

ARTICLE IV. SPECIAL REGULATIONS

4100. Accessory Uses

4110. Home Occupations

4111. Home occupations are permitted without need for a special permit only if conforming to each of the following conditions:

- (a) No more than 25% of the habitable floor area of the residence (exclusive of accessory structures) shall be used for the purpose of the home occupation. Accessory structures shall be used only for parking or incidental storage.
- (b) Not more than one person not a member of the household shall be employed on the premises in the home occupation.
- (c) There shall be no exterior display, no exterior storage of materials, no outside parking of commercial vehicles, and no other exterior indication of the home occupation or other variation from the residential character of the principal building other than an unlighted sign not to exceed one square foot in area.
- (d) The environmental requirements of Section 3200 shall be complied with.
- (e) Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from residential use, considering volume, hours, vehicle types and other traffic characteristics.
- (f) The parking generated shall be accommodated off-street, other than in a required yard, and shall not occupy more than 35% of lot area.
- (g) There shall be no retail sale of articles not produced on the premises or incidental to the occupation.

4112. A special permit from the Board of Appeals may authorize any of the following provided that the Board determines that the activities will not create hazard, disturbance to any abutter or the neighborhood, and will not create unsightliness visible from any public way or abutting property.

- (a) Use of more than 25% of the habitable floor area of the residence, or use of any accessory building for other than parking or incidental storage.
- (b) On-premises employment of a second or third person not a member of the household.
- (c) Exterior parking of a commercial vehicle.
- (d) Traffic determined by the Building Inspector to exceed the limits of item 4111(e).
- (e) Parking within a required yard, provided that it is effectively screened from the street and abutting premises.

4120. Scientific Uses. The Board of Appeals may grant a Special Permit for a use accessory to a scientific research, scientific development, or related production activity, whether or not on the same parcel as such activity. A Special Permit shall be granted where the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

4130. Family Apartment. A special permit authorizing a Family Apartment may be granted only if consistent with the following.

4131. Development Requirements.

- (a) Unit must be a single family dwelling to which the Family Apartment is being added, and must have been in existence and occupied under a legal Occupancy Permit at least two (2) years at the time of application.
- (b) Any increase in floor area shall meet the requirements of Section 2600 without variance or Special Permit.
- (c) The Applicant must acquire Board of Health approval that the sewerage disposal will be within the legal requirements.
- (d) Parking shall be as required in Section 3300 for a two Family Dwelling unit.

4132. Occupancy Requirements.

- (a) Either the principal or the accessory unit must be owner-occupied.
- (b) The remaining unit must be occupied by a family member of the owner(s).

4133. Procedural Requirements.

- (a) To approve a special permit for a Family Apartment, the Board of Appeals must make a determination that all of the above requirements have been met, and also that the particular circumstances of the case make such use appropriate, including consideration of:
 - i) whether lot area or other site characteristics assure mitigation of any impacts on the neighborhood;
 - ii) whether there is enforceable assurance that occupancy of the unit will serve significant community purposes, such as facilitating care for the elderly or handicapped;
 - iii) whether there is a financial hardship to the family;
 - iv) whether site and building design are within the character of the neighborhood.
- (b) The Special Permit and a Certificate of Occupancy for a Family Apartment shall be issued for a period no greater than five years from the date of issuance and must be filed at the Norfolk Registry of Deeds prior to the issuance of a Building Permit.

- (c) A Special Permit for a Family Apartment may be extended for additional five year periods upon application to the Zoning Board of Appeals at least sixty (60) days prior to the expiration of the Special Permit. An extension shall be given only after inspection and a written report by the Town Inspector that the conditions of the renewal have not changed since the initial application and the Zoning Board's determination that the applicant is in full compliance with Section 4130. Any extension given must be filed at the Norfolk Registry of Deeds within 30 days of issuance. Failure to file within the time period given shall nullify the permit given.
- (d) Sale of the lot or dwelling that is the subject of the Special Permit shall nullify the Permit on the date of sale.
- (e) Permanent Removal from the premises of the individual or individuals for whom the permit has been obtained shall nullify the Permit on the date of such removal.

4200. Mobile Homes, Trailers, and Campers

4210. No mobile home, trailer, or camper shall be used for permanent residence.

4220. A mobile home may be stored, and following issuance of a zoning permit by the Zoning Agent a mobile home, trailer or camper may be occupied for not more than 30 days in any 12 month period, provided it is so placed on the lot as to meet minimum yard requirements.

4230. A trailer or camper may be regularly stored accessory to a permitted use, provided that it is so located on the lot as to meet minimum yard requirements.

4240. Replacement of mobile homes parking in non-conformity with Section 2400 is not permitted, even where such replacement does not increase the extent of non-conformity.

4300. Major Residential Development

4310. Intent.

The intent of Major Residential Development (MRD) provisions is to allow greater flexibility and creativity in residential development and to assure a public voice and public authority in consideration of development in order to gain the following.

4311. Location of development on sites best suited for building, and protection of land not suited for development, reflecting such considerations as:

- permanent preservation of open space for conservation or recreational use, especially in large contiguous areas within the site or linked to off-site protected areas;
- protection of water bodies, streams, wetlands, wildlife habitats, and other natural resources;
- protection of the character of the community through preserving open space within view from public roads, preservation of stone walls and other historic landscape features, preservation of scenic vistas, and siting of dwellings at low-visibility locations;

- protection of street appearance and capacity by avoiding development close to or having egress directly onto existing streets.

4312. Efficient patterns for construction and maintenance of public facilities and services such as streets and utilities.

4313. Promotion of social and economic diversity.

4314. Privacy for residents of individual lots.

4315. Avoidance of unnecessary development cost.

4320. Applicability.

Section 4300 shall apply to all Major Residential Developments as defined in Article V.

