, as prepared by a Registered Professional Engineer, and (iii) are designed with secondary containment adequate to contain a spill the size of the container's total storage capacity.
- d. For any proposed activity on a lot which will render more than 15 percent of the total lot area or more than 2,500 sq. ft. impervious, a system for groundwater recharge must be provided that does not degrade groundwater quality, by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. Such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- e. For stockpiling or disposal of snow from outside the district, earth removal, storage of sludge or septage, manure storage, treatment works, and/or discharge or process wastewater, a narrative statement, prepared by a Registered Professional Engineer, assessing the impacts, if any, of the proposed activity on groundwater and surface water quality on the premises, adjacent to the premises, and on any wellfield(s) downgradient from the proposed activity or use, accompanied by a description of the measures proposed to protect such wellfields.



**181.826 Special Permit Decision.** Special permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated herein, that groundwater quality resulting from on-site wastewater disposal or other operations on-site shall not fall below the more restrictive of federal or state standards for drinking water, or, if existing groundwater quality is already below those standards, on-site disposal or operations shall result in no further deterioration.

**181.827 Dimensional Regulation.** The minimum lot size in the WRPOD shall be three (3) acres and the minimum frontage shall be three hundred (300') feet, except that with respect to land that remains in the same record ownership as of the adoption of this section one additional lot may be created at any time in accordance with the lot area and frontage requirements for the underlying zoning district in effect on the date this provision was adopted. This section is in addition to and not in derogation of any other rights under applicable zoning laws. **Added September 21, 2005**

### **181.83 MILL CONVERSION OVERLAY DISTRICT (MCOD)**

**181.831 Purpose.** The purpose of this Section is to create an overlay district to allow for conversion of Fitchburg's historic mills while preserving the character of nearby residential and commercial neighborhoods; to encourage the preservation, reuse and renovation of historic mill properties; to promote diversified housing opportunities and other uses such as mixed residential/commercial use, and/or a combination of such uses.

**181.832 Definitions.** For the purposes of this Section, these words and phrases have the following definitions:

*“Applicant”* shall mean the person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

*“Appropriate Renovation”* shall mean development of an Mill Conversion Project in a manner consistent with the standards of the National Park Service for the rehabilitation of historic buildings, or the applicable standards of the Fitchburg Historical Commission.

*“Bedroom”* shall mean a separate room intended for, or which customarily could be used for, sleeping.

*“Dwelling Unit”* shall mean a residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

*“Land”* shall mean land, including areas covered by water and including, but not limited to, all waterways, dams, waterfalls, and canals.

*“Mill Conversion Project” (MCP)* shall mean the conversion of an existing mill, or portion thereof, to multifamily dwellings, assisted living facility, single-family dwelling(s) and/or nonresidential ancillary uses in some combination.

*“Nonresidential Ancillary Uses”* shall mean any use set forth in the Table of Use Regulations, Section 181.313, or any accessory use or structure as the Planning Board may deem an appropriate renovation by special permit.

*“Regulations”* shall mean the rules and regulations of the Planning Board relative to subdivisions, special permits and site plans.

*“Wetlands”* shall mean land subject to the provisions of M.G.L. c. 131, ss. 40 and 40A.

**181.833 Overlay District.** The Mill Conversion Overlay District (MCO) is hereby established and shall be construed as an overlay district. Within the MCO all regulations of the underlying district(s) shall continue to be in full force and effect, except where these regulations supersede such underlying requirements or provide an alternative to such requirements. The MCO shall consist of the following properties where an existing mill is located:

Parcels included in the Mill Overlay District: **\*amended May 5, 2010**  
*(Assessor's Map – Block – Lot number)*

17-65-0	44-84-0	133-6-0
17-76-0	46-59-0	134-1-0
18-15-0	46-60-0	134-2-0
27-1-0	49-1-0	142-1-0
27-8-0	50-27-0	142-10-0
28-24-0	50-27-A	175-1-0
28-26-0	51-9-0	175-15-0
28-26-A	54-7-0	175-2-0
28-26-B	56-16-A	183-15-0
28-27-0	56-17-0	220-14-0
28-27-A	56-19-A	220-35-0
28-28-0	56-28-0	249-35-0
28-30-0	57-2-0	249-35-D
28-8-0	61-26-0	249-36-0
29-1-0	61-27-0	249-37-0
29-1-1	61-28-0	254-5-0
29-11-0	62 54-A	W-2-0
29-53-0	63-29-0	W-2-A
39-45-0	68-34-0	W-8-A
39-54-0	83-69-0	W-8-B
41-20-0	109-32-0	W-10-0
41-25-0	109-33-0	W-11-0
42-1-0	109-34-0	W-13-0
44-100-0	123-13-A	
44-65-0	133-25-0	

**181.834 Special Permit Required.** Within the MCOB, a Mill Conversion Project (MCP) may be constructed upon the issuance of a special permit by the Planning Board, and upon site plan approval pursuant to Section 181.94, subject to the requirements set forth herein. No other use or structures shall be permitted in conjunction with an MCP, except as specifically provided herein.

**181.835 Special Permit Granting Authority.** The Planning Board shall serve as the special permit granting authority pursuant to this section. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. An application for a special permit shall be governed by the Planning Board's regulations and Section 181.93. In addition, the applicant shall submit:

181.8351. Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by the City Solicitor; and

181.8352. Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by City Solicitor.

**181.836 Standards.** In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

181.8361. Roadways. The principal roadway(s) within the site shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

181.8362. Parking. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces shall be computed using the requirements of Section 181.51 or other applicable provision herein.

181.8363. Loading. Loading areas may be required by the Planning Board where deemed necessary for the efficient operation of the MCP.

181.8364. Utilities. All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances. The facility shall be served by the municipal water system.

181.8365. Expansion of Existing Buildings. Existing buildings within a MCOB may be expanded in accordance with the following requirements:

- a. Such expansion shall be permitted to the extent reasonably necessary to accommodate the proposed MCP.
- b. Such expansion shall be consistent with the character and scale of existing building(s).

181.8366. New Buildings. Within the MCP, new buildings may be constructed in accordance with the following requirements:

- a. The type, architectural style, and uses within such new buildings shall be subject to Planning Board approval.
- b. New buildings shall be permitted to the extent reasonably necessary to accommodate the proposed MCP.

181.8367. Nonresidential Ancillary Uses. Nonresidential ancillary uses may be provided within an existing or new building. The type(s) of permissible nonresidential ancillary use(s) within a MCP shall be at the discretion of the Planning Board.

**181.837 Number of Dwelling Units.** The maximum number of dwelling units shall be established by the Planning Board after reviewing the following criteria: existing structures; proposed method and efficacy of wastewater disposal; availability of public water; trip generation and traffic safety; character of the proposed MCP and its relation to the surrounding neighborhood(s); character of the existing buildings and the potential for reuse thereof.

181.8371. Number of Bedrooms. The Planning Board may ensure the diversification of dwelling units within a MCP by establishing the number of dwelling units with one, two, or three bedrooms.

**181.838 Action by the Planning Board.** The Planning Board may grant a special permit for a MCP where it makes the following findings:

181.8381. The proposed MCP complies with the requirements of this section;

181.8382. The proposed MCP does not cause substantial detriment to the neighborhood after considering the following factors:

- a. noise, during the construction and operational phases;
- b. pedestrian and vehicular traffic;
- c. environmental harm;
- d. visual impact caused by the character and scale of the proposed structure(s);
- e. other consequences as may be set forth in the Development Impact Statement for the MCP.

181.8383. The Planning Board may impose conditions in the grant of any special permit, including, but not limited to, the following:

- a. that all construction or infrastructure and improvements shall be completed within a specific time period;
- b. that all aspects of the MCP, including authorized uses, building occupancy, and intensity of use, shall remain in substantial conformance with the plans and other documents submitted to the Planning Board as part of the special permit proceeding unless modification of the special permit for the MCP is authorized, after public hearing, by the Planning Board;
- c. that a performance guarantee suitable to the Planning Board may be required.

## **181.84 PLANNED DEVELOPMENT DISTRICT**

**181.841 Purpose.** A Planned Development District (PDD) is encouraged in order to promote various types of land uses which can be combined in a compatible relationship with each other as part of a totally planned development. It is the intent of this provision to ensure compliance with the master plan and good zoning practices, while allowing certain desirable combinations of uses and structures, not otherwise available, in a distinct district. A Planned Development District does not have predetermined standards for development, but are proposed by the developer (with input from the City staff) to serve as guidelines for the development of a particular location. The intent of this district is also to insure that what is presented at the time of a Planned Development District zoning amendment is what is actually constructed.

**181.842 Procedures.** A Planned Development District requires an amendment to the Fitchburg Zoning Ordinance and Zoning Map. Applicants for PDD are requested to observe the following procedures in order to promote review of the proposed amendment and to facilitate public-private cooperation in the establishment of the PDD:

181.8421. *Pre-Application Review.* Applicants are strongly encouraged to schedule a pre-application review with the Planning Board and its staff. Pre-application review should precede the preparation of detailed plans or specifications.

181.8422. *Concept Plan.* The applicant should prepare a Concept Plan for the PDD in consultation with the Planning Board and its staff. The Concept Plan should be prepared using the requirements of Section 181.94, herein, as a guide to contents and specifications. The Concept Plan will serve as a preliminary site development plan, which will govern the development standards and uses for that particular location.

181.8423. *Informal Public Workshop.* When the applicant and the Planning Board have arrived at a mutually agreed upon Concept Plan, an informal public workshop(s) should be conducted to inform the neighborhood and the city of the proposal, and the Concept Plan should be adjusted, if necessary, based upon public comments.

181.8424. *Zoning Amendment.* The finalized Concept Plan provides the basis for the text of the zoning amendment. The Planning Board and its staff should prepare the text of the amendment and locate the new district on the Zoning Map.

181.8425. *Statutory Requirements.* The zoning amendment must thereafter be processed in accordance with G.L. c. 40A, s. 5. The Concept Plan or preliminary site development plan must also be approved by a two-thirds (2/3) vote of City Council. No use is permitted and no development may occur in a PDD except in conformity with the preliminary site development plan approved by the City Council.

The City Council, in considering the zoning amendment and concept plan may permit, as an allowable use, manufactured homes in a PDD residential community where the units are restricted to persons 55 years of age or older.

181.8426. *Changes in Uses or Site Development Plan.* Changes in uses or substantial changes in the site development plan approved by Town Meeting may be made only after approval by City Council of a new preliminary site development plan according to the procedures used for a zoning amendment, followed by the issuance of an Special Permit based on the new approved plan.

181.8427. *Special Permit required.* The Planning Board may grant a Special Permit with site plan review for a Planned Development subject to the following provisions

- a. The Planning Board makes a determination that the development conforms substantially to the preliminary site development plan approved by the City Council and is consistent with the considerations set forth in Section 181.841;
- b. The Special Permit incorporates, by reference, the definitive site development plan filed with the Special Permit application;
- c. The Special Permit may allow any or all of the uses specified in the plan approved by City Council but no others;
- d. The Planning Board may, in its discretion, permit revisions from the preliminary site development and use plan approved by the City Council provided they do not conflict with the provisions of the text of such plan. Such revisions shall generally be limited to the location of the building(s) and changes in the site plan;
- e. The Special Permit shall require that any land designated as common open space on the approved plan shall be either conveyed to the City or protected by an easement granted to the City; and
- f. The Special Permit may contain such additional conditions as the Planning Board finds will serve the public interest.

181.8428. *Denial of Special Permit.* The Planning Board may deny an application for a Planned Development Special Permit and base its denial upon a finding that the proposed development does not conform substantially to the plans for the commercial or residential development of the tract as approved by the City Council.

