

**PROTECTIVE ZONING BY-LAW  
for the  
TOWN OF WORTHINGTON,  
MASSACHUSETTS**

**Adopted**

June 3, 1970

**As Amended**

February 13, 1971

April 26, 1973

June 23, 1978

September 25, 1980

June 5, 1982

June 17, 1989

May 22, 1990

May 4, 1996

June 28, 1997

October 25, 1997

August 14, 2001

January 29, 2002

May 4, 2002

October 18, 2005

May 5, 2007

May 3, 2008

May 2, 2009

October 26, 2010

September 13, 2011

December 13, 2011

May 6, 2017

April 24, 2021 (Reorganized)

May 7, 2022

May 6, 2023

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## HISTORY OF AMENDMENTS

<b>SECTION I</b>	<b>DEFINITIONS</b> - Added 4/26/73: Family, Family Dwelling Unit, One Family Dwelling & Educational. Added 6/23/78: Agriculture, Cluster Development, Mobile Home & Special Permit Granting Authority. Added 6/5/82: Sideyard. Added 5/4/96: All others. Deleted 6/28/97: Cluster Development. Added 10/25/97: Wireless Communication Facility.. 5/5/2007 Changed “Mobile Homes” to “Manufactured Housing” & added 4 types of trailers:
<b>SECTION II</b>	<b>EXISTING USES</b> - intent clarified 4/26/73
<b>SECTION IV</b>	<b>USE REGULATIONS:</b> A. Permitted Uses - clarifications 4/26/73 & 6/23/78 B. Uses Authorized on Special Permits- Modular Homes deleted from list 6/23/78. Added 10/25/97: Wireless Communication Facility. 5/5/2007 Changed “Mobile Homes” to “Manufactured Housing”, Rev 10/26/10 C. Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10 D. Special Permit Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10 E. Agricultural Uses Requiring Site Plan Review-added 10/18/05, Rev 10/26/10
<b>SECTION V</b>	<b>DIMENSIONAL REQUIREMENTS:</b> 6/3/70- 6/23/78 1 acre and 200 feet frontage 6/23/78- 9/25/80 2 acres and 200 feet frontage 9/25/80 to present 2 acres and 400 feet frontage Setback and Side yard clarifications 4/26/73 & 6/23/78; Minimum 700 sq. ft. & Maximum 2.5 story from 6/3/70 to 4/26/73. 5/5/2007 Clarified re: private roads 5/2/2009 Clarified frontage requirement
<b>SECTION VI</b>	<b>MANUFACTURED HOUSING</b> - Modular Homes deleted 6/23/78; 5/5/07: Changed “Mobile Homes” to “Manufactured Housing” & added “accessible” basement.
<b>SECTION VII</b>	<b>TRAILERS</b> - Eliminated distances to boundary requirement 6/23/78; 5/5/07 Replaced general regulations with separate regulations for Construction Office, Residential, Storage & Travel Trailers.
<b>SECTION VIII</b>	<b>GENERAL REGULATIONS AND ADMINISTRATION</b> A. Non-conforming Uses - eliminated “abandoned” clause 6/23/78 B. Enforcement - altered 4/26/78 & 6/23/78. Part 5 replaced 1/29/2002 C. Bd. of Appeals- altered 2/13/71, 4/26/73, 6/23/78, 5/5/07, 5/3/2008
<b>SECTION IX</b>	<b>FLOOD PLAIN ZONING</b> - added 6/5/82, replaced 6/17/89
<b>SECTION X</b>	<b>WESTFIELD RIVER PROTECTION</b> - added 6/17/89
<b>SECTION X</b>	<b>WORTHINGTON WATER SUPPLY PROTECTION DISTRICT</b> - added 5/22/90, Rev 10/26/10
<b>SECTION XI</b>	<b>WIRELESS COMMUNICATIONS STRUCTURES AND FACILITIES</b> - added 10/25/97, replaced August 14, 2001. Renumbered 5/5/07, Rev 10/26/10 11.4.11 Temporary Moratorium, added May 4, 2002: removed January 1, 2003
<b>SECTION XII</b>	<b>SITE PLAN REVIEW</b> - added 10/18/05, Section C Rev 10/26/10, Section I Rev 12/13/11
<b>SECTION XIII</b>	<b>FLEXIBLE DEVELOPMENT</b> - added 9/13/11
<b>SECTION XIV</b>	<b>LARGE SCALE GROUND MOUNTED SOLAR VOLTAIC INSTALLATIONS</b> – added 5/6/17
<b>SECTION XV</b>	<b>MEDICAL/ADULT USE MARIJUANA</b> – added 4/24/21 and renumbered as Section 8.6

**PROTECTIVE ZONING BY-LAW FOR THE  
TOWN OF WORTHINGTON, MASSACHUSETTS**

**SECTION 1. PURPOSE AND AUTHORITY**

**1.1. PURPOSE**

The purpose of this By-Law is to provide for the Town of Worthington all the protections authorized by the General Laws of the Commonwealth of Massachusetts Chapter 40A (MGL Ch40A), as amended.

**1.2. AMENDMENT**

This Zoning By-Law may be amended from time to time at an Annual or Special Town Meeting as provided for by MGL Ch40A. Copies of the procedures for doing so are available at the office of the Town Clerk.

**1.3. SEVERABILITY**

The invalidity, unconstitutionality, or illegality of any provision of this section shall not have any effect upon the validity, constitutionality, or legality of any other provision of this section.

**SECTION 2. ADMINISTRATION AND ENFORCEMENT**

**2.1. ZONING ENFORCEMENT OFFICER; PERMITS**

- A. The Selectboard shall appoint an Inspector of Buildings who will be responsible for enforcement of this By-Law.
- B. No new construction, structural alternation, or moving of a building shall take place in the Town of Worthington until a Building Permit has been issued by the Inspector of Buildings.
- C. Each application for a Building Permit to alter the outside of an existing structure or to construct a new structure shall be accompanied by two copies of a site plan which clearly shows boundaries of the lot, location of the street, any required culverts, placement of building, buildings or other man-made permanent features and location of sewerage system and water supply.

**2.2. ENFORCEMENT, VIOLATIONS, AND PENALTIES**

**2.2.1. Enforcement**

- A. Construction or operation under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the Permit and in cases involving construction unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
- B. Pursuant to the non-criminal disposition Chapter Authority of Section 21D of Chapter 40, any person violating any provision of the Zoning By-Law **shall be fined \$20/day for the first five business days, \$40/day for the next five business days, and \$100/day for each subsequent business day until compliance is achieved**, for each offense. Notice of such offense **shall** be delivered by the Building Inspector in writing.

### **2.2.2. Appeals**

The Board of Appeals shall hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of MGL Ch40A, or by any Officer or Board of the Town, or by any person aggrieved by any order or decision of the Building Inspector or any other administrative official in violation of any provision of MGL Ch40A or of this Protective Zoning By-Law for the Town of Worthington.

### **2.2.3. Variance**

Upon appeal or upon petition, the Board of Appeals shall award or deny a variance from the terms of this Zoning By-Law with respect to particular land or structures. The prerequisites for and the limitations and conditions of awarding a variance are established by MGL Ch 40A sect. 10.

## **2.3. ZONING BOARD OF APPEALS**

There is hereby established a Board of Appeals of five (5) members and two (2) associate members, to be appointed by the Selectboard, as provided in MGL Ch40A.

## **2.4. PLANNING BOARD**

There shall be a Planning Board consisting of five (5) members elected for overlapping three (3) year terms, as stated in the General By-Laws for the Town of Worthington, Effective October 22, 1997, Section II.

## **2.5. SPECIAL PERMITS**

- A. The Board of Appeals shall issue a Special Permit under the following conditions, unless otherwise designated in this bylaw:
  - 1. The use:
    - a) Is listed in Section 4.4 of this By-Law;
    - b) Shall not adversely affect the capacity of existing or planned community facilities, the character of the neighborhood, traffic on roads and highways in the vicinity or general by-laws and regulations in effect, including this Zoning By-Law;
    - c) Is declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
- B. Required Plan
  - 1. A plan for the proposed development of a site for an exception shall be submitted with an application for a Special Permit and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that may be necessary to determine if the proposed special use meets the requirements of this By-Law.
- C. Expiration
  - 1. A Special Permit shall be deemed to authorize only one particular special use and shall expire if the special use shall cease for more than one (1) year for any reasons, and a new Permit shall be required for continuance of an exception.
- D. All Special Permits shall lapse within two (2) years from the date the Permit was granted, unless substantial use or construction has commenced, except for a good cause. Included in the two (2) years shall be the time required to pursue or await the determination of an appeal referred to in MGL Ch40As17, as amended.

- E. The Board of Appeals shall submit one copy of said application and site plan to the Planning Board, Board of Health and Conservation Commission for their review. Said Boards and Commission shall make recommendations as they deem appropriate and shall send copies thereof to the Board of Appeals in accordance with MGL Ch40As11, as amended. Failure of said Boards or Commission to make recommendations within thirty-five (35) days of receipt by said Board or Commission of the petition shall be deemed lack of opposition thereto.
- F. Special Permits shall only be issued after a public hearing held within sixty-five (65) days after an application for a Special Permit has been filed by the applicant with the Board of Appeals, a copy of which shall be immediately given to the Town Clerk by the applicant. Said public hearing shall be held in accordance with MGL Ch40As11, as amended.
- G. Conditions Applicable to Exceptions

- 1. If deemed necessary to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole, the Board of Appeals shall impose additional conditions in granting an exception. These additional conditions may include the following:
  - a) Increasing the required lot size or yard dimensions in order to protect the adjacent properties;
  - b) Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent properties;
  - c) Controlling the location and number of vehicular access points to the property;
  - d) Increasing the street width;
  - e) Increasing the number of off-street parking or loading spaces required;
  - f) Limiting the number, location and size of signs;
  - g) Requiring suitable landscaping and screening where necessary to reduce noise and glare and to maintain the property in character and keeping with the surrounding area;
  - h) Specifying a specific time limit for construction, alteration or enlargement to begin for a structure to house an exception;
  - i) If a commercial operation, restricting the hours of operation so as to make it in harmony with the rest of the neighborhood;
  - j) Providing for special layout of facilities on the property such as location of the building, parking areas and access to the building so as to minimize effect on adjoining property;
  - k) Requiring that any future enlargement or alteration of use be reviewed by the Board of Appeals to permit specifying of new conditions;
  - l) Specifying standards for operation of this exception so that it will be no more objectionable to the neighborhood by reasons of noise, odors, vibrations or flashing lights than will be the operation of a permitted use at that site;
  - m) Specifying that in case of the remodeling of existing structures into two-family or boarding house use that the remodeling of the structure would be done in such a manner that it will not substantially change the exterior appearance of the structure so as to affect the character of the area;
  - n) Requiring special location for the necessary parking, including the possibility of off-lot parking where necessary to retain or provide the necessary landscaping so that the exception will not detract from the neighborhood;
  - o) Requiring such additional, reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and to protect the best interest of the surrounding property and the neighborhood.

#### H. Scientific Research

- 1. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

## **2.6. SITE PLAN REVIEW**

### **2.6.1. Purpose**

- A. The purpose of Site Plan Review is to allow the town to review project plans with a developer at an early stage and, when appropriate, to negotiate alterations to the plans so as to lessen adverse impacts on neighbors and the town. The goals of this by-law are to:
1. Protect the rural character, aesthetic qualities, and natural and historic features of the Town of Worthington;
  2. Insure safe and efficient traffic and pedestrian circulation within areas adjacent to the project site;
  3. Minimize disproportionate burdens on town services from new development.

### **2.6.2. Site Plan Reviewing Authority**

- A. When a Special Permit is required, the Site Plan Reviewing Authority shall be the Special Permit Granting Authority. When a Variance is required, the Site Plan Review Authority shall be the Zoning Board of Appeals. When no Special Permit or Variance is required, the Site Plan Reviewing Authority shall be the Planning Board.

### **2.6.3. Application Procedure**

- A. The current owner of record of property with a use or structure requiring Site Plan Review shall submit a Site Plan Review application to the Town Clerk together with the required fees set by the Site Plan Reviewing Authority's Regulations before applying for a Building Permit or Special Permit.
1. Upon receipt of the application, the Site Plan Reviewing Authority shall check it for completeness. If it finds the application is incomplete, it shall return the application to the applicant with a list of missing information. In the event the applicant does not complete the application within 30 days the Site Plan Reviewing Authority may deny the application on the ground that it is incomplete. The Site Plan Reviewing Authority may grant a reasonable extension of time to complete the application.

### **2.6.4. Form and Contents of Site Plan Review Application**

- A. Every Site Plan Review application shall be on a form approved by the Site Plan Reviewing Authority and shall be accompanied by five sets of site plans, each bearing the project name, location, date, and plan scale. The Site Plan Reviewing Authority may require that one copy be in an electronic format specified by the Site Plan Reviewing Authority.
- B. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal.
- C. The contents of the Site Plan Review application shall include:
1. All existing lot lines, easements and rights of way
  2. Location of all proposed new lot lines
  3. Location and use of all existing and proposed buildings and structures, including approximate height and floor area



4. Location and description of any existing and proposed open space or recreation areas
5. Location of proposed private and public ways on the site
6. Location and size of proposed parking areas+
7. Location and use of buildings and structures within 300 feet of the site
8. Location of wetlands on site and within 300 feet of the site, according to the latest data from the National Wetlands Inventory
9. Location of proposed water supply well, if any
10. Location and date of all registered percolation tests
11. A runoff and drainage plan, showing the proposed snow storage areas, drainage facilities and storm water impacts on site and on adjacent downstream surface water bodies and flood plain
12. A plan for control of erosion and sedimentation, including both temporary and permanent measures
13. Existing and proposed changes in topography
14. Location of stone walls
15. Size and location of existing and proposed sign(s)
16. Location of proposed outdoor lighting
17. Method and location of waste disposal
18. Location of fire protection measure
19. Proposed landscape features, including the location and description of buffers, screening, fencing, and plantings (specifying the size and type of plant materials)
20. Traffic patterns at the site including entrances and egresses, loading and unloading areas, and curb cuts on site and within one hundred feet of the site
21. Information sufficient to assess the traffic safety impacts of the proposed project on the carrying capacity of any adjacent bridge, highway or road, to include the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak hour traffic levels
22. Projected need for public utilities and services, including schools, fire protection and security

#### **2.6.5. Waivers**

If the applicant believes that any of the information required in any clause of Section 2.6.4(C) is not relevant to the project, he or she may request a waiver of that requirement. The Site Plan Reviewing Authority may waive for good cause shown, any or all requirements of Site Plan Review where such waiver is in the public interest and consistent with the purpose and intent of this bylaw. Such waiver decisions must be documented in writing by the Site Plan Reviewing Authority.