4330. Procedures.

Special permits for Major Residential Development shall be acted upon through a two-step decision process, the Planning Board first identifying the Preferred Plan, and second determining if that plan complies with the requirements of Section 4300. At the applicant's option, both steps may be taken based upon Definitive Plan-level materials. Alternatively the identification of the preferred plan may be made based upon concept-level materials with the compliance decision subsequently being made based upon definitive-level materials, with hearing continuations allowing public review and input at both steps.

4331. Alternative Plans. Applicants for Major Residential Development shall submit, among other things, two Alternative Plans. These Alternative Plans shall include the basic development proposal that the owner prefers and a substantially different alternative proposal. Examples of 'substantially different' would be a conventional subdivision plan versus one using the alternative dimensional regulations of Section 4350, or two plans of the same type but having major differences in the number of lots created, road pattern, or open space configuration. For the purposes of determining the number of potential lots in the development, a conventional layout plan must be submitted if a conventional layout is not one of the two proposed Alternative Plans.

4332. Application for Major Residential Development. Applicants for Major Residential Development shall file the following except for any submittal items which the Planning Board may have waived in writing prior to application submittal, based on its determination that the waived information would not be germane to the decision, or would be unjustified in light of the scale, location, or other attributes of the proposal. Application packages shall be filed pursuant to the Planning Board's "Form K Distribution List" (as most recently amended), plus one package shall be filed with the Bellingham Historical Commission.

- (a) A Design Concept Plan for both alternatives, prepared by a team that includes one or more registered Civil Engineers, Land Surveyors, and either or both Architects and Landscape Architects. The plan shall indicate schematically how the configuration of site grading, building design and locations, roads and drives, sidewalks and trails, wells and sewage disposal facilities, retained vegetation and new plantings, building lots and reserved open space are proposed to be shaped in relation to the qualities of the site and the concerns of the Town, reflecting consideration of site topography, geology, environmental resources, cultural resources, microclimate, visibility and viewsheds,

access convenience and safety, and other planning considerations. The Design Concept Plan shall normally include the following (at uniform scale if shown on separate sheets, plus an index sheet):

- Existing Site Conditions: location and boundaries of the site, water bodies, streams and wetlands (delineation to be accepted by the Conservation Commission in accordance with the Massachusetts Wetlands Protection Act prior to the Planning Board rendering a decision on which Alternative Plan to pursue), topography at two-foot intervals, identification of land having slopes in excess of 25%, identification of general cover type (wooded, cropland, etc.), location of Designated Natural or Cultural Resources, and existing ways;
 - Context information: ownership and use of abutting properties, location of existing buildings within 50 feet of the premises, location of any wells within 100 feet of the premises.
 - Proposals: proposed lot lines, streets and ways, building envelopes; water system, sewage disposal proposals, drainage system, indication of vegetation removal and retention; and proposed vegetation, common open space, and other land for non-residential use;
 - Landscape Plan: identifying areas of retained vegetation, proposed plantings, proposed restrictions upon vegetation alteration, and other elements of an integrating conceptual landscape design.
 - MRDs containing twenty (20) or more dwelling units shall also submit documentation of having consulted with the Bellingham Conservation Commission, the Bellingham Historical Commission and the Massachusetts Historical Commission regarding Designated Natural and Cultural Resources; and evidence that all feasible efforts have been made to avoid, minimize, or compensate for any damage to any of those identified resources.
 - Such other information as the Planning Board may reasonably find necessary for making informed determinations on the proposal.
- (b) Floor plans and elevations for any proposed buildings other than detached single-family dwellings and typical accessory structures (e.g., sheds, garages)
- (c) Indication of each landowner's interest in the land to be developed, the form of organization proposed to own and maintain any proposed common open space, the substance of covenants and grants of easements to be imposed upon the use of land and structures, and a development schedule, indicating cumulative maximum number of dwelling units proposed to be completed by the end of each year in the schedule and the latest date of completion for any proposed community facilities, which schedule as approved or amended and approved shall be made part of the Special Permit decision.
- (d) Narrative and tabular materials describing the proposal, including the number and size of dwelling units; proposed project phasing; and any provisions being made to target special occupancies, such as for the elderly or for affordable housing.

- (e) Prior to the final special permit decision (but not necessarily prior to identification of the preferred plan) a plan satisfying all requirements for a Definitive Subdivision Plan under the Subdivision Regulations of the Bellingham Planning Board.
- (f) Any additional information necessary to make the determinations and assessments cited in Section 4360 Decision.

4333. Review and Decision for Major Residential Development Special Permit. The DPW, Board of Health, and Conservation Commission shall submit reports to the Planning Board within 35 days of application, and the Planning Board shall make no decision upon the application until receipt of all such reports or until 35 days have elapsed since date of application without such reports.

4340. Use Regulations.

Uses allowed in a Major Residential Development shall be all those permitted or allowed on special permit at that location under Section 2400 Use Regulations Schedule and other provisions of this Bylaw, whether residential use or non-residential use, so long as at least a majority of the proposed floor area within the development is committed for residential use, and provided that all other requirements of the Zoning Bylaw, including, if applicable, approval under Section 1420 Development Plan Approval, are complied with.

4350. Alternative Dimensional Regulations.

The following alternative dimensional regulations may be used in preparing plans for Major Residential Development, rather than those of Section 2600 Intensity of Use Schedule, except where specified below.

4351. Allowable Number of Dwelling Units. The maximum number of dwelling units that may be allowed shall equal the maximum number of units that could reasonably be expected to be created with the proposed mix of single-family dwellings, two-family dwellings, and special residential uses through conventional development of the land under Section 2600 Intensity of Use Schedule and Section 4400 Special Residential Uses without substantial waivers or variances from applicable regulations, as determined by the Planning Board. In making that determination, land proposed for use other than residential, open space, or circulation shall be excluded. The Planning Board may limit the development to a smaller allowable number of units only upon its determination that special circumstances of this site location or design that are not generally true throughout the vicinity make that reduction necessary in this case to protect important public concerns.