181.8429. *Revision of Special Permit.* Subsequent to a Special Permit granted by the Planning Board, minor revisions may be made from time to time in accordance with applicable laws, ordinances, and regulations, but the commercial or residential development approved under such Special Permit shall otherwise be in accordance with the application for the special permit, except as modified by the decision of the Planning Board. The developer shall notify the Planning Board in advance of any such revision which shall not be effective until approved by vote of the Board. If the Planning Board determines such revisions not to be minor, it shall order that an application for a revised Special Permit be filed, and a public hearing held in the same manner as set forth in Section 181.93.



## **181.85 MUNICIPAL PARKING OVERLAY DISTRICT (MPOD)**

**181.851 General.** Notwithstanding the provisions of Section 181.51, off-street parking spaces need not be provided for any retail business or service use or any commercial or industrial use which is located within the Municipal Parking Overlay District.

**181.852 Location.** The Municipal Parking Overlay District shall be located as set forth on the map entitled “Municipal Parking Overlay District, City of Fitchburg,” dated July 17, 2001, on file in the offices of the City Clerk and Building Commissioner.

## **181.86 PRIORITY DEVELOPMENT SITE OVERLAY DISTRICT (PDS)**

**Added 12-3-08**

**181.861 Purpose.** The City designates Priority Development Sites (PDS) to encourage the redevelopment of the sites by providing expedited permitting processes pursuant to G.L. c. 43D. This section shall be construed and interpreted to be consistent with G.L. c. 43D and the regulations promulgated thereunder. Any terms used in this section shall have the meaning defined in G.L. c. 43D

**181.862 Location.** The Priority Development Sites are located as follows, as shown on the Zoning Map:

- 1) an area off Intervale Road and Airport Road consisting of the following parcels:
  - (a) 135 Intervale Road, shown on the Assessors’ Map as parcel ID 123-60-0
  - (b) 0 Airport Road, shown on the Assessors’ Map as parcel ID 143-1-0
- 2) an area in the City of Fitchburg consisting of the following parcel:
  - 0 Princeton Road, shown on the Assessors’ Map as parcel ID W-11-B

**181.863 Procedures.** All applications for development within a PDS, except applications for building permits, definitive subdivision plans and plans submitted under G.L. c. 41, Section 81P as plans not requiring approval (ANR), must be processed and approved within the specific time-frames described in this section. If any deadline or date described in this section falls on a Saturday, Sunday, legal holiday or during a state of emergency declared by a public authority, the deadline will be computed to be the business day which occurs immediately following that Saturday, Sunday, legal holiday or publicly declared state of emergency.

181.8631. The application shall be filed with the appropriate permit granting authority and the City Clerk subject to the rules, regulations and requirements of that permit granting authority. The applicant shall also file a complete copy of the application with the primary municipal liaison a person appointed by the Mayor, without Council approval, who will coordinate all applications for the project.

181.8632. The primary municipal liaison shall ensure that all relevant local boards, commissions, officials, and other authorities have received a copy of the application for review.

181.8633. Within 20 business days after receiving the application, the permit granting authority will determine whether the application is complete, and will notify the applicant of its determination by certified mail. If the permit granting authority determines the application is complete, it will issue a Certificate of Completeness to the applicant within this 20 day period. If the permit granting authority fails to mail the notice of Completeness within this 20 day period, the application will be deemed complete and the permit granting authority will issue a Certificate of Completeness on request. If the permit granting authority determines the application is incomplete, it will notify the applicant in writing by certified mail a statement of the reasons why the application is incomplete and inform the applicant what information is necessary to complete the application. The re-submission of a new application in response to the notice of incompleteness starts a new 20 business day completeness review period.

181.8634. The permit granting authority will complete the review of the application and will render its decision on the application within 180 calendar days from the day after the issuing a Certificate of Completeness. This period may be waived or extended only in the following circumstances:

1. For good cause shown, upon written request, and with the consent of both the applicant and the permit granting authority;
2. If, within the first 150 days after a Certificate of Completeness has been issued, the permit granting authority determines that another permit or additional review by another authority is required which had not been previously identified by the municipal liaison, the time limits may be extended as described in this subsection 2 if the permit granting authority notifies the applicant by certified mail immediately upon the discovery of the need for the additional permit or review. The time period will be extended by no more than 30 days from the close of any public hearing or public comment period required by the additional permit or review if one is required, or, if no public hearing or comment period applies, by 30 days from the original 180 day period. The special permit granting authority will schedule any hearing or comment period as quickly as publication allows.
3. If, during the process, the application is modified to the degree that the permit granting authority cannot make a decision on the application within the original 180 day period, or, if the applicant makes a substantial change to the project for the purpose of public benefit, provided that the permit granting authority makes a written request to the Interagency Permitting Board established under G.L. c. 23A, section 2, or the Permitting Ombudsman and includes the reasons for the request and the requested new time-frame. The Board or Ombudsman shall respond with their determination on the request within 10 business days of receipt of such request. If the permit granting authority does not get a response within this time, the time will be extended until such a response is received and then extended, in accordance with the response.

4. The 180 day period will also be extended in cases if:

- (a) action by another federal, state, or municipal government agency, not subject to G.L. c. 43D, is required before the permit granting authority may reasonably act;
- (b) pending judicial proceedings affect the ability of the permit granting authority or the applicant to proceed with the application; or
- (c) enforcement proceedings that could result in revocation of an existing permit for the project or denial of the application have commenced.

In these cases, the 180 day clock shall resume when the reason for the extension is no longer applicable. The permit granting authority will notify the applicant and the City Clerk by certified mail of the resumption of the process.

181.8635. If an application to modify a permit or decision is filed, the permit granting authority shall inform the applicant within 20 business days after it receives the application whether the request is: approved, denied, if it requires additional information to make a decision, or if the proposed modification is substantial enough to require additional time and/or public hearings for review. In cases where additional information is required, the permit granting authority shall have an additional 20 business days after it receives the new information within which to complete the review and issue their decision. In cases where the proposed modification is substantial and/or requires a public hearing, the permit granting authority shall make every reasonable effort to complete the process in a timely manner to maintain the integrity of the expedited permitting process.

181.8636. Failure of the permit granting authority to take final action on an application within the 180 day period, except as extended under this section, shall be deemed a constructive grant of the relief or approval requested by the applicant pursuant as set forth in G.L. 43D. If this happens, the applicant may file, within the next 14 calendar days, an affidavit together with a copy of the application in the office of the City Clerk. The affidavit describe all of the facts giving rise to the constructive grant or approval and shall state that copies been mailed by certified mail to all parties to the proceedings and all persons entitled to notice of hearing. This constructive grant or approval shall not apply when:

- 1. the permit granting authority has made a timely determination that the application is incomplete and the applicant has not provided the requested information within 90 calendar days – in which case the permit granting authority shall notify the Interagency Permitting Board that the permit process has been discontinued;
- 2. the permit granting authority has determined that the application has undergone substantial modifications as referred to in section 181.8634;
- 3. the permit granting authority has determined the application contained false or misleading information, in which case notice of said determination shall be mailed by certified mail to the applicant and the Interagency Permitting Board.

181.8636. Appeals of the permit granting authority's decision or from the constructive grant of approval shall be filed within 20 calendar days after the last permitting decision related to the project has been rendered or the conclusion of the 180 day period (or the extended time period as applicable), whichever is later, as set forth in G.L. 43D.

## **181.87 SMART GROWTH OVERLAY DISTRICT (SG)**

*Added 3-17-2010*

**181.871 Purposes.** The purposes of Smart Growth Overlay District (SG) is:

181.8711. To encourage the preservation, reuse and renovation of Fitchburg’s historic mills while preserving the character of nearby residential and commercial neighborhoods, and to promote low impact, sustainable new development that is pedestrian friendly.

181.8712. To establish development standards that ensure high quality and creative site planning, architecture and landscape design that is consistent with the distinct visual character and identity of the City of Fitchburg.

181.8713. To promote diversified housing stock at a variety of costs, including affordable housing, and other uses such as mixed residential/commercial use, and/or a combination of such uses that meets the needs of the City’s population and promotes diversity.

181.8714. To generate positive tax revenue, and to benefit from the financial incentives provided by M.G.L. c. 40R, while providing the opportunity for housing choice among households of varying incomes, ages and sizes

### **181.872 Scope and Authority.**

181.8721. A SG is hereby established pursuant to the authority of M.G.L. c. 40R and 760 CMR 59.00 and shall be construed as a zoning overlay district. There are seven (7) Sub-Districts identified as Nockege; Homeline Furniture; Premier Box; Downtown Gateway; Iver Johnson; Broad Street; and Can-Am, all as shown on the Zoning Map of the City of Fitchburg, as amended.

<b>Subdistrict</b>	<b>Street Address</b>	<b>Assessors</b>	<b>Block</b>	<b>Lot</b>
<b>Nockege</b>	0 Nockege St.	28	23	0
	93 Nockege St.	28	24	0
<b>Homeline Furniture</b>	1428 Main St.	27	8	0
<b>Premier Box</b>	245 River St.	27	1	0
<b>Downtown Gateway</b>	1146 Main St.	17	65	0
	1098 Main St.	18	1	0
	0 Main St.	18	2	0
	51 River St.	28	32	0

<b>Downtown Gateway</b>	41-47 River St.	28	33	0
<b>(continued)</b>	5 Broadway St.	28	35	0
	33 River St.	28	36	0
	27 River St.	29	17	0
<b>Iver Johnson</b>	83 River St.	17	76	0
	91 River St.	28	26	0
	89 River St.	28	26	A
	87 River St.	28	26	B
	85 River St.	28	27	0
	85 River St.	28	27	A
	81 River St.	28	28	0
	0 River St.	28	29	0
	79 River St.	28	30	0
<b>Broad Street</b>	314-348 Broad St.	29	1	0
	356 Broad St.	29	1	1
	339 Broad St.	29	53	0
<b>Can-Am</b>	644-688 River St.	61	26	0

181.8722. At the option of the Applicant, development of land within a SG may be undertaken by means of a Plan Approval pursuant to the zoning controls set forth in this §181.87 or by complying with all applicable zoning controls set forth in the Zoning Ordinance of the City of Fitchburg (Underlying Zoning). At such time as a building permit is issued for any Development Project for which Site Plan Approval has been given pursuant to this §181.87, all of the land subject to the application shall be developed pursuant to this §181.87 and shall not be developed pursuant to the Underlying Zoning.

181.8723. Development Projects proposed pursuant to this §181.87 shall be subject to all other applicable local, state and federal regulations.

**181.873 Definitions.** As used in this §181.87, defined terms shall have the meanings set forth in §181.10 of the Underlying Zoning in effect as of the date of adoption of this §181.87. To the extent that there is any conflict between this §181.87 and M.G.L. c. 40R and / or 760 CMR 59.00, *et seq.*, the latter shall control. Additional defined terms as used in this §181.87 shall have the meanings set forth as follows:

*“Affordable Homeownership Unit”* – An Affordable Housing unit required to be sold to an Eligible Household in accordance with the requirements of this Ordinance.

*“Affordable Housing”* – Housing that is affordable to and occupied by Eligible Households.

*“Affordable Housing Restriction”* – A deed restriction of Affordable Housing meeting the requirements in M.G.L. c. 184 §31 and the requirements of this Ordinance.

*“Affordable Rental Unit”* – An Affordable Housing unit required to be rented to an Eligible Household in accordance with the requirements of this Ordinance.

*“Applicant”* – The person or persons, including a corporation or other legal entity, who applies for issuance of a Plan Approval subject to the provisions of the SG. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

*“Approving Authority”* – The Planning Board of the City of Fitchburg acting as the authority designated to review projects and issue approvals under this Ordinance.

