Town of Marion

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BYLAWS
TOWN
OF
MARION
MASSACHUSETTS

ARTICLE I General Provisions

SECTION 1 TITLE

The following provisions shall constitute the Bylaws of the Town of Marion, and acceptance and approval of these Bylaws shall specifically repeal any and all Bylaws in force prior to said acceptance and approval.

SECTION 2 EFFECT OF REPEAL

The repeal of a Bylaw shall not thereby have the effect of reviving a Bylaw theretofore repealed.

SECTION 3 MANNER OF AMENDMENT AND REPEAL

Any and all of these Bylaws may be repealed or amended or other Bylaws may be adopted at any town meeting, an article or articles for that purpose having been inserted in the warrant for such meeting.

SECTION 4 PENALTY

Whoever violates any of the provisions of these Bylaws whereby any act or thing enjoined or prohibited shall, unless other provision is made, forfeit and pay a fine in the amount of one hundred dollars for each offense. Each day on which a violation exists shall be deemed a separate violation.

(Amended, ATM, Art. 25, April 22, 1996)

SECTION 5 DENIAL FOR NON-PAYMENT

The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes,

fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be issued or renewed until the licensing authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitation to the license or permit and that the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

The Board of Selectmen may waive such denial, suspension or revocation if it finds there is not direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Section I of Chapter 268A in the business or activity conducted in or on said property.

This section shall not apply to the following licenses and permits: open burning (Section 13 of Chapter 48); bicycle permits (Section 11A of Chapter 85); sales of articles for charitable purposes (Section 33 of Chapter 101); children work permits (Section 69 of Chapter 149); clubs, associations dispensing food or beverage licenses (Section 21E of Chapter 140); fishing, hunting, trapping license (Section 12 of Chapter 131); marriage licenses (Section 28 of Chapter 207); and theatrical events, public exhibition permits (Section 181 of Chapter 140).

(*Added, ATM, Art. 23, May 19, 2008)*

ARTICLE II Town Meetings

SECTION 1 ANNUAL MEETING

The Annual Town Meeting shall be held on the third Monday in May.

(Amended, ATM, Art. 19, April 26, 2005)

SECTION 2 ELECTION OF OFFICERS

The election of officers designated on the official ballot and the voting upon such questions or matters as may be properly submitted for vote on the official ballot, shall take place on the Friday following the Monday commencement of the Annual Town Meeting each year.

(Amended, ATM, Art. 19, May 21, 2007)

SECTION 3 NOTICE

All warrants of Town Meeting shall be served by posting up an attested copy thereof in not less than three public places in the Town, fourteen days, at least, before the time of holding the annual or any special Town Meeting.

A copy of the warrant shall be sent to all voters at least five days before the time of holding any Special Town Meeting.

SECTION 4 QUORUM

The number of voters necessary to constitute a quorum at any town meeting shall be fifty provided, however, that a number of less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted exclusively to the election of officers by ballot.

SECTION 5 AVAILABILITY OF WARRANT & FINANCE COMMITTEE REPORT

Copies of the warrant and of the report of the finance committee thereon shall be available to the voters at all Town Meetings.

SECTION 6 REGULATIONS OF ADMISSION

The Moderator shall appoint such tellers and such clerks as he may require for his assistance and the Moderator may designate a section of floor space at each Town Meeting where he shall allow only registered voters to enter, the voting list being used.

In counting the number of votes cast, the tellers shall count only the voters of persons in the space designated for voters, if such space is designated as aforesaid.

SECTION 7 ORDER OF ACTION ON ARTICLES

Articles of the warrant shall be acted upon in the order in which they appear in the warrant unless otherwise determined by a vote of the meeting, except that no article to appropriate sum in excess of one thousand dollars shall be introduced after 10:00 p.m.

SECTION 8 MOTIONS IN WRITING

All motions having to do with the expenditure of money shall be presented in writing. Other motions shall be in writing, if so directed by the Moderator.

SECTION 9 PRIORITY OF MOTIONS

When a question is before the meeting, the following motions, namely: to adjourn, to lay on the table, for the previous question, to postpone to a certain time, to recommit, or refer, to amend, to postpone indefinitely, shall be received and shall have precedence in the foregoing order, and the first three shall be decided without debate.

SECTION 10 TWO-THIRDS VOTE

On matters requiring a two-thirds vote by statute, a count need not be taken unless the vote so declared by the Moderator is immediately questioned by seven or more voters, as provided in M.G.L., c. 39, s. 15.

(Amended, ATM, Art. 3, April 28, 1997)

SECTION 11 SUITABLE FACILITY

The Warrant for an Annual or Special Town Meeting may specify that the meeting is to be held in a suitable auditorium or other facility in any of the contiguous towns. Town Meeting may also vote to adjourn to such a facility if it deems appropriate, as provided in Section 1 of Chapter 448 of the Acts of 1996.

(Amended, ATM, Art. 3, April 28, 1997)

ARTICLE III Town Officers

SECTION 1 TOWN CLERK

It shall be the duty of the Town Clerk to immediately after every Town Meeting, notify in writing all members of committees who may be elected or appointed at such meeting, stating the business upon which they are to act and the names of the persons composing

the committees, and also to notify all officers, boards, and committees of all votes passed at such meeting in any way affecting them.

SECTION 2 FINANCE COMMITTEE

The Finance Committee shall have all the powers and duties as set forth in the General Laws, and shall consist of five regular members and up to three associate members. Associate members may vote in the temporary absence of a regular member on the regular business of the Finance Committee but may serve and participate on any subcommittees (e.g., Capital Planning Subcommittee) of the Finance Committee as fully as regular members. Appointments to the same shall be made by a committee consisting of the Chairman of the Board of Selectmen, the Moderator and the Chairman of the School Committee. Appointments shall be made for a period of three years and shall be so made that not more than two members shall have their terms expire in any one year. In case of vacancy, a member shall be appointed to fill the unexpired term.

The Finance Committee shall consider all articles in the warrant previously to any Town Meeting regularly called and shall file a report of its recommendations with the Selectmen at least seven days before each meeting. No amount shall be transferred from the Reserve Fund to any appropriation, which shall require additional funds to complete the fiscal year unless approved by the finance committee.

(Amended, ATM, Art. 16, May 16, 2006)

SECTION 3 FEES PAYABLE TO THE TREASURY

All fees received by the tax collector and treasurer by virtue of his or her office shall be paid into the town treasury.

(Amended, ATM, Art. 18, April 28, 1992)

SECTION 4

The terms and conditions of employment of non-union employees of the Town shall be established, and may from time to time be changed, by the Board of Selectmen as that Board deems fair and equitable, and as otherwise subject to applicable law, but no such employee shall be paid salary and compensation in excess of the amount so appropriated by Town Meeting.

(Amended, ATM, Art. 39, April 29, 1997)

ARTICLE IV Town Reports

SECTION 1 DISTRIBUTION

The fiscal year shall begin on July 1 and close on the day of June 30. An annual report of all officers, boards and committees having charge of the expenditure of money, referring

however, to the report of the Town Accountant for statements in detail of receipts and expenditures, shall be submitted and the Selectmen, who shall cause a copy thereof to be printed and made available in the Town House at least five days before the Annual Town Meeting.

(Amended, ATM, Art. 23, April 26, 1994)

ARTICLE V Town Beaches

SECTION 1

No person shall expose himself or herself without a bathing suit on any beach or in any pond, stream or waters, to the view of the spectators from any street, public grounds, dwelling house, railroad, boat, steamboat or vessel. And no person shall appear in any public place, except a bathing beach, in a bathing suit, unless covered by a wrap concealing the bathing suit.

SECTION 2

No person shall robe or disrobe in a vehicle of any description on any street of the Town, and no person shall obstruct the view of the interior of any vehicle, except a trailer, by curtains, paper, paint or cloth of any kind, while on any street or property of the town.

SECTION 3

No person or persons shall be allowed to sleep, gather, or congregate on any beaches within the Town of Marion between the hours of 10:00 p.m. and 6:00 a.m. This Bylaw shall not apply to any person, or persons, who sleep, gather or congregate on a beach which is not owned by the town, county or state, with the expressed permission of the owner or person, or persons who are lawfully in possession of said beach. Any person violating this bylaw shall be punished by a fine of not more than fifty dollars, and any person who remains on any beaches within the Town of Marion, in willful violation of this Bylaw or ordinance, may be arrested without a warrant.

(Amended, ATM, Art. 13, March 2, 1970)

SECTION 4

It shall be unlawful for any person to consume alcoholic beverages and/or bring glassware to any beach owned by the Town of Marion.

(Amended, ATM, Art. 26, April 27, 1998)

ARTICLE VI

Wiring Inspector

(Chapter 143, Section 3, M.G.L. accepted by the Town, March 1940)

SECTION 1

The selectmen shall appoint a wiring inspector and an alternate wiring inspector each year in March, their terms to expire the following March 31.

SECTION 2

The Inspector of Wires, with the approval of the Selectmen, shall make rules and regulations, subject to the requirements of the General Laws, covering the installation of electric wires within the Town of Marion, and they shall be filed with the Town Clerk.

SECTION 3

Whoever proposed to install wires, conduits, apparatus, fixtures, or other appliances for carrying or using electricity for heat, light, or power purposes, within any building or connected to any building, shall notify the Inspector of Wires in writing before proceeding with the work.

ARTICLE VII Plumbing Rules

(Deleted, STM, Art. 4, June 18, 1969)

ARTICLE VIII Soil Removal

SECTION 1 GENERAL PROVISIONS

No person shall remove nor cause to be removed any soil, loam, sand, or gravel for commercial purposes from any land in the Town, not in public use, unless such removal is authorized by a permit issued by the Selectmen, except in conjunction with and for the purpose of construction of a building on a parcel and except for the continued operation on the same parcel of any existing sand or gravel or clay pit. No such permit shall be issued until the application therefore is filed with said board. Said board shall hold a public hearing on the application and the date and time of the public hearing thereon shall be advertised in a local newspaper seven days at least before the public hearing. Whoever violates any of the provisions of this bylaw shall, for the first offense, pay a fine

of fifty dollars, for the second offense, one hundred dollars; and for each subsequent offense two hundred dollars.

ARTICLE IX Minimum Requirements for Street Acceptability

No way shall be accepted by the Town unless it conforms to the following minimum specifications:

SECTION 1

Descriptive plan, grant of title and easements as required have been filed with the Selectmen.

SECTION 2

The land has been grubbed and cleared of all perishable material.

SECTION 3

The land has been graded to flow water to any existing drainage system, brook or other natural rain in each side of the proposed roadway and any drainage system required by the Planning Board has been inspected and approved by the Public Works Superintendent.

SECTION 4

The land has been cleared of boulders projecting above the subgrade level and subgrade has been inspected by the Public Works Superintendent.

SECTION 5

The effective length of the roadway has been graded to a maximum slope of 7%. If, in the opinion of the Superintendent of Public Works and the Planning Board, the topography is such that the 7% limit is not feasible, the gradient may be increased but in no case may it exceed 10%.

SECTION 6

The effective length and width of the roadway has been covered with a minimum of twelve inches of stabilized gravel to a point three inches below the finished grade shown on the profile with a transverse pitch from the centerline to the pavement edge of one

quarter inch per foot. All roadway and rounded areas of street intersections shall be finished with bituminous concrete, meeting current Massachusetts DPW specifications. Concrete to be applied in a two inch binder core and a subsequent one inch topcoat, both well rolled and compacted to maintain the pitch above noted.

SECTION 7

The width of the way conforms to the regulations of the Planning Board of the Town of Marion.

ARTICLE IX A Public Way Access Permits

A. Purpose. It is the purpose of this Bylaw to provide for the review of public way access permit applications to provide for predictable, timely and uniform procedures and public safety. These procedures apply to public way access permit application for:

1. New access to a public way.
2. Physical modification to existing accesses to a public way.
3. Use of new or existing access to serve the building or expansion of a facility that generates a substantial increase in, or impact on, traffic from properties that abut the public way.

B. Definitions. In this bylaw, the following terms shall have the meaning prescribed below.

1. "Modification" shall mean any alteration of the physical or traffic operational features of the access.
2. "Substantial increase or impact on traffic" shall mean that generated by a facility which meets or exceeds any of the following thresholds:
   a. Residential, including hotels, motels, lodging house and dormitories: ANY INCREASE TO THE EXISTING CERTIFICATE OF OCCUPANCY OF MORE THAN TWENTY FIVE PERSONS
   b. Non-residential: TWO HUNDRED FIFTY TRIPS PER DAY, AS DEFINED IN THE ITE TRIP GENERATION MANUAL 4TH EDITION.
   c. Non-residential: TWENTY FIVE NEW PARKING SPACES
   d. Non-residential: FIVE THOUSAND NEW SQUARE FEET

3. "Public way" shall not be construed to mean a State highway pursuant to M.G.L. c. 81, s. 21C, Submittal of Permit Application. The Board of Selectmen shall be responsible for the issuance and/or denial of public way access permits. A permit applicant shall request issuance of a permit on a standard form supplied by the Board of Selectmen. A permit application shall be deemed complete by the Board of Selectmen only after the following items have been submitted.
   a. Standard application form;

b. Evidence of certification of compliance with MEPA by the Executive Office of Environmental Affairs of the Commonwealth, if necessary;

c. Engineering plans acceptable to the Board of Selectmen, where required by the Board. The Board of Selectmen, by regulation, may adopt a schedule of reasonable fees to accompany said application.

C. Procedures of the Board of Selectmen:

1. Any application for a public way access permit, other than an application pertaining to a single family residential structure, shall be transmitted to the Board of Selectmen within three working days to the Planning Board for review and comment. The Planning Board shall, within twenty days of receipt of the application, report to the Board of Selectmen in writing its findings as to the safety of the proposed activity and, in the event of a finding that the proposed activity would be unsafe, its recommendations, if possible, for the adjustment thereof. Failure by the Planning Board to respond within twenty days of the receipt of the application shall be deemed lack of opposition thereto.

2. Where an application is deemed complete, the Board of Selectmen shall render a decision within the following timetable, by filing same with the Town Clerk.

   a. For an application pertaining to a single-family residential structure, twenty days;

   b. For any other application, forty days.

   Where the Board of Selectmen denies said application, it shall state specific findings for the denial in its decision.

3. The Board of Selectmen may retain a qualified technical expert to assist in its assessment of the traffic impact of the proposal. The fee for such expert shall be paid by the applicant prior to the issuance, if any, of the public way access permit.

D. Powers of the Board of Selectmen:

1. The Board of Selectmen may deny the issuance of a public way access permit due to the failure of the applicant to provide sufficient highway improvements to facilitate safe and efficient highway operations or when the construction and use of the access applied for would create a condition that is unsafe or endangers the public safety and welfare.

2. The Board of Selectmen may, in the alternative, condition an access permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the permit. Such conditions may include, but not be limited to:

   a. Necessary limitation on turning movements;

b. Restrictions on the number of access points to serve the parcel;
c. Vehicle trip reduction techniques;
d. Necessary and reasonable efforts to maintain existing levels of service;
e. Design and construction of necessary public way improvements by the permittee; and
f. Reimbursement by the permittee of costs of Town inspection of public way improvement work.

3. Variance. Where site or access standards do not allow the proposed access to meet these standards, the Board of Selectmen may vary application of the design standards on a case by case basis, upon the finding that:
   a. For either private applications or a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional or State public interest, including the avoidance or minimization of environmental impacts.
   b. As an alternative procedure for a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional or State public interest, including the avoidance or minimization of environmental impacts.

E. Access Permit Provision:

1. Construction under the terms of a public way access permit shall be completed within one year of the date of issue, unless otherwise stated in the permit. The Board of Selectmen may extend the permit for an additional year, at the written request of the permittee, filed prior to the expiration of the original construction period.
2. When the Board of Selectmen determines that a permit condition has not been complied with, it may suspend or revoke a public way access permit if, after notice to the permittee of the alleged noncompliance, twenty four hours have elapsed without compliance.
3. The Board of Selectmen may require a performance bond to be posted by the permittee in an amount not to exceed the estimated cost of the work, or fifty thousand dollars, whichever is the lesser. The performance bond shall be posted prior to the issuance of the permit.
4. The Board of Selectmen may issue written orders to enforce the provisions of this Bylaw.

ARTICLE X Zoning Bylaws

SECTION 1 AUTHORITY AND PURPOSE

1.1 Title

This Bylaw shall be known and cited as the “Zoning Bylaws, Town of Marion, Massachusetts”.

1.2 Authority

This Bylaw is authorized and may be changed or amended in the manner provided in the Zoning Act (M.G.L. c. 40A)

1.3 Purpose

This Bylaw is adopted to provide procedures to implement home rule powers. The objectives of this Zoning Bylaw include, but are not limited to, the following: to lessen congestion in the street; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land and water throughout the town; including consideration of the recommendation of the Master Plan or Land Use Plan, if any, adopted by the Planning Board and the Comprehensive Plan, if any, of the Regional Planning Agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

1. Open Space

   In General Business, Marine Business and Limited Industrial Districts, it is desirable that a portion of each lot be left in an unpaved, unbuilt-upon condition, after allowing for the parking space required by Section 6.5, with a goal of a minimum of 20% of the lot area in this open condition.

1.4 Validity

The invalidity of any section of provision of this Zoning Bylaw shall not invalidate any other section or provision thereof.

SECTION 2 ADMINISTRATION

2.1 Enforcement

This Bylaw shall be enforced by the Building Inspector. No building shall be built or altered or a building begun or changed without a permit having been issued by the Building Inspector.

No building, whether residential or non-residential, shall be occupied until a certificate of occupancy has been issued by the Building Inspector.

(Amended, ATM, Art. 24, April 26, 1994)

For any proposed new or change of nonresidential use of land or buildings, and any home occupations requiring use of buildings or lot space outside of the principal residential building, the Building Inspector shall issue a use permit stating that the use is in conformance with the requirements of this Bylaw. Applications for a use permit shall be filed with the Building Inspector prior to changing the use of the property and shall be allowed or denied in writing,

including the cause of the action taken, within seven days of receipt of the application. No such new or change use shall be allowed except upon the issuance of a use permit.

Any person violating any of the provisions of this Bylaw may be fined not more than fifty dollars for each offense. Each day that such violation continues without abatement shall constitute a separate offense.

2.2 Board of Appeals

A Board of Appeals shall be appointed as provided in M.G.L. c. 40A consisting of five members for terms of five years each and three associate members for terms of three years each. The term of one member and one associate member will expire on May 31 of each year. When a vacancy occurs by resignation or otherwise, it shall be filled within thirty days for the unexpired term in the same manner as an original appointment.

2.3 Powers of the Board of Appeals

1. Permits

   Applications may be made directly to the Board of Appeals for any permit which said board is authorized to grant by virtue of this Bylaw.

2. Appeals

   Appeals may be taken to the Board of Appeals by any officer, or board of the town, or any person aggrieved by an order or decision in violation of, or being unable to obtain a permit under, any provisions of M.G.L. c. 40A or any provisions of this bylaw.

   Appeals from decisions of the Building Inspector relative to the location of district boundaries shall be considered as follows:

   Zone boundary lines designated by property lines, street lines, easement lines, without giving dimensions, are the nearest to such lines existing when this zone was established.

   Zone boundary lines drawn nearly parallel to street lines shall be considered parallel and at the given offset dimension measured at right angles to the street.

   Zone boundary lines not otherwise defined shall be determined by the measured distance from adjacent map features.

3. Special Permits

   Special permits may be authorized for specific uses by the designated Special Permit Granting Authority.

4. Variances

   Variances may be granted by the Board of Appeals with respect to particular land or structures from the terms of the applicable Zoning Bylaw when a particular use or dimensional variance is sought and when it

specifically finds that owing to circumstances relating to the soil condition, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw. Variances properly granted prior to January 1, 1976, but limited in time may be extended on such terms and conditions that were in effect for such variances upon said effective date.

2.4 Public Hearings

Special Permits, variances, permits and relief may be granted by the Board of Appeals only after a public hearing, for which posting and proper notification has been given, as provided in M.G.L. c. 40A.

SECTION 3 DISTRICTS

3.1 Types of Districts

For the purposes of this Bylaw, the Town of Marion is hereby divided into the following types of use districts:

Residence A
Residence B
Residence C
Residence D
Residence E
General Business
Marine Business
Limited Industrial
Special Flood Hazard District
Water Supply Protection District
Open Space Development District (See Section 12)
Surface Water District
Wireless Communications Facilities Overlay District

3.2 Zoning Map

1. Location of Districts

Said districts are located and bounded as shown on a map entitled “Zoning Map, Town of Marion”, dated September 30, 1999 and filed with the Town Clerk, together with amendments thereto. The zoning map, with all explanatory matter thereon, is herby made a part of this bylaw. The boundaries of all land use zoning districts adjoining tidal waters shall extend to the low water mark as defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.

2. Flood Hazard District:

The Floodplain/ Flood Hazard District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Marion designated as Zone A, AE, AO, or VE on the Plymouth County Flood Insurance Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Plymouth County FIRM that are wholly or partially within the Town of Marion are panel numbers 25023C0468J, 25023C0469J, 25023C0556J, 25023C0557J, 25023C0559J, 25023C0559J, 25023C0566J, 25023C0567J, 25023C0576J, 25023C0578J, 25023C0579J, 25023C0586J, and 25023C0587J dated July 17, 2012. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 17, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Marion Town Clerk.

1. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in the floodways which would result in any increase in flood levels within the community during the occurence of the base flood discharge.
2. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnaumbered A zones.
3. Man-made alteration of sand dunes within Zone VE which would increase potential flood damage are prohibited.
4. All subdeivision proposals must be designed to assure that:
   a) Such proposals minimize flood damage;
   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.
5. 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:
   a) Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal hazard areas;
   b) Wetlands Protection Regulations, Department of Environmental Protection, DEP (currently 310 CMR 10.00);

c) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
e) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.00).

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

6. Within riverine floodplains, the Building Commissioner or his/her designee shall notify the following of any alteration or relocation of a watercourse: (1) abutting cities and towns; (2) NFIP State Coordinator (c/o Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104) and the (3) NFIP Program Specialist (c/o Federal Emergency Management Agency, Region I, 99 High Street, 6th Floor, Boston, MA.)

(Amended, ATM, Art 31. May 21, 2012)
(3.2.2 – 3.2.2.6 inclusive)

3. Water Supply Protection Area (See Section 8.2)
As delineated on an overlay map, entitled "Water Supply Protection District and Aquifer Protection District, Town of Marion." This map is hereby made a part of this Bylaw and shall be on file in the Office of the Town Clerk.

4. Wireless Communications Facilities Overlay District
As delineated on an overlay map, entitled "Wireless Communications Facilities Overlay District, Town of Marion", hereby made a part of this Zoning Bylaw, and on file in the office of the Town Clerk.

SECTION 4 USE REGULATIONS

4.1 General Provision Relating to Permitted Principal Uses

Principal uses and districts in which they are permitted are identified. Uses which are necessarily and customarily identical to principal uses, including accessory signs and off-street parking, are also permitted in compliance with the provision of this Bylaw.

Except as may be provided otherwise in this Bylaw, no building or structure shall be constructed, and no building structure or land or part thereof, shall be used for any purpose or manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by Special Permit in said district as so authorized.

4.2 Table of Principal Uses

Symbols Used –

R Residential District (includes Residence A, B, C, D)
RE Multifamily Residence District
GB General Business District
LB Limited Business District
MB Marine Business District
LI Limited Industrial District
CP Campus Office Park District
Y Permitted Use
N Not a Permitted Use
BA Special Permit Required from Zoning Board of Appeals
PB Special Permit Required from Planning Board

Table of Principal Use Regulations

	Districts						
Principal Uses	R	RE	GB	LB	MB	LI	CP
A. Residential Use							
Dwelling, single family	Y	Y	Y	Y	Y	BA	N
Conversion to two dwelling units	BA	BA	BA	BA	BA	BA	N
Dwelling in same building as principal nonresidential use	N	N	Y	Y	N	N	N
Rooming house	PB	PB	PB	PB	N	N	N
Association piers	PB	N	N	N	Y	N	N
Piers, accessory use	PB	N	N	N	PB	N	N
Conservation Subdivision	PB	N	N	N	N	N	N
B. Institutional or Exempt Uses							
Use of land or structure for religious purposes	Y	Y	Y	Y	Y	Y	Y
Use of land or structure for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivision or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation as allowed by M.G.L.	Y	Y	Y	Y	Y	Y	Y
Child care facility in existing building	Y	Y	Y	Y	Y	Y	Y
Child care facility in new building	PB	PB	PB	PB	PB	PB	PB
Use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture on a parcel of more than five acres in areas as allowed by M.G.L.	Y	Y	Y	Y	Y	Y	Y
Facilities for the sale of produce and wine and dairy products, provided that during the months of June, July, August and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located as allowed by M.G.L.	Y	Y	Y	Y	Y	Y	Y
Hospital	PB	PB	PB	PB	N	PB	N
Municipal facilities	Y	Y	Y	Y	Y	BA	N
Essential services	PB	PB	PB	PB	PB	PB	N
C. Service Uses							
General service establishment	N	N	Y	N	N	PB	PB
Personal service establishment	N	N	Y	PB	Y	PB	Y

D. Recreational Uses							
Camp, nonprofit	PB	PB	PB	N	N	PB	N
Club, nonprofit	PB	PB	PB	N	N	PB	N
Club, for profit	N	N	PB	N	N	PB	N
Commercial recreation, indoor	N	N	PB	N	N	PB	N
Commercial recreation, outdoor	N	N	PB	N	N	PB	N
E. Office Uses							
Bank or financial services office	N	N	Y	PB	Y	PB	Y
Business or personal office	N	N	Y	Y	PB	Y	Y
Medical office or clinic	PB	N	Y	PB	PB	PB	Y
F. Restaurant Uses							
Restaurant, indoor	N	N	Y	PB	Y	PB	N
Restaurant, outdoor	N	N	PB	PB	N	PB	N
Restaurant, fast food	N	N	PB	N	N	N	N
Restaurant, drive in	N	N	N	N	N	N	N
G. Retail Uses (under 5000 sq. ft.)							
General Retail Establishment	N	N	PB	PB	PB	N	N
Storage and sale of building materials	N	N	N	N	N	Y	N
Storage and sale of fuel oil	N	N	N	N	N	Y	N
Non-exempt roadside farm stand	Y	Y	Y	Y	Y	PB	Y
Nursery	PB	PB	Y	Y	Y	PB	N
Commercial greenhouse	PB	PB	Y	Y	Y	PB	Y
Major commercial project (MCP)	N	N	PB	PB	PB	PB	PB
H. Major commercial uses (any use allowed in the "Table of Principal Uses" under the heading "G. Retail Uses" with a gross floor area of more than 5000 square feet)	N	N	PB	PB	PB	PB	PB
I. Motor vehicle-related uses							
Motor vehicle service station	N	N	Y	Y	Y	PB	N
Motor vehicle general repair	N	N	Y	N	N	PB	N
Motor vehicle body repair	N	N	Y	N	N	PB	N
Motor vehicle sales or rental	N	N	PB	N	N	PB	N
Motor vehicle junkyard or graveyard	N	N	N	N	N	N	N
J. Marine-related uses							
Vessel or boat storage or sales	N	N	Y	PB	Y	PB	N
Marina	N	N	N	N	Y	N	N
Commercial pier	N	N	N	N	Y	N	N
K. Miscellaneous commercial uses							
Adult use	N	N	PB	N	N	N	N
Body art parlor or studio	N	N	PB	N	N	N	N
Art gallery	PB	PB	Y	Y	N	PB	N
Bed and Breakfast	BA	N	BA	BA	N	N	N
Non-exempt educational use	PB	PB	Y	Y	N	PB	N
Nursing or convalescent home	PB	PB	PB	PB	PB	PB	N
Adult daycare facility	PB	PB	PB	PB	PB	PB	N
Contractor's yard	N	N	Y	N	N	PB	N
Landscaper's yard	N	N	Y	N	N	PB	N
Truck garden	Y	Y	Y	Y	Y	PB	N
L. Industrial uses							
Light manufacturing	N	N	PB	N	N	Y	N
Research laboratory	N	N	N	N	N	Y	N
Warehouse	N	N	N	N	N	PB	N
Assembly	N	N	N	N	N	Y	N
Manufacture of electronic components	N	N	N	N	N	Y	N
Fabrication	N	N	N	N	N	Y	N

M. Accessory uses							
Home occupation	Y	PB	Y	PB	Y	PB	N
Accessory scientific use	PB	PB	PB	PB	PB	PB	N
Family day care, small	PB	PB	PB	PB	N	PB	N
Family day care, large	PB	PB	PB	PB	N	PB	N
Above ground fuel storage accessory to nonresidential principal use	N	N	PB	PB	PB	Y	N
Underground fuel storage accessory to nonresidential principal use	N	N	PB	N	N	Y	N
Outside storage of more than two unregistered motor vehicles or equipment used for construction purposes	BA	N	BA	BA	BA	BA	N
N. Other uses							
Drive-in or drive-through window, excluding restaurant	N	N	PB	N	PB	PB	PB
Windmills	Y	N	Y	Y	Y	Y	N

SECTION 5 INTENSITY OF USE REGULATIONS

5.1 Lot, Yard and Height Requirement

A dwelling hereafter erected in any district and a building hereafter in any Business, Limited Industrial or Campus Office Park or Open Space Development District, shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built on such a lot except as may be allowed in the Residence E and the Open Space Development District or by Special Permit where otherwise authorized by these Zoning Bylaws.

No existing lot shall be changed in size or shape so as to result in the violation of the requirements set forth below.