4352. Other Dimensional Regulations. Other dimensional regulations for individual lots (but not for determining the allowable number of dwelling units) shall be as follows, rather than as provided at Section 2600 Intensity of use Schedule.

- (a) **Lot Area.** Minimum lot area shall be that necessary to meet requirements for building envelope ((d) below) and for Board of Health requirements, but lot area in no event shall be less than 20,000 square feet.
- (b) **Lot frontage and lot width.** The lot frontage and lot width through buildings or structures shall be that necessary to meet requirements for building envelope requirements and to provide for adequate access to the building site, but in no event shall lot frontage or width be less than thirty-five (35) feet.

- (c) **Existing Street Protection.** There may not be a larger number of lots relying on frontage on a street other than one created by the development involved than would be expected under a conventional plan.
- (d) **Building envelope.** Principal buildings, accessory buildings, and parking, both initially and through subsequent additions and alterations, shall be located within a designated building envelope. Such envelopes shall not exceed 40% of the lot area (exclusive of wetlands) of the lots they are on, and shall be located consistent with the following.
- (i) Building envelopes shall include no land within front, side and rear yards based upon requirements contained in the Intensity of Use Requirements of Section 2600 applied as follows:
 - For yards measured from the boundary line at the perimeter of the Major Residential Development the requirements for the Suburban District shall apply.
 - For yards not measured from the perimeter boundary the requirements for the Residential (R) District shall apply, except that the Planning Board in acting on the special permit approval may authorize a reduction of up to 50% in those requirements upon its determination that such reduction results in better design, improved protection of natural or cultural resources, and adequate protection of privacy and safety.
 - (ii) Building envelopes shall include no land within any wetland, flood plain, or slope in excess of 25%.
 - (iii) Building envelopes shall not be located within 100 feet of any Designated Natural or Cultural Resource unless, in approving the Major Residential Development special permit, the Planning Board determines that either such buffering is inappropriate, as in the case of proposing an architecturally compatible building in the vicinity of an historic structure, or that meeting these resource buffers would leave otherwise developable property without economically beneficial use, and that the relief granted is the minimum necessary to allow economic use.
 - (iv) Where possible, building envelopes shall avoid damage to areas of visual importance, such as ridgelines, open fields, or dense vegetation buffering development from existing roads.

4360. Other Requirements.

4361. Common Open Space. Any proposed common open space within the Major Residential Development shall be conveyed to the Town or its Conservation Commission and accepted for park or open space use, or shall be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or shall be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan, as provided by Section 9 of Chapter 40A, G.L. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadway. Building coverage shall not exceed 5% in such conservation or recreation areas.

4362. Landscaping. Elements such as any protected open space areas, street trees, stream buffer areas, other buffers, cul-de-sac planting areas, and outstanding specimen trees or tree groupings shall be used as part of an integrated conceptual design uniting the various elements of the site and preserving and enhancing its natural and scenic resource elements.

- (a) Existing trees and indigenous vegetation shall be retained to the extent reasonably feasible, except where the Board concurs that removal is preferable for opening views from public roads, control of invasive growth, or other benefits.
- (b) Protected areas and resources shall be linked in continuous patterns to the extent reasonably feasible.
- (c) Protection for trees and tree groupings to be retained shall include avoidance of grade change within the drip line, careful marking to avoid accidental damage, and location of materials and soil deposits distant from those trees during construction.

4370. Decision.

4371. Decision Basis. The Planning Board shall approve or approve with conditions a Special Permit for Major Residential Development for either the basic or alternative development proposal, whether a 'conventional' plan or one utilizing the flexibility provisions of these provisions, provided that the Board determines that both submitted plans are feasible and responsive design efforts to serve the following provisions of the Zoning Bylaw, but that the selected one does so better than does the one not selected:

- (a) Section 1100 Purpose;
- (b) Section 1530 Special Permit Criteria;
- (c) Section 3420 Major Proposal Criteria (regardless of whether or not the proposal is otherwise subject to Section 3400 Major proposals);
- (d) Section 4310 Major Residential Development Intent.

4372. Disapproval. The Board shall disapprove both plans only if it determines that one or both of the plans are not feasible and responsive designs, or that the plan that better meets the objectives of these provisions does not conform to the requirements of the Zoning Bylaw.

4373. Relationship to Subdivision Plan. Planning Board approval of a Special Permit for a Major Residential Development shall neither oblige the Planning Board to approve any related Definitive Plan nor substitute for such approval.

The Design Concept Plan, Special Permit application, and if a non-conventional layout is proposed, a Conventional Layout Plan (to allow for final determination of the number of lots) shall be prepared and submitted to the Planning Board concurrent with a Definitive Plan for subdivision of land. The applicant may submit a combined plan and application that conforms to all requirements of Section 4333 and all Definitive Plan requirements of the Subdivision Regulations of the Bellingham Planning Board.

4374. Long-term Compliance. Subsequent to approval of a Major Residential Development, no land therein shall be sold and no lot line or structure altered from that shown on the Design Concept Plan so as to increase the extent of nonconformity with the standard dimensional regulations of this Bylaw. Prior to sale of any lot within a Development, or issuance of a building permit for construction therein, such lots shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, which plan shall make reference to the recorded land agreements referred to in Section 4361. Unless the Planning Board has specifically approved staged development, such plan shall show all lots to be included in the Development.

4400. Special Residential Uses.

Special residential uses are Townhouses, Assisted Elderly housing, Public Housing, and Other Multi-family Housing.

4410. Townhouse Dwellings.

As provided in Section 2400 Use Regulation Schedule, townhouse dwellings may be allowed on special permit in all except the Industrial District. Such special permits shall be acted on by the Planning Board, subject to the following:

4411. Minimum lot area shall be 10,000 sq. ft. per bedroom, but in no case shall lot area be less than 20 acres.

4412. Approval of the special permit shall be based upon the criteria of Section 4455 Decision.

4420. Assisted Elderly Housing.

As provided in Section 2400 Use Regulation Schedule, Assisted Elderly housing may be allowed on special permit in all except the Industrial District. Such special permits shall be acted on by the Planning Board, subject to the following:

4421. For units designated as 'targeted' by the Planning Board under Section 2690, lot area and frontage requirements shall be as specified in that Section, rather than Section 2600 Intensity of Use Schedule.