*“As-of-right”* – Allowable under this Ordinance without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to Plan Review shall be considered As-of-right.

*“DHCD”* – The Massachusetts Department of Housing and Community Development or any successor agency.

*“Design Standards”* – The document entitled Fitchburg Smart Growth Overlay District Design Standards, as amended, approved by DHCD on [INSERT DATE] pursuant to M.G.L. c. 40R, §10. The Design Standards are applicable to all Development Projects within a SG that are subject to Plan Review by the Approving Authority.

*“Development Project”* or *“Project”* – A residential or mixed-use development undertaken under this §181.87. The limits of a Development Project shall be identified on the Plan which is submitted to the Approving Authority for Plan Review.

*“ Dwelling Unit ”* – A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and shall contain a kitchen area or combination kitchen/living area.

*“ Dwelling, Multi-Family ”* – A residential building containing four or more dwelling units designed for occupancy by the same number of families as the number of dwelling units. A Mixed-Use Development Project may include Multi-Family Dwelling Units.

*“ Eligible Household ”* – An individual or household whose annual income is below eighty percent (80%) of the area-wide Median Household Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

*“ Household Income, Median ”* – The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, HUD.

*“ Impacted ”* – For purposes of traffic mitigation, means intersections projected to receive at least twenty per cent (20%) of the expected traffic generated by the proposed Development Project, either based upon the total anticipated peak hour traffic generated by the proposed Project, or based upon the total anticipated average daily traffic counts generated by the proposed Project.

*“ Level of Service (LOS) ”* – *Traffic Level of Service* shall be determined according to criteria set forth by the most recent edition of the manual of the Transportation Research Board of the National Research Council

*“ Mixed-Use Development Project ”* – A Development Project that includes a building or buildings with a portion of the floor area devoted to one or more Non-Residential Use. A minimum of 50% of the total gross floor area in a Mixed Use Development Project shall be devoted to Multi-Family residential use.

*“ Monitoring Agent ”* – A qualified housing organization designated by the Fitchburg Planning Board with the power to monitor and to enforce compliance with the provisions of this Ordinance related to Affordable Housing units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Housing units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Housing unit in a SG.

*“ Residential Development Project ”* – A Development Project that contains Dwelling Units and does not contain a non-residential use.



*“Non-Residential Use”* – A use that is listed as an allowed Exempt and Institutional Use, Commercial Use or Industrial Use in the CBD Zoning District, without need for a special permit, in the Zoning Ordinances Table 181.313 Table of Principal Use Regulations, in effect as of the date of adoption of this §181.87.

*“Parties in interest”* – The Applicant, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the Applicant as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the Fitchburg Planning Board, and the planning board of every abutting city or town.

*“Plan”* – Plans depicting a proposed Development Project for all or a portion of the SG and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of this Ordinance and the Design Standards.

*“Plan Approval”* – The Approving Authority’s authorization for a proposed Development Project based upon a finding of compliance with this Ordinance and Design Standards after the conduct of a Plan Review.

*“Plan Review”* – The review procedure established by §181.879 of this Ordinance and administered by the Approving Authority.

*“Renovation”* – Physical improvement that adds to the value of the real property. Painting, ordinary repairs, and other normal maintenance do not constitute a renovation.

*“SG”* or *“District”* – The Smart Growth Overlay District, an overlay zoning district adopted pursuant to M.G.L. c. 40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L. c. 40A and approved by DHCD pursuant to M.G.L. c. 40R and 760 CMR 59.00.

*“Underlying Zoning”* – The zoning requirements adopted pursuant to M.G.L. c. 40A that are otherwise applicable to the geographic area in which the SG is located, as said requirements may be amended from time to time.

*“Unduly Restrict”* – A provision of the SG or a Design Standard that adds unreasonable costs or unreasonably impairs the economic feasibility of a proposed Development Project in a SG.

*“Unrestricted Unit”* – A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

*“Zoning Map”* – The Zoning Map of the City of Fitchburg, Massachusetts, adopted in accordance with and pursuant to the provisions of M.G.L. c. 40A.

*“Zoning Ordinance”* – The Zoning Ordinance of the City of Fitchburg, Massachusetts, adopted in accordance with and pursuant to the provisions of M.G.L. c. 40A.

**181.874 Permitted and Prohibited Uses.**

181.8741. *Permitted Uses.* The following uses shall be permitted in the following Districts As-of-right upon Plan Approval:

<b>Sub-District</b>	<b>Multi-Family Development Project</b>	<b>Mixed-Use Development Project</b>
Nockege	Y	Y
Homeline Furniture	Y	Y
Premier Box	Y	Y
Downtown Gateway	Y	Y
Iver Johnson	Y	Y
Broad Street	Y	Y
Can-Am	Y	Y

181.8742. *Accessory Buildings and Uses.* Accessory buildings and uses shall be permitted on the same lot with the principal use pursuant to §181.32 of the Underlying Zoning in effect as of the date of adoption of this §181.87. If an accessory use requires Site Plan Approval, it may be authorized within a Plan Approval issued pursuant to this §181.87.

181.8743. *Prohibited Uses.*

- a. Any use prohibited in the Underlying Zoning District by the Underlying Zoning in effect as of the date of adoption of this §181.87.
- b. Any use not listed in §181.874 of this Ordinance is prohibited.

**181.875 Dimensional and Other Requirements.**

181.8751. Methods for calculating dimensional requirements shall be consistent with §181.412 of the Underlying Zoning in effect as of the date of adoption of this §181.87.

181.8752. New buildings within the SG shall be subject to the bulk, dimensional and density requirements in Table 181.875:

<b>Table 181.875 Table of Dimensional and Density Requirements.</b>								
<b>District</b>	<b>Min. Lot Area (sq. ft.)</b>	<b>Max. Residential Density, new construction (units/acre)</b>	<b>Max. Residential Density, renovation (units/acre)</b>	<b>Min. Frontage (linear ft.)</b>	<b>Min. Front Yard (linear ft.)</b>	<b>Min. Side Yard (linear ft.)</b>	<b>Min. Rear Yard (linear ft.)</b>	<b>Max. Height (ft.)</b>
Nockege		20	40	20	0	0	0	55
Homeline Furniture		20	20	20	0	0	0	55
Premier Box		20	22	20	0	0	0	55
Downtown Gateway		20	30	20	0	0	0	55
Iver Johnson		20	21	20	0	0	0	45
Broad Street		20	25	20	0	0	0	45
Can-Am		20	21	20	0	0	0	45

181.8753. *Fractional Units.* When the application of the allowable residential densities specified in Table 181.875. Table of Dimensional and Density Requirements results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.

181.8754. *Building Renovation.* Renovation of existing buildings may maintain existing building footprints, and may only expand such footprints insofar as such expansion is in compliance with this Ordinance including the required dimensional requirements for new buildings in Table 181.875.

181.8755. *Transportation network.*

- a. **Design and location.** The overall site design shall include a cohesive transportation network providing for vehicular, pedestrian and bicycle circulation to and within the SG. The principal roadway(s) serving the site shall be designed to conform to the standards of the City where the roadway is intended for dedication and acceptance by the City. Private ways shall be adequate for the intended use and vehicular, pedestrian and bicycle traffic and shall be maintained by an association of unit owners or by the Applicant. Design and construction shall incorporate sound engineering and construction standards including adequate provisions for drainage.
- b. **Ownership and maintenance.** The plans and documentation submitted to the Approving Authority shall include a description of proposed ownership and maintenance of all traveled ways internal to the site, including vehicular ways and sidewalks. As a condition of Plan Approval, the Approving Authority may require provision of an operations and maintenance plan for traveled ways and associated drainage facilities, and for sidewalks within public rights-of-way adjacent to the site.
- c. **Off-Site traffic impacts.** Where traffic mitigation is required as a condition of Plan Approval pursuant to §181.8792(c)(4), measures shall be proposed to ensure that Level of Service (LOS) at nearby intersections shall not be degraded more than one level as a result of traffic generated by the proposed Project.

181.8756. *Signs and Advertising Devices.* Commercial signs and advertising devices proposed, including those within a Mixed-Use Development Project, shall be subject to the procedures and requirements of the Underlying Zoning District as governed by §181.53 of the Underlying Zoning in effect as of the date of adoption of this §181.87.

181.8757. *Environmental Performance Standards.* Proposed Development Projects shall be subject to §181.55 of the Underlying Zoning in effect as of the date of adoption of this §181.87.

181.8758. *Applicability of Floodplain Protection Overlay District.* Proposed Development Projects shall be subject to §181.81 (Floodplain Protection Overlay District) of the Underlying Zoning in effect as of the date of adoption of this §181.87.

**181.876 Off-Street Parking and Loading.**

181.8761. Off-street parking in the Districts shall be provided in order to meet or exceed the following minimum requirements:

<b>Table 181.8761. Off-Street Parking Requirements.</b>	
<b>Use</b>	<b>Required Parking</b>
Dwelling Unit (1 bedroom)	1.25 spaces
Dwelling Unit (2 bedrooms)	1.75 spaces
Dwelling Unit (3 bedrooms)	2.0 spaces
Dwelling Unit (4 bedrooms)	2.5 spaces
Non-Residential Uses	Off-Street parking for Non-Residential Uses shall be provided in accordance with §181.512 of the Underlying Zoning in effect as of the date of adoption of this §181.87.

181.8762. *Guest Parking.* As a condition of Plan Approval, the Approving Authority may require the provision of up to one (1) off-street parking space, in addition to the requirements in Table 181.8761, for every ten (10) Dwelling Units.

181.8763. *Fractional Spaces.* When the application of the minimum required parking standards in Table 181.8761 results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.

181.8764. *Location of parking.*

- a. Newly constructed surface parking for new Development Projects shall be located at the side or rear of a new building relative to any public right-of-way.
- b. Parking shall be provided on the same parcel as the Development Project served by the parking except where the Approving Authority authorizes the provision of dedicated off-site parking spaces within eight hundred (800) linear feet, to be measured along pedestrian easements or rights-of-way, upon a written finding that there exists continuous pedestrian access between the parking and the primary entrance to the Development Project.

181.8765. *Shared use of required parking.* At the discretion of the Approving Authority, shared use may be made of required parking spaces by intermittent use establishments such as churches, assembly halls, or theaters whose peak parking demand is only at night or on Sundays and by other uses whose peak demand is only during the day. Required spaces shall be within eight hundred (800) feet of the main entrance to the principal buildings served by the shared parking. In order for such shared parking to be eligible to satisfy required off-street parking standards in whole or in part, prior to Plan Approval a contract, agreement, or suitable legal instrument acceptable to Fitchburg legal counsel shall be filed with the application for Plan Approval which shall specify the location of all spaces to be jointly used, the number of such spaces, the hours during the day that such parking shall be available, and the duration or limit, if any on such parking.

181.8766. *Modifications.* The Approving Authority may grant a Plan Approval making such reductions in the parking standards, or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in or in proximity to the Development Project. The Approving Authority may impose conditions of use or occupancy appropriate to such reductions.

181.8767. *Construction Standards.* Parking areas shall comply with the provisions of §181.514 of the Underlying Zoning in effect as of the date of adoption of this §181.87. Parking shall be designed and constructed to comply with all applicable disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (AAB).

181.8768. *Off-Street Loading.* All buildings requiring the delivery of goods, supplies, or materials, or shipments of the same shall have bays and suitable maneuvering space for off-street loading of vehicles in accordance with §181.52 of the Underlying Zoning in effect as of the date of adoption of this §181.87.