DIMENSIONAL REQUIREMENTS TABLE

District	Minimum Lot Size in square feet (9)	Minimum Lot Frontage in feet	Minimum Front Yard Setback in feet	Minimum Side & Rear Setback in feet	Maximum Building Height in feet
Residence A (4)	21,780 (0.5 acre)	125’	35’	15’	35’
Residence B (1) (4)	43,560 (1 acre)	150’	35’	20’	35’
Residence C (1) (3) (4) (11)	87,120 (2 acres)	200’	35’	30’	35’
Residence D (1) (11)	87,120 (2 acres)	250’	35’	30’	35’
Residence E (2)	40,000	150’	35’	20’	35’
Limited Business (13)	15,000	80’	35’ (12)	10’	35’
General Business (13)	15,000	100’	35’ (7) (12)	10’ (8)	35’
Marine Business (13)	15,000	100’	35’ (12)	10’	35’
Limited	15,000	100’	35’ (12)	10’	35’

Industrial (13)					
Campus Office Park	160,000 (5)	(5)	(5)	(5)	35’
Surface Water (6)					
Open Space Development					

Notes

1. These dimensional requirements may be waived in accordance with the provisions of Section 10, Conservation Subdivision, upon the issuance of a Special Permit to Residence A.
2. See Section 5.3 for additional and special requirements for the Residence E, Multifamily Residence District.
3. Dimensional requirements will be established by action of the Town Meeting in designating an Open Space Development District.
4. These dimensional requirements may be waived in accordance with the provisions of Section 5.5, Waterfront Compound.

   (Amended ATM, Art. 26, April 24, 2000)
5. See Section 5.4 for additional and special requirements for Campus Office Park District.
6. See Section 8.5 for requirements applying to Surface Water District.
7. Not less than 25% of the required front yard must be maintained with vegetative cover.
8. Where a business use abuts a residential district, a landscape buffer five feet in width shall be provided along abutting side or rear lot lines unless otherwise specified under site plan review and approval.
9. The required contiguous upland area is calculated by multiplying the percentage shown in the table by the minimum required lot size for each zoning district. In computing the minimum lot area, land area as defined in the Massachusetts Wetland Regulations (310 CMR 10.00) as bordering vegetated wetlands, land under water bodies or waterways, salt marshes, or all land seaward of mean high water shall not be used in computing the minimum lot area requirements, as based on the following tables:

   (Amended, STM, Art. S1, October 25, 1999)

Zone	Area	Percent contiguous uplands area required to compute lot size
RA	15,000	100%
RB	30,000	100%
RC	60,000	80%
RD	80,000	60%

Lots serviced by town water and on-site sewage disposal systems

Zone	Area	Percent contiguous uplands area required to compute lot size
RA	15,000	100%
RB	30,000	80%

RC	60,000	70%
RD	80,000	60%

Lots serviced by both town water and town sewer

Zone	Area	Percent contiguous uplands area required to compute lot size
RA	15,000	900%
RB	30,000	70%
RC	60,000	60%
RD	80,000	50%

(This provision shall only apply to lots created on plans filed after March 6, 1995.)

10. The rear yard setback requirements may be waived for piers where a pier is constructed in a nonresidential district or where a pier is allowed by Special Permit in a residential district.
11. Provided, however, that the Planning Board may grant a Special Permit to allow a minimum lot frontage on a common private way shown on an enclosed residential compound plan pursuant to the Subdivision Rules and Regulations of the Planning Board. In issuing any Special Permit for reduced frontage in a residential compound, the Planning Board shall require the applicant to demonstrate that, through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the common driveway within the residential compound shall remain perpetually the responsibility of the private parties, or their successors-in-interest and that any breach of this condition shall be deemed noncompliant with the terms of any Special Permit issued hereunder. Any subsequent change to the roadway surface after the construction of a residential compound shall require a modification of the endorsed plan pursuant to M.G.L. c. 41, s. 81W and this Special Permit.

(Added STM, Art. S3, October 28, 1997)

12. Provided, however, that the Planning Board may grant a Special Permit to allow a lesser setback. In issuing any Special Permit for reduced setbacks, the Planning Board shall require the applicant to provide parking, curbing, street trees, or other plantings, and pedestrian access in a manner acceptable to the Planning Board. Through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the sidewalk and street trees or other plantings on the property of the business shall remain the responsibility of the owner of said property.

(Added STM, Art. 30, April 26, 2005)

13. Provided, however, that the Planning Board may grant a Special Permit to allow a use, other than a one or two family dwelling, as allowed by the Table of Principal Use Regulations on parcels equal to or greater than five thousand square feet and with a minimum of fifty feet of frontage, provided that the project is otherwise in harmony with the provision of the Zoning Bylaw and the lot was in compliance with the applicable zoning at the time the lot was created or shown on a plan endorsed by the Planning Board.

(Added ATM, Art. 30, April 26, 2005)

5.1

a. The height of a building abutting a street shall be measured from the average finished grade on the street side(s) and, if not abutting a street from the mean ground level along its front to the highest point of the exterior in the case of a flat roof or to the ridge in the case of a pitched roof.

b. Front, side and rear yard setbacks shall be measured from the nearest point of any structure or dwelling to each front, side or rear lot line. Uncovered steps, ramps, and bulkheads or the construction of wall or fences not exceeding six feet in height shall not be considered part of the structure for the purposes of measuring setbacks. A chimney and all types of decks shall be considered part of a structure.

c. A detached accessory building shall conform to the minimum setback and set in from any boundary. Any building attached to a dwelling will be considered as part of the dwelling.

d. All buildings on lots abutting Route 6 (Mill Street and Wareham Street) shall be set back at least fifty feet from said right of way. No building, except on lots on Route 6, need to be set back more than the average of the setback of the building next thereto (within two hundred fifty feet) on either side. A vacant lot, or lot occupied by a building set back more than the minimum setback requirements, shall be counted as though occupied by a building set back at this requirement.

e. Frontage for the width of a lot shall measured continuously along one street line between side lot lines, provided that the shape of the lot is capable of containing a rectangle with a width of at least seventy five feet at the front of the property line and with a length significant that the area of the rectangle contains no less than 50% of the minimum lot size requirement.

(Amended ATM, Art. 21, April 27, 1999)

f. Each lot shall have a width of not less than 80% of the required frontage at all points between the sideline of the right of way along which the frontage of the lot is measured and the nearest point on the front wall of the dwelling upon such lot. Such width shall be measured along lines which are parallel to such sideline.

(Amended STM, Art. S5, October 25, 1999)

g. The thinnest cross section of a lot must be greater than seventy feet as determined from the length of a line segment running parallel to the front lot line. Rear lot access is exempt from this requirement.

(Amended STM, Art. S3, November 13, 2000)

h. On a corner lot the frontage requirement shall be measured to the midpoint of the curve forming the intersecting streets. On a corner lot an accessory use, including a visual screen, must comply with the setback requirements relating to both streets.

i. An exception to the Minimum Lot Frontage Requirements may be allowed in any residence district in the case of a single rear lot which has insufficient frontage on an existing road or way by granting of approval

pursuant to the procedures and standards established in Section 8.4 of this bylaw.

j. The limitations of height in feet shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, and other accessory features usually carried above roofs, nor domes, towers, or spires of churches or other buildings provided such features are in no way used for living purposes, and further provided that no structural feature of any building shall exceed a height of sixty five feet from the ground except by Special Permit from the Board of Appeals.

k. A detached accessory building shall conform to the minimum setback and set in from any boundary except where dwelling exists on lots which are less than minimum requirements, in which case the Board of Appeals may by Special Permit authorize such reductions of setback and set in requirements as may be reasonable with respect to the size and shape of the lot and not hazardous or detrimental to the neighborhood and the adjacent facilities.

l. Nothing in this section shall be construed to exempt wireless communications facilities from this Bylaw. See Section 8.10.

5.2 Exceptions to the Minimum Lot Requirements

a. On any lot which is less than the minimum lot size or frontage set forth in Section 5.1, but which is allowed by M.G.L. c. 40A, s. 6 to be built upon, coverage of the lot by the house, accessory buildings and other impervious type surfaces or structures may not exceed 40% of ground area.

b. If any existing lot contains more than one dwelling and the division of such lot would result in one or both lots containing less than the minimum requirements in said districts, said lot may be divided with each lot having one dwelling and equal square footage and equal frontage. Appeal from this restriction may be made to the Zoning Board of Appeals, which may grant a Special Permit if equal division creates a true hardship. This provision shall not apply when an accessory building has been converted to an apartment under a Special Permit.

c. One single family dwelling may be constructed on any lot or combination of adjoining lots, provided that said lots were held in common ownership with that of adjoining lot(s) that contains at least five thousand square feet of area and fifty feet of frontage on a way, provided that:

1. the lot or combined lots are located in a residential zoning district;
2. the lots are shown on a plan of land as a separate and identifiable lots of record on a plan or deed duly recorded on the Plymouth County Registry of Deeds or in the Land Court prior to January 1, 1996 and in compliance with the Zoning Bylaw at the time of creation.
3. the lots will accommodate a residential dwelling that when constructed will comply with side and rear setbacks of the Zoning Bylaw as follows:

   RA 10 feet

RB 15 feet
RC 20 feet
RD 20 feet

Said residential districts as shown on the Zoning Map of the Town of Marion, Massachusetts, February 1974, final revision date July 1999.

4. all lots will comply with the front setback requirements under the Zoning Bylaw in effect at the time the lot was created.
(Added, STM, October 25, 2004, Art. S15 – Submitted by petition as 5.2.d)

5.3 Multifamily Residence

1. Purpose

Regulations covering multifamily housing are enacted to encourage a limited amount of rental or ownership housing in Marion at a relatively low density to facilitate affordable housing and construction needs. Such housing must be served by public sewer and water. In keeping with the community's desire to maintain Marion as a place where single family detached homes predominate, these regulations will apply only when the Marion Town Meeting decides to designate an area or areas as Residence E, Multifamily Residence.

The intent of these regulations is to encourage low-density multifamily housing designed to be compatible with the neighborhood in which it may be located. Pursuant to Section 9, Site Plan Review and Approval, all development exceeding a minimum threshold will be required to obtain Site Plan Approval.

2. Dimensional Requirements

Maximum Lot Coverage: 40%, the same to include the gross ground floor area of all buildings and all parking areas.

Minimum Usable Open Space: There shall be provided for each lot or building site area a minimum usable open space of not less than 40% to the lot area. Usable open space shall include all the lot area not covered by buildings, accessory buildings and/or structures, or surface parking areas. The area devoted to lawns, landscaping, walks, roadways, drives and exterior recreation areas shall be included as usable open space.

3. Density Requirements

The maximum allowable density shall be twelve dwelling units per acre in areas served by public water and sewer. In determining whether the density rate has been complied with, all land in the development lot or parcel not reasonably suited for residential development, such as wetlands, shall be excluded.

5.4 Campus Office Park

1. Purpose

The Campus Office Park District is created to encourage the development of quality office space in a campus-type setting, with substantial preservation of the natural environment.

Pursuant to Section 9, Site Plan Review and Approval, all development exceeding a minimum threshold will be required to obtain Site Plan Approval.

The creation of a Campus Office Park District is allowed in any district where offices and similar business are permitted, as shown in Section 4.2 Principal uses (chart). The creation of a Campus Office Park District in Residential districts will require approval by a two-thirds vote of the Marion Town Meeting.

2. Dimensional Requirements

Minimum Lot Frontage in Feet: fifty feet on a private interior street constructed as part of a Campus Office Park Development or two hundred feet on an existing public way.

Minimum Front Yard Setback in Feet: twenty feet from the sidelines of private streets within a Campus Office Park Development, one hundred feet from existing public ways. No parking may be placed within the minimum front yard.

Minimum side and Rear Yard Setback in Feet: twenty feet from property lines of other parcels within a Campus Office Park Development; fifty feet from property lines of parcels within a Campus Office Park Development; fifty feet from property lines of parcels outside the Campus Office Park District, all of which must be used as a buffer area. No building or parking may be placed within the minimum side or rear yard except when joint parking areas are allowed by the Planning Board through Site Plan Review.

Maximum Lot Coverage: 35%, the same to include the gross ground floor area of all buildings and all paved areas.

5.5 Waterfront Compound

1. Purpose

Marion has a number of estate properties located along the waterfront, where large homes on large tracts of land, often along with several smaller homes on the same tract or in separate parcel ownership, have evolved as residential compounds served by a common, private access road. A number of the large homes, which were built for seasonal use originally, have been converted to year-round occupancy. It is the intent of this section to preserve the estate and open space characteristics of large tracts

of land along the waterfront, including parcels in more than one ownership, in a manner which minimized Town maintenance responsibility.

2. Applicability
On tracts of ten acres or more abutting tidal waters, a Waterfront Compound comprised of dwelling units sharing common frontage and a private access road or roads, may be permitted, through the issuance of a Special Permit by the Planning Board, in any single family residential district.

3. Conditions
A Waterfront Compound shall meet all of the following conditions:
   1. Tract Ownership
      For the purposes of making an application under this section, the minimum tract size may be comprised of parcels in more than one ownership, providing evidence of legal arrangements binding all property owners to the restrictions which may be imposed in the granting of a Special Permit are presented with an application for Special Permit.
   2. Tract Frontage
      The tract shall have a minimum frontage on a public way equal to at least twice the minimum frontage required in the residential district in which it is located, unless san island surrounded by water.
   3. Maximum number of dwelling units
      The Waterfront Compound shall not contain more than one dwelling unit per two acres of land. Conversion of larger estate residences to more than one dwelling unit is permitted in a Waterfront Compound.
   4. Dimensional Requirements
      There shall be no minimum lot width or frontage requirements in a Waterfront Compound. On all lots which abut the peripheral boundary of the tract, the setback requirements from the peripheral boundary shall be the same as those which would be required for the residential district in which the land is located.
   5. Access
      Each dwelling unit in the Waterfront Compound shall have adequate and legally enforceable rights of access to a public street via a private street or driveway or public waterway in case of an island surrounded by water.

4. Open Space Requirements
A minimum of 10% of the tract shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the Waterfront Compound. The percentage of

the open space which is wetlands, as defined pursuant to M.G.L. c. 131, s. 40, 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 the open space upon a demonstration that such inclusion promotes the purposes set forth above.

1. The required open space shall be used for conservation, outdoor recreational facilities of a noncommercial nature, agriculture, preservation of scenic resources and structures accessory to any of the above uses (including swimming pools, tennis courts, stables and greenhouses), and shall be served by suitable access for such purposes.
2. Underground utilities to serve the Waterfront Compound may be located within the required open space.
3. The required open space shall, at the owner's election, be conveyed to:
    a. The Town of Marion or its Conservation Commission;
    b. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
    c. A Corporation or trust owner jointly or in common by the owners of lots within the Waterfront Compound. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the 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 of Marion to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance and shall grant the Town an easement for this purpose. In such event, the Town shall first provide fourteen 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. The owner of each lot shall be deemed to have assented to the Town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the Town of same. 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 in the Registry of Deeds.

4. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable to 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.
5. All deed restrictions with respect to ownership, use and maintenance of permanent open space shall be referenced on and recorded with the plan.

5. Limitation on Further Subdivision
No Waterfront Compound for which a Special Permit has been under this section may be further subdivided and a notation to this effect shall be shown on the plan.
Decision. A Special Permit may be granted under this section by the Planning Board provided:
1. Adequate provision has been made for the disposal of sewage generated by the development in accordance with the requirements of the Board of Health;
2. Due consideration has been given to the reports of the Board of Health and the Conservation Commission;

6. Additional Conditions
Any Special Permit authorizing a Waterfront Compound shall require that individual deeds for lots or dwelling units within the Compound contain the following terms:
1. The land lies within an approved Waterfront Compound Conservation Area;
2. The development of the land is permitted only in accordance with the land uses indicated in the Planning Board's Special Permit decision;
3. The Town will not be requested to accept or maintain the private access, drainage, open space (except as may be determined during the course of site plan review) or other improvements within the Waterfront Compound.

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

(Amended, STM, Art. S6, October 28, 1997)

5.6 Special Permit and Local Initiative Program Dwelling Units

(Added, STM, Art. S22, October 25, 2004)

1. Purpose: The purpose of this Section is to allow, upon receipt of both a Special Permit and approval from the Board of Selectmen, pursuant to 760

CMR 45.00 (Local Initiative Program), the development of a lot that has lot vested rights under the Zoning Act and/or the Marion Zoning Bylaw.

2. The Board of Selectmen may grant a Special Permit to build one single family dwelling on any lot or combination of existing adjoining lots provided:
   a. the Board of Selectmen vote to endorse the application pursuant to the Selectmen's authority contained within 760 CMR 45.00 and grant a Special Permit to Section 7.2 of the Zoning Bylaw;
   b. said existing lot or lots were held in common ownership with that of adjoining land, which, when combined with any other land, contains at least five thousand square feet of area and fifty feet of frontage on a street, as defined in the Zoning Bylaw;
   c. the lot or combined lots are located in a zoning district where residential use is permitted;
   d. the lot(s) are each shown on a plan of land as a separate and identifiable lots of record on a plan or deed duly recorded in the Plymouth County Registry of Deeds or in the land court prior to January 1, 1996; and
   e. the lot(s) is subject to a deed restriction and regulatory agreement limiting, for a period of no less than ninety nine years, the sale or rental of the dwelling unit to a qualified individual pursuant to guidelines established by the Planning Board, said guidelines to be consistent with the purpose and intent of 760 CMR 45.00 and M.G.L. c. 40B, s. 20-23 and is approved by the Board of Selectmen, or its designee.

SECTION 6 GENERAL PROVISIONS

6.1 Nonconforming Uses and Structures

(Amended, STM, Art. S4, October 25, 1999)

1. Applicability

No provision of this zoning bylaw shall 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 M.G.L., c. 40A, s. 5. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

2. Nonconforming uses

The Board of Appeals may award a Special Permit to change a nonconforming use in accordance with this section only if it determines that such change or extension may not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

   a. Change or substantial extension of the use;

b. Change from one nonconforming use to another, less detrimental, nonconforming use.

3. Nonconforming Structures

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:

a. Reconstructed, extended or structurally changed;

b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

4. Variance Required

Except as provided below in subsection 5, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance by the Board of Appeals.

5. Nonconforming Single- and Two-family Structures

Nonconforming single- and two-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following types of changes shall be deemed not to increase the nonconforming nature of said structure; provided, however, that, in no case, shall the alteration to the nonconforming structure result in (a) a structure no more than the lesser of the maximum height allowable under these bylaws, or a 10% increase in existing height, or (b) a structure closer to the side or rear lot lines than ten feet in Resident A, fifteen feet in Resident B, twenty feet in Residence C or twenty feet in Resident D; said residential districts as shown on the Zoning Map of the Town of Marion, Massachusetts, February, 1984, final revision date July, 1999:

a. alteration to a structure located on a lot with insufficient area, where such alteration complies with all current setback, yard, building coverage, and building height requirements.

b. alteration to a structure located on a lot with insufficient frontage, where such alteration complies with all current setback, yard, building coverage, and building height requirements.

c. alteration to a structure encroaching upon one or more required yard or setback areas, where such alteration will comply with all current setback, yard, building coverage and building height requirements.

In any other case, the Building Commissioner shall refer the matter to the Board of Appeals. 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.

(Amended, STM, Art. S2, April 29, 2003)

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.

7. Catastrophe or Demolition

   Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe or after demolition, provided that such reconstruction is completed within twenty four months after such catastrophe or demolition, and provided that the building(s) as reconstructed shall be located on the footprint of the nonconforming structure and rebuilt to an extent only as great in volume or area as the original nonconforming structure unless a larger volume or area or different footprint is authorized by special permit from the Board of Appeals. The Board of Appeals may extend by twelve months the period of completion.

   (Amended, STM, Art. S11, October 15, 2001)

8. Reversion to Nonconformity

   No nonconforming use shall, if changed to a conforming use, revert back to a nonconforming use.

6.2 Signs

It is the intention of these sign regulations to promote public safety, protect property values, create an attractive business climate and enhance the physical appearance of the community.

1. General Requirements/Procedures
   a. Illumination: Any illuminated sign or lighting device shall employ only lights emitting a constant light source.
   b. Maintenance: All signs, together with their supports, braces, guys and other anchors, shall be kept in good repair and in safe condition. The owner and the lessee, if any, of the premises on which the sign is erected, shall be directly responsible for keeping such sign and the area around it in a neat, clean and safe condition.
   c. Design Limitations:
      i. Freestanding or projecting signs shall be no closer than eight feet from the ground where people walk and fifteen feet where vehicles may drive.
      ii. The top of every sign shall be no higher than eighteen feet from the ground or, if mounted on a building or roof, no higher than the highest point of the roof (such as the ridge line) or parapet – whichever is the higher.
      iii. Any sign attached to a building shall project no more than five feet from the building.

iv. Any freestanding sign shall have a support structure which is of sufficient strength and which is securely attached to a foundation or the ground so that the sign and its support create no danger to life or limb.

2. Signs in Residential Districts

There shall be no advertising signs in any residential district, except for:

a. Real estate "for sale" and "for rent" signs and related directional signs
b. Accessory use signs as provided in Section 6.2.3
c. Signs for nonconforming businesses that are located in Residential Districts. These signs shall carry the same restrictions as signs in the Limited Business District. (Section 6.2.4)
d. Signs for proposed subdivision projects. These signs shall include the name of the developer, the size and scope of the proposed subdivision, as well as the date of the definitive subdivision hearing. The sign shall have an aggregate area of forty eight square feet and shall be located on the subdivision's proposed access front.

(Amended, ATM, Art. 34, April 28, 1997)

3. Residential Accessory Use Signs

a. No more than one sign is allowed.
b. No sign shall be larger than two square feet of surface per side.
c. No illumination shall be greater than one hundred seventy five watt incandescent bulb, or equivalent, per side.
d. No illumination shall be directed anywhere but on the sign face and illumination source shall be suitably concealed by a reflecting shield.

4. Signs Permitted in General Business (GB), Marine Business (MB), Limited Industrial Districts (LID), and Limited Business Districts (LBD)

a. Each business or industrial establishment may display at each of its locations a total of two signs selected from the following:
   i. One wall- or roof-mounted sign having an aggregate face area of not more than twenty four square feet in the GB, MB and LID and not more than twelve square feet in the LBD.
   ii. One projecting double-faced sign, each face having an aggregate face area of not more than twelve square feet in the GB, MB, LID and LBD.
   iii. One freestanding double-faced sign, each face having an aggregate face area of not more than twelve square feet in the GB, MB, LID and LBD.
   iv. If a business faces and operates with more than one geographic front for public access, it may have any two of the above signs on one public access geographic front and any one of the above on its other public access fronts.
   v. If a business is required to display a brand name, an un-illuminated wall-mounted sign showing the brand name

and not exceeding four square feet may be displayed in addition to the signs allowed in i, ii, and iii above. A maximum of two brand name signs is allowed.

b. Where more than one business is located in a building or buildings on the same lot or contiguous lots, owned and operated as a unit, one freestanding sign for each main building, not exceeding twenty five square feet of face area per side in the GB, MB and LID and fifteen square feet of face area per side in the LBD, may be provided in lieu of the individual business freestanding sign allowed in a. iii. and in addition to either the wall- or roof-mounted or projecting sign for each business allowed in a. i. or a. ii. above.

c. Non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.

d. Temporary banners across a street or on a building, or any other temporary sign, may be displayed for a maximum of fifteen days per event or activity when such sign is used to inform the public of an activity or event sponsored by any government agency or civic, charitable, religious, patriotic, fraternal or nonprofit organization.

e. Real estate “for sale” and “for rent” signs and off-premise related directional signs.

f. Signs associated with an approved stand for farm produce not exceeding twelve square feet in total area.

5. Signs for Gasoline Filling and Service Stations and Marine Fuel Stations

The following signs, customary and necessary to the operation of filling and service stations, are permitted:

a. All signs required by federal, state and municipal laws and regulations.

b. A credit card sign not to exceed two square feet in area, affixed to the building, or the gasoline pumps or permanent sign structure of non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.

c. One sign bearing the brand name or the trade name of the station, of a design specified by the vendor, permanently affixed to the building or its own metal substructure, said sign not to exceed twenty five square feet in area in the GB, MB, and LID and fifteen square feet in the LBD.

6. Signs Allowed by Special Permit (See Section 7.4)

The Zoning Board of Appeals, in evaluating requests for Special Permits for signs not permitted in Section 6, shall weigh equally the community’s concern that commercial signage be minimized and the right of businesses to advertise and that departure from the limitations of Section 6 shall not ordinarily be granted without a clear showing of business hardship:

a. Off-property directional or advertising signs other than those permitted in 6.2.2.

b. More than the number of signs allowed on a property as allowed in Section 6.2.4.

c. Signs larger than permitted size.

d. Community Service Signs that seek to inform the community of upcoming events are permitted, provided that no such sign shall be permitted which would habitually be detrimental or offensive or tend to reduce property values in the immediate neighborhood. Signs shall remain for no longer than forty five days. Such period may be extended for an additional forty five day period by the Special Permit Granting Authority upon the written request of the applicant.

(Amended, ATM, Art. 34, April 28, 1997)

7. Prohibited Signs

The below listed signs and conditions are prohibited in all districts, unless specifically allowed in other sections of this bylaw:

a. Signs simulating those signs normally erected by various governmental agencies for the protection of public health or safety.

b. Signs which interfere with the free and clear vision of any street or driveway.

c. Freestanding signs within ten feet of any side or rear lot line, thirty feet to street corners and within fifty feet of any residential zoning boundary.

d. Signs or advertising devices, including lighting, which interfere with radio or TV reception.

e. Illuminated signs or lighting devices that allow light beams or reflected lights to cause glow or reflections that can constitute a traffic hazard or a public nuisance.

f. Billboards

g. Animated signs and/or flashing signs or advertising devices which create intermittent or varying light intensity, and signs with movement, including revolving signs, actuated by mechanical or electrical devices.

This prohibition also applies to signs and devices located within a building, but visible on its exterior. Signs must be stationary and shall not move nor oscillate nor contain any visible moving parts.

h. Illumination of a wall, roof or gable for purposes of advertising (temporary holiday decorations are excluded from this prohibition)

i. Portable or mobile type signs, including sandwich-type and cardboard signs.

j. A string of three or more banners, streamers, pennants and similar devices designed to attract attention through the use of bright colors or movement, natural or artificial.

8. Severance

If any section or part thereof this bylaw is held to be invalid, the remainder of this Bylaw shall not be affected thereby.

6.3 Accessory Uses

Accessory uses customarily incidental to the permitted principal uses on the same premises are permitted provided that no such use shall be permitted which would habitually be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of noise, dirt, excessive vibration or odor. Accessory uses are permitted only in accordance with lawfully existing principal uses. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under Special Permit, its accessory use is also subject to the Special Permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 9.1, such addition shall also require site plan review and approval.

6.4 Home Occupation

The use of up to 25% of the floor space in a dwelling for customary home occupations conducted by a resident occupant, such as dressmaking, candy making, or for the practice by a resident, of a recognized profession or craft is a permitted activity. Special permit required in Limited Industrial Zone.

Also permitted is the use of up to two thousand square feet of a lot, including an accessory building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber, or any other artisan, provided that no manufacturing or business use requiring substantially continuous employment be carried on.

Farm, market garden, nursery or greenhouse and the sale of products, the major portion of which are grown on the premises, is a permitted activity of a resident occupant.

6.5 Off-street Parking and Loading

Parking facilities off the street right of way shall be provided on the premises for all new residential and new or changed nonresidential uses. The number of spaces to be provided shall be as set forth in the Table of Parking Requirements, unless the proponent elects to provide more parking spaces than is otherwise required.

1. Reduction of Parking Requirement by Special Permit
   Notwithstanding the provisions of Section 6.5, the Planning Board may, by Special Permit, reduce the number of parking spaces required for non-residential uses upon its determination that the intended use of the premises can be adequately served by fewer spaces. The Planning Board may consider on street parking available near the premises as a factor in making this determination.
2. Off-street Parking in the Limited Business District
   Notwithstanding the provisions of Section 6.5, uses located within the Limited Business District need only supply 70% of the parking requirement set forth in the Table of Parking Requirements.

3. Table of Parking Requirements

Parking shall be provided in accordance with the following schedule:

Principal Use	Minimum Number of Parking Spaces
General retail	1 per 200 square feet of gross floor area
Retail sales accessory to industrial use (less than 2000 square feet of retail space)	1 per 500 square feet of gross floor area devoted to retail sales
Boat sales and service	1 per 5000 square feet of indoor or outdoor area devoted to display, sales, service or storage
Printing and publishing	1 per 500 square feet of gross floor area
Medical office	1 per 150 square feet of gross floor area for medical and dental offices
General office	1 per 250 square feet of gross floor area
Restaurants	1 per 2 seats, plus 1 per 2 employees
Research and development, manufacturing or industrial	1 per 500 square feet of gross floor area or 1 per employee, whichever is greater
Warehousing and storage	1 per 2 employees, but not less than 1 space per 5000 square feet of area devoted to indoor or outdoor storage
Inns and Bed & Breakfasts	1 per sleeping room, plus 1 per 2 employees
School or daycare facility	1 per 4 occupants, plus 1 per 2 employees
Church, library, museum or similar place of assembly	1 per 8 occupants, plus 1 per 2 employees
Bank	1 per 175 square feet of gross floor
Home occupation	1 per room used for office, plus 1 per non-resident employee (in addition to parking spaces for the principal residential use)
Gasoline service station	2 per service bay, plus 1 per employee
Residential Unit	2 spaces per residential unit
Rooming House	2 spaces, plus 1 space per rental room

Any computation resulting in a fraction of a space shall be rounded to the highest whole number.