4422. The following information shall be submitted in addition to the submittal requirements of Sec.1423:

- (a) A description of the proposed management of the facility.
- (b) A description of the services to be provided to the residents and how such services are to be supplied.
- (c) A description of all common or shared areas.

4423. Approval of the special permit shall be based upon the criteria of Section 4455 Decision.

4430. Public Housing.

As provided in Section 2400 Use Regulation Schedule, Public Housing is a permitted use in all districts except the Industrial district. Public housing is exempt from the minimum requirements of Section 2600 Intensity of Use Schedule.

4440. Other Multifamily Dwellings.

As provided in Section 2400 Use Regulation Schedule, multifamily dwellings other than townhouse dwellings, assisted multifamily housing, or public housing are allowed only:

- (a) in the Multifamily District, or
- (b) through conversion of an existing dwelling in any other district, upon determination by the Board of Appeals that the structure could not reasonably be used or altered for any other use (see Section 2400 footnote 10).

4441. New Multifamily Districts (M) shall each be created only by vote of the Town Meeting amending the Zoning Map. Each such district shall not be less than 20 acres in extent, shall front for at least 500 feet on an arterial street, and shall contain not less than 70% vacant or agricultural land.

4442. Minimum lot area for other multifamily dwellings shall be 40,000 square feet for up to four dwelling units, and 3,000 square feet additional lot area for each additional family accommodated.

4443. Approval of the special permit shall be based upon the criteria of Section 4455 Decision.

4450. Special Residential Use Requirements.

The following shall apply to all Special Residential Uses (Townhouse Dwellings, Assisted Elderly Housing, and Other Multifamily Dwellings) except not to Public Housing.

4451. Major Development. Special permits resulting in either 50 or more dwelling units or 100 or more bedrooms on that and abutting parcels which have been in common ownership at any time subsequent to January 1, 1989, shall be construed to be Major Proposals, and therefore may be approved only following concept plan approval as provided in Section 3400.

4452. Bedroom Limitation. Not more than 10% of the cumulative number of dwelling units on the premises having been granted occupancy permits at any point in time may have three bedrooms (except assisted elderly, which may have none) and none may have more than three bedrooms, unless (except in the case of assisted multifamily) the Special Permit originally allowing the development explicitly authorizes occupancy permits for more or larger units. Said authorization shall be granted only where lot area will equal at least 10,000 square feet per bedroom.

4453. Submittals. The application for a Special Permit shall be accompanied by six copies of:

- (a) a Site Plan including the items required under Section 1423(a) (but they may be at a concept rather than final level of detail);
- (b) a proposed staging plan, if building permits are not to be immediately sought for all units; and

- (c) a ground floor plan and architectural elevations of all proposed buildings, prepared by a registered Architect.

Those materials shall be circulated for review as provided at Section 1422(b). No special permit shall be decided upon within 35 days of such referral without receipt of advisory reports, from each of those agencies regarding compliance of the proposal to local rules, regulations, and Bylaws as well as good practice within their area of concern.

4454. Special Permit Lapse. The Special Permit shall lapse upon transfer of ownership or within 12 months of Special Permit approval (plus such time required to pursue or await the determination of an appeal referred to in Sec. 17, Ch. 40A, G.L., from the grant thereof) if a substantial use thereof or construction has not begun, except for good cause.

4455. Decision. In deciding on a Special Permit for Townhouse, Assisted Elderly housing, or Other Multifamily dwellings, the following more detailed criteria shall be used rather than those of Section 1530. Such Special Permit shall be granted only if the Planning Board determines that the proposal would serve

Town interests better than would single-family development of the same area, considering the following:

- (a) Municipal costs and revenues.
- (b) Effect on the range of available housing choice.
- (c) Service to identified housing needs.
- (d) Service to current Bellingham residents.
- (e) Support for local business activity and jobs.
- (f) Impact on the natural environment, especially on ground and surface water quality and level.
- (g) Impacts on traffic safety and congestion, adequacy of water service, and need for school facilities.
- (h) Impacts on the visual environment through preservation or displacement of visual assets, and consistency with existing development in area.

4456. Development Rate. In authorizing Townhouse Dwellings and other Multifamily Dwellings the Planning Board shall establish an annual limit for the number of such dwelling units to be authorized, taking into consideration the Town-wide building rate experienced over the previous two years and anticipated over the next half-dozen years, the needs which the housing will serve, the ability of the Town to provide services in a timely manner, the housing cost and feasibility consequences of the limitation, and the considerations of Section 3420 for Major Proposals. Such development rate may be less than but not more than that contained in the Concept Plan, if any, approved by Town Meeting.

4500. Flood Plain Requirements

4510. District Establishment.

The Flood Plain District is herein established as an overlay district. The uses in underlying districts are allowed provided that they meet the following additional requirements as well as those of the Massachusetts State Building Code dealing with construction in flood plains. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Bellingham Flood Insurance Rate Maps, (FIRM), and the Flood Boundary and Floodway Map, Community-Panels Numbers 250232 00001-0007, effective Dec. 15, 1982 on file with the Town Clerk and Building Inspector. Those maps as well as the accompanying Bellingham Flood Insurance Study are incorporated herein by reference.

4520. Development Regulations.

The following requirements apply in the Flood Plain District:

4521. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.

4522. In the floodway designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

(a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development, are prohibited unless certification by a registered Professional Engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.

(b) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.

4600. Earth Removal Regulations

4610. General.

The removal from any premises of topsoil, borrow, rock, sod, loam, peat, humus, clay, sand or gravel shall be done only in accordance with Section 4620 through 4670.