### **2.6.6. Fees**

- A. The Site Plan Reviewing Authority shall set reasonable administrative fees to cover the expenses of its review of the Site Plan application. The applicant shall reimburse the Town for the full cost of all engineering and planning consultant services that the Site Plan Authority deems necessary for review purposes, and no Site Plan may be approved until the applicant has done so. The Site Plan Reviewing Authority may request the posting of adequate financial guarantees to cover consulting services expenses.

### **2.6.7. Review Procedure**

- A. Site Plan Review applications shall be reviewed and acted upon at a public meeting of the Site Plan Reviewing Authority.
- B. The Site Plan Reviewing Authority shall provide copies of the application and the site plan to the Fire Chief, Police Chief, Conservation Commission, Board of Health, Building Inspector, Highway Superintendent, Selectboard, and Zoning Board of Appeals or Planning Board. These boards and individuals shall have thirty-five (35) days to report to the Site Plan Reviewing Authority their findings and recommendations. The failure of a board or individual to report in the allotted time shall constitute approval by that board or individual.
- C. The Site Plan Reviewing Authority shall post information about the application and how it can be reviewed at the place where other public notices are posted. The reviewing authority shall also provide this information to abutters and non-abutters within three hundred feet of the application property. Such information shall include a summary of the proposed project, including size, location, and proposed use. The Site Plan Reviewing Authority shall allow 14 days after such posting for receipt of written comments from the general public before making its decision.
- D. The Site Plan Reviewing Authority shall render a decision on the application within sixty-five (65) days of the date the application was deemed complete and the Town has been reimbursed for all fees for engineering and consulting services referred to in Section 2.6.6 of this bylaw. If the Site Plan Reviewing Authority does not act within this period, approval is granted by default.

### **2.6.8. Site Plan Review Decision**

- A. The decision of the Site Plan Review Authority shall be one of the following:
  - 1. Approval of the Site Plan based on a determination that the proposed project complies with the criteria mentioned in Section 2.6.9 of this bylaw;
  - 2. Approval of the Site Plan, subject to such conditions, modifications and reasonable restrictions as the Site Plan Review Authority deems necessary to ensure compliance with the criteria mentioned in Section 2.6.9 of this bylaw;
  - 3. Denial of the Site Plan application based on a determination that it was incomplete and insufficient information was submitted to review the proposal.

### **2.6.9. Site Plan Review Criteria**

- A. The Site Plan Reviewing Authority shall use the following criteria in evaluating site plans applications:
  - 1. Whether the architectural design, scale, layout, and landscaping of the proposed development is in harmony with the historic and rural character of the neighborhood and the Town of Worthington;

2. Whether the proposed project, to the extent feasible:

- a) Protects Town amenities and abutting properties by minimizing detrimental or offensive actions and site characteristics such as lighting glare and noise;
- b) Minimizes adverse environmental impacts on such features as wetlands, floodplains, steep slopes, and aquifer recharge areas;
- c) Maximizes open space retention and minimizes fragmentation of contiguous undeveloped land;
- d) Minimizes obstruction of scenic views from publicly accessible locations;
- e) Preserves unique natural or historical features;
- f) Minimizes tree, vegetation and soil removal and grade changes;
- g) Provides adequate landscaping to screen storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features from view from adjacent residences and public roadways;
- h) Provides adequate measures to prevent pollution of surface and groundwater, erosion and sedimentation, and assures no increase in run-off or potential for flooding;
- i) Places electric lines, telecommunications lines and other such utilities, to the extent feasible, underground;
- j) Provides for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties; and
- k) Provides access to adjoining properties where needed.

**2.6.10. Expiration**

The approval of any Site Plan under this Section shall expire in two (2) years if substantial construction has not begun by that date.

**2.6.11. Regulations**

The Site Plan Reviewing Authority may adopt and from time to time amend reasonable regulations for the administration of this Site Plan bylaw.

**2.6.12. Enforcement**

The Site Plan Review Authority may require the posting of adequate financial guarantees to assure monitoring and compliance with the Site Plan approval and all conditions, modifications and restrictions contained therein. The Site Plan Review Authority may also require that an amount be included for land restoration not having to do directly with the construction of improvements. The town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Site Plan Review Authority within two years from the date of approval, or the final date of the last extension of such approval, if any. All funds shall be held in escrow, in an interest-bearing account, interest payable to applicant when conditions for release of funds are duly met. The Site Plan Review Authority may suspend any permit or license when work is not performed as required. The owner of record must accept all such conditions, modifications, and restrictions in writing prior to the issuance of a Building Permit. The Zoning Enforcement Agent shall monitor compliance and shall notify the Site Plan Review Authority of any material compliance-related issue.

**2.6.13. Appeals**

Decisions of the Site Plan Reviewing Authority regarding Site Plan approval may be appealed as set forth in MGL, Chapter 40A, Section 17.

#### **2.6.14. Violations**

Any violations of the approved Site Plan or of any conditions, modifications, and restrictions of the approval by the Site Plan Review Authority shall be subject to the enforcement provisions of Section 2.2.1(B) of the Zoning Bylaw.

#### **2.7. EXISTING USE**

The Protective Zoning By-Law shall not apply to any existing buildings or structures, nor to the existing use of any building or structures, nor to the land or premises or part thereof to the extent of the use existing at the time of the adoption of this Zoning By-Law, but it shall apply to any change of use thereof and to any alteration of a building or structure to provide for its use to a purpose or in a manner substantially different from the use to which it was put before alteration, or its use for the same purpose to a substantially greater extent.

### **SECTION 3. DISTRICTS**

#### **3.1. ESTABLISHMENT OF DISTRICTS**

For the purpose of this By-Law the entire Town of Worthington is hereby designated as a Residential-Agricultural District, with three overlay districts: Flood Plain District, Westfield River Protection District, and the Water Supply Protection District.

#### **3.2. ZONING MAP**

The districts listed in Section 3.1, are as shown, defined, and bounded on the map and accompanying this Bylaw, entitled "Zoning Map of the Town of Worthington," dated August 5, 2020, as hereafter amended from time to time by the Town Meeting. The Zoning Map and all explanatory matter are hereby made a part of this Bylaw.

#### **3.3. BOUNDARIES OF DISTRICTS**

- A. District boundaries are as shown upon the Zoning Map.
- B. Where the boundary lines are shown approximately on the location of property or 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.
- C. Where a boundary is indicated upon a street, the line shall be the center line of the street.
- D. Where a boundary is indicated approximately parallel to a street, it shall be taken as parallel thereto, and if there is any variance between the scaled distance between the boundaries and the side line of the street and the distance as marked in feet upon the Map, the latter shall govern.
- E. Where a boundary is indicated otherwise than above, it is determined by its location on the Zoning Map.
- F. Where a district boundary line divides a lot existing as of the effective date of this Bylaw, the district in which the lot frontage is located shall determine the use regulations that apply to the entire lot, but the portion of the lot located in the less restrictive district shall conform to the dimensional regulations of that district.

## **SECTION 4. USE REGULATIONS**

### **4.1. GENERAL PROVISIONS**

No structure or land shall hereafter be used or occupied, and no structure shall hereafter be erected, maintained or altered unless in conformity with the regulations for a Residential-Agricultural District.

### **4.2. PROHIBITED USES**

- A. Business and industrial uses, not agricultural, which manufacture, use, process, store, or dispose of hazardous materials or wastes as a principal activity, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning, and auto body repair, or which involve on-site disposal or process wastewaters.
- B. Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops.
- C. Solid waste landfills, dumps, auto recycling, junk and salvage yards, with the exception of the disposal of brush or stumps.
- D. Underground storage and/or transmission of petroleum products excluding liquified petroleum gas, unless tanks and piping are double-lined in accordance with the latest State regulations.
- E. Outdoor storage of salt, de-icing materials, pesticides or herbicides.
- F. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic or hazardous material, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride, and 1-1-1 trichloroethane, or other household hazardous wastes.
- G. Marijuana Membership Club

### **4.3. PERMITTED IN ALL DISTRICTS**

- A. Agricultural use, except as limited in Section 4.4 of this By-law.
  - 1. One family dwellings
  - 2. Religious, educational or municipal use
  - 3. Renting of rooms or furnishing of board for not more than four (4) persons in a dwelling regularly occupied for residential purposes.
- B. Accessory Use or Structure
  - 1. All of the following types of accessory uses or structures shall be permitted where the use or building is subordinate to the main building or use, and is incidental to the main or permitted use:
    - a) Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, millinery, or for the practice by a resident of a recognized profession;
    - b) Use of premises or building by a tradesman or artisan who resides therein in connection with his trade, art or craft, provided that no manufacturing or business requiring employment of persons other than said resident, tradesman, or artisan shall be carried on;
    - c) Display of one permanent sign on the premises pertaining to a permitted use, which sign shall have a total area of not more than 12 square feet and is non-flashing, non-rotating and non-neon. Temporary signs may be permitted by the Selectboard.

- d) Accessory buildings or structures shall be permissible on a lot provided they are incidental to the principal use of said premises and shall not be located within the required front and/or side yard areas. Excluded from this provision are roadside stands and accessory signs.
- e) Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

#### **4.4. USES AUTHORIZED ON SPECIAL PERMITS**

A. Uses which are authorized after issuance of a Special Permit by the Zoning Board of Appeals in accordance with the regulations appearing in Section 2.5 of this By-Law:

- 1. Garage
- 2. Filling Station
- 3. Inn
- 4. Motel
- 5. Store
- 6. Ski Tow
- 7. Light Industry
- 8. Small Business
- 9. Saw Mill
- 10. Large scale raising of poultry, pigs, hogs, fur-bearing or other farm animals.
- 11. Conversion of a one-family dwelling existing at the time this By-Law was originally adopted into a two-family dwelling.
- 12. Restaurant
- 13. Boarding House
- 14. Manufactured Housing
- 15. Riding Stable
- 16. Private Club
- 17. Recreational Camps
- 18. Seasonal Dwellings
- 19. Camping Areas
- 20. Seasonal Food Trucks and Trailers operating at a fixed location for more than 5 days

B. Uses which are authorized after issuance of a Special Permit by the Planning Board in accordance with the regulations appearing in Section 2.5 of this By-Law:

1. Wireless Communication Facility
2. Water Supply Protection District uses as follows:
  - a) Commercial and industrial uses which are allowed in the underlying District
  - b) Commercial and industrial uses which are allowed in the underlying District
  - c) Any enlargement, intensification or alteration of an existing commercial or industrial use
  - d) The rendering impervious of more than 20% of any single residential lot
  - e) Alterations to uses that pre-exist the Water Supply Protection District
3. For the purposes of this section, only those uses in the schedule below shall be allowed in the Town of Worthington.

**Abbreviations:**      SP = Special Permit; N = No; Y = Yes (by-right use)

Craft Marijuana Cooperative	SP
Marijuana Cultivator	SP
Marijuana Product Manufacturer	SP
Marijuana Retailer	SP
Marijuana Independent Testing Laboratory	SP
Marijuana Microbusiness	SP
Marijuana Research Facility	SP
Marijuana Transporter	SP
Registered Marijuana Dispensary, or Medical Marijuana Treatment Center	SP

#### 4.5. BY-RIGHT USES REQUIRING SITE PLAN REVIEW

A. Site Plan Review is required for all uses listed in Sections 4.5, 4.6, and 4.7 of this By-law, with the exception of the following:

1. A single-family or two-family dwelling and its surrounds, including but not limited to garages, outbuildings, and driveways which can reasonably be defined as for residential use;
2. Construction completed more than 5 years prior to the construction, addition or change of use under consideration;
3. Construction which previously received Site Plan approval;
4. Construction which received Building Permit or Special Permit approval before this bylaw became effective.

B. These uses require a Site Plan Review determination if they meet one or more of the following criteria:

1. New construction, addition or change of use resulting in:
    - a) More than two thousand (2,000) square feet of impervious surface;
    - b) More than two (2) new dwelling units;
    - c) Coverage of fifty (50) percent of the lot area in impervious surface;
    - d) A structure with any part more than 35' tall; or
    - e) Parking for more than 5 vehicles.
  2. The review shall be conducted in accordance with the regulations in Section 2.6 of this bylaw, to the extent permitted for the use by Massachusetts General Law Chapter 40A.
- C. The Planning Board shall be the Site Plan Review Authority for the following uses where no special permit is required:
1. Accessory Dwelling Units (added 5-7-22)
  2. Religious and Educational Uses
  3. Federal, State of Massachusetts, and Town of Worthington uses;
  4. Public Service Corporations exempt from the Special Permit process;
  5. Child Care Facilities;
  6. Hazardous Waste, Refuse Treatment and Disposal Facilities;
  7. Scientific Research Facilities;

#### **4.6. SPECIAL PERMIT USES REQUIRING SITE PLAN REVIEW**

- A. Uses which require a Special Permit or Variance require a Site Plan Review if they meet one or more of these conditions:
1. New construction, addition or change of use resulting in:
    - a) more than ten thousand (10,000) square feet of impervious surface;
    - b) coverage of fifty (50) percent of the lot area in impervious surface; or
    - c) a structure with any part more than 35' tall.
- B. The Special Permit Granting Authority shall be the Site Plan Review Authority. In case of a variance, the Zoning Board of Appeals shall be the Site Plan Review Authority.
- C. The review shall be conducted in accordance with the regulations in Section 2.6 of this bylaw.
- D. If a business is conducted from the residence, any structure or part thereof used for business is considered to be separate from the residence, and if it meets the conditions above will be subject to this bylaw.
- E. The period of review for a Special Permit requiring a Site Plan Review shall be the same as any for other Special Permits and shall conform to the requirements of M.G.L. Chapter 40A.
- F. Conditions of the Site Plan approval shall also be conditions of the permit or variance, if one is granted.

#### **4.7. AGRICULTURAL USES REQUIRING SITE PLAN REVIEW**

- A. Uses or structures defined as agricultural by Massachusetts General Law Chapter 40A Section 3 require Site Plan Review if they meet one or more of the following criteria:



1. New construction, addition or change of use resulting in:
  - a) more than ten thousand (10,000) square feet of impervious surface;
  - b) coverage of fifty (50) percent of the lot area in impervious surface; or
  - c) a structure with any part more than 35' tall.

B. When no special permit is required, the Planning Board shall be the Site Plan Review Authority.

C. The review shall be conducted in accordance with the regulations in Section 2.6 of this bylaw, to the extent permitted by Massachusetts General Law Chapter 40A for this use.

## SECTION 5. DIMENSIONAL REGULATIONS

A. A dwelling, principal building or principal structure hereinafter erected shall be located on a lot having not less than a minimum area of two (2) acres and a minimum frontage of 400 feet measured contiguously along a single street, either public or private, which the lot abuts. If private, said private street must either have been in existence or have been laid out on a plan duly recorded in the Hampshire County Registry of Deeds at the time of the enactment of the Zoning By-Law. Frontage on more than one street or opposite sides of the same street cannot be added to meet the minimum frontage requirement. No more than one **principal** dwelling, principal building or principal structure, **and one accessory dwelling unit** shall be built upon any such lot. A lot or parcel of land having an area or frontage of lesser amounts than required above, may be considered as coming within the area and frontage requirements of this Section provided such lot or parcel of land was listed in the tax records, or shown on a plan or described in a deed duly recorded and registered at the time of adoption of the By-Law, and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel. **(bold print added 5-7-22)**

B. The minimum setback and side yard requirements for all buildings, dwellings and structures shall be forty (40) feet for the minimum setback or in conformity with the existing property, and thirty-five (35) feet for the side yards. The minimum setback shall be determined by a line parallel to the street right of way line extending from one side lot line to the other. No part of any building shall be placed within or protrude within forty (40) foot area between the setback line and the street line. In the case of corner lots the setback line shall be observed for all bordering streets. No building or any part thereof shall protrude within the thirty-five (35) foot prohibited side yard area.