4. Parking Lot Design
   a. Required parking areas shall not be located forward of any building front line on the lot, on an adjacent lot;
   b. Parking spaces shall be at least 9’ x 18’;
   c. In parking areas with eight or more spaces, individual spaces shall be delineated by painted lines, wheel stops or other means;
   d. For parking areas of fifteen or more spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per three parking spaces or fraction thereof. Such bicycle rack(s) may be located within the parking area or in another suitable location as deemed appropriate by the Planning Board.
   e. Parking lot aisles shall be designed in conformance with the following:

Parking Angle	Minimum Aisle Width (one-way traffic)	Minimum Aisle Width (two-way traffic)

0 degrees (parallel)	12 feet	20 feet
30 degrees	13 feet	20 feet
45 degrees	14 feet	21 feet
60 degrees	18 feet	23 feet
90 degrees	24 feet	24 feet

f. All artificial lighting shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. All parking facilities which are used at night shall be lighted as evenly as possible within the maximum limits established by the State Building Code.
All light shall be confined to the site and shall comply with the dark skies provisions set forth in Section 9.11 (Site Plan Details).
(Amended, ATM, Art. 24, May 21, 2007)

g. Access driveways to nonresidential premises shall be ten feet wide for one-way traffic and eighteen feet wide for two-way traffic. Driveways shall not exceed twenty four feet in width; provided, however, that driveways serving two-way traffic may be reduced to ten feet in width when the driveway does not exceed fifty feet in length, does not serve more than five parking spaces, and provides sufficient turnaround so as not to require backing onto a public way.
(Amended, STM, Art. S12, October 15, 2001)

h. Parking facilities shall provide specially designated parking stalls for the physically handicapped in accordance with the Rules and Regulations of the Architectural Barriers Board of the Commonwealth of Massachusetts Department of Public Safety or any agency superseding such agency. Handicapped stalls shall be clearly identified by a sign stating that such stalls are reserved for physically handicapped persons. Said stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Adequate access for the handicapped from the parking facility to the structure shall be provided.

i. To the extent feasible, lots and parking areas shall be served by common private access ways, in order to minimize the number of curb cuts. Such common access ways shall be in conformance with the functional standards of the Subdivision Rules and Regulations of the Planning Board for road construction, sidewalks and drainage. Proposed documentation (in the form of easements, covenants or contracts) shall be submitted with the application, demonstrating that proper maintenance, repair and apportionment of liability for the common access way and shared parking areas has been agreed upon by all lot owners proposing to use the common access way. Common access ways may serve any

number of adjacent parcels deemed appropriate by the Planning Board.

5. Landscaping Requirements for Parking Areas

a. Parking lots containing ten or more spaces shall be planted with at least one tree per eight spaces, no smaller than two inch caliper, each tree being surrounded by no less than forty square feet of permeable unpaved area. Trees required by the provisions of this section shall be at least five feet in height at the time of planting and shall be of a species characterized by rapid growth and by suitability and hardiness for location in a parking lot. To the extent practicable, existing trees shall be maintained with vegetative cover.

(Amended, STM, Art. S6, October 25, 1999)

6.6 Visual Screening

(Amended, ATM, Art. 35, April 28, 1997)

A visual screen not less than six feet in height (a solid fence, wall or strip of densely planted trees and/or shrubs) shall be provided for each of the following:

a. Off-street open parking areas of more than ten spaces or more than two trucks or other construction vehicles continually parked in or adjacent to a residential district.

b. All exterior storage areas exceeding four hundred square feet in or adjacent to a residential district.

c. All exterior service areas of a business or industrial use.

6.7 Mobile Homes and Trailers

A trailer or mobile home is any vehicle basically designed for human habitation and for the occasional or frequent mobile use whether on wheels or rigid supports.

1. Accessory use

A mobile home or trailer may be parked on stored on a lot occupied by the owners if located within a garage or an accessory building, or if located at least twenty five feet from any property line in the rear half of the lot. Use and occupancy for living or business is prohibited.

` 2. Temporary use

Temporary occupancy of a trailer or mobile home by a non-paying guest of the owner or occupant of the land may be permitted by the board of selectmen for a period not to exceed two weeks in any calendar year and an additional two weeks permit may be granted by the board of selectmen. Temporary use and occupancy of a mobile home as an office or dwelling incidental to construction on the site may be authorized by special permit which must be approved and signed by the board of health for a term not to exceed two years.

6.8 Commercial Utilities

All utilities for new commercial site development shall be installed underground and shall meet standards set by the utility companies to the extent permitted under any other applicable State or local law or regulation.

(Amended, STM, Art. S10, October 15, 2001)

SECTION 7 USES BY SPECIAL PERMIT

7.1 Special Permit Granting Authority (SPGA)

The Board of Appeals or such other board designated a Special Permit Granting Authority shall hear and decide upon the applications for the specific special permits authorized by this bylaw.

1. Distribution and Review of Special Permit Applications

   Within five days after receipt of an application for special permit, the special permit granting authority shall transmit copies thereof, together with copies of the accompanying plans, to the planning board (when it is not the special permit granting authority), the conservation commission, the board of selectmen (when it is not the special permit granting authority), the board of health and such other municipal boards or agencies as the special permit granting authority may designate by rule or regulation. All such boards shall investigate the application and report in writing their recommendations to the issuing special permit granting authority.

   The special permit granting authority shall not take final action on such application until it has received a report thereon from any of the boards listed above or until said boards have allowed twenty one days to elapse after the receipt of such application without submission of report; provided, however, that the planning board shall have forty five days from its receipt of a site plan to render and transmit its decision to the special permit granting authority. Such period may be extended upon the written request of the applicant, and, in such cases, the special permit granting authority shall request of the applicant a corresponding extension of time for its final action.

7.2 General Requirements

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. Social, economic or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment. Special permits may be granted with such reasonable

conditions, safeguards, or limitations on time or use as the Special Permit Granting Authority may deem necessary to serve the purposes of this bylaw. Special permits shall lapse twenty four months following final action (plus such time required to pursue or await the determination of an appeal referred to M.G.L. c. 40A, s. 17, from the grant thereof) if a substantial use thereof has not commenced nor construction begun, except for good cause.

7.3 Public Hearings

A special permit granting authority shall grant special permits only after public hearings held in conformity with the provisions of Chapter 40A including due notice to parties in interest, the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner, as shown on the most recent applicable tax list (including any such owner of property in another city or town), the planning board of the Town of Marion, and the planning boards of the towns of Mattapoisett, Rochester and Wareham.

The procedure for the issuance of special permits, including applications, notices, public hearing, referral to the planning board and other town bodies, filing of decisions and other procedural requirements shall be as provided in Chapter 40A of General Laws and in the rules to be adopted by the special permit granting authority and filed with the town clerk in accordance with said Chapter 40A.

7.4 Certain Uses Authorized by Special Permit

Where eligible for consideration in the Table of Principal Uses, applications for the following types of special permits shall be governed by these rules:

7.4.1 Bed and Breakfast Establishments

1. An owner or owners of a residence may apply for a special permit for a Bed and Breakfast Establishment.
2. The Special Permit Granting Authority (SPGA):
    a. shall make a finding that the issuance of a special permit use not result in increased congestion or other adverse impacts which will tend to reduce neighborhood amenities or the value of surrounding properties.
    b. shall make a finding that the issuance of a special permit shall not make existing wastewater systems inadequate and will cause no undue crowding on or near the site in order to provide required parking space.
    c. may allow up to, but no more than, three guest rooms per property.
    d. shall permit that breakfast may be the only meal served in such facility and that only guests residing in the structure may be served.
    e. shall require that the off-street parking ratio be one space per guest room with no less than one additional space for the owner.

Parking to accommodate bed and breakfast clients shall not be located within the front yard between the residence and the street line except where the board of appeals finds that due to the considerable setback of the building from the street or other unique conditions pertaining to the lot, alternative off-street parking arrangements, such as an existing driveway, will not be detrimental to the neighborhood.

f. may find that in areas where there are small lots and a need to prevent excessive paving of yard areas, one or more of the required guest parking space requirements may be satisfied by the use of curbside parking where the board of appeals determines that there will be no significant adverse impact on the neighborhood or any individual abutter.

g. shall require that the residence shall be managed by an owner residing on the property.

h. shall state that the special permit shall not be transferable to subsequent owner or another property.

i. shall require that guests shall register upon arrival, stating their names and current residence address. The registration form shall be kept by the owner for a period of two years and shall be made available for a representative of the Town of Marion upon one day's notice.

j. shall require that signs for bed and breakfast operations shall be consistent with those allowed for accessory uses in a residential district. See Section 6.2.

k. shall require that the establishment must comply with all necessary state or local permits and licenses.

7.4.2 Conversion of a Dwelling

(Deleted, ATM, Art. 31, April 26, 2005)

7.4.3 Industry and Manufacturing

No special permit shall be granted for any manufacturing use which would be detrimental, offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.

7.4.4 Deleted

(Deleted, STM, Art. S6, April 29, 2003)

7.4.5 Piers as an Accessory Use

An accessory pier serving a single family residence located on the same lot may be approved by the Planning Board pursuant to the special permit regulations of this bylaw provided that:

1. The Planning Board gives due consideration to the recommendations of the Marine Resources Commission and Conservation Commission.

2. The accessory use will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
3. Alternatives in the form of an association pier or public pier are not reasonably available.
4. The zoning map does not designate the area as a no pier construction zone.
5. The lot for which the permit is sought fully conforms with the current area and frontage requirements for the district in which it is located or was lawfully in existence on May 1, 1996 at which time the lot conformed with the then current area and frontage requirements for the district in which it is located.

(Amended, ATM, Art. 32. May 21, 2012)

7.4.6 Association Piers

An Association Pier may be granted a special permit provided that:

1. Evidence is provided in the form of deed restrictions which restrict use of the pier to a defined geographical area or development. The developer shall include in the deed to the owners of individual lots within the defined areas beneficial rights to such association pier.
2. There are provisions assuring the maintenance of the pier facilities by the developer until taken over by a homeowners association.
3. There are adequate provisions for assuring maintenance of the pier facilities by the homeowners association. The Planning Board's attention is called to the requirements of Section 8.5.4, which generally would be applicable to an association maintaining a pier.
4. Due consideration has been given to screening any parking areas from adjoining or nearby residences.
5. The lot meets the minimum requirements for a single family house lot in the district or was lawfully in existence on May 1, 1996 at which time the lot conformed with the then current area and frontage requirements for the district in which it was located.

(Amended, ATM, Art. 33. May 21, 2012)

6. There is no clubhouse facility.
7. Due consideration has been given to the report and recommendations of the Marine Resources Commission and the conservation commission.

7.4.7 Signs

Signs Larger than Permitted Size. A special permit may be granted by the SPGA where a business has unusual requirements or a long name requiring a larger sign, and the granting of the special permit will not be detrimental to the character of the neighborhood or to the town, will not be unduly distracting, by blocking visibility of traffic, or other business or scenic views.

Off-Property Directional Signs. A special permit may be granted by the Special Permit Granting Authority where an applicant shows a special need.

More Than One Sign on Building. A Special Permit may be granted by the SPGA where due to shape of the building, orientation of the building lot, the road location, topography of the land, or special landscape features, an additional sign would be appropriate for the business and not detrimental to the town or neighborhood.

7.4.8 Structural Features Exceeding Sixty Five Feet High
The Board of Appeals may grant a Special Permit where certain structures exceed sixty five feet in height and are not in any way for living purposes. This applies to accessory features such as chimneys, ventilators, skylights, water tanks, bulkheads, domes, towers, and spines usually carried above roofs. Does not apply to wireless communication facilities.

7.4.9 Multiple Unit Rental Housing
The Planning Board may grant a Special Permit to allow for rental housing units on the second or third floor of an existing structure lawfully in existence as of the date of adoption of this section, provided the following criteria are met:

1. The structure is located in one of the following zoning districts: Limited Industrial, Limited Business, Marine Business or General Business, and the first floor shall be used for commercial purposes.
2. The structure was designed and principally constructed prior to 1931 or any structure constructed thereafter that can demonstrate historical significance to the Town of Marion.
3. The structure has a pre-existing second and/or third floor that can accommodate multiple rental units.
4. The converted or altered structure shall conform to the historic architectural design and façade of the existing structure.
5. The proposed conversion or alteration of the structure will not cause an increase in the height of the existing structure by more than 15% of the existing structure.
6. The proposed conversion or alteration will not increase the total square footage of the interior area of the existing structure by more than 15% of the existing structure.
7. The proposed conversion or alteration receives site plan review and approval from the Planning Board.
8. The Special Permit shall become null and void and subject to immediate revocation if the rental units are ever converted to fee simple or interval ownership dwellings, and
9. The Planning board may approve greater than two rental units, but shall require as a condition of said approval, that no less than 25% of the rental units approved be rented. Affordable Housing Unit in compliance with Section 8.12.1A.

(Amended, ATM, Article 32, April 26, 2005)

7.5 Special Permits Applicable to Certain Uses in the Limited Business District
A use designated by Section 4.2 as subject to this Section 7.5 or the change or expansion of such a use, or the construction of, or addition to, any structure

associated with such a use, shall be permitted only upon the issuance of a Special Permit by the Board of Appeals pursuant to this section.

The Board of Appeals shall issue such a permit upon a finding that:

1. The intended use or structure will not cause any of the following:
   a. Congestion in the streets that causes an adverse impact on vehicular traffic flow.
   b. Danger to public health or safety
   c. Demands on the supply of public services beyond their capacity.
2. The proposed structure is no higher than any building on all adjoining lots, and
3. The distance between all points on the side and rear of the proposed structure and all points on the side and rear of all buildings on all adjoining lots shall be no less than twenty feet.

Except as otherwise stated in this section, the provision of this Section 7.5 shall be in addition to the requirements of any other provision of this Bylaw, including the general and specific provisions of Section 7.4 where applicable.

In the event the terms of the Bylaw subject a use of certain property to both this section and Section 2.5, then the provision s of this section shall apply.

7.6 Additional Special Permit Regulations

Additional regulations of a more detailed nature in which Special Permits are authorized by this Bylaw are included in other sections as follows:
Section 8.2 Water Supply Protection District
Section 8.3 Towers, Windmills, Radio Transmitters, etc.
Section 8.4 Rear Lots
Section 10 Conservation Subdivision

(Amended, ATM, Art. 20, April 27, 1999)

SECTION 8 SPECIAL PROVISIONS

8.1 Flood Hazard District (See Section Three)

1. Where State and Town laws, Bylaws, and regulations designed to reduce flood loss impose greater requirements or restrictions than other applicable laws, Bylaws, and regulations, such flood protection regulations and land use controls shall take precedence.
2. New construction or substantial improvements of residential structures within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one hundred year flood.
3. New construction or substantial improvements of nonresidential building within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one hundred year flood, or together with attendant utility and sanitary facilities, be

flood-proofed to meet applicable requirements up to the level of the one hundred year flood.

4. The intent of this Bylaw is to prevent unnecessary loss of life or injury to waterfront residents, to reduce the need for rescue efforts and to prevent destruction of property by ocean water, waves and debris landward by high wind storms. For the purpose of this Bylaw the Velocity Zone in Marion is the area defined as a Velocity Zone by the Federal Emergency Management Agency and delineated on the most recent Flood Insurance Rate Map for the Town of Marion, MA.

(Amended, STM, Art. S9, April 29, 2003)

A. There shall be no new residential construction of any sort on lots completely within the Marion Velocity Zone. The only exceptions are:
   a. Seawalls, piers, groins, wharves, weirs and similar structures are not prohibited by this section; and
   b. Lots created before the enactment of this Bylaw whose areas lie completely within the Velocity Zone may be built upon, providing the structure(s) is located as far landward of mean high water as possible.

B. In the case of lots created before the date of enactment of this Bylaw and with areas both in the Velocity Zone and outside the Velocity Zone all structures built after the enactment of this Bylaw shall be located in area outside the Velocity Zone. If this area is not sufficient to allow for the required zoning setbacks, the applicant may apply for a variance to allow lesser setbacks. The only exceptions are: seawalls, piers, groins, wharves, weirs and similar structures.

C. Every buildable lot created after the enactment of this Bylaw shall have an adequate building area, plus the required setbacks outside the Velocity Zone and all structures shall be placed within this area. The only except ions are: seawalls, piers, groins, wharves, weirs and similar structures.

D. The landward line of the Velocity Zone must be located on the official lot plan by a licensed surveyor and registered with the plan at the Massachusetts Registry of Deeds.

(Amended, STM, Art. S4, November 13, 2000)

5. Any use otherwise permitted or authorized by Special Permit in the District underlying the Flood Hazard District shall likewise be permitted or authorized by Special Permit in the Flood Hazard District subject to the special provisions of this section.

6. Reserved for future use.

8.2 Water Supply Protection

1. District Area (See Section III)

There is hereby established within the town an Aquifer Protection area which is delineated on an overlay map entitled, “Water Supply Protection District and Aquifer Protection District, Town of Marion”. The map is hereby made a part of this Bylaw and shall be on file in the office of the Town Clerk.

Except as specifically provided otherwise, this section applies to the Water Supply and Aquifer Protection Districts hereby established. The Water Supply and Aquifer Protection Districts are superimposed on existing zoning districts. All uses, dimensional requirements, and other provisions of the Bylaw applicable to such underlying districts shall remain in force and effect, except where the restrictions and requirements of the overlay district are more restrictive, the later shall prevail.

The purpose of the Water Supply and Aquifer Protection Districts is to promote the health, safety, and general welfare of the town to protect, preserve, and maintain the existing and potential well sites and ground water supply and watershed areas for the public health and safety; to preserve and maintain the existing and potential ground water supply and ground water recharge areas within the town for the public health and safety; to preserve and protect the streams, brooks, rills, marshes, swamps, bogs and other water bodies and watercourses in the town; to protect the community from the detrimental use and development of land and water within the district; to preserve and protect the groundwater and water recharge areas within the town; and to prevent blight and pollution of the environment.

2. Permitted Uses

Within the Aquifer Protection District the only uses allowed are as follows:

a. A single family residence and uses accessory thereto connected to the municipal sewer prior to occupancy, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.

b. A single family residence and uses accessory thereto located on a lot not less than one acre in area, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.

c. Within the Water Supply Protection District the requirements of the underlying districts continue to apply, except that uses listed in Section 8.2.3 are prohibited and all uses other than single family residences and uses accessory thereto shall require a Special Permit pursuant to Section 8.2.4.

3. Prohibited Uses

The following are prohibited as a principle or an accessory use in a water supply protection district. Where lawfully existing, such uses may be continued but not expanded, added to, or enlarged:

a. Outdoor storage of salt, snow-melting chemicals, pesticides, herbicides, hazardous wastes or chemicals, and materials containing or coated with such chemicals susceptible to being carried into the surface or ground waters within the Water Supply Protection District.

b. Junkyards, salvage yards, open and landfill dumps, manufacture of pesticides, fertilizers, weed killers and herbicides, and commercial facilities for the storage or treatment of hazardous waste.

c. Disposal of hazardous toxic materials (as defined by Federal and State regulations), solid waste, or hazardous toxic wastewater through an onsite subsurface disposal system.

4. Uses by Special Permit

All principal or accessory uses, other than those permitted in Section 8.2.2, which are authorized in the underlying district and which are not otherwise prohibited by Section 8.2.3, are permitted in a Water Supply Protection District upon issuance of a Special Permit by the Board of Selectmen, which shall consider the reports and recommendations of the Board of Health, Planning Board, and Conservation Commission.

The Board of Selectmen may waive all or part of the submission requirements upon the submission of evidence by the applicant that the surface or groundwater drainage from the applicant's site is not contributory to a municipal well field.

1. Submittals

The following information shall be submitted when applying for a Special Permit within the Water Supply Protection District:

a. A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous material to be used and stored in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect from vandalism, corrosion, and leakage and to provide for spill prevention and countermeasures.

b. A description of potentially toxic or hazardous wastes to be generated indicating storage and disposal method.

c. For underground storage of toxic and hazardous materials, evidence of qualified professional supervision of system design and installation.

2. Review and Approval Considerations

Special Permits shall be granted only if the Board of Selectmen determined that at the boundaries of the premises the groundwater quality

resulting from the onsite waste disposal, other onsite operations, natural recharge, and background water quality will not fall below the standards established by the DEP in, "Drinking Water Standards of Massachusetts" or, for parameters where no standard exists, below standards established by the Board of Health, and wherever existing groundwater is already below those standards, upon determination that the proposed activity will result in no further degradation.

A Special Permit issued by the Board of Selectmen shall be conditioned upon the following additional limitations to protect the water supply:

a. Safeguards
   Provisions shall be made to protect against toxic or hazardous materials discharged or lost through corrosion, accidental damage, spillage or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, secure storage areas for toxic or hazardous materials, and indoor storage provision for corrodible or dissolvable materials.
b. Location
   Where the premises are partially outside the Water Supply Protection District, such potential pollution sources as onsite waste disposal systems shall, to the degree feasible, be located outside the district.
c. Disposal
   For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with M.G.L. c. 21C.
d. Drainage
   All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination.
e. Monitor Test Wells
   Where fertilizers, pesticides, herbicides or other potential contaminants are to be applied, utilized or stored, and in the opinion of the Board of Selectmen are a matter of concern, a groundwater monitoring program shall be established before the Special Permit is granted. Such a program shall adequately monitor the quality of the groundwater leaving the site through the use of monitor wells and/or appropriate groundwater sample analysis.
f. Natural Vegetation
   Nor more than 50% of natural vegetation, existing as of the effective date (June 18, 1990) of the adoption of this amendment to the Bylaw on any lot, may be disturbed in any underlying district.

However, to the extent that there is a finding that surface or groundwater drainage activity from the applicant's proposed use or activity on the site has decreasing, minimal or no impact on the municipal well field, the Board of Selectmen may relax the requirements of the preceding sentence, but in no event to a standard which is less restrictive than that set forth in the "Minimum Usable Open Space" paragraph of Section 5.3.2.

g. Technical Reference

The Board of Selectmen and applicants shall use the following technical references in the preparation and review of plans under this section: "Guidelines for Soil and Water Conservation in Urbanizing Ares of Massachusetts" 1977, U.S.D.A. Soil Conservation Service, Amherst, Massachusetts or equivalent; and Guide to Contamination Sources for Wellhead Protection. 1989, Department of Environmental Quality Engineering – with special attention to the matrix entitled, "Land Use/Public Supply Well Pollution Potential Matrix."

3. Additional Rules and Regulations

The Board of Selectmen shall adopt additional rules and regulations relative to the issuance of a Special Permit under this section. Such rules shall consider, but need not be limited to, requirements to control causes of pollution to underground surface water.

8.3.A Towers, windmills, radio transmitters, etc.

Towers, including windmills with rated power less than or equal to 60 kilowatts, radio transmitters and receivers, dish antennas, and similar structures may be permitted in all districts provided they meet the following requirements:

1. Generating capacity in residential areas

Windmills for generation of electricity in residential areas shall have a maximum generating capacity of twice the requirements of the property owner of the same lot.

2. Setback Requirements

Setback – The minimum setback distance for all towers from any abutter's property line shall be (and shall continue to be for the life of the installation) at least equal to the maximum height of the tower and its tower mounted equipment plus twenty feet. Setbacks will be measured to the tower base. The Board of Appeals may grant a Special Permit for installations which do not meet the setback requirements if:

1. all other conditions of this Bylaw are met and
2. the waiver of the setback requirement does not, in the opinion of the Board, create a safety hazard and/or derogate substantially from the public good.

3. Tower Height

Tower Height – All freestanding towers exceeding thirty five feet in height and all towers exceeding sixty five feet from grade when mounted

on buildings require a Special Permit from the Board of Appeals. Special Permits may be issued if the applicant can demonstrate to the Board that:

1. it is necessary to extend higher than the limit for effective operation of the equipment to be mounted on the tower;
2. the installation will not derogate substantially from the public good.

4. Access

Tower Access – Climbing access to the tower shall be restricted by limiting tower climbing apparatus to no lower than ten feet from the ground, or, for towers that are climbable without climbing apparatus, the lowest ten feet shall be covered with a smooth un-climbable surface.

5. Maintenance

If a tower is designated a safety hazard by a Registered Professional Structural or Civil Engineer, or if a tower is abandoned for more than two years, the owner of said tower shall be required to dismantle the tower. All tower mounted equipment shall be operated in a safe and responsible manner.

6. Radio/Television Interference

The applicant shall furnish the Building Inspector or the Board of Appeals, if required as a condition to a Special Permit, a written commitment that any interference caused by the tower or equipment on the tower to local radio and/or television reception will be corrected within sixty days at the applicant's expense. If, in the opinion of the Board of Selectmen, noise is found to be excessive, as observed at the lot line of the lot on which the device is located, the owner shall reduce the noise to an acceptable level. Failure to comply with this section shall constitute just cause requiring the structure to be immediately removed.

7. Certification of Structural Design

Applicants for permits for towers over the minimum height must have the design of the tower certified as structurally safe by a Registered Professional Structural or Civil Engineer before the permit can be issued.

8.3.B Land-Based Commercial and Public Partnered Wind Turbines

1. Application

This bylaw shall be limited in its use and application to only an applicant that has been formed and established as a partnership or similar business entity by between a commercial or non-profit organization and the Town of Marion pursuant to a written agreement which sets forth the terms and conditions of said partnership, and which has been approved and formally executed on behalf of the Town of Marion by the Board of Selectmen, with the advice and counsel of the Alternative Energy Committee.

2. Generating Capacity

Land-based commercial-sized wind turbine facilities are defined as those turbines with a rated power greater than 60 kilowatts (60kW).

3. General Requirements

Proposed wind turbine installations shall be consistent with all applicable Town, state and federal requirements, including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements. The installation and operation of a wind turbine shall require the issuance of a Special Permit issued by the Board of Appeals (ZBA) pursuant to the requirements of Section 7.2 of the Zoning Bylaw and those additional conditions contained in Section 8.3.B11, below.

4. Dimensional Requirements

Height – in no case shall the height of the tower exceed 480 feet. Site specific requirements, see items b. and c. below, may require a lesser height. The height of a wind turbine shall be measured from natural grade to the tip of the rotor blade at its tallest point, or blade-tip length.

Clear area – the area of a circle centered at the base of the wind turbine tower and having a radius equal to 1.0 times the height of the wind turbine. This area shall be clear of all buildings, critical infrastructure, or private or public ways that are not part of the wind turbine facility.

Setback – the minimum distance from the nearest property line or residence to the center or base of the wind turbine shall be equal to three times the height of the wind turbine. The ZBA may reduce the minimum setback distance as appropriate based on site-specific considerations or written consent of the affected abutter(s) if the project satisfies all other criteria for granting of a building permit under the provisions of this section.

5. Noise Requirements

The wind turbine shall conform to Massachusetts noise regulation 310 CMR 7.10. The Massachusetts Department of Environmental Protection Noise Level Policy established for implementing this regulation specifies that the ambient sound level, measured at the property line of the facility or at the nearest inhabited buildings, shall not be increased by more than 10 decibels weighted for the “A” scale or 10 dB(A) due to the sound from the facility during its operating hours.

6. Visual Requirements

Unless required by the Federal Aviation Administration (FAA), wind turbines shall not be lighted on a continuous basis. Lighting of equipment, structures, and any other facilities on site (except lighting required by the FAA) shall be shielded from abutting properties.

The wind turbine structure shall be free of all company logos, advertising, and similar promotional markings. Signs on the facility shall be limited to those needed to warn of any danger; and educational signs providing information on the technology. All signs shall comply with the requirements of the Town’s sign regulations.

The applicant shall minimize any impact on the visual character of surrounding neighborhoods and the community by painting the wind turbine structure a non- reflective color that blends with the surroundings.

Wind energy facilities shall be sited and/or operated in a manner that minimizes shadowing or flicker impacts on the neighboring or adjacent uses.

7. Safety

No hazardous materials or waste shall be discharged on the site of any wind turbine facility. If any hazardous materials or wastes are to be used on the site, the Special Permit shall incorporate provisions for full containment of such materials or waste. An enclosed containment are, designed to contain at least one hundred ten percent of the volume of the hazardous materials or waste stored or used on the site may be required to meet this requirement.

The wind turbine structure and facility shall also be designed to prevent unauthorized access (for example, by construction of a fenced enclosure or locked access, anti-climbing provisions, etc.).

8. Underground Utilities

All electrical connections from the wind turbine, including any associated substations, to either the point of use for the electricity or to the grid shall be made via underground conduits.

9. Modifications

All modifications to a wind turbine installation made after issuance of the Special Permit shall require prior approval by the ZBA pursuant to G.L. c.40A, s. and the terms and conditions of this Bylaw.

10. Reporting

After each wind turbine is operational, the applicant shall submit to the special permit granting authority at annual intervals from the date of issuance of the Special Permit, a report detailing operating data for the wind turbine, including, but not limited to, days of operation, daily electrical energy production, total energy production, emergent maintenance events.

11. Monitoring and Maintenance

The applicant shall maintain the wind turbine facility installation in good condition using a formal planned maintenance system based on historical experience, good engineering practice, and installed system and performance monitoring instruments. Such maintenance shall also include, but not be limited to, painting, maintaining the structural integrity of the foundation, support structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping, if present.