4620. Permitted Activities.

The following activities do not require a Special Permit and are not subject to subsections 4630 through 4670. However, a permit (for which no fee will be charged), specifying proposed time and estimated volume, must be obtained from the Inspector of Buildings prior to initiation of removal.

Such No-Fee Permit may specify conditions regarding trucking hours, routes, and methods; hours of operation; drainage and erosion control; and exposed face height and slope limits. Unbuilt-on areas shall be restored consistent with the standards of Section 4650 Restoration within a period to be specified in the

Permit. Performance security as specified at Subsection 4622 shall be required by the Inspector of Buildings where other means of assuring timeful restoration are not available.

- (a) Removal of less than 50 cubic yards of materials within any 12 month period.
- (b) Removal of less than 2,500 cubic yards incidental to construction on the premises under a currently valid building permit, as indicated on a site plan approved by the Inspector of Buildings under Subsection 1423, or as required for cellar excavation, driveways, and parking to grades indicated on a plot plan approved by the Inspector of Buildings. However, topsoil stripped and stockpiled or removed from the premises shall be restored to its original location within 24 months of such stripping unless the construction has been completed or is authorized under a currently valid building permit.
- (c) Removal of less than 2,500 cubic yards incidental to road construction within a public right-of-way or a way shown on an approved Definitive Subdivision Plan.
- (d) Removal on a parcel for which removal was authorized under a legal permit issued prior to adoption of these provisions until the expiration date of said permit, provided that all Bylaws, permits, and conditions applicable prior to the adoption of this Section shall be complied with. From that expiration date, full compliance with all the requirements of Section 4600 must be met.

4630. Permit from the Board of Appeals.

Removal shall be allowed only under Special Permit for an exception issued by the Board of Appeals following written application. The following shall be conditions for such issuance:

4631. The Application shall be accompanied by a plan showing all man-made features, property lines, names and addresses of all abutters (from the Assessors), including those across any street or way, and shall be accompanied by topographic information, such as that available on the Town's 1"=100' topographic maps. Plans for Major Removal, which are those involving more than two thousand five hundred (2,500) cubic yards or more than two (2) acres, shall be prepared by a registered land surveyor, and in addition to the above, shall show the following:

- * existing topography in the area for which material is to be removed and for one hundred (100) feet beyond that;
- * estimates of the evaluation of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the USGS;
- * grades below which excavation will not take place;
- * proposed finish grades upon completion of removal and restoration activities;
- * proposed cover vegetation and trees.

Two additional copies of materials submitted in applying for Major Removal shall be provided by the applicant for forwarding to the Planning Board for its review and recommendation to the Board of Appeals.

4632. A performance bond in the amount determined by the Board of Appeals may be posted in the name of the Town assuring satisfactory performance in the fulfillment of the requirements of the Bylaw and such other conditions to the issuance of its permit. Such bond shall have an expiration date not less than six months later than the permit termination date.

4633. Before granting a permit, the Board of Appeals shall give due consideration to the location of the proposed earth removal, to the general character of the neighborhood surrounding such location, to the protection of water supply, and to the general safety of the public on the public ways in the vicinity.

4640. Removal

4641. Finish grade shall not lie below a level that would reasonably be considered a desirable grade for the later development of the area, or below the grades specified on the plan accompanying the permit application. The Board of Appeals may specify a base grade below which excavation shall in no event take place.

4642. Provision shall be made for safe drainage of water, and for prevention of wind or water erosion carrying material onto adjoining properties.

4643. A 100 foot buffer strip shall be maintained at all boundaries, and not excavated below boundary grades except at a slope of not greater than three feet horizontal to one foot vertical if such will enhance overall grading.

4644. The visibility, sound, and airborne particulates from processing equipment may be screened from adjacent premises through the design and location of such equipment, and use of natural vegetation planting, overburden piles, and surge piles as screening.

4645. Dust shall be controlled through oiling or chemical treatment of roads except within Water Resource Districts. Within Water Resource Districts, dust control measures shall employ alternative methods that do not involve the use of hazardous materials as defined in this bylaw.

4650. Restoration.

Forthwith following the expiration or withdrawal of a permit, or upon voluntary cessation of operations, or upon completion of removal to the extent covered by the performance bond (Sec. 4632), that entire area shall be restored as follows:

4651. All land shall be so graded that no slope exceeds one foot vertical rise in three feet horizontal distance and shall be so graded as to safely provide for drainage without erosion.

4652. All boulders larger than 1/2 cubic yard and stumps shall be removed.

4653. The entire area excepting exposed ledge rock shall be covered with not less than four inches of topsoil, which shall be planted with cover vegetation adequate to prevent soil erosion.

4654. Bond shall not be released until sufficient time has lapsed to ascertain that the vegetation planted has successfully been established and that drainage is satisfactory.

4660. Additional Conditions.

The Board of Appeals may set conditions in addition to the above, including but not limited to: duration of the permit, hours of the day during which removal may take place, hours during which vehicles may leave the premises, and trees to be planted.

4670. Renewal or Renovation of Permit.

No permit shall be issued under the provisions of Section 4600 for a period of more than two years, but a permit may be renewed upon application without a public hearing; provided that such renewal is approved prior to expiration of the permit being renewed. Prior to renewal, inspection of the premises shall be made by the Zoning Agent to determine that the provisions of this Bylaw are being complied with. The Board of Appeals, after hearing any proof of violation of this Bylaw shall withdraw the permit, after which the operation shall be discontinued and the area restored in accordance with Section 4650.

4700. Major Business Complex

4710. Applicability.

Major Business Complexes shall be granted special permits only in districts where allowed under Section 2400 Use Regulations Schedule, and only in accordance with the following. The applicant shall submit adequate documentation, including plans, calculations and narrative, to allow determination of compliance by the Planning Board without need for extensive further analysis.

4720. Eligible Locations.

Major Business Complexes shall be so located and sized or their development phased so that the following will be met, as determined by the Planning Board.