## SECTION 6. NONCONFORMING USES AND STRUCTURES

Any lawful building or structure or lawful use of a building or structure on premises existing at the time this By-Law is adopted may be continued even if not in conformity with the provisions of the By-Law. Any non-conforming building or structure damaged hereafter by fire or explosion or by flood or other so-called act of God, may be rebuilt. Any non-conforming building or structure may be enlarged to a reasonable extent or replaced if authorized by the Board of Appeals, but any new use of the building, structure or premises shall conform with this By-Law.

## SECTION 7. GENERAL REGULATIONS

[Reserved for future use.](#)

## SECTION 8. SPECIAL REGULATIONS

### 8.1. MANUFACTURED HOUSING

A. The following regulations shall apply in respect to all Manufactured Housing:

1. Manufactured Housing must meet the minimum lot setbacks and other requirements for a single-family dwelling in the District in which it is located.
2. Manufactured Housing must be placed on a permanent foundation.
3. An accessory building for storage must be provided unless the Manufactured Housing has an accessible basement for storage.

## **8.2. TRAILERS**

### **8.2.1. Residential Construction Trailer:**

- A. A Residential Construction Trailer may be permitted within the town of Worthington with a special temporary permit issued by the Building Inspector subject to, but not limited to, the following conditions:
1. The Residential Construction Trailer shall be used only as temporary living quarters on the subject lot for the owner-occupants of a one family dwelling being constructed, undergoing substantial renovation or being rebuilt due to fire or natural disaster.
  2. The permit will be effective for a one hundred and eighty (180) day period, renewable at the discretion of the Building Inspector for consecutive periods only, but under no circumstances shall permits be issued for any one Residential Construction Trailer to exceed eighteen (18) months.
  3. The Residential Construction Trailer shall conform to all use and dimensional regulations, as well as Board of Health and Conservation Commission regulations, as applicable. The Building Inspector may waive dimensional setbacks if circumstances warrant.

### **8.2.2. Travel Trailer:**

- A. A Travel Trailer may be used as temporary living quarters for recreational or vacation use within the Town of Worthington on private property and with the owner's permission subject to the following conditions:
1. The Travel Trailer shall have a current registration.
  2. Temporary occupancy exceeding thirty (30) consecutive days requires a Temporary Housing Permit issued by the Board of Health in accordance with 105 CMR 410.430. Temporary Housing Permits require evidence of a permanent street address and shall be valid for a period not to exceed one hundred and twenty (120) days. Upon expiration of the Temporary Housing Permit, the Travel Trailer shall be vacated and no new Temporary Housing Permit shall be issued for said Travel Trailer for a period of at least thirty (30) days.
  3. Travel Trailer Occupancy Permits are not required for Travel Trailers residing at Registered Campgrounds that provide utility and sanitary facilities and that are in full compliance with all Board of Health and Building Code regulations.

### **8.2.3. Construction Office Trailer:**

- A. Placement of a Construction Office Trailer to be used for temporary office space is permitted subject to the following conditions:
1. The Construction Office Trailer is required in the specifications of a commercial construction or infrastructure project.
  2. The Construction Office Trailer is used solely for the conduct of business related to the project for which it is installed.

3. The Construction Office Trailer shall be removed from the construction site within thirty (30) days of completion of an approved project.

#### **8.2.4. Storage Trailer**

A. Storage Trailers are not permitted as accessory structures under Section 4.3.B.1, whether or not the same may otherwise qualify as structures under the Building Code, 780 CMR.

B. Exception:

1. A temporary Storage Trailer(s) may be permitted for the storage of building materials, equipment, or personal effects only when explicitly provided for as a condition in a Building Permit. Such condition shall stipulate that the Storage Trailer(s) shall be removed from the site within thirty (30) days of satisfactory final inspection or within eighteen (18) months of installation, whichever period is shorter.

### **8.3. WIRELESS COMMUNICATION STRUCTURES AND FACILITIES**

#### **8.3.1. Purpose**

The purpose of this section is to outline the special permitting process to site wireless communication facilities in the Town of Worthington, while minimizing potential damage and adverse visual impacts of wireless communication facilities on adjacent properties, residential neighborhoods, and areas of historic or high scenic value; to allow the provision of wireless communication services in an orderly way; and to promote shared use of existing facilities to reduce the need for new facilities.

#### **8.3.2. Exemptions**

A. The following shall be exempt from this by law:

1. Wireless communication facilities used exclusively for Town or State emergency services.
2. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communication Commission and used solely for that purpose.
3. Wireless communication structures and devices used expressly for home television reception.

#### **8.3.3. General Requirements**

- A. No wireless communication facility shall be erected, constructed, or installed without a special permit and site plan review from the Planning Board acting as the Special Permit Granting Authority (SPGA).
- B. Wireless communication facilities may be permitted in any zoning district.
- C. Wherever feasible, wireless communications devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers
- D. Applicants shall consider town owned properties as sites for wireless communications structures where such properties are in compliance with the requirements of this section.
- E. Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification. Any new tower constructed shall be of the monopole type, consisting of a single self-supporting vertical pole with below grade foundation. No other type of structure shall be permitted.

- F. No wireless communication structure shall be constructed closer to any existing wireless communication structure than is necessary to provide the minimum adequate wireless communications coverage to the Town of Worthington, as determined by the Planning Board.
- G. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on the site, and shall be used only for the placement of equipment related to this particular site.
- H. A special permit shall not be granted for a wireless communication structure to be built on speculation. If Applicant is not simultaneously installing a wireless communication device on the structure, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall submit all data requested by SPGA to assure compliance with the terms of this section.

#### **8.3.4. Siting and Height Requirements**

##### **A. Setbacks**

- 1. The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure.
- 2. The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
- 3. The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletics fields, and abutting residences to prevent the structure from appearing to “tower” over; and so as not to adversely affect property values.

##### **B. Height**

- 1. The height shall be the minimum height necessary, as determined by the Independent Consultant, to accommodate anticipated and future use, but in no case shall exceed one hundred twenty (120) feet.

C. The wireless communication structure shall, when possible, be sited off ridge lines and where the visual impact is the least detrimental to historic and scenic areas.

D. No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the SPGA that no existing wireless communication structure can accommodate the Applicant’s proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the applicant’s proposed device may consist of any of the following:

- 1. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the applicant’s engineering requirements.
- 2. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the applicant’s requirements.
- 3. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be brought up to appropriate strength to support the proposed wireless communication device.
- 4. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.

5. The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

#### **8.3.5. Design Requirements:**

- A. Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.
- B. There shall be no signs or advertisements, except for no trespassing signs, signs required by law, and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication devices shall be colored, molded, and/or installed to blend into the structure and/or the landscape. The SPGA may require that all wireless communication structures be camouflaged sufficiently that they blend in as well as possible with surroundings.
- D. The area around the wireless communication facility shall be completely fenced to control access within an area no greater than 2500 square feet at the base of the wireless communication structure. The 2500 square foot limitation can be waived if it adversely affects co-location.
- E. Lighting shall be by motion-detection, unless otherwise required by the FAA.
- F. There shall be a maximum of one parking space for each facility to be used in connection with maintenance of the site and not to be used for the storage of vehicles or other equipment.
- G. Existing on-site vegetation shall be preserved to the maximum extent possible.
- H. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

#### **8.3.6. Application Process**

- A. Application for a special permit for siting wireless communication facilities shall be filed in accordance with Section 2.5 of this By-law.
- B. Applications for a special permit to construct a new wireless communications structure shall include the following information:
  1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1"=40' or 1"=200' where appropriate, on as many sheets as necessary which shows the following:
    - a) North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for reviewing licensed engineer's seal.
    - b) Name and address of landowner and name and address of parties in interest as defined by MGL Chapter 40A Section 11.
    - c) Property lines and location of permanent structures or buildings, within 500-foot radius of proposed wireless communication structure.
    - d) From a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts, existing and proposed contour lines at a maximum of 2-foot intervals and spot elevations at base of all the proposed and existing structures.

- e) Vegetation to be removed or altered.
- f) Plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
- g) Delineation of wetlands, if any.
- h) Location of wireless communication structure.
- i) Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
- j) Plans for accessory buildings.
- k) Layout and details of surfacing for access road and parking.
- l) Amenities such as lighting, fencing, and landscaping.
- m) Four view lines at a one-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines at smaller intervals, and from any historic, scenic, or other areas of Town determined by the SPGA.
- n) A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
- o) A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
- p) A locus map at a scale 1"=1000' (or whatever is necessary to show where in town the proposed tower is sited) which shall show streets, and landscape features.
- q) A description of the soil and surficial geology at the proposed site.
- r) A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall:

- 1) Describe the justification of proposed site.
- 2) List town-owned properties considered, and if rejected, the reasons for rejection.
- 3) Describe the structure and the technical, economic, and other reasons for the facility design.
- 4) Describe the capacity of the structure, including the number and type of additional facilities it can accommodate.
- 5) Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
- 6) Describe the projected future needs of the Personal Wireless Service Provider and how the proposed wireless communications facilities fit with future projections to serve the Town and adjacent towns.
- 7) Describe leasing agreement should another carrier desire to co-locate.
- 8) Describe special design features to minimize the visual impact of the proposed wireless communication facility
- 9) Proof of approval of all other necessary permits needed for construction and operation.

C. After the application is submitted and not more than 21 days before the public hearing, the applicant shall arrange to preview the visual impact of the installation by displaying at the site of the proposed wireless communication structure, some object of the approximate size and at the maximum height of the planned antenna array, for example by flying a balloon or erecting a crane. The Applicant shall inform the SPGA in writing of the date and time of the

preview at least 21 days in advance. The balloon, crane, or other object shall be set up at the height of the proposed installation for at least eight consecutive daylight hours on the date chosen. The date and location of this preview shall be advertised twice in two separate weeks, in a newspaper with a general circulation in the town. The first advertisement shall be at least 14 days before the preview. This advertisement may be combined with the public hearing advertisement.

- D. Applications for a special permit to construct a new wireless communication device on an existing wireless communication structure or non-residential structures such as buildings, grain silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, shall include the following information:
1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1"=40' or 1"=200' on as many sheets as necessary which shows the following:
  2. North arrow, date, scale, the seal(s) of the licensed professionals who prepared the plans and a space for the reviewing licensed engineer's seal.
  3. Plans for supporting and attaching the device including specifications of hardware and all other building material.
  4. Building plans for accessory buildings, if any.
  5. Layout and details of surfacing for access road and parking, if it is to be altered from existing condition.
  6. A map showing the areas covered by proposed device(s) of different signal strengths and the interface with adjacent service areas.
  7. A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall:
  8. include a draft of the contract between the structure/building owner (whichever appropriate) and the Applicant
  9. demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such device
  10. describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC
  11. describe the projected future needs of the carrier, and how the proposed facility fits with future projections
  12. Proof of approval of all other necessary permits needed for construction and operation.
- E. If the proposed facility adds more than five feet to the height of the structure at the effective date of this by-law and will exceed zone height restrictions, the SPGA may require a preview of visual impact as described above in Section 8.3.6.C of this By-law.
- F. The Applicant shall submit additional copies of the application for the following town boards, officials, and consultants. All materials submitted should also be submitted in an electronic version. Three full-sized copies of the plans are required for town officials, and one full-sized copy for each consultant(s) to the Planning Board. The remaining copies of the plans may be reduced size.
1. Building Inspector (one full-sized required)

2. Planning Board Members (5 copies, one full-sized required)
3. Town Clerk (one full-sized required)
4. Consultant(s) to the Planning Board (one full sized copy each required)
5. Board of Health
6. Conservation Commission
7. Fire Chief
8. Highway Superintendent
9. Selectboard
10. Zoning Board of Appeals

G. Independent Consultant(s)

1. Upon submission of an application for a Special Permit under this Section, the Applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of Independent Consultant(s). These Consultant(s) shall each be qualified professionals with a record of service to municipalities in one of the following fields:
  - a) telecommunications engineering
  - b) structural engineering
  - c) monitoring of electromagnetic fields
  - d) other relevant fields of experience as determined necessary by the SPGA
2. The Applicant shall provide a complete copy of the application for a Special Permit to any Independent Consultant(s) and shall further provide any additional information reasonably requested by the Independent Consultant(s) in order to properly advise the SPGA in their review of the application.
3. The Applicant shall grant permission for any Independent Consultant(s) to conduct any necessary site visits.

H. Approval

1. In granting a special permit for wireless communication facilities, in addition to the findings required by the Town's Zoning By-law for Special Permits, the SPGA shall find:
  - a) That the Applicant has demonstrated to the satisfaction of the SPGA that the requirements of this section have been met.
  - b) That the size and height of the structure is the minimum necessary
  - c) That the proposed wireless communication facilities will not adversely impact historic structures or scenic views.
  - d) That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location, that would minimize their impact, and the Applicant has exercised good faith in permitting future co-location of facilities at the site
  - e) That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the wireless communication facilities.
  - f) That the proposal shall comply with all applicable FCC regulations regarding emissions of electromagnetic radiation. Copies of any monitoring reports required by state and federal government shall be supplied to the Zoning Enforcement Officer.



2. When considering an application for a wireless communication facility, the SPGA shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and will encourage the use of existing structures.
3. Any extension, or construction of new or replacement towers or transmitters shall be subject to an amendment to the Special Permit, following the same procedure as siting a new wireless communication device on an existing structure.
4. Any decision by the SPGA to deny an application for a special permit under this bylaw shall be in conformance with the Telecommunications Act of 1996, in that it shall be in writing and supported by substantial evidence contained in a written record.