12. Special Permit

a. A Special Permit issued by the ZBA for the construction or operation of any wind turbine shall be valid for twenty years, unless extended or renewed. Upon request, the ZBA may extend the time period or renew the Special Permit if there has been satisfactory operation of the facility. Any Special Permit issued under this Bylaw shall lapse within one year from the grant thereof if construction has not sooner commenced except for good cause as

determined by the ZBA. Upon the lapse of a Special Permit, a new Special Permit must be issued before construction or installation of the wind turbine may proceed. Upon expiration or termination of the Special Permit, the owner shall remove the wind turbine facility. A Special Permit granted for a wind turbine facility requires that the ZBA make written findings as set forth in Section 7.2 of the Zoning Bylaw and, in addition, conclude that the wind turbine facility will not unreasonably interfere with the use or enjoyment of property abutting the proposed wind turbine facility and property within three hundred feet of the location of the wind turbine facility

b. Pre-application Conference: Prior tot the submission of an application for a Special Permit under this regulation, the applicant is strongly encouraged to meet with the ZBA at a public meeting to discuss the proposed wind turbine installation in general terms and to clarify the filing requirements.

c. Pre-application Filing Requirements: The purpose of the pre-application conference is to inform the ZBA as to the general nature of the proposed wind turbine. As such, no formal filings are required to be presented at the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary drawings or to present manufacturer's drawings and specifications to inform the ZBA of the location and overall design of the proposed facility, as well as its scale, noise levels, and proximity to abutting residential structures.

d. Application Filing Requirements: At a minimum, the following shall be included with the application for a Special Permit for each wind turbine. The ZBA may require additional information where it deems necessary to render a decision in the application for a wind turbine.

Name, address, telephone number, and original signature (photo-reproductions of signatures will not be accepted) of applicant and any co-applicants. Co-applicants may include the landowner of the subject property or the operator of the wind turbine.

If the applicant or co-applicant will be represented by an agent, the name, address and telephone number of the agent shall be provided as well as an original signature authorizing the agent to represent the applicant and/or co-applicant. Photo-reproductions of signatures will not be accepted.

Documentation of the legal right to install and use the proposed wind turbine and proof of control over the clear area, as required by Sections 8.3.B.3 a, b, and c of this bylaw. A copy of the recorded deed tot eh property shall be sufficient for this purpose if the applicant is the record owner of the property.

If the property is to be leased or subject to an easement, the applicant shall provide a copy of the lease or easement instrument.

Identification of the subject property by including the name of the nearest road or roads, and street address, if any; Assessors map and parcel number of subject property; Zoning district designation for the subject parcel with separately submitted locus map; A one-inch-equals-forty-feet vicinity plan, signed and sealed by a licensed Professional Land Surveyor showing the following:
Property lines for the subject property, and all properties adjacent to the subject property within three hundred feet.
Proposed location of the wind turbine(s), fencing, associated ground equipment, transmission infrastructure and access roads.
The outline of all existing buildings, including their purpose(s) (e.g., residential buildings, garages, accessory structures, etc.) on the subject property and all adjacent properties within three hundred feet, and the distances, at grade, from the proposed wind turbine to each building on the vicinity plan shall be shown.
Existing (before) condition photographs: A color photograph of the current view shall be submitted from at least two locations to show the existing conditions.
Proposed (after) condition representations: Each of the existing condition photographs shall have the proposed wind energy conversion facility superimposed on it to accurately simulate the proposed wind energy conversion facility when built and illustrate its total height, width, and breadth. For wind turbines with hub heights of one hundred sixty five feet (fifty meters) of greater, sight-line representations must be provided. A sight-line representation shall be drawn from representative locations that show the lowest point of the turbine tower visible from each location. Each sight-line shall be depicted in profile, drawn at one-inch-equals-forty-feet scale. The profiles shall show all the intervening trees and buildings. There shall be at least two sight-line representations illustrating the visibility of the facility from surrounding areas as the closest residence or place of business, or nearby public roads or areas. Documentation of the wind turbine manufacturer and model, rotor diameter, tower height, tower type and foundation type/dimensions. Tower and foundation drawings and specifications signed by a Professional Engineer(s) licensed to practice in the Commonwealth of Massachusetts. Materials of the proposed wind turbine shall be specified by type and specific treatment. This information shall be provided for the wind turbine tower and all other proposed equipment/facilities.
Colors of the proposed wind turbine shall be represented by a color board showing actual colors proposed. If lighting of the site or turbine is proposed by the applicant or required by the FAA, the applicant shall submit a copy of the FAA's determination to establish the required markings and/or lights for the structure. The applicant shall also submit a printout of a computer-generated,

point-to-point simulation indicating the horizontal foot-candle levels at grade, both within the property to be developed and three hundred feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

The applicant shall provide a statement listing the existing ambient noise levels at the property boundaries of the proposed wind turbine and the maximum future projected noise levels from the proposed wind turbine. Such statement shall be certified and signed by a Professional Engineer licensed in the Commonwealth of Massachusetts, stating that noise projections are accurate and meet the noise standards of this bylaws and the Massachusetts noise regulation 310 CMR 7.10 and are acceptable under Massachusetts Department of Environmental Protection guidance for noise measurements.

To ensure safe operation of the wind turbine, the applicant shall provide a statement from the wind turbine manufacturer giving the recommended maintenance procedures and schedule, and an Operation and Maintenance Plan by the applicant to follow said procedures and schedule.

The applicant shall provide a detailed business plan for the project, including but not limited to the goals of the project, the stakeholders, and the time-line of anticipated activities.

The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a Cost of Living Adjustment for removals after ten, fifteen and twenty years. The ZBA shall require the applicant to provide a form of surety (i.e., post a bond, establish an escrow account, or other) at the ZBA's election at the time of construction to cover the costs of removal in the event the town must remove the facility.

The amount of such surety shall be equal to one hundred fifty percent of the anticipated cost of compliance with this section.

The applicant shall provide evidence that the utility company that operates the electrical grid where the facility is to be located has been informed of the customer's intent to install an interconnected customer-owned generator.

The applicant shall identify the proposed clearing of natural vegetation for the construction, operation and maintenance of the wind turbine facility.

The ZBA may require additional information and date from the applicant as it determines relevant to the application, in its sole discretion.

e. Professional Fees: The Town may retain a technical expert/consultant and legal services, pursuant to G.L. c. 44, s. 53G, to verify information presented by the applicant. The cost for such a technical/consultant and legal services, if needed, will be at the

expense of the applicant pursuant to the terms and conditions of G. L. c.44, s. 53G.

f. Adjudication of Special Permit Applications: The ZBA shall make a formal decision regarding each application for Special Permit for a wind turbine. The ZBA shall base any decision pursuant to the requirements of Section 7.2 of the Zoning Bylaw and the provisions of this Bylaw.

13. Abandonment or Discontinuation of Use

a. Notification Requirements: At such time that a wind turbine is scheduled to be abandoned or discontinued, the applicant will notify the ZBA and Building Commissioner by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. In the event that an applicant fails to give such notice, the facility shall be considered abandoned or discontinued if the wind turbine is inoperable for one hundred eighty consecutive days.

b. Physical Removal: Upon abandonment or discontinuation of use, the owner shall physically remove the wind turbine within ninety days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and the discretion of the ZBA. “Physically remove” shall include, but not be limited to: Removal of the wind turbine and tower, al machinery, equipment shelters, security barriers and all appurtenant from the subject property, proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations, and restoration of the location of the wind turbine to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after-condition.

14. Change of Owner

Once a Special Permit for a commercial wind turbine has been approved, the applicant shall duly record a copy of the Special Permit with the Plymouth County Registry of Deeds. All subsequent deeds to the property shall refer to the Special Permit and incorporate it by reference. All conditions under which the Special Permit was originally granted shall be binding on all successive owners of the property. In the event of a transfer of ownership, the original owner shall notify the Chief Executive Officer of the town by certified U.S. Mail of the transfer in ownership within thirty days of the transaction.

15. Severability of Provisions

The provisions of this Bylaw are severable. If any provision of this Bylaw is held invalid, the other provisions shall not be affected thereby. If application of this Bylaw or any of its provisions to any person or circumstance is held invalid, the application of this Bylaw and its provisions to other persons and circumstances shall not be affected thereby.

(8.3.B.1-15 added ATM May 17, 2010 Art. 27)

8.4 Rear Lots

Individual lots in Residence Districts need not have the required amount of lot frontage, provided that all of the following conditions can be met for each individual lot lacking such frontage:

1. The area of said lot is at least double the minimum area normally required for the district.
2. A building line is designated on the plan, and the width of the lot at that line equals or exceeds the number of feet normally required for street frontage in the district.
3. Lot width is at no point less than thirty five feet, and lot frontage is not less than thirty five feet. Frontage shall meet all of the requirements contained in the definition for "frontage" in Section 11, herein.
4. Not more than one rear lot shall be created from a property, or a set of contiguous properties held in common ownership as of March 10, 1997. Documentation to this effect shall be submitted to the Planning Board along with the application for Approval Not Required or Definitive Subdivision Plans under the Subdivision Control Law. The Building Inspector shall not issue a building permit for any rear lot without first establishing that compliance with this provision has been determined by the Planning Board.
5. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.
6. The applicant shall submit a plan to the Planning Board under the Subdivision Control Law depicting both the rear lot and the front lot from which the rear lot was created.
7. Rear lots serving single family structures shall have front, rear, and side yards equal to or in excess of those required in the district.
8. Any lot lawfully in existence as of June 1, 2004 that complied with the requirements of Section 8.4 at the time said lot was created shall be considered in compliance with the frontage, area and width provisions of the Zoning Bylaw in effect at the time a building permit is sought for said lot and therefore be eligible for a building permit as a lot that conforms to zoning; provided, however, that the resulting structure shall comply with the front, rear, and side yard setback requirements under the Zoning Bylaw in effect at the time the lot was created.

(Added, STM, October 25, 2004, Art. S20)

8.5 Surface Water District

1. Purpose

   The purpose of this section is to provide municipal control of the use of coastal water areas which are not within any of the town's land use zoning districts in order to protect and enhance the natural and man made environmental qualities of the Town of Marion, encourage water dependent uses where appropriate, and preclude uses which could evolve because other Town, State or Federal laws and regulations do not provide sufficient protection of the public interest.

All areas within the Surface Water District shall also be subject to the Rules and Regulations as are from time to time issued by the Marine Resources Commission or the Harbormaster in support of the authority granted under M.G.L. c. 91 and further subject to any special bylaws as may be adopted by the Town, and further subject to the granting of licenses and/or permits required by the Town, State or Federal boards or agencies exercising authority granted to them by laws other than M.G.L. c. 40A.

All traditional uses of the surface waters for recreational and commercial purposes shall be permitted except as otherwise set forth herein.

2. District Boundaries

The district defined by these regulations shall cover all water areas within the municipal limits of the Town of Marion seaward of the low water mark as said mark is defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.

3. Prohibited Uses

The following uses shall not be allowed within the Surface Water District:

1. Boatels and similar facilities offering temporary sleeping and/or eating accommodations
2. Residential uses, except that a vessel equipped with a Type 3 holding tank or other Coast Guard approved wastewater device and anchored or moored in accordance with applicable Town mooring regulations, may be used for human habitation for a period which cumulatively shall not exceed nine months within any calendar year.
3. Floating office, industrial, and commercial uses except as they may be accessory to and allowed by Special Permit under Section 8.5.4.

4. Special Permit Uses

The Planning Board shall be the Special Permit Granting Authority. The following uses may be allowed within the Surface Water District only by Special Permit from the Planning Board:

1. Boat launching ramps
2. Landing facilities
3. Marinas as defined by M.G.L. c. 91
4. Piers, commercial
5. Service facilities for the repair or maintenance of vessels
6. Underwater sewer, water and electrical lines and pipes

The following uses may be allowed in both the Surface Water District and an adjoining residential land use district by Special Permit from the Planning Board:

1. Association piers subject to the provisions of Section 7.4.5
2. Accessory use piers subject to the provisions of Section 7.4.6

(Amended, ATM, Art. 26, April 24, 2000)

5. Special Permit Review Procedure

Special Permits shall be granted only after the Planning Board:

a. Reviews the written recommendations of the Marine Resources Commission, Harbormaster, Selectmen, Board of Health, and Conservation Commission. Upon receipt of the Special Permit application, the Planning Board shall forward a copy of the application to each of the above named authorities for comment. Failure of any of the above named authorities to submit written initial filing of the Special Permit application shall be deemed a favorable recommendation of said authority. If the Planning Board allows or denies a use which is contrary to the recommendations of the Marine Resources Commission, the Planning Board shall so state its reasons in writing when making the decision.

b. Determines that the proposed use is consistent with the provisions of the Marine Land Use Plan or Master Plan and the Open Space Plan as they are from time to time adopted and amended.

c. Determines that the proposed use is consistent with any Town of Marion Harbor Plan.

d. Determines that the proposed use is a water dependent use, meaning those uses and facilities which require direct access to, or locations in marine or tidal waters and which therefore cannot be located inland (ref. M.G.L. c. 91, Waterways Law).

e. Determines that the landward facilities, such as parking and access ways, will not constitute an adverse influence on adjoining properties.

8.6 Accessory Apartments

8.6.1 Purpose

The purpose of accessory apartments is to provide additional dwelling units to rent without adding to the number of buildings in the Town or to alter substantially the appearance of the Town. An accessory apartment is intended to provide assistance in the provision of affordable housing opportunities for families and individuals of all ages.

8.6.2 Procedure

A single family dwelling, lawfully in existence as of the date of the adoption of this Bylaw, or an accessory structure located on the same lot as a single family dwelling lawfully in existence as of the date of the adoption of this Bylaw, may be converted such that it contains an accessory dwelling unit (an accessory apartment), provided that requirements of Section 7.2 of the Zoning Bylaw and the following terms and conditions are met.

8.6.3 Minimum Submittal and Performance Standards

1. The applicant shall submit a plot plan prepared by a Registered Land Surveyor that shows the following: the existing dwelling unit, accessory structure(s) and proposed accessory apartment, location of any septic

system, required parking, and all residential dwellings within one hundred fifty feet of the proposed accessory apartment. A mortgage inspection survey, property adapted by a surveyor, shall be sufficient to meet this requirement.

2. Any Special Permit shall be subject to review and approval by the Board of Health as to sanitary wastewater disposal in full conformance with the provision of 310 CMR 15.00 (Title V of the State Environmental Code), assurance that there is an adequate supply of potable water and the proposed drainage plans, if any, required due to the construction of new parking spaces or alteration to existing structures;
3. The Board of Appeals shall require the owner of the property to provide an affidavit, subject to the pains and penalties of law, certifying that the owner of the property, except for bona fide temporary absence, shall occupy one of the two dwelling units.
4. Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed eight hundred fifty square feet in floor space, must be smaller than the area of the main part of the dwelling and shall be located in the principal residential structure or within an accessory building.

(Amended, ATM, Art. 34. May 21, 2012)

5. The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single family structure, in accordance with the following:
   a. Any accessory apartment construction shall not create more than a 50% increase in the gross floor space of the structure existing as of the date of the adoption of this Bylaw.
   b. Any stairways or access and egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.
   c. Sufficient and appropriate space for at least one additional parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway,
   d. The design and size of the apartment conforms to all applicable standards in the Health, Building, and other relevant codes and regulations.
6. The Board of Appeals shall require as a condition of the Special Permit that the Special Permit is not transferable or assignable and that it shall lapse, by operation of law, when the property (in whole or in part) that is subject to the Special Permit is transferred or sold.
7. The Board of Appeals shall take into consideration the reports of Town agencies, departments and Boards and shall make specific findings as to the decision's consistency or inconsistency with the reports received from the Planning Board and Board of Health.
8. The Board of Appeals shall obtain a certification from the applicant that the apartment will be occupied by an immediate family member of the owner or shall be an Affordable Housing Unit in compliance with Section 8.12.2.a of the Zoning Bylaw.

(Amended, STM, Art. S7, November 13, 2000)
(Amended, ATM, Art. 31, April 26, 2005)

8.7 Sippican River Protection Overlay District

1. Purposes

   The purposes of the Sippican River Overlay District are to:

   a. Prevent and control water pollution, especially from non-point sources and thereby improve the water quality of the river;
   b. Promote the preservation of the scenic qualities of the natural landscape (indigenous vegetation) along the river;
   c. Prevent any additional disruptions to the natural flow of the river;
   d. Protect fisheries and wildlife habitat within and along the river;
   e. Control erosion and siltation;
   f. Enhance and preserve existing agricultural lands, floodplains and other environmentally sensitive areas along the shoreline;
   g. Conserve shore cover and encourage well-designed and environmentally sensitive developments and agricultural and other farming uses.

2. Scope of Authority

   All existing regulations of the Marion Zoning Bylaws applicable to such district shall remain in effect, except that where the Sippican River Protection Overlay District imposes additional regulations, such regulations shall prevail.

3. District Delineation

   The area covered by this Overlay District shall be all contiguous portions of the Sippican River in the Town of Marion, its shores and landward up to two hundred feet from the normal high water line. All distances shall be measured in horizontal feet. The upstream boundary of the District is the Rochester town line; the downstream boundary is a line drawn from the tip of Rose Point to the westerly line of the Town beach lot on River Road. This Overlay District is shown on a map on file with the Town Clerk.

4. Permitted Uses

   The following uses are permitted within the District, provided they are in conformance with the River Protection Standards in Section 8.7.7:

   a. Agricultural production, including raising of cranberries, livestock, poultry, nurseries, orchards, hay and other crops;
   b. Recreational uses, provided there is minimal disruption of wildlife habitat;
   c. Maintenance and repair usual and necessary for continuance of an existing use;
   d. Conservation of water, plants and wildlife, including the raising and management of wildlife;
   e. Emergency procedures necessary for safety or protection of property;

f. Single family residences on lots fronting on a way not requiring approval under the Massachusetts Subdivision Control Law, M.G.L. c. 41;

g. Maintenance of the river may be done under the requirements of M.G.L. c. 131, s. 40 and any other applicable laws, bylaws and regulations.

5. Prohibited Uses

a. All uses of outboard motors, including jet skis, of any type on the river west of the County Road bridge;

b. See Section 8.7.7 for limitations with the buffer strip;

c. All other uses not specifically permitted or allowed by variance granted by the Zoning Board of Appeals within the Overlay District are prohibited.

6. Additional Site Plan Approval Criteria

All residential subdivisions which require approval under M.G.L. c. 41 shall require site plan approval from the Planning Board. In addition to the standards contained in M.G.L. c. 41, the Planning Board shall also consider whether the use or uses proposed in the River Protection Overlay District meets the following criteria:

a. Is situated on a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip;

b. Is integrated into the existing landscape through features such as vegetative buffers and through retention of the natural banks of the river;

c. Will not result in erosion or sedimentation;

d. Will not result in water pollution.

7. River Protection Standards

All land uses, including all residences developed on river front lots, shall comply with the following standards:

a. A buffer strip extending one hundred feet in depth, to be measured landward from the high water line of the Sippican River, shall be required for all lots within the River Protection Overlay District. If any lot existing at the time of adoption of this Bylaw does not contain sufficient depth, measured landward from the high water line, to provide a one hundred foot buffer strip, the buffer strip may be reduced to 50% of the available lot depth, measured landward from the high water line.

1. Within the buffer strip, no trees or other vegetation shall be harvested, cut, removed, thinned or otherwise disturbed other than:

i. Cutting and removing of dead vegetation; or of

ii. Selected cutting within the buffer strip when it will not cause significant adverse environmental impact with respect to the stability of the river bank and is subject to the following: no more than 50% of the live trees five inches or more in diameter breast

high during any ten year period, or the removal of more than one half of the total vegetative cover within the portion of each parcel that is within the buffer strip.

2. No building not structures shall be erected or moved into the buffer strip.

b. Onsite disposal systems shall be located as far from the Sippican River as is feasible and shall conform to the provisions of 310 CMR 15, Title V of the Massachusetts State Environmental Code and the Marion Sanitary Code.

c. All new development shall be integrated into the existing landscape on the property so as to minimize its visual impact and maintain the natural beauty of environmentally sensitive shoreline areas through use of vegetative and structural screening, landscaping, grading and placement on or into the surface of the lot.

d. Runoff from all agricultural and farming activities and from new development, building or change in building or site must be contained within the development or site. There shall be no net increase in offsite runoff, nor any degradation of water quality in the water leaving the site.

8. Nonconforming Use

a. Any lawful use, building, structures or parts thereof existing at the effective date of this Bylaw, or amendment thereto, and not in conformance with the provisions of this Bylaw, shall be considered to be a nonconforming use.

b. Any existing use or structure may continue and may be maintained, repaired and improved but in no event made larger unless permission is granted by the Zoning Board of Appeals.

c. Any nonconforming structure which is destroyed may be rebuilt on the same location, but no larger than its overall original square footage unless permission is granted by the Zoning Board of Appeals.

9. Hardships

To avoid undue hardships, nothing in this Bylaw shall be deemed to require a change in design, construction or intended use of any structure for which a building permit was legally issued prior to the affective date of this Bylaw. Such construction must be completed within two years from the effective date of this Bylaw or such construction shall be required to conform to this Bylaw.

10. Severance

If any section or part thereof of this Bylaw is held to be invalid, the remainder of this Bylaw shall not be affected thereby.

11. Definitions

Bank – That portion of the land surface which normally abuts and confines the review. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level – whichever is lower.

High Water Line – A line located within a river bank that is apparent from visible markings, changes in character of solids or vegetation due to prolonged presence of water and which distinguishes predominantly aquatic land form predominantly terrestrial land.

8.8 Adult Uses

The following regulations shall apply to adult uses as defined herein.

1. Separation Distances

   Adult uses may be permitted only when located outside the area circumscribed by a circle which has a radius consisting of the following distances from specified uses or zoning district boundaries:

   a. one thousand feet from the district boundary line of any residence zone;
   b. one thousand feet from any other adult use as defined herein;
   c. five hundred feet from any establishment licensed under M.G.L. c. 138, s. 2.

2. Measurement of Radius

   The radius distance shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed adult use is to be located, to the nearest point of the parcel of property of the zoning district boundary line from which the proposed adult use is to be separated. In the case of the distance between adult uses (Section 8.8.1.b) and between an adult use and an establishment licensed under M.G.L. c. 138, s. 12 (Section 8.8.1.c), such distances shall be measured between the closest points of the buildings in which such uses are located.

3. Maximum Useable Floor area

   With the exception of an adult cabaret or an adult motion picture theater, adult uses may not exceed two thousand five hundred square feet of gross floor area.

4. Parking Requirements

   The following parking requirements shall apply:

   a. Parking for adult bookstores, adult paraphernalia stores, and adult video stores shall meet the requirements of Section 6.5 for retails stores.
   b. Parking for adult cabarets and adult motion picture theaters shall meet the requirements of Section 6.5 for private clubs.
   c. Parking shall be provided in the side or rear yard area only.
   d. All parking areas shall be illuminated, and all lighting shall be contained on the property.
   e. Parking areas shall be landscaped in conformance with the appropriate provisions of this zoning Bylaw.

5. Screening and Buffers

   A five foot wide landscaped buffer shall be provided along the side and rear property lines of an adult use establishment consisting of evergreen shrubs or trees not less than five feet in height at the time of planting, or solid fence not less than five feet in height.

6. Visual Access
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.

7. Application for Special Permit
The Planning Board shall be the Special Permit Granting Authority for the purposes of this Section 8.8. An application for a Special Permit for an adult use establishment shall include the following information:
   a. Name and address of the legal owner of the establishment;
   b. Name and address of all persons having lawful equity or security interest in the establishment;
   c. Name and address of the manager;
   d. Number of employees;
   e. Proposed provisions for security within and without the establishment;
   f. The physical layout of the interior of the establishment.

8. Prohibition
No adult use Special Permit shall be issued to any person convicted of violating the provisions of M.G.L. c. 119, s. 63 or M.G.L. c. 272, s. 28.

9. Public Hearing
An adult use Special Permit shall only be issued following a public hearing held within sixty five days after the filing of an application with the Special Permit Granting Authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.

10. Lapse
Any adult use Special Permit issued under the Bylaw shall lapse within one year, not 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.

11. Severability
Any provision of this Section 8.8, or portion thereof, declared invalid shall not affect the validity or application of the remainder of said section of this Zoning Bylaw.

8.9 Driveway Regulations

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”=100’, showing the driveway serving the premises, and showing existing and proposed topography at ten feet 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 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:

1. Except in access strips of less than fifty feet width to rear lots, no driveway shall be located within ten feet of any side or rear lot line without written approval by the appropriate abutter(s), or by Special Permit by the Planning Board after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
2. 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 five hundred feet, unless the Planning Board shall grant a Special Permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
3. The grade of each driveway where it intersects with the public way shall not exceed 7% for a distance of twenty feet from the travel surface of the public way unless the Planning Board shall grant a Special Permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
4. 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 8.9.6, herein.
5. A common driveway with a single access point, serving not more than two lots, may be allowed on Special Permit by the Planning Board. A driveway with two access points, designed as a loop, serving three to six lots may be allowed on Special Permit by the Planning Board. A common driveway must satisfy all of the conditions in this Section 8.9, as well as all of the following conditions:
    a. the centerline intersection with the street centerline shall not be less than forty five degrees;
    b. a minimum cleared width of twelve feet shall be maintained over its entire length;
    c. 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;
    d. the driveway shall be located entirely within the boundaries of the lots being served by the driveway and not along a side or rear boundary line;
    e. 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; and

f. a common driveway may never be used to measure or determine lot frontage.

(Amended, STM, Art. S9, October 15, 2001)

8.10 Wireless Communications Facilities (WCF) Overlay District

1. Purpose

The purpose of this section is to establish areas in which wireless communications facilities may be provided while protecting Marion's unique community character. The WCF Overlay District has been created (a) to provide for safe and appropriate siting of wireless communications facilities consistent with the Telecommunications Act of 1996, and (b) to minimize visual impacts from such facilities on residential districts and scenic areas within Marion.

2. Location

The WCF District shall be located as follows: Lot 14 on Assessor's plan 6; Lot 54 on Assessor's plan 15; lots 9 and 18 on Assessor's plan 24; lot 14 on Assessor's plan 26.

(Added, STM, Art. S2, October 28, 1997)

3. Applicability

The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superseded herein.

4. Submittal Requirements

As part of any application for a Special Permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at Section 9. Applicants shall also describe the capacity of the facility, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.

5. Special Permit

A wireless communications facility may be erected in the WCF District upon the issuance of a Special Permit by the Planning Board if the Board determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts as to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

a. Communications needs served by the facility;
b. Traffic flow and safety, including parking and loading;
c. Adequacy of utilities and other public services;
d. Impact on neighborhood character, including aesthetics;
e. Impacts on the natural environment, including visual impacts;
f. Potential fiscal impact, including impact on Town services, tax base, and employment;

g. New monopoles shall be considered only upon a finding that existing or approved monopoles or facilities cannot accommodate the equipment planned for the proposed monopole.

6. Conditions

All wireless communications facilities shall be subject to the following conditions:

a. To the extent feasible, service providers shall co-locate on a single facility. Monopoles shall be designed to structurally accommodate foreseeable users (within a ten-year period) where technically practicable.

b. New freestanding facilities shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed one hundred feet above mean finished ground elevation at the base of the mounting structure; provided, however, that a monopole may be erected higher than one hundred feet where co-location is approved or proposed, not to exceed a height of one hundred thirty feet above mean finished ground elevation at the base of the mounting structure.

c. Wireless communications facilities may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission lines, and the like. In such cases, the facility height shall not exceed twenty feet above the height of the existing structure or building.

d. All structures associated with wireless communications facilities shall be removed within one year of cessation of use. The Board may require a performance guarantee to affect this result.

e. To the extent feasible, all network interconnections from the communications facility shall be via landlines.

f. Existing onsite vegetation shall be preserved to the maximum extent practicable.

g. The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.

h. Traffic associated with the facility shall not adversely affect public ways.

i. Fencing may be required to control unauthorized entry to wireless communications facilities.

j. The setback of the WCF from the property line shall be determined by the Planning Board based on the specific proposal presented. In no case will the setback be less than forty feet.

8.11 Erosion Control

Site design, materials, and construction processes shall be designed to avoid erosion damage, sedimentation or uncontrolled surface water runoff by conformance with the following:

Grading or construction which will result in final slopes of 15% or greater on 50% or more of lot area, or on thirty thousand square feet or more on a single lot, even if less than half the lot area shall be allowed only under Special Permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation.
All such slopes exceeding 15% which result from site grading or construction activities shall either be covered with topsoil to a depth of four inches and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber.

No area or areas totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity, or unless necessarily incidental to construction on the premises under a currently valid building permit, or unless within streets which are either public or designated on an approved subdivision plan, or unless a Special Permit is approved by the Planning Board on condition that runoff will be controlled, erosion avoided and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by Special Permit shall remain through the winter without a temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity or an emergency situation, such as storm damage, where such temporary cover would be infeasible.

The Building Inspector may require the submission of all information from the building permit applicant or the landowner, in addition to that otherwise specified herein, necessary to ensure compliance with these requirements, including, if necessary, elevation of the subject property, description of vegetative cover and the nature of impoundment basins proposed, if any.

In granting a Special Permit, the Planning Board shall require a performance bond to ensure compliance with the requirements of this section.