### **181.877 Design Standards.**

181.8771. *Adoption.* To ensure that new development shall be of high quality, and shall meet the standards envisioned by the City of Fitchburg in adopting this Ordinance, the Approving Authority shall adopt the Fitchburg Smart Growth Overlay District Design Standards as approved by DHCD on [INSERT DATE] governing the issuance of Plan Approvals for Development Projects within the SG and shall file a copy with the City Clerk. In addition to the standards set forth in this Ordinance, the physical character of Development Projects within the SG shall comply with such Design Standards. In the event of any conflict between this Ordinance and the Design Standards, this Ordinance shall govern and prevail.

181.8772. *Amendment.* The Approving Authority may adopt, by simple majority vote, amendments to the Design Standards. Before adopting any amendment to the Design Standards, the Approving Authority shall submit the proposed amendment to DHCD for approval. An application for Plan Approval shall not be subject to any Design Standard that has not been approved by DHCD and filed with the City Clerk. Any amendment to the Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties.

### **181.878 Affordable Housing.**

181.8781. *Number of Affordable Housing units.* Twenty percent (20%) of all Dwelling Units constructed in a Development Project shall be Affordable Housing units. For Development Projects in which all of the Dwelling Units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five percent (25%) of the Dwelling Units shall be Affordable Housing units.

181.8782. *Fractional Units.* When the application of the percentages specified in §181.8781 results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.

181.8783. Affordable Housing units shall comply with the following requirements:

- a. Fair Housing Requirement. All Development Projects within the SG shall comply with applicable federal, state and local fair housing laws.
- b. For an Affordable Rental Unit, the monthly rent payment including utilities and parking shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, with price determined assuming a Family size equal to the number of bedrooms in the unit plus one unless other affordable program rent limits approved by DHCD shall apply.
- c. For an Affordable Homeownership Unit, the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a Family size equal to the number of bedrooms in the Dwelling Unit plus one.
- d. Affordable Housing units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

181.8784. *Design and timing.*

- a. **Design.** Affordable Housing units must be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Housing units must have access to all on-site amenities. The total number of bedrooms in the Affordable Housing units shall be at least proportionate to the total number of bedrooms in all units in the Development Project.
- b. **Timing.** All Affordable Housing units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units. For any Development Project that is approved in phases, the proportion of Affordable Housing units shall be consistent across all phases.

181.8785. *Affordable housing restriction.* Each Affordable Housing unit shall be subject to an Affordable Housing Restriction which is recorded with the Worcester North District Registry of Deeds or Land Court. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Ordinance. All Affordable Housing Restrictions must include, at minimum, the following:

- a) Description of the Development Project, including whether the Affordable Housing unit will be rented or owner-occupied.
- b) A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification.
- c) The term of the Affordable Housing Restriction shall be no less than thirty (30) years.
- d) The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Fitchburg Planning Board or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Fitchburg Planning Board.



- e) Reference to a housing marketing and resident selection plan, to which the Affordable Housing unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, the housing marketing and selection plan may provide for preferences in resident selection. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size.
- f) A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan.
- g) Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
- h) A requirement that only an Eligible Household may reside in an Affordable Housing unit and that notice of any lease or sublease of any Affordable Housing unit to another Eligible Household shall be given to the Monitoring Agent.
- i) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.
- j) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the City of Fitchburg, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household.
- k) Provision that the restriction on Affordable Rental Units in a rental Development Project or rental portion of a Development Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and the City of Fitchburg, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household.
- l) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent, in a form specified by that Monitoring Agent certifying compliance with the provisions of this Ordinance and containing such other information as may be reasonably requested in order to ensure affordability.
- m) A requirement that residents in Affordable Housing units provide such information as the Monitoring Agent may reasonably request in order to ensure affordability eligibility and compliance.
- n) Designation of the priority of the Affordable Housing Restriction over mortgages and other restrictions.

181.8786. *Administration.* The Monitoring Agent shall ensure the following:

- a. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
- b. Income eligibility of households applying for Affordable Housing units is properly and reliably determined.
- c. The housing marketing and resident selection plan conforms to all requirements and is properly administered.
- d. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given.
- e. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Worcester North District Registry of Deeds or Land Court.

181.8787. The housing marketing and selection plan may make provision for payment by the Applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households, to conduct the housing lottery, and to monitor and enforce compliance with affordability requirements over time.

**181.879 Administration.** The Approving Authority shall adopt and file with the City Clerk administrative rules relative to the application requirements and contents for Plan Review. Such administrative rules may be included as a separate section within the approved Design Standards. Such administrative rules and any amendment thereto must be approved by DHCD. The Plan Review process encompasses the following, as may be supplemented by the administrative rules:

181.8791. *Pre-application review.* Applicants are strongly encouraged to schedule a pre-application review with the Approving Authority staff, which may include meeting with the Fitchburg Development Review Committee. Pre-application review should precede the preparation of detailed plans or specifications. The purpose of the pre-application review is to obtain the advice and direction of the Approving Authority staff prior to filing the application, including determining whether additional technical analyses listed in §181.8792(c) may be required. At the pre-application review the Applicant shall outline the proposal and seek preliminary feedback from the Approving Authority staff, other municipal review entities, and members of the public. The Applicant is also encouraged to request a site visit by the Approving Authority's designee in order to facilitate pre-application review.

181.8792. *Application procedures.*

- a. An application for Plan Approval shall be filed by the Applicant with the City Clerk and a copy of the application including the date of filing certified by the City Clerk shall be filed forthwith with the Approving Authority. The Applicant shall also file the required number of copies of the application with the Approving Authority including any required forms provided by the Approving Authority.
- b. As part of any application for Plan Approval, the Applicant must submit the following documents to the Approving Authority and, if a Monitoring Agent has been designated, with the Monitoring Agent:
  - 1) Evidence that the Development Project complies with the cost and eligibility requirements of §181.8783. Affordable Housing.
  - 2) Development Project plans that demonstrate compliance with the requirements of §181.8784. Affordable Housing.
  - 3) A form of Affordable Housing Restriction that satisfies the requirements of §181.8785. Affordable Housing.
- c. As part of any application for Plan Approval, the Applicant may be required to submit one or more of the following technical analyses to the Approving Authority:
  - 1) **Architecture.** Renderings of the architectural design of the buildings to be constructed and/or renovated, including identification of all major exterior materials, colors and finishes in sufficient detail for the Approving Authority to determine consistency with the Ordinance and Design Standards.
  - 2) **Surface and water pollution.** A report on the impact of stormwater runoff on adjacent and downstream surface water bodies, subsurface groundwater and the water table.
  - 3) **Soils.** Analysis of erosion and sedimentation that may be caused by the construction, operation and maintenance of the proposed development.

- 4) **Traffic impact study.** When required by the Approving Authority, the traffic impact study shall include the following information:
- A report on existing traffic conditions including estimated average daily and peak hour traffic volumes, average and peak speeds, sight distances, accident data for the previous three years, and levels of service (LOS) of intersections and streets likely to be impacted by the proposed development. Generally, such data shall be presented for all major streets and intersections within 1000 feet of the project boundaries provided, however, that all such studies shall include the intersection of River Street and Main Street located immediately to the east of the Downtown Gateway Sub-District, and shall be no more than 18 months old at the date of the application.
  - Projected traffic conditions for design year of occupancy: statement of design year of occupancy, average annual background traffic growth, impacts of proposed developments which have already been approved or are pending before City boards.
  - Projected impact of proposed development: Projected peak hour and daily levels and directional flows resulting from the proposed Project; sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity of the proposed development; and projected post development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed Project.
  - Proposed methods as necessary to mitigate the estimated traffic impact and methodology and sources used to derive existing data and estimations. At the discretion of the Approving Authority, the Applicant may within a mitigation plan contribute funds for the purpose of partial design and/or construction of off-site traffic improvements provided the funding is proportional to the impacts of the traffic impacts resulting from the proposed Development Project. The Approving Authority may reduce the amount of required mitigation upon a finding that achieving this performance standard would Unduly Restrict opportunities for development.
- d. **Review fees.** The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Approving Authority. Such fees shall be held by the City of Fitchburg in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

- e. Upon receipt by the Approving Authority, applications for Plan Approval shall be distributed to the Mayor, City Council, Health Department, Building & Zoning Division, Assessors Office, Public Works Department (Water Division and Waste Water Treatment Division), Conservation Commission, the Fire Department and the Police Department. Any reports from these parties shall be submitted to the Approving Authority within sixty (60) days of filing of the application.
- f. Within thirty (30) days of filing of an application with the Approving Authority, the Approving Authority or its designee shall evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the Applicant certifying the completeness of the application. Where an application is found to be incomplete, the Approving Authority or its designee shall provide a statement outlining required items that were missing from the application. The Approving Authority or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.

181.8793. *Public hearing.* The Approving Authority shall hold a public hearing, including sending notice of such hearing to parties in interest, and shall review all applications according to the procedure specified in M.G.L. c. 40R §11.

181.8794. *Plan Approval decision.*

- a. The Approving Authority shall make a decision on the application for Plan Approval by a simple majority vote and shall file said decision with the City Clerk within 120 days of the receipt of the application by the City Clerk. The time limit for public hearings and taking of action by the Approving Authority may be extended by written agreement between the Applicant and the Approving Authority. A copy of such agreement shall be filed with the City Clerk.

- b. In the event that a Plan is submitted relative to a lot that is subject to a special permit currently in effect that has been issued pursuant to §181.83 of the Underlying Zoning, and provided that the proposed Development Project is substantially similar in unit count and design to the approved Mill Conversion Project, the Approving Authority shall make a decision on the application for Plan Approval by a simple majority vote and shall file said decision with the City Clerk within 60 days of the receipt of the application for Plan Approval by the City Clerk. In order to facilitate this streamlined review, the Approving Authority shall conduct its completeness review pursuant to §181.8792(f) within 21 days of submittal and shall reduce to 35 days the time allotted to other public departments to offer comments pursuant to §181.8792(e). The time limit for public hearings and taking of action by the Approving Authority may be extended by written agreement between the Applicant and the Approving Authority. A copy of such agreement shall be filed with the City Clerk.
- c. Failure of the Approving Authority to take action within the time provided in §181.8794(a) or (b), as applicable, or extended time, if applicable, shall be deemed to be an approval of the application.
- d. An Applicant who seeks approval because of the Approving Authority's failure to act on an application within the time provided in §181.8794(a) or (b), as applicable, or extended time, if applicable, must notify the City Clerk in writing, within fourteen (14) days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the Applicant to parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to M.G.L. c. 40R and shall be filed within twenty (20) days after the date the City Clerk received such written notice from the Applicant that the Approving Authority failed to act within the time prescribed.
- e. The Approving Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Plan Approval application. The written decision shall contain the name and address of the Applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision.
- f. The decision of the Approving Authority, together with the detailed reasons therefore, shall be filed with the City Clerk and the Building & Zoning Division. A copy of the decision shall be mailed by the Approving Authority to the Applicant and to the owner if other than the Applicant certifying that a copy of the decision has been filed with the City Clerk and that all plans referred to in the decision are on file with the Approving Authority. A notice of the decision shall be sent to parties in interest and to persons who requested a notice at the public hearing.

- g. Effective date. If twenty (20) days have elapsed after the decision has been filed in the office of the City Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the City Clerk shall so certify on a copy of the decision. If the application is approved by reason of the failure of the Approving Authority to timely act, the City Clerk shall make such certification on a copy of the application. A copy of the decision or application shall be recorded with the title of the land in question in the Worcester North District Registry of Deeds or the Worcester Land Registry District, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the Applicant.

