

## Chapter 235. Zoning

[HISTORY: Adopted by the Special Town Meeting of the Town of Middleton 11-29-2005 by Art. 23; amended in its entirety by the Annual Town Meeting 5-13-2008 by Art. 30. Subsequent amendments noted where applicable.]

### ATTACHMENTS

- Attachment 1 - Table of Dimensional Requirements [!\[\]\(f15d3c54be60b4fd0ce1da9fb3f67256\_img.jpg\)](#)
- Attachment 2 - Table of Use Regulations [!\[\]\(7bf135d42c40a6430c927b2fd03d7659\_img.jpg\)](#)
- Attachment 3 - Signs Exhibits [!\[\]\(2bcc37677ea6b96900e4d746ad300082\_img.jpg\)](#)
- Attachment 4 - Zoning Map [!\[\]\(b62812e390f75b509ead0f847e76b4ce\_img.jpg\)](#)

## SECTION 1.0. Purpose and Authority

### 1.1. Title.

The full title of these regulations shall be the "Zoning Bylaws of the Town of Middleton, Massachusetts." These regulations shall be referred to herein as the "Zoning Bylaws" or "these bylaws."

### 1.2. Purpose.

These regulations are enacted to promote the general welfare of the Town of Middleton, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the Town, and to increase the amenities of the Town, all as authorized by, but not limited by, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

### 1.3. Authority.

This Zoning Bylaw is enacted in accordance with the provisions of the General Laws, Chapter 40A, any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

### 1.4. Scope.

For these purposes, the construction, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the

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size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

## 1.5. Applicability.

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All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning Bylaw. No building, structure or land shall be used for any purpose or in any manner other than as expressly permitted within the district in which such building, structure or land is located. Where the application of this bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this bylaw shall control. Nothing herein shall be construed to supersede the provisions of the State Building Code, 780 CMR 1.00, et seq.

## 1.6. Amendments.

This bylaw may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, § 5, and any amendments thereto.

## 1.7. Separability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision herein.

# SECTION 2.0. Districts

## 2.1. Establishment.

The Town of Middleton is hereby divided in the classes of districts designated as follows:

### **Residence Districts**

Residential District R-1a

Residential District R-1b

Residential - Agricultural District (RA)

Village Residential District (R2)

### **Business Districts**

Business District (B)

Interstate Highway Business District (IH)

### **Manufacturing Districts**

Light Industrial District (M-1)

## 2.2. Overlay districts.

[Amended 5-14-2013 ATM by Art. 6; 5-12-2015 ATM by Art. 38; 5-12-2015 ATM by Art. 39; 6-5-2021 ATM by Art. 29]

In addition, the following overlay districts are also hereby established in Section 8.0:

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Institutional Overlay District (IOD)

Watershed Protection Overlay District (WPOD)

Floodplain Overlay District (FPOD)

Adult Entertainment Overlay District (AOD)

Medical Marijuana Overlay District (MMOD)

Groundwater Protection Overlay District (GPOD)

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## 2.3. Zoning Map.

The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of the Town of Middleton" dated October 29, 1965, and amendments, including the amendment dated March 22, 1983, and any other amendments approved by the Attorney General up to and including March 24, 2008 (hereinafter referred to as the "Zoning Map"), filed with the Town Clerk and hereby made part of these bylaws.

2.3.1. Historic districts. Historic districts established pursuant to the provisions of G.L. c. 40C, as may be from time to time amended, shall be indicated on the Zoning Map.

## 2.4. Boundaries of districts.

The following rules shall apply to the interpretation of the Zoning Map.

2.4.1. Boundary lines within public or private ways. Where the boundary line (or portion of a boundary line) of a zoning district is shown on the Map within the street line of a public or private way, the center line of such public or private way shall be the boundary line.

2.4.2. The boundary lines of zoning districts shall be based on the Town's GIS zoning and parcel data maps, available at: <https://www.axisgis.com/MiddletonMA/>.

~~2.4.2. Boundary lines shown approximately. Where the boundary line or portion of a boundary line of a zoning district is shown approximately on the location of a property or lot line, and the exact location of the property, lot, or boundary line is not indicated by means of dimensions shown in figures, then the property or lot line existing at the time of adoption of these bylaws shall be the boundary line.~~

2.4.3. Boundary lines outside public or private ways. A boundary line (or portion of a boundary line) of a zoning district located outside of a street line and shown to be approximately parallel to the street line shall be regarded as parallel to such street line, and any dimensions shown in figures on the Map between such boundary line and the street line shall be regarded as the distance in feet between such boundary lines and the street line, with the distance being measured at right angles to the street line unless otherwise indicated.

2.4.4. Location of other boundary lines. In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon the Zoning Map, by the use of identifications as shown on the Zoning Map, or by the scale of the Zoning Map.

2.4.5. Lot split by district lines. Where a district boundary line ~~between a residential, business and/or manufacturing district~~ divides any lot existing at the time such line is adopted, ~~the regulations that apply to the larger part of the area of such lot may, at the option of the lot owner, apply in the smaller part beyond such district boundary for a distance not to exceed 30 linear feet, if the smaller part has frontage on a public way. Any discrepancies or ambiguities with respect to the location of the district boundary and the other dimensional components of this section may be resolved by reference to a certified survey or available GIS data.~~

~~2.4.5. the regulations for the less restricted portion of such lot shall extend no more than 30 feet into the more restricted~~

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portion, provided the lot has frontage on a public way in the less restricted district.<sup>[1]</sup>

[1] *Editor's Note: Former Section 2.4.6, Contour lines, which immediately followed this section, was repealed 5-12-2015 ATM by Art. 38.*

## SECTION 3.0. Use Regulations

### 3.1. Principal uses.

Except as provided by law or in this bylaw in each district, no building or structure shall be constructed, used or occupied, nor shall land be used or occupied, except for the purposes permitted as set forth in the accompanying Table of Use Regulations.<sup>[1]</sup>

3.1.1. Principal use. No lot shall be used for more than one principal use, except as otherwise provided in this bylaw. In Residential Districts, not more than one principal building shall be placed on a lot except as otherwise provided herein.

3.1.1.3.1.2. By right. A use listed in the Table of Use Regulations is permitted as of right in any district under which it is denoted by the letter "Y" subject to such restrictions as may be specified elsewhere in

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this bylaw.

3.1.2-3.1.3. Special permit: Board of Appeals. A use designated in the Table of Use Regulations by the letters "BASP" may be permitted as a special permit only if the Board of Appeals so determines and grants a special permit therefor as provided in Section 9.4 of this bylaw subject to such restrictions as are set forth elsewhere in this bylaw, and such restrictions as said Board may establish.

3.1.3. Special permit: Planning Board. A use designated in the Table of Use Regulations by the letters "PB" may be permitted as a special permit only if the Planning Board so determines and grants a special permit therefor as provided in Section 9.4 of this bylaw subject to such restrictions as are set forth elsewhere in this bylaw, and such restrictions as said Board may establish.

3.1.4. Special permit: Board of Selectmen. A use designated in the Table of Use Regulations by the letters "SB" may be permitted as a special permit only if the Board of Selectmen so determines and grants a special permit therefor as provided in Section 9.4 of this bylaw subject to such restrictions as are set forth elsewhere in this bylaw, and such restrictions as said Board may establish.

[1] *Editor's Note: The Table of Use Regulations is included as an attachment to this chapter.*

## 3.2. Accessory uses and structures.

3.2.1. Residential Districts. The following customary and incidental accessory uses are allowed on the same lot in all Residential Districts, including but not limited to the following:

1. Private: swimming pool, pool cabana, tool shed, boathouse, garage, and recreational playing surface, including, but not limited to, tennis court, sport court, basketball court, and ice sport surface.  
[Amended 5-14-2013 ATM by Art. 6]
2. Use of buildings or land for the raising and keeping of pets and of livestock or other farm animals (but not including swine or mink) or the raising of poultry in a flock not to exceed 100 birds, provided that no such accessory farm building, barn or enclosure shall be nearer than 50 feet to any side or rear lot line.
3. Subject to receipt of approvals as required under Section 6.2 of this Bylaw, Removal of sod, loam, sand, gravel or other earth product in connection with the construction of a building for which a building permit has been issued, subject to the Town bylaws, and further provided that the amount of such material removed does not exceed the amount contained, before construction, in the particular space to be occupied by the foundation of said building.
4. Family day care, large and small.
5. Adult day care.
6. Renting of roomss to not more than two boarders.

3.2.2. Home occupations. A home occupation conducted in a dwelling by a person residing on the premises is allowed in the R-1a, R-1b, and RA District subject to the following:

1. Such use is clearly incidental and secondary to the use of the premises for residential purposes and does not constitute, in effect, a conversion of principal use of the premises to a use not permitted in this district;

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2. Such use shall not utilize more than 25% of the footprint area of the dwelling unit to which such use is secondary;
3. Not more than one person other than residents is employed thereon in connection with such use;
4. No nuisance shall be created by virtue of noise, smoke, dust, odor, vibrations, electrical interference or unsightliness, which is discernible from adjoining properties;

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5. There is no public display of goods or wares and there are no signs except as permitted in the district;
6. There is no exterior storage of material or equipment (including the parking of more than two commercial vehicles) and no other exterior indication of such use or variation from the residential character of the premises; and
7. Adequate off-street parking must be available on or within 100 feet of the site to meet the needs of employees or visitors, if any.

3.2.3. Accessory building. An accessory building, including a detached garage, located on any lot shall have the same setback requirements as the primary structure. ~~not be located closer than 25 feet to the street on which the lot is located and shall not be any closer to any side or rear lot line than the greater of the height of such accessory building above the ground or 20 feet.~~ No accessory building shall be located closer than 20 feet to any dwelling or main structure on a lot unless both structures conform to regulations relative to fire safety.

### 3.3. Nonconforming uses and structures.

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

3.3.2. Nonconforming uses. The Board of Appeals may award a special permit to change alter, or modify a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood, and provided that such change, alteration or modification is not different in kind, character or degree. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use.

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

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

#### 3.3.4. Nonconforming structures; variance required.

1. Except as provided in Subsection 3.3.5, below, the reconstruction, extension or structural change of a nonconforming single or two-family residential structure in such a manner as to

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~~increase an existing nonconformity, or~~ create a new nonconformity shall require the issuance of a variance from the Board of Appeals.

~~3.3.4.2. ; The reconstruction extension or structural change of all other structures in such a manner as to increase an existing nonconformity, or create a new nonconformity shall require the issuance of a variance from the Board of Appeals, provided, however, the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require only the issuance of a special permit from the Board of Appeals. provided, however, the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require the issuance of a special permit from the Board of Appeals.~~

3.3.5. Nonconforming single- and two-family residential structures. Nonconforming single- and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. ~~In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood, provided that a variance will be required for all new non-conformities.~~ The following circumstances may, at the Building Inspector's reasonable discretion, shall not be deemed to increase the nonconforming nature of said structure:

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1. Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements,
2. Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

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

3.3.6. Abandonment or non-use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Bylaw; provided, however, that by issuance of a special permit, the Board of Appeals may reestablish such nonconforming use or structure where such reestablishment shall not cause substantial detriment to the community.

3.3.7. Reconstruction after catastrophe or demolition. Any nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

1. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
2. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure, and shall meet all applicable requirements for yards, setback, and height.
3. In the event that the proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) exceed applicable requirements for yards, setback, and/or height or (c) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition, provided however that a variance shall be required in the event that a new non-conformity is proposed.

3.3.8. Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

## 3.4. Temporary uses.

Temporary uses for amusement and recreation shall require the issuance of a special permit from the Board of Appeals Board of Selectmen, and may be subject to appropriate conditions.

# SECTION 4.0. Dimensional Requirements

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## 4.1. General dimensional requirements.

4.1.1. Table of Dimensional Requirements. No building or structure shall be constructed nor shall any existing building or structure be enlarged or altered except in conformance with the Table of Dimensional Requirements,<sup>[1]</sup> as to lot coverage, lot area, land area per dwelling unit, lot width, front, side and rear setbacks, and maximum height of structures except as may otherwise be provided elsewhere herein.

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[1] *Editor's Note: The Table of Dimensional Requirements is included at the end of this chapter.*

4.1.2. Notes to Table of Dimensional Requirements. The notes attached to the Table of Dimensional Requirements shall have the force and effect of the Table itself.

1. Lot width. Lot width shall be measured as the shortest distance between side lot lines ~~taken through the dwelling. In the event of an irregularly shaped lot and a question as to the identification of the appropriate side lot lines for the foregoing measurement, the matter shall be decided by the Building Commissioner with the advice of the Planning Board.~~ At no point ~~between the street frontage line and the principal structure~~ shall the lot be narrower than 75% of the required lot frontage.  
[Amended 5-14-2013 ATM by Art. 6]
2. Front yard. In the R-1a, R-1b, and RA Districts the required front yard is 25 feet to the lot line ~~or 50 feet to the street center line, whichever is greater~~
3. Open area; Business and Light Industrial Districts. At least 25% of the lot area shall be free of structures, paving, storage areas or other elements which preclude vegetation.
4. Business and Light Industrial District; North Main Street. For lots with frontage on North Main Street, front yard building setback of not less than ~~100-30~~ feet from the ~~lot line~~center line of the street shall be required. ~~The required front yard shall be maintained and planted as open space.~~
5. Business and Light Industrial District; lots abutting Residential District. Where a lot abuts a Residential District, side and rear yards of not less than 35 feet shall be provided. In such cases, parking shall not be permitted in these setback areas unless buffer screens are provided.
6. Front yard; Business District. Front yards shall be ~~green and open, be~~ suitably landscaped, ~~be~~ unbuilt upon, ~~be~~ unpaved and not parked on. Adequate entrances and exits shall be allowed in this front yard.
7. ~~The total number of apartment dwelling units in an IH District shall not exceed 416 of such units. The maximum number of buildings (accessory buildings excepted) in an IH District shall not exceed eight of such buildings in the aggregate.~~

8.7. In the M-1 District, an industrial park shall have a minimum lot size of at least 320,000 square feet (7.346 acres). This requirement does not prohibit the construction of more than one building on a lot of less than 320,000 square feet in the M-1 District, provided that the lot meets all other requirements of the M-1 District.

9.8. No dwelling, or part thereof, shall be located within the front, side and rear yard setbacks, as defined by the Table of Dimensional Requirements.

[Added 5-14-2013 ATM by Art. 6]

4.1.3. Reduction of lot size and frontage; eminent domain. No lot shall be reduced in area or frontage if it already has or will be caused to have less area or frontage than required by these bylaws, except by a taking by eminent domain or a conveyance for a public purpose. In such case of eminent domain or conveyance, the lot shall remain a buildable lot to the extent it was a buildable lot before such action.

4.1.4. Appurtenant open space. No yard or other open space required for a building by these bylaws

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shall, during the life of such a building, be occupied by another building or be counted as open space for another building.

## 4.2. Special dimensional regulations.

4.2.1. Lots with more than one frontage. Lots abutting more than one street shall be provided with the required frontage on all such abutting streets.

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4.2.2. Exceptions to height requirements. Limitations of height shall not apply to such structures as belfries, flagpoles, chimneys, radio and television antennas, windmills, silos, water tanks and similar nonhabitable structures. In the IH District, the limitation of height in feet shall not include water tanks, transmission towers, observation towers nor chimneys, ventilators, skylights, tanks, bulkheads, elevator penthouses, aerials nor any other necessary features usually carried above roofs, towers or church spires or other buildings if such features are in no way used for living purposes.

1. The height of wireless telecommunications facilities shall be governed by the provisions of Section **6.5.11**.

4.2.3. Corner clearance. Within an area formed by the side lines of intersecting streets and a line joining points on such lines 25 feet distant from their point of intersection, or in case of a rounded corner, from the point of intersection of their tangents, no structure or fences shall be erected and no foliage maintained between a height of 3.5 feet and a height of eight feet above the plane through the curb grades.

4.2.4. Front yards. Every structure in all districts shall be so located as not to extend within 25 feet of the street line or building line, or 50 feet from the street center line, whichever is greater, except as otherwise set forth herein, except that no building need be set back more than the average setback of the buildings on either side, a vacant lot being counted as though occupied by a building set back 25 feet from the street side line. If a lot abuts on more than one street, the full front yard shall be provided for each street.

4.2.5. Business District; special permit. A lot in the Business District which does not meet the area or frontage requirements of this Section 4.0 may apply for a special permit from the Board of Appeals to exempt such lot from the dimensional requirements for lot area, lot frontage and width, and side and rear yards. Any such special permit shall ensure compliance with the needs of public safety, health and welfare.

[Added 5-12-2009 ATM by Art. 33]

## SECTION 5.0. General Regulations

### 5.1. Off-street parking and loading.

5.1.1. General requirements. All off-street parking areas and loading areas, other than those provided for dwellings, but including drives and other accessways, shall be treated with bituminous or other surfacing material and shall be provided where necessary with appropriate bumper and wheel guards; illumination shall be so arranged as to deflect light away from adjoining lots and abutting streets; and screening shall be provided where required by these bylaws.

5.1.2. Table of Parking Requirements. Off-street parking spaces and loading areas shall be provided in at least the ratio specified in the Table of Parking Requirements. Off-street parking must be provided to service the net increase in parking demand created by new construction, additions or change of use.