Hillside areas, except naturally occurring ledge or bedrock outcroppings or ledge cuts, shall be retained with vegetative cover, as follows:

Average percentage slope	Minimum percentage of land remain in vegetation
10.0-14.9	25
15.0-19.9	40
20.0-24.9	55
25.0-29.9	70
30.0 and above	85

(Added, STM, Art. S7, October 28, 1997)

8.12 Inclusionary Housing

(Added STM, Art. SI, April 29, 2003)

1. Purpose and Intent
   The purpose of this Bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with M.G.L. c. 40B ss. 20-23, and ongoing Town of Marion programs to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from the Bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town's requirements under M.G.L. c. 40B ss. 20-23.
2. Definitions
   a. Affordable Housing Unit. A dwelling unit that can be purchased at an annual cost that is no more than 30% of the homeowner's income, which is at or below 80% of the Town of Marion's median income as reported by the U.S. Department of Housing and Urban Development, including units under M.G.L. c. 40B ss. 20-24 and the Commonwealth's Local Initiative Program (LIP).
   b. Qualified affordable housing unit purchaser. An individual or family with a household income that does not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).
3. Applicability
   a. Division of Land. This Bylaw shall apply to the division of land held in single ownership as of April 29, 2003 or any time thereafter into six or more lots, whether said six or more lots are created at one time or the cumulative of six or more lots created from said land held in single ownership as of April 29, 2003, and shall require a Special Permit under Section 7 of the Zoning Bylaw. A Special Permit shall be required for land divisions under M.G.L. c. 40A s. 9 as well as for "conventional" or grid divisions allowed by M.G.L. c. 41 s. 81-L and s. 81-U, including those divisions of land that do not require subdivision approval.
   b. Multifamily Dwelling Units. This Bylaw shall apply to the construction of six or more multifamily dwelling units, whether on one or more contiguous parcels in existence as of April 29, 2003, and shall require a Special Permit under Section 7 of the Zoning Bylaw.
   c. The provisions of Section 8.12.3b shall not apply to the construction of six or more single family dwelling units on individual lots, if said six or more lots were in existence as of April 29, 2003.

d. The Planning Board shall be the Special Permit Granting Authority (SPGA) for all Special Permits under this Bylaw.

4. Mandatory Provision of Affordable Units

The SPGA shall, as a condition of approval of any development referred to Section 8.12.3, require that the applicant for Special Permit approval comply with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 8.12.5.

5. Provision of Affordable Units

The SPGA shall deny any application for a Special Permit for development if the applicant for Special Permit approval does not comply, at a minimum, with the following requirements for affordable units:

a. At least 10% of the lots in a division of land or units in a multifamily unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six dwelling units shall require one affordable unit, a development proposing eleven dwelling units shall require two affordable units, and so on:

b. the affordable unit(s) shall be constructed or rehabilitated on:

(i) the locus property, or

(ii) a locus different from the one subject to the Special Permit (see Section 8.12.9); or

c. an applicant shall make a donation of land or pay a fee in lieu of affordable housing unit provision (see Section 8.12.12, below).

The applicant may offer, and the SPGA may accept, any combination of the Section 8.12.5 requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by the Bylaw.

6. Provisions Applicable to Affordable Housing Units On- or Off-Site

a. Siting of affordable units. All affordable units constructed or rehabilitated under this Bylaw shall be situated so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market rate units.

b. Minimum design and construction standards for affordable units. Affordable housing units with market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

c. Timing of construction or provision of affordable units or lots. The SPGA may impose conditions on the Special Permit requiring construction of affordable housing according to a specified timetable, so that affordable housing units shall be provided coincident to the development of market rate units, but in no event

shall the development of affordable units be delayed beyond the schedule noted below:

MARKET RATE UNIT %	AFFORDABLE HOUSING UNIT %
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Any fractions of an affordable unit shall be rounded up to a whole unit.

7. Local Preference
   The SPGA shall require the applicant to comply with local preference requirements, if any, as established by the Board of Selectmen.
8. Marketing Plan for Affordable Units
   Applicants under this Bylaw shall submit a marketing plan or other method approved by the SPGA, which describes how the affordable units will me marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance to DHCD rules and regulations.
9. Provision of Affordable Housing Units Off Site
   Subject to the approval of the SPGA, an applicant subject to this Bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 8.12.5 off site. All requirements of this Bylaw that apply to onsite provision of affordable units shall apply to provision of off site affordable units. In addition, the location of the off site units to be provided shall be approved by the SPGA as an integral element of the Special Permit review and approval process.
10. Maximum Incomes and Selling Prices: Initial Sale
    a. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' Federal and State income tax returns for the household and to certify in writing and prior to transfer of title the to the developer of the housing units or his/her agent, and within 30 days following transfer of title to the Marion Board of Selectmen or to another authority as stipulated by them that the annual household income level does not exceed the maximum established by the Commonwealth's Division of Housing and Community Development (DHCD) and as may be revised from time to time.
    b. The maximum price of the affordable housing unit(s) created under this Bylaw is established by DHCD under the Local Initiative Program (LIP) guidelines in effect at the time the unit(s) is built.
11. Preservation of Affordability; Restrictions on Resale

Each affordable unit created in accordance with the Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction, acceptable to DHCD, on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for a period of ninety nine years.

a. Affordable Housing Unit(s) Resale Price: Sales beyond the initial sale to a qualified purchaser shall not exceed the maximum sales price as determined by the DHCD for affordability within the Town of Marion at the time of resale.

b. Right of first refusal of purchase: The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town of Marion's right of first refusal for a period not less than one hundred eighty days to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

c. The SPGA shall require, as a condition for Special Permit approval under this Bylaw, that the applicant comply with the mandatory set asides and accompanying deed restrictions of affordability. The Building Inspector shall not issue any building permit for any unit(s) until the Special Permit and deed restriction are recorded at the Plymouth County Registry of Deeds or the Land Court.

12. Donation of Land and/or Fees in Lieu of the Affordable Housing Unit Provision

As an alternative to the requirements of Section 8.12.5, an applicant may contribute a fee or land to the Marion Housing Trust Fund in lieu of constructing and offering affordable units within the locus of the proposed development or off site.

a. Calculation of fees in lieu of units. The applicant for development subject to this Bylaw may pay fees in lieu of the construction or provision of affordable units in the amount of two hundred thousand dollars per unit. For example, if the applicant is required to construct two affordable income units, he/she may opt to pay four hundred thousand dollars in lieu of constructing or providing the units. The fee in lieu of construction of affordable units shall be reviewed annually by the Board of Selectmen on or before July 1 and adjusted to reflect the current cost of constructing an affordable dwelling unit.

b. Schedule of fees in lieu of payments. Fees in lieu of payments shall be made according to the schedule set forth in Section 8.12.6.c, above.

c. An applicant may offer, and the SPGA, in concert with the Board of Selectmen may accept, donations of land in fee simple, on or off

site, that the SPGA determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set aside of affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this Bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value; or take any other action thereon.

SECTION 9 SITE PLAN REVIEW AND APPROVAL

9.1 Applicability

No permit to build, alter or expand any nonresidential building, structure or use of land in any district where such construction shall exceed a total gross floor areas of five hundred square feet or require changes or alterations to a parking area shall be issued by the Building Inspector until he or she shall have received from the Planning Board a written statement of site plan approval by the Planning Board in accordance with the provisions of this section. A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.

Pursuant to the provisions of Section 2.1 all new uses and changes of use require a use permit issued by the Building Inspector.

The Building Inspector shall enforce the fulfillment of any conditions which the Planning Board may impose. This section shall not include signs or normal maintenance.

1. Minor Site Plan Review

   Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of five hundred square feet but not exceed a total gross floor area of two thousand square feet, or will not generate the need for more than ten parking spaces, shall require minor site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal the submittal of a minor site plan for review:

   (a) All of the information set forth in Section 9.11.1; provided, however, that the scale of the site plan may be 1” = 80’; the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey, and the plan need not provide the information set forth in the eleventh paragraph of said section.

   (b) All of the information set forth in Section 9.11.2.

   (c) Such additional information as the Board shall require to determine compliance with the standards set forth in Section 9.4.

2. Major Site Plan Review

Applications for permits to build, alter, or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of two thousand square feet, or generate the need for more than ten parking spaces, shall require major site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal of a major site plan for review:

(a) All of the information set forth in Section 9.11 in its entirety and Sections 9.6 and 9.12, if applicable.

9.2 Board of Selectmen or Board of Appeals Referrals

When in accordance with Section 7.1.1 of this Bylaw, the Board of Selectmen or the Board of Appeals shall refer an application for a Special Permit to the Planning Board for review and comment, the Planning Board's written report to the Board of Selectmen or the Board of Appeals shall include, but not be limited to, all of the findings and determinations the Planning Board would make in reviewing a site plan under this section to the extent they are applicable to the information contained in the application for Special Permit. To the extent feasible, the Board of Appeals and the Board of Selectmen shall coordinate the submittal requirements for Special Permits under their jurisdiction with the Planning Board's submittal requirements for minor and major site plans, as set forth herein.

9.3 Grounds for Site Plan Approval Application Denial

The Planning Board may reject an application for site plan approval for the following reasons:

1. Noncompliance with Zoning Bylaw
2. Incomplete application, including the application form, the accompanying site plan maps and supporting documentation, or the application fee as requested by the Planning Board.
3. The site plan is so intrusive on the needs of the public in one regulated aspect or another that rejection by the Board would be tenable because no from of reasonable conditions can be devised to satisfy the problem with the plan.

9.4 Standards for Review

Site plan approval is designed to provide a balance between landowner's rights to use his land with the corresponding rights of abutters and neighboring landowners to live or operate businesses without undue disturbance (e.g., noise, congestion, smoke, dust, odor, glare, stormwater runoff, etc.)

Additional objectives include the preservation of the natural resources of the town; the creation of a better and safer living environment and the enhancement of Marion's manmade resources including the town's architectural and historic heritage.

Site plan approval shall be granted upon determination by the Planning Board that the following considerations have been reasonably addressed by the applicant. The Planning Board may impose reasonable conditions, at the expense of the applicant, to secure this result. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other alteration shall be designed in the site plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points and other aspects of the development, so as to:

1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion and threat of air and water pollution;
2. Maximize pedestrian and vehicular safety both on the site and egressing from it;
3. Minimize obstruction of scenic views from publicly accessible locations;
4. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
5. Minimize glare from headlights through plantings or other screening; minimize lighting intrusion through use of such devices as cut-off luminaries confining direct rays to the site, with fixture mounting not higher than twenty feet;
6. Minimize unreasonable departure from the character and scale of building in the vicinity, as viewed from public ways;
7. Minimize contamination of groundwater from onsite wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.
8. All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses and roadways.
9. Individual buildings shall be related to each other in design, masses, materials, placement, and connections to provide a visually integrated development. Buildings should be separated by a minimum of thirty feet or the height of the taller building, whichever is greater.
10. Treatment of the sides and rear of all buildings shall be comparable in amenities and appearance to the treatment given street frontages of these same buildings.
11. All buildings shall be oriented so as to insure adequate light and air exposure to the rooms within.
12. All buildings shall be arranged so as to avoid undue exposure to concentrated parking facilities wherever possible, and shall be oriented to preserve visual and audible privacy between adjacent buildings.

13. All buildings shall be arranged to be accessible to emergency vehicles.
14. All areas proposed to satisfy usable open space requirements shall be of a size, shape, soil characteristic, and slope suitable for the intended use.
15. Where common open space is to be provided, the organization proposed to own and maintain the open space shall include provisions which recognize the right of the Town of Marion to enforce the maintenance of common open space in reasonable order and condition and to assess property owners for the cost of such maintenance in the failure of the organization to maintain the common open space. Such assessment shall become a lien on the properties.

9.5 Pre-submission Conference

Before submitting a site plan, an applicant shall meet informally with the Planning Board at a public meeting to review the information the applicant must submit and determine the required filing fee. At this meeting the applicant shall request a written determination by the Planning Board of the amount of the filing fee and the need for and/or scope of an Environmental Assessment as described in 9.6 below. The Planning Board shall advise the applicant in writing of the amount of the filing fee, the need for and/or scope of an Environmental Assessment, and any exceptions with respect to the site plan details under Section 9.11 within twenty two days of the presubmission meeting. Any technical services required to assist the Planning Board in preparing its written response shall be included as part of the application fee under Section 9.15.

(Amended, STM, Art. S5, April 29, 2003)

The applicant shall also notify the Tree Warden, Building Commissioner and Building Inspector prior to any plan submission.

(Amended, ATM, Art. 21, May 16, 2006)

The Planning Board may, taking into consideration the size and impact of the proposed project, waive any of the requirements in this section.

9.6 Environmental Assessment Scope

An Environmental Assessment shall be prepared in all applications for site plan review within the Water Supply Protection District. An Environmental Assessment shall be prepared in support of all other development requiring site plan review except that the Planning Board, as part of a presubmission conference as described in 9.5 above, may decide that the project is not of a size or nature requiring an Environmental Assessment or may scope an Environmental Assessment focusing on one or more significant impacts and advise the applicant of its decision in writing within fourteen days of the presubmission conference. The purpose of the Environmental Assessment is to assist the Planning Board in determining if the Standards for Review can be achieved.

An applicant is encouraged to submit the suggested outline of an Environmental Assessment for review by the Planning Board during a presubmission meeting.

The Environmental Assessment, except as may be modified by the Planning Board following a presubmission conference meeting, must be prepared by recognized professionals; the name, education, disciplines and experience of the professionals shall be included in the Environmental Assessment report.

The Environmental Assessment shall include an evaluation of all influences, both positive and negative, which can be expected to impact the natural and manmade environment in the vicinity of the proposed project. Both direct and indirect impacts shall be evaluated.

Methods designed to mitigate, and where appropriate, monitor the impacts shall be proposed; the party responsible for implementing the mitigating measures shall be identified.

Where applicable and where acceptable to the Planning Board, an Environmental Impact Report scoped and submitted in compliance with the Massachusetts Environmental Policy Act, may be submitted in satisfaction of all or portions of the requirements under this section.

The Environmental Assessment should assemble relevant material facts, identify the essential issues to be decided, evaluate all mitigating measures and reasonable alternatives, and make findings and conclusions. It should be concise and analytical, not encyclopedic.

The following elements of a typical Environmental Assessment are identified to provide guidance and assistance to site plan applicants and the Planning Board in scoping an Environmental Assessment.

1. A concise description of the proposed project, including its purposes and need.
2. A concise description of the environmental setting of the area to be affected; sufficient to understand effects of the proposed project and alternatives.
3. A statement of the important environmental impacts of the proposed project, including short- and long-term effects, and typical associated environmental effects.
4. An identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed project is constructed.
5. A description and evaluation of reasonable alternatives to the project which would achieve the same objectives.
6. An identification of any irreversible and irretrievable commitments of resources which would be associated with the project should it be constructed.
7. A description of mitigation measures to minimize the adverse environmental impacts.
8. A description of any growth-inducing aspects of the project where applicable and significant.

9. A list of any underlying studies, reports, and other information obtained and considered in preparing the Environmental Assessment.

9.7 Site Plan Approval Application Filing

An applicant for site plan approval shall file with the Planning Board copies of an application and a site plan, and a filing fee as required by the Planning Board. The Planning Board shall acknowledge receipt of the application and site plan by providing the applicant a form on which the date of receipt is noted. Concurrently, the applicant shall file a copy of the application and site plan with the Town Clerk. Such application and site plan shall include the elements on which the Planning Board is to make findings and determinations as provided in this section, and shall also include information as to the nature and extent of the proposed use of buildings, and such further information as the Planning Board shall reasonably require by rule or regulation in a Site Plan Review Manual. Applications for a building permit shall not be filed prior to having received site plan approval under the provisions of this Bylaw. In subsequent applications concerning the same subject matter, the Planning Board may waive the filing of plans and documents to the extent they duplicate those previously filed.

The Planning Board may, following a duly advertised public hearing, adopt or amend Site Plan Review Manual to provide further guidance to both applicants and the Planning Board in the preparation, review and approval of site plan approval applications. Copies of the adopted manual shall be filed with the Town Clerk.

9.8 Relationship to Subdivision Regulations

Site plan approval issued hereunder by the Planning Board shall not be a substitute for compliance with the Rules and Regulations Governing the Subdivision of Land in Marion or the Subdivision Act as they may apply to an application submitted hereunder. The Planning Board, by granting site plan approval, is not obligated to approve any definitive plan nor reduce any time periods for the Planning Board's consideration under the Subdivision Control Act. In order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this section, the Rules and Regulations Governing the Subdivision of Land in Marion, and the Subdivision Control Act.

9.9 Referrals to Town Boards/Commissions

The Planning Board shall, within five days of receipt of the site plan application, transmit two copies of the application and site plan to the following Town committees, departments, commissions, and Boards for review and comment: Conservation Commission, Board of Health, public works administration, Marine Resources Commission, Fire Chief, and Police Chief. Other committees, departments and commissions may be requested to review site plan applications and site plans if the Planning Board feels such review will help in their deliberations.

If the Planning Board determines that the site plan application is not complete, it may so advise the applicant to avoid delays to the applicant due to the anticipated disapproval of an incomplete submission.

The Conservation Commission and other agencies designated by the Planning Board shall consider the same and submit a final report thereon with recommendations to the Planning Board. The Conservation Commission shall review the application with particular reference to the Wetlands Protection Act and shall recommend as to the advisability of granting the site plan approval and as to the restrictions which should be imposed upon the development as a condition of such permit.

The Planning Board shall not make a finding and determination upon an application until it has received the final report of the Conservation Commission and/or other agencies designated by the Planning Board thereon, or until twenty one days shall have elapsed since the transmittal of said copies of the application and site plan to the Conservation Commission and other agencies designated by the Planning Board without such report being submitted. Failure of a commission or agency within the allotted time shall be interpreted as non-opposition to the submitted site plan.

9.10 Procedures and Decision

(Amended, STM, Art. S20, November 3, 2003)

1. Uses as of Right
   For uses "as of right", the Planning Board shall provide notice of its decision on major and minor site plans to the applicant within sixty days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based on a majority of those present and shall be in writing. The Building Commissioner shall not issue a building permit without the written approval of the site plan by the Planning Board, unless sixty days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board.
2. Uses Available by Special Permit
   For Special Permits, the Planning Board shall provide notice of its decision to the Special Permit Granting Authority within forty five days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based upon a majority of those present and shall be in writing. The Building Commissioner shall not issue a building permit without the written approval of the site plan by the Planning Board, unless forty five days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board; however, no site plan review shall be required for single family or two family uses. Where the Planning Board approves a site plan with conditions and amendments are subject to a special permit, the conditions imposed by the Planning Board shall be

incorporated into the issuance, if any, of a Special Permit by said granting authority.

3. Decision

The Planning Board may make the following determinations with regard to a site plan:

a. The Planning Board shall approve an application if it finds that the proposed development is in conformance with this Bylaw, after considering whether the proposed plan will comply, to the extent feasible, with the standards set forth in Section 9.4. In granting approval of an application, the Planning Board may impose conditions, limitations and safeguards that shall be in writing and shall be a part of the approval; or

b. The Planning Board may reject a site plan for the reasons set forth in Section 9.3. In the event the Planning Board approves a site plan application under these provisions, any construction, reconstruction, substantial exterior alteration or addition shall be built or altered in conformity with any conditions, modifications and restrictions the Board shall have made in its findings and determination and as set forth in the application and site plan.

No permit, or any extension, modification or renewal thereof issued pursuant to this section shall take effect until the Town Clerk certifies that twenty days have elapsed and no appeal has been filed or that such appeal has been dismissed or denied.

4. Minor Changes to Approved Plan

Minor changes to the approved site plan may be submitted to the Building Commissioner for approval. All requests for minor change shall, within one business day of receipt, be referred to the Planning Board and, at its next regular meeting, shall evaluate the proposed changes against its previous findings to determine if it is major or minor. The Planning Board shall advise the Building Commissioner of its decision within two business days of that meeting. If the change is determined to be minor by the Planning Board, the Building Commissioner is authorized to either approve or to disapprove the change. If the change is determined to be major by the Planning Board, resubmission of an application for site plan review and approval under Section 9 shall be required.

5. Duration

The approval of a site plan application, or modification or amendment thereof, shall remain effective for a period of two years from the date of filing the decision with the Town Clerk, unless prior to the expiration of the two year period, the applicant makes substantial efforts to construct or develop in accordance with the approved site plan, or upon a written request from the applicant, the Planning Board votes to extend the time period for a period not to exceed one additional year.

6. If Use Permit Required

A site plan review and approval decision shall not constitute a Special Permit where such Special Permit is required to establish or undertake a use.

7. Appeals

Persons aggrieved by a site plan review decision may appeal to the Board of Appeals, pursuant to Section 2.3.2 and M.G.L. c. 40A, s. 15.

9.11 Site Plan Details

Each applicant shall provide nineteen paper copies, or a combination of paper and downloadable electronic copies, as determined by the Planning Board of the proposed site plan of the tract for each application for the site plan approval. Site plans shall include the following information, unless specifically waived by a vote of the Planning Board:

Site Plan

1. General Information
    1. Date of site plan and date of each subsequent revision.
    2. The title, scale and block for the plan and the assessors' lot and plan number of the site.
    3. An arrow indicating North.
    4. The name and address of the owners and/or applicant. The president and secretary, if the applicant or owner is a business entity.
    5. The zoning boundaries and property lines within on hundred feet, lot reservations, easements, rights of way and public grants or easements.
    6. Public and private ways and driveways with the name of said ways indicated on the plan.
    7. A key showing the locus of the parcels(s).
    8. Existing site condition contours at intervals of two feet for slopes between 3% and 15%. Five foot intervals for slopes greater than 15%. All existing grades shall be indicated with dashed lines and finished grades shall be indicated with solid lines.
    9. Location of existing erratics, soil types, high points, vistas, depressions, water bodies, wetlands, flood plain designations, wooded areas and major trees (twelve inch caliper or over) and other significant existing features, including previous flood elevations of water courses, and wetlands, as determined by survey.
    10. Location of existing structures that shall remain and all other existing structures, such as walls, fences, culverts, bridges, as well as roadways, with spot elevations. Structures to be removed shall be indicated in dashed lines.
    11. All structures and any significant topography within fifty feet of the property lines shall be indicated.

12. The acreage of the tract(s) to the nearest one tenth of an acre shall be indicated.
13. A signature block for the Chairman shall be provided.
14. The plan shall be stamped by the engineer or surveyor who prepared the plan.
15. Any areas that fall within the one hundred year flood plain or a velocity (VE or V) zone shall be shown with base elevations.

2. Buildings and Structures
    1. The proposed uses and layout of proposed and improved structures, including square footage of each use, as well as the totals for each structure.
    2. Elevations for all sides of proposed or improved structure.
    3. The location of solid waste bins and containers, including screening details.
    4. The location of all signs, existing and proposed.
    5. Height of buildings, including relationship to existing and proposed grades and sketches, as appropriate, to indicate the visual impact on the community.
    6. The locations, housing type and density of land use to be allocated to parts of the site to be developed.

3. Landscaping
    A plan showing all existing natural features, trees, forest and water resources and proposed changes to these features, including size and type of plant material. Water resources shall include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.

4. Utilities and Drainage
    The location of the proposed stormwater management system components with proposed grading, pipe sizes, invert elevations, and rates of gradient shall be provided. Typical cross sections and elevation details of all stormwater management and collection system components shall also be provided.

    The design of the proposed stormwater management systems and the required Stormwater Management Plan (SWMP) submittals for all site plans, open space development plans and flexible development plans shall comply with the Subdivision Rules and Regulations of the Planning Board and the applicable requirements of the Board of Health and the Conservation Commission.

    Pursuant to M.G.L. c. 41, s. 81R, strict compliance with the Subdivision Rules and Regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest, not inconsistent with the Subdivision Control Law, and promotes public health and safety.

Requests for waivers shall follow the procedures set forth in Section 2800 of the Rules and Regulations.

5. Traffic and Parking
    1. All means of vehicular access to and from the site onto any public way shall be indicated and include the size and locations of driveways and curb cuts, traffic channels, acceleration and deceleration lanes, and any additional width or any other device necessary to ease the traffic flow.
    2. The location and design of any off-street parking areas or loading areas showing the size and location of bays, aisles, barriers and proposed plantings.
    3. The total ground coverage by structures and impervious surfaces shall be identified and measured.
    4. All proposed streets and profiles, including grading and cross sections showing width of roadway and locations and width of sidewalks.

6. Open Space – Maintenance
    1. The location and size of common open space.
    2. All proposed easements.
    3. The proposed screening, landscaping and planting plan, including details of types of planting.

7. Illustration
    The proposed location, height, direction of illumination, bulb type, power and time of proposed outdoor lighting and methods to eliminate sky glare and glare onto adjoining properties must be shown. Dark sky compliant lighting fixture shop drawings are to be submitted for review, accompanied by a point to point photometric analysis.

8. Additional Documents Required
    In addition to the site plan, the following documents shall also be required, unless waived by the Board:
    1. Copies of all existing or proposed agreements by which private roads shall be maintained, refuse collected, snow plowed and removed, and other supplementary services shall be provided;
    2. The applicant shall prepare a circulation study both within the site and as it may affect the surrounding areas, including estimates of total automotive trips generated, peak hour demand, present and anticipated traffic volumes on adjoining streets, existing street capacities and other elements which may influence and be influenced by the development.
    3. A traffic impact study conducted as part of an Environmental Assessment required pursuant to this section shall consider the following:

i. Analysis of roadways that may be influenced by the project. These roadways can be considered as adjacent roads and major intersections;

ii. The analysis shall be completed for the estimated year of completion, or, in the case of phased developments, for the first phase, with the understanding that each phase shall required an independent analysis; and

iii. Analytical efforts shall consider the following: safety, including accident data, sight distances, roadway conditions, etc.; capacity analysis using Transportation Research Board Report No. 209; existing volumes (traffic counting); site-generated and future traffic; and planned transportation improvements.

4. A copy of any covenants, deed restrictions or exceptions that are intended to cover all or any part of the tract;
5. All calculations necessary to determine conformance by bylaws and regulations;
6. A survey prepared by a Massachusetts licensed surveyor shall accompany the site plan and shall show the boundaries of the parcel and the limits of all proposed streets, recreation and conservation areas and other property to be dedicated to public use;
7. The names and addresses of all abutters; and
8. Such other information as may be required to show that the details of the site plan are in accordance with applicable standards of the Zoning Bylaw.

(Amended, ATM, Art. 33, April 26, 2005)

9.12 Special Provisions for Phased Developments

In the case of plans which call for development over a period of years, a schedule shall be included in the application showing the proposed times within which each section of the development may be started.

The proponents of a phased development shall include assurances that each phase could be brought to completion in a manner which would not result in an adverse effect upon the town as a result of termination at that point.

All site plans previously approved by the Planning Board shall be submitted each time a new part or section is submitted for approval.

9.13 Preparation of Major Site Plan

A major site plan shall be prepared by a licensed engineer, landscape architect or architect for general locations except where waived by the Planning Board because of unusually simple circumstances.

For topographical and boundary survey information, the major site plan shall be signed and sealed by a licensed land surveyor.

For all elements of design, which shall include drainage, pavements, curbing, walkways, embankments, horizontal and vertical geometries, utilities and pertinent structures, drawings shall be signed by a licensed professional engineer.

1. Preparation of Minor Site Plan
   Minor site plans may be submitted without the assistance of a licensed engineer, surveyor, architect, and/or landscape architect. However, at its first meeting in review of the minor site plan, the Planning Board may instruct the applicant, in writing, to have certain details of the plan prepared in accordance with any or all of the requirements of a major site plan set forth in Section 9.13.

9.14 Endorsement of Site Plan

After approval by the Planning Board and subject to the satisfaction of any conditions of approval, a mylar or linen print of all approved site plan maps shall be submitted for signature and filing; all information thereon shall be in black India ink.

9.15 Application Fee

As part of any application for site plan review, a fee shall be required. This fee is structured to offset directly any expenses the Town or Planning Board incurs in the review of the application. The site plan review fee system is intended to encourage the applicants to submit complete, accurate and thorough applications. Such applications generally cost less to review. In such cases, these rules authorize a refund to the applicant of any unused monies on deposit.

1. Minimum Review Fee Deposit
   A minimum deposit, in an amount established by the Planning Board, shall be submitted at the same time the application and site plan is submitted to the Planning Board. The minimum review fee deposit shall be submitted in check form and made out to the Town of Marion. If prior to action on the application, the Planning Board finds that the amount of the deposit is not sufficient to cover the actual costs incurred by the town in its review of the application, the applicant shall be required, upon written notice, to submit forthwith to cover such costs. The Planning Board shall notify the applicant of such additional amounts in writing by certified mail. Failure to submit such additional amounts shall be deemed a violation of these regulations and shall be deemed reason to deny approval of the application. If the actual costs incurred by the Town or Planning Board for the review of the application are less than the amount of the deposit, the Planning Board shall authorize that such excess amount be refunded to the applicant concurrently with Planning Board action on the site plan application.
2. Costs Covered by Fee
   The review fee shall be applied to all costs associated with the proper review and administration of the site plan application including, but not limited to, staff time in administration and review of the application, costs for legal notices, advertising costs, and public hearing costs. The Planning

Board is authorized to retain professional planners, registered professional engineers, architects or landscape architects, attorneys or other professional consultants to advise the Board on any and all aspects of the site plan. The cost of the advice shall be borne by the applicant.

3. Planning Board Regulations
The Planning Board, following a public hearing, may adopt, and from time to time amend, procedures for establishing fees including costs for in-house processing and review and the engagement of outside experts.

SECTION 10 CONSERVATION SUBDIVISION

10.1 Purpose

The purposes of this section, Conservation Subdivision, are:

1. to encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources;
2. to encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
3. to protect the value of real property;
4. to promote more sensitive siting of buildings and better overall site planning;
5. to perpetuate the appearance of Marion's traditional New England landscape;
6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. to allow for greater flexibility and creativity in the design of residential developments.

10.2 Definitions

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

1. "Conservation Subdivision" shall mean a residential development in which the buildings are clustered together with variable lot sized and frontage. The land not included in the building lots is permanently preserved as open space. A Conservation Subdivision is the preferred form of residential development in the Town of Marion.
2. "Contiguous open space" shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth in Section 10.12, therein. Such open space may be separated by the road(s) constructed within the Conservation Subdivision. Contiguous open space shall not include required yards.
3. "Townhouse" shall mean a unit of real estate located in a single building on a single lot, where said building contains more than one but not more than four units of real estate located in one row of houses connected by

common walls, and where are combined fee simple title to the unit and joint ownership in the common elements shared with other unit owners.