4721. Traffic. Projected peak hour traffic will not be increased on any servicing road by 25% or more above levels otherwise anticipated at the time of occupancy provided, however, that a complex increasing traffic by more than that amount may be granted a special permit, provided that the Planning Board determines that traffic mitigation measures assured under the special permit adequately provided for capacity and safety improvements.

4722. Water Supply. Servicing the projected water demand for these premises will not result in substantial limitation upon the Town's ability to adequately provide water service to other developed sites in the Town.

4723. Sewage Disposal. If proposed to be serviced with public sewerage, providing that service will not result in substantial limitation upon the Town's ability to adequately provide sewage collection and treatment service to other developed sites in the Town.

4730. Site Design.

Individual uses must be located within a district allowing that category of use even if it were not within a Major Business Complex. Major Business Complexes shall be so designed that all banks exceeding 15

degrees in slope resulting from site grading shall be retained with vegetative cover reasonably sufficient to prevent erosion.

4740. Traffic Mitigations.

Special permits for Major Business Complexes may be granted subject to conditions requiring the applicant to provide off-site traffic mitigation, including measures to assure safety and adequacy of capacity at points of ingress and egress, and to participate in improvements at other locations in proportion to the development's pro-rated share of the municipal costs for those improvements.

4800. Motor Vehicle Service Stations

Motor vehicle service stations shall be granted a Special Permit only in conformity with the following:

4810. Entrances, Exits. No location shall be approved if a vehicular entrance or exit will be so located as to create an unusual hazard. Lanes of entry shall be separated from lanes of egress by not less than 40 feet, shall be clearly distinguished by directional signs or markers, and shall be clearly channeled through use of curbed planting areas or similar devices. Entrances and exits together shall occupy not more than 40% of the lot frontage.

4820. Relation to Pedestrian Flow. No location shall be approved if a vehicular entrance or exit will be so located as to cross a major pedestrian flow, such as on sidewalks servicing churches, schools, recreation areas, or compact retail districts.

4830. Visibility. No entrance or exit shall be located within 20 feet of a side lot line, or within 50 feet of the intersection of sidelines of intersecting streets. Egressing vehicles shall have at least 400 feet visibility in each travel direction.

4840. Off-Street Spaces. There shall be at least two additional waiting spaces per filling position.

4850. Service Building. No service building shall be located within 40 feet of a street line, and no pump or other dispensing device, moveable sign or display, nor temporary or permanent storage of merchandise, shall be located within 20 feet of a street line.

4860. Fuel Storage Tank. No fuel storage tank shall be located within 20 feet of any lot line.

4870. Service Safety. Self-service gasoline stations shall be allowed by grant of a Special Permit from the Bellingham Board of Selectmen.

4900. Water Resource Districts

4910. Purpose.

The purpose of this Water Resource District is to:

- a. promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Bellingham.
- b. preserve and protect existing and potential sources of drinking water supplies;
- c. conserve the natural resources of the Town; and

- d. prevent temporary and permanent contamination of the environment.

4920. Scope of Authority.

The Water Resource District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities/uses in a portion of one of the underlying zoning districts that fall within the Water Resource District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Water Resource District.

4930. State Laws and Regulations Considered Incorporated.

Throughout this Bylaw there are references to various Massachusetts General Laws (M.G.L.) and Code of Massachusetts Regulations (CMR). The following is a list of those referenced:

310 CMR 32.30	314 CMR 5.03(13)	310 CMR 15.004 (6)	M. G. L. c. 21C
310 CMR 32.31	310 CMR 30	310 CMR 30.136	M. G. L. c. 21E
314 CMR 5.05(3)	310 CMR 19.006	310 CMR 30.390	M. G. L. c. 21 s. 52A

All such Laws, Codes, and Regulations as they apply to this Bylaw are effective only as they exist at the date of acceptance of this Bylaw and not as they may be subsequently amended. Copies of these Laws, Codes, and Regulations as they apply to this Bylaw are on file with the Zoning Inspector.

4940. Definitions.

For the purposes of this section, the following terms are defined below:

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

Department (the): The Massachusetts Department of Environmental Protection.

Water Resource District: The zoning district defined to overlay other zoning districts in the Town of Bellingham.

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

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

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

Non-sanitary wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

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

Potential Drinking Water Sources: Areas which could provide significant potable water in the future.

Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material, which is a hazardous waste, pursuant to 310 CMR 30.000.

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

SPGA: Special Permit Granting Authority

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

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

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M.G.L. c. 21. s. 52A.

4950. Establishment and Delineation of Water Resource District.

For the purposes of this district, there are hereby established within the Town certain groundwater protection areas, consisting of aquifers which are delineated on a map. This map is entitled Water Resource District Map, Town of Bellingham, This map is attached to the Town zoning By-Law and is further on file in the Office of the Town Clerk.

4960. Pre application Conference Requirement.

- A. Timing. Any private party intending to submit an application for building construction, land development, or earth moving exceeding 1,500 cubic yards on land, which may be fully or partially within the Water Resource District must meet with the Zoning Inspector who will determine if the project is subject to this bylaw. If so determined, said private party shall meet with the SPGA at a public meeting to discuss the proposed development in general terms, determine if a Special Permit under this bylaw is required, and establish the plan filing requirements.
- B. The SPGA shall meet with an applicant within 21 days following a written request submitted to the SPGA and the Town Clerk. If the SPGA fails to meet with an applicant who has requested such a meeting within 21 days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a special permit application without need for a pre-application conference.
- C. Filing Requirements. The purpose of the pre-application conference shall be to inform the SPGA as to the preliminary nature of the proposed project, and, as such, no formal filings are required for the conference. However, the applicant is encouraged to meet with the Town Planner to discuss the preparation and

submission of sufficient preliminary site design or engineering drawings to inform the SPGA of the scale and overall design of the proposed project.