#### I. Conditions of Use

1. The Applicant shall post an initial bond with the Town Treasurer to cover the costs of remediation of any damage to public property and infrastructure that may occur during construction of the wireless communication facility. The bond shall be in an amount to be determined by the SPGA.
2. All wireless communication facilities shall be insured by the owner(s) against damage to persons or property. The special permit holder shall provide a Certificate of Insurance to the Selectboard on an annual basis.
3. The Zoning Enforcement Officer may inspect the facility with adequate notice.
4. Regulatory Compliance:
  - a) If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within six months or earlier if a more stringent compliance schedule is included in the regulation.
  - b) Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, devices at the owner's expense.
5. Any special permit for wireless communications facilities shall be subject to review for renewal at five-year intervals. Upon renewal, the SPGA may require replacement of facility with least obtrusive and/or minimum height facility available at the time of renewal. The topographical site survey shall be reviewed and any necessary adjustments shall be made to the bond as part of the renewal process.
6. If the device is moved lower on the structure and the top of the structure is no longer needed, then the non-operational part of the structure shall be removed within 120 days

#### J. Removal and Repair:

1. If a wireless communication structure ceases to operate for a period of one year the special permit expires by operation of law and the structure must be removed by the Special Permit Holder within 180 days. "Cease to operate" is defined as not performing the normal functions associated with any wireless communication structure on a continuous and ongoing basis for a period of one year, including the absence of a valid lease/contract with a Personal Wireless Service Provider. At the time of removal, the site of the wireless communication structure shall be remediated such that the site is restored to the same condition as existed prior to the structure being constructed. A cash bond shall be posted with the Town Treasurer in an amount determined by the SPGA to be used by the Town to remove any structure required to be removed and not removed within the time frame required by this Section.

#### K. Severability

1. The invalidity, unconstitutionality, or illegality of any provision of this section shall not have any effect upon the validity, constitutionality or legality of any other provision of this section.

#### **8.4. FLEXIBLE DEVELOPMENT**

##### **8.4.1. Purposes**

A. The purposes of this section are to:

1. Promote flexible standards for residential development to encourage site designs that are compatible with the landscape;
2. Retain open space for use as farmland, forestry, recreation, or wildlife habitat;
3. Retain the town's natural resources, environmentally sensitive areas, or scenic views;
4. Increase use of alternative energy sources in residential development; and
5. Retain rural town character, including scenic roads and town centers.

##### **8.4.2. Flexible Development Allowed By Right with Site Plan Review**

A. Flexible Development in accordance with this bylaw shall be allowed by right with Site Plan Review in all zoning districts. Any person creating two or more lots available for residential use, whether or not by subdivision, may apply for Flexible Development under this section. Flexible Development shall be encouraged within the town and shall be the preferred method of development wherever the purposes in Section 8.4.1.A of this By-law would be served.

##### **8.4.3. Criteria for Site Plan Review**

- A. In reviewing applications for Flexible Development, the Planning Board may consider whether the application complies substantially with the following Site Plan Review criteria. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these criteria.
1. All dwellings shall, to the greatest extent possible, be located out of view from any road, unless valuable natural resources or farmland located to the rear of the property render building in view of the road more desirable.
  2. Flexible Development shall create permanently protected conservation land. All land within a Flexible Development not in use for building lots shall be placed in permanent conservation.
  3. The portion of a parcel placed in conservation shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land.
  4. Flexible Development shall result in the creation of fewer curb cuts and vehicular access points to a public way than would occur under standard Approval Not Required or Subdivision Development.
  5. Flexible Development may result in a net increase in density of dwellings on the parcel, up to ten percent (10%) or one (1) lot over the density which could reasonably be expected to occur under standard Approval Not Required or Subdivision Development.

6. Stormwater runoff generated from land development and land use conversion activities shall not be discharged directly to a wetland, local water body, municipal drainage system, or abutting property, without adequate treatment.
7. Flexible Development shall employ Low Impact Development techniques and Renewable Energy techniques to the maximum extent practicable, as described in Section 8.4.6.
8. In Flexible Development, each structure shall be integrated into the existing landscape on the property, to the extent feasible, so as to minimize its visual impact through use of vegetative and structural screening, landscaping, grading, and placement on or into the surface of the lot.

#### **8.4.4. Application Procedure**

- A. Any application for Flexible Development shall include all contents and follow all procedures in the Site Plan Review section, Section 2.6 of the Town of Worthington Zoning Bylaw.
- B. Any application for Flexible Development shall clearly state the terms by which the development shall meet the criteria listed in Section 2.6.9 of this Zoning Bylaw.
- C. In addition to the Site Plan Review requirements listed in Section 2.6 of the Town of Worthington Zoning Bylaw, a Site Context Map and Existing Resources / Site Analysis Map shall be submitted to the Planning Board. These maps shall be used by the applicant in the preparation of a preliminary design plan.
- D. The applicant is very strongly encouraged to request a concept meeting at a regular business meeting of the Planning Board. If one is requested, the Planning Board may invite the Conservation Commission, Board of Health, Historical Commission, or other appropriate boards. The purpose of a concept meeting is to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. At the meeting, the applicant may outline the proposed development, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application.

#### **8.4.5. Flexible Dimensional Standards**

- A. Flexible Developments shall use the flexible area and frontage provisions of this section for the purpose of minimizing the destruction of natural resources while maximizing availability of open space, farmland, and rural character.
- B. Flexible Frontage in Flexible Developments:
  1. The frontage of the total parcel from which the lots of Flexible Development are created shall equal or exceed seventy percent (70%) the total frontage length otherwise required for the sum of all lots created under standard Subdivision Regulations. (For example, to create a four-lot Flexible Development in a zone where there is a 400 foot frontage requirement, the parcel must have a minimum of 1120 foot contiguous frontage along one road.)
  2. Provided that all other requirements of this section are met, there shall be no frontage required for individual lots within Flexible Development, with the exception described in Section 8.4.5.B.3 below.
  3. Any building lot which fronts on an existing public road shall have 400 foot frontage. This provision shall not apply to permanent conservation land.
- C. Flexible Area in Flexible Developments

1. There is no minimum lot size for individual lots, provided the lot meets Title V standards. The average lot size for all lots created shall be at least two (2) acres.
2. The total number of building lots which can be created from any parcel shall be determined by subtracting the area of all wetlands (as defined by the Massachusetts Wetland Protection Act, M.G.L. Chapter 141 Section 40) and slopes of greater than fifteen percent (15%) from the total parcel area, and dividing the resulting area by the required average lot size of two acres.
3. All land not used for building lots shall be placed in permanent conservation in accordance with Section 8.4.6.H of this By-law, but not less than fifty percent (50%) of the total land area.
4. To the extent feasible and practical, building lots shall be located out of view of town roads, while all protected open space shall be located along, or in view of, town roads.

#### D. Flexible Setback Requirements

1. Building lots within the flexible development have no minimum setback requirements for front, rear or side yards unless a boundary abuts a public way or adjacent property not part of the development. Per Section 8.4.6.C of this By-law, the common driveway is not a public way.
2. Minimum front, side and rear setbacks from a public way and/or abutting properties not part of the flexible development shall conform to the underlying requirements of the zoning district. If the abutting property is a separate flexible development, these setback requirements can be waived with the consent of the homeowners' associations of both developments.

### **8.4.6. Additional Development Standards**

#### A. Stormwater Management

1. The design and development of Flexible Development shall minimize off-site stormwater runoff, promote on-site infiltration, and minimize the discharge of pollutants to ground and surface water. Natural topography and existing land cover should be maintained and protected to the maximum extent practicable. Flexible Development shall meet the following requirements:
  - a) Untreated, direct stormwater discharges to wetlands and surface waters are not allowed;
  - b) Post-development peak discharge rates should not exceed pre-development peak rates;
  - c) Erosion and sediment controls must be implemented to remove eighty percent (80%) of the average annual load of total suspended solids;
  - d) All stormwater treatment systems or Best Management Practices must have operation and maintenance plans to ensure that systems function as designed.

#### B. Low Impact Development

1. All Flexible Developments shall employ the following Low Impact Development techniques to the maximum extent practicable:
  - a) Vegetated Swales
  - b) Cisterns and Rain Barrels
  - c) Bioretention Areas or Rain Gardens
  - d) Low Impact Roadways
  - e) Permeable Paving

#### C. Common Driveways

1. Common Driveways shall be allowed with Site Plan Review in accordance with the provisions of this section.
2. No more than six (6) lots shall be served by a Common Driveway.
3. Frontage along the length of any Common Driveway shall in no way be used to satisfy frontage requirements as specified in the Zoning Bylaw; furthermore, no Common Driveway shall be accepted as a public road; nor shall the town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any Common Driveway.
4. The landowners of all residences served by a Common Driveway shall be granted a Right-of-Way for the use of the Common Driveway. Such Right-of-Way shall be recorded in the Hampshire County Registry of Deeds prior to the recording and the deeding out of any of the lots within the Flexible Development, together with a statement of covenants as follows:
  - a) The Common Driveway shall at no time be used to satisfy frontage requirements under the zoning bylaw;
  - b) The Common Driveway shall at no time become the responsibility or liability of the town;
  - c) Each landowner served by the Common Driveway shall be liable and responsible for the repair and maintenance of any portion of the Common Driveway to which they have the exclusive Right-of-Way (such as a spur serving solely one parcel); and
  - d) Each landowner served by the Common Driveway shall be responsible and liable for the repair and maintenance of all portions of the Common Driveway to which more than one landowner holds a Right-of-Way.
  - e) The applicant shall prepare Maintenance and Repair Agreement that will provide provisions for services, maintenance, and enforcement for the Common Driveway and shall be entered into by the affected property owners. Such Agreement shall be recorded in the Hampshire County Registry of Deeds prior to the recording and the deeding out of any of the lots within the Flexible Development
5. A common driveway shall have a maximum width of eighteen (18) feet, in addition to an easement of sufficient width to assure proper drainage and maintenance.
6. A common driveway shall not be longer than twelve hundred (1200) feet in length. The length restriction may be waived where it would conflict with the purposes of this bylaw.
7. The slope or grade of a Common Driveway shall be sufficient for a fire engine to negotiate, generally no more than fifteen percent (15%).
8. The common drive shall intersect a public way at an angle of not less than eighty (80) degrees.
9. The minimum curvature of a common driveway shall be sufficient for a fire engine to negotiate, generally no less than a radius of fifty (50) feet.
10. There shall be a turnaround area at the end of the Common Driveway; such turnaround shall accommodate safe and convenient turning by fire trucks and other emergency vehicles. Design of the turnaround area shall also be approved by the town's Fire Department.
11. Other standards may be set based on site configurations, including requirements for drainage.
12. The common driveway shall be constructed of a minimum 15" gravel base, with a surface layer consisting of three successive layers of ¾"-size crushed traprock stone, ½"-size crushed traprock stone, and ¼"-size crushed traprock stone, with a crown sufficient for drainage. Further requirements may be added to meet the site's requirements.

13. Drainage shall be adequate to dispose of surface runoff. Low Impact Development standards for stormwater management are required, but culverts shall be installed if deemed necessary by the Worthington Highway Department.
14. These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Worthington Zoning Bylaw.
15. No lot within the flexible development shall be sold before the common driveway is completed.

#### D. Utility Requirements

##### 1. On-site Sewage Disposal

a) The following standards shall apply to developments requiring on-site sewage disposal:

- 1) The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the application.
- 2) The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the application.
- 3) All Flexible Developments must meet the minimum state Environmental Code (Title V) requirements for minimum setbacks between private water supply wells and septic tanks or soil absorption systems (310 CMR 15.211).

E. All Flexible Developments must meet the minimum state Environmental Code (Title V) requirements for nitrogen loading limitations (310 CMR 15.214-15.217). For Flexible Developments with individual lot sizes less than 40,000 square feet, applicants must meet the following standards:

1. Applicants must designate, on a plan, specific areas of common open space as "nitrogen credit land" based on the following equation:
  - a)  $(40,000 \text{ square feet} \times \text{number of Flexible Development lots}) - (\text{total square feet in proposed Flexible Development lots}) = \text{square feet of required nitrogen credit land in common conservation lands}$
  - b) Nitrogen credit land must meet DEP qualifications contained in "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading 310CMR15.216"
  - c) All designated nitrogen credit land must be permanently restricted from further development under a "Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land".
  - d) After approval of the Flexible Development Plan, applicants must apply to the Board of Health and the Mass. Department of Environmental Protection (DEP) for an aggregate determination of nitrogen loading under 310 CMR 15.216.
  - e) Septic tanks must be installed on individually-owned lots.
  - f) Nitrogen Credit Land must be at least 100 feet from all private wells.

#### F. Water Supply

1. In order to meet state Title V requirements for separation distances between drinking water wells and septic systems, private drinking water supply wells may be located in the common open space for a Flexible Development, provided that the provisions of Section 1.12 for a homeowners' association are met.

#### G. Conservation Land

## 1. Conservation Land Requirements

- a) A minimum of fifty percent (50%) of the total development parcel must be permanently protected as conservation land. At least seventy percent (70%) of the conservation land shall be retained in contiguous areas, unless approved by the Planning Board.
- b) Watercourses, lakes, ponds, wetlands, floodplains, and steep slopes over twenty-five percent (25%) may be included in conservation land calculations not to exceed twenty-five percent (25%) of the total protected conservation lands.
- c) Planning Board may permit up to three percent (3%) of the conservation land to be paved or built upon for structures accessory to the dedicated use of open space (i.e. pedestrian walks, bicycle paths, playgrounds, farm-related structures).
- d) All recreational facilities, common areas, and conservation land shall be reasonably accessible to all residents of the development.

## H. Land Protection Methods for Conservation Land

1. All land not devoted to buildings, lots, roads and other development shall be permanently protected for open space, outdoor recreation, forestry or agricultural uses which preserve the land in its natural condition. A legal mechanism approved by the Planning Board shall permanently protect land from any inconsistent use or development. Permanent protection through a donation of the land, or of a conservation restriction, to the town or a non-profit conservation organization is preferred. Land may be donated to the Town or conservation organization duly recognized as such pursuant to M.G.L. c. 180 and IRC Section 170(h) for conservation purposes, or be placed under a permanent conservation restriction in accordance with the provisions of M.G.L. c.184 §§ 31-33, as amended. The conservation restriction must be held by the Town or a non-profit organization dedicated to conserving open space.
2. The final owner of the conservation land and/or the conservation restriction is strongly recommended to develop a conservation management plan that will address proper management and future maintenance of this natural resource.
3. Further subdivision of conservation land, except for easements for underground utilities or drinking water supply wells, shall be prohibited.

## I. Maintenance of Conservation Land

1. Prior to final approval of the Flexible Development, all required covenants, grants of easements, or conveyance for the conservation land must be submitted to the Planning Board and Town Counsel for review and approval prior to the recording and the deeding out of any of the lots within the Flexible Development.
2. Where applicable, if any portion of the conservation land is conveyed to a non-profit homeowners association or trust of the homeowners of the dwelling units in the Flexible Development, then the following shall be required. In order to ensure that the grantee will properly maintain the land deeded to it under this section, the applicant shall cause to be recorded in the appropriate Registry of Deeds, a Declaration of Covenants and Restrictions which shall, at a minimum, provide for:
  - a) Mandatory membership in an established homeowners association or trust, as a requirement of ownership of any residential unit or lot in the Flexible Development;
  - b) Provisions for maintenance assessments of all owners of residential units or lots in order to ensure that the conservation land is maintained in a condition suitable for the approved uses; failure to pay such assessment shall create an automatic lien upon written notice to any property owner failing to pay the assessment on the property assessed, enforceable by the association or trust;

- c) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the conservation land will not terminate by operation of law. The developer of the Flexible Development shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the grantee is capable of assuming said responsibility.
3. Prior to the issuance of a building permit for an approved Flexible Development, proposed conservation land shall be clearly marked, and all efforts shall be taken by the developer to prohibit any disturbance of the delineated conservation lands during the construction process.