#### Table of Parking Requirements

Use	Requirement
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Dwelling unit	2 spaces
Retail sales/service	1 space per 200 square feet gross floor area exclusive of storage area but not fewer than 5 spaces per separate enterprise
Business or professional office	1 space per <u>200-300</u> square feet gross area
Bank	<del>1 space per 200 square feet gross floor area exclusive of storage area by not fewer than 5 spaces per separate enterprise</del>

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### Table of Parking Requirements

<b>Use</b>	<b>Requirement</b>
Restaurant, conventional	<u>1 space per 3 seats of seating capacity</u> <del>1 space per 250 square feet gross floor area</del>
<u>Restaurant, fast food</u>	<u>1 space per 150 square feet gross floor area</u>
Wholesale and industrial	1 space per 1.2 person employed on the largest shift plus 1 space for each company-owned and operated vehicle and loading space for all delivery or shipping trucks
Place of public assembly	1 space per 3 persons; capacity based on State Building Code
Hotel or motel guest unit	1.1. spaces per unit and loading space for all delivery trucks or sanitary collections vehicles
Lodging house, other accommodation	1 space per 3 beds
Nursing home	1 space per 3 beds
<u>Schools and educational facilities</u>	<u>For pre-school through Grade 8: 1 space per employee plus 1 space per classroom; For High School: 1 space per employee and 1 space per 3 students.</u>
All other uses	1 space per <u>200-300</u> square feet of gross floor area or such number of spaces in accordance with anticipated needs as determined by the Board of Appeals with the advice of the Planning Board

5.1.3. Parking setback. ~~No parking shall be located in the required front yard along the frontage of North Main Street.~~

5.1.4.5.1.3. Backing restrictions. Parking areas with five or more spaces or reached from a state-numbered highway shall be designed and located so that their use does not involve vehicles backing onto a public way.

5.1.4. Parking lot plantings. ~~On properties located along the North Main Street frontage,~~ ~~p~~Parking lots containing 10 or more parking spaces shall have at least one tree per eight parking spaces, such trees to be located either within the lot or within five feet of it. At least 5% of the interior of any parking lot having 25 or more spaces shall be maintained with landscaping, including trees, in plots of at least eight feet in width; trees shall be so located as to provide visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation.

5.1.5. Parking lot layout. Each required off-street parking space shall have direct access to an aisle or driveway having the following widths:

<u>Type</u>	<u>Angle of Parking</u>	<u>Minimum Aisle Width</u>
<u>One Way Parking Lot</u>	<u>Parallel</u>	<u>12 feet</u>
	<u>30 Degrees</u>	<u>11 feet</u>
	<u>45 Degrees</u>	<u>13 feet</u>
	<u>60 Degrees</u>	<u>18 feet</u>
	<u>90 Degrees</u>	<u>20 feet</u>

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<u>Two Way Parking Lot</u>	30 to 60 Degrees	22 feet
	90 Degrees	24 feet

5.1.6. Parking space dimensions. Each parking space, except for the allowable percentage for compact cars, shall measure at least 9 feet in width and 18 feet in length; however, parallel parking spaces shall be at least 20 feet in length. The required parking space dimensions, including those for compact car spaces, shall not be reduced by obstructions, including, but not limited to, light poles and columns.

5.1.7. Compact parking spaces. Off-street parking areas may be designed to allow up to a maximum of 15% of the total number of parking spaces to be used by compact cars. Compact car spaces shall not be less than 8.5 feet by 16 feet.

#### 5.1.1.

5.1.8. Special permit. The Zoning Board of Appeals may adjust any of the requirements of this section by special permit where it finds that such adjustment will not be substantially detrimental to safety.

5.1.9. Reserve parking. The Zoning Board of Appeals may require the establishment of a reserve area where a reduction in the number of spaces is authorized. The reserve area shall be subject to the following provisions:

- (a) The spaces that are not intended for construction immediately shall be labeled "Reserve Parking" on the site plan and shall be properly designed as an integral part of the overall parking layout, located on land suitable for parking development and in no case located within area counted as buffer, setback, or open space under other provisions of this Bylaw.
- (b) No more than fifty (50) percent of the total number of required spaces may be reserved for later construction.
- (c) At the request of the Board of Appeals, the applicant may be required to provide a parking monitoring program in order to determine if and when the land-banked parking spaces are needed.
- (d) If, after the issuance of a certificate of occupancy, the Board of Appeals or the applicant finds that all or a portion of the reserve parking spaces are needed, the applicant shall submit a written request for a minor modification to the site plan, stating such need and, if approved, denote the revision on the site plan.

5.1.10. Shared parking. Shared private parking facilities for different buildings or uses may be allowed by Special Permit, subject to the following provisions:

- (a) Up to fifty percent (50%) of the parking spaces serving a building may be used jointly for other uses not normally open, used or operated during similar hours. The applicant must show that the peak parking demand and principal operating hours for each use are suitable for a common parking facility.
- (b) A written agreement defining the joint use acceptable to the Zoning Board of Appeals of the common parking facility shall be executed by all parties concerned and approved by the Zoning Board of Appeals as part of the special permit process. Such agreement shall be recorded at the Essex County Registry of Deeds.

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(c) Any subsequent change in land uses for which the shared parking proposal was approved, and which results in the need for additional parking spaces, shall require a new special permit application under this subsection.

5.1.11. Electric vehicle ready spaces. Parking lots must comply with the Massachusetts Base Energy Code as amended or supplanted to provide complying spaces wired for electric vehicle supply equipment.

5.1.12. Pedestrian access. All parking areas or parking lots with five (5) or more spaces shall be designed to safely accommodate pedestrian access and circulation.

5.1.2.

## 5.2. Signs.

[Amended 5-13-2008 ATM by Art. 32; 5-12-2009 ATM by Art. 31]

5.2.1. Purpose. The purpose of the regulation and restriction of signs within the Town of Middleton is as follows:

1. To protect and enhance the visual environment of the Town for purposes of safety, convenience, information, orderly development, and welfare of its residents;
2. To eliminate signs and lights that overload the public's capacity to receive information, that violate privacy, or that increase the probability of accidents by distracting attention or obstructing vision;
3. To encourage signs and lighting that aid communication, orientation, identify activities, express local history and character, and serve educational purposes for the public good; and
4. To reduce visual and informational conflict among private signs and lighting and between the private and public information systems.

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5.2.2. Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in these regulations, have the meanings shown herein:

**A-FRAME SIGN**

A portable, temporary sign or device capable of standing without support or attachments.

**ABANDONED SIGN**

A sign that has ceased to be used for more than two years or a sign that the owner or interested party no longer intends to use for the display of sign content; provided, however, this shall not relieve the owner or interested party of its obligation to remove sign content to the extent that such content is obsolete.

**ACCESSORY SIGN**

A sign that advertises activities, goods, products, or a specific use, owner, or tenant, available within the building or on the premises on which the sign is located, or advertises the premises as a whole or any part thereof for sale or rent.

**ANIMATED SIGN**

Any sign that uses movement or the illusion of movement or a change of lighting to depict action or create a special effect or scene that is activated electrically, wirelessly, environmentally (wind, thermal, and other similar changes), mechanically, manually or by some other means using either:

1. Flashing: Signs with illumination that are characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For purposes hereof, "flashing" will not be defined as occurring if the period between on/off phases of illumination exceeds 60 minutes.
2. Patterned illusionary movement: Signs with simulated movement through alternate sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion or action.
3. Revolving: Signs that revolve about an axis.

Animated signs shall not be defined to include signs that only display numeric or digital images of time/temperature.

**APPLICANT/INTERESTED PARTY**

Any advertiser, tenant, or other persons known to the Building Commissioner as having control of or a substantial interest in said sign.

**AWNING**

An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and or fabric on a supporting framework that may be either permanent or retractable.

**AWNING SIGN**

An awning with sign content on the surface of the fringe of an awning.

**BANNER SIGN**

A sign consisting of flexible substrate on which sign content may be displayed.

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**BUILDING FRONTAGE**

The length in feet of the ground floor level of the wall of a building that faces a street from which legal frontage is derived.

**CANOPY SIGN**

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A sign affixed to the visible surface of an attached or freestanding canopy, which is a multisided overhead structure or architectural projection supported by attachments to a building and cantilevered or supported by columns. The surface or soffit of an attached canopy may be illuminated by means of internal or external sources of light.<sup>[1]</sup>

#### **DIRECTIONAL SIGN**

A nonaccessory sign that is located on the premises giving direction and/or orientation for pedestrian or vehicular traffic within said premises but containing no advertising material.

#### **ELECTRONIC MESSAGE BOARDS**

A sign with the capability of content change by means of manual or remote input that is not defined as an animated sign under these regulations, may be used only on ground signs and with the issuance of a special permit by the Board of Appeals.

#### **ERECT**

Shall mean and include the construction, placement, relocation, enlargement, alteration, attachment, suspension, adhering, lettering, posting, and any other manner of affixing a sign at any premises.

#### **GROUND SIGN**

Any sign erected on the ground which is self-supported and anchored to the ground by a pole, columns, braces, or placed on the ground and not attached to any building. See the figures shown on Exhibit 1, attached hereto, for a depiction of permitted ground signs.<sup>[2]</sup>

#### **ILLUMINATED SIGN**

Any sign illuminated by artificial light either projecting through its surface (internally illuminated); or reflecting off its surface (externally illuminated).

#### **INTERIOR SIGNS**

Any sign placed within a building, but not including window signs as herein defined. Interior signs, with the exception of window signs, are not regulated by this regulation.

#### **NONACCESSORY SIGN**

Any sign that is not an accessory sign.

#### **OBSCENE**

In accordance with MGL c. 272, § 1, any sign content that would be defined as "obscene" if it: appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; depicts or describes sexual conduct in a potentially offensive way; and lacks serious literary, artistic, or political or scientific value.

#### **OFF-PREMISES SIGN**

Any nonaccessory sign erected to advertise or give directions to an establishment or merchandise which is not sold, produced, manufactured or furnished at the premises on which the sign is located.

#### **OWNER**

The individual, partnership, company, corporation, or other entity owning all or a portion of the premises or having a long-term ground lease for the premises on which a sign is to be erected as evidenced by a deed recorded with the Essex South District Registry of Deeds for the

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premises or part thereof.

**PERMANENT SIGN**

Any sign permitted to be erected and maintained for more than 60 days.

**POLITICAL SIGN**

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A temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor advertising sign shall not be considered to be a political sign.

#### **PREMISES**

Shall refer to an entire property, complex, park, development, plaza, or center, which may consist of one or more individual lots or tax parcels, including all buildings and improvements located thereon.

#### **PROJECTING SIGN**

Any sign which is attached or suspended from a building or other structure and any part of which projects more than 12 inches from the wall surface of that portion of the building or structure.

#### **REAL ESTATE SIGN**

A temporary sign advertising the sale, lease, or rental of all or any part of the premises upon which it is located.

#### **ROOF SIGN**

Any sign erected, constructed, and maintained wholly upon, connected to, or over the roof or parapet (extension of a building façade about the line of the roof) of any building with the entire support on the roof or roof structure. See the figure shown on Exhibit 2, attached hereto, for a depiction of permitted roof signs.<sup>[3]</sup>

#### **SIGN**

Any structure, mechanically or electrically driven, still or moving device, light, letter, figure, word, model, banner, pennant, trade flag, or representation that is designed to be seen from outside the premises on which it is erected. It advertises activities, goods, places, persons, objects, institutions, organizations, associations, businesses or events, products, services, or facilities available either on the premises where the sign appears or in some other location. The definition includes electric signs in windows or doors, but does not include window displays or merchandise. A sign may be permanent or temporary.

#### **SIGN AREA**

The entire area of a sign within a single continuous perimeter enclosing the extreme limits of lettering, representation, emblems, or other figures, together with any material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed. Structural members bearing no sign content and the address of the premises shall not be included in determining sign area. See Exhibit 3, attached hereto, for an example of how to compute sign area.<sup>[4]</sup>

#### **SIGN CONTENT**

The information contained on the face of any sign.

#### **SIGN PERMIT**

A permit issued by the Building Commissioner entitling an owner or applicant to erect a sign at a premises.

#### **SPECIAL PERMIT**

A special permit granted by the Board of Appeals pursuant and in accordance with Section 9.4 of the Zoning Bylaws.

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**TEMPORARY SIGN**

A sign permitted to be used on a short-term basis for the duration of no longer than 60 days unless otherwise specifically provided herein.

**WALL SIGN**

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Any sign affixed to, suspended from or painted on an exterior wall of a building or structure and that does not project more than 12 inches from the building or structure wall, including signs affixed to architectural projections from a building, provided the sign content remains on a parallel plane to the face of the building facade or to the face of the architectural projection to which it is affixed. See the figures shown on Exhibit 4, attached hereto, for a depiction of permitted wall signs.<sup>[5]</sup>

## WINDOW SIGNS

Any sign affixed to the surface of or inside display windows, lighted only by the general building illumination with its message intended to be visible to and readable from the public way.

- [1] *Editor's Note: Exhibit 1 is included at the end of this chapter.*
- [2] *Editor's Note: See Exhibit 5, included at the end of this chapter, for a depiction of permitted canopy signs.*
- [3] *Editor's Note: Exhibit 2 is included at the end of this chapter.*
- [4] *Editor's Note: Exhibit 3 is included at the end of this chapter.*
- [5] *Editor's Note: Exhibit 4 is included at the end of this chapter.*

5.2.3. Administration and enforcement. Unless otherwise provided herein, no sign shall be erected unless it complies with the terms and provisions set forth in this regulation and the owner or applicant has submitted a sign application and paid the associated fee and the Building Commissioner has issued a sign permit.

5.2.4. Sign permits. Applications for sign permits shall be submitted by an owner or applicant to the Building Commissioner. Such applications shall be not complete unless and until accompanied by:

1. Two prints of scale drawings of the sign, supporting structure and location identifying the location of the sign within the premises and its location relative to all property lines, rights-of-way, parking areas, all structures within the premises, all structures located within 40 feet of the premises, and any residential districts;
2. The written consent of the owner, with a copy of any deed or evidence of the long-term ground lease;
3. Two scaled drawings/architectural depictions of the sign, showing the sign content, color, materials, dimensions, and all other architectural features of the sign; any deviation from the drawing shall require the review of the Building Commissioner to confirm that the changes continue to comply with the provisions of this regulation; and
4. A copy of any relevant special permit.
5. All ground, wall or roof signs shall be registered and identified as required by Section 1407.0 of the State Building Code.
6. All temporary signs requiring a sign permit shall be registered and identified as required by the Sign Officer.
7. Signs that are exempt from the requirement to obtain a sign permit hereunder shall not relieve an owner or interested party from responsibility for erecting and maintaining all signs in a safe manner and in a manner in accordance with all the other provisions of this regulation.

5.2.5. General requirements.

1. A permit fee shall be paid at the time an application for a sign permit is submitted to the

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Building Commissioner.

2. All signs, unless otherwise noted, require a sign permit and the payment of a fee. Every sign permitted by this regulation shall be kept in good condition and repair.
3. Ground signs shall be set back a minimum of 10 feet from all property lines, including rights-of-way (both public and private), and a minimum of 40 feet from all residential districts and all off

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premises structures. Only ground signs may incorporate electronic message boards into their sign content, with the issuance of a special permit.

4. Notwithstanding any other provisions of this regulation, signs may be erected the purpose of which is to post the land as follows: "no hunting," "no trespassing," etc.
5. Any owner or interested party shall remove any sign content that is rendered obsolete, which is a sign that no longer advertises or identifies an occupant of the premises or a use conducted on the premises, through change or termination of activities on the premises within 30 days of receiving an order issued by the Building Commissioner to remove such sign content and shall continue to maintain said sign in accordance with these regulations.

5.2.6. Enforcement. The Building Commissioner is hereby charged with the enforcement of this regulation and the issuance of permits hereunder.

1. The Building Commissioner and his duly authorized agents shall, at reasonable times and upon presentation of credentials, have the power to enter upon the premises on which any sign is erected or maintained in order to inspect said sign.
2. The Building Commissioner is further authorized, upon notice as herein provided, to order the repair or removal of any sign which in his judgment is a prohibited nonaccessory or off-premises sign, or is likely to become dangerous, unsafe, or in disrepair, or which is erected or maintained contrary to this regulation.
3. The Building Commissioner shall serve a written notice and order upon the owner and applicant directing the repair or removal of the sign within a time not to exceed 30 days after giving such notice. If such notice and order is not obeyed within such period of time, the Building Commissioner and his duly authorized agents shall, at reasonable times and upon presentation of credentials, have the power to enter upon the premises on which said sign is erected or maintained and repair or remove, or cause to be repaired or removed, said sign. The Building Commissioner shall be empowered to institute proceedings and to impose fines against the owner and any advertiser, tenant, or other persons known to have control of or a substantial interest in said sign for any violations in accordance herewith and with the enforcement powers set forth under Section **9.2** of the Zoning Bylaws.
4. All expenses incurred by the Building Commissioner and his duly authorized agents in repairing or removing any sign shall be assessable against any person who failed to obey said notice and order and shall be recoverable in any court of competent jurisdiction if not paid within 30 days after written notice of assessment is given by the Building Commissioner to any such person.
5. The Building Commissioner may enforce the provisions of this section with regard to the owner of the premises or the lessee, or both.
6. The Building Commissioner and the Board of Appeals may make reasonable rules and regulations for the implementation of this section, including the establishment of fees for permits and special permits.

5.2.7. Special permit. Any sign for which a special permit is required to be issued shall be issued by the Board of Appeals, unless otherwise noted, pursuant to the requirements of Section **9.4** of the Zoning Bylaw, and provided the owner or applicant can demonstrate to the Board that the sign shall be in harmony with the general purposes of this regulation.