4970. Prohibited Uses.

The following uses are prohibited within the Water Resource District

- i. landfills and open dumps as defined in 310 CMR 19.006;
- ii. automobile graveyards and junkyards, as defined in M.G.L.c. 140B, §1;
- iii. landfills receiving only wastewater and/or septage residuals including those approved by the Department;
- iv. facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L.c. 21C and 310 CMR 30.00, except for:
 - a) very small quantity generators as defined under 310 CMR 30.000;
 - b) household hazardous waste centers and events under 310 CMR 30.390;
 - c) waste oil retention facilities required by M.G.L. c. 21, §52A;
 - d) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- v. petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
- vi. storage of liquid hazardous materials, as defined in M.G.L.c. 21E, and/or liquid petroleum products unless such storage is:
 - a) above ground level, and;
 - b) on an impervious surface, and
 - c) either:
 - (i) in container(s) or above ground tank(s) within a building, or;
 - (ii) outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
- vii. storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- viii. storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

- ix. storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- x. earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within four (4) feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, utility works, or primarily agricultural purposes consistent with MGL Chapter 40A, Section 3;
- xi. discharge to the ground of non-sanitary wastewater, except:
 - a) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - b) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);and
 - c) publicly owned treatment works.
- xii. stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the Town ;
- xiii. storage of commercial fertilizers, as defined in M.G.L. Chapter 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- xiv. gasoline or diesel fuel vehicle filling stations;
- xv. motor vehicle service and repair.
- xvi. motor vehicle washing (car washes), unless equipped with a system by which no wash water is discharged to any form of underground soil absorption system.

4980. Uses and Activities Requiring A Special Permit.

The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- i. enlargement or alteration of existing uses that do not conform to the Water Resource District;
- ii. those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section 4970). Such activities shall require a special permit to prevent contamination of groundwater;
- iii. any use that will render impervious any lot or parcel more than 30%. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins, or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and oil, grease, and sediment traps to facilitate removal of contamination shall precede wells. The owner shall permanently maintain any and all recharge areas in full working order.

4990. Procedures for Issuance of Special Permit.

- A. The Special Permit Granting Authority (SPGA) under this bylaw shall be the Planning Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Board of Selectmen, and Department of Public Works, that the intent of this By-Law, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision.
- B. Upon receipt of the special permit application, the SPGA shall notify the Board of Health, the Conservation Commission, the Board of Selectmen, and Department of Public Works, for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The applicant shall furnish the necessary number of copies of the application.
- C. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 4980 of this Bylaw, and any regulations or guidelines adopted by the SPGA, including Section 1530 of the Bylaw. The proposed use must:
 - 1. in no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Water Resource District; and
 - 2. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- D. The applicant shall file copies of the special permit application, site plan and attachments as indicated on the Form K. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. Qualified professionals shall prepare all additional submittals. The site plan and its attachments shall at a minimum include the following information where pertinent:
 - 1. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
 - 2. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
 - a) provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - b) provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

c) evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.

d) proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

- E. The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, § 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments, and Commissions. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL Chapter 40A, §11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit.
- F. Permit Recording and Expiration of Special Permit shall apply as per Section 1500 of the Bylaw.

4991. Severability

- A. The Zoning Inspector shall give written notice of any violations of this By-Law to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.
- B. A copy of such notice shall be submitted to the Planning Board, Inspector of Buildings, Board of Health, Conservation Commission, and Department of Public Works. The cost of containment, clean up, or other action of compliance shall be borne by the owner and operator of the premises. A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

5000. Wireless Communication Facilities.

5010. Purpose.

The purposes of this By-Law are as follows:

- To minimize adverse impacts of wireless communication facilities on residential neighborhoods and the community;
- To encourage the shared use of facilities to reduce the need for new facilities; and
- To limit the overall number and height of facilities to what is necessary to serve the public.

5020. Definitions.

Co-Location: The use of a single mount on the ground by more than one carrier (vertical collocation), and/or several mounts on an existing structure by more than one carrier.

Camouflaged facility: A telecommunications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure that is considered “camouflaged”.

Guyed Tower: A monopole or lattice tower that is tied to the ground or other surfaces by diagonal cables.

Lattice Tower: A type of mount that is self-supporting with multiple legs and cross bracing of steel structure.

Monopole: A single self-supporting vertical pole with below grade foundations.

Provider or Carrier: An entity, licensed by the FCC, to provide telecommunications services to individuals or institutions.

Tower: A Monopole or Lattice Tower that is designed to support Personal Wireless Communication Services transmission, receiving and relaying antennas and equipment.

Wireless Communication Facilities: A telecommunications facility consisting of the structures, including Towers and Antennas mounted on towers and buildings, equipment and equipment shelters, accessory buildings or structures, and site improvements, involved in sending and receiving telecommunications or radio signals to a central switching computer which connects the mobile unit with land based or other telephone lines.

5030. Applicability.

This section shall apply to reception and transmission facilities for the purpose of personal wireless communication services. This by-law shall not apply to towers or antennas installed for use by a federally licensed amateur radio operator.

5040. General Requirements.

Wireless Communication facilities shall only be allowed after the issuance of a special permit in accordance with the provisions of MGL Ch 40A s. 9, this By-Law and any rules and regulations adopted hereunder. The Board of Appeals shall be the Special Permit Granting Authority for Wireless Communication Facilities.

5041. Lattice style towers and similar facilities requiring more than one leg or guy wires for support are prohibited.

5042. All structures associated with wireless communication facilities shall be removed within one year of cessation of use.

5043. The tower height shall not exceed 100 feet measured from the base of the tower to the highest point of the tower including anything on it.

5044. All towers shall be set back from lot lines a minimum of the height of the tower except where the tower abuts the right of way of Route I-495 where the setbacks shall be the minimum permitted by the Commonwealth of Massachusetts.

5045. No tower shall be located within two miles of another such tower.

5046. Any utilities servicing a tower shall be located underground.

5047. Lighting of wireless communication facilities shall be limited to low level security lighting installed at or near ground level, except for lighting required by the Federal Aviation Administration (FAA).