#### J. Additional Considerations

##### 1. Trails

- a) Where there is an existing local or regional trail network on land adjacent to a proposed Flexible Development, the applicant may be required to preserve or enhance the existing trail network with trail corridors through the site.

##### 2. Enhancing Conservation Land Connectivity

- a) Where there is existing conservation land adjacent to a proposed Flexible Development, the applicant may be required to locate the development's conservation land so that it expands or enhances the connectivity of such lands, where feasible.

##### 3. Renewable Energy

- a) Flexible Developments must employ the following Renewable Energy techniques to the maximum extent practicable:
  - 1) Streets, roads and common driveways shall be laid out primarily on an east-west axis to maximize solar gain;
  - 2) Homes and buildings shall be oriented to maximize passive solar gain, by having the longest side of the structure facing south, while maximizing windows facing south;
  - 3) Solar access should be maintained for all buildings. New structures shall not cast shadows that reduce solar access for other structures;
  - 4) Homes and buildings should use renewable energy sources as feasible.

##### 4. Homeowners' Associations

- a) A qualified Homeowners' Association shall be created prior to the conveyance of any lot in Flexible Development for which such an association is required.
- b) The Association shall be responsible for the permanent maintenance of all commonly-owned amenities, (e.g. common conservation lands, stormwater facilities, recreational facilities, utility easements), except where such responsibility is assumed by another owner of the amenities.
- c) A Homeowners Association agreement or covenant shall be submitted with the Flexible Development application guaranteeing continuing maintenance of and the development of a capital expense fund for such commonly-owned amenities, and assessing each lot a share of maintenance expenses. The articles of formation of the qualified homeowners' association shall be prepared by a licensed attorney. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board, and shall



be recorded in the Hampshire County Registry of Deeds. The Planning Board may commission further legal review of any documents submitted, the cost of which shall be borne by the applicant.

- d) Such agreements or covenants shall provide that in the event that the Homeowners Association fails to maintain the commonly-owned amenities reasonable order and condition, in accordance with the agreements or covenants, the Town of Worthington may, after notice to the homeowners association enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the commonly-owned amenities from becoming a public nuisance. The costs of such maintenance by the Town of Worthington shall be assessing each lot a share of maintenance expenses within the Flexible Development.

#### 5. Enforcement specific to Site Flexible Residential Developments

- a) Before endorsement of the flexible development plan by the Site Plan Review Authority, the applicant shall agree to complete the required improvements as specified in the plans submitted to the Site Plan Review Authority for all lots in the site, such construction and installation to be secured in accordance with Chapter 41 § 81U of the Subdivision Control Law by covenant duly recorded, as to the parcels that can be built upon. The Site Plan Review Authority may require either the posting of adequate financial guarantees or recorded covenants, or both such forms of performance guarantees, to assure monitoring and compliance with the Site Plan Review and approval of the flexible development plan and all conditions, modifications and restrictions contained therein.

#### 6. Financial Guarantees for Site Flexible Residential Developments

- a) Adequate financial guarantees in the form of a cash escrow may be required by the Site Plan Review Authority to assure flexible development plan compliance. All funds shall be held in an interest-bearing account, interest payable to applicant when conditions for release of funds are duly met. It is within the discretion of the Site Plan Review Authority, as applicable to site flexible residential developments, to substitute form or to entirely waive requirements of a financial guarantee only where it is in the public interest to do so and not inconsistent with the intent and purpose of the subdivision control law, as per MGL Chapter 41 §81R. No such waiver is applicable to required covenants for Site Flexible Residential Developments.

#### 7. Covenants for Site Flexible Residential Developments

- a) All land within a flexible development shall be covered by duly recorded covenant to insure that all work, including legal work, is completed prior to transfer of title or sale of any parcel therein.
  - 1) The applicant shall fulfill a covenant (Form I within Subdivision Regulations of the Town of Worthington), executed and duly recorded concurrent with recording the flexible development approval by the owner of record, running with the land, that no lot in the flexible development shall be sold and no building erected thereon until such common driveways, services and, whenever applicable, turnarounds are constructed and installed, and until record plans and other required work are accepted by the Site Plan Review Authority, in accordance with governing Town bylaws, so as to adequately serve the lots
  - 2) Such covenant shall be inscribed on the plan of the flexible development or on a separate document referred to on the plan and delivered to the Site Plan Review Authority. The Site Plan Review Authority shall turn over the covenant agreement to the town's legal counsel who shall review its contents at the applicant's expense and forward counsel's comments in writing to the Site Plan Review Authority. Upon approval of the covenant by the Site Plan Review Authority, the Site Plan Review Authority shall note its action on the plan of the flexible development and the applicant shall record the covenant,

the endorsed plan of the flexible development, and other appropriate documents at the Hampshire County Registry of Deeds.

- b) Section III.B.11.a and III.B.11.b of the Town of Worthington Subdivision Regulations specific to release of performance guarantees shall be the sole and applicable implementing regulations for Site Flexible Development until such time as the Planning Board will adopt other implementing regulations specific for Site Flexible Development in the Town of Worthington.

**8. Conflict with Other Laws**

- a) The provisions of this section shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this section and others, the more restrictive bylaw or provision thereof shall apply.

**9. Severability**

- a) If any provision of this section is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity in whole or in part of any section or sections of this bylaw shall not affect the validity of the remainder of the town's bylaws.

**8.5. LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS (LSGMSPI)**

**8.5.1. Purposes**

A. The purposes of this section are to:

- 1. Promote the creation of large-scale ground-mounted solar photovoltaic installations with a minimum nameplate capacity of 250kW DC (hereinafter abbreviated as LSGMSPI)
- 2. Provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations
- 3. Address public safety, minimize impacts on scenic, natural and historic resources, and provide adequate financial assurance for the eventual decommissioning of such installations.
- 4. The provisions set forth in this section shall apply to the construction, operation, and/or repair of LSGMSPI.

**8.5.2. Applicability**

- A. This section applies to LSGMSPI proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.
- B. LSGMSPIs will be permitted in Worthington, subject to the terms of this Section and subject to Site Plan Review, per Section 2.6 of this By-law.

**8.5.3. General Requirements for all LSGMSPI**

A. The following requirements are common to all LSGMSPI to be sited in Designated Locations:

- 1. Compliance with Laws and Regulations

- a) The construction and operation of all LSGMSPI shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a LSGMSPI shall be constructed in accordance with the State Building Code.
2. Building Permit and Building Inspection
- a) No LSGMSPI shall be constructed, installed, or modified as provided in this section without first obtaining a building permit.
3. Fees
- a) The application for a Site Plan Review for a LSGMSPI must be accompanied by the fee as determined by the Planning Board.
4. Site Plan Review
- a) LSGMSPIs shall undergo Site Plan Review (see Section 2.6) by the Planning Board prior to construction, installation or modification as provided in this section.
5. General
- a) All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.
6. Required Documents
- a) Pursuant to the site plan review process, the project proponent shall provide the following documents:
    - 1) A site plan showing:
      - a. Property lines and physical features, including roads, lot areas, setbacks, open space, parking, and structure coverage for the project site;
      - b. Proposed changes to the landscape of the site, grading, drainage, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
      - c. Blueprints or drawings of the LSGMSPI and appurtenant structures signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, lighting, signage, utility connections, transformers, and any potential shading from nearby structures or natural features or vegetation;
      - d. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
      - e. Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter;
      - f. Name, address, license verification, and contact information for proposed system installer;

- g. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
  - h. The name, contact information and signature of any agents representing the project proponent;
  - i. The delineation of any wetlands on or near the specific portion of the parcel proposed for the LSGMSPI.
- 2) Documentation of actual or prospective access and control of the project site; see also Section 8.5.3.A.6.a.11 of this By-law;
  - 3) An operation and maintenance plan; see also Section 8.5.3.A.6.a.10 of this By-law;
  - 4) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
  - 5) Natural Resources Conservation Service soil survey classification map(s) for the proposed site
  - 6) Proof of liability insurance; and
  - 7) Description of financial surety that satisfies Section 8.5.6.F of this By-law.
  - 8) The Planning Board may waive documentary requirements as it deems appropriate.
  - 9) Site Control
    - a. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed LSGMSPI.
  - 10) Operation and Maintenance Plan
    - a. The project proponent shall submit a plan for the operation and maintenance of the LSGMSPI, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
  - 11) Utility Notification
    - a. No LSGMSPI shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator.

#### **8.5.4. Dimension and Density Requirements**

##### **A. Setbacks**

1. For LSGMSPIs, front, side and rear setbacks shall be as follows:

- a) Front yard: The front yard depth shall be at least 50 feet.
- b) Side yard: Each side yard shall have a depth at least 50 feet.
- c) Rear yard: The rear yard depth shall be at least 50 feet.
- d) Access roads or driveways shall be set back at least 25 feet from side and rear lot lines.

#### B. Appurtenant Structures

1. All appurtenant structures to LSGMSPIs shall be subject to the Worthington Zoning By-laws. Whenever reasonable, structures should be shielded from view by vegetation and/or joined or clustered to avoid adverse visual impacts. Vegetation shall be of varieties native to New England. Said vegetative screening shall reach a mature form to effectively screen the installation within five years of installation. Planting of the vegetative screening shall be completed prior to final approval of the photovoltaic installation by the Building Inspector.

### **8.5.5. Design Standards**

#### A. Lighting

1. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

#### B. Signage

1. Signs on LSGMSPIs shall comply with the Worthington sign by-law (Section 4.3.B.D). A sign consistent with the Worthington sign by-law shall be required to identify the owner and provide a 24-hour emergency contact phone number.
2. LSGMSPIs shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

### **8.5.6. Safety and Environmental Standards**

#### A. Emergency Services

1. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked and approved by the Town fire chief. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
2. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked and approved by the Town fire chief. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

#### B. Land Clearing, Soil Erosion, Drainage and Habitat Impacts

1. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGMSPI or otherwise prescribed by applicable laws, regulations and bylaws. LSGMSPIs shall be installed on water permeable surfaces as approved by the Planning Board during site plan review

### C. Landscape Maintenance

1. When possible, a diversity of plant species shall be used, with a preference for species native to New England. Use of plants identified by the most recent copy of the "Massachusetts Prohibited Plant List" maintained by the Massachusetts Department of Agricultural Resources, is prohibited. Herbicides shall only be applied by properly licensed personnel, as enforced by the Massachusetts Department of Agricultural Resources.

### D. Sound Levels

1. The sound levels under normal operating conditions, measured at the boundary of the lot on which the installation is sited, shall not be more than 10 decibels greater than would otherwise exist in the absence of such a facility.

### E. Monitoring and Maintenance

#### 1. Solar Photovoltaic Installation Conditions

- a) The LSGMSPI owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Town Fire Chief and Police Chief. The owner or operator shall be responsible for the cost of maintaining the LSGMSPI and any access road(s), unless accepted as a public way.

#### 2. Modifications

- a) Any modifications to a LSGMSPI made after issuance of the required building permit shall require approval by the Planning Board.

#### 3. Abandonment or Decommissioning

##### a) Abandonment

- 1) Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSGMSPI shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the LSGMSPI fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned LSGMSPI. As a condition of site plan approval, a property owner shall agree to allow the Town entry to remove an abandoned or decommissioned installation. The cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

##### b) Removal Requirements

- 1) Any LSGMSPI which has reached the end of its useful life or has been discontinued or has been abandoned consistent with Section 8.5.6(E)(3)(a)(1) of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of LSGMSPI structures, equipment, security barriers and transmission lines from the site
- b. Physical removal of LSGMSPI structures, equipment, security barriers and transmission lines from the site
- c. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations
- d. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation

#### F. Financial Surety

1. Proponents of LSGMSPI projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer, during site plan review stage of application. The amount shall include a mechanism for calculating increased removal costs due to inflation.

#### G. Independent Engineer

1. The Planning Board may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the Planning Board with its review of the application in accordance with the requirements of Section 53G of Chapter 44 of the Massachusetts General Laws. The Planning Board may direct the applicant to deposit funds with the Planning Board at the time the application is accepted, and to add additional funds as needed upon notice. Failure to comply with this section shall be grounds for denying the application. Upon approval of the application, any excess amount in the account attributable to that project, including any accrued interest, shall be repaid to the applicant.

### **Section 8.6 MEDICAL/ADULT USE MARIJUANA**

#### 8.6.1 Purpose

It is recognized that the nature of the substance cultivated, processed, and/or sold by Registered Marijuana Dispensaries, also known as Medical Marijuana Treatment Centers and Marijuana Establishments may have operational characteristics that should be located in such a way as to ensure the health, safety, and general well-being of the public while also supporting the right of legally authorized adults to access marijuana for their own use. The specific and separate regulation of Medical Marijuana Treatment Centers and Marijuana Establishments is necessary to advance these purposes.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, Chapters 94G and 94I of the Massachusetts General Laws and 935 CMR 500.000, 935 CMR 501.000 and 935 CMR 502.000, Medical Marijuana Treatment Centers and Marijuana Establishments will be permitted to provide the opportunity for the

legal cultivation, product manufacturing, retail sale and other legally authorized uses of marijuana for medical and non-medical adult marijuana use in a manner that complies with state regulations.

#### 8.6.2 Applicability

This section applies to the operation of Medical Marijuana Treatment Centers and Adult Use Marijuana Establishments as defined in part 3 of this section. Nothing in this section shall be construed to supersede state law governing the sale and distribution of marijuana, or any federal laws governing the interstate transportation or sale of the same. This section does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

#### 8.6.3 General Administration

- A. Special Permit Granting Authority: for the purposes of this section, the Special Permit Granting Authority shall be the Planning Board of the Town of Worthington.
- B. Enforcement: Any violations of the terms of a Special Permit granted under to this section and otherwise not of a criminal nature, shall be directed to the Zoning Enforcement Officer as defined by Section 2.6.12 of this zoning bylaw or in writing to the Special Permit Granting Authority.
- C. Special Permits granted under this section shall apply to no more than one Licensee and no Special Permit shall allow for the concurrent operation of two or more Medical Marijuana Treatment Center and/or Marijuana Establishments on the same parcel of land.

#### 8.6.4 Location Requirements

- A. No Medical Marijuana Treatment Center or Marijuana Establishment shall be located within five hundred (500) feet of any of the following:
  - 1. A public or private school providing education in preschool, kindergarten or any of grades 1-12
  - 2. A public or private library
  - 3. Duly licensed daycare centers
  - 4. Churches, synagogues or other places of worship
  - 5. Public or private parks, playgrounds and recreation areas
- B. Under no circumstances shall a Medical Marijuana Treatment Center or Marijuana Establishment be located within two hundred fifty feet (250) of a residential use.
- C. All aspects of any Medical Marijuana Treatment Centers and Marijuana Establishments, except for the transportation of product or materials, relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at an enclosed, fixed location and shall not be permitted to be located in a trailer, storage freight container, motor vehicle or other similar type potentially movable platform or enclosure.
- D. No Medical Marijuana Treatment Center or Marijuana Establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
- E. No Medical Marijuana Treatment Center or Marijuana Establishment is permitted to utilize or provide a drive-through service.