181.8795. *Criteria for approval.*

- a. The Approving Authority shall approve the Development Project upon finding that it complies with the requirements of the SG and applicable Design Standards.
- b. **Waivers.** The Approving Authority may at its discretion authorize waivers in the Plan Approval with respect to the dimensional and other standards set forth in this §181.87 and in the Design Standards upon a finding that such waiver will allow the Development Project to achieve the density, affordability and/or physical character allowable under this Ordinance. However, the Approving Authority may not waive any portion of the Affordable Housing requirements in §181.878. Affordable Housing except insofar as such waiver results in the creation of a number of Affordable Housing units in excess of the minimum number of required Affordable Housing units.
- c. Prior to the granting of any Plan Approval for a Development Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent or, in the event that a Monitoring Agent has not yet been named, to the satisfaction of the Approving Authority, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the City of Fitchburg.

181.8796. *Criteria for conditional approval.*

- a. The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with this §181.87 and applicable Design Standards, or to mitigate any extraordinary adverse impacts of the Project on nearby properties, insofar as such conditions are compliant with the provisions of M.G.L. c. 40R and applicable regulations and do not Unduly Restrict opportunities for development.

- b. The Approving Authority may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address extraordinary adverse Project impacts on nearby properties.

181.8797. *Criteria for denial.* The Approving Authority may deny an application for Plan Approval pursuant to this Ordinance if the Approving Authority finds one or more of the following:

- a. The Development Project does not meet the conditions and requirements set forth in the SG and applicable Design Standards.
- b. The Applicant failed to submit information and fees required by the SG and necessary for an adequate and timely review of the Development Project or potential Project impacts.
- c. It is not possible to adequately mitigate significant adverse Development Project impacts on nearby properties by means of suitable conditions.

181.8798. *Time limit.* A Plan Approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the Applicant is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.

181.8799. *Appeals.* Any person aggrieved by a decision of the Approving Authority may appeal pursuant to M.G.L. c. 40R, Section 11. within twenty (20) days after the Plan decision has been filed in the office of the City Clerk.

181.8710. *Annual Update.* On or before July 31 of each year, the Approving Authority shall cause to be filed an Annual Update with DHCD in a form to be prescribed by DHCD. The Annual Update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c. 40S and accompanying regulations. The City Clerk shall maintain a copy of all updates transmitted to DHCD pursuant to this Ordinance, with said copies to be made available upon request for public review.



181.8711. *Notification of Issuance of Building Permits.* Upon issuance of a residential building permit within the SG, the Approving Authority shall cause to be filed an application to the DHCD in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit issued pursuant to M.G.L. c. 40R. The application shall contain all information required in 760 CMR 59.06 (2), as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c. 40S and accompanying regulations. The City Clerk shall maintain a copy of all such applications transmitted to DHCD pursuant to this Ordinance, with said copies to be made available upon request for public review.

181.8712. *Date of effect.* The effective date of this Ordinance shall be the date on which such adoption is voted upon by the City Council pursuant to the requirements of M.G.L. c. 40A §5 and M.G.L. c. 40R; provided, however, that an Applicant may not proceed with construction pursuant to this Ordinance prior to the receipt of final approval of this Ordinance and accompanying Zoning Map by DHCD.

181.8713. *Severability.* The provisions of this section are severable. If any provision of this section is held invalid, the other provisions shall not be affected but shall remain in full force.

## **181.88 STUDENT HOUSING OVERLAY DISTRICT (SHOD)**

*Added 4-6-2011*

**181.881 Intent.** The residential area in the vicinity of the Fitchburg State University is densely populated and there is a shortage of housing for students. The purpose of this Section is to create an overlay district over the Urban Renewal District established by the City and the Fitchburg Redevelopment Authority as shown on the amended zoning map to allow for the conversion of existing buildings or the construction of new buildings as lodging houses for post-Secondary Education students in or near the Central Business District shown on the Zoning Map which are privately owned and managed. The intent of this section is to simplify the creation of student housing and that intent should guide construction of the section and the Zoning Ordinance generally.

**181.882 Definitions.** For the purposes of this section the following words have the following meanings:

*“Applicant”* means the person or persons, including a corporation, limited liability company or any other lawfully organized legal entity applying for a special permit for student housing

*“Student Housing”* means a dwelling for students which contains rooming units and which space is let for compensation by the owner or operator to four or more university students not within the second degree of kindred to the person compensated. Lodging houses, dormitories and other similar dwelling places are included, except to the extent that they are governed by

stricter standards elsewhere created. The definition does not include any hospital, sanatorium, convalescent or nursing home, infirmary or boarding home for the aged licensed by the Department of Public Health or any dwelling licensed, authorized or regulated by the Department of Mental Health or any other agency of the Commonwealth or United States

*“Rooming Unit”* means the room or group of rooms let to an individual for private use as living and sleeping quarters with shared or common facilities for cooking, shared bathroom facilities and common shared living area. Shared or common facilities or areas are not permitted at all if they can be reached only by passing through any private part of the dwelling unit or rooming unit of another. The permit granting authority may not waive this prohibition.

*“Student”* means individuals enrolled in a college or university in a course of study for a post high school education.

**181.883 Establishment.** The Student Housing Overlay District (SHOD) is hereby established. It is an overlay district as shown on a plan titled: “SHOD – Student Housing Overlay District” dated January 2011, on file with the offices of the City Clerk and Building Commissioner. All the regulations of the underlying district shall continue in full force and effect except as modified by this section or where this section provides an alternative.

**181.884 Permitted Uses.** Within the SHOD, buildings may be converted or constructed as student housing upon obtaining a special permit and site plan approval as provided in Sections 181.93 and 181.94 of the Zoning Ordinance. No single family, two, three, or four family residential structures in the SHOD District may be eligible for conversion to student housing.

**181.885 Special Permit Granting Authority.** The Planning Board will serve as the Special Permit Granting Authority and will conduct hearings, as necessary, on receipt of a completed application for student housing. The Planning Board will enact and promulgate regulations regulating the contents of the applications and relating to the standards described in this section. The provisions of Section 181.93 shall apply to applications for student housing except as modified by this section. The Planning Board may waive set-back and height requirements. The Planning Board shall adopt design standards applicable to student housing.

**181.886 Standards.** To build or convert an existing building for student housing the proposed development must meet the following standards:

- a. The parking restrictions in other sections of this Zoning Ordinance shall not apply to student housing. However, the applicant must demonstrate that the occupants will have sufficient on-site, off-street parking, or nearby off-street parking by arrangement for use of a parking lot reasonably close to the premises for the convenient use of the occupants. The parking availability must be clearly shown on the site plan. During site plan review the Planning Board shall take into account any arrangement for shuttle bus service or the availability of public transportation in determining the reasonableness of the applicant’s plan for parking. The Planning Board shall have the discretion to approval any

reasonable parking plan proposed by the applicant. However the Planning Board, if it finds that the plans for parking are inadequate, may deny the site plan and if it does the developer may not proceed with the creation of student housing.

- b. The plans must include provisions for on-site management for the period from 7 p.m. to 7 a.m. seven days a week which could include a security desk, reception desk, management office and/or maintenance operations or some combination, but regardless must include a method of providing immediate access to management and/or maintenance on a 24/7 basis.
- c. A security guard or locks that use a magnetic key or another suitable security system approved by the Planning Board.
- d. Designation of a community and police liaison to interact with the community, the police and the University to keep open lines of communication. This person may be the on-site manager or a resident.
- e. The applicant will submit a clearly written and, publicized and advertised policy manual that explains resident's responsibilities and behavioral expectations as well as the management's response or possible responses to policy infractions for the Planning Board's review and approval. The approved policy must be posted in the building, provided to each new resident, and provided to the city police. The policy must indicate that policy infractions may subject the violator to eviction.
- f. Each rooming unit will be designed to meet the standards of both the Massachusetts Building Code and the State Sanitary Code and the regulations of the Board of Health and the Fitchburg Board of License Commissioners as they may from time to time be amended. The applicant must submit plans for the conversion or construction of the student housing. The Planning Board shall submit the plans for review by the Fire Chief, Police Chief, Director of Public Health and/or the Building Commissioner and the plans shall be modified and adapted to meet the written requirements imposed by these authorities.

**181.887 Comparison to Lodging/Boarding House.** Student housing will be considered as lodging houses within the meaning of G.L. c. 140, § 22 but will not be considered to be a boarding house as defined in this Zoning Ordinance.

## SECTION 181.9 ADMINISTRATION AND PROCEDURES

### 181.91 ADMINISTRATION

**181.911 Permits.** This ordinance shall be administered by the Building Commissioner. Pursuant to the State Building Code, the Building Commissioner may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth and may request advisory reviews by other municipal boards and officials. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use unless in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as certification of such compliance.

181.9111. *Occupancy permit.* No building hereafter erected, altered or relocated shall be used and no change shall be made of the use of any building or any parcel of land, except for the use of land for agriculture, horticulture, or floriculture, unless an occupancy permit signed by the Building Commissioner has been granted to the owner or occupant of such land or building. Such permit shall not be granted unless the proposed use of the land or building and all accessory uses comply in all respects with this chapter, and no use shall be made of such land or building except the use or uses authorized by such occupancy permit.

**181.912 Enforcement.** The Building Commissioner of the City of Fitchburg is hereby designated as the officer charged with the enforcement of this Zoning Ordinance.

181.9121. *Enforcement action.* The Building Commissioner, upon a written complaint of any citizen of Fitchburg or owner of property within Fitchburg or upon such Commissioner's own initiative, shall institute any appropriate action or proceedings in the name of the City of Fitchburg to prevent, correct, restrain or abate violation of this chapter. In the case where the Building Commissioner is requested, in writing, to enforce this chapter against any person allegedly in violation of the same and the Commissioner declines to act, the Commissioner shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days of receipt of such request. Upon a majority vote of the City Council, the Building Commissioner shall institute appropriate legal proceedings to enforce the provisions of this chapter.

181.9122. *Non-criminal disposition.* In addition to the provisions for enforcement of the Zoning Ordinance described in Section 181.9121, the provisions of the Zoning Ordinance may also be enforced by and in the discretion of the Building Commissioner, by a non-criminal complaint filed in the District Court or Worcester County Housing Court pursuant to the provisions of G.L. c. 40, s.21D. Each day on which a violation exists shall be deemed a separate offense. The penalty for violation of any provision of the Zoning Ordinance pursuant to this paragraph shall be fifty dollars (\$50.00) for the first offense; seventy-five dollars (\$75.00) dollars for the second offense; one hundred dollars (\$100.00) for the third offense; and one hundred twenty-five dollars (\$125.00) for the fourth and each subsequent offense.

**181.913 Penalties.** The penalty for violation of any provision of this ordinance, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals, any special permit granting authority, or the site plan approval board shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

## **181.92 BOARD OF APPEALS**

**181.921 Establishment.** The City of Fitchburg Board of Appeals is hereby designated as the Board of Appeals required by the Zoning Act of the Commonwealth of Massachusetts. The Board of Appeals shall consist of five (5) members with two (2) associate members, who shall all be residents of the City of Fitchburg. At least one (1) member shall be a member of the Bar. Each member shall be appointed by the Mayor, subject to confirmation by the City Council, for terms of five (5) years and the appointments shall be so arranged that the term of one (1) member shall expire each year. Vacancies, removals and other organizational matters shall be governed by G.L. c. 40A, s. 12.

**181.922 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws of the Commonwealth and by this ordinance. The Board's powers are as follows:

181.9221. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section 181.93, or as otherwise specified.

181.9222. To hear and decide appeals or petitions for variances from the terms of this ordinance, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals shall not grant use variances in the Residential Districts.

181.9223. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 7, 8 and 15.

181.9224. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

**181.923 Conditions.** Variances may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the board of appeals may deem necessary to serve the purposes of this ordinance. Such conditions may include, but are not limited to: private disposal of waste; deadline to commence construction; signage; alarm system; limits on vehicles, number of students, gender of residents, noise, possession of substances; maintenance requirements; landscaping, parking spaces; dust control; term for years with or without automatic renewals; sewer connection; bond.