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1. The owner or applicant must submit to the Board, in addition to the items required by Section **9.4** of the Zoning Bylaw, the following:
  - a. A special permit application; and
  - b. Site plan, which complies with Section **9.5** of the Zoning Bylaws, showing all parking areas, driveways, accessways, landscaping, lighting, rights-of-way, structures, and all existing and proposed signs for the premises; and

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- c. Scaled drawings/architectural depictions of the sign, showing the sign content, color, materials, dimensions, and all other architectural features of the sign; any deviation from the drawing shall require the review of the Building Commissioner to confirm that the changes continue to comply with the provisions of this regulation.
- 2. Special permit criteria. The Board of Appeals may grant a special permit, provided the Board issues a finding that all of the following criteria have been satisfied and that the sign is in harmony with and does not derogate from the general purposes of this regulation.
  - a. The premises is an appropriate location for the proposed sign and that conditions affecting the premises are different from other similarly situated properties located in the district and require special relief; and
  - b. The sign will not adversely affect or be incongruous with the neighborhood or surrounding zoning district in which it is to be located; and
  - c. There will be no nuisance or serious hazard to vehicular or pedestrian traffic or safety as a result of the sign; and
  - d. The sign satisfies all of the applicable dimensional and other criteria described in this section **5.2** unless otherwise waived as provided herein; and
- 3. Conditions. The Board of Appeals, in approving the special permit, may attach such conditions and safeguards as are deemed necessary to protect the abutting properties and neighborhood and to safeguard the purposes of this regulation, including but not limited to the following:
  - a. Requiring increased setbacks;
  - b. Requiring additional screening;
  - c. Modifications to the sign location, features and appearance;
  - d. Limiting the number of signs or duration of any temporary permit.

5.2.8. Nonconforming signs. Any sign legally existing at the time of the passage of this regulation that does not conform in use, location, height, or size with the regulations applicable to the zoning district in which such sign is located shall be considered a legally nonconforming use or structure, as the case may be, and shall be permitted to continue and be maintained until it is removed by its owner or interested party or constitutes an abandoned sign as follows:

- 1. No Increase in the nonconformity: Structural alteration, enlargement or reerection of a nonconforming sign is permissible only to the extent, in the opinion of the Building Commissioner, such alterations will not increase the degree of the nonconformity of the sign. To the extent the Building Commissioner makes a determination that a change will increase the degree of nonconformity, the owner or interested party shall be required to apply to the Board of Appeals for a special permit under Section 5.2.7 hereof to authorize structural alteration, enlargement or reerection.
- 2. Abandoned signs. Any owner or interested party shall remove all abandoned signs within 30 days of receiving an order issued by the Building Commissioner to remove such sign.
- 3. Destroyed or damaged signs. Any sign that has been destroyed or damaged to the extent that the cost of repair or restoration will exceed 50% of the replacement value as of the date of destruction shall not be repaired, rebuilt, restored or altered unless in conformity of this

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regulation. For the sake of clarity, the normal maintenance of the sign or the changing of the sign content resulting from a change in occupancy shall not be considered a repair or restoration for the purposes of this provision and shall not invalidate its status as a legally existing nonconforming sign.

5.2.9. Prohibited signs. The following signs, devices, and locations shall be specifically prohibited in all zoning districts:

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1. Signs that are lighted by any means other than a steady, stationary light, shielded and directed solely at the sign.
2. Signs that cast glare onto any residential premises or onto any portion of a way so as to create a traffic hazard.
3. Signs that are illuminated in any residential district between the hours of 11:00 p.m. and 7:00 a.m. unless indicating time or temperature or an establishment open to the public during those hours.
4. Signs having red or green lights within sight of a traffic signal unless approved in writing as nonhazardous by the Chief of Police.
5. Animated or neon or any signs that revolve, move, give the appearance of movement, or flash.
6. Neon signs, except as used for window signs.
7. Portable signs except as may be allowed as temporary signs in accordance with this regulation.
8. Off-premises signs except as may be allowed by special permit from the Board of Appeals in accordance with the provisions hereof.
9. Electronic message boards except as may be allowed by special permit from the Board of Appeals in accordance with the provisions hereof and only to display sign content on ground signs.
10. Pennants, streamers, advertising flags, balloons, spinners or similar devices.
11. Corner visibility shall not be obstructed.
12. Signs that are erected, displayed, or maintained upon any rock, tree, fence, or utility pole.
13. Signs that are erected, displayed, or maintained that contain any obscene matter.
14. Signs that obstruct any means of egress from a building.
15. Signs that obstruct or otherwise interfere with an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.
16. Projecting signs.
17. Signs projecting onto the public right-of-way.
18. Nonaccessory signs except for directional signs.
19. Signs that are attached to motor vehicles, trailers or other movable objects regularly or recurrently located for fixed display advertising a product or service, shelter, or distribution point for commercial products or services.

#### 5.2.10. Permitted signs — all Residential Districts.

1. Accessory signs. The following signs are allowed in all Residential Zoning Districts:
  - a. One sign, either attached or ground, indicating only the name of the owner or occupant, street number and permitted uses or occupations engaged in thereon such as accessory

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professional office, home occupation, or other accessory uses permitted in a residential district. Such sign shall not exceed two square feet in area.

- b. One ground sign identifying a housing development at each public entrance to a subdivision, provided such sign shall be set back a minimum of 10 feet from the boundary lines of any adjacent streets and a minimum of 40 feet from all structures. Such sign shall not exceed 24 square feet in area and shall not extend more than six feet above ground level.

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2. Nonaccessory signs. Directional signs located on private property ~~by special permit from the Board of Appeals~~, limited as follows:
  - a. Two signs for each activity, not exceeding six inches by 30 inches in size.
  - b. Ground signs not exceeding eight feet in height.
3. Temporary signs. All temporary signs in a residential district must be accessory signs and shall be set back a minimum of 10 feet from all property lines and a minimum of 40 feet from all off-premises structures. Notwithstanding that the following temporary signs do not require a sign permit or the payment of a fee, an owner or interested party is not relieved from responsibility for erecting and maintaining all signs in a safe manner and in a manner in accordance with all the other provisions of this regulation.
  - a. One temporary unlighted real estate sign advertising the sale, rental or lease of the premises or subdivision on which it is erected, to be no larger than six square feet and shall not extend more than four feet above ground level. Such sign shall be removed 14 days after sale, rental or lease.
  - b. Signs advertising open houses shall be removed at the end of each day. In no event shall such signs include pennants, streamers, advertising flags, balloons, spinners or similar devices.
  - c. One unlighted identification sign at each public entrance to a subdivision not exceeding 12 square feet in area and shall not extend more than four feet above ground level; to be removed when the subdivision roadway is accepted by the Town.
  - d. One temporary unlighted sign maintained on the premises while construction is in process and containing information relevant to the project, including the name and address of the parties involved in the construction or financing of a project on the premises. The construction sign shall not be larger than six square feet and shall not extend more than six feet above ground level. Such sign shall be removed 14 days after completion of construction or as required by the Building Commissioner if a waiver is granted.

The Building Commissioner may waive the size limitations set forth above and allow a sign larger than six square feet if: the premises fronts on a state highway, such as Route 114 or Route 62; or if the sign is advertising lots in a subdivision and a larger sign is needed for legibility purposes. The total area of the sign shall not exceed 24 square feet.

#### 5.2.11. Permitted signs — all Business and Industrial Districts.

4. Accessory signs. A premises shall be allowed to have one accessory ground sign and either one accessory roof or one accessory wall sign, subject to the provisions set forth below and unless otherwise specifically permitted hereby.
  1. a.2. Ground signs. Only one ground sign is permitted on any premises regardless of the number of buildings on such premises.
    - a. No ground sign shall extend more than 15 feet above ground level.
    - b. For single-occupant buildings, the sign area shall not exceed 36 square feet.

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- c. For multiple-occupant buildings, the sign area shall not exceed 36 square feet plus an additional six square feet for each additional occupant up to a maximum area of 96 square feet.
- d. Sign areas larger than 96 square feet and signs in excess of 15 feet above ground level may be allowed by special permit of the Board of Appeals in accordance with Section **5.2.7**.

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2.3. Roof signs and wall signs. Each building located at a premises shall be entitled to only one roof sign or only one wall sign.

- a. The total sign area of any wall or roof sign shall not exceed more than one square foot for every one linear foot of the building frontage. See Exhibit 3, attached hereto, for an example of how to compute sign area.<sup>[6]</sup>

<sup>[6]</sup> *Editor's Note: Exhibit 3 is included at the end of this chapter.*

- b. A building that is situated on lot where the main public entrances of the majority of its occupants face a parking lot shall be entitled to use the linear footage of the side of the building wall that faces the parking lot in determining the permissible sign area.

- c. The center line of any roof sign shall not exceed the midline of the roof and shall not extend above the ridge of the roof. See the figure shown on Exhibit 2, attached hereto, for a depiction of permitted roof signs.<sup>[7]</sup>

<sup>[7]</sup> *Editor's Note: Exhibit 2 is included at the end of this chapter.*

- d. All allowed wall signs and roof signs shall be limited to the designs shown on Exhibits 2 and 3, attached.

- e. Subject to the issuance of a special permit by the Board of Appeals in accordance with Section 5.2.7, a multi-occupant building may be permitted to erect multiple roof and wall signs for each occupant, provided in addition to all other criteria listed herein and in Section **9.4** of the Zoning Bylaw the owner or interested party is able to demonstrate to the Board that:

(1) The combined sign area shall not exceed the sign area as determined under Subsection **2.a** above.

(2) In no event shall a building have a combination of wall and roof signs.

(3) Wall signs on a single building, or multiple buildings within a premises, shall be consistent in size, color, and character providing for a uniform design.

- f. Subject to the issuance of a special permit by the Board of Appeals in accordance with Section 5.2.7, a building may have wall or roof signs on more than one side of a building, provided in addition to all other criteria listed herein and in Section **9.4** of the Zoning Bylaw the owner or interested party is able to demonstrate to the Board that:

[Amended 5-11-2010 ATM by Art. 31]

(1) The building is located on a corner lot with legal frontage on both sides, as determined for the applicable zoning district; or

(2) The building is situated on a lot where the main public entrances for its occupants face its parking lot and a street on which the premises has legal frontage;~~;~~<sup>and</sup>

~~(1)~~<sup>And in either situation</sup> ~~t~~<sup>The</sup> sign is to be placed on the side of the building with legal frontage or that faces its parking lot; and

~~t~~<sup>The</sup> combined sign area of all such signs shall not exceed sign area as determined under Subsection **2.a** above.

~~(2)~~

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3.4. Canopy signs. A premises shall be permitted to have a canopy sign ~~subject to the issuance of a special permit by the Board of Appeals~~ in accordance with Section 5.2.7 ~~and in Section 9.4~~ of the Zoning Bylaw, and provided owner or applicant meets all other requirements listed herein for wall or roof signs. Canopy signs shall take the place of any wall or roof sign that may be erected on any building. Only canopy signs as shown on Exhibit 5 shall be permitted, ~~subject to the issuance of a special permit as mentioned herein~~.

4.5. Awning signs. A building shall be permitted to have awning signs, provided they are consistently used on a building and shall be consistent in size, color, and character providing

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for a uniform design. The sign area used by the awning sign shall reduce the sign area permissible for any wall or roof sign being erected on any building. The size of lettering or other copy used in the sign shall not be taller than eight inches.

**5.6.** Window signs. Signs shall be permitted in windows, provided the sign content shall not cover more than 20% of the window glass area in which it is located. The area of the sign is computed as shown on Exhibit 3, Figure 1.<sup>[8]</sup>

[8] *Editor's Note: Exhibit 3 is included at the end of this chapter.*

**6.7.** Building directories (if located outside). Directories may be affixed to the exterior wall of a building at each public entrance. Such directory shall not exceed an area determined on the basis of one square foot for each establishment occupying the building but in no event shall the directory sign be larger than six square feet.

**7.8.** Directional signs. Traffic control orientation, directional, and guidance signs located within the boundaries of the premises for which such signs are being employed shall be permitted up to four square feet in area, displayed for purposes of direction or convenience, including signs identifying parking, fire lanes, rest rooms, freight entrances and the like. Each premises shall be limited to no more than four directional signs per premises. The Building Commissioner may permit additional signs if the owner or occupant can demonstrate a reasonable need for public safety and convenience.

**8.9.** Service stations or garages.

- a. May divide the allowed sign area of the permitted wall sign into separate, smaller wall signs indicating separate operations or departments. A ground identification sign of 36 square feet with price sign incorporated is allowed.
- b. For active fuel-dispensing service stations, with multiple tenants, on the same lot: one single freestanding ground identification sign of 36 square feet plus an additional six square feet for each additional occupant up to a maximum area of 96 square feet. Pricing information, if advertised, shall be counted toward sign area for service stations. The maximum height (including pylons) of this freestanding ground sign shall be 15 feet from ground level.
- c. Sign areas larger than 96 square feet and signs in excess of 15 feet above ground level may be allowed by special permit of the Board of Appeals, in accordance with Section 5.2.7.

**9.10.** Temporary signs requiring no permit. All temporary signs must be accessory signs and shall be set back a minimum of 10 feet from all property lines and a minimum of 40 feet from all residential districts and off premises structures and shall be permitted on a short-term basis as hereinafter specified. The following temporary signs do not require a sign permit or the payment of a fee:

- a. One unlighted real estate sign advertising the sale, rental or lease of the premises on which it is erected, to be no larger than 24 square feet and shall not extend more than six feet above ground level. Such sign requires no sign permit and shall be removed 14 days after sale, rental or lease or as required by the Building Commissioner if a waiver is granted.
- b. Signs advertising open houses shall be removed at the end of each day. In no event shall

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such signs include pennants, streamers, advertising flags, balloons, spinners or similar devices.

- c. One unlighted sign maintained on the premises while construction is in process and containing information relevant to the project, including the name and address of the parties involved in the construction or financing of a project on the premises. The construction sign shall not be larger than 24 square feet and shall not extend more than six feet above ground level. Such sign shall require no sign permit and shall be removed

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14 days after completion of construction or as required by the Building Commissioner if a waiver is granted.

- d. The Building Commissioner may waive the size limitations set forth above and allow a sign larger than 24 square feet if: the premises fronts on a state highway, such as Route 114 or Route 62, and a larger sign is needed for legibility purposes. The total area of the sign shall not exceed 32 square feet.

**40.11.** Temporary signs requiring a permit. All temporary signs other than as provided above in Subsection 8 shall require a permit and the payment of a fee. Such signs must be accessory signs and shall be set back a minimum of 10 feet from all property lines and a minimum of 40 feet from all residential districts and off-premises structures and shall be permitted on a short-term basis as hereinafter specified.

**41.12.** A-frame sign. An A-frame sign shall only advertise sales, special events, a daily or weekly special (which changes each day or week) or changes in the nature of an operation, and shall not otherwise be used to advertise a continuing or regularly recurring business operation.

- a. Each A-frame shall require the issuance of a sign permit that complies with the requirements of this regulation for a temporary sign by the Building Commissioner and the payment of a fee.
- b. No premises shall be permitted to erect more than two such signs at any one time, and only one such A-frame sign shall be permitted for every 50 feet of legal frontage abutting a public way and available at premises.
- c. Each permit shall contain an authorization from the owner and be signed and submitted by the applicant.
- d. The total sign area shall not exceed 12 square feet on each side and shall not be more than 36 inches wide at its widest part.
- e. The sign shall not extend more than 48 inches above grade.
- f. The sign shall be taken down every evening and displayed only during the hours that the advertising entity is open for business to the general public.
- g. The sign shall not be illuminated, emit any sound, have any moving parts, flashing lights, reflectors or other devices that are likely to cause a distraction.
- h. The sign shall be securely anchored so as to not blow over and is professional in appearance.
- i. The sign shall not display brand names, symbols or slogans of nationally distributed products except in cases where the majority of the floor or lot on the premises is devoted to manufacture or sale or other processing of that specific product.
- j. Signs should not contain selling slogans or other advertising which is not an integral part of the name or other identification of the enterprise.
- k. The sign shall not obstruct a public or private walkway, or be placed on public property.

**42.13.** Banners. Banner signs may be permitted to advertise sales or special events, but shall not otherwise be used to advertise a continuing or regularly recurring business operation. Street

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banners may advertise a public or charitable entertainment or event. All banners shall be removed promptly when the information they display is out of date, but in any event no later than seven days after the event. Banners shall comply with the following:

- a. Shall only be erected for up to 10 consecutive days in any two-month period and for never more than 30 days in any twelve-month period on any premises.
- b. Only one shall be permitted at a premises at any given time.

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- c. The dimensions shall be no greater than 20 feet long or four feet tall with a total sign area not to exceed 80 square feet.
- d. Shall not be illuminated, emit any sound, have any moving parts, flashing lights, reflectors or other devices that are likely to cause a distraction.
- e. Shall be securely anchored and properly maintained and professional in appearance.
- f. Shall not be attached to shrubs, trees or similar items for support but rather must be professionally erected.
- g. Shall not obstruct a public or private walkway, or be placed on public property.

~~5.1.5. Temporary signs not requiring a permit — all districts. The following temporary signs, in addition to those specifically set forth herein, shall be allowed in all districts, provided they comply with the following:~~

- ~~1. Temporary signs, of not more than 12 square feet in area, erected for a charitable or religious cause; requires no sign permit and is to be removed within 30 days of erection. The Building Inspector shall maintain placement controls.~~
- ~~2. Identification signs or entrance markers for a church or synagogue shall not exceed a combined total of 30 square feet, and provided that there shall be no more than two signs allowed on the premises.~~
- ~~3. Temporary signs pertaining to a candidate or ballot question appearing on the ballot of an election duly called in the Town of Middleton shall require no sign permit. Such signs permitted by this bylaw shall only be permitted on private property and in no event:~~
  - ~~a. Shall be placed in any public right of way or obstruct traffic visibility;~~
  - ~~b. Shall exceed six square feet in area per sign and shall not exceed in aggregate 24 square feet in area per lot;~~
  - ~~c. Shall be higher than four feet above ground level; and~~
  - ~~d. Said signs shall be stationary and shall not be illuminated.~~

~~Unless otherwise specified in this bylaw, temporary signs pertaining to other noncommercial issues shall require no sign permit and shall be allowed in all zoning districts. Such signs shall be subject to the limitations set forth in Subsection 3.a through d, inclusive, above.~~

5.2.12. Off-premises signs — all districts. Only signs pertaining exclusively to the premises on which they are located or to products, accommodations, services or activities on the premises shall be allowed, except that an off-premises directional sign, designating the route to an establishment not on the street to which the sign is oriented, may be erected and maintained within the public right-of-way at any intersection if authorized by the Board of Selectmen or on private property if granted a special permit by the Board of Appeals. Such sign shall be authorized only upon the authorizing agency's determination that such sign will promote the public interest, will not endanger the public safety and will be of such size, location and design as will not be detrimental to the neighborhood. At locations where directions to more than one establishment are to be provided, all such directional information shall be incorporated into a single structure. All such directional signs shall

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be unlighted, and each shall be not over four square feet in area.