- F. Enclosed area cultivation, manufacturing, processing, retail, and standards and testing establishments are encouraged to utilize existing buildings where possible.

#### 8.6.5 Use Regulations

- A. Any type of Medical Marijuana Treatment Center or Marijuana Establishment may only be involved in the uses permitted by its license definition and may not include other businesses or services.
- B. No marijuana shall be smoked, eaten or otherwise consumed or ingested within Medical Marijuana Treatment Centers or Marijuana Establishments unless expressly permitted under this Bylaw, and permitted by state law or regulation. The prohibition on on-site consumption shall also include Marijuana Membership Clubs, private social clubs and any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.
- C. The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall a Medical Marijuana Treatment Center or Marijuana Establishment be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
- D. No Medical Marijuana Treatment Center or Marijuana Establishment may commence operation or apply for a building permit prior to its receipt of all required permits and approvals including, but not limited, to its Final License from the Cannabis Control Commission.
- E. The number of adult use marijuana retail establishments permitted to be located within the Town shall not exceed twenty percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises where sold under chapter 138 of the General Laws.
- F. Medical Marijuana Treatment Center or Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets, and areas surrounding the premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of marijuana, excessive pedestrian or vehicular traffic, illegal drug activity under state or local law, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) or other obstructions in the public or private way (sidewalks and streets).

#### 8.6.6 Design Standards

- A. Medical Marijuana Treatment Centers and Marijuana Establishments are encouraged to utilize existing vacant buildings where possible.
- B. In addition to the general requirements in Sections 8.6.3, 8.6.4, and 8.6.5, all structures utilized for any purpose by a licensed Medical Marijuana Treatment Center or Marijuana Establishment shall be compatible in scale, design and aesthetic with the existing neighboring properties in particular, and with the rural, agricultural character of the Town of Worthington in genera. The following design standards shall also apply to all Medical Marijuana Treatment Centers or Marijuana Establishments in the Town of Worthington:
  1. Enclosed Structures: for the purposes of this section, an Enclosed Structure shall mean any structure, other than a standard Greenhouse, actively devoted to the cultivation, manufacture, transportation, storage or testing of marijuana products.

- a) **Combined Maximum Building Footprint:** The total combined footprint for all Enclosed Structures shall not exceed 15,000 square feet.
  - b) **Maximum Building Footprint:** An individual enclosed structure shall not exceed 5,000 square feet of area.
  - c) **Height:** no Enclosed Structure shall exceed a total of thirty-five (35) feet in height.
  - d) **Spacing:** Enclosed Structures shall be no less than twenty (20) feet apart and in no instance shall a Marijuana Establishment erect more than five (5) Enclosed Structures.
2. **Greenhouses:** For the purpose of this section, a Greenhouse shall mean any structure with walls and roof made of transparent or translucent material in which plants requiring regulated climatic conditions are grown and allowed in all areas where Marijuana Cultivation is allowed provided that:
- a) The greenhouse installation conforms to all regulations regarding security, screening, ventilation, odor and any other provisions of 935 CMR 500, 935 CMR 501 and of this bylaw.
  - b) The total footprint of all structures devoted to active cultivation, including greenhouse space, does not exceed 13,500 square feet of total area.
  - c) No greenhouse exceeds a total height of twenty (20) feet.
3. **Outdoor cultivation:** For the purpose of this section, outdoor cultivation shall mean a marijuana establishment that involves the cultivation of mature cannabis outdoors in the open air, which is not (a) for personal use or (b) conducted by a licensed caregiver, in amounts not to exceed the state imposed limits for individuals or caregivers, and allowed in all areas where marijuana cultivation is allowed provided that:
- a) No fertilizers, compost, soils, materials, machinery, or equipment shall be stored within the required front, side, and rear yard setbacks.
  - b) The minimum setback from all property lines shall be 200 feet.
  - c) The outdoor cultivation facility shall comply in every respect with the requirements of 935 CMR 500.110 (6) which regulates "Security and Alarm Requirements for Marijuana Establishments Operating Outdoors," as amended.
  - d) In reviewing a special permit under this section the Board shall consider the impact of the proposal on the following:
    - 1. Character of the neighborhood to include visual compatibility with surrounding uses.
    - 2. Proximity to other licensed marijuana uses to prevent clustering.
    - 3. Relationship to surrounding uses to avoid unnecessary exposure to minors.
    - 4. Site design and other development related site impacts.
    - 5. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining use or property, except as allowed under a Special Permit granted to a Marijuana Cultivator with outdoor cultivation. Outdoor cultivation of marijuana will implement industry best practice to eliminate any noticeable trace of marijuana odor at the perimeter of property of the cultivator site.
4. **Retail Establishments:** The total gross floor of Retail Marijuana Establishments or a Medical Marijuana Treatment Center engaged in retail operations shall not exceed 2,500 square feet.

5. Setbacks: With the exception of retail uses, all marijuana establishments shall have a minimum setback of 100 feet as measured from the nearest edge of any public right-of-way or abutting property boundary.
6. Roofing: No Enclosed Structure, as defined herein, shall have a roof pitch of less than 5/12, unless the applicant can demonstrate to the satisfaction of the Special Permit Granting Authority that any deviation from this standard is in better keeping with Section 2.6.9(A)(1).
7. Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from the outside of the building in which the Medical Marijuana Treatment Center or Marijuana Establishment is located and shall comply with the requirements of 935 CMR 500. No outside storage of marijuana, related supplies, or promotional material is permitted. Any artificial screening device erected to eliminate the view from a public way shall also be subject to a vegetative screen and the Special Permit Granting Authority shall consider the surrounding landscape and views to determine if an artificial screen would be out of character with the neighborhood.
8. Ventilation and odor: all Medical Marijuana Treatment Centers and Marijuana Establishments shall be ventilated in such a manner that no:
  - a) Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
  - b) No odor from marijuana, marijuana products or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Medical Marijuana Treatment Center or Marijuana Establishment or at any adjoining use or property.
9. Signage: All signage shall comply with all other applicable signage regulations in the Zoning Bylaw, 935 CMR 500, and 935 CMR 501.
10. Lighting: to the extent permissible by state law and regulations, all Medical Marijuana Treatment Centers and Marijuana Establishments shall make every reasonable effort to minimize the effects of security and other necessary light installations on the surrounding community and shall comply with "dark skies" standards whenever possible.

#### 8.6.7 Reporting Requirements:

- A. Prior to the commencement of the operation or services, any Medical Marijuana Treatment Center or Marijuana Establishment approved under this section shall provide the Police Department, Fire Department, Building Commissioner/Inspector and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.
- B. The local Building Inspector, Board of Health, Police Department, Fire Department, Selectboard and Special Permit Granting Authority shall be notified in writing by the Medical Marijuana Treatment Center or Marijuana Establishment facility owner/operator/ manager:
  1. A minimum of 30 days prior to any change in ownership or management of that establishment.
  2. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.

- C. Permitted Medical Marijuana Treatment Centers or Marijuana Establishments shall file an annual written report to, and appear before, the Special Permit Granting Authority no later than January 31<sup>st</sup> of each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.
- D. The owner or manager of a Medical Marijuana Treatment Center or Marijuana Establishment is required to respond by phone, text message or email within twenty-four hours of contact by a town official concerning their Marijuana Establishment at the phone number or email address provided to the Town as the contact for the business in cases of town emergencies or public health emergencies.

#### 8.6.8 ISSUANCE/TRANSFER/DISCONTINUANCE OF USE

- A. Special Permits/Site Plan Approvals shall be issued to the Medical Marijuana Treatment Center or Marijuana Establishment entity only.
- B. Special Permits/Site Plan Approvals shall be issued for a specific type of Medical Marijuana Treatment Center or Marijuana Establishment on a specific site/parcel only.
- C. Special Permits/Site Plan Approvals shall be non-transferable to either another Medical Marijuana Treatment Center or Marijuana Establishment owner or another site/parcel.
- D. Special Permits/Site Plan Approvals shall have a term limited to the duration of the Applicant's ownership/control of the premises as a Medical Marijuana Treatment Center or Marijuana Establishment, and shall lapse if:
  - 1. The Medical Marijuana Treatment Center or Marijuana Establishment ceases to operate; and/or
  - 2. The Medical Marijuana Treatment Center or Marijuana Establishment's registration/license by the Cannabis Control Commission expires or is terminated.
- E. The Medical Marijuana Treatment Center or Marijuana Establishment shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.
- F. In the event that any Medical Marijuana Treatment Center or Marijuana Establishment has reasonable grounds to temporarily ceases to operate, the Special Permit Granting Authority may, at its discretion, extend the term limit defined in Section 8.6.8(D), provided that:
  - 1. The licensed Medical Marijuana Treatment Center or Marijuana Establishment submits to the Special Permit Granting Authority a written statement explaining the need for such an extension, the steps being taken to resume operations and the amount of time considered necessary to realize those steps; AND
  - 2. No such cessation of operations shall be for a period longer than 365 days in total.
- G. A marijuana cultivator or manufacturer shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.
- H. Prior to the issuance of a Building or Occupancy Permit for a Medical Marijuana Treatment Center or Marijuana Establishment, the Applicant shall be required to furnish evidence that a decommissioning bond or other form of financial security pursuant to the requirements of 935 CMR 500.105, as may be

amended, has been posted with the Commission in an amount which shall be sufficient to cover the costs of removing all materials, plants, equipment and other paraphernalia in the event the Applicant fails to do so.

1. Should the applicant not furnish sufficient evidence, or such financial security is deemed insufficient in the opinion of either the Special Permit Granting Authority or Town Treasurer to cover potential costs to the Town for the removal of said material, the Applicant shall post with the Town Treasurer an addition bond or other form of financial security acceptable to said Treasurer in an amount set by the Special Permit Granting Authority, which shall cover any and all potential costs to the Town for the removal of said material.
  2. In the event that the Town finds a licensed Medical Marijuana Treatment Center or Marijuana Establishment to have ceased operations, the Building Inspector shall give the owner 30 days' written notice in advance of taking any action. Should the Applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 30 days written notice, any bond posted with and under the control of the Town Treasurer shall be returned to the Applicant.
  3. All licensed Medical Marijuana Treatment Centers and Marijuana Establishments in the Town of Worthington shall be required to furnish to the Town an annually updated estimate of decommissioning costs which shall include any increases resulting from changes to operations, annual inflation or any and all other factors, as well as a full accounting of any bonds or other financial securities held with the Commission and/or the Town. The owner shall be responsible for the cost of any annual increases in posted bonds necessary to cover the cost of decommissioning.
- I. The Special Permit Granting Authority may hire, at the applicant's expense, professional, third-party consultant(s) of their choosing to assist them in evaluating the Special Permit application, estimating any bond amounts as required by Section 8.6.8(H) of this bylaw, or any other requirements contained herein.

### **8.6.9 APPLICATION REQUIREMENTS**

A Medical Marijuana Treatment Center or Marijuana Establishment shall only be allowed by Special Permit from the Special Permit Granting Authority in accordance with MGL c.40A §9 and other provisions of this chapter. All Special Permits for Medical Marijuana Treatment Centers and Marijuana Establishments shall be subject to following requirements and conditions:

- A. Community Host Agreement: All applications for a Special Permit shall include an executed Community Host Agreement with the Town.
- B. Community Outreach meeting for Marijuana Establishments: All applications for a Special Permit shall include certification that a Community Outreach Hearing in accordance with 935 CMR 500 has occurred. Additionally, the applicant shall demonstrate that reasonable efforts have been made to ensure that any and all handouts, presentations and other audio/visual materials utilized in a public hearing have been designed so as to accommodate the needs of sight and/or hearing-impaired residents.
- C. Site Plan Approval: No Special Permit for any Medical Marijuana Treatment Centers and Marijuana Establishments shall be issued without site plan approval by the Special Permit Granting Authority. In addition to the standards set forth herein, the site plan must meet all dimensional, parking, and other requirements set forth by this zoning bylaw

D. License requirements:

1. The Applicant shall submit proof that the application to the Commission has been deemed complete by the Commission pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as an integral component of the application to the Planning Board and no Special Permit application shall be deemed complete by the Planning Board until this information is provided.
2. No Special Permit shall be granted by the Planning Board to an applicant without the Medical Marijuana Treatment Center or Marijuana Establishment first having been issued a Provisional License from the Marijuana Control Commission pursuant to 935 CMR 500 or 935 CMR 501.
3. No person shall operate a Medical Marijuana Treatment Center or Marijuana Establishment without having a license in good standing from the Cannabis Control Commission.

E. Security Plan: All applications for a Special Permit shall include a security plan describing all proposed security measures including lighting, fencing, gates and alarms, and any other such measures that will satisfy the requirements of 935 CMR 500.110. Security information shall be submitted and retained by the Planning Board submitted as a confidential document and forwarded to the Police Chief for review and comment.

F. Odor Control Plan: All applications for a Special Permit shall include an Odor Control Plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the Medical Marijuana Treatment Center or Marijuana Establishment, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative of odor control including maintenance of such controls.

G. Management Plan: All applications for Special Permit shall include a management plan with a comprehensive description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to the Medical Marijuana Treatment Center or Marijuana Establishment or off-site direct delivery.

H. Energy Use Plan: All applications for a Special Permit shall include an energy use plan which shall demonstrate best practices for energy conservation, water usage, and waste disposal. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.

I. Decommissioning Plan: All applications for Special Permit shall include a plan providing for the decommissioning of the Medical Marijuana Treatment Center or Marijuana Establishment. Such decommission plans shall include a cost estimate provided by a qualified, third-party expert and shall detail dismantling, disposal of equipment and all other reasonably anticipated costs associated the decommissioning of the Medical Marijuana Treatment Center or Marijuana Establishment, along with detailed accounting of any bonds posted with the Commission in accordance with 935 MCR 500 and Section 8.6.8 (H) of this section. The Special Permit Granting Authority/Planning Board reserves the right to request a comparison estimate provided by an independent, qualified professional estimator of the board's choosing, the cost of which shall be borne by the Applicant.

J. Waivers:

- 1) The Applicant shall be required to submit specific information regarding any waivers from 935 CMR 500.000 or 935 CMR 501.000 granted by the Commission. The Special Permit Granting Authority shall consider said waivers based on the following Commission criteria in 935 CMR 500 or 935 CMR 501.000:

- a. Compliance would cause undue hardship to the investor;
  - b. If applicable, the requestor's non-compliance does not jeopardize the health or safety of any patient or the public;
  - c. If applicable, the requestor has instituted compensating features that are acceptable to the Planning Board; and
  - d. The requestor provides to the Planning Board written documentation, in a form and manner determined by the Planning Board, supporting its request for a waiver.
- 2) The Planning Board may waive any information requirements it judges to be unnecessary to the review of a particular plan. A request for a waiver(s) by an applicant must be made in writing by the applicant to the Planning Board.