**181.924 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers.

**181.925 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

## **181.93 SPECIAL PERMITS**

**181.931 Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority.

**181.932 Criteria.** Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this ordinance, the determination shall include consideration of each of the following:

181.9321. Social, economic, or community needs which are served by the proposal;

181.9322. Traffic flow and safety, including parking and loading;

181.9323. Adequacy of utilities and other public services;

181.9324. Neighborhood character and social structures;

181.9325. Impacts on the natural environment, including drainage; and

181.9326. Potential fiscal impact, including impact on city services, tax base, and employment.

**181.933 Procedures.** Applicants shall file with the City Clerk the number of copies of the special permit application and plans, and follow the procedures as listed in the Special Permit Granting regulations.

181.9331. An application shall not be deemed complete until all copies of required information and documentation have been filed with the special permit granting authority.

181.9332. The special permit granting authority shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time or to file plans with the agencies or officials set forth above shall be deemed nonsubmittal of the application, without prejudice.

181.9333. Reports from other boards and officials shall be submitted to the special permit granting authority by the date of the public hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.

181.9334. In the event that the public hearing by the special permit granting authority is held prior to the expiration of the 35 day period, said authority shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period.

181.9335. The provisions of this Section 181.933 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may adopt regulations to establish procedures governing the form of such applications.

**181.934 Plans and Other Submittals.** Unless waived by the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 181.94, herein. At the discretion of the special permit granting authority, the submittal of a development impact statement (DIS) may be required. The DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Professional or Civil Engineer, and a Registered Surveyor.

181.9341. *Physical Environment.*

- (a) Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
- (b) Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

181.9342. *Surface Water and Subsurface Conditions.*

- (a) Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
- (b) Describe any proposed alterations of shore lines, marshes, or seasonal wet areas.
- (c) Describe any limitations imposed on the project by the site's soil and water conditions.
- (d) Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

181.9343. *Circulation Systems.*

- (a) Project the number of motor vehicles to enter or depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the site per average day and peak hour. Such data shall be sufficient to enable the special permit granting authority to evaluate: (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and providing access to the site. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

181.9344. *Support Systems.*

- (a) *Water Distribution:* Discuss the types of wells or water system proposed for the site, means of providing water for fire-fighting, and any problems unique to the site.
- (b) *Sewage Disposal:* Discuss the type of on-site or sewer system to be used, suitability of soils, procedures and results of percolation tests, and evaluate impact of disposal methods on surface and groundwater.
- (c) *Refuse Disposal:* Discuss the location and type of facilities, the impact on existing city refuse disposal capacity, hazardous materials requiring special precautions.



(d) *Fire Protection*: Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing fire fighting equipment to confront potential fires on the proposed site.

(e) *Recreation*: Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.

(f) *Schools*: Project the increase to the student population for nursery, elementary, junior high school, and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.

181.9345. *Phasing*. Where development of the site will be phased over more than one (1) year, indicate the following:

(a) Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.

(b) Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.

**181.935 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this ordinance. Such conditions may include, but are not limited to: private disposal of waste; deadline to commence construction; signage; alarm system; limits on vehicles, number of students, gender of residents, noise, possession of substances; maintenance requirements; landscaping, parking spaces; dust control; term for years with or without automatic renewals; sewer connection; bond; limitation to the term of ownership or use by the applicant.

**181.936 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk.

**181.937 Regulations.** The special permit granting authority may adopt rules and regulations for the administration of this section.

**181.938 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

## **181.94 SITE PLAN REVIEW**

**181.941 Applicability.** The following types of activities and uses require site plan review by the Planning Board:

181.9411. Construction, exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure with more than four dwelling units;

181.9412. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose.

181.9413. Exemptions from Site Plan Review. Construction of less than 500 gross square feet of floor area.

**181.942 Procedures.** Minor site plan approval, as set forth in Section 181.944, below, shall follow the procedures set forth herein. Major site plan review shall require a public hearing in accordance with the procedures set forth in G.L. c. 40A, ss. 9 and 11. Applicants shall submit the number of copies as required by the Planning Board's Site Plan regulations. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit or certificate of occupancy shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

181.9421. Application for Building Permit. An application for a building permit to perform work as set forth in Section 181.941 available as of right shall be accompanied by an approved site plan.

181.9422. Application for Special Permit or Variance. An application for a special permit or a variance to perform work as set forth in Section 181.941 shall be accompanied by an approved site plan; in the alternative, any special permit or variance granted for work set forth in Section 181.941 shall contain the following condition:

“The work described herein requires the approval of a site plan by the Fitchburg Planning Board pursuant to Section 181.94 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.”

181.9423. Where the Planning Board approves a site plan “with conditions”, and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

181.9424. Where the Planning Board serves as the special permit granting authority for proposed work, it shall consolidate its site plan review and special permit procedures.

181.9425. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

181.9426. No deviation from an approved site plan shall be permitted without modification thereof.

**181.943 Preparation of Plans.** Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board. Unless waived by the Board, the size, scale, contents and number of copies of plans shall be as required by the Board's Site Plan regulations referred to in Section 181.947.

**181.944 Waiver of Compliance; Minor and Major Site Plans.** The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 181.943, 181.516, 181.543, 181.544 and 181.545 where the project involves relatively simple development plans or constitutes a minor site plan.

181.9441. *Minor Site Plan.* An application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will not exceed a total gross floor area of 2,000 square feet, or an application which will not generate the need for more than 10 parking spaces shall be deemed a "minor site plan." For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans, at the discretion of the Planning Board, may be required to set forth all of the information required by Section 181.943; provided, however, that the requirements for the preparation of such plans shall normally be relaxed by the Planning Board.

**181.945 Approval.** Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including but not limited to those set forth in Section 181.935, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

181.9451. Minimize the volume of cut and fill, the number of removed trees 6-inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

181.9452. Maximize pedestrian and vehicular safety both on the site and egressing from it;

181.9453. Minimize obstruction of scenic views from publicly accessible locations;

181.9454. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

181.9455. Minimize glare from headlights and lighting intrusion;

181.9456. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

181.9457. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

181.9458. Ensure compliance with the provisions of this Zoning Ordinance, including parking and landscaping.

**181.946 Lapse.** Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

**181.947 Regulations; Fees.** The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines. The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

**181.948 Appeal.** Any decision of the Planning Board pursuant to this Section 181.94 shall be appealed in accordance with the provisions of G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## **181.95 PLANNING BOARD ASSOCIATE MEMBERS**

**181.951 General.** To assist in carrying out its duties as a special permit granting authority, there shall be two (2) associate members of the Planning Board appointed by the Mayor, subject to confirmation by City Council, under authority of G.L. c. 40A, s. 9. The associate members shall sit on the Planning Board for the purposes of acting at special permit application hearings in case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.

## **181.96 VARIANCES**

**181.961 General.** A variance from the specific requirements of this chapter, excluding a variance authorizing a use not otherwise permitted, may be authorized by the Board of Appeals.

181.9611. Rules and regulations and fees. The Board of Appeals shall adopt and from time to time amend rules and regulations not inconsistent with the provisions of this chapter or MGL C. 40A or other applicable provision of the General Laws and shall file a copy of said rules and regulations with the City Clerk. Such rules shall prescribe, as a minimum, the size, form, contents, style and number of copies of plans and specifications, the city boards or agencies from which the Board of Appeals shall request written reports and the procedure for submission and approval of such permits. The Board of Appeals may adopt and from time to time amend fees sufficient to cover reasonable costs incurred by the city in the review and administration of variances.

181.9612 Application. Any person who desires to obtain a variance from the requirements of this chapter shall submit a written application to the Board of Appeals on a form prescribed by the Board of Appeals.

181.9613. Public hearing and decision. The Board of Appeals shall hold a public hearing no later than sixty-five (65) days after the filing of an application. The Board of Appeals shall have the power to continue a public hearing under this section if it finds that such continuance is necessary to allow the petitioner or applicant to provide information of an unusual nature and which is not otherwise required as part of the variance application. The Board of Appeals shall issue a decision of such variance no later than one hundred (100) days following the filing of the variance petition with the Board of Appeals.

181.9614 Mandatory findings. Before the grant of any variance from the requirements of this chapter, the Board of Appeals must specifically find that owing to circumstances relating to the soil conditions, shape or topography of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.

181.9615. Conditions and safeguards. The Board of Appeals may impose such conditions, safeguards and limitations as it deems appropriate upon the grant of any variance.

181.9616. Time limitation on variance. Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this section, except that the Board, in its discretion and upon written application by the grantee of the right in a variance, may extend the time for exercise of such rights for a period not to exceed an additional six (6) months if the grantee applies for the extension prior to the expiration of the one-year period.

181.9617. Effective date of a variance. No variance or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Northern Worcester County Registry of Deeds. Such decision shall bear the certification of the City Clerk that twenty (20) days has elapsed after the decision has been filed in the office of the City Clerk and no appeal has been filed or that, if such an appeal has been filed, it has been dismissed or denied.

### **181.962 Use variance.**

181.9621. The Board of Appeals may authorize a use variance, but no use variances shall be granted in the Residential Districts. In addition to the requirements of Section 181.961 of this chapter and Massachusetts General Law, the Board must unanimously find:

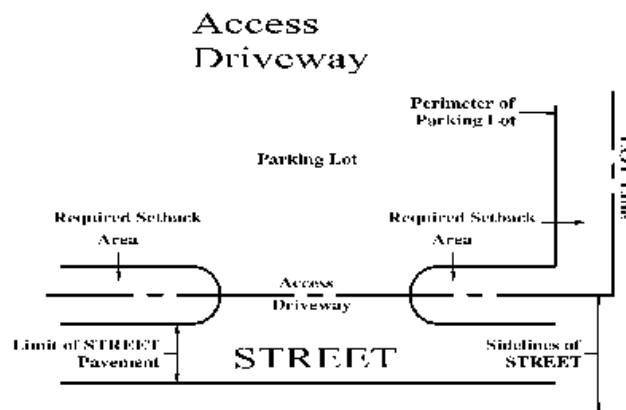
- (1) That the proposed use is in the public interest.
- (2) That the applicant has demonstrated that the proposed use would not create any hardship to the neighborhood.
- (3) That the applicant has demonstrated that the proposed use would not disturb the existing character of the neighborhood.

181.9623. It is the intent of this section to allow use variances only in those rare cases when the applicant, the neighborhood and the general public equally benefit.

## SECTION 181.10 DEFINITIONS

In this ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word “shall” is mandatory and “may” is permissive or discretionary. The word “and” includes “or” unless the contrary is evident from the text. The word “includes” or “including” shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word “lot” includes “plot”; the word “used” or “occupied” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied”. The words “building,” “structure,” “lot,” or “parcel,” shall be construed as being followed by the words “or any portion thereof.” The word “person” includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this ordinance.

**ACCESS DRIVEWAY** - The travel lane that allows motor vehicles ingress from the street and egress from the site.



**ACCESSORY BUILDING** - A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**ACCESSORY USE** - A use customarily incidental to that of the main or principal building or use of the land.

**ADULT DAY CARE FACILITY** - A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

**ADULT USE** - Adult Use shall mean a sexually oriented business as defined herein.

**AGRICULTURE** - Cultivating and harvesting general crops including the storage of necessary farm equipment on parcels of less than five (5) acres and raising of livestock if on parcels of more than five (5) acres, but not including animal feedlots. "Agriculture" includes those facilities for the sale of produce and wine and dairy products insofar as a majority of the products for sale have been produced by the owner of the land on which the facility is located.