10.3 Applicability

In accordance with the following provisions, a Conservation Subdivision project may be created from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town of Marion.

10.4 Procedures

A Conservation Subdivision may be authorized upon the issuance of a Special Permit by the Planning Board. A pre-application meeting between the Planning Board and the applicant is strongly encouraged.

Applicants for a Conservation Subdivision shall file the following with the Planning Board at the appropriate times.

1. Seven copies of both a Preliminary Subdivision Plan and a Conservation Subdivision sketch plan. One of the purposes of this submission is to determine the number of lots possible in the Conservation Subdivision.
2. Seven copies of the Definitive Conservation Subdivision plan. The Definitive Conservation Subdivision plan shall show: location and boundaries of the site proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply, drainage, proposed easements, stormwater management systems, and methods of sewage disposal. The plan shall be prepared by a team including a Registered Civil Engineer, Registered Land Surveyor and a Registered Landscape Architect.
3. An Existing Conditions Plan. An Existing Conditions Plan shall accompany the Definitive Conservation Subdivision Plan. The Existing Conditions Plan shall depict existing topography, wetlands, water bodies and the one hundred year floodplain, all existing rights of way, easements, existing structures, location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways and cart paths. The Existing Conditions Plan shall also show locations of soil test pits and percolations tests with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by the Bylaw.

The Planning Board may also require as part of the development plan additional information necessary to make the determinations and assessments cited herein. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.

10.5 Design Process

Each development plan shall follow the design process outlined below.

When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, 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, any historical districts in the vicinity, and to determine the connection of these important features to each other.
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. Open space shall be planned as large, contiguous areas whenever possible.
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 Marion's historical development patterns. The maximum number of house lots, compatible with good design, shall abut the open space and all house lots shall have reasonable physical and visual access to the open spaces.
5. Lot Lines. The final step is simply to draw in the lot lines (if applicable).

10.6 Modification of Lot Requirements

The Planning board encourages applicants for a Conservation Subdivision to modify lot size, shape, and other dimensional requirements for lots within a Conservation Subdivision, subject to the following limitations:

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

10.7 Basic Maximum Number of Dwelling Units

The Basic Maximum Number of dwelling units allowed in a Conservation Subdivision shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland 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.

10.8 Types of Buildings

The Conservation Subdivision may consist of any combination of single family, two family and townhouse residential structures. A townhouse structure shall not contain more than four dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gable 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.

10.9 Roads

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

10.10 Parking

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

10.11 Contiguous Open Space

A minimum of 50% 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 to 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.

10.12 Permissible Uses of Open Space

1. Purposes: Open space shall be used solely for recreation, conservation, agriculture or forestry purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.
2. Recreation Lands: Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal filed for group recreation or community gardens for the residents of the subdivision.

3. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants to insure that such facilities are adequately maintained by the lot owners within the development.
4. Accessory Structures: Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking.
5. Wetlands: The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 10.5.1, above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
6. Underground Utilities: Underground utilities to serve the Conservation Subdivision site may be located within the contiguous open space.

10.13 Ownership of the contiguous Open Space

Ownership of contiguous open space shall be governed by the following conditions:

1. Conveyance: The contiguous open space shall, at the developer's option and subject to the approval by the Planning Board, be conveyed to:
   a. the Town of Marion, to be placed under the care, custody and control of the Open Space Acquisition Committee or its successor, or the Conservation Commission;
   b. a nonprofit organization acceptable to the Town, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
   c. a corporation or trust owned jointly or in common by the owners of lots within the Conservation Subdivision. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. 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 of Marion to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. In such event, the

Town shall first provide fourteen 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.

2. Permanent Restriction: In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with M.G.L. c. 184, s. 31, approved by the Planning Board and the Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to insure that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses. Restrictions shall provide for periodic inspection of the open space by the Town. A management plan may be required by the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.
3. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.
4. Monumentation: Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

10.14 Buffer Areas

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

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 fifty feet in depth which may include such restricted land area within such buffer area calculation;
2. where the land abutting the site is held by the Town for conservation or recreation purposes;
3. the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

10.15 Design Requirements

The location of open space provided through this Bylaw shall be consistent with the policies contained in the Local Comprehensive Plan and the Open Space and Recreation Plan of the Town. The following design requirements shall apply to open space and lots provided through this Bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
2. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forest land and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as coastal and inland floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
3. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred foot buffer to such areas shall be incorporated into the open space. Where it is appropriate, reasonable access shall be provided to shorelines.
5. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
6. Open space shall be provided with adequate access, by a strip of land at least twenty feet wide, suitable for a footpath, from one or more streets in the development.
7. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

10.16 Drainage

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

10.17 Decision

The Planning Board may approve, approve with conditions, or deny an application for a Conservation Subdivision after determining whether the Conservation Subdivision better promotes the purposes of Section 10.1 of this

Conservation Subdivision Bylaw than would a conventional subdivision development of the same locus.

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

10.19 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 Marion's Zoning Bylaws.

SECTION 11 DEFINITIONS

In this Bylaw certain terms and words, unless a contrary meaning is required by the context, or is specifically prescribed, shall have the meaning given herein. Words applying to the masculine gender shall apply to the feminine gender. Words used in the present tense include the future. The words used and occupied include the words designed, arranged, intended or offered to be used or occupied. The words building, structure, lot, land or premises shall be construed as though followed by the words "or any portion thereof." The word shall is always mandatory and not merely directory. The word constructed shall include the words built, enlarged, erected, altered, moved and placed. The word "person" includes a corporation or partnership, as well as an individual.

Accessory Apartment: A separate, complete dwelling unit which is:
(1) contained substantially within the structure of a one-family dwelling unit, is served by a separate entry/exit and can be isolated from the principal one-family dwelling unit, or
(2) contained entirely within an accessory building located on the same lot as a one-family dwelling.

Accessory Use: See Use, Accessory

Accessory Structure: See Structure, Accessory

Acre: The area of land to be equal to forty three thousand five hundred sixty square feet, as measured by acceptable surveying practices.

Adult Day Care: A facility, whether principal or accessory, providing nonresidential day care to adults over the age of sixteen. Not more than fifteen such persons shall be served at an accessory facility.

Adult Use: Adult Bookstores, Adult Cabarets, Adult Motion Picture Theaters, Adult Paraphernalia Stores, and Adult Video Stores as defined below:

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 M.G.L. c. 272, s. 31.

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 M.G.L. c. 272, s. 31.

Adult Motion Picture Theater: An enclosed building or any portion thereof used for presenting material (motion picture films, videocassettes, 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 M.G.L. c. 272, s. 31.

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

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, DVDs, and similar audio/visual media, which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. c. 272, s. 31.

Alteration: Any construction, reconstruction or other action resulting in a change of the structural parts or height, number of stories, size, use or location of a building or other structure.

Assisted Living Facility: A structure or structures containing dwelling units for persons in need of assistance with activities of daily living, as defined and regulated by Chapter 19D of the General Laws.

Basement: A story partly underground but having at least one half of its height above the average level of the adjoining ground. A basement shall be counted in determining the floor area of a building.

Bed and Breakfast: a private owner occupied residence in which lodging and the breakfast meal are offered to transients for a fee.

Body Art Parlor or Studio: A facility where tattoos, body piercing or other forms of body decoration are provided for a fee or for any other type of compensation.

Buffer or Buffer Strip: An area within a site which is adjacent to or parallel with the property line, consisting of a continuous strip, except required vehicle or pedestrian access points, of existing vegetation or of vegetation created by the use of trees or shrubs, designed to minimize intrusion of dirt, dust, litter, noise, glare from motor vehicle headlights, artificial lights (including ambient glare), or view of signs, unsightly buildings or parking lots.

Building: A structure, or portion thereof, either temporary or permanent, having a roof or other covering forming a structure for the shelter of persons, animals and property of any kind; no trailer or mobile home shall be uses as a building; and the term "building" shall be construed as if following by the words "or portion thereof".

Building Code: The State Building Code of the Commonwealth of Massachusetts, as the same may be amended from time to time. Terms used in this Bylaw shall have the same meaning as ascribed to them in the building code unless the context of usage in this Bylaw clearly indicates another meaning.

Building Height: Measured as the vertical distance from the mean natural grade on the street side(s), and, if not abutting a street, from the mean natural ground level along its front to the cornice of the building.

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.

Change of Use: See, Use, Change of. See also, Bylaw Section 9.1.

Child Care Facility: A day care center or school-age child care program, as those terms are defined in M.G.L. c. 28A, s. 9.

Club, Nonprofit: Buildings, structures and premises used by a nonprofit social or civic organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities occurring in said building or structures or on said premises, except as may be required generally for the membership and purposes of such organization. (See Section 4.2.D, Recreational Uses)

Commercial Greenhouse: A facility on a parcel with less than five acres for retail sale of plants and related products which are raised on and/or off the premises.

Commercial Recreation, Indoor: A structure for recreational, social or amusement purposes, including all connected rooms or space with a common means of egress and entrance, which may include as an accessory use the consumption of food and drink. Indoor commercial Recreation shall include theaters, concert halls, dance halls, skating

rinks, bowling alleys, health clubs, dance studies, or other commercial recreational centers conducted for or not for profit.

Commercial Recreation, Outdoor: A lot or combination of lots used for recreational, social, or amusement activities. This definition shall include: drive-in theater, golf course/driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this Bylaw. (See Section 4.2.D, Recreational Uses)

Common Open Space: A parcel or parcels of land or an area of water, or a combination of land and water within the site designated and intended for the use and enjoyment of residents of a Conservation Subdivision. Common Open Space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the Conservation Subdivision.

Conservation Subdivision: An option as defined in Section 10 of the Marion Zoning Bylaw, which permits an applicant to build single family dwellings with reduced lot area and frontage requirements designed to create a development in which the buildings and accessory uses are clustered together into one or more groups with adjacent open land.

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. (See Section 4.2 K, Miscellaneous Commercial Uses)

Cooking Facilities: Any facilities (including without limitation a hot plate, microwave or portable oven, but not including an outdoor grill) which permits the occupant to prepare meals in the building on a regular basis.

Drive-in or Drive-through Window: Any window or similar feature at a facility, except restaurants, designed to serve persons while situated in a motor vehicle.

Driveway: An improved access (other than a street) connecting between a way or a street and one or more parking or loading spaces.

Dwelling: A building or part thereof designed, erected and used for continuous and permanent habitation for one or more families or individuals. A dwelling does not include a vessel.

Dwelling Unit: A portion of a building occupied or suitable for occupancy as a residence and arranged for use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary, and sleeping facilities, but not including trailers or mobile homes, however mounted, or commercial accommodations offered for periodic occupancy.

Educational Use (exempt): See Use, Educational

Environmental Assessment: A concise report which accomplishes the following: evaluates the positive and negative, and direct and indirect impact of a development project on the natural and man-made environment; and proposes reasonable measures to mitigate impacts.

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 overhand, 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.

Existing Estate Dwelling Structure: A structure originally designed for seasonal occupancy which was constructed prior to January 1, 1960 and which has a gross floor area of three thousand square feet or more, exclusive of basements or cellars.

Family Day Care, Large or Small: Any private residence operating a facility as defined in M.G.L. c. 28A, s. 9. (See Section 4.2M, Accessory Uses)

FEMA: The Federal Emergency Management Agency of the United States Government. This agency administers the National Flood Insurance Program and the Flood Insurance Rage Maps.

Floor Area Ratio: The ratio of the gross floor area of the building or buildings on one lot to the total area of the lot.

General Service Establishment: A facility providing general services such as appliance or equipment repairs, furniture or upholstery repairs, and offices for trades or crafts, but excluding motor vehicle services of any kind.

Gross Floor Area: The sum of the horizontal areas of the floors of a building or several buildings on the same lot measured from the exterior face of exterior walls, or from the centerline of the wall separating two buildings, not including any space where the floor to ceiling height is less than seven feet three inches.

Groundwater: Water beneath the surface of the ground whether or not flowing through known and definite channels.

Groundwater Recharge Area: That portion of the drainage basin where water enters the saturated zone and the net flow of groundwater is directed from the saturated area to an aquifer.

Hazardous or Toxic Material: A material which is hazardous to human health or to the environment, as defined by the U.S. Environmental Protection Agency and under 40 CMR 250 and the regulations of the Massachusetts Hazardous Waste Act, M.G.L. c. 21, s. 1.

Homeowners Association: A corporation or trust owned or to be owned by the owners of lots or residential units within a site approved for a Conservation Subdivision, or Open Space Development, which entity shall hold the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

Home Occupation: The use of up to 25% of the floor space in a dwelling for customary home occupations conducted by a resident occupant, such as dressmaking, candy making, or for the practice by a resident of a recognized profession or craft. Also permitted as a home occupation is the use of to two thousand square feet of a lot, including an accessory building thereon, in connection with a trade by a resident carpenter, electrician, painter, plumber, or any other artisan, provided that no manufacturing or business use requiring substantially continuous employment be carried on. Also permitted as a home occupation is a farm, market garden, nursery, or greenhouse and the sale of products, the major portion of which are grown on the premises.

Housing, Affordable: Housing for people of low or moderate income which is constructed, rehabilitated, remodeled and sold, leased or rented by the Town of Marion, a local housing commission or authority, or by any other public agency, nonprofit corporation, limited dividend corporation or partnership or cooperative, the construction, remodeling, financing, sale, lease or rental of which housing is regulated and financially assisted by agencies of the government of the United Sates of the Commonwealth of Massachusetts under programs the purpose if which is to provide housing for people of low or moderate income. For the purposes of this paragraph, the terms “low income”, “moderate income” and “limited income” shall have the meanings defined in the programs or laws administered by such agencies.

Impervious Surface: A surface which has been compacted or covered with a layer of material so that it is, or may become, highly resistant to infiltration by water. Semi-impervious surfaces such as compacted clay, gravel and other materials which may become compacted over time, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures and materials shall be considered to be impervious.

Light Manufacturing: Fabrication, assembly, processing, finishing work or packaging.

Lot: A single area of land in one ownership throughout defined by metes and bounds or boundary lines as shown in a recorded deed or on a recorded plan.

Lot Area: The horizontal area of the lot exclusive of any area in a public or private way open to public usage.

Lot, Frontage: That boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by the Town, county, State, or along ways shown on the Definitive Plans of approved subdivisions, through which actual access to the potential building site shall be required. Lot frontage shall be measured continuously along one street line between side lot lines, or, in the case of corner lots, between one side lot line and the midpoint of the corner.

Lot Line, Front: That property line which establishes frontage on a way.

Lot Line, Rear: That property line which is farthest from and most nearly parallel to the front lot line. All other lot lines are side lot lines. Triangular and irregularly shaped lot lines may have no rear lot line.

Lot Line, Side: Any lot line not defined as a front or rear lot line.

Major Commercial Project: Any commercial use or combination of commercial uses set forth in the Table of Principal Uses under the heading "G. Retail Uses" with a gross floor area of more than five thousand square feet.

Marina: A facility which provides dockage or berthing for more than five vessels and may also provide facilities for the servicing of vessels. Dockominiums, where the berths are individually owned, shall be included with the definition of a marina.

Marion Waters: All waters within the geographic bounds of the Town of Marion, including ocean waters along the coastal bounds of the town.

Maximum Lot Coverage: Include the gross ground floor area of all buildings and all impervious surfaces.

Mean High Water: The line where the arithmetic mean of the high water heights observed over a specific nineteen year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

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

Motor Vehicle Body Repair: 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. Such establishment does not include the storage vehicles for the cannibalization of parts.

Motor Vehicle General Repair: Premises for the servicing and repair of autos, but not to include retail fuel sales. Such premises do not include establishments for motor

vehicle body repair or motor vehicle junkyards or graveyards. (See Section 4.1 I Motor Vehicle Related Uses)

Motor Vehicle Junkyard or 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.

Motor Vehicle Service Station: Premises designed for the supplying of motor vehicle fuel, and which may also provide oil, lubrication, or minor repair services. Washing shall be permitted only as an incidental or subordinate use. Not included in this definition are services designed for automobile body repair, painting or major vehicle repair. (See Section 4.2 I Motor Vehicle Related Uses)

Multifamily Use: Two or more dwelling units on a single lot, including any mix of single family, two-family, or multifamily structures, whether or not attached, and regardless of form of tenure.
Municipal Facilities: Facilities owned or operated by the Town of Marion or facilities licensed by the Town to other entities.

Nonexempt Roadside Farm Stand: Facility for the sale of produce, wine, other edible farm products, flowers, fireplace wood, preserves, dairy and similar products on property not exempted by M.G.L. c. 40A, s.3. The footprint of such facility shall be less than one hundred square feet for the sale of produce, flowers and firewood.

Nursery: A facility on a parcel with less than five acres for retail sale of trees, shrubs, plants and related products which are raised on and off the premises.

Nursing or Convalescent home: Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire. (See Section 4.2 K Miscellaneous Commercial Uses)

Parking Space (Non-Handicapped): An area measuring at least 9’ x 18’, suitable for parking a car having adequate access for entry and exit while other adjacent parking spaces are occupied and one which complies with the standard set forth in 521 CMR 23.

Personal Kennel: A facility on a parcel with more than five acres specifically used in the breeding, raising and training of dogs owned by the property owner.

Personal Service Establishment: A facility providing personal services such as hair salon, barber s hop, tanning beds, dry cleaning, print shop, photography studio, and the like.

Pier, Accessory: A pier serving as an accessory to a single-family residence and which is located on the same lot as the residence.

Pier, Association: A pier used exclusively for noncommercial purposes by an association of boat owners.

Pier, Commercial: A pier available or used for commercial purposes.

Research Laboratory: Buildings, structures or parts thereof constructed, altered or used for the following purposes: (1) general and technical office, nonmedical; (2) research laboratory engaged in research, experimental and testing activities, including but not limited to the fields of biology, chemistry, electronics, engineering, geology, medicine and physics, provided that no recombinant DNA research or technology is involved.

Restaurant: A building or portion thereof containing tables and/or booths for at least two thirds of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in areas designated for dining purposes, which are adjunct to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurant" or "drive-in restaurant".

Restaurant, Drive-in: A restaurant or fast-food restaurant with a window designed to serve people in motor vehicles.

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 on or off the premises, with food ordering at a counter, rather than at a table.

Restaurant, Outdoor: An establishment serving food at tables or at counters in which more than 50% of the seats are out of doors, such as an open porch, deck, patio or on the grounds.

Retail, General: A facility selling goods but not specifically listed in Section 4.2, the Table of Use Regulations, and less than five thousand square feet of gross floor area.

Rooming House: A dwelling in which the person resident therein provides sleeping accommodations for not more than four paying guests who are not provided with meals or individual or shared cooking facilities.

Sign: Any temporary or permanent lettering, word, numeral, billboard, pictorial representation, display, emblem, trademark, device, banner, pennant, insignia or other figure or similar character, located outdoors, whether constituting a structure or any part thereof, or attached, painted on, or in any other manner represented on a building or other structure, and which is used to announce, direct, attract, advertise or promote.

Sign, Accessory: Any sign relating to an allowed accessory use of the premises.

Sign, Face Area Thereof: the area within the shortest line that can be drawn around the outside perimeter of a sing, including any frame. Structural members designed for support purposes shall not be included in computing the sign area if they are not used for advertising purposes.

Sign, Billboard: A large freestanding, permanent sign which directs attention to a business, commodity, services or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is located.

Sign, Business: A sign identifying the business, company or agency located on the premises. An advertising sign used to direct attention to a product and/or a service or activity not performed on the premises shall not be considered a business sign; such signs are not allowed in Marion.

Sign, Directional: A sign which directs and gives guidance, but does not contain any advertising.

Sign, Freestanding: A sign not supported by a wall nor building and supported by its own permanent base or foundation on or in the ground.

Sign, Portable or Mobile: A sign, not including banners, pennants and the like which is not supported by its own permanent base nor foundation in the ground.

Sign, Projecting: A sign which is attached to a building, extends more than 12 inches there from and provides necessary clearance for pedestrians and vehicles.

Sign, Roof: A sign which is mounted on the roof of a building above the eave line. The top of the sign may not extend higher than the highest point of the roof on which it is mounted.

Sign, Wall Mounted: A sign which is attached directly to the wall of a building and does not extend more than twelve inches there from and provides necessary clearance for pedestrians.

Special Permit Granting Authority: The Board of Appeals, Board of Selectmen, or the Planning Board as designated in this Bylaw.

Story: A portion of a building between the surface of any floor and the surface of the floor or ceiling next above it. A half story is a space under a sloping roof which has the line of intersection of the roof and wall space not more than three feet above floor level, in which space the possible floor area with head room of five feet or less occupies at least 40% of the floor area of the story directly beneath it.

Street: An improved public way laid out by the Town of Marion, the Plymouth County Commissioners or the Commonwealth of Massachusetts, or a way which the Marion Town Clerk certifies is maintained by public authority as a public way, or a way in

existence having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon. A way shall not be a "street" with respect to any lot which does not have appurtenant to it a recorded right of access to and over such way for vehicular traffic.

Structure: A combination of materials to form a construction including, among others, buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, water tanks, play tower, swimming pools, trestles, sheds, shelters, fences over six feet high, display signs, flagpoles, masts for radio antenna, courts for tennis or similar games, backstops, backboards; the term "structure" shall be construed as of followed by the words "or portion thereof." A vessel shall not be considered to be a structure.

Structure, Accessory: A use or structure which is subordinate to, customarily incidental to and located on the same lot as the principal building or use to which it is accessory.

Structure, Nonconforming: A structure lawfully existing at the time of this Bylaw, or any subsequent amendment thereto, which does not conform to one or more provisions of this Bylaw.

Tract: An area of land comprising one or more lots for the purposes of an application under this Bylaw.

Use, Accessory: A use incidental and subordinate to the principal use of the structure or lot; or a use not the principal use, which is located on the same lot or in the same structure as the principal use.

Use, Change of: Any change in type or class of activity for a nonresidential lot or building requires a Plan and Site Review. Examples of types of activity include, but are not limited to, the following: retail sales, medical use, food service, office use, manufacturing, distribution, etc. Any changes within a type of class of use may require a Site Plan Review. There shall be a review if change results in a significant change in impact on the neighborhood as in the following: Pedestrian or vehicular traffic flow within or to the site, parking requirements, noise, odors, hours of operation, outdoor lighting, use of outside space for display of goods. All nonresidential nonconforming uses will require Plan and Site Review.

Use, Educational (exempt): Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation defined in M.G.L. c. 180.

Variance: Such departure from the terms of this Bylaw which the Zoning Board of Appeals upon appeal in specific cases, is empowered to authorize under the terms of Article X, Section 2.3.4 of these Bylaws.

Vegetative Cover: Shrubs, grass, trees and other forms of growing ground cover whether landscaped or naturally occurring.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises, but excluding mini or self storage facilities.

Wetlands: Area characterized by conditions described in M.G.L. c. 131, s. 40.

Yard: an open space on a lot not covered by a building or structure.

Yard, Front: A yard extending between lot sidelines across the lot adjacent to each street it abuts.

Yard, Rear: A yard extending between the sidelines of a lot adjacent to the rear line of the lot.

Yard, Side: A yard extending along each sideline of a lot between front and rear yards.

SECTION 12 OPEN SPACE DEVELOPMENT DISTRICT

12.1 Purpose

The Open Space Development District is intended to apply to tracts of land if fifty acres or more located in the Residence C district and owned by one or more property owners where flexible development controls will allow residential uses and accessory uses incident thereto, which will preserve common open spaces, natural resources, or agricultural lands to the extent of at least 40% of the tract in accordance with the overall goals of the marion Land Use Plan and the Marion Open Space Plan. Residential uses other than single family homes on individual lots will be allowed within an Open Space Development District subject to assurances that such development will enhance the amenities in the neighborhood in which it occurs.

There shall be no minimum lot area, frontage or yard requirements within an Open Space Development District. However, no building shall be erected within 40 feet of an existing public way or boundary line or an Open Space Development District.

The Open Space Development District is intended to offer incentives to property owners through the offering of options to develop under standards which are unique to the site and not limited by the standards which generally apply to development within the Residence C District.

The Open Space Development District allows for the construction of single family (detached and attached) and multiunit structures of all types. The flexibility permitted with respect to types of ownership and housing types in an

Open Space Development District should allow for a range of housing costs. The total number of residential units allowable on the site proposal for an Open Space Development shall not exceed the number that would be allowed in the Residence C District. The Open Space Development District, however, also provides for an increase in density up to a maximum of 15% if a certain number of affordable housing units are provided in the District.

12.2 Approval Process

Unless and until any portion of the Residence C District is placed in an Open Space Development District, the permitted uses shall be those in effect from time to time in the Residence C District.

Upon the submission of a Preliminary Open Space Development Plan pursuant to Section 12.3 and compliance with other requirements of this Section 12, any portion of the Residence C District of fifty acres or more may be placed, by a two-thirds vote of the Marion Town Meeting, in an Open Space Development District. Open Space Development Districts hall be numbered sequentially at the time of the Town Meeting vote.

The Open Space Development District shall be considered an overlay district. If site plan approval is obtained for land within an Open Space Development District, the provisions of the overlay district shall apply thereafter.

All of the definitions set forth in Section 11, and the provisions of any other overlay district in which such land may be located shall apply within any Open Space Development District, and the requirements of other provisions of the Zoning Bylaw not limited in application to particular underlying zoning districts shall apply except to the extent expressly and conspicuously otherwise stated in the written portion of the Preliminary Open Space Development Plan.

12.3 Preliminary Open Space Development Plan Application

Rezoning land to the Open Space Development District shall be initiated by the preparation of a Preliminary Open Space Development Plan Application submitted, along with a filing fee, to the Board of Selectmen and signed by all of the owners of the affected land or their authorized representatives.

Prior to filing the Preliminary Open Space Development Plan application, the applicant shall attend a pre-submission conference with the Planning Board to review the information and specifications the applicant must submit and the amount of the filing fee. With respect to the fee, the Planning Board may be guided in part by the provisions of Section 9.15, Application Fee. The fee shall be sufficient to recompense the town and the Planning Board for any or all of the out of pocket costs of reviewing and analyzing the application.

Within five days of receipt of such application and petition for a revision in the Zoning Bylaw, the Board of Selectmen shall forward copies of the Preliminary

Open Space Development Plan application to the Planning Board for review and the conduct of the public hearing. Additional copies of the Preliminary Open Space Development Plan application also shall be forwarded within five days to the Conservation Commission, Board of Health, Public Works Administration, Police and Fire Departments, and such other Boards and Commissions as the Board of Selectmen may designate, for review and comment to the Planning Board.

The Preliminary Open Space Development Plan application shall include the information which the Planning Board requires for the submission of a site plan under Section 9 of this Bylaw, and, as appropriate, information covered by Section 10.15, Ownership of Open Space, of Section 10, Cluster Residential Housing. The Planning Board, in the interest of encouraging this type of development, may, following a pre-submission conference, relax some of the submission requirements to the extent that they will not adversely influence the ability of the Town Meeting to make a reasoned decision in voting on the creation of an Open Space Development District. Since the Planning Board will review a Final Open Space Development Plan under Section 9 requirements as well as additional standards and criteria as listed in Section 12.7, extensive detail may not be necessary or appropriate for a project which must be presented at Town Meeting.

The Preliminary Open Space Development Plan application shall provide information to allow a determination of the number of lots that could be developed on the land by utilizing a conventional subdivision plan in accordance with the Rules and Regulations Governing the Subdivision of Land in Marion. Wetlands, as defined under the Wetlands Protection Act, water bodies, and any land otherwise prohibited from development by local bylaw or regulation shall not be included in the overall area in calculating density. The burden of proof shall be on the applicant in determining the allowable number of dwelling units.

The Preliminary Open space Development Plan application may provide that the number of dwelling units obtained through the computations described in the preceding paragraph may be increased by 15% if between 15% and 30% of the dwelling units within the Open Space Development Plan are affordable (as defined in Section 11), “independence housing”, or “starter housing.:

“Independence housing” is defined as small floor area single family detached or attached owner-occupied housing designed to serve families and individuals where the head of household is fifty five years of age or older. Deed restrictions shall apply to maintain affordability and limit resale to those fifty five and older as allowed by law.

“Starter housing” is defined as single family detached or attached, owner occupied housing. “Starter housing” shall be available for purchase to first time homebuyer households earning at least 80%, but less than 110% of the median

income for the Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development. Long term availability at affordable costs will be provided in the form of deed restrictions and other conditions as allowed by law.

The Preliminary Open Space Development Plan application shall include a statement identifying all respects in which the proposed development will not comply with any provision of the Bylaw, not limited in application to the Residence C District.

The applicant shall recognize that the Preliminary Open Space Development Plan as submitted with the application will be in the form of a plan which will be the basis for binding action by the Town Meeting. The applicant may provide specifications beyond those required by the Planning Board. Such additional specifications shall be binding to the same extent as those required by the Planning Board.

12.4 Public Hearing

Pursuant to the provisions of M.G.L. c. 40A, s. 5, the Planning Board shall give notice and hold a public hearing within sixty five days after the submission of the Preliminary Open Space Development Plan and notice if such hearing, including reproductions of architectural renderings and of the site plan, all in a form approved by the Planning Board, shall be mailed to each registered voter of the town at least fourteen days prior to such hearing. The applicant shall pay the cost of reproduction and mailing of such notice. Failure of notice by mail shall not be a bar to action on the plan unless actual prejudice is shown.

12.5 Change in Application

The Planning Board may recommend changes in the Preliminary Open Space Development Plan at the Town Meeting if it finds that there is good cause for the change and that the change is not inconsistent with the information presented at the Planning Board hearing.