**K. Other Requirements**

- 1. The name and address of each owner and operator of the Medical Marijuana Treatment Center or Marijuana Establishment facility/operation.
- 2. Proof of Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500 and 935 CMR 501.
- 3. Evidence that the Applicant has site control and right to use the site for a Medical Marijuana Treatment Center or Marijuana Establishment facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement.
- 4. A notarized statement signed by the Medical Marijuana Treatment Center or Marijuana Establishment organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons.
- 5. A detailed floor plan identifying the areas available and functional uses (including square footage).
- 6. All signage being proposed for the Medical Marijuana Treatment Center or Marijuana Establishment.
- 7. A pedestrian/vehicular traffic impact study to establish the Medical Marijuana Treatment Center's or Marijuana Establishment's impacts at peak demand times, including a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along access areas including, but not limited to the public right of ways, will not be unreasonably obstructed.

**8.6.10 FINDINGS**

In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find all the following:

- A. The Medical Marijuana Treatment Center or Marijuana Establishment is consistent with and does not derogate from the purposes and intent of this Section and the Zoning Bylaw.
- B. That the Medical Marijuana Treatment Center or Marijuana Establishment is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- C. That the Medical Marijuana Treatment Center or Marijuana Establishment demonstrates that it meets or exceeds all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations; and
- D. That the Applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw;
- E. That the Medical Marijuana Treatment Center or Marijuana Establishment provides adequate security measures to ensure that there is no direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured on-site or via delivery.
- F. That the Medical Marijuana Treatment Center or Marijuana Establishment adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

#### 8.6.11 SEVERABILITY

If any provision of this section is found to be invalid by a court of competent jurisdiction, the remainder of this section shall not be affected but shall remain in full force. The invalidity of any provision of this section shall not affect the validity of the remainder of this zoning bylaw.

#### 8.7 ACCESSORY DWELLING UNITS (ADU) (added 5-7-22)

A. Purpose- The provision of Accessory Dwelling Units (ADUs) is intended to:

1. provide housing options for residents who cannot afford, or who do not desire, a free-standing single unit house with land;
2. provide older owners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in their homes and neighborhoods they may otherwise be forced to leave;
3. encourage a more economic and energy-efficient use of the Town's housing supply and create a greater range of housing accommodations while maintaining the appearance and rural character of the Town;
4. protect the stability, property values, and the single-family residential character of the town by ensuring accessory dwelling units are installed only in owner-occupied properties with proper permitting and inspections; and,
5. provide housing units for persons with disabilities.

B. Accessory Dwelling Units (ADU) Conditions

The Planning Board shall issue Site Plan Approval, per Section 2.6 of this bylaw, for only one singular dwelling unit accessory to the use of a single-family principal dwelling, provided that each of the following conditions is met:



1. The ADU will be a complete, separate housekeeping unit containing kitchen, sleeping and sanitary facilities.
2. Only one ADU is created within a single-family dwelling or house lot as defined under Section 5 hereof.
3. In the case of an attached ADU, plans must be provided showing all proposed interior and exterior changes to the single-family dwelling. In the case of a detached ADU, plans must be provided showing the proposed site changes, as well as the interior and exterior of the proposed structure.
4. There will be two separate egresses. One must open directly to the outside. One may be shared with the principal single-family principal dwelling through an entry hall or corridor.
5. The gross floor area of the ADU (including any additions) shall not be greater in floor area than 900 square feet.
6. Once an ADU has been added to a single-family residence, the ADU shall never be enlarged beyond 900 square feet in floor area, as allowed by this bylaw.
7. Any new separate outside entrance serving an attached ADU shall be placed in such a manner that it does not interfere with the single-family character of the town. For example, the entry to the ADU can be located on the side or in the rear of the building. Detached ADUs shall be designed and sited in such a way that they do not interfere with the rural and single-family residential character of the town, and are clearly subordinate to the principal dwelling.
8. A minimum of three off-street parking spaces must be available for use by the owner occupant(s) and tenants to avoid on-street parking.
9. The procedure for the submission and approval of a Building Permit for an ADU shall be the same as prescribed elsewhere in this Bylaw except the application shall include a notarized letter from the owner(s) stating that the owner(s) will occupy one of the dwelling units on the premises.
10. The owner(s) of the property on which the ADU is created must continue to occupy at least one of the property's dwelling units as their primary residence, except for bona fide temporary absences. The Building Inspector shall revoke the Certificate of Occupancy for any ADU for which the Building Inspector determines that the owner(s) does not so occupy.
11. The Inspector of Buildings shall not issue a Certificate of Occupancy for an ADU until the owner(s) of the property presents a time-stamped copy of a Declaration of Covenants for the subject property that has been filed at the County Registry of Deeds. The Declaration shall state that the right to occupy an ADU ceases if the property is not the primary residence of one or more of its owners, or upon transfer of title unless the new owner takes the action described in paragraph 12 below.
12. In those instances where there is a transfer of ownership of a dwelling with an ADU, if a structure that has received approval for an ADU is sold, and if the new owner wishes to continue to exercise the use, the new owner must, within 30 days of the sale, submit a notarized letter to the Building Inspector stating that the owner will occupy one of the dwelling units on the property and shall conform to all of the criteria and conditions for ADUs.

#### C. Accessory Dwelling Units in Existence Before the Adoption of an Accessory Dwelling Unit Bylaw

1. The Planning Board may authorize, under a Site Plan Review and in conjunction with the Building Commissioner, an accessory unit (ADU) in an owner-occupied, single-family dwelling or accessory structure. The Board will review, with the Building Commissioner and Board of Health Agent, each existing use on a case-by-case basis to determine if the dwelling conforms to the State Building Code and Health Code.
2. The applicant must follow the same procedures described in this Accessory Dwelling Unit Bylaw.

#### D. Conflict with Other Laws

The provisions of this bylaw shall be considered supplemental of the existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

## **SECTION 9. SPECIAL DISTRICTS**

### **9.1 FLOOD PLAIN AND RIVER PROTECTION ZONING**

#### **9.1.1. Purposes**

A. The purposes of the Flood Plain and Westfield River Protection Districts are to:

1. Protect life, public safety and property from flooding hazards;
2. Preserve the natural flood control and flood storage characteristics of the floodplain;
3. Promote the preservation of agricultural lands along the Westfield River;
4. Prevent any alterations to the natural flow of the river;
5. Protect fisheries and wildlife habitat within and along the Westfield River;
6. Control erosion and siltation;
7. Enhance and preserve existing scenic or environmentally sensitive areas along the shoreline;
8. Conserve shore cover and encourage well-designed developments
9. Prevent water pollution caused by erosion, sedimentation, nutrient or pesticide run-off, and poorly sited waste disposal facilities.
10. Preserve and maintain the groundwater table and water recharge areas within the floodplain.

#### **9.1.2. District Delineation**

- A. The Flood Plain District is herein established as an overlay district and includes all special flood hazard areas designated as Zones A, A1-30 on the Worthington Flood Insurance Rate Maps (FIRM), dated June 19, 1989, on file with the Town Clerk, and hereby made a part of this By-Law.
- B. The Westfield River Protection District is herein established as an overlay District. The area subject to the By-Law shall be the entire length of the Middle Branch of the Westfield River within the Town of Worthington. The Westfield River Protection District shall encompass those floodplain areas designated as Zone A or Zones A 1-30 on the Town of Worthington Flood Insurance Rate Maps (FIRM) for the Westfield River, Middle Branch. Where the floodplain has not been delineated on the FIRM maps or where the delineation is less than 100 feet from the river bank (as defined by MGL Ch131s40), the River Protection District shall be defined as that area within 100 feet, measured horizontally, of the river bank.
- C. The boundaries of the Flood Plain and Westfield River Protection Districts shall be determined by scaling distances on the Flood Insurance Rate Map. When interpretation is needed as to the exact location of the boundaries of a District, the Building Inspector shall make the necessary interpretation.

#### **9.1.3. Use Regulations**

- A. All development, including structural and non-structural activities, whether permitted as a right or by Special Permit must be in compliance with the Massachusetts Wetlands Protection Act, MGL Ch131s40, and with the requirements of the Massachusetts State Building Code pertaining to construction in the Flood Plain (currently Section 744).

## B. Permitted Uses

1. The following uses in the Flood Plain District of low flood-damage potential and causing no obstruction to flood flows shall be permitted provided they do not require structures, fill, or storage of material or equipment:
2. Agricultural uses such as farming, grazing, and horticulture.
3. Forestry uses.
4. Outdoor recreational uses, including fishing, boating, play areas and foot, bicycle or horse paths
5. Conservation of water, plants, and wildlife.
6. Wildlife management areas.
7. Buildings lawfully existing prior to the adoption of these provisions.

## C. Uses by Special Permit

1. No structure or building in the Flood Plain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Zoning Board of Appeals.
2. The following uses may be allowed by Special Permit from the Zoning Board of Appeals in accordance with the Special Permit regulations of this Zoning By-Law, and additional restriction and criteria contained herein
  - a) Single family residences.
  - b) Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.
3. The following Special Permit requirements apply in the Flood Plain District:
  - a) With Zone A 1-30, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
  - b) No encroachments (including fill, new construction, substantial improvements to existing structures, or other development shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.
  - c) The proposed use shall comply in all respects to the provisions of the underlying District in which the land is located.
  - d) The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.
  - e) Within 10 days of the receipt of the application the Board shall transmit one copy of the development plan to the Conservation Commission, Board of Health, Building Inspector, and the Planning Board. Final action shall not be taken until reports have been received from the above Boards or until thirty-five (35) days have elapsed.
4. The following Special Permit requirements apply in the Westfield River Protection District, in addition to those requirements specified in Section 9.1.3.3:

- a) A buffer strip extending at least one hundred (100) feet in depth, to be measured landward from each bank of the Westfield River shall be required for all lots within the River Protection District. If any lot, existing at the time of adoption of this By-Law, does not contain sufficient depth, measured landward from the river bank, to provide a one hundred (100) buffer strip, the buffer strip, may be reduced to 50% of the available lot depth, measured landward from the river bank. For purposes of this By-Law, the river bank shall be defined as the river's seasonal high water mark. The buffer strip shall include trees and shall be kept in a natural or scenic condition.
  - b) No buildings or structures shall be erected, enlarged, or altered or moved within the buffer strip.
  - c) On-site wastewater disposal systems shall be located as far from the Westfield River as is feasible.
5. In addition to the provisions of Section 2.3 of this By-law, the Zoning Board of Appeals may issue a Special Permit if it finds the proposed use is compliant with the following provisions:
- a) In the Flood Plain District, proposed uses must:
    - 1) Not create increased flood hazards which are detrimental to the public health, safety and welfare.
    - 2) Comply in all respects to the provisions of the underlying District or Districts within which the land is located.
    - 3) Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (MGL Ch131s40).
  - b) In the Westfield River Protection District, proposed uses must also:
    - 1) Be situated in a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip.
    - 2) Be integrated into the existing landscape through features such as vegetative buffers and through retention of the natural shorelines.
    - 3) Not result in erosion or sedimentation.
    - 4) Not result in water pollution.

D. Restricted Uses Within the Westfield River Protection District

- 1. No altering, dumping, filling, or removal of river-line materials or dredging is permitted. Maintenance of the river may be done under requirements of MGL Ch131s40, and any other applicable laws, by-laws, and regulations.
- 2. All forest cutting shall require the filing of a Forest Cutting Plan in accordance with the Massachusetts Forest Cutting Practices Act (MGL Ch132s40-46). In addition, no cutting of forest or vegetation shall occur within fifty (50) feet of the river bank. In the area between fifty (50) and one hundred (100) feet from the river bank, no more than 50% of existing forest shall be cut.
- 3. No impoundments, dams, or other water obstructions may be located within the District.
- 4. All other uses not specifically permitted or allowed by site plan approval within the overlay zone are prohibited.

## E. Nonconformable Uses

1. Any lawful use, building, structures, premises, land or parts thereof existing at the effective date of this By-Law or amendments thereof and not in conformance with the provisions of this By-Law shall be considered to be a nonconforming use.
2. Any existing use or structure may continue and may be maintained, repaired, and improved, but in no event made larger.
3. Any nonconforming structure which is destroyed may be rebuilt on the same location but no larger than its overall original square footage.

## 9.2. WATER SUPPLY PROTECTION DISTRICT

### 9.2.1. Purpose of District

- A. To promote the health, safety, and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality of its water sources.

### 9.2.2. Scope of Authority

- A. The Water Supply Protection District is an overlay district and shall be superimposed on the other Districts established by this By-Law. All regulations of the Town of Worthington Zoning By-Law applicable to such underlying Districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.

### 9.2.3. District Delineation

- A. The Water Supply Protection District is herein established to include all lands within the Town of Worthington lying within the primary recharge areas of groundwater aquifers and watershed area of the Worthington Fire District which now or may in the future provide public water supply. The map entitled "Water Supply Protection District", Town of Worthington, as most recently amended or drafted, on file with the Town Clerk, delineates the boundaries of the district.
- B. Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located. At the request of the owner(s), the Town may engage a professional hydrogeologist to determine more accurately the location and extent of an aquifer or primary recharge area, and may charge the owner(s) for all or part of the cost of the investigation.

### 9.2.4. Prohibited Uses

- A. Business and industrial uses, not agricultural, which manufacture, use, process, store, or dispose of hazardous materials or wastes as a principal activity, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning, and auto body repair, or which involve on-site disposal or process wastewaters.
- B. Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops.

- C. Solid waste landfills, dumps, auto recycling, junk and salvage yards, with the exception of the disposal of brush or stumps.
- D. Underground storage and/or transmission of petroleum products excluding liquified petroleum gas, unless tanks and piping are double-lined in accordance with the latest State regulations.
- E. Outdoor storage of salt, de-icing materials, pesticides or herbicides.
- F. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic or hazardous material, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride, and 1-1-1 trichloroethane, or other household hazardous wastes.

**9.2.5. Restricted Uses**

- A. Excavation for removal of earth, sand, gravel and other soils shall not extend closer than five (5) feet above the annual high groundwater table. A monitoring well shall be installed by the property owner to verify groundwater elevations. This section shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
- B. Access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.
- C. The use of sodium chloride for ice control shall be minimized, consistent with the public highway safety requirements.
- D. Salt storage areas shall be covered and be located on a paved surface, with berms to prevent run-off from leaving the site.
- E. Commercial fertilizers, pesticides, herbicides, or other leachable materials shall be used with all necessary precautions to minimize adverse impacts on surface and groundwater, and shall not result in groundwater concentrations exceeding Massachusetts Drinking Water Standards.
- F. Above-ground storage tanks for oil, gasoline, or other petroleum products shall be placed in a building, in a concrete basement, or on a diked, impermeable surface sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater.
- G. To the extent feasible, all new permanent manure pits and animal feed lots shall be designed to restrict infiltration, run-off or other movement of animal wastes or manure to the aquifer or surface water.