~~5.2.13. Guidelines. The following are further means by which the objectives for signs can be served. These guidelines are not mandatory, but degree of compliance with them shall be considered by the Board of Appeals in acting upon special permits authorized by the Zoning Bylaws and by the Building Commissioner in issuing a sign permit authorized under this section of the Zoning Bylaw.~~

1. Efficient communication.

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- a. Signs should not display brand names, symbols or slogans of nationally distributed products except in cases where the majority of the floor or lot on the premises is devoted to manufacture or sale or other processing of that specific product.
- b. Premises chiefly identified by a product name (such as a gasoline or auto brand) should devote some part of their permitted sign area to also displaying the identity of the local outlet.
- c. Signs should not contain selling slogans or other advertising which is not an integral part of the name or other identification of the enterprise.
- d. Sign content normally should not occupy more than 40% of the sign background, whether a signboard or a building element.
- e. Signs should be simple, neat and avoid distracting elements, so that contents can be quickly and easily read.

2. Environmental relationship.

- a. Sign design should take into consideration the scale of the street to which the sign is oriented and the size, brightness, style, height and colors of other signs in the vicinity.
- b. Sign brightness should not be excessive in relation to background lighting levels, e.g., averaging not in excess of 100 foot lamberts in the downtown or similarly bright areas and not in excess of 20 foot lamberts in unlighted outlying areas.

3. Building relationship.

- a. Signs should be sized and located so as to not interrupt, obscure or hide the continuity of columns, cornices, roof eaves, sill lines or other elements of building structure and, where possible, should reflect and emphasize building structural form.
- b. Sign material, colors and lettering should be reflective of the character of the building to which the sign relates, just as sign area should be related to building size.
- c. Clutter should be avoided by not using support brackets extending above the sign or guy wires and turnbuckles.

## 5.3. General landscaping requirements.

5.3.1. Applicability. The requirements of this section shall apply to any nonresidential use subject to a special permit or site plan approval.

5.3.2. Landscaping requirements for property lines. Property line(s) with residential districts or uses shall be screened from nonresidential uses by means of plantings or maintenance of trees of a species common to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property used for nonresidential purposes. No part of any building or structure or paved space intended for or used a parking area may be located within the buffer area. Planted buffer areas along property lines with residential districts or uses shall be at least 10 feet in depth.

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5.3.3. Large parking areas. Parking areas containing over 20 spaces shall be suitably landscaped. The Board of Appeals may require at least one shade tree per 10 parking spaces. At least 5% of the interior of the parking area shall be maintained with landscaping, including trees. Trees shall be located to provide visual relief from sun and wind interruption within the parking area and assure safe patterns of internal pedestrian and vehicular traffic.

5.3.4. Fencing; retaining walls; and berms. Fencing, retaining walls and berms may be allowed in lieu or in conjunction with plantings. Design and height of such substitute shall be subject to the approval

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of the Board of Appeals.

5.3.5. Unsightly uses and areas. Exposed storage areas, refuse disposal facilities, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or wall or tight fence complemented by evergreen plantings.

5.3.6. Planted area requirements. Planted areas shall contain an appropriate mix of plant species appropriate to proposed use, siting, soils, and other environmental conditions. Where the Board of Appeals determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.

5.3.7. Coordination with site plan approval. The Board of Appeals shall require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at a scale sufficient to determine compliance with the specifications set forth in this section.

5.3.8. Maintenance. All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season as a condition of approval.

5.3.9. Special permit. By special permit, the Board of Appeals may authorize a reduction in the requirements of this section, where such reduction will not result in substantial detriment.

## 5.4. Performance standards for nonresidential and multi-family residential development.

5.4.1. Purpose. The following performance standards have been adopted in order to control the size, scale, and impacts of larger nonresidential and multi-family residential developments. The Board of Appeals shall ensure that such standards are met during the course of any special permit application or site plan review for a nonresidential or multi-family residential use.

5.4.2. Lighting. The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing nighttime safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

1. Shielding. All outdoor light fixtures shall be shielded so as to meet the goals of this section.
2. Light trespass. Direct light from the light source is to be confined within the property boundaries.
3. Light intensity. Outdoor lighting shall be designed to provide the minimum intensity needed at any particular time.
4. Searchlights. The operation of laser shows or searchlights for advertising purposes is prohibited; ~~provided however, that same may be authorized for a period of not more than 14 days by special permit issued by the Board of Appeals.~~
5. Indoor lighting. Indoor light sources will not be projected outside in a manner to defeat the intent of this bylaw.

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6. Flickering and flashing lights. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.
7. Hours of operation. Except as may be deemed appropriate for site safety or security, the Board of Appeals may require as a condition of site plan approval that all external lighting, including lighting accessory to authorized signs, shall be extinguished 1/2 hour after the facility is closed for the business day. Such lighting may be timed to resume 1/2 hour prior to the arrival of the first employee on the premises.

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5.4.3. Noise. The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise. Practices and systems shall reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; preserve property values; and preserve neighborhood character.

1. Hours of operation. As a condition of any special permit or site plan approval, the Board of Appeals may incorporate required specific hours of operation for the following activities:
  - a. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or other objects or materials for sale or storage or use in a manner that causes a condition of noise pollution at any time;
  - b. Operating or permitting the operation of tools or equipment used in construction, drilling or demolition work;
  - c. Operation of construction devices.
2. Ambient noise level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 10 dBA above ambient when measured at the property boundary of the receiving land use, in accordance with the standards of the Massachusetts DEP.

5.4.4. Site development standards. To the extent practicable, the proposed development shall be located to preserve and enhance the natural features of the site, to avoid disturbances of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the subdivision and the Town.

1. Phasing of development. The Board of Appeals may limit the extent of a site exposed at any one time through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

5.4.5. Pedestrian and vehicular access; traffic management. The proposed development and/or redevelopment shall be designed with a forecast for the next five years from the time of application to minimize hazards to public health and safety as a result of traffic; provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles; provide off-site traffic mitigation, where required, to offset the impact of the development; reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimize the impact on scenic roads, historic districts, natural resources, and community character. The development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. Access via roadways abutting residential districts shall be avoided where possible.
2. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Board of Appeals.
3. Each development shall be served by an adequate driveway. The Board of Appeals may, in certain circumstances, allow additional driveways as a condition of approval where the access is shared or the project has frontage on two separate streets.

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4. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
5. Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 24 feet in width unless waived by the Board of Appeals. The location of driveway openings in relation to traffic and to adjacent streets shall provide for the convenience and

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safety of vehicular and pedestrian movement within the site. The number of curb cuts on state and local roads shall be minimized.

6. Interior circulation. The proposed development shall assure safe interior circulation within its site by separating pedestrian, bike ways, and vehicular traffic.
7. The Board of Appeals may require a traffic study, prepared by a qualified traffic engineer, detailing the excepted traffic impacts, as specified in the Town of Middleton Zoning Board of Appeals Rules, section 260-4.B.2.c..
8. Sight distance. Acceptable sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the development.
9. Mitigation. The Board of Appeals may require as a condition of any special permit or site plan approval off-site improvements to mitigate the impact of the proposed development.

- 9.10. Each development must demonstrate that it provides adequate on-site pedestrian amenities and construction of new sidewalks and/or rehabilitation of an existing sidewalk along the frontage of the subject property.

5.4.6. Exemptions. The following are exempt from these standards:

1. Emergency response. Emergency responses performed by a private entity or a public agency and fire or burglar alarms.
2. Municipal uses and structures. All municipal uses and structures, including schools.
3. Events. Parades, fairs or outdoor entertainment between the hours of 7:00 a.m. and 11:00 p.m. only, provided that a permit for such activity has been granted by the Board of Selectmen and that said permit is for not more than 10 days.
4. Religious structures and services. Religious services conducted by an organization which qualifies under the laws of the commonwealth as a tax-exempt religious group.

## SECTION 6.0. Special Regulations

### 6.1. Trailers and movable structures.

Trailers and other movable structures shall not be occupied as dwellings; provided, however, that for reasons of necessity or hardship, the Board of Appeals, after public notice and a hearing, may grant temporary occupancy permits for such structures for dwelling purposes for not more than one year at a time in any part of the Town, or except as permitted by state law.

### 6.2. Earth removal.

The removal of sod, loam, sand, gravel, or other products from a lot is prohibited. However, where such removal is permitted as an accessory use, the Board of Appeals, subject to the Town bylaws, may authorize incidental removal by the grant of a special permit. In such cases, the Board shall impose conditions relative to the hours of operation and routes for transporting the material through the Town

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and impose requirements for regrading and planting the area to suitable cover when operations are completed. Said Board shall require a bond or other security for compliance with the terms of its authorization.

## 6.3. Driveways.

6.3.1. General. For the purpose of promoting the safety of the residents of the Town, an application for a building permit for a residential structure shall include a plan, at a scale of 1 inch = 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at ten-foot or three-meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100

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feet or less from the building site of the residential structure on the premises, for all vehicles, including, but not limited to, emergency, fire, and police vehicles. The Building Inspector shall not issue a building permit for the principal structure on the premises unless all of the following conditions have been met:

6.3.2. Location. Wherever possible, a driveway shall not be located within 10 feet of any side or rear lot line.

6.3.3. Maximum distance. The distance of any driveway measured from the street line to the point where the principal building is proposed shall not exceed a distance of 500 feet, ~~unless the Board of Appeals grants a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.~~

6.3.4. Grade: The grade of each driveway where it intersects with the public way shall not exceed 6% on major streets, 9% on secondary streets, or 9% on minor streets for a distance of 20 feet from the travel surface of the public way, unless the Board of Appeals shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

[Amended 5-14-2013 ATM by Art. 6]

6.3.5. Access. Driveways serving the premises shall provide access through the required frontage of the serviced lot, except in the case of a common driveway under Section 6.3.6, herein.

6.3.6. Common driveways. Common driveways serving not more than two lots may be allowed on special permit by the Board of Appeals. A common driveway must satisfy all of the conditions in this section, as well as all of the following conditions:

1. ~~The radius of the driveway where it intersects with the street right-of-way (ROW) must be sufficient to enable emergency vehicles to exit and enter the common driveway without leaving the surface of the common driveway. Moreover, the center line intersection with the street center line shall not be less than 45 degrees; The center line intersection with the street center line shall not be less than 45 degrees;~~
2. A minimum cleared width of 12 feet shall be maintained over its entire length;
3. A roadway surface of a minimum of four inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown shall be installed;
4. The driveway shall be located entirely within the boundaries of the lots being served by the driveway;
5. Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest.

## 6.4. Egress requirement on North Main Street and South Main Street.

Driveway openings on the same side of the street shall be separated by at least 100 feet if on the same premises, or at least 50 feet if on separate premises, measured center line to center line at the street

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line. At intersections with North Main Street and South Main Street, no driveway side line shall be located within 20 feet of the intersection of the street way lines. No driveway opening shall exceed 24 feet in width at the street line unless necessity of greater width is demonstrated by the applicant and the opening is designed consistent with the Massachusetts Department of Highways Regulations, Section 10A-9 or subsequent revisions. All driveways serving five or more parking spaces shall be constructed with a minimum edge radius of five feet on both sides. Lot divisions which would preclude meeting the above requirements shall provide access easements or other means of satisfying those requirements, on each lot.

## 6.5. Wireless telecommunications facilities.

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6.5.1. Special permit required. Wireless telecommunication facilities may be allowed by special permit issued by the Board of Appeals in the following districts and areas:

1. The M-1 Light Industrial District;
2. The IH Interstate Highway Business District; and
3. The ~~I Institutional District overlaying the~~ R-1b Residential District on land owned by the Commonwealth of Massachusetts and the Massachusetts Institute of Technology. This area ~~within the Institutional District~~ is defined as Lot 20A and Lot 16 respectively located off Maple Street at the Danvers Town Line and as shown on the Middleton Assessor's Map No. 20 and consisting of approximately 60 acres.

6.5.2. Procedures. The procedures to be followed shall be according to the Rules and Regulations for Granting Special Permits adopted by the Board of Appeals. A building permit from the Building Commissioner for the Town shall be required for the installation of any antenna support structures, antenna attached to buildings or other independent support structures and unmanned equipment buildings developed for a wireless communication system. Applications for a permit shall be accompanied by the following:

1. Four complete sets of construction documents showing the proposed method of installation.
2. A copy of the manufacturer's recommended installation instructions.
3. A certified plot plan to scale showing the antenna, property and setback lines, easements, power lines, all structures and the distances from all residential zoning districts.
4. Certification by a structural or civil engineer registered by the Commonwealth of Massachusetts that the proposed installation complies with the latest edition of the Massachusetts State Building Code.
5. Certification shall be submitted stating that all antennas and antenna support structures shall comply with the height and illumination restrictions established by the FAA (Federal Aviation Administration) or other applicable federal or state agencies.

6.5.3. Colocation. The shared use of existing antenna support structures and approved antenna support structure sites shall be preferred to the construction of new such facilities. The antenna support structures must be constructed to support a minimum of two antenna arrays from two separate wireless communication system providers or users.

6.5.4. Tower illumination. Towers shall not be illuminated except as required by the Federal Aviation Administration (FAA) or other applicable federal or state agencies.

6.5.5. Radiation standards. Wireless communication systems shall comply with current Federal Communications Commission (FCC) standards for non-ionizing electromagnetic radiation (NIER). The applicant shall submit verification that the proposed site plan ensures compliance with these standards.

6.5.6. Fencing. A fence shall be required around the antenna support structure and other equipment, unless the antenna is mounted on a building or other independent support structure. The fence shall not be less than eight feet in height measured from finish grade. Access to the antenna support structure shall be through a locked gate.

6.5.7. Landscaping. Landscaping shall be required to screen as much of the antenna support structure

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as possible, the fence surrounding the antenna support structure, and any other ground-level features, such as a building. A combination of existing native vegetation, natural topography, man-made features such as berms, walls, and decorative fences and any other features can be used instead of landscaping if those features achieve the same degree of screening as the required landscaping.

6.5.8. Signs. There shall be only one sign allowed on any wireless communication tower or antenna support structure. Any such sign shall be no greater in size than three square feet and shall be

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limited to the identification of the owner/operator of such facility. Signs advertising any products or services not pertinent to the operation of the facility shall be prohibited. Any such sign allowed shall not be placed at a height of greater than eight feet from ground level.

6.5.9. Setbacks. Antenna support structures and unmanned equipment buildings shall meet the minimum building setback requirements for both the IH District and this Section **6.5**. In addition, antenna support structures shall be set back from all other buildings and structures a minimum of 150% of the height of such antenna support structure.

6.5.10. Abandonment. In the event the use of any wireless communication system, which would include any antenna support structure, has been discontinued for a period for 180 consecutive days, the antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Building Commissioner, who shall have the right to request documentation and/or affidavits from the antenna support structure owner/operator regarding the issue of usage. Upon determination of abandonment, the owner/operator of the antenna support structure shall remove the antenna support structure within 90 days of receipt of notice from the Building Commissioner notifying the owner/operator of such abandonment. If such antenna support structure is not removed within said 90 days, the Building Commissioner may cause such antenna support structure to be removed at the owner's expense. If there are two or more users of an antenna support structure, then this provision shall not become effective until all users cease using the antenna support structure.

6.5.11. Interstate Highway Business District.

1. Antenna support structures shall be 200 feet from all residential zoning districts, measured from the base of the antenna support structure to the nearest residential zoning district boundary.
2. The unmanned equipment buildings shall not exceed 750 feet of gross floor area and shall not exceed 12 feet in overall height.
3. The overall height of antenna support structures, including the antenna, shall not exceed 150 feet. Antennas placed on buildings or other support structures shall comply with the maximum height requirement.

~~6.5.12. Institutional Overlay District. Development standards shall be those set forth for the Interstate Highway Business District, above.~~

## 6.6. Industrial park.

6.6.1. General. An industrial park shall have a minimum lot size of at least 320,000 square feet (7.346 acres). This requirement does not prohibit the construction of more than one building on a lot of less than 320,000 square feet in the M-1 District or applicable Business districts, provided that the lot meets all other requirements of the M-1 District or applicable Business district.

6.6.2. Permitted uses. The following uses shall be permitted in an industrial park:

1. Research, experimental or testing laboratories with incidental processing or pilot manufacture.
2. Office building.
3. Wholesale establishment, the principal activities of which shall be the preparation, storage,

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transfer or distribution of goods (such as building materials, automobile parts, etc.).  
[Amended 5-12-2009 ATM by Art. 28]

4. Plants for bottling of beverages or packaging food products; for light metal fabrication or finishing; for manufacture of electrical or electronic devices or appliances; for manufacture of medical, dental or drafting instruments, optical goods or watches; for manufacture of advertising displays, awnings, shades, bakery products, books, brushes, candy, clothing or

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textile products, cosmetics, dairy products, greeting cards, jewelry, ice, finished leather, and toys; and for similar manufacturing activities.

5. Parking, indoor storage and other accessory uses customarily associated with permitted uses.

## 6.7. Approved street plan.

[Added 5-12-2009 ATM by Art. 27]

6.7.1. General. No building permit shall be issued unless the lot to be built upon has frontage on a street, as defined in this Zoning Bylaw, or, if it is on an unconstructed way, such way shall be constructed in accordance with the Planning Board Subdivision rules and regulations providing adequate access to existing lots, with said plan being subject to receipt of Special Permit approval.. . A street plan based on the criteria set forth in the regulations relating to adequate access shall be approved by the Middleton Planning Board.