12.6 Town Meeting

The Preliminary Open Space Development Plan application shall be presented to the Town Meeting which considers the creation of an Open Space Development District for the area covered by the application, and shall be identified in any motion to create such a district. In the event that the procedures followed with respect to a Preliminary Open Space Development Plan application do not conform in all of the requirements of this Section 12, such nonconformity may be waived upon the favorable recommendation of the Planning Board, by a two thirds vote of the Town Meeting.

The Preliminary Open Space Development Plan application, as submitted to the Town Meeting, may be amended on the floor of the Town Meeting to add restrictions, limitations or requirements.

12.7 Site Plan Approval

Final Open Space Development Plan

After the approval by the Town Meeting for the designation if an Open space Development District and approval of a Preliminary Open space Development Plan application the Planning Board may grant site plan approval for a final Open space Development Plan for the development of the land within the Open Space Development District. At its option, the Planning Board may coordinate its site plan approval of a Final Open Space Development Plan with any required subdivision review for land located within an Open Space Development District.

The procedures outlined in Section 9, Site Plan Review and Approval, shall be followed in the issuance of site plan approval. In addition to the findings that the Planning Board may require under Site Plan Review and Approval, the Planning Board shall approve a Final Open Space Development Plan if it finds the Plan:

1. Is substantially consistent in all respects with the approved Preliminary Open Space Development Plan;
2. Provides for no grater number of dwelling units than is provided in the approved Preliminary Open space Development Plan;
3. Provides for no uses which are not permitted by the approved Preliminary Open Space Development Plan;
4. Provides a suitable development which is in harmony with the objectives of the Zoning Bylaw and Land Use Plan and will not be detrimental to the surrounding neighborhoods.
5. Provides that land shown in the approved Preliminary Open Space Development Plan as permanent open land shall be conveyed in the manner provided for ownership of open land under Section 10.15 of the Cluster Residential Housing regulations.
6. Satisfies the following additional design standards and criteria:
    a. The existing land form shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and manmade features such as stone walls.
    b. The natural character and appearance of the town shall be maintained and enhanced by screening views of the development from nearby streets and adjoining neighborhoods. Existing land forms and vegetation should be used where possible.
    c. Open space shall be located and designed so as to increase the visual amenities of the neighborhood as well as for the occupants of the open space development area. Where appropriate, links to open spaces, as proposed in the Land Use Plan and Open Space Plan, shall be provided.
    d. Buildings shall be located so as to be harmonious with the land form.
    e. Access points from driveways or new streets to the town's existing street system shall be minimized.

f. Utility systems should be located underground or as inconspicuously as possible.

12.8 Amendment of Site Plan

Amendments to approved Final Open Space Development Plans shall be processed in accordance with the provisions of Section 9, Site Plan Review and Approval, and shall be subject to the findings required under Section 12.7.

SECTION 13 RATE OF DEVELOPMENT

13.1 Purpose

The purpose of this section, "Rate of Development", is to promote orderly growth in the Town of Marion, consistent with the rate of residential growth over the last eleven calendar years, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services, to provide the Town, its Boards and its agencies information, time, and capacity to incorporate such growth into the Master Plan for the community, and to preserve and enhance existing community character and the value of property.

13.2 General

Beginning on March 10, 1997 building permits for not more than twenty six dwelling units shall be issued in each of the five full calendar years following said date, for the construction of new residential dwellings. For the purposes of this section, an accessory apartment shall constitute a dwelling unit. The provisions of this section shall not apply to any lot or lots existing prior to March 10, 1997, which, at the time of recording, complied with the Zoning Bylaws.

13.3 Procedures

Any building permits issued shall be issued in accordance with the following procedures:

1. The Building Inspector shall act on each permit in order of submittal. Any permit application that is incomplete or inaccurate shall be returned to the applicant within three business days and shall require new submittal.
2. Permits shall be issued on alternate Fridays, one per Friday. Permits not issued in any month of the calendar year in accordance with this schedule shall be available in any subsequent month for issuance by the Building Inspector.
3. The Building Inspector shall mark each application with the time and date of submittal.
4. Any building permits not issued in any calendar year shall not be available for issuance in any subsequent year.
5. At the end of each calendar year in which this Bylaw is in effect, the Building Inspector shall retain all applications for which a building permit has not been issued. Upon being informed in writing by the applicant before the tenth of January of the succeeding calendar year that the

applicant desires the application to remain in effect, the Building Inspector shall treat said application in accordance with subsection 13.3.1, above.

13.4 Special Permit Exemption

Upon a determination by the Planning Board under a Special permit application that the building permits will be issued for dwelling units within a development that will provide special benefits to the community, said permits shall be exempt from this section in its entirety, and shall not count toward the twenty six permits to be issued annually. The Planning Board may grant a Special Permit under this section only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well as conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to M.G.L. c.41, s. 81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of 50% or more.

13.5 Exemptions

The provisions of this section shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, or reconstruction of dwellings existing on lots as of the date of passage of this Bylaw, but shall apply to the conversion of single-family to two-family dwellings.

13.6 Time Limitation and Extension

This section shall expire on January 1, 2007; provided, however, that this section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to January 1, 2007.

SECTION 14 SUBDIVISION PHASING

14.1 Purpose

The purpose of this section, “Subdivision Phasing”, is to assure that growth shall be phased so as not to unduly strain the town’s ability to provide public facilities and services, so that tit will not disturb the social fabric of the community, so that it will be in keeping with the community’s desired rate of growth; and so that the Town can study the impact of growth and plan accordingly.

14.2 Applicability

The issuance of building permits for any tract of land divided pursuant to any provision of M.G.L. c. 41, ss. 81K-81GG, the Subdivision Control Act, into more than seven lots after the effective date of this Bylaw shall be subject to the regulations and conditions set forth herein. This provision shall apply to any

proposed division or combination of properties which were in the same ownership and contiguous as of March 10, 1997.

14.3 Phasing

Not more than seven building permits shall be issued in any twelve month period for construction of residential dwellings on any tract of land divided into more than seven lots pursuant to any provision of M.G.L. c. 41, ss. 81K-81GG, the Subdivision Control Act.

14.4 Exceptions

Issuance of more than seven building permits for the same tract of land in a twelve month period may be allowed in the following circumstances:

1. The owner of said land may apply for a Special Permit from the Planning Board for the issuance of more than seven building permits in any twelve month period. The Planning Board may grant a Special Permit only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well as conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to M.G.L. c. 41, s. 81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of 50% or more. Where such Special Permit is granted, any building permits issued for dwelling units within the division of land shall not count toward the twenty six permits to be issued annually in Section 13.2.
2. Where the tract of land will be divided into more than forty lots, the Planning Board may, by Special Permit, authorize development at a rate not to exceed 10% of the units per year.

14.5 Zoning Change Protection

The protection against subsequent zoning change granted by M.G.L. c. 40A, s. 6 to land in a subdivision shall, in the case of a development whose completion has been constrained by this section, be extended to ten years.

14.6 Relation to Real Estate Assessment

Any landowner denied a building permit because of these provisions may appeal to the Board of Assessors, in conformity with M.G.L. c. 59, s. 59, for a determination as to the extent to which the temporary restriction on development use of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate.

SECTION 15 FLEXIBLE DEVELOPMENT

15.1 Purpose

The purpose of this Section 15, Flexible Development, is to preserve open space, forested and other scenic views along the public ways in the Town of Marion; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to preserve Marion's traditional New England landscape and to allow landowners a reasonable return on their investment.

15.2 Applicability

Any creation of five or more parcels in a residence district, whether a subdivision or not, from a parcel or set of contiguous parcels held in common ownership may proceed under this Section 15, Flexible Development, and is further subject to the requirements of Section 9.0, Site Plan Review.

(Amended, ATM, Art. 25, May 21, 2007)

15.3 Procedures

Applicants for Flexible Development shall file with the Planning Board six copies of a Development Plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. The Planning Board may also require as part of the Development Plan any additional information necessary to make the determinations and assessments cited herein.

15.4 Modification of Lots – Requirements

The Planning Board may authorize modification of lot size, shape and other bulk requirements for lots within a Flexible Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by subdivision involved.
2. Lots may be reduced in area to a minimum of 85% of the otherwise applicable requirement for the district.
3. Lot frontage may be reduced to 65% of the frontage required in the district, provided that all lots located within the Flexible Development shall average 85% of the frontage required in the district.
4. Each lot shall have at least 85% of the required yards for the district.

15.5 Visual Buffer Requirements

A buffer area, not less than two hundred feet in width, shall be provided between any public way adjacent to the Flexible Development and any home constructed therein. The buffer may be constituted as a "no build" zone with the site, and may serve as area for individual lots contained therein. No indigenous vegetation shall be removed from this buffer zone before or after the development of the residential compound (except for removal necessary for the construction of subdivision roadways and services and ordinary maintenance), nor shall any building or structure be placed therein.

15.6 Relation to Other Requirements

The submittals and permits of this Section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

(Added, STM, Art. S4, October 28, 1997)

SECTION 16 GENERAL

The invalidity of any section or provisions of this Bylaw shall not invalidate any other section or provision thereof.

ARTICLE XI LICENSES – JUNK, OLD METAL AND SECONDHAND ARTICLES

SECTION 1

The Selectmen may license suitable persons to be dealers and keepers of shops principally for the purchase, sale, or barter of junk, old metal, or secondhand articles in the town. They may also license suitable persons as junk collectors to collect by purchase or otherwise junk, old metal, and secondhand articles from place to place in the town; and they must provide that such collectors shall display badges upon their persons or upon their vehicles or upon both when engaged in collecting, transporting, or dealing in junk, old metal, or secondhand articles and may prescribe the design thereof. They may also provide that such shops and all articles of merchandise therein and any place, vehicle, or receptacle used for the collection or keeping of the articles aforesaid, may be examined at all reasonable hours by the Selectmen or by any person by them authorized thereto. The fee for such license shall be in the discretion of the Selectmen, except that it shall not be less than twenty five dollars nor exceed two hundred fifty dollars.

SECTION 2

Every keeper of a shop principally for the purpose of sale or barter of junk, old metal, or secondhand articles within the limits of the town shall keep a book in which shall be written at the time of every purchase of any such article a description thereof, the name, age, and residence of the person from whom purchased and the day and hour when such purchase was made; such book shall at all times be open to the inspection of the Selectmen and of any person by them authorized to make such inspection. Every keeper of such shall put in a suitable and conspicuous place in his shop a sign having his name and occupation legibly inscribed thereon in large letters. Such shop and all articles of merchandise therein may be at all times examined by the Selectmen or by any person by them authorized to make such examination; and no keeper of such shop and no junk collector shall directly or indirectly either purchase or receive by way of barter or exchange any of the articles aforesaid of a minor or apprentice, knowing or having reason to believe him to do such; and no article purchased or received by such shopkeeper shall

be sold until at least thirty days from the date of its purchase or receipt have elapsed. No junk collector shall purchase or sell any of the articles aforesaid from 6 p.m. to 7 a.m.

SECTION 3

In no case shall a license be granted until:

a. plan of the location has been submitted to the Planning board for their review, said plan to be submitted fourteen days before the first action by the Selectmen.

b. public hearing has been held, said hearing to be given ten days prior notice and all abutters and the Planning Board has been duly notified.

SECTION 4

Whoever violates any of the foregoing Bylaws shall, unless other provision is expressly made, be liable to a penalty on not more than twenty dollars for each offense.

SECTION 5

It shall be the duty of the Selectmen and the police officers of the town to promptly prosecute for all violations of the foregoing Bylaw.

ARTICLE XII MOTOR BOAT LAWS

SECTION 1 GENERAL PROVISIONS

(a) This Article applies to all persons, vessels, objects or structures, on or using the water of the Town of Marion, including all saltwater harbors.

(b) The Harbormaster is authorized to prescribe regulations to carry out this Article.

(c) Before prescribing any regulations under this Article, the Harbormaster shall present said regulations to the Marion Resource Commission, who shall hold a public hearing on the proposed regulations.

(d) Failure of the Harbormaster to prescribe regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Article.

SECTION 2 DEFINITION OF TERMS

The following words, for the purposes of this Article of this Bylaw shall, unless another meaning is clearly apparent for the way in which the word is used, have the following meanings:

(a) ”vessel” means every description of a watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

(b) ”personal watercraft” means a vessel propelled by a water jet pump or other machinery as its primary source of propulsion that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than being operated in the conventional manner by a person sitting or standing inside the vessel.

(c) ”headway speed” means the slowest speed at which a personal watercraft may be operated and maintain steerageway. To be considered operating at headway speed under this Article, the operator shall be either kneeling or sitting.

(d) ”water skiing” means the towing or manipulating of a surfboard or other similar devise behind any vessel.

(e) ”safety zone” means an area established by the Harbormaster during a marine event, emergency, or other situation, restricting access.

SECTION 3 SPEED LIMIT, NO WAKE, POSTED AREAS AND SAFETY ZONE

(a) Speed Limit and No Wake

(1) In areas posted “No wake”, vessels shall not exceed five miles per hour and shall make no wake.

(2) Vessels shall make no wake within one hundred fifty feet of: bathers, divers, piers, docks, floats, small boats propelled by other means other than machinery, vessels not underway, or the shore.

(3) The number and location of 5 MPH and/or “No Wake” areas may be changed at the discretion of the Harbormaster, providing that such action is approved by the Board of Selectmen and that a two week period for public comment is allowed prior to any change(s).

(b) The following areas are posted “No Wake” from April 15 to October 15:

(1) Marion Inner Harbor (Sippican Harbor) which includes all water north of a line drawn from the United States Coast Guard Green Buoy #7 to the southern tip of Ram Island.

(2) Blankenship and Planting Island Coves and adjoining waters, including all waters north and east of a line drawn from the northern tip of Planting Island to the southernmost point of Ram Island.

(3) Wing’s Cove, from the outer end of Piney Point dock to the southern tip of Clapps Island to the southern tip of Great Hill.

(4) Weweantic River, from Bass Point Road due east to the Town boundary.

(c) Safety Zone

(1) There shall be no swimming, anchoring, water skiing, use of sailboards or scuba diving or unauthorized marine traffic in a designated Safety Zone.

SECTION 4 TOWN FLOATS, TIE-UP TIME LIMIT

Without the express permission of the Harbormaster and assistant Harbormaster, or a wharfinger, no vessel may remain tied up to a Town-owned float for longer than twenty minutes.

Mobile gasoline fueling is not permitted on Town-owned floats or piers.

Mobile commercial diesel fueling may be permitted with the express permission of the Harbormaster, providing the vendor/vendors hold a current Coast Guard-approved Operations Manual and Response Plan under 33 CFR 154 Subpart F and meet all federal, state, and local requirements as they pertain to fueling of marine vessels. The Harbormaster may require the vendor/vendors to provide a copy of the USCG-approved Operations and Response Plan. In the event of any alterations or revisions to either the Operations Manual or Response Plan, the Harbormaster shall be notified prior to any fueling operations.

Mobile commercial diesel fueling is restricted to the North Wharf of Old Landing, Monday through Friday, 8:00 a.m. to 4:00 p.m.

The vendor/vendors must notify the Harbormaster at least twenty four hours prior to any fueling operation.

(Added at ATM May 17, 2010 Art. 26)

SECTION 5 WATER SKIING

Water skiing is prohibited in the areas posted “No Wake”, in marked channels, and within one hundred fifty feet of bathers, divers, piers, floats, docks, other boats or the shore.

SECTION 6 CANOEING AND KAYAKING

Any person aboard a canoe or kayak shall wear a Coast Guard-approved personal floatation device of Type I, II, or III from January 1 to May 15 and September 14 to December 31, except persons aboard vessels excluded by M.G.L. c. 90B, s. 5A.

SECTION 7 OPERATION OF PERSONAL WATERCRAFT

(a) The purpose and scope of this section is to promote safety by establishing rules of conduct governing the operation of personal watercraft. The Town of Marion intends to improve, through this Article, the safe and appropriate use of personal watercraft.

(b) No person shall operate a personal watercraft except in a safe and prudent manner, having due regard for other waterborne traffic, the posted speed and wake restrictions, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

(c) No person shall operate a personal watercraft if such person is:
(1) Under the age of sixteen, or
(2) sixteen or seventeen years of age without first having received a safety certificate evidencing satisfactory completion of a training course in the safe operation conducted by the United States Power Squadron, the Division of Law Enforcement, or other such entity approved in writing by the Director of the Division of Law Enforcement.

(d) No person shall operate a personal watercraft in a negligent manner. The following, without limitation, constitute negligent operation:
(1) Unreasonable jumping or attempting to jump the wake of another vessel;
(2) Following within one hundred fifty feet of a water skier;
(3) Speeding in restricted areas;
(4) Weaving through congested vessel traffic;
(5) Crossing unreasonably close to another vessel; or
(6) Operating a personal watercraft in such a manner that it endangers the life, limb, or property of any person.

(e) Except as otherwise provided in this Article, no person shall operate a personal watercraft:
(1) Within one hundred fifty feet of shore except at headway speed.
(2) Within one hundred fifty feet of a public bathing area.
(3) Between one hundred fifty feet and three hundred feet of a public bathing area except at headway speed.
(4) Within one hundred fifty feet of a swimmer in the water.

(f) Every person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch shall attach said lanyard to his person, clothing or personal floatation device, as is appropriate for the specific craft.

(g) Any person riding on a personal watercraft shall wear a Coast Guard-approved personal floatation device of Type I, II, or III.

SECTION 8 SAILBOARDS

(a) The use of sailboards is prohibited in all marked channels, and in restricted swimming areas.

(b) If a sailboarder is required to pass a marked channel in order to gain access to another area, he shall do so as nearly as practicable at right angles to the traffic flow in the marked channel.

SECTION 9 POLLUTION

The discharge or disposal of petroleum products, dead fish or shellfish, fish frames, garbage, wastewater, rubbish or debris on the water, shores, or beaches is prohibited.

SECTION 10 ABANDONMENT AND REMOVAL OF VESSELS

(a) No vessel, mooring, or other object shall be abandoned, sunk, or placed where it may constitute a hazard to navigation.

(b) Any vessel, mooring, or object constituting a hazard to navigation, any vessel or object improperly secured, swamped, sunk, washed ashore, or found in a restricted area may be removed or relocated at the direction of the Harbormaster or Assistant Harbormaster if corrective action is not taken after seventy two hours notice to the owner, or if the owner is unknown, after notice has been posted for the same period at the Town office or on or near such vessel, mooring, or object.

(c) The expense of such removal or relocation and liability incurred therefore, shall be the responsibility of the owner.

(d) Nothing in the above subsections shall restrict earlier action by the Harbormaster or an Assistant Harbormaster, with or without notifying the owner if, in their judgment, such action is necessary to protect life, limb, or property.

SECTION 11 DIVERS AND VESSEL OPERATIONS NEAR DIVERS

(a) Unless, for special purposes, permission is granted in writing by the Harbormaster to otherwise protect divers, any person or persons skin diving or scuba diving shall adhere to the following requirements:

(1) Display a diver's flag consisting of red field with white diagonal stripe, of a size not less than 12 x 15 inches.

(2) Display a flag on a vessel or surface float or similar device, which holds the flag upright at a minimum distance of three feet above the surface of the water.

(3) Stay within 100 feet of the aforesaid float or vessel, or tow the float and flag with him while he is submerged and surface thereunder.

(4) Vessels restricted in their ability to maneuver because divers are attached to the vessel shall, in addition to the above requirements, display the day shape required by the Navigation Rules.

(b) A vessel operating within sight of a diver's flag or the day shape required in the above subsection shall proceed with caution, and within a radius of one hundred feet of such flag or day shape, shall proceed at a speed not to exceed three miles per hour.

SECTION 12 ANCHORING AND MOORING

Unattended vessels shall not anchor in Marion Harbor other than the anchorage designated on the Harbor Anchorage Map, unless otherwise directed by the Harbormaster. Failure to comply with this section will result in the removal of the vessel at the owner's expense.

SECTION 13 OPERATION AND RESPONSIBILITY

(a) Vessel operators are responsible for their wake at tall times, and shall not operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any vessel in a manner that violates M.G.L. c. 90B, or any regulations adopted thereunder, or any other State or Federal law that may apply.

(c) Nothing in these regulations shall exonerate any vessel, or the owner, master, crew thereof, from the consequences of any neglect to comply with this article or the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

SECTION 14 JURISDICTION

Nothing contained in this Article shall be held or constructed to supersede or conflict with or interfere with or limit the jurisdiction of the United States Government with respect to the enforcement of the navigation, shipping, anchorage, or other associated Federal laws, or with the regulations, or any laws, or regulations of the Commonwealth of Massachusetts.

SECTION 15 NON-CRIMINAL DISPOSITION

Any person or entity who violates any section of this Article XII shall be liable to the Town in the amount of three hundred dollars, unless a lesser amount is provided for such violation under M.G.L. c. 90B or any regulation adopted there-under.

Fines shall be recovered by indictment or on complaint before the District Court or by non-criminal disposition in accordance with the Article XXIV of this Town Bylaw and M.G.L. c.40, s. 21D. The Harbormaster or his/her designee shall be the enforcing agent under this Chapter.

Each day of noncompliance following the issuance of a warning or citation pursuant to this section shall constitute a separate violation.

ARTICLE XIII Gas Piping and Gas Appliances

SECTION 1 GENERAL PROVISIONS

The Board of Selectmen shall during each year appoint one or more inspectors of gas piping and gas appliances that shall serve at the pleasure of said Board.

The inspectors of gas piping and gas appliances shall be master plumbers as defined by the provisions of M.G.L. c. 142, s. 1.

SECTION 2 DEFINITION OF TERMS

It shall be the duty of the inspector of gas piping and gas appliances to enforce the provisions of the Massachusetts Code for Installation of Gas Appliances and gas piping, as are or hereafter shall be master plumbers as defined by the provisions under Chapter 737 of the Acts of 1960 or any rules and regulations issued under the authority of said Act.

SECTION 3 FEE

There shall be a fee charged for each inspection made by the said inspectors, the amount of which fee shall be determined by the Board of Selectmen.

ARTICLE XIV Installation and Acceptance of Water Mains

PLANS AND SPECIFICATIONS

No water main hereafter installed in any public or private way of the Town of Marion shall be connected to the town water supply system until plans and specifications showing the proposed work in necessary of such plans submitted to the Board of Selectmen and the Board of Selectmen has determined from examination of such plans and specifications that they give assurance that the work will conform to the provisions of this Bylaw by endorsing thereon their approval in writing. Said water main shall be installed in accordance with the specifications entitled “Specifications for the Construction of Water Mains, Marion Water Department, Marion, Massachusetts, dated February 6, 1962.” Said specifications are available for inspection at the office of the

Town Clerk, and were published in pamphlet form and were posted in each of the following five places within the Town of Marion:

1. Marion Town House
2. Marion Post Office
3. The New Look Barber Shop
4. Jensen's Store
5. Well's Service Station

Any water main hereafter installed shall be inspected and approved in writing by the water department before it is covered in and before it is connected to the town's water supply system.

Acceptance

1. No water main hereinafter installed shall be accepted by the Town of Marion unless all of the foregoing requirements are hereafter complied with.
2. No water main shall be accepted by the town until the town has received a grant by deed of the way, or an easement over the way in which said main is located, to perform maintenance.
3. No water main shall be accepted by the Town of Marion unless the total annual revenue from the users of said main shall be equal to or greater than an amount computed as follows:

   $$\text{Total Annual Revenue} = \frac{\text{Installed Cost of Main} \times 50\%}{\text{twenty five years}}$$

4. The Town of Marion shall not hereafter install or contract for the installation of any water mains on any private property.
   This Bylaw which regulates the installation and acceptance of water mains will become effective sixty days after any necessary approval required by law.
5. On and after the effective date of this Bylaw, no main shall be accepted by the town by means of purchase, and no town funds are to be appropriated therefore, except this shall not apply to any water mains that were in the ground as of March 3, 1969. This Bylaw shall take effect as required under M.G.L. c. 40, s. 32.

(Added, ATM, Art. 9, March 3, 1969)

Specifications for the Construction of Water Mains
Marion Water Department, Marion, Mass.

SECTION 1 GENERAL DIRECTIONS

a. Plans and Dimensions

The contractor shall furnish a complete set of plans of the proposed water main installation for approval of the Board of Selectmen prior to construction of the water main, showing a street layout, property lines and subdivision boundaries. These plans are to be made by a registered land surveyor or professional engineer or other qualified person. The town reserves the right to alter the location of the water mains shown in order to provide the best method of servicing the development.

b. Lines and Grades
The contractor shall establish on the ground the lines and finished grades of the proposed streets, together with property lot lines where required for the proper location of hydrants, valves, services, etc.

c. Record Drawings
Following the completion of the installation, the contractor shall furnish the town record plans showing the actual location of all water mains including fittings, valves, hydrants, service connections, curb cocks and boxes. The boxes (installed over all gate valves) with at least three ties to houses, telephone poles, hydrants or other objects located within one hundred feet of the respective gate boxes. The contractor shall furnish, all of similar tracing cloth, the location of each service box (installed over each curb cock) with ties from the service box to each front corner of the house into which the service is installed, together with the distance from the house to the service box along the line of the service, and offset from side range line of house.

d. Protection of Work
All work is to be carefully protected so that no injury will come to it from water, frost, accident or other cause, and any injury, which may come to the work, is to be repaired by the contractor at his expense.

e. Work in Progress and Final
Extreme care is to be taken that the work and all appurtenances shall be done carefully, well and completely and, if later, errors, leaks, or poor work are discovered they shall be thoroughly repaired and rectified by the contractor up to the time of the acceptance of the entire system by the town.

f. Sanitary Conveniences
The contractor shall provide all necessary sanitary conveniences, properly secluded from public observation, and shall carry out all directions relating to same given by the superintendent of Public Works.

g. Care of Materials
The contractor shall have charge of, and liable for the loss of, or injury to, any materials delivered to him, on or in the vicinity of the work to be used

thereon and shall furnish men to handle them for examination by the superintendent or his assistants shall keep trimmed up piles, so placed as not to endanger the work, all materials so delivered, whether furnished by him or the town; and all refuse, rubbish and materials until removed shall not occupy private land without approval of the superintendent and permission from the owner or his authorized agent.

h. Materials to be Removed
The contractor is to promptly remove from the work and its vicinity all rejected materials and the surplus earth, refuse, rubbish and excavated materials to such points as shall be directed by the superintendent and shall dispose of them without expense to the town.

SECTION 2 EXCAVATIONS

a. Width and Depth
The excavation, trenches, etc., in which the work and appurtenances are to be constructed shall be excavated in all cases in such manner and to such depth and widths as will give suitable room for building the structures they are to contain. In earth excavations the contractor shall excavate the trench to the width and depth shown on the attached "Detail Showing the Minimum Trench Width and Depth for Various Pipe Sizes." In ledge excavations, the contractor shall remove the ledge to a depth of six inches below the bottom of the water main and at least two feet greater in width than the inside dimension of the water main.

b. Unsuitable Materials
If in the opinion of the superintendent existing material below trench grade is unsuitable for laying and bedding pipe, the contractor shall excavate and remove the unsuitable material and replace the same with approved gravel properly consolidated.

SECTION 3 FURNISHING AND LAYING WATER MAINS

a. Work to be Done
Contractor shall furnish and install the required water pipes together with all the necessary hydrants, gate valves, gate boxes, special pip fittings, selected gravel fill, where required, concrete backing of all fittings and shall do all excavation, backfilling, flushing, chlorinating, testing, connecting to existing water mains, including tapping sleeves and valves, and shall furnish and do everything to build a complete water main extension in accordance with the approved drawing.

b. Materials to be Furnished by the Contractor
1. Pipe: the contractor shall furnish and install all of the required Class 150 Transite Pipe as manufactured by the Johns-Manville

Company of the RingTite type, or its equivalent. The pipe shall consist of full lengths, half-lengths and machined overall pieces as required in order to lay the pipe in accordance with manufacturer's recommendations. Service pipe shall be of the same make and grade now used by the town.

2. Fittings: Contractor shall furnish and install all of the required fittings necessary to make a proper, satisfactory water main installation. Fittings are to be cast iron, tar coated with Ringtite hubs or poured-joint hubs, as the conditions requires. The fittings shall comply with the A.S.AA21.4-1952 or as approved by the superintendent.

3. Gate Valves and Valve Boxes: All valves six inches and larger shall be iron body, bronze mounted, double disc gate valves with two inch operating nut, having RingTite hubs or poured joint hubs. The valves shall conform in every respect to the latest standard specification for gate valves adopted by the American Water Works Association. Valves should be designed for the 200 psi working and 300 psi test pressure, and shall be of the make now used by the town or approved by the superintendent. Valves shall open in the same direction as those now in use by the Town.

   Tapping sleeves and valves shall conform to the latest specifications for gate valves as adopted by the A.W.W.A. Tapping sleeves to be of the standard type, set in place with lead joints and are to be properly caulked and made watertight.

   Valve boxes shall be furnished and installed for all valves, shall be cast iron, tar coated, sliding type, adjustable valve and boxes together with iron covers. The bell end of the lower sections shall in all cases be sufficiently large to fit over the stuffing boxes of valves. The smallest inside dimensions of the shaft shall be not less than five and one quarter inches. The upper section shall have a flange sufficiently strong to furnish the bearing for that section so that all the weight or jolting resulting from street traffic or the like shall not be transmitted to the valve. Each of these boxes including cover shall weigh at least one hundred pounds.