**9.2.6. Uses Allowed by Special Permit**

- A. The following uses may be allowed by Special Permit obtained from the Planning Board:
  - 1. Commercial and industrial uses which are allowed in the underlying District;
  - 2. Any enlargement, intensification or alteration of an existing commercial or industrial use;
  - 3. The rendering impervious of more than 20% of any single residential lot.

**9.2.7. Requirements for Special Permit in the Water Supply Protection District**

- A. The applicant shall file six (6) copies of the site plan prepared by a qualified professional with the Planning Board. The site plan shall at a minimum include the following information where pertinent:

1. A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
2. Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board, Hazardous Materials Coordinator, Fire Chief, and Board of Health which shall include:
  - a) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.
  - b) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
  - c) Evidence of compliance with Regulation of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the MA Department of Environmental Quality Engineering.
3. Drainage recharge features and provisions to minimize loss of recharge.
4. For commercial and industrial use, to the extent feasible, run-off from impervious surfaces shall be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. All recharge areas shall be permanently maintained in full working order by the owner(s).
5. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.

**9.2.8. Additional Procedures for Special Permit in the Water Supply Protection District**

- A. The Planning Board shall follow all Special Permit procedures contained in Section 9.2 and Section 2.5.A of this By-law.
- B. The Planning Board may grant the required Special Permit only upon finding that the proposed use meets the following standards and those specified in Section 9.2 and Section 2.5.A of this By-Law. The proposed use must:
  1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District and;
  2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- C. The Planning Board shall not grant a Special Permit under this Section unless the petitioner’s application materials include, in the Board’s opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards of Section 9.2 and Section 2.5.A of this By-law.

**9.2.9. Non-Conforming Uses**

- A. Non-Conforming uses which were lawfully existing, begun or in receipt of a Building or Special Permit prior to the first publication of notice of public hearing for this By-Law may be continued. Such non-conforming uses may be extended or altered, as specified in MGL Ch40s6, provided that there is a finding by the Planning Board that such change does not increase the danger of surface or groundwater pollution from such use.



## SECTION 10. DEFINITIONS

For the purpose of this By-Law certain terms or words shall be as defined below. Words in the present tense include the future, the singular number includes the plural and vice versa. The word “person” includes a partnership, corporation, or other entity. The word “lot” includes the word “plot”. The word “building” includes the word “structure”.

**The following terms relate to Section 4 of this bylaw.**

Accessory Dwelling Unit (ADU) (Added 5-7-22) A self-contained housing unit, whether attached to the principal dwelling or detached from the principal dwelling, which shall be inclusive of sleeping, cooking and sanitary facilities on the same lot as the principal dwelling and which:

1. conforms to all applicable zoning, building, health, septic, electrical, plumbing, and wetlands protections standards and codes of the Commonwealth of Massachusetts and the Town of Worthington; and which,
2. includes two separate egresses, both meeting the requirements of the Commonwealth’s building code for safe egress; and,
3. is not larger than 900 square feet in floor area.

Agriculture shall include but not be limited to farming, horticulture, floriculture, nursery, truck gardening, greenhouses, maple sugar productions and display and sale of natural products raised in the Town with the necessary structures needed for these uses.

Boarding House: An establishment with lodging for up to four (4) persons where meals are regularly prepared and served for compensation and where the food is placed upon the table without service or ordering of individual portions from a menu.

Educational use as permitted in the By-Laws is use of land or buildings for educational purposes which are for religious, sectarian, denominational or public use.

A family is any number of individuals related by blood, marriage or adoption, living together as a single housekeeping unit, provided that a group of not more than five (5) persons keeping house together, but not necessarily related by blood or marriage shall be considered a family.

~~A family dwelling unit is a dwelling or part of a building occupied or intended to be occupied by one family for residential purposes. (deleted 5-7-22)~~

Filling Station: Any premises where gasoline and other petroleum products are sold. Filling stations shall not include premises where automobile maintenance activities such as engine overhauls, automobile painting and body work are conducted.

Food Truck or Trailer: A food establishment permitted by a local board of health under the State’s Retail Food Code, that is operated from a movable or portable structure that can change location. (added 5-6-23)

Garage: Any building, premises or land in which or upon which a business, service or industry involving the maintenance, servicing, repair, or painting of motor vehicles is conducted or rendered.

Inn: A facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants and recreational facilities.

Light Industry: A use engaged in the manufacture of finished products or parts, predominately from previously prepared materials, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Manufactured Housing: Manufactured Housing is factory-built housing, intended for permanent occupancy, that has been constructed and manufactured to be in compliance with U.S. Department of Housing and Urban Development (HUD) Construction and Safety Standards (24 CFR, Part 3280.2). Manufactured Housing is built on a chassis and shipped on wheels. To conform to highway regulations, HUD code regulates the length, width and height of Manufactured Housing. Single section widths are typically 14 or 16 feet wide. Two single sections placed side by side constitute a “double-wide”.

Motel: A building or group of buildings containing apartments and/or rooming units each of which maintains a separate outside entrance. Such building or buildings is designed, intended or used primarily for the accommodation of motor vehicle travelers and provides motor vehicle parking conveniently located on the premises.

One family dwelling: A detached building designed for or occupied by one family.

Private Club: Buildings or facilities owned or operated by a corporation, association, or persons for a social, educational or recreational purpose but not primarily for profit or to render a service that is customarily carried on as a business.

Recreational Camps: An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment and which is primarily used for recreational purposes and retains an open air and natural character.

Renting of Rooms: A residential structure that provides lodging with or without meals, is available for permanent occupancy only, and which makes no provision for cooking in any of the rooms occupied by the paying guests.

Restaurant: An establishment that serves food and beverages to persons seated within the building. This includes cafes, tea rooms and outdoor cafes.

Riding Stable: A building or buildings and the attendant land where horses are kept for commercial use including boarding, hire, sale and instruction.

Saw Mill: An establishment where logs are sawed into boards and the boards and the by-products are sold commercially.

Seasonal Dwellings: A dwelling not used for permanent residence and not occupied for more than six months of the year.

Sideyard: Sideyard requirements shall apply to all boundaries other than the front yard.

Ski Tow: A type of ski lift which is operated by a ski facility for recreational purposes which enables skiers to glide on their skis as they are towed by an endless cable.

Small Business: Any enterprise conducting sales from the premises, not deemed to be a tradesman or an artisan as referenced in Section 4.3(B)(1)(b) of this bylaw.

Special Permit Granting Authority shall be the Board of Appeals or the Planning Board as provided in Section 4.4 of this By-Law.

Store: A retail establishment offering for sale to the general public food products, household items, farm items, and other goods commonly associated with the same.

Trailer, Construction Office: A registered, vehicular, portable structure built on a chassis or a modified storage container designed to be used for temporary occupancy as an office for conducting business related to a commercial or infrastructure construction project.

Trailer, Residential Construction: A Travel Trailer or Manufactured Housing used for temporary occupancy by the owner-occupants of a one family dwelling being constructed, undergoing substantial renovation or being rebuilt due to fire or natural disaster.

Trailer, Storage: A manufactured container, with or without a chassis and wheels, typically of metal or fiberglass construction, intended for storing or shipping goods. Examples include, but are not limited to, modular shipping containers, semi-trailers and truck bodies.

Trailer, Travel: A registered, vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use. Affixed to a Travel Trailer is the manufacturer's permanent identification "Travel Trailer."

Wireless Communication Facility: A commercial or public utility operated equipment or infrastructure designed to facilitate wireless communication including cellular telephone service, enhanced specialized mobile radio service and similar uses through a tower, monopole, antenna, satellite dish or other transmitting and receiving equipment.

**The following terms relate to Section 8.3 of this bylaw.**

Distance: distance shall be measured on a horizontal plane.

FAA: the Federal Aviation Administration.

FCC: the Federal Communications Commission.

Height: the distance measured from ground level to the highest point on the structure.

SPGA: Special Permit Granting Authority. The Planning Board shall be the SPGA for this Section.

Non-Residential Structure: such structures as, but not limited to, buildings, grain silos, and water towers, but does not include dwellings.

Wireless Communication Building: any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a wireless communication structure.

Wireless Device: any antenna, appurtenance, wiring or equipment used in connection with the communication, reception or transmission of electromagnetic radiation which is attached to a structure.

Wireless Communication Facility: a general term to include wireless communication building, wireless communication device, and wireless communication structure.

Wireless Communication Structure: a monopole tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

Personal Wireless Service Provider: An entity licensed by the FCC to provide Personal Wireless Services.

**The following terms relate to Section 8.4 of this bylaw.**

Flexible Development: A form of residential development allowed by right with Site Plan Review, whereby the options of common driveways and flexible area and frontage requirements are used to create permanent open space and as an alternative to current state and local development regulations.

Bioretention Areas or Rain Gardens: bioretention "cells" are shallow depressions filled with sandy soil, topped with mulch and planted with dense vegetation, that collect, treat and infiltrate rainwater

Common Driveway: A vehicular access from a road to more than one (1) but no more than six (6) residential units, built in accordance with the common driveway standards stated in Section 8.4.6(C) of this bylaw.

Cisterns and Rain Barrels: water tanks that store rainwater for landscaping and gardens

Existing Resources / Site Analysis Map: A map which identifies, locates, and describes noteworthy features to be designed around through sensitive subdivision layouts, such as vegetation, wetlands, steep slopes, farmland soils, historic or cultural features, threatened or endangered species, unusual geological formations, and scenic views or viewsheds.

Low Impact Development (LID): A land-planning and engineering design approach to managing stormwater runoff which emphasizes use of natural features to protect water quality. Low Impact Developments are designed to reflect natural hydrology, limit impervious surfaces, treat stormwater in small decentralized structures, preserve portions of the site in natural conditions, and use natural topography for drainage ways and storage as an alternative to conventional stormwater structures associated with traditional subdivision developments.

Low Impact Roadways: narrow roadways to reduce impervious cover, which employ open-section layouts without curbs and gutters, flanked by grass filter strips and swales for stormwater infiltration

Permeable Paving: paving surfaces used for driveways, parking, walkways and patios that allow rainwater to percolate into the ground, including porous asphalt or concrete, paving stones and manufactured “grass pavers” made of concrete or plastic.

Site Context Map: A map that illustrates the proposed development in connection to its surrounding neighborhood and shows major natural resource areas or features that cross parcel lines.

Vegetated Swales - shallow drainage channels with thick grasses or vegetation that slows runoff, filters it, trap pollutants and promote infiltration into the ground

**The following terms relate to Section 8.5 of this bylaw.**

Large-Scale Ground-Mounted Solar Photovoltaic Installation (LSGMSPI): A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in Direct Current (DC).

Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

Wetlands: as defined in the Wetlands Protection Regulations, 310 CMR 10.02 (1) (a)-(f).

**The following terms relate to Section 8.6 of this bylaw.**

Cannabis Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and promoting the growth of cannabis by a cannabis cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for cannabis cultivation.

Cannabis or Marijuana or Marihuana: All parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana(a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c. 94G, §1; provided that cannabis shall not include:

- i. the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;

- ii. hemp; or
- iii. the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

Cannabis or Marijuana Products: Cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Ceases to Operate means a Medical Marijuana Treatment Center or Marijuana Establishment which closes and does not transact business for period greater than 180 days with no substantial action taken to reopen. A determination that an establishment has ceased to operate may be based on its actual or apparent termination of operations.

Commission: The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, §76, or its designee.

Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

Dark Skies Standards: A design standard for lighting fixtures which minimizes glare, light trespass into the nighttime environment and generally reduces skyglow to the most minimum level practically achievable.

Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

Host Community: A municipality in which a Medical Marijuana Treatment Center or Marijuana Establishment is located or in which an Applicant has proposed locating a Medical Marijuana Treatment Center or Marijuana Establishment.

Host-Community Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Cannabis Establishment and a municipality.

Licensee: A person or entity licensed by the Commission to operate a Medical Marijuana Treatment Center or Marijuana Establishment under 935 CMR 500.000 and 935 CMR 501.000.

Manufacture: To compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

Marijuana Cultivator: An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center. Marijuana establishments permitted in accordance with these regulations are considered to be a commercial and/or manufacturing use and are not considered being subject to any agricultural exemptions under zoning.

Marijuana Independent Testing Laboratory: A laboratory that is licensed by the Commission and is:

- i. accredited to the International Organization for Standardization 17025 (ISO/IEC 7025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory
- ii. independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- iii. qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, §34.

Marijuana Membership Club: An organization, club, lodge or other private grounds (non-profit and private) allowing on-site consumption of marijuana or marijuana products, regardless of whether marijuana or marijuana products are sold on the premises, but not operating as a licensed Adult On-Site Marijuana Social Consumption Operator.

Marijuana Microbusiness: A collocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Marijuana Process or Processing: To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

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

Marijuana Research Facility: An entity licensed to engage in research projects by the Commission.

Marijuana Retailer: An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

Marijuana Transporter: An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

Open Area Cultivation: A marijuana cultivation operation conducted wholly in the open air, and not located in any building, greenhouse or other enclosed area which would be subject to security provisions of 935 CMR 500.110 (6) and 935 CMR 500.120.

Propagation: The reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.

Provisional Medical Marijuana Treatment Center or Marijuana Establishment License: A certificate issued by the Commission confirming that a Medical Marijuana Treatment Center or Marijuana Establishment has completed the application process and satisfied the qualifications for initial licensure.

Registered Marijuana Dispensary (RMD), or Medical Marijuana Treatment Center means an entity formerly and validly registered under State law that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

**The following terms relate to Section 9 of this bylaw.**

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

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

Hazardous Waste: A waste which is hazardous to human health or the environment. Hazardous wastes have been designated by the U.S. Environmental Protection Agency under 40 CFR 250 and the regulations of the Massachusetts Hazardous Waste Management Act (MGL Ch21C).

Impervious Surfaces: Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

Leachable Wastes: Waste materials including solid wastes, sludge and pesticide and fertilizer wastes capable of releasing waterborne contaminants to the environment.

Primary Aquifer Recharge Area: Areas which are underlain by surficial geologic deposits including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward the area of influence of public or private water supply wells.

Toxic or Hazardous Materials: Any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any other substance or substances, constitutes a present or potential threat to human health or to water supplies or to the environment when improperly stored, treated, transported or improperly disposed into or on any land or water in this Town. "Toxic or hazardous materials" shall mean material including but not limited to any material or substance controlled as being toxic or hazardous by the provisions of MGL Ch21 C or defined as a hazardous substance by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C & 9605), as amended.

Trucking Terminal: Business which services or repairs commercial trucks which are not owned by the business.

Watershed: Land lying adjacent to water courses and surface water bodies which create the catchment or drainage areas of such water courses and bodies.