## 6.8. Marijuana establishment temporary moratorium.

[Added 5-9-2017 ATM by Art. 19]

6.8.1. ~~Definition. "Marijuana," "marijuana establishment," "marijuana product," "marijuana retailer" shall have the meaning as set forth in the "Regulation of the Use and Distribution of Marijuana Not Medically Prescribed Act of 2016."~~

6.8.2. ~~Purpose. By vote at the state election on November 8, 2016, the voters of the commonwealth approved a law entitled the Regulation and Taxation of Marijuana Act (the "Act"), regulating the control and production and distribution of marijuana under a system of licenses and regulations. This Act was revised by Chapter 351 of the Acts of 2016, which added six months to the timeline for implementation of legalized retail marijuana. Currently under the Zoning Bylaw, a marijuana retailer or establishment is not a permitted use in the Town and any regulations promulgated by the Cannabis Control Commission are expected to provide guidance to the Town in regulating marijuana sales and distribution. The regulation of marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of marijuana retail or distribution centers and address such novel and complex issues, as well as to address the potential impact of the state regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of marijuana retail sales and distribution and other uses related to the regulation of marijuana. The deadline for the Cannabis Control Commission to adopt initial regulations is March 15, 2018, according to the new deadlines contained in Chapter 351 of the Acts of 2016. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for marijuana retail and distribution so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.~~

6.8.3. ~~Temporary moratorium. For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town of Middleton hereby adopts a temporary moratorium on the use of land or structures for "marijuana," "marijuana establishment," "marijuana product," and "marijuana retailer." The moratorium shall be in effect through June 30, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of~~

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marijuana in the Town, consider the Cannabis Control Commission regulations regarding "marijuana," "marijuana establishment," "marijuana product," and "marijuana retailer" and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of marijuana establishments and marijuana retailers and related uses.

[1] *Editor's Note: Former Section 6.8, Temporary moratorium on medical marijuana treatment centers, added 5-14-2013 ATM by Art. 6, was repealed 5-12-2015 ATM by Art. 39.*

## 6.9.6.8. Marijuana not medically prescribed.

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**6.9.1-6.8.1.** Prohibition. Consistent with MGL c. 94G, § 3(a)(2), all types of marijuana establishments as defined in MGL c. 94G, § 1(j), to include all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Middleton.

## SECTION 7.0. Special Residential Regulations

### 7.1. Multifamily or attached dwelling.

7.1.1. Special permit required. In the Village Residential (R2) District, a multifamily or attached dwelling may be authorized by the grant of a special permit by the Planning Board, in accordance with the requirements set forth below.

#### 7.1.2. Dimensional requirements for multifamily or attached dwellings.

1. Minimum lot size. The minimum lot size in this district shall be at least 100,000 square feet (2.296 acres) for an attached dwelling or townhouse complex. Individual attached dwelling lots within an attached dwelling complex shall have an area of not less than 3,000 square feet.
2. Density. The maximum overall density shall be one dwelling unit per 20,000 square feet.
3. Coverage. The maximum coverage of all buildings shall not exceed 20% of the development parcel.
4. Open space. At least 30% of the development parcel shall be maintained as open space land.
5. Open area. At least 40% of the development parcel shall be maintained as open area.
6. Lot frontage. The minimum lot frontage shall be 200 feet for each development in this district.
7. Setback. All structures shall not be less than 75 feet from all lot lines and street lines.
8. Height. The height of any structure shall not exceed 35 feet or be in excess of three stories.
9. Watershed Protection Overlay District. For lots within the Watershed Protection Overlay District, the requirements of Section **8.2** shall apply.

#### 7.1.3. Dimensional regulations for attached dwellings:

1. Maximum lot coverage: 40%.
2. Minimum open space: 20%.
3. Minimum frontage: 20 feet.
4. Minimum lot width: 20 feet.
5. Minimum front setback: 25 feet.
6. Minimum side yard: none where a party wall is constructed between dwelling units. Otherwise, the minimum distance between two buildings on the same lot shall be 40 feet.

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7. Minimum rear yard: 30 feet.
8. Minimum number of dwellings: three.
9. Maximum units per structure: eight.

7.1.4. Driveways. There shall be a paved driveway or paved walk adequate to accommodate emergency vehicles within 50 feet of the outside entrance of each dwelling unit.

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7.1.5. Roadways. Any road or driveway providing principal access to dwelling units and lots intended for multifamily dwellings shall conform to the appropriate provisions of the subdivision rules and regulations as if it were a minor street. If deemed necessary by the Planning Board, such road or street shall be dedicated as a public way.

7.1.6. Buffer screen. Where a development containing multifamily or attached dwellings is adjacent to a single-family district or preexisting commercial or industrial development, a buffer screen may be required around the multifamily or attached dwelling complex.

7.1.7. Water and sewer. Any proposed multifamily or attached dwelling complex shall be served by water and sewer systems satisfactory to the Board of Health and shall meet any applicable state regulations.

7.1.7.7.1.8. Single-family or two-family dwellings in the R2 District shall have the same dimensional requirements as the R-1a District.

## 7.2. Conversion of single-family dwelling in R2 District.

7.2.1. General requirements. The conversion of a single-family dwelling existing at the time of adoption of the Village Residential (R2) District into a dwelling with more than one dwelling unit shall subject to the following conditions:

1. No substantial change shall be made to the external appearance of the structure.
2. The maximum number of dwelling units on each lot does not exceed that allowed in the R2 District.
3. Sufficient parking shall be provided in accordance with the Table of Minimum Requirements in Section 5.1.
4. The Board of Health shall be satisfied with the adequacy of the methods of waste disposal.
5. Area requirements are in conformance with Section 7.1, above.

## 7.3. Flexible development.

[Amended 5-12-2009 ATM by Art. 29]

7.3.1. Purpose. The purpose of this section, Flexible development, is to:

1. Encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2. Preserve historical and archeological resources; to protect the natural environment, including the Town's varied landscapes and water resources;
3. Protect the value of real property;
4. Promote more sensitive siting of buildings and better overall site planning;
5. Perpetuate the appearance of the Town's traditional New England landscape;

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6. Facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. Offer an alternative to standard subdivision development;
8. Promote the development of affordable housing; and
9. Promote the development of housing for persons over the age of 55.

7.3.2. Definitions. The following terms shall have the following definitions for the purposes of this section:

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## AFFORDABLE HOUSING

Housing affordable to persons or families qualifying as moderate income<sup>11</sup> in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 50% but less than 80% of the median income.

## CONTIGUOUS OPEN SPACE

Open space suitable, in the opinion of the Planning Board, for the purposes set forth in Section 7.3.13(2), herein. Such open space may be separated by the road(s) constructed within the flexible development. Contiguous open space shall not include required yards.

7.3.3. Applicability. In accordance with the following provisions, a flexible development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town.

7.3.4. Procedures. Flexible development may be authorized according to the requirements in this section and after Site Plan Approval from the Zoning Board of Appeals. ~~upon the issuance of a special permit by the Planning Board~~. Applicants for flexible development shall file with the Planning Board~~Board of Appeals~~ seven copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.<sup>[1]</sup>  
[1] *Editor's Note: See Ch. 250, Subdivision of Land.*
2. Where wetland delineation is in doubt or dispute, the Board of Appeals~~Planning Board~~ may require appropriate documentation.
3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
4. The Board of Appeals~~Planning Board~~ may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

7.3.5. Pre-application meeting. Prior to filing an application to the Board of Appeals, applicants shall schedule a meeting with the Planning Director or their designee to discuss the project informally. The Planning Director may recommend the applicant meet with Town Staff within 30 days prior to applying or in a period as determined by the Planning Director. The group shall consist of a representative from the Building, Planning, Public Safety, Public Works, and Water departments, and any other individuals that the Planning Director deems necessary. This preliminary review will attempt to avoid unnecessary deficiencies in the application being filed and to promote efficiency in the public hearing process. Comments made by Town Staff during a preliminary review are non-binding.

7.3.5-7.3.6. Design process. Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board~~Board of Appeals~~ that this design process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

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

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2. Evaluating site context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. Designating the contiguous open space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. Location of development areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. Lot lines. The final step is simply to draw in the lot lines (if applicable).

7.3.6.7.3.7. Modification of lot requirements. The Board of AppealsPlanning Board encourages applicants for flexible development to modify lot size, shape, and other dimensional requirements for lots within a flexible development, subject to the following limitations:

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1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the flexible development; provided, however, that the Board of Appeals Planning Board may waive this requirement where it is determined that such reduced lots are consistent with existing development patterns in the neighborhood.
2. At least 50% of the required side and rear yards in the district shall be maintained in the flexible development.

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

7.3.8.7.3.9. Density bonus. The Board of Appeals Planning Board may award a density bonus to increase the number of dwelling units beyond the basic maximum number. The density bonus for the flexible development shall not, in the aggregate, exceed 40% of the basic maximum number (the "maximum density bonus"). All dwelling units awarded as a density bonus shall be two bedroom units with deed restrictions in perpetuity. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

1. For each additional 10% of the site over the open space required below and set aside as contiguous open space, a bonus of 5% of the basic maximum number may be awarded, up to the maximum density bonus;
2. For every two dwelling units restricted to occupancy by persons over the age of 55, one dwelling unit may be added as a density bonus, up to the maximum density bonus;
3. Where the Planning BoardBoard of Appeals determines that the applicant has offered significant amenities to the Town, including but not limited to infrastructure improvements, equipment, or technical assistance, a bonus, may be added up to the maximum density bonus;
4. Any combination of additional open space or age-restricted units or significant amenities to the Town as set forth in Subsections 1, 2 and 3 above, up to the maximum density bonus.

7.3.9.7.3.10. Affordable component. As a condition of the grant of any special permit for a flexible development, a minimum of 15% of the total number of dwelling units shall be affordable housing units, restricted in perpetuity. The restriction shall be approved as to form by legal counsel to the Planning BoardBoard of Appeals, and a right of first refusal upon the transfer of such affordable housing units shall be granted to the local Housing Authority or, in lieu thereof, the Board of Selectmen, for a period not less than 120 days after notice thereof. The following requirements shall be applicable:

1. In determining the total number of affordable housing units required, calculation of a fractional unit of 0.5 or more shall be regarded as a whole unit;
2. The price for affordable housing units shall be calculated such that household size matches the number of bedrooms plus one;
3. Affordable housing units shall conform to all requirements for inclusion on the state's Subsidized Housing Inventory; and

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4. Affordable housing units shall be located throughout the project site and consist of all of the varying styles of dwellings being constructed, and shall be comparable to market-rate units in terms of location, quality and character, room size, number of rooms, number of bedrooms and external appearance.

In exceptional circumstances, the Planning Board Board of Appeals may allow the developer to make a financial contribution to the Middleton Housing Authority, or Affordable Housing Trust Fund or the Board of Selectmen for use in securing affordable housing for the Town, in lieu of providing all or any portion of the affordable housing units required, if the Planning Board finds that: (i) it is

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in the best interest of the Town to do so, or (ii) the provision of affordable housing units would result in a hardship such as rendering the project economically infeasible. In the event of such a determination by the Planning Board, then the financial contribution for each unit shall be equal to the difference between the fair market value of a market-rate unit and the price of an affordable housing unit, and shall be payable in full prior to issuance of a final occupancy permit.

7.3.10-7.3.11. Types of buildings. The flexible development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than three dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

7.3.11-7.3.12. Roads. The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the applicant.

7.3.12-7.3.13. Parking. Each dwelling unit shall be served by two off-street parking spaces. Parking spaces in front of garages may count in this computation.

7.3.13-7.3.14. Contiguous open space. A minimum of 40% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Subsection 1, above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 10% of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths.
4. Underground utilities to serve the flexible development site may be located within the contiguous open space.

7.3.14-7.3.15. Ownership of the contiguous open space. The contiguous open space shall, at the Board of Appeals' Planning Board's election, be conveyed to:

1. The Town or its Conservation Commission;
2. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

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3. A corporation or trust owned jointly or in common by the owners of lots within the flexible development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the

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Town an easement for this purpose. In such event, the Town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

7.3.15-7.3.16. Buffer areas. A buffer area of 100 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Board of Appeals Planning Board may waive the buffer requirement:

1. Where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least 50 feet in depth, which may include such restricted land area within such buffer area calculation; or
2. Where the land abutting the site is held by the Town for conservation or recreation purposes; or
3. The Board of Appeals Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

7.3.16-7.3.17. Stormwater management. Stormwater management shall be consistent with the requirements for subdivisions set forth in the rules and regulations of the Planning Board.

7.3.17-7.3.18. Decision. The Board of Appeals Planning Board may approve, approve with conditions, or deny an application for a flexible development after determining whether the flexible development better promotes the purposes of Section 7.3.1 of this flexible development Bylaw than would a conventional subdivision development of the same locus.

7.3.18-7.3.19. Relation to other requirements. The submittals and permits of this section shall be in addition to

any other requirements of the Subdivision Control Law<sup>[2]</sup> or any other provisions of this Zoning Bylaw.

[2] *Editor's Note: See MGL c. 41, §§ 81K to 81GG.*

## 7.4. Development schedule.

7.4.1. Purpose. The Town is facing limited capacity in its school system, water supply, roadways, stormwater drainage facilities, recreational facilities, and fire and police protection services. Because of the Town's limited ability to increase school capacity and similar limited ability to increase water supply, roadways, stormwater drainage capacity, and recreational and fire and police protection services and facilities, this development scheduling bylaw is hereby enacted to limit the rate of growth in the demand for such facilities and services to 25% of total proposed units. This section of the Zoning bylaws, containing said growth rate limits, shall be in effect for a fifteen-year period from the date of its enactment until June 30, 2015. This section was originally adopted by Article 47 of the 2000 Annual Town Meeting and was further amended on May 8, 2007. During this period, study of the school needs, public water supply needs and other public services and facilities needs of the Town shall be undertaken to determine whether the provisions contained in this section should be continued.

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~~7.4.2. Building permits. For 15 years, following enactment of this section, building permits for the construction of dwellings on lots held in common ownership shall not be granted at a rate per annum greater than permitted by the following schedule, commencing in the year such lots are separated or subdivided, or in the year this provision becomes effective, except as may be exempted herein. Any lots covered by this provision hereafter sold or otherwise transferred to another owner shall include in the deed the earliest date on which construction may be commenced in accordance with these provisions.~~

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Number of Dwelling Units in Subdivision	Dwelling Units Per Year
1 to 16	4
17 and over	25% of the total

~~7.4.3. Commencement.~~ The yearly schedule shall commence from the date of the Planning Board signing of the definitive subdivision plan, or the granting of a special permit or variance if applicable to the development. All definitive subdivisions, special permits and variances shall include a proposed development schedule by the applicant.

~~7.4.4. Transfer of rights.~~ Any person, corporation, or other legal entity that wholly owns more than one subdivision that has received approval for its development schedules may use its combined annual dwelling unit building permit authorizations in one of its developments. When such a transfer of scheduled rights occurs, the time period for the beginning and total duration of scheduled development in the project or projects, from which the transfer occurs, shall be delayed one calendar year from the time of transfer.

~~7.4.5. Improvements.~~ All improvements, including the paved base coat of roadways, streetlights, utility installations, waterlines, common wastewater disposal facilities, fire alarm pull boxes, if applicable, and drainage facilities, required in the Rules and Regulations Governing the Subdivision of Land in Middleton, MA, shall be completed to the full road frontage for any lot prior to issuance of a certificate of occupancy for the building on such lot.

~~7.4.6. Exemption.~~ Any dwelling units that are restricted by written and recorded agreement to occupants age 55 or older are exempt from the provisions of this section.

## 7.5.7.4. Accessory dwelling units.

[Added 12-12-2024 STM by Art. 1]

7.5.1.7.4.1. ~~Definition.~~ An accessory dwelling unit ("ADU") is an attached or detached dwelling unit that is accessory to a principal dwelling unit and is otherwise defined in accordance with the provisions of MGL c. 40A, § 1A, as may be amended.

### 7.5.2.7.4.2. ~~Use schedule.~~

1. ADUs are allowed as a matter of right in the R-1a, R-1b, RA, and R-2 Zoning Districts, subject to the requirements of this section. ADUs are prohibited in all other districts.
2. Only one ADU is allowed as a matter of right on any property.
3. ADUs may not be used as short-term rentals, as such term is defined in MGL c. 64G, § 1, or otherwise rented for a period shorter than 31 days.

### 7.5.3.7.4.3. ~~Dimensional requirements.~~

1. An ADU may be no larger in gross floor area than one half of the gross floor area of the principal dwelling unit on the property or 900 square feet, whichever is less.
2. ADUs shall comply with frontage, setback, height, lot width and lot coverage requirements, as may be applicable, as contained in **Attachment 1 - Table of Dimensional Requirements** of this Zoning Bylaw.

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- a. Single family dwellings and ADU's in the R2 District are to comply with the dimensional controls for the R1b District.
- b. Conversions of existing non-residential accessory structures to ADUs are permitted provided that the existing accessory structure complies with the above-described dimensional requirements.

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3. ADUs shall be designed and constructed so that no portion thereof shall be closer to the front lot line than the primary dwelling.

#### 7.5.4.7.4.4. Parking.

1. Parking may be in a driveway or a garage but the parking space may not be a tandem space with a parking space for the primary structure.
2. The construction of a new garage to serve an ADU shall require a Special Permit from the Board of Appeals.

#### 7.5.5.7.4.5. Site plan approval. All ADUs are required to obtain site plan approval from the Board of Appeals pursuant to the procedures in Section 9.5 of this Zoning Bylaw, provided that the site plan review criteria shall be limited to the following:

1. The ADU should minimize tree, vegetation and soil removal and grade changes.
2. Architectural style should be compatible with the existing principal dwelling on the subject property.
3. The ADU shall be serviced with adequate water supply and sewer or septic service.
4. The plan shall demonstrate adequate parking, as required hereunder and shall maximize convenience and safety for vehicular and pedestrian movement within the property and in relation to adjacent ways.