4. Hydrants: All hydrants are to be furnished with bell ends or RingTite hubs as approved by the superintendent. The length of hydrants to be such as to place the "round-line" at the finished grade of a completed sidewalk. The hose thread and operating nut to comply with "National Standard, Hydrants, shall open in same direction as the existing hydrants in the town. Hydrants shall be

designed for one hundred fifty pounds working pressure and shall conform in every respect to the latest A.W.W.A. specifications.

c. Handling of Pipe
The loading, trucking, unloading and handling of the pipes and other materials shall be done by the contractor with extreme care so as not to crack them or injure them or the street surface. Dropping of pipes, special castings, gates, hydrants, etc., directly from the trucks upon the ground will not be permitted. Suitable effective buffers or runners must be provided. The contractor shall be held responsible for any damage done to the pipers or other materials until they are accepted in the completed work.

d. Concrete Backing
Contractor shall furnish and place cement concrete in such places and quantities as required. Concrete shall be of proportions: one part Portland cement to two parts sand and to four parts coarse aggregate. Concrete shall be furnished and placed as backing for small size pipes, fittings, hydrants, etc., or as otherwise directed.

e. Pipe Blocking
Where required, due to the condition of trench bottom, blocking is to be used as directed by the superintendent. Blocking to be furnished by the contractor shall be new spruce lank one inch and two inch thickness. The blocks must be bedded firmly and level across the bottom of the trench and when any block has been sunk too deeply additional blocking of suitable thickness shall be placed to bring the pipe to the required grade. Blocks are to be placed at a point one fifth of the span from each joint, each block to be 2”x 4” with a length four inches larger than the diameter of the pipe. A sufficient quantity of wedges twelve inches long of 4” x 4” spruce shall be furnished to property hold gates and special castings in place; a new 4” x 4” timber shall be used to properly brace hydrant posts.

f. Poured Joints for Cast Iron Pipe Fittings, where applicable
All pipes are to be thoroughly cleaned before being laid. The spigots to be adjusted in the bells so as to give a uniform space for the joints and be entered solidly against hub shoulder. Joints to be poured in a continuous stream until the joint and the gate are completely filled. The gate to extend at least six inches above the top of the bell of the pipe. The joints to be made so as to secure tight joints, every means being taken to secure this result. The cast iron pipe joints shall have a deflection where required of not more than one half the recommended maximum deflection allowed.

g. Jointing Materials for Cast Iron Pipe, where applicable
The contractor shall furnish the required best quality jointing material made up of the finest ground iron and sulphur composition, substituting for lead as a jointing material. Jointing material to be used as

manufactured by the Leadite Company, or its equivalent. All jute used in joints shall be of a dry braided type except that in special joints dry jute may be used. Connections to existing cast iron mains where tapping sleeves and valves are not used shall be made with "Hyde-ro" seal rubber rings or equal.

h. Cutting of Cast Iron Pipe

All cuts of cast iron pipe shall be made with an electrically or pneumatically operated machine. Blades shall be carbide tipped for cutting cement lined cast iron pipe. The machine used shall be "Rein Portable Automatic Saw" or equal. Wheeler hydraulic cutter can also be used.

i. Connections to Existing Mains

The contractor to make all necessary taps, whether dry or wet, into the various water pipes and to install the sleeves, tees, couplings, reducers, nipples, jointing compound and other fittings and make all joints watertight in order to make complete and effective connections to existing water mains.

j. Refilling

The greatest care is to be taken in refilling, only the suitable materials taken from the excavations to be used. Good sand, clay or other fine materials entirely free from the large stones is to be deposited in six inch layers, thoroughly consolidated by railroad irons, hand or mechanical tampers until the pipe has at least twelve inches of cover over the top of the pipe.

The remainder of the trench shall be carefully backfilled and consolidated as follows or as directed by the superintendent. Fill may be placed by hand or machine in layers not exceeding two feet in thickness (before tamping). Each layer of fill shall be thoroughly compacted by means of approved mechanical tampers. Only suitable material taken from the excavation or approved run-of-the-bank sand and gravel hauled in for the purpose shall be used. No mud, frozen earth, stones larger than nine inches or other objectionable material is to be used for refilling.

Trenches in surfaced roads shall be backfilled as follows: The area to twelve inches over the top of the pipe shall be as specified above. From twelve inches above the top of the pipe to twelve inches below the road surface, or to existing sub-grade, the trench shall be carefully backfilled and consolidated with mechanical or hand tamps in twelve inch layers with approved materials. The surface of such backfill shall be firm and shall be graded to a line parallel to the surface of the existing road.

With the express approval of the superintendent, the contractor shall, at certain locations, further consolidate the backfill by rolling, puddling or water jetting.

In all machine work, care it so be taken not to disturb the grades or surfacing of the adjoining areas, trees, fences, etc. On paved surfaces, all machines used for refilling shall be equipped with rubber tires.

SECTION 4 CHLORINATION AND TESTING

a. Pressure and Leakage Test: Water pressure and leakage tests shall be made on completely backfilled pipe. Pipeline shall be subjected on one hundred twenty five pounds of pressure for fifteen minutes. During this time leakage shall not exceed seventy five gallons per twenty four hours, per inch diameter, per mile of pipe in thirteen foot lengths.

b. Disinfecting or chlorinating: The contractor shall furnish all materials and shall place HTH Tablets in each pipe by inserting them in a small amount of mastic or permatex adhered to the interior top of each pipe near its end.

Required Chlorine Dosage:	
6” pipe	2 tablets/length
8” pipe	3 tablets/length
10” pipe	4 tablets/length
12” pipe	6 tablets/length

At the completion of the pipeline, water shall be allowed to flow slowly into the pipeline until full. After forty eight hours retention period the chlorinated water shall be flushed from the pipeline.

ARTICLE XV The Building Code of the Town of Marion

The building code was deleted as it became obsolete on January 1, 1975, when it was superseded by the State Building Code.

ARTICLE XVI Building Numbering

SECTION 1

The Selectmen shall assign a number to every dwelling house, store, office, factory, or other building occupied for residential or business purposes on property which abuts or faces on a public or private way within the town. A building occupied by more than one family or business shall be assigned a number for each entrance facing on said way.

SECTION 2

The Selectmen shall send notice to the owner of each building thereof as appearing in the last annual tax list, by mail or by causing such notice to be delivered at each building required to be numbered, of the number or numbers assigned to such building together with a copy of this Bylaw.

SECTION 3

Within thirty days of the date that such notice is sent or delivered, the owner or occupant of any such building shall affix or cause to be affixed to said building, on or near the entrance or entrances of the buildings which face on the way, the number assigned by the Selectmen, the numerals of which shall be clear, legible, and not less than three inches in height.

Structures required to be numbered under this Bylaw which are not in plain view of, or are not within 150 feet of a public or private way within the Town, shall display a duplicate number or numbers at least three (3) inches in height. Said duplicate numbers shall be made of reflective material, shall be displayed within 25 feet of the public or private way , and shall be displayed not less than 48 inches above the public or private way.

(Added, ATM, Art. 30, May 16, 2011)

SECTION 4

In case the numbers on the building, including numbers displayed facing the public or private way as contemplated in Section 3 above, affixed under this Bylaw are defaced or removed, or upon the erection of a new building after the numbering under this Bylaw is completed, new numbers shall be placed upon such building and displayed facing the public or private way in the same manner as prescribed in this Bylaw.

(Amended, ATM, Art. 30, May 16, 2011)

SECTION 5

Any owner or occupant that fails to comply with any section of this Bylaw, or any person who willfully removes, defaces, or changes a number affixed under this Bylaw, or affixes a number or numbers other than those assigned to the building by the Selectmen, shall be subject to a fine of not more than twenty dollars for each offense. After official notification of an existing violation, each day of non-compliance shall constitute a separate offense.

(Added, ATM, Art. 28, March 1, 1965)

ARTICLE XVII Unregistered Motor Vehicles

No person shall have more than one unregistered car or truck un-garaged on premises owned by him or under his control except farm vehicles used exclusively upon a farm.

Under no circumstances will an unregistered car or truck be permitted to be stored in a front yard. Penalty for a breach hereof shall be in an amount not in excess of fifty dollars and each day during any portion of which violation is permitted to exist, shall constitute a separate offense. This section shall not apply to premises licensed under Chapter 140 of the General Laws.

(Amended, ATM, Art. 26, April 25, 1999)

ARTICLE XVIII Disorderly Conduct

No person shall behave in a disorderly manner or use indecent or insulting language, or shout, scream and/or utter loud outcries without reasonable cause, in any public place, or any sidewalk, street, or other public way of the town, or near any dwelling house to the annoyance or disturbance of any person there being or passing. Any person violating of the provisions of this Bylaw may be arrested without a warrant and shall be punished by a fine of not more than fifty dollars for each offense.

(Amended, ATM, Art. 35, March 6, 1967)

ARTICLE XIX Loitering

No person, except the owner or occupant, shall stand or remain in any doorway or upon any stairs, doorsteps, portico or other projection from any house or building, or upon any wall or fence on or near any street or public way or public place, after having been requested by the owner or any occupant of the premises or by any constable, watchman employed by the town, or public officer to remove therefrom.

Any person violating any of the provision of this Bylaw may be arrested without a warrant, and shall be punished by a fine of not more than fifty dollars for each offense.

(Amended, ATM, Art. 35, March 6, 1967)

ARTICLE XX Alcoholic Beverages Pertaining to Minors

It shall be unlawful for any minor to consume any alcoholic beverages on any public way, or in any way to which the public has a right of access as invitees or licensees, or in public places within the Town of Marion. Whosoever violates the provisions of this Bylaw shall be subject to a fine not exceeding fifty dollars.

(Added, ATM, Art. 35, March 6, 1967)

ARTICLE XXI Solicitation for Contributions or Commercial Purposes

SECTION 1

No one shall solicit contributions and/or there shall be no solicitations by commercial salesmen or their agents while going uninvited, house to house, in the Town of Marion unless said person or persons have first registered with the Board of Selectmen. Anyone

intending to go uninvited from house to house to solicit contributions and/or to act as a commercial salesman or their agents shall first present themselves to the Board of Selectmen and give their full name, age, permanent and local address, if any, employer's name and address and list all the products or commodities being offered for sale and/or the organization for which the contributions are to be solicited. The Board of Selectmen, upon receipt of the above information and statement, under the pains and penalties of perjury, shall grant to the person or persons written authorization to solicit. Whoever violates the said rules and regulations shall pay a fine of not more than twenty dollars for each offense, and each day during any portion of which a violation is permitted to exist, shall constitute a separate offense.

(Added, ATM, Art. 14, March 2, 1970)

ARTICLE XXII Council for the Aging

SECTION 1

The town shall establish a Council for the Aging, hereinafter called the council, for the purposes of carrying out programs which may be designed or established to meet the opportunities, challenges and problems of the elderly of Marion. It shall keep accurate records of its meetings and actions and shall file an annual report, which shall be printed in the Annual Town Report. The council may appoint such clerks and other employees as it may from time to time require. The council shall consist of nine members appointed by the Board of Selectmen. When the council is first established, the terms of the members shall be for one, two and three years and so arranged that the terms of approximately one third of the members shall expire each year and their successors shall be appointed for a term of three years each. Any member of a council, so appointed, may, after a hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term by appointment made by the Board of Selectmen. Said council may receive gifts to be managed and controlled by the council for the purposes of this Bylaw.

(Added, ATM, Art. 37, March 2, 1970)
(Amended, ATM, Art. 28, April 27, 1987)

ARTICLE XXIII Temporary Repairs on Private Ways

The town, acting pursuant to M.G.L. c. 40, s. 6N, allowing the town to make temporary repairs on private ways (commonly referred to as "unaccepted streets") as therein provided.

a. Such repairs may include repairs to the surface and subsurface.
b. Repairs may include the installation, construction and repair of drainage.
c. Petitions for repairs shall contain a description of the repair project, together with an estimate of the cost, be signed by a majority of the abutters and submitted to the Board of Selectmen, which, after investigation and determination, that said repairs rare required by public necessity, may at its discretion recommend that Town Meeting authorize

said repairs and appropriate funds therefore. For the purpose of this subsection "a majority of abutters" shall mean the owners of more than 50% of the built on and buildable lots abutting on the way or ways subject to the petition.

d. Betterment charges shall be assessed for repairs performed hereunder for a maximum of five years. In general, betterment charges shall be assessed by number of built on and buildable lots included in the repair project, each lot sharing an equal portion of the cost. Any lot receiving benefit of advantage from the repair project will be included in the assessment base equally, unless otherwise determined by Selectmen, which alternative apportionment may be requested by the petitioners.

e. Repairs may be included only on such ways that have been released from covenant and/or bond, open to the public, and the estimate for the repair project must exceed five thousand dollars.

f. The town shall not be liable or accountable for any damage caused by repairs made pursuant to this Bylaw.

(Amended, ATM, Art. 17, April 27, 1988)

ARTICLE XXIV Non-criminal Disposition of violations of Certain Regulations

The Harbormaster, or any other official taking cognizance of a violation of any of the following regulations which he is empowered to enforce:

1. Shellfish Regulations for Marion
2. Harbormaster's Mooring and Anchorage Rules and Regulations
3. Rules and Regulations for use of Old Landing and Island Wharves
4. Town of Marion Dinghy Rack Regulations, as the same may be amended from time to time, as an alternative to initiating criminal proceeding, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof for non-criminal disposition as provided in M.G.L. c. 40, s. 21D.
5. Motor Boat Laws (Article XII)

The non-criminal disposition of such a violation shall be in the sole discretion of the enforcing person and the availability of such disposition shall not be a bar to criminal disposition of any such violation. No person shall have a right to non-criminal disposition of such a violation.

Each violation of the above enumerated regulations shall be punishable in the event of non-criminal disposition by a fine of twenty five dollars, unless another amount is provided for in these Bylaws.

Each day on which any violation exists shall be deemed a separate violation.

Each violation of the above enumerated regulations shall be punishable in the event of criminal disposition as otherwise provided by law.

(Amended, ATM, Art. 21, April 28, 2003)

ARTICLE XXV Non-Criminal Disposition of Non-Marine Violations

Any officer taking cognizance of a violation of any of these Bylaws or any rule or regulation of any officer, board or department of the town, except Marine Resources, which he is empowered to enforce, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court for non-criminal disposition as provided in M.G.L. c. 40, s. 21D. Except as otherwise provided by general law or by the express terms of any bylaw, rule or regulation, the specific penalty for any bylaw, rule or regulation of the town shall be one hundred dollars. Each day on which any violation exists shall be deemed a separate violation. The non-criminal disposition of such a violation shall be in the sole discretion of the enforcing person and the availability of such disposition shall not be a bar to criminal disposition of any such violation. No person shall have a right to non-criminal disposition of such a violation.

(Added, ATM, Art. 24, April 22, 1996)

ARTICLE XXVI Animal Control Bylaw

SECTION 1 DEFINITIONS

As used in this Bylaw, the following terms mean:

Owner: Any person, group of persons or corporation owing or keeping or harboring a dog or dogs.

Restraint: a dog is under restraint within the meaning of this ordinance if he is under the control and beside a competent person and obedient to that person's command or within the property limits of its owner or keeper.

Dog pound: Any premises designated by action of the Town for the purpose of impounding dogs and caring for all dogs found running at large in violation of this ordinance.

Animal Control Officer: The person or persons employed by the Town as the enforcement officer.

Kennel: A single premises with a collection of four or five dogs, three months or older, that are maintained for breeding, boarding, sale, training, hunting, or any other purpose.

Hobby Kennel: a single premises with a collection of six to ten dogs, three months or older, that are maintained for any purpose, and where fewer than four litters per year are raised.

Commercial Kennel: A single premises, with a collection of eleven or more dogs, three months or older, that are maintained for any purpose, or where four or more litters per year are raised, or where the boarding or grooming of dogs is performed as a business.

License Period: The time between July 1 through June 30, both dates inclusive.

(Amended, ATM, Article 19, April 28, 2003)

SECTION 2 ENFORCEMENT

The Animal Control Officer or Animal Control Officers shall enforce the provisions of this Bylaw.

SECTION 3 RESTRAINT

The owner shall keep his dog under restraint at all times.

SECTION 4 IMPOUNDMENT FEES

Any dog impounded hereunder may be reclaimed as herein provided upon payment by the owner to the Animal control Officer of the sum of one hundred dollars for each day such dog is kept.

SECTION 5 CONFINEMENT OF CERTAIN DOGS

a. The owner shall confine within a building or secure enclosure every fierce, dangerous or vicious dog and not take such dog out of such building or secure enclosure unless such dog is securely muzzled and upon a leash. The Animal Control Officer may destroy any such dog which is found not to be so confined and without such a muzzle.

b. The owner shall confine within a building or secure enclosure any dog that has been impounded more than twice by the Animal Control Officer and not take such dog out of such building or secure enclosure unless such a dog is well secured by a leash. Failure to do so may result in such dog being taken permanently.

SECTION 6 BEACHES

It shall be unlawful for any person to permit any dog owned by him and/or under his or her care or control to be present on any beach owned by the Town of Marion from May 1 through October 1. From October 2 through April 30, dogs may be present on any beach owned by the Town of Marion, provided it is under the control of its owner. It is the owner's responsibility to provide a "pooper scooper" or some other device capable of removing dog waste from the beach property. Failure of the owner to remove dog waste shall be subject to the penalties described in Section 7.

(Amended, Art. 24, ATM, May 18, 2009)

SECTION 7 PENALTIES

Penalties for the violation of any provision of this Bylaw shall be assessed and collected in accordance with the procedure established under M.G.L. c. 140, s. 173A (Non-criminal Disposition of Complaints for Violation of Dog Control Laws), provided, however, that the fine for each violation, including the first offense, shall be the sum of twenty five dollars.

SECTION 8 LICENSES AND TAGS

The owner or keeper of a dog in the Town of Marion is subject to these regulations when the dog reaches the age of three months. This section shall not apply to a person having a kennel license.

There shall be a fee that is paid by the owner for each license and tag and any replacement tag issued by the Town Clerk. All fees under this section shall be determined by the Board of Selectmen, and may be changed from time to time as they deem appropriate. No fee shall be charged for a license for a dog owned by a person aged 70 years or over.

(Amended, Art. 21, ATM, May 19, 2008)

The Town Clerk shall record each license issued, the name of the owner or keeper of each dog so licensed, and the name, registered number and description of each dog. The owner or keeper of any dog so licensed shall state upon the license form, the breed, color, weight and special markings of the dog. Such books shall be open to the public for inspection during the usual office hours of the Town Clerk.

The owner or keeper shall cause said dog to wear around its neck or body a collar or harness to which the tag shall be securely attached. In the event that any tag is lost, defaced, or destroyed, the owner or keeper shall obtain substitute tags from the Town Clerk.

A license duly recorded in another jurisdiction shall be valid in the Town of Marion until the expiration of the licensing year, at which time the owner or keeper shall cause the dog to be licensed in the jurisdiction of residence.

The licensing period shall be for one year. The deadline for procurement of a dog license is established as June 30 of each year. License renewal may be applied for within thirty days prior to the expiration date. New residents must apply for a license within thirty days of establishing residence. No fee shall be charged for a dog specially trained to lead or serve a blind or deaf person upon presentation to the Town Clerk a certificate of such training.

A license fee shall not be refunded because of a subsequent death, loss spaying or neutering, or removal from the Town of such dog, not because a license fee has been mistakenly paid to the Town.

The provisions of this section shall not apply to institutions licensed under M.G.L. c. 140 s. 174D, to shops licensed under M.G.L. c. 129, s. 39A, to any person operating a license kennel or where otherwise provided, by law.

SECTION 9 KENNEL LICENSES

Any owner of keeper of a kennel, hobby kennel, or commercial kennel shall obtain a kennel license; provided, however, that before the Town Clerk issues such license, the owner or keeper provides the Town Clerk with the written approval of the Board of Appeals or Special Permit Granting Authority or the written determination by the Building Commissioner that such approval is not required. The kennel license shall be issued by the Town Clerk and there shall be a fee for such kennel license to be paid by the owner. All fees under this section shall be determined by the Board of Selectmen, and may be changed from time to time as they deem appropriate.

A kennel license shall be in lieu of any other license required for a dog, for the period of time the dog is kept in such kennel. The owner or keeper of such kennel shall renew the license prior to the commencement of each succeeding license period.

While at large, each dog in a kennel shall wear a collar or harness with a tag securely attached. The tag shall have the number of the kennel license, the name of the town that issued the kennel license, and the year that the license was issued. Such tag shall be in the form prescribed and furnished by the Town Clerk and shall be issued by the Town Clerk.

If a kennel owner desires to increase the capacity of his/her kennel during a license period, he/she shall apply to the Town Clerk, and, if required by the Zoning Bylaw, present the Town Clerk with the written approval of the Board of Appeals or Special Permit Granting Authority prior to the issuance of such license modification. The Town clerk shall issue such modification upon payment by the owner of the difference between his existing kennel license and the fee for the kennel license most recently approved.

The Town Clerk shall issue, without charge, upon written application and written approval of the Board of Appeals, a kennel license to any domestic charitable corporation, incorporated in the Commonwealth, exclusively for the purpose of protecting animals from cruelty, neglect, or abuse.

A veterinary shall not be considered a kennel unless it contains an area for the grooming or selling of dogs, or for the boarding of dogs for other than medical or surgical purposes. If it is considered a kennel, the owner or keeper shall, before the Town clerk issues such license, provide the Town Clerk with the written approval of the Board of Appeals or Special Permit Granting Authority or the written determination by the Building Commissioner that such approval is not required.

All holders of kennel licenses shall notify the Town Clerk, in writing of the sale of any dog or puppy, which includes the description of the animal, the age, color, breed, identifying marks, sex, and whether the dog has been spayed or neutered. The kennel owner shall forward a copy of such notice to the Clerk of the city or town in which the new owner of the dog resides.

SECTION 10 ISSUANCE AND REVOCATION OF LICENSESAND REGULATION; KENNEL INSPECTION

The Town Clerk, upon receiving a written directive from the Selectmen that was based on information obtained from the Animal Control Officer or the Chief of Police or his/her designee may revoke any license. In such case of suspension of said license, the Board of Selectmen may reinstate such kennel license and impose conditions and regulations upon the operation of the kennel.

If an applicant is shown to have withheld or falsified any material information on the application, the Town clerk may refuse to issue or may revoke a license.

The Animal Control Officer or the Chief of Police of the Town of Marion or other persons authorized under the General Laws may at any time inspect or cause to be inspected any kennel and if, in his or her judgment, the same is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Board of Selectmen shall by order revoke or suspend such license. In the case of suspension, the Board of Selectmen may reinstate such license and impose conditions and regulations upon the operation of said kennel.

Upon the petition of six citizens filed with the Board of Selectmen setting forth they are aggrieved or annoyed to an unreasonable extent by one or more dogs at a kennel located in town, because of excessive barking or vicious disposition of such dogs or other conditions connected with the kennel that constitute a public nuisance, the Board of Selectmen shall, within seven days of filing such petition, give notice to all parties concerned of a public hearing to be held within fourteen days after the date of such notice. Within seven days after the public hearing, the Board of Selectmen shall make an order either revoking or suspending such kennel license or otherwise regulating the operation of said kennel, or shall dismiss such petition. Written notice of any order under section revoking, suspending or reinstating a license shall be mailed forthwith to the office issuing such license and to the holder of the license.

Any person maintaining a kennel after the license has been so revoked, or while such license is so suspended, shall be charged a fee of fifty dollars (M.G.L. c. 140, s. 137C)

(Added, ATM, Article 19, April 28, 2003)

SECTION 11 PENALTIES FOR FAILURE TO LICENSE

Whoever violates any provision of Section 8 or 9 of these Rules and Regulations shall be punished by a fine of not less than twenty five dollars, which shall be paid to the Town.

If any person refuses to answer, or answers falsely, questions of a police officer or an Animal Control Officer, pertaining to their ownership of a dog, they shall be punished by a fine of not less than twenty five dollars, which shall be paid to the Town.

If the dog as to which any violation occurs was unlicensed at the time of such violation, a fine of not less than twenty five dollars nor more than fifty dollars shall be paid by the owner to the Town, and the owner or keeper of such dog will be required to immediately procure all delinquent licenses and tags, as well as the current license and tag.

(Added, ATM, Article 25, April 27, 1999)

ARTICLE XXVII Open Space Acquisition

There shall be an Open Space Acquisition Commission consisting of five members. At the initial election of Commission members, one candidate shall be elected for a term of one year, two shall be elected for terms of two years, two shall be elected for terms of three years, and all subsequent terms shall be for periods of three years. The Commission shall have the powers of a Conservation Commission with respect to the acquisition of interests in land and the expenditure of funds under provisions of M.G.L. c. 40, s. 8C. The Commission shall also have the power to hire staff and professional services to perform its duties. The Commission shall meet its financial obligations by (1) drawing upon an open space fund that is funded by a property tax surcharge, (2) appropriations voted at Town Meeting and (3) gifts made to the fund in cash or other negotiable securities.

(Added, ATM, Article 25, April 27, 1999)

ARTICLE XXVIII Water Use Restrictions

SECTION 1 AUTHORITY

This Bylaw is adopted by the Town under its police powers to protect public health and welfare and its powers under M.G.L. c. 40, s. 21 et seq, and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, s. 69B. This Bylaw also implements the Town's authority under M.G.L. c. 40, s. 41A, conditional upon a declaration of water supply emergency issued by the Department of Environmental Protection.

SECTION 2 PURPOSE

The purpose of this Bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the town or by the Department of Environmental Protection.

SECTION 3 DEFINITIONS

Enforcement Authority shall mean the Board of Water and Sewer Commissioners, the Department of Public Works, or other department or board having responsibility for the

operations and maintenance of the water supply, the Health Department, the Town Police, and any other local designated body having police powers.

Person shall mean any individual, corporation trust, partnership or association, or other entity.

State of Water Supply Emergency shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under M.G.L. c. 21G, ss. 15-17.

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town pursuant to Section 4 of this Bylaw.

Water Users or Water Consumers shall mean all public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

SECTION 4 DECLARATION OF A STATE OF WATER SUPPLY CONSERVATION

The Town, through its Water and Sewer Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under Section 6 of this Bylaw before it may be enforced.

SECTION 5 RESTRICTED WATER USES

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under Section 6.

a) Outdoor Watering Days. Outdoor watering is permitted only on certain days of the week to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

(Amended, STM, Article S16, November 3, 2003)

b) Outdoor Watering Ban. Outdoor watering is prohibited.

c) Outdoor Watering Hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

d) Filling Swimming Pools. Filling of swimming pools is prohibited.

e) Automatic Sprinkler Use. The use of automatic sprinkler systems is prohibited.

SECTION 6 PUBLIC NOTIFICATION OF A STATE OF WATER SUPPLY CONSERVATOIN; NOTIFICATION OF DEP

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under Section 5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

SECTION 7 TERMINATION OF A STATE OF WATER SUPPLY CONSERVATION; NOTICE

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water and Sewer Commissioners upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section 6.

SECTION 8 STATE OF WATER SUPPLY EMERGENCY; COMPLIANCE WITH DEP ORDERS

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the State of Emergency.

SECTION 9 PENALTIES

Any person violating this Bylaw shall be liable to the Town in the amount of fifty dollars for the first violation and one hundred dollars for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with M.G.L. c. 40, s. 21D. Each day of violation shall constitute a separate offense.

SECTION 10 RIGHT OF ENTRY

Agents of the enforcement authority may enter upon any property for the purpose of inspecting and investigating any violation of this Bylaw or enforcing the same.

SECTION 11 SEVERABILITY

The invalidity of any portion of provision of this Bylaw shall not invalidate any other portion or provision thereof.

ARTICLE XXIX Community Preservation

SECTION 1 ESTABLISHMENT

There is hereby established a Community Preservation Committee consisting of seven voting members pursuant to the provisions of M.G.L. c. 44B, s. 5. The composition of the Committee, the appointing authority and the terms of office for the Committee members shall be as follows:

1. One member of the Conservation Commission, as designated by the commission;
2. One member of the Historical Commission established pursuant to M.G.L. c. 40, s. 8D, as designated by the Commission;
3. One member of the Planning Board, as designated by the Board;
4. One member of the Parks Committee, as designated by the Committee;
5. One member of the Housing Committee, as designated by the Committee; and
6. Two members of the Open Space Acquisition Commission, as designated by the Commission.

Each member of the Community Preservation Committee shall serve for a term of one year or until the person no longer serves on the designating commission, board, or committee, whichever is earlier.

Should any of the commissions, boards, authorities or committees which have appointing authority under this Bylaw be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in their place.

Any member of the Community Preservation committee may be removed for cause by their respective designating authority, after a hearing.

SECTION 2 DUTIES

1. The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Open Space Acquisition Commission, the Parks Committee, and the Housing Committee, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one annual public information hearing or more,

at its discretion, on the needs, possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

2. The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

3. The Community Preservation Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation, but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

4. In every fiscal year, the Community Preservation Committee must recommend either that the legislative body spend or set aside for later spending not less than 10% of the annual revenues of the Community Preservation Fund for (a) open space (not including land for recreational use), (b) historic resources and (c) community housing.

SECTION 3 REQUIREMENTS FOR A QUORUM AND COST ESTIMATES

The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, M.G.L. c. 39, s. 23B. The Committee shall not meet or conduct business without the presence of a majority of the members of the Community Preservation Committee. Recommendations to the Town Meeting shall include the Committee's anticipated cost.

SECTION 4 AMENDMENTS

This Bylaw may be amended from time to time by a majority vote of the Town Meeting consistent with the provisions of M.G.L. c. 44B.

SECTION 5 SEVERABILITY

In case any section, paragraph or part of the Bylaw be for any reason declared invalid or unconstitutional by any court, every other section, paragraph or part shall continue in full force and effect.

SECTION 6 EFFECTIVE DATE

Provided that this Bylaw is approved by the Attorney General, this Bylaw shall take effect upon acceptance of the Community Preservation Act at the 2005 Annual Town Election, and after all requirements of M.G.L. c. 40 s. 32 have been met. Each appointing authority shall have thirty days after acceptance at the 2005 Annual Town Election to make their initial appointments; or take any other action thereon.

(Added, ATM, Article 21, April 26, 2005)