**AGRICULTURAL USE, NONEXEMPT** - Agricultural use of property not exempted by G.L. c. 40A, s. 3.

**AIRPORT** - A facility for the landing, takeoff, storage and repair of airplanes, including helicopters.

**AMUSEMENT FACILITY** - Indoor facilities open to the public, such as a theater, cinema or video arcade.

**ANTENNA:** A device used to transmit and/or receive electromagnetic waves conducted through the air.

**ANTENNA SUPPORT STRUCTURE** - Any frame, pole, tower or other mechanical device to which one or more antennas are attached. Examples of Antenna Support Structures are towers, smokestacks, roof-mounted poles, or wall-brackets.

**ANTENNA TRANSMISSION** - The commercial transmission or reception of radio, television and/or microwave signals provided that such transmission or reception shall be conducted in accordance with all federal and state rules and regulations.

**ASSISTED LIVING FACILITY (ALF)** - An assisted living residence as defined in 651 CMR 12.02.

**BANK OR FINANCIAL AGENCY** - A bank, loan agency or similar facility.

**BED AND BREAKFAST ESTABLISHMENT** - Accommodations with not more than five bedrooms occupied by bed and breakfast guests in which the owner of the establishment resides. Bed and breakfasts are intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

**BOARDING HOUSE** - A dwelling or part thereof in which lodging is provided by the owner or operator to at least three, but not more than six, boarders.

**BUFFER** - Screening accomplished by the use of planted areas, berms, natural contours or natural vegetation, fences or a combination of the above.



**BUILDING** - A structure enclosed within exterior walls, built, erected and framed with a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property.

**BUILDING-MOUNTED ANTENNA SUPPORT STRUCTURE** - Any out-of-doors ANTENNA SUPPORT STRUCTURE mounted on, erected on, or supported in whole or in part by an existing building or structure occupied and/or used for purposes other than wireless communications. Such structures include, but are not limited to, office and industrial buildings, smokestacks, steeples, water tanks and towers, observation towers, silos, fixed-position industrial machinery. However, if the structure is constructed primarily to support and/or camouflage an antenna installation, see the definition of FREESTANDING ANTENNA SUPPORT STRUCTURE.

**BUILDING TRADE SHOP** - An establishment for use by the practitioner of a building trade such as a carpenter, welder, plumber, electrician, builder, mason or similar occupation.

**BUSINESS OR PROFESSIONAL OFFICE** - A business or professional office, a medical office or outpatient clinic, including laboratories incidental thereto.

**CAMOUFLAGED**: Masked or disguised, partially or fully, to reduce the visual impact of an ANTENNA SUPPORT STRUCTURE and/or ANTENNA.

**CEMETERY** - Use of land as a burial ground.

**CHILD CARE FACILITY** - A day care center or school age child care program, as those terms are defined in G.L. c. 28A, s. 9.

**COMMERCIAL KENNEL** - An establishment where dogs, cats or other pets are kept for the purpose of sale, breeding or boarding care.

**COMMERCIAL RECREATION** - Indoor or outdoor facilities, operated such as a business and open to the public as facilities for ice skating, roller-skating, racquet sports, bowling, horseback riding, swimming, miniature golf and outdoor and open-air live theater.

**COMPUTER HARDWARE DEVELOPMENT** - The development, creation, and/or manufacturing of computer hardware.

**COMPUTER SOFTWARE DEVELOPMENT** - The development, creation, writing and encoding of computer software.

**CONCEALED WIRELESS COMMUNICATIONS FACILITY** - A WIRELESS COMMUNICATIONS FACILITY which is mounted, erected, or supported within an existing building or structure (including buildings, cupolas, church spires, inactive smoke stacks, and the like) occupied and/or used for purposes other than wireless communications, and which is not apparent from the exterior of the structure.

CONSERVATION - The use of land in its natural state or improved with trails or resource management programs that do not significantly alter its natural state.

CONTRACTOR'S YARD - A facility or area for storage, open or enclosed, for construction equipment or materials and commercial vehicles associated therewith.

DWELLING, SINGLE FAMILY - A detached dwelling unit designed as the residence of one (1) family.

DWELLING, THREE FAMILY - Three (3) attached dwelling units designed as the residences of three (3) families.

DWELLING, TWO FAMILY - Two (2) attached dwelling units designed as the residences of two (2) families; including in-law apartments.

DWELLING UNIT - A portion of a building designed as the residence of one (1) family.

EARTH REMOVAL - The removal of earth products from a lot, including but not limited to sand, gravel, soil, loam and mineral products. The removal of earth products which is incidental to and in connection with the necessary excavation and grading of a site for a building or structure and its appurtenant driveways or parking facilities, for which a permit has been granted by the Building Commissioner, if such removal does not exceed one hundred fifty percent (150%) of the volume of the first floor of the building or structure, or the construction of a street approved under the Subdivision Control Law, shall not be considered as "earth removal" for the purposes of this provision.

EDUCATIONAL USE - Use of land, buildings and structures for providing learning in a general range of subjects on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a bona fide religious sect or denomination or by a nonprofit educational entity.

EDUCATIONAL USE, NONEXEMPT - Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

ESSENTIAL SERVICES - Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

FAMILY - A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of five or more unrelated persons shall not be deemed a "family" where not related by blood, marriage or adoption, including wards of the state.

**FAMILY DAY CARE HOME, SMALL** - any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. (MGL c. 28A, s. 9)

**FAMILY DAY CARE HOME, LARGE** - a private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the office; provided, however, that the number of children under the age of sixteen in a large family day care home shall not exceed ten, including participating children living in the residence. A large family day care home shall have at least one approved assistant when the total number of children participating in such day care exceeds six. Large family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. (MGL c. 28A, s. 9)

**FARM STAND, NONEXEMPT** - Facility for the sale of produce, wine and dairy products on property not exempted by G.L. c. 40A, s. 3.

**FREESTANDING ANTENNA SUPPORT STRUCTURE** - Any out-of-doors ANTENNA SUPPORT STRUCTURE attached to the ground and built for the primary purpose of supporting antennas, including but not limited to monopoles, lattice towers (with or without guy wires), and structures which are designed primarily to support antennas but appear or act as another type of structure, such as flag poles, watchtowers or obelisks.

**FRONTAGE**: A continuous LOT line along the side line of a STREET which provides safe, convenient and meaningful vehicular and utility access to the buildable portion of the LOT. Calculation of the FRONTAGE dimensional requirements shall be in conformance with Section 181.4122 of this ordinance.

**FUNERAL HOME** - An undertaking or funeral establishment.

**GENERAL SERVICE ESTABLISHMENT** - Establishment providing services to the general public or to business establishments, such as equipment rental and leasing, building cleaning, photocopying, telephone answering, word processing or secretarial services; computer service bureaus; facilities for dancing, martial arts or music instruction; facilities for repair of appliances, office equipment, bicycles, lawn mowers or similar equipment; and food-catering facilities.

**HOME OCCUPATION** - An occupations, business, trade, service or profession which is incidental to and conducted in a dwelling unit or in a building or other structure accessory thereto, by a resident thereof.

**HOSPITAL** - A facility for the provision of health care services, licensed as an acute, sub-acute or chronic care facility by an appropriate governmental authority if and to the extent required by applicable law, including any facility for providing in-patient or ambulatory diagnostic, preventive, medical, dental, surgical, mental or rehabilitation services, treatment or counseling.

**HOTEL, INN OR MOTEL** - A facility providing transient lodging accommodations to the general public.

**INDEPENDENT LIVING FACILITY (ILF)** - A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

**LODGE OR CLUB** - A facility used by a noncommercial organization which is characterized by formal written membership requirements.

**LIGHT MANUFACTURING** - The production, fabrication, processing or assembly of goods in a manner that is in compliance with all state and federal rules and regulations; confines disturbing smoke, fumes, dust, chemical discharge and noise to the premises; and is not hazardous to abutters because of potential fire, explosion or radiation.

**LOT** - An area of land in one (1) ownership, with definite boundaries, used or available for use as the site of one or more buildings. Not more than ten percent (10%) of land under any water body, bog swamp, swamp meadow or marsh, as defined in MGL c. 131, s 40 shall be included in the lot area required under this chapter.

**LUMBERYARD** - A facility for the open or enclosed storage and sale of building materials.

**MAJOR RECREATIONAL EQUIPMENT** - Boats, trailers, motor homes, campers, recreational vehicles, and other such types of equipment.

**MANEUVERING AISLE** - A travel lane located within the perimeter of a parking lot by which motor vehicles directly enter and leave parking spaces.

**MANUFACTURING** - The production, fabrication processing or assembly of goods in a manner that is in compliance with all state and federal rules and regulations.

**MOBILE HOME** - A structure, transportable in one (1) or more sections, which is eight (8) body feet or more in width and is thirty-two (32) body feet or more in length and which is built on a permanent chassis and designed to be used as a dwelling with permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

**MOTOR VEHICLE AND EQUIPMENT SALES** - Salesroom and related facilities, including but not limited to open-air display, for the sale or lease of automobiles, motorcycles, recreational vehicles and similar vehicles, boats, or light industrial or farm equipment.

**MOTOR VEHICLE FUEL DISPENSING STATION** – Premises for supplying fuel and oil, but not lubrication, washing, minor repair services, body work, etc.

**MOTOR VEHICLE REPAIR OR BODY SHOP** - An establishment where the principal service is the repair of motor vehicles or similar motor vehicles, provided that all major maintenance and servicing of vehicles shall be conducted entirely within a building, and further provided that outside storage of vehicles shall be authorized by a special permit from the City Council.

**MOTOR VEHICLE SERVICE STATION** - Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

**MULTIFAMILY HOUSING** - More than three (3) units designed as residences for more than three (3) families provided that the density shall not exceed six (6) dwelling units per acre.

**MUNICIPAL** - Use of land, buildings and structures by the City of Fitchburg.

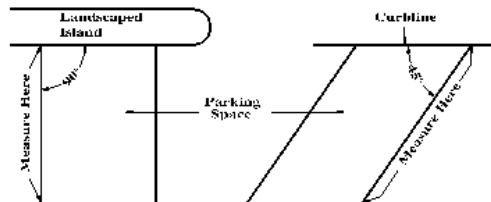
**NURSING HOME** – A facility for the assistance, maintenance, care, treatment, or recuperation of mentally or physically handicapped, injured, invalid, convalescent or chronically ill persons on a full or part time basis, licensed by an appropriate governmental authority if and to the extent required by applicable law, including independent living facilities, assisted living facilities, continuing care-retirement facilities, congregate living facilities, group care facilities, nursing homes, long-term pediatric or geriatric care facilities, and rehabilitation or physical, psychiatric, psychological, cognitive or behavioral therapy facilities whether or not owned by or affiliated with a hospital.

**OPEN-AIR STORAGE** - Open-air storage of materials, merchandise, products or equipment needed in connection with, or provided by the principal use of the premises, provided that all such storage shall be screened from neighbors and public ways.

**PARKING FACILITY** - Privately owned commercial parking open to the public for automobiles and similar light motor vehicles.

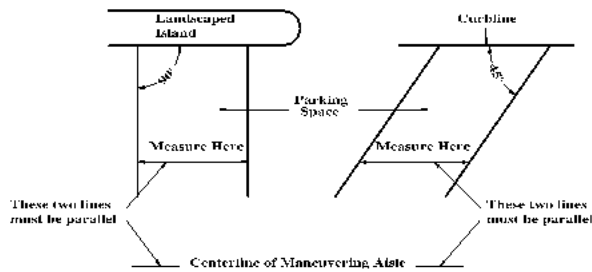
**PARKING STALL LENGTH OF LINE** - The longitudinal dimension of the stall measured parallel to the angle of parking.