The Board of Appeals may request reasonable plan modifications of the site plan for an ADU and may impose reasonable conditions that are not inconsistent with this bylaw or the provisions of MGL c. 40A, § 3.

## SECTION 8.0. Special District Regulations

### 8.1. Floodplain Overlay District (FPOD).

[Amended 5-8-2012 ATM by Art. 7]

8.1.1. Overlay district. The Floodplain District is herein established as an overlay district. The district includes all special flood hazard areas within the Town of Middleton designated as Zone A or AE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Middleton are panel numbers 25009C0243F, 25009C0244F, 25009C0263F, 25009C0381F, 25009C0382F, 25009C0383F, 25009C384F, 25009C0401F, 25009C0402F, and 25009C403F dated July 3, 2012. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and the Building Commissioner of the Town of Middleton.

8.1.2. Permitted uses. The underlying permitted uses are allowed provided that they meet the following requirements, as well as those of the Massachusetts State Building Code dealing with construction in floodplains. The following uses of low flood damage potential and causing no obstructions to

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flood flows are encouraged provided they are permitted in the underlying district and do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating play areas, etc.

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4. Conservation of water, plants, wildlife.
5. Wildlife management areas, foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
7. Buildings lawfully existing prior to the adoption of these provisions.

#### 8.1.3. Zone A requirements.

1. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Commissioner for its reasonable utilization toward meeting the elevation or floodproofing requirements of the State Building Code, as appropriate.
2. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A zones.

#### 8.1.4. Floodway requirements. In the floodway, designated on the Flood Insurance Rate Map, the following provisions shall apply:

1. All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments, are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.
2. Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.
3. In Zones A and AE, along watercourses that have not had a regulatory floodway designed, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the best flood discharge.

#### 8.1.5. Use regulations:

1. The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal hazard areas

Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)

Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)

Minimum requirements for Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)

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

2. All subdivision proposals must be designed to assure that:
  - a. Such proposals minimize flood damage;

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- b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- c. Adequate drainage is provided to reduce exposure to flood hazards.

3. In a riverine situation, the Middleton Conservation Agent shall notify the following of any alteration or relocation of a water course:

Adjacent communities

NFIP State Coordinator

Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104

NFIP Program Specialist

Federal Emergency Management Agency, Region 1  
99 High Street, 6th Floor  
Boston, MA 02110

4. Existing contour intervals of site and elevations existing structures must be included on plan proposals.

#### 8.1.6. Floodplain Overlay District (FPOD) definitions.

##### **AREA OF SPECIAL FLOOD HAZARD**

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

##### **BASE FLOOD**

The flood having a one-percent chance of being equaled or exceeded in any given year.

##### **DEVELOPMENT**

Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

##### **DISTRICT**

Floodplain district.

##### **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

Administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

##### **FLOOD INSURANCE RATE MAP (FIRM)**

An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

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**FLOOD INSURANCE STUDY**

An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**FLOODWAY**

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

#### **LOWEST FLOOR**

The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

#### **NEW CONSTRUCTION (FOR FLOODPLAIN MANAGEMENT PURPOSES)**

Structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

#### **ONE-HUNDRED-YEAR FLOOD**

See "base flood."

#### **REGULATORY FLOODWAY**

See "floodway."

#### **SPECIAL FLOOD HAZARD AREA**

An area having special flood and/or flood-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

#### **STRUCTURE (for floodplain management purposes)**

Any construction, erection, assemblage or other combination of materials in a fixed location to give support or shelter.

#### **SUBSTANTIAL DAMAGE**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

#### **SUBSTANTIAL IMPROVEMENT**

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

#### **ZONE A**

The one-hundred-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

#### **ZONE AE (FOR NEW AND REVISED MAPS)**

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The one-hundred-year floodplain where the base flood elevation has been determined.

#### **ZONE X**

Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

## **8.2. Watershed Protection Overlay District (WPOD).**

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8.2.1. Purpose. The Watershed Protection District is established in the Town of Middleton for the following purposes:

1. To protect the proposed Emerson Brook Reservoir, a source of water supply for the Town of Middleton;
2. To preserve and protect the streams, brooks, rills, marshes, swamps, bogs and other;
3. To protect, preserve and maintain the water table and water recharge areas within the said watershed; and
4. To protect the community from the detrimental use and development of land and waters within the Watershed Protection District.

8.2.2. Overlay district. The Watershed Protection District is established as an overlay district and shall be enforced by the Building Commissioner of the Town of Middleton.

8.2.3. Location. The intent of the Watershed Protection District is to include all lands, water bodies and watercourses within it which create the catchment or drainage area of the watershed of Emerson Brook Reservoir. The district includes all areas within the Watershed Protection District line designated on the Official Zoning Map of the Town of Middleton. The Watershed Protection District is an overlay district and may be superimposed on the other districts established by these bylaws.

8.2.4. Dimensional requirements.

1. Lot area. In the Watershed Protection District, a lot not less than 40,000 square feet shall be provided for each structure.
2. Lot coverage. All buildings shall not cover more than 10% of the area of any lot, and not less than 75% of the lot area shall be free of structures, paving, storage areas or other elements which preclude vegetation.
3. Lot frontage and width. In the Watershed Protection District, the lot frontage and width shall be in accordance with the requirements of the underlying district.
4. Height. In the Watershed Protection District, the height requirements shall be in accordance with the requirements of the underlying district.

## 8.3. Institutional Overlay District (IOD)

~~8.3.1. Purpose. The purpose of this district is to show on the Zoning Map those areas which, because of their institutional, public or semipublic purposes, are not intended for business, industry, or the general types of residential developments provided for in other zoning districts. The IOD is intended for public and semipublic uses and for large scale, designed development of institutions, schools, academies, camps, campgrounds and recreation areas including dwelling units for year-round or seasonal use. Such uses shall be allowed as of right.~~

~~[Amended 5-12-2009 ATM by Art. 26]~~

~~8.3.2. Overlay district. The Institutional District consists of those areas which are owned by public or other tax exempt organizations or have already been dedicated or used for public or semipublic uses, such as public parks and recreation areas, public buildings, cemeteries, schools, churches, reservoirs and open space reservations. All new plans for commercial and industrial development~~

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must be reviewed by the Industrial and Commercial Design Review Committee prior to consideration by the Planning Board and/or Board of Appeals, in accordance with the provisions of Section 9.6 of this bylaw.

[Amended 5-12-2009 ATM by Art. 28]

8.3.3. ~~Uses allowed by special permit and site plan approval. The uses set forth in Table 3.1.1<sup>141</sup> are allowed only if a special permit is issued by the Board of Appeals. Issuance of a special permit includes the approval of a site plan. Such activities shall not be offensive, injurious, or noxious~~

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~~because of sewage, refuse, noise, vibration, smoke, fumes, dust, odors, danger of fires or explosion or other characteristics detrimental to a predominantly residential town.~~

[1] *Editor's Note: See the Table of Use Regulations included as an attachment to this chapter.*

~~8.3.4. Effect of inoperative requirements. If by reason of sale of a part of the property of a public, charitable or educational institution or holding included in the Institutional District to a noninstitutional owner, or if for any other reason the restrictions or requirements of this section shall be or become invalid or inoperative as to any land shown on the Zoning Map as being in the Institutional District, then such land shall continue to be zoned in the district which the Institutional District overlays.~~

~~8.3.5. Dimensional requirements.~~

- ~~1. Lot area. The minimum lot area shall be in accordance with an approved site plan.~~
- ~~2. Lot coverage. All buildings shall not cover more than 25% of the lot.~~
- ~~3. Lot frontage and width. The minimum lot frontage shall be 400 feet for each building in an IH District. Otherwise, the minimum lot frontage shall be that required in the underlying district.~~  
[Amended 5-12-2009 ATM by Art. 32]
- ~~4. Height. The height of any structure shall not exceed the limitation in the underlying district.~~  
[Amended 5-12-2009 ATM by Art. 32]

### **8.4.8.3. (Reserved)**

[1] *Editor's Note: Former Section 8.4, Conservancy Overlay District (COD), was repealed 5-12-2015 ATM by Art. 38.*

### **8.5.8.4. Adult Entertainment Overlay District.**

[Added 5-11-2010 ATM by Art. 29]

**8.5.1.8.4.1. Applicability.** The following regulations shall apply to adult uses as defined in Section 10 of this bylaw. Adult uses require a special permit from the Board of Appeals.

**8.5.2.8.4.2. Authority.** This bylaw is enacted pursuant to G.L. Chapter 40A and pursuant to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment enterprises, as defined and designated herein, because of the deleterious effect in generating crime and blight.

**8.5.3.8.4.3. Purpose.** It is the purpose of the Adult Entertainment Overlay District to address and mitigate the secondary effects of the adult entertainment enterprises and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Middleton and its inhabitants.

1. The provisions of this bylaw have neither the purpose nor intent of imposing a limitation on the

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content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this bylaw to restrict or deny access by adults to Adult entertainment enterprises or to sexually oriented matter or materials that are protected by the Constitution of the United States of America or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this bylaw to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

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8.5.4.8.4.4. Location; overlay district. The location of the Adult Entertainment Overlay District is shown on the map titled, "Town of Middleton, Adult Entertainment Overlay District," dated May 12, 2009. The parcels included in the Overlay District are identified as: Assessor's Map 26, Parcels 13A, 13B, 13C, 13D, 14 and 16. The Adult Entertainment Overlay District is an overlay district. To the extent that it provides for land use activities not otherwise set forth in the underlying district, the provisions of the overlay district shall control. Otherwise, the underlying district remains in full force and effect.

[Assessor's Map 26, Parcels 13A, 13B, 13C, 13D, 14, & 16 are owned by: Lot 13A owner: Commonwealth of Massachusetts (6.89 acres); Lot 13B owner: Johnson Trust (1.86 acres); Lot 13C owner: GEK Family Trust (1.19 acres); Lot 13D owner: by Coviello Trust (1.08 acres); Lot 14 owner: Danvers Fish and Game Club (80.59 acres); and Lot 16 owner: by Steven Kahan Trust (1.39 acres). See attached map for location of parcels.<sup>[1]</sup>]

[1] *Editor's Note: Said map is on file in the Town offices.*

8.5.5.8.4.5. Standards. The following standards apply in the Adult Entertainment Overlay District.

1. Adult uses may not exceed 3,500 square feet of gross floor area.
2. No adult use special permit shall be issued to any person convicted of violating the provisions of G.L. c. 119, § 63, or G.L. c. 272, § 28.
3. No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or to suffer minors to view displays or linger on the premises.

8.5.6.8.4.6. Parking requirements. The following parking requirements shall apply:

1. Parking for adult bookstores, adult paraphernalia stores, and adult video stores shall meet the requirements for retail establishments.
2. Parking for adult cabarets and adult motion picture theaters shall meet the requirements of places of assembly or restaurants, whichever is greater.
3. Parking shall be provided in the side or rear yard area only.
4. All parking areas shall be illuminated, and all lighting shall be contained on the property, and no adult use shall have any flashing lights visible from outside the establishment.
5. Parking areas shall be landscaped in conformance with the appropriate provisions of the Zoning Bylaw.

8.5.7.8.4.7. Screening and buffering. The frontage in this zone will have 30 feet of landscaping not including any Town or state land, which will also be landscaped to the pavement. This frontage will be mounded to three feet, then with a wall and plantings or just plantings to achieve a 50% capacity. The final six feet toward the building will be grass or plantings no higher than two feet.

1. At the building there will be six feet of landscaping on at least three sides. The collector sidewalk can either be on the inside of this six feet or the outside.
2. The sides and rear of the property will have a minimum of twenty-foot green buffer consisting of a six-foot fence or wall and at least eight feet of landscaping; also there will be a four-inch to six inch street tree every 25 feet.
3. All building openings, entries and windows shall be screened in such a manner as to prevent

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visual access to the interior of the establishment by the public.

**8.5.8.8.4.8.** Application information. The application for a special permit from the Board of Appeals for an adult use establishment must include the following information regarding the proposed facility:

1. Name and address of the legal owner of the establishment;
2. Name and address of all persons having lawful equity or security interest in the establishment;

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3. Name and address of the manager;
4. The total number of employees and number of employees on a per-shift basis;
5. Proposed provisions for security within and without the establishment;
6. The physical layout of the interior of the establishment;
7. Proposed hours of operation.

**8.5.9.8.4.9.** Procedure. An adult use special permit shall only be issued following a public hearing held within 65 days after the filing of an application with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant.

1. No building permit shall be granted for an adult use prior to submission and approval of a site plan by the Boards of Appeals.
2. The Board may impose reasonable conditions on the grant of any special permit, including limitations for the term of such special permit.

**8.5.10.8.4.10.** Lapse. Any adult use special permit issued under this bylaw shall lapse within one year, and including such time required to pursue or await the determination of an appeal from the grant thereof, if substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

## **8.6.8.5. Medical Marijuana Overlay District.**

[Added 5-12-2015 ATM by Art. 39]

**8.6.1.8.5.1.** Applicability. The following regulations shall apply to registered marijuana dispensary (RMD) uses as set forth in Section 3.0, "Use Regulations," and as shown in the Table of Use Regulations.<sup>[1]</sup> RMDs are allowed pursuant to a special permit from the Board of Appeals.

<sup>[1]</sup> *Editor's Note: The Table of Use Regulations is included as an attachment to this chapter.*

**8.6.2.8.5.2.** Establishment. The Medical Marijuana Overlay District ("MMOD") is established as an overlay district. The boundaries of the MMOD are shown on the Zoning Map on file with the Town Clerk. Within the MMOD, all requirements of the underlying district(s) remain in effect, except where these regulations provide an alternative to such requirements. Land within the MMOD may be used either for 1) a registered marijuana dispensary ("RMD"), in which case the requirements set forth in this section shall apply; or 2) a use allowed in the underlying district, in which case the requirements of the underlying district shall apply. If the provisions of the MMOD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control.

**8.6.3.8.5.3.** Purpose. To provide for the placement of RMDs, in accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. § 1-1, et seq., in locations suitable for lawful medical marijuana facilities and to minimize adverse impacts of RMDs on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security, and removal of RMDs.

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8.6.4.8.5.4. **Definitions.** Where not expressly defined in the Zoning Bylaws, terms used in the MMOD Bylaw shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App.

§ 1-1, et seq., and the Department of Public Health Regulations promulgated thereunder, 105 CMR 725.001 et seq., and otherwise by their plain language.

8.6.5.8.5.5. **Location.**

1. The location of the MMOD is shown on the map titled, "Zoning Map of the Town of Middleton," dated October 29, 1965, including amendments approved by the Attorney General and voted

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at the May 12, 2015, Town Meeting. The parcels included in the Overlay District are identified as: Assessor's Map 26, Parcels 13A, 13B, 13C, and 13D.

2. Proximity to other uses:

- a. RMDs may not be located within 500 feet of the following: school (including a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university); child care facility; library; playground; public park; youth center; public swimming pool; video arcade facility; or similar facility in which minors commonly congregate.
- b. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Section 4.b. to the nearest point of the property line of the proposed RMD.
- c. The distance requirement may be reduced by 25% or less, but only if:
  - i. The applicant demonstrates that the RMD would otherwise be effectively prohibited within the municipality;
  - ii. The applicant demonstrates that the RMD will employ adequate security measures to prevent diversion of medical marijuana to minors who are not qualifying patients pursuant to 105 CMR 725.004.

3. An RMD may not be located:

- a. Within 500 feet of any other premises containing an RMD;
- b. Inside a movable or mobile structure such as a van or truck.

8.6.6.8.5.6. **Parking requirements.** The following parking requirements shall apply:

1. The number of parking spaces required for RMDs shall be the same as the number required for retail establishments.
2. Parking shall be provided in the front yard area only.
3. All parking areas shall be illuminated, and all lighting shall be contained on the property, and no registered marijuana dispensary use shall have any flashing lights visible from outside the establishment.
4. Parking areas shall be landscaped in conformance with the appropriate provisions of the Zoning Bylaw.

8.6.7.8.5.7. **Screening and buffering.** All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.

8.6.8.8.5.8. **Procedure.** The Board of Appeals shall be the special permit granting authority (SPGA) for an RMD special permit.

1. Application: In addition to the materials required under Section **9.4** and **9.5** of the Zoning Bylaw, the applicant shall include:
  - a. A copy of its registration as an RMD from the Massachusetts Department of Public Health ("DPH");

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- b. Names and addresses of all officers and directors of the establishment, employees, and managers;
- c. Total number of employees and number of employees on a per-shift basis;
- d. Proposed hours of operation;

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- e. A detailed floor plan of the premises of the proposed RMD that identifies the square footage available and describes the functional areas of the RMD, including areas for any preparation of MIPs;
- f. Detailed site plans that, in addition to the requirements of Section **9.5** (Site plan review), include information on the convenience and safety of vehicular and pedestrian movement on the site and off the site, if vehicular and pedestrian traffic off-site can reasonably be expected be substantially affected by on-site changes;
- g. A description of the security measures, including employee security policies, approved by DPH for the RMD;
- h. A copy of the emergency procedures approved by DPH for the RMD;
- i. A copy of the policies and procedures for patient or personal caregiver home delivery approved by DPH for the RMD;
- j. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by DPH;
- k. A copy of proposed waste disposal procedures;
- l. A description of any waivers from DPH regulations issued for the RMD; and
- m. Nine copies of application, plans, and supporting materials.

2. The SPGA shall refer copies of the application to the Board of Selectmen, Inspection Department, Fire Department, Police Department, Board of Health, the Conservation Commission, the Department of Public Works, and the Planning Board. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 35 days of referral of the application shall be deemed lack of opposition.

3. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other Town boards and departments, the SPGA may act upon such a permit.

**8.6.9-8.5.9.** Special permit conditions on RMDs. The SPGA shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's RMD, the SPGA shall include the following conditions in any special permit granted under this bylaw:

1. Hours of operation, including dispatch of home deliveries; but in no event shall said hours be between 9:00 p.m. and 8:00 a.m.
2. The permit holder shall file a copy of any incident report required under 105 CMR 725.110(F) with the Zoning Enforcement Officer and the SPGA within 24 hours of creation by the RMD. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
3. The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or

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final action issued by DPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Zoning Enforcement Officer and SPGA within 48 hours of receipt by the RMD.

4. The permit holder shall provide to the Zoning Enforcement Officer and Chief of the Police Department the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.

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5. The special permit shall lapse within five years of its issuance. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.
6. The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the RMD.
7. The special permit shall lapse upon the expiration or termination of the applicant's registration by DPH.
8. The permit holder shall notify the Zoning Enforcement Officer and SPGA in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with DPH.

8.6.10.8.5.10. Exemption from RMD special permit requirement. RMDs that demonstrate that they are protected pursuant to the agricultural exemption under G.L. c. 40A, § 3, are not required to obtain a special permit, but shall apply for site plan approval pursuant to Section **9.5** of the Zoning Bylaw.

8.6.11.8.5.11. Prohibition Against Nuisances. No use shall be allowed in the MMOD which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

8.6.12.8.5.12. Severability. The provisions of this bylaw are severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

## **8.7.8.6. Groundwater Protection Overlay District.**

[Added 6-5-2021 ATM by Art. 29]

8.7.1.8.6.1. Purpose of district. The purpose of this Groundwater Protection District is to:

1. Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Middleton and adjacent towns;
2. Preserve and protect existing and potential sources of drinking water;
3. Conserve natural resources in the Town of Middleton; and
4. Prevent temporary and permanent contamination of the environment.

8.7.2.8.6.2. Scope of authority. The Groundwater Protection District is an overlay district superimposed on the other zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

8.7.3.8.6.3. Definitions.

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**AQUIFER**

A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**CMR**

Code of Massachusetts Regulations.

**COMMERCIAL FERTILIZER**

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Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant growth, except un-manipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, and other products exempted by state regulations.

## **DISCHARGE**

The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, pouring, or placing of toxic or hazardous material or hazardous waste upon or into any land or water such that it may enter the surface or ground waters.

## **DRY WELL**

A subsurface pit with open-jointed lining or holes through which stormwater drainage from roofs, basement floors, foundations or other areas seeps into the surrounding soil.

## **GROUNDWATER PROTECTION DISTRICT**

The land area consisting of aquifers and Zone II recharge areas as identified on a map and adopted pursuant to this bylaw.

## **HAZARDOUS MATERIAL**

Any substance in any form which because of its quantity, concentration, or its chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with one or more substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. Hazardous material includes, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as toxic or hazardous under MGL c. 21E. This term shall not include hazardous waste or oil.

## **HAZARDOUS WASTE**

A substance or combination of substances which, because of quantity, concentration, or physical, chemical or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety, or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. This term shall include all substances identified as hazardous pursuant to the Hazardous Waste Regulations, 310 CMR 30.000.

## **HISTORICAL HIGH GROUNDWATER TABLE ELEVATION**

A groundwater elevation determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.

## **IMPERVIOUS SURFACE**

Material or structure on, above, or below the ground that does not allow precipitation or surface water runoff to penetrate into the soil.

## **LANDFILL**

A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to the Solid Waste Regulations, 310 CMR 19.006.

## **MassDEP**

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**MGL**

Massachusetts General Law.

**NON-SANITARY WASTEWATER**

Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified

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in 310 CMR 15.004(6).

#### **OPEN DUMP**

A facility operated or maintained in violation of the Resource Conservation and Recovery Act, 42 U.S.C. § 4004(a)(b), or state regulations and criteria for solid waste disposal.

#### **PETROLEUM PRODUCT**

Includes, but not limited to, fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. "Petroleum product" shall not include liquefied petroleum gas, including, but not limited to, liquefied natural gas, propane or butane.

#### **RECHARGE AREAS**

Land areas, such as a Zone II, where precipitation and surface water infiltrates into the ground to replenish groundwater and aquifers used for public drinking water supplies.

#### **SEPTAGE**

The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. This term shall not include any material that is a hazardous waste, as defined by 310 CMR 30.000.

#### **SLUDGE**

The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment, including wastewater residuals. This term shall not include grit, screening, or grease and oil which are removed at the headworks of a facility.

#### **TREATMENT WORKS**

Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

#### **UTILITY WORKS**

Regulated activities providing for public services, including roads, water, sewer, electricity, gas, telephone, transportation and their associated maintenance activities. This term shall include the installation of detention and retention basins for the purpose of controlling stormwater.

#### **VERY SMALL QUANTITY GENERATOR**

Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

#### **WASTE OIL RETENTION FACILITY**

A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c. 21, § 52A.

#### **ZONE II**

The delineated recharge area to a public drinking water well as approved by MassDEP and defined under the Massachusetts Drinking Water Regulations, 310 CMR 22.00.

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**8.7.4.8.6.4.** Establishment and delineation of Groundwater Protection Overlay District. For the purposes of this bylaw, there is hereby established within the Town of Middleton, a certain groundwater protection area consisting of aquifers or recharge areas. This area is delineated on the Middleton Zoning Map and is based on the MassDEP Wellhead Protection Areas (Zone II) layer which is maintained in a MassDEP Enterprise Geodatabase as a polygon feature class named [ZONE2\_POLY] and is hereby made part of the Groundwater Protection District Bylaw and is on file in the office of the Town Clerk.

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8.7.5-8.6.5. Permitted uses. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. All uses permitted in the underlying zoning district and not specifically prohibited hereby are permitted within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained.

8.7.6-8.6.6. Prohibited uses. The following land uses and activities are prohibited unless designed in accordance with the specified performance standards:

1. Landfills and open dumps;
2. Landfills receiving only wastewater residuals and/or septage, including those approved by MassDEP pursuant to MGL c. 21, § 26 through § 53, MGL c. 111, § 17, and MGL c. 83, § 6 and § 7;
3. Automobile graveyards and junkyards as defined in MGL c. 140B, § 1;
4. Stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
5. Petroleum, fuel oil, and heating oil bulk stations and terminals, including, but not limited to, those listed under North American Industry Classification System (NAICS) Codes 424710 and 454311, except for liquefied petroleum gas.
6. Non-sanitary wastewater discharges from industrial and commercial facilities, except for:
  - a. Replacement or repair of an existing system that will not result in a design capacity greater than the existing system;
  - b. Treatment works approved by MassDEP designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and
  - c. Publicly owned treatment works.
7. Facilities that generate, treat, store, or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.000, except for:
  - a. Very small quantity generators as defined under 310 CMR 30.000;
  - b. Household hazardous waste centers and events under 310 CMR 30.390;
  - c. Waste oil retention facilities required by MGL c. 21, § 52A;
  - d. Treatment works approved by MassDEP for the treatment of contaminated waters.
8. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
9. Storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
10. Storage of commercial fertilizers unless such storage is within a structure designed to prevent

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the generation and escape of contaminated runoff or leachate;

11. Storage of animal manure per [310 CMR 22.21(2)(b)(4)], unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
12. Storage of liquid hazardous materials and/or liquid petroleum products unless such storage is above ground level and on an impervious surface and either:

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- a. In container(s) or above ground tank(s) within a building; or
- b. Outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either: 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater; however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline, provided the replacement is performed in a manner consistent with state and local requirements;

13. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other mineral substances within four feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark and except for excavations for the construction of building foundations, roads, utility works or wetland restoration work conducted in accordance with a valid order of condition issued pursuant to MGL c. 131, § 40; and
14. Land uses that result in rendering impervious any portion of any lot or parcel located within the GWPOD more than 15% or 2,500 square feet of such area located within such GWPOD, whichever is greater; unless in full compliance with the requirements of the Middleton Stormwater Management Bylaw, Chapter **204**, Article **I**, of the Town of Middleton General Bylaws.

**8.7.7.8.6.7.** Nonconforming uses and structures. The Groundwater Protection Overlay District Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure shall be permitted unless authorized in accordance with Section **3.3**, Nonconforming Uses and Structures, of the bylaw.

**8.7.8.8.6.8.** Enforcement. Written notice of any violations of this bylaw shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Appeals, Conservation Commission, Department of Public Works, Fire Department, and Board of Health. The cost of containment, clean-up, or other action of compliance shall be borne by the owner/operator of the premises.

**8.7.9.8.6.9.** Severability. If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of this bylaw.

## SECTION 9.0. Administration and Procedures

### 9.1. Building permit.

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9.1.1. Building Commissioner. The provisions of these bylaws shall be administered and enforced by the Building Commissioner appointed by the Selectmen under the provisions of the State Building Code as well as Massachusetts General Laws and bylaws of the Town of Middleton.

9.1.2. Interpretation. On any interpretation question, the Building Commissioner or any other officer or officers administering these provisions shall consult the Planning Board and, in interpretations involving the Watershed Protection District, the Conservation Commission. The Board of Health

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shall be consulted when interpretations involve Watershed Protection Districts. These boards shall be notified of any interpretation in writing and within five days of that interpretation. It shall be the duty and obligation of the person or entity seeking the interpretation and owner of the land in question to ensure that the above-referenced boards have been so notified.

[Amended 5-12-2015 ATM by Art. 38]

9.1.3. Building permit required. It shall be unlawful to erect, alter, reconstruct or relocate any structure, or to institute a new or altered use of land or structure, without first obtaining a building permit from the Building Commissioner.

1. Application. Any application for a new or altered use of land or structure shall be accompanied by a specific reference to the subject lot or group of lots in the same ownership as recorded in the Registry of Deeds, or by copies of a plan of the proposed lot, drawn to scale, showing the entire recorded ownership, all existing structures, all abutting streets, and the exact area and boundaries of the parcel to be assigned to the subject use. Said application shall not be considered complete unless all information and approvals required by the Building Department and the State Building Code have been provided.
2. Approval. The Building Commissioner shall approve no applications of any kind or plans or specifications or intended uses which are not in all respects in conformity with these bylaws, unless the applicant has secured a special permit, variance, or comprehensive permit from the Board of Appeals.

9.1.4. Occupancy permit. No building erected, altered, or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit, signed by the Building Commissioner. Such permit shall not be issued until the building and its uses, and the use incident thereto, comply in all respects with these bylaws or with a decision of the Board of Appeals taken thereunder.

9.1.5. Fees. A fee for services shall be charged. All fees shall be set by the jurisdiction and schedules shall be available at the office of the Building Commissioner.

9.1.6. Appeals. Any person aggrieved by his inability to obtain a permit, by the refusal of the Building Commissioner to issue a permit, or by any order, decision or failure to act of the Building Commissioner, or any officer or board of the Town, may appeal to the Board of Appeals in the manner provided by G.L. c. 40A, §§ 7, 8 and 15.

## 9.2. Enforcement.

9.2.1. Building Commissioner. The Building Commissioner shall institute proceedings to enforce these bylaws and to enjoin the construction, alteration, enlargement, reconstruction or use of any building or the use of any premises in violation of these bylaws. The Chief of Police upon application of the Building Commissioner, shall cause a complaint to be made before the proper court for any violation of these bylaws. The use of one remedy shall not preclude a resort to another remedy for the same violation.

9.2.2. Criminal complaint. Whoever violates any provision of these Zoning bylaws may be penalized by complaint brought in a District Court of competent jurisdiction. Except as may be provided by law and as the District Court may see fit to impose, the maximum penalty for each violation, or offense, brought in such manner shall be \$300. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense, beginning with the date of the receipt of the notice and

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order issued pursuant to these Zoning bylaws.

9.2.3. Noncriminal disposition. In addition to the procedures for enforcement as described above, the provisions of these Zoning bylaws may also be enforced by noncriminal complaint pursuant to the provisions of G.L. c. 40, § 21D.

1. The Building Commissioner or Assistant Building Commissioner, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of

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the Salem District Court at any time during office hours, not later than 21 days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice should be signed by the Building Commissioner or Assistant Building Commissioner and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received. The notice shall be served and all the procedures followed as set out in said G.L. c. 40, § 21D, as amended. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense, beginning with the date of receipt of the notice and order issued pursuant to these Zoning bylaws.

2. In noncriminal dispositions, the penalty for violation of any provision of these Zoning bylaws shall be as follows:

First offense: written warning.

Second offense: \$100.

Third offense: \$200.

Fourth offense and subsequent offenses: \$300.

## 9.3. Board of Appeals.

9.3.1. Establishment. There shall be a Board of Appeals under these bylaws which shall be appointed by the Select Board~~Board of Selectmen~~. The Select Board may appoint two associate members to the Board of Appeals.

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

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.
2. To hear and decide appeals or petitions for variances from the terms of this bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, § 10. The Board of Appeals may grant use variances.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, §§ 8 and 15.
4. To hear and decide comprehensive permits for construction of low- or moderate-income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, §§ 20 - 23.

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

9.3.4. Conditions. The Board of Appeals may impose reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as it may deem necessary to serve the purposes of this bylaw.

9.3.5. Fees. The Board of Appeals may adopt reasonable administrative fees and technical review fees

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for petitions for variances, administrative appeals, and applications for comprehensive permits.

## 9.4. Special permits.

9.4.1. Special permit granting authority. Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority.

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9.4.2. Criteria. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of each of the following:

1. Community needs which are served by the proposal;
2. Traffic and pedestrian flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character;
5. Impacts on the natural environment; and
6. Potential economic and fiscal impact, including impact on Town services, tax base, and employment.

9.4.3. Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the special permit granting authority.

9.4.4. Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this bylaw.

9.4.5. Plans. Unless otherwise provided by the rule or regulation of the special permit granting authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section **9.5**, herein.

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

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

9.4.8. Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24-36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, § 17, from the grant thereof) with the Town Clerk.

9.4.8-9.4.9. Activities requiring a special permit. Uses requiring a Special Permit are documented in the Table of Use Regulations. Additional activities requiring a special permit discussed elsewhere in these Zoning Bylaws are summarized in the Table of Activities Requiring a Special Permit, included as an attachment to this chapter.

## 9.5. Site plan review.

9.5.1. Purpose. For the purpose of administering the provisions of these bylaws relating to parking and loading spaces, to ensure the most advantageous use of all properties within the same district, and for the reasonable protection of the legitimate interests of adjoining property owners, no permit shall

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be issued until a site plan, prepared by a professional architect, engineer or landscape architect, has been submitted to the Board of Appeals for a public hearing and approved thereafter.

9.5.2. Applicability. The following types of activities and uses require site plan review by the Zoning Board of Appeals:

1. Garden apartments in a residence district;
2. Any new buildings or structures in a Business District, Light Industrial District, Institutional Overlay District, or Interstate Highway Business District; or
3. An addition to or alteration of an existing building for commercial or industrial use.
4. Childcare or adult day care facility (not including family day care operating in a private residence).
5. Any changes to commercial uses in residentially zoned districts
6. Any educational use, as defined under G.L. c. 40A, §3.
7. Accessory Dwelling Units, as described in Section 7.5.5 of this Zoning Bylaw.
8. Any other use or structure for which Site Plan Approval is prescribed under these Zoning Bylaws.

9.5.3. Modification; merger.

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1. Any substantial modification of an approved site plan shall require the approval of the Board of Appeals after public hearing.
2. Where a use subject to site plan approval also requires the grant of a special permit by the Board of Appeals, the provisions of this Section **9.5** shall be construed to require the submittal of the information set forth below. The special permit shall govern the decision of the Board. No separate application shall be filed for site plan approval.

9.5.4. Preparation of plans. Site plans shall be submitted in accordance with the rules and regulations of the Board of Appeals. Site plans shall be submitted on twenty-four-inch-by-thirty-six-inch sheets. Plans shall be prepared by a registered professional engineer, registered land surveyor, architect, or landscape architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1 inch = 20 feet.

1. Applicants are invited to submit a pre-application sketch of the proposed project to the Board and to schedule a comment period at a regular meeting of the Board.

9.5.5. Contents of plan. The contents of the site plan are as follows:

1. Five separate plans prepared at a scale of one inch equals 20 feet or such other scale as may be approved by the Board. The plans are as follows:
  - a. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one inch equals 100 feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries or such other distance as may be approved or required by the Board.
  - b. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.
  - c. Utility and landscaping plan, which shall include all facilities for refuse and sewage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
  - d. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
  - e. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.
2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.
3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or

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maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this bylaw.

4. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town's subdivision regulations.
5. The Board may require narrative assessments of the on-site and off-site impacts of the proposed development.

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6. Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

6.7. The Board may adopt regulations requiring additional information consistent with this Bylaw, and may require filing via electronic means.

9.5.6. Waiver of technical compliance. The Board may, upon written request of the applicant, waive any of the technical requirements of this section where the project involves relatively simple development plans or constitutes a minor site plan.

9.5.7. Procedures; constructive approval. The Board of Appeals shall hold a public hearing in conjunction with the application for site plan approval, in accordance with the procedures of G.L. c. 40A, §§ 9 and 11. The failure of the Board of Appeals to file its decision with the Town Clerk within 90 days after the close of the public hearing shall constitute approval of such use or construction.

1. Extension of time. The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.
2. The Board shall prepare and file a written decision regarding site plan approval with the Town Clerk.

9.5.8. Review by other boards. The Board of Appeals shall refer all site plans to the Planning Board and to the Industrial and Commercial Design Review Committee for their advisory review and recommendations. The Planning Board and the Design Review Committee shall have 45 days to render such recommendations. Failure to respond within such period shall be deemed a lack of opposition thereto.

1. The Planning Board shall make recommendations with regard to the provision of water, wastewater disposal, stormwater management, roadway and access design and construction, and the provision of other utilities.
2. The Design Review Committee shall make recommendations in accordance with Section 9.6, herein.

2.9.5.9. Review by Affordable Housing Trust. For all Multifamily Housing and Flexible Development projects, the Board of Appeals shall refer site plans to the Affordable Housing Trust for their advisory review and recommendations. The Affordable Housing Trust shall have 45 days to render such recommendations. Failure to respond within such period shall be deemed a lack of opposition thereto. The Affordable Housing Trust shall make recommendations with regard to Affordable Housing Units included in the project, including the number, affordability levels, unit type, and location of such units.

9.5.9.9.5.10. Regulations. The Board of Appeals may from time to time adopt rules prescribing reasonable regulations under this section.

9.5.10.9.5.11. Fee. An application for site plan approval shall be accompanied by a fee, as set forth in the Board's Rules and Regulations.

9.5.11.9.5.12. Approval. Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives.

1. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of these bylaws;

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2. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
3. Adequacy as to the arrangement and, where not herein specified, the number of parking and loading spaces in relation to the proposed uses of the premises;
4. Arrangement and appearance of proposed buildings, structures, freestanding and attached signs, screening and landscaping;
5. Adequacy of the methods on the site for waste disposal, surface and subsurface drainage, and lighting.

5.6. Where a lot in the Business or Light Industrial District abuts a Residential District, compliance with requirements for setbacks and screening.

9.5.12-9.5.13. Lapse. Site plan approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.  
[Amended 5-12-2009 ATM by Art. 34]

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9.5.13-9.5.14. Appeal. Any decision of the Board pursuant to this section shall be appealed in accordance with G.L. c. 40A, § 17 to a court of competent jurisdiction.

## 9.6. Industrial and Commercial Design Review Committee.

9.6.1. Establishment. In order to promote harmony in architectural, landscape and sign treatment and design; avoid incongruous or inappropriate architectural and landscape treatment and design; and to avoid arrangement of buildings detrimental to the property values of adjoining owners and the community an Industrial and Commercial Design Review Committee is established.

1. The Committee shall be appointed by the Board of Selectmen and shall consist of three members and two alternate members. One member shall be a registered architect or landscape architect, if available. The other members must be residents of the Town of Middleton. One member shall be initially appointed for a one-year term, one member shall be initially appointed for a two-year term, and one member shall be initially appointed for a three-year term. After the third year, all members shall be appointed for three-year terms, with one member to be appointed or reappointed each year.

[Amended 5-13-2014 ATM by Art. 7]

9.6.2. Duties; powers.

1. The duties of the Industrial and Commercial Design Review Committee are to review all plans for new commercial and industrial development prior to consideration by the Board of Appeals and to review all plans for exterior and site changes of existing commercial and industrial buildings that require action by the Board of Appeals.
2. The Board of Appeals shall have the discretion to accept and/or reject, in part or in whole, the recommendations of the Industrial and Commercial Design Review Committee. The powers of the Committee are advisory only.

9.6.3. Subject matter jurisdiction. The following subjects shall be considered by the Industrial and Commercial Design Review Committee in its review of plans and preparation of recommendations for change, acceptance or rejection:

1. General appearance of the proposed buildings.
2. General appearance of the proposed site landscaping.
3. Walkways and pedestrian and bicycle circulation.
4. Building massing: the relation between the building size and siting, and the lot size.

9.6.4. Attendance. At least one member of the Industrial and Commercial Design Review Committee is encouraged to represent the Committee at regular meetings of the Board of Appeals when a commercial or industrial development is under consideration.

## SECTION 10.0. Definitions

### 10.1. Definitions.

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In this bylaw, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the bylaw. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by

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the words "or intended, arranged, or designed to be used or occupied." The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this bylaw.

#### **ACCESSORY USE OR BUILDING**

A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory.

#### **ACTIVE RECREATION**

Activities which require some disruption of the natural configuration of the land, such as ball fields, tennis courts, and swimming pools.

#### **ADULT BOOKSTORE**

An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, § 31.

[Added 5-11-2010 ATM by Art. 29]

#### **ADULT CABARET**

A nightclub, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity, or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement as defined in G.L. c. 272, § 31.

[Added 5-11-2010 ATM by Art. 29]

#### **ADULT DAY-CARE FACILITY**

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

#### **ADULT MOTION PICTURE THEATER**

An enclosed building or any portion thereof used for presenting material (motion picture films, video cassettes, cable television, slides or any other such visual media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, § 31.

[Added 5-11-2010 ATM by Art. 29]

#### **ADULT PARAPHERNALIA STORE**

An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. c. 272, § 31.

[Added 5-11-2010 ATM by Art. 29]

#### **ADULT USE or ADULT ENTERTAINMENT ENTERPRISES**

Adult bookstores, adult cabarets, adult motion-picture theaters, adult paraphernalia stores, and adult video stores as defined in this bylaw.

[Added 5-11-2010 ATM by Art. 29]

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**ADULT VIDEO STORE**

An establishment having a substantial or significant portion of its stock in trade for-sale-or-rent motion picture films, video cassettes, and similar audio/visual media, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, § 31.

[Added 5-11-2010 ATM by Art. 29]

**ATTACHED DWELLING**

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A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire-resistant walls. Attached dwellings are also referred to as "townhouse dwellings" or "row houses."

#### **ATTACHED DWELLING COMPLEX**

A group of three or more attached dwellings located on contiguous lots or on a single or commonly owned lot. Attached dwelling complexes are usually comprised of units for sale as individual townhouse dwellings (with their own lots) or as condominium units.

#### **BUFFER SCREEN**

A strip of land intended to buffer uses on one lot from uses on an adjoining lot. Such strip shall include natural or planted vegetation sufficient to provide a visual and noise buffer satisfactory to the reviewing authority.

#### **BUILDING**

A structure having a roof or cover and forming a shelter for persons, animals or property.

#### **BUILDING HEIGHT**

Building height shall be measured as the vertical distance from the average elevation of the finished lot grade adjoining such building to the highest point of the roof in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.

#### **BUILDING OR OTHER INDEPENDENT SUPPORT STRUCTURE**

Buildings or other structures such as water towers, steeples, utility poles and other creative locations.

#### **BUSINESS OR PROFESSIONAL OFFICE**

A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

#### **CAMP**

Private organized camp and camps of educational and charitable institutions (but not including a correctional institution).

#### **CHILD CARE FACILITY**

A day-care center or school age child care program, as those terms are defined in G.L. c. 28A, § 9.

#### **COMMERCIAL GREENHOUSE OR NURSERY**

On a parcel of less than five acres, establishment growing and selling plants or nursery stock at retail.

#### **COMMERCIAL RECREATIONAL USE, INDOORS**

Commercial amusement enterprises such as bowling, dance hall, theater, clock golf, skating, and similar enterprises, provided that if any portion of a building so used or of any parking area accessory thereto is less than 200 feet from the boundary of a residential district, the Board shall impose such limitations on the size or capacity of the establishment and its hours of operation as are, in its judgment, necessary to protect said residential district.

#### **COMMERCIAL RECREATIONAL USE, OUTDOORS**

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Boat livery, ski ground or golf course, but not including a golf driving range or miniature golf course.

**CONTRACTOR'S YARD**

Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

**DRIVE-IN RETAIL ESTABLISHMENT**

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A business or commercial establishment dispensing food, beverages or goods from inside a building to persons standing outside or seated in their automobiles.

## **DWELLING**

A building, or part thereof, designed, erected or used for continuous and permanent human habitation.

### **A. SINGLE-FAMILY DWELLING**

A building containing one dwelling unit.

### **B. TWO-FAMILY DWELLING**

A structure on a single lot containing two dwelling units. This definition includes a duplex dwelling.

### **C. MULTIFAMILY DWELLING**

A building designed or intended or used as the home of three or more families, each in a separate dwelling unit, living independently of each other and who have a common right in halls and stairways. This definition is intended to include building types commonly known as "garden apartments," "mid-rise apartments" and "high-rise apartments."

## **DWELLING UNIT**

One or more rooms designed, occupied or intended for occupancy as separate living quarters with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family.

## **EDUCATIONAL USE, NONEXEMPT**

Educational facilities not exempted from regulation by G.L. c. 40A, § 3.

## **ESSENTIAL SERVICES**

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

## **FAMILY**

Any number of persons living together as a single economic unit and using a single cooking facilities.

## **FAMILY DAY CARE, SMALL AND LARGE**

Any private residence operating a facility as defined in G.L. c. 28A, § 9.

## **FARM, COMMERCIAL**

On a parcel of less than five acres, the growing and storing of fruits, berries, vegetables, hay fodder and ensilage; orchards; wood lots and forestry; and greenhouse, nursery and similar activities in the field of agriculture; the raising and keeping of farm animals and poultry other than for the use of residents on the property, with barns, stables and similar buildings not less than 50 feet from the nearest lot line, and subject to the regulations of the Board of Health; and accessory uses customarily incidental to such agricultural uses and including but not limited to storage of farm

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equipment not less than 50 feet from any lot line and employment of persons for agricultural activities.

#### **FARM STAND, NONEXEMPT**

Sales room or roadside stand for display or sale of farm produce raised on the premises or of articles manufactured on the premises from such products, provided that any such structure is set back at least 30 feet from the street line and provided that space for customers' cars is available off

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the right-of-way of the street and so arranged as not to permit backing of automobiles onto any public or traveled way.

#### **FUNERAL HOME**

Facility for the conducting of funerals and related activities such as embalming.

#### **GARDEN APARTMENT**

A multifamily dwelling of not more than three habitable stories in height containing not fewer than three dwelling units.

#### **GENERAL SERVICE ESTABLISHMENT**

Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, builder, carpenter, caterer, electrician, lawn mower service person, mason, painter, plumber or roofer.

#### **GUYED LATTICE ANTENNA STRUCTURE**

A steel lattice, guy-wire-supported structure, so designed to support fixtures which hold one or more antennas and related equipment for wireless communication transmission.

#### **HIGH-RISE APARTMENT**

A multifamily dwelling of more than six stories in height.

#### **HOME OCCUPATION**

An accessory use carried on entirely within a dwelling unit, by the occupant, which is incidental and subordinate to the dwelling use.

#### **HOSPITAL**

An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, and other physical or mental conditions and including, as an integral part of the institution, related facilities, including laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

#### **HOTEL, MOTEL OR LODGING HOME**

A building, or part thereof, or a group of buildings on a single lot, where space is used for sleeping by more than three persons as paying guests, regular or transient.

#### **INFORMAL RECREATION**

Activities which require the minimum amount of disruption of the natural configuration of the land, such as walking, jogging, picnicking, and cross-country skiing.

#### **INDUSTRIAL PARK**

A group of individual buildings for light industry and related activities in an arrangement for access, loading and parking facilities in accordance with a site plan hereunder for an area in single ownership.

#### **JUNKYARD OR AUTOMOBILE GRAVEYARD**

The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

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**KENNEL**

A commercial establishment in which more than three dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold.

**LATTICE ANTENNA STRUCTURE**

A steel lattice, self-supporting structure with no guy wire support, so designed to support fixtures which hold one or more antennas and related equipment for wireless communication transmission.

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**LIGHT MANUFACTURING**

Fabrication, assembly, processing, finishing work or packaging.

**LOADING ZONE**

Space for parking of trucks for delivery or loading of goods.

**LOT**

The whole area of continuous land under single ownership, whether by one person or entity or by several, whether the tenure is joint, in common or by the entirety.

**LOT FRONTRAGE**

Lot frontage is the portion of a lot which fronts on a street or way accepted by the Town, a street or way used as a public way, or a street or way which the Town Clerk certifies is maintained and used as a public way, or a street or way shown on a plan approved and endorsed by the Planning Board in accordance with the Subdivision Control Law.<sup>[1]</sup> Lot frontage shall be measured along the length of the lot line that is coterminous with the above street or way line.

**LOT WIDTH**

See section 4.1.2.1.

**MARIJUANA-INFUSED PRODUCT (MIP)**

A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by a registered marijuana dispensary (RMD), shall not be considered a food or a drug as defined in M.G.L. c. 94, § 1.

[Added 5-12-2015 ATM by Art. 39]

**MEDICAL CENTER OR CLINIC**

A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

**MEDICAL MARIJUANA TREATMENT CENTER**

A not-for-profit entity registered under 105 CMR 725.100, to be known as a registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products (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.

[Added 5-12-2015 ATM by Art. 39]

**MID-RISE APARTMENT**

A multifamily dwelling of more than three stories but not more than six stories in height.

**MONOPOLE ANTENNA STRUCTURE**

A self-supporting pole-type structure with no guy wire support, tapering from base to top, and so designed to support fixtures which hold one or more antennas and related equipment for wireless telecommunication transmission.

**MOTOR VEHICLE BODY REPAIR**

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An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

**MOTOR VEHICLE GENERAL REPAIRS**

Premises for the servicing and repair of autos, but not to include fuel sales.

**MOTOR VEHICLE LIGHT SERVICE**

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Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

#### **MUNICIPAL FACILITIES**

Facilities owned or operated by the Town of Middleton.

#### **NURSING OR CONVALESCENT HOME**

Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

#### **OPEN AREA**

A yard area which is unbuilt upon but which may include sidewalks, swimming pools, terraced areas, patios, tennis courts, play courts, playground facilities or similar facilities and shall not have streets, driveways, or off-street parking or loading areas.

#### **OPEN SPACE LAND**

Land which is open to the sky, unbuilt upon, free of all traffic by automobiles and other motorized vehicles, and contains no paved areas, except as incidental to active recreation uses.

#### **PERSONAL SERVICE ESTABLISHMENT**

A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

#### **PLANNING BOARD**

The Planning Board of the Town of Middleton established under G.L. c. 41.

#### **PREMISES**

A lot together with all buildings, structures and uses thereon.<sup>[2]</sup>

#### **RESTAURANT**

A commercial establishment where food and beverages are prepared, served, and consumed. Take-out and delivery are allowed.

~~Place for serving food, provided that no mechanical, computerized or live entertainment is regularly furnished except where authorized by the Board of Appeals. The serving of food or drink to persons seated in motor vehicles, or on foot, outside of any building or through openings in the exterior walls of a building shall not be permitted.~~

#### **RESTAURANT WITH ENTERTAINMENT**

Place for serving food, with mechanical, computerized or live entertainment regularly furnished as authorized by the Board of Appeals. The serving of food or drink to persons seated in motor vehicles, or on foot, outside of any building or through openings in the exterior walls of a building shall not be permitted.

#### **RESTAURANT, FAST-FOOD**

~~An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.~~

#### **RETAIL**

A facility selling goods. Specific types of retail uses may also be set forth in the Table of Use

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Regulations.<sup>[3]</sup>

## **ROOMING OR BOARDING HOUSE**

A dwelling in which the family resident therein provides eating and/or sleeping accommodations for not more than two paying guests who use only the identical cooking facilities located in one location, used by the family residents.

[Added 5-14-2013 ATM by Art. 6]

## **STREET**

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A public way or a way which the Clerk of the Town of Middleton certifies is maintained and used as a public way, or a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law,<sup>[4]</sup> or a way in existence when the Subdivision Control Law became effective in the Town of Middleton on March 15, 1955, having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the building erected or to be erected thereon.

#### **STREET LINE**

The side line of a street or way, as determined by deeds and plans recorded at the Essex South Registry of Deeds, or a building line laid out under G.L. c. 82, § 37. Where no line is thus legally established, then a line parallel with and 25 feet distant from the center line of a traveled way.

#### **STORY**

Each story of a building shall be deemed to be the portion of a building between the upper surface of any floor and the upper surface of the floor next above. A basement having more than 1/2 of its height above the average elevation of the finished grade adjoining the building shall be considered to be a story for the purposes of this definition. Any part of a building between the top floor and the roof shall be deemed a half story.

#### **STRUCTURE**

Any construction, erection, assemblage or other combination of materials in a fixed location to give support or shelter.

#### **TRADE SHOP**

Shop of carpenter, painter, printer or similar craftsman, provided that no more than five persons are employed.

#### **TRAILER OR MOBILE HOME**

Any structure or vehicle designed or adapted for human habitation, with or without a permanent foundation, which is capable of being moved from one place to another whether by being towed or by being transported.

#### **UNMANNED EQUIPMENT BUILDING**

An accessory building housing electronic and communication equipment as an associated and permitted part of a wireless communication system.

#### **USABLE OPEN SPACE**

Land which is sufficiently well drained and has a natural grade (less than 11%) suitable to permit its use for informal recreation. A maximum of 10% of usable open space may be used for active recreation and may have a minimum amount of paving incidental to it.

#### **VETERINARY CLINIC OR HOSPITAL**

A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the clinic or hospital use.

#### **WIRELESS COMMUNICATION SYSTEMS**

Antenna support structures for mobile and land telecommunication facilities, including whip antennas, panel antennas, microwave dishes and receive-only satellite dishes, cell enhances and related equipment for wireless transmissions from a sender to one or more receivers, such as for

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mobile cellular telephones or mobile radio systems facilities. This definition is inclusive of the placement of the above-referenced equipment on a monopole tower, a steel lattice tower, guyed steel lattice tower and any communication tower which does or does not utilize guy wire support in addition to existing buildings or other independent support structures. This system shall also allow as one of its components an unmanned equipment shelter.

**YARD**

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A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

**YARD, FRONT**

A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

**YARD, REAR**

A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

**YARD, SIDE**

A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

- [1] *Editor's Note: See MGL c. 41, §§ 81K to 81GG.*
- [2] *Editor's Note: The former definition of "private garage," which immediately followed this definition, was repealed 5-14-2013 ATM by Art. 6.*
- [3] *Editor's Note: The Table of Use Regulations is included at the end of this chapter.*
- [4] *Editor's Note: See MGL c. 41, §§ 81K to 81GG.*

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