**Parking Stall Length of Line**



**PARKING STALL WIDTH** - The linear dimension measured across the stall and parallel to the maneuvering aisle.

**Width of Parking Stall**



**PERSONAL SERVICE FACILITY** - An establishment providing services involving the care of a person or his or her apparel, such as a barbershop, laundry or dry-cleaning shop, diaper service, shoe repair shop, steam bath, reducing salon and health club, and clothing rental shop.

**PLANNED UNIT DEVELOPMENT** - A planned development on a plot of land containing a minimum of the lesser of sixty thousand (60,000) square feet or five (5) times the minimum lot size of the zoning district, in which a mixture of residential, open space, commercial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant a special permit to depart from the normal requirements of the district to the extent authorized by this ordinance.

**PUBLISHING AND PRINTING** - Publishing and/or printing services, provided that all operations shall confine disturbing smoke, fumes, dust, chemical discharge and noise to the premises.

**RECREATION** - Noncommercial outdoor facilities for activities such as horseback riding, skiing, ice skating, swimming and tennis.

**RELIGIOUS** - Use of land, buildings and structures for religious purposes by a bona fide religious sect or denomination.

**RESEARCH AND TESTING** - Investigation and/or testing of goods and/or equipment, provided that all operations shall confine disturbing smoke fumes, dust, chemical discharge and noise to the premises and that no operation shall violate any federal or state rule or regulation.

**RESIDENTIAL COMMUNICATIONS FACILITY** - Any permanently affixed fixture or equipment used for the wireless transmission or reception of radio signals located on the same lot as, and customarily incidental to, a residential use. Such fixture or equipment shall include, but not be limited to, those used for reception of free or subscription radio or TV broadcasts, reception and transmission of licensed amateur radio communications (per MGL 40A, S. 3), and reception and/or transmission of Citizen's Band or other two-way radio communications.

**RESTAURANT** - An establishment where food and beverages are sold within a building to customers for consumption at a table or counter or on a patio or off the premises as carryout orders.

**RESTAURANT, FAST-FOOD** - An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

**RETAIL** - An establishment engaged in displaying and selling goods or merchandise within a building to the general public or to business establishments, which goods or merchandise are not intended for resale, except that a garden center, florist or commercial greenhouse may have open-air display of horticultural products and that other open-air displays may be allowed with a special permit from the Board of Appeals.

SEXUALLY ORIENTED BUSINESS - Any place of business at which any of the following activities is conducted:

*Adult Bookstore or Adult Video Store* -- which shall mean a business that devotes more than fifteen percent (15%) of the total display, shelf, rack, table, stand or floor area for the display and sale of the following: Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in G.L. c. 272, Section 31; or instruments, devices, or paraphernalia which are designed for use in connection with “sexual conduct” as defined in G.L. c. 272, Section 31, other than birth control devices.

*Adult Cabaret* -- which shall mean a nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features (a) live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in G.L. c. 272, Section 31, and/or (b) features films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentations of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in the G.L. c. 272, Section 31.

*Adult Drive-In Theater* -- which shall mean an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as described in G.L. c. 272, Section 31.

*Adult Motel* -- which shall mean a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by the depiction or description of materials which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in G.L. c. 272, Section 31.

*Adult Motion Picture Arcade* -- which shall mean a place, to which the public is permitted or invited, wherein coin or slug operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in G.L. c. 272, Section 31.



*Adult Motion Picture Theater* -- which shall mean an establishment with a capacity for five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in G.L. c. 272, Section 31, for observation by patrons. For purposes of this subsection and subsections (3), (4), (5), (6) and (7) infra, a “substantial portion of the total presentation time” shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

*Adult Theater* -- which shall mean a theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in G.L. c. 272, Section 31.

*Nude Model Studio* -- which shall mean a place where a person appears in a state of nudity as defined by G.L. c. 272, Section 31, or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, or sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration for such display where such display is characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as defined in G.L. c. 272, Section 31.

*Sexual Encounter Center* -- which shall mean a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling and /or tumbling, rolling or similar conduct between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in a state of nudity, or where the activities, described in (a) or (b) of this clause, are characterized by conduct which meets the definition of “harmful to minors” and/or “sexual conduct” as defined in G.L. c. 272, Section 31.

*Specified Anatomical Areas* -- as used herein shall mean uncovered or exposed human genitals, the pubic region, or pubic hair; or buttocks or female breast(s) below a point immediately above the top of the areola or nipple; or a combination of the foregoing, or human male genitals in a discernible erect state, even if completely and opaquely covered.

*Specified Sexual Activities* -- as used herein shall mean sexual conduct, either actually occurring or simulated, including acts of human masturbation; sexual intercourse; or physical contact by one person, in an act of apparent sexual stimulation or gratification, with another person’s, clothed or unclothed, genitals, pubic area, buttocks, or the breast(s) of any female; or any sadomasochistic abuse, or acts by any person in apparent or actual sexual stimulation or gratification, including acts using animals or any objects.

**SIGN** - Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs." The following, however, shall not be considered signs within the context of this ordinance:

- (a) Flags and insignia of any government except when displayed in connection with commercial promotion.
- (b) Legal notices, or informational devices erected or required by public agencies.
- (c) Temporary devices erected for a charitable or religious cause, provided they are removed within seven (7) days of erection.
- (d) Temporary displays inside windows, covering not more [than] thirty (30) percent of window area, illuminated by building illumination only.
- (e) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.
- (f) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.
- (g) Devices identifying a building as distinct from one (1) or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four (4) square feet in area.
- (h) Address identification through numerals or letters not exceeding three (3) inches in height.

**SIGN AREA** - The area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matters shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

**STREET** - A street shall be an improved public way, a way which the City Clerk certifies is maintained and used as a public way, a way shown on a subdivision plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or a way in existence on August 25, 1958, if such way 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 thereupon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereupon. For the purposes of this definition, a public way shall be considered improved if such public way has, in the opinion of the Planning Board, sufficient paved width, paved suitable grade and otherwise adequate construction and ongoing city maintenance to provide for the needs of the vehicular traffic in relation to the proposed use of the land abutting thereupon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereupon.

**STRUCTURE** - A combination of materials assembled to give support or shelter, such as buildings, kiosks, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, signs or fences, but not including driveways, walkways and other paved areas, underground storage tanks, septic tanks and septic systems and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

**TIMBER HARVESTING** - The cutting and removal of forest products on any parcel of land in quantities greater than twenty-five thousand (25,000) board feet or fifty (50) cords of wood, but not including clearing of land associated with a valid building permit or the cutting of timber for consumption by the property owner, provided that all activity shall be in accordance with the Forest Cutting Practices Act of the Commonwealth of Massachusetts.

**TRANSPORTATION TERMINAL** - A facility for the storage and repair of trucks and/or buses.

**USE, ACCESSORY** - Any use which is incidental and subordinate to a principal use.

**USE, PRINCIPAL** - The main or primary use of any land or lot.

**VEHICLE SALVAGE YARD** - Outdoor storage of unregistered vehicles in whole or part, or used vehicle parts.

**VETERINARY CARE** - A facility where animals are given medical or surgical treatment and where the boarding of animals is limited to short-term care incidental to the medical or surgical treatment.

**WAREHOUSE** - A building for the storage, distribution or wholesale marketing of material merchandise, products or equipment.

**WIRELESS COMMUNICATIONS** - All forms of communications which transmit and receive electromagnetic signals.

**WIRELESS COMMUNICATIONS ACCESSORY BUILDING** - A structure designed to house radio communications equipment that is associated with one or more **WIRELESS COMMUNICATIONS FACILITIES**. It is placed in proximity to an **ANTENNA SUPPORT STRUCTURE** with a means to permit its **ANTENNAS** to be connected to equipment housed in the accessory building.

**WIRELESS COMMUNICATIONS FACILITY** - One system of transmission and/or reception equipment operated by an FCC licensee or a communications service installed at one location. The system includes one or more **ANTENNAS** mounted on an **ANTENNA SUPPORT STRUCTURE**, a means to connect the **ANTENNA(S)** to communications equipment, communications transmitting and/or receiving equipment and related equipment required for the operation of the facility. Such related equipment may be, for example, network interconnection equipment, alternate power sources, or control and monitoring systems. Mobile vehicle-mounted or transported systems, such as used for mobile news organizations, are not considered wireless communications facilities under this ordinance.

**YARD** - A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

**YARD, FRONT** - A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

**YARD, REAR** - A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

**YARD, SIDE** - A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

174-13. AN ORDINANCE: Amending the Fitchburg Zoning Ordinance by adding the following language under: Purpose and Intent (Moratorium on Medical Marijuana Treatment Centers).  
(Ref: Petition #73-13)

### **Moratorium on Medical Marijuana Treatment Centers**

Amend the Fitchburg Zoning Ordinance by adding the following language under:

#### **Purpose and Intent**

**Whereas**, by vote at the Massachusetts election on November 6, 2012, the voters of the Commonwealth approved legislation regulating the cultivation, distribution, possession and use of marijuana for medical purposes; and

**Whereas**, the legislation provides the law is effective on January 1, 2013; and

**Whereas**, the Massachusetts Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date; and

**Whereas**, currently under the City of Fitchburg Zoning Ordinance, a medical marijuana treatment center is not a permitted use in the City of Fitchburg (hereinafter "City"); and

**Whereas**, any regulations promulgated by the Massachusetts Department of Public Health are expected to provide guidance to the City in regulating medical marijuana, including medical marijuana treatment centers; and

**Whereas**, the regulation of medical marijuana raises new and complex legal and planning issues; and

**Whereas**, the City needs time to study and consider the regulation of medical marijuana treatment centers and address such new and complex issues; and

**Whereas**, the City needs time to address the potential impact of the Massachusetts regulations on local zoning; and

Whereas the City needs time to undertake a planning process to consider amending the zoning ordinance regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana; and

**Whereas**, the City intends to adopt a temporary moratorium on the use of land and structures in the City for medical marijuana treatment centers so as to allow the City sufficient time to consider enacting an ordinance in a manner consistent with sound land use planning goals and objectives;

For the reasons set forth above and notwithstanding any other provision in the City of Fitchburg Zoning Bylaw to the contrary, the City of Fitchburg hereby adopts a temporary moratorium of the use of land or structures for medical marijuana treatment centers.

**IT IS RESOLVED THAT,** the following moratorium is adopted and implemented;

1. A zoning moratorium is hereby declared and established prohibiting the City of Fitchburg from any of the following until such time that the City adopts rules and procedures relating to the following uses, permits and licenses:
  - (a) The acceptance of any application for the licensing, establishment or location of a medical marijuana dispensary within the City's corporate limits.
  - (b) The issuance or approval of any building permit, business license, occupancy permit, site plan approval, development permit or any other discretionary approval to dispense medical marijuana or for a medical marijuana dispensary.
2. The moratorium is effective immediately upon the adoption of this ordinance. It shall remain in effect until June 30, 2014 with the caveat that upon adoption of an Ordinance setting rules and procedures relative to medical marijuana treatment centers and related uses in the City of Fitchburg the moratorium will be lifted.
3. This resolution does not restrict a licensed physician from prescribing marijuana compliant with state law and state health regulations.
4. Any and all city regulations or resolutions in conflict herewith are repealed only to the extent necessary to give full force and effect to the foregoing provisions.
5. During the moratorium period, the City will review the Massachusetts Department of Public Health regulations regarding medical marijuana treatment centers and related uses, and consider zoning regulations to address the impact and operation of medical marijuana treatment centers and related issues.

Ordinance was passed to a third and final reading and adopted to be enrolled and ordained by unanimous vote. 11 members present. Board consists of 11 members.

Ordinance was signed by the Mayor June 19, 2013.

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