5048. Fencing shall be provided to control unauthorized access to the tower.

5049. The facility shall contain one sign no greater than one square foot that provides the telephone number where the operator in charge can be reached on a 24-hour basis.

5050. Criteria.

A special permit for a wireless communication facility shall not be issued unless the Special Permit Granting Authority finds the following:

5051. Existing or approved facilities cannot accommodate the applicant's proposal.

5052. The facility has been designed to accommodate the maximum number of providers but in no case less than three (3).

5053. The applicant has agreed to allow other service providers to co-locate on the tower, now, or at anytime in the future.

5054. The tower has been designed, using the best available technology to blend into the surrounding environment through the use of color, camouflaging techniques, or other architectural treatments.

5055. The facility has been designed to minimize adverse visual impacts on the abutters and the community as demonstrated by illustrations and by a balloon test performed in accordance with any requirements adopted by the Board of Appeals.

5056. The facility is sited in such a manner that it is screened, to the maximum extent possible, from public view.

5060. Conditions.

Before approving any special permit under this Section, the Special Permit Granting Authority may impose conditions, safeguards and limitations to assure that the proposal is in harmony with the general purpose and intent of this By-Law.

5070. Bonding.

Prior to the issuance of a building permit the Special Permit Granting Authority may require a performance guarantee to ensure compliance with the plan and conditions set forth in their decision.

5100. Adult Uses

5110. Purpose and Intent.

It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment Establishments are distinguishable from other business uses and that the location of adult entertainment uses degrades the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime, decreased tax base, and blight resulting from the clustering and concentration of adult entertainment uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This bylaw is enacted pursuant to Massachusetts General Law Chapter 40A, Section 9 and the Home Rule Amendment to the Massachusetts Constitution with the purpose and intent of regulating and limiting the location of Adult Entertainment Establishments (as defined herein) so as to prevent the secondary effects associated with these establishments, and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Bellingham.

The provisions of this Section have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this Section to restrict or deny access by adults to [Adult Uses](#) and to sexually oriented matter or materials protected by the Constitutions of the United States of America and of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials. Neither is it the purpose or intent of this Section to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

5120. Definitions:

5121. Adult Uses: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution or exhibition, which are distinguished or characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws, including but not limited to the following:

- (a) **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 on depicting, describing or relating to sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws;
- (b) **Adult Club:** An establishment having as any of its activities or entertainment a person or persons performing in a state of nudity or distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws;
- (c) **Adult Entertainment Establishment:** An establishment offering activities or goods or providing services where employees, entertainers or patrons are engaging in nudity, sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws;
- (d) **Adult Motion Picture Theater:** An establishment used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws;
- (e) **Adult Paraphernalia Store:** An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or

characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws;

- (f) **Adult Video Store:** An establishment having as a substantial or significant portion of its stock in trade videos, movies or other film materials which are distinguished or characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws.

5122. Substantial or Significant Portion: The term "substantial or significant portion" as used in this Section 5100 shall mean any of the following:

- (a) Twenty percent (20%) or more of the business inventory or stock of merchandise for sale, rental, distribution or exhibition during any period of time.
- (b) Twenty percent (20%) or more of the annual number of gross sales, rentals or other business transactions; or
- (c) Twenty percent (20%) or more of the annual gross business revenue.

5130. Special Permit.

No Adult Use shall be allowed except by a Special Permit granted by the Planning Board. The Planning Board shall grant a Special Permit for an Adult Use in any district permitting such use only if the use is found by the Planning Board to comply with the following standards and procedures:

5131. Location: An Adult Use may not be located:

- (a) Within five-hundred (500) feet of a boundary line of a residential zoning district or of a property line of a lot containing a residential use;
- (b) Within one-thousand (1000) feet of any structure containing, at the time of Special Permit application, a church or other religious use, public school, private kindergarten or school, child care facility, park, playground, any recreational area, public library, cultural facility, museum, elderly housing, assisted living facility, nursing home, or adult day-care facility;
- (c) Within one-thousand (1000) feet of any structure containing, at the time of Special Permit application, an establishment licensed under the provisions of Section 12 of Chapter 138 of the General Laws;
- (d) Within one-thousand (1000) feet of any structure containing any other Adult Use;
- (e) Within two hundred (200) feet of an Interstate Highway, Arterial Street or a street with average daily traffic greater than 2000 vehicle trips per day
- (f) So that the building and/or signage associated with an Adult Use will be visible from an Interstate Highway, Arterial Street or a street with average daily traffic greater than 2000 vehicle trips per day.

5132. Site Development Standards:

- (a) Development Plan Review: No Special Permit for any Adult Use shall be issued without Development Plan Approval first having been obtained from the Planning Board under Section 1420 hereof.
- (b) Parking and Loading: On-site parking and loading shall be provided in accordance with the requirements set forth in Section 3300 of these By-Laws as pertains to service establishments.
- (c) Landscaping: At a minimum, the property on which an Adult Use is proposed to be located shall contain a landscaped buffer strip along its entire perimeter, except that portion directly abutting a public street. Said buffer strip shall have a twelve (12) foot minimum depth and contain a curb to prevent parking within the strip, a six (6) foot high fence which shall be located a maximum of two (2) feet from the abutting lot lines and contain an evergreen hedge on the Adult Use side of the fence which is to be at least three (3) feet in height at the time of planting and will provide a year-round dense visual screen and attain a height of at least seven (7) feet within five years of planting.
- (d) Signs: All signs for any Adult Use must meet the requirements of Section 3100 hereof. In addition, no portion of an advertisement, display or other promotional material which contains sexually explicit graphics or sexually explicit text shall be visible to the public from any public way including but not limited to sidewalks, pedestrian walkways, highways, railways, or airways.

5133. Other Special Permit Requirements:

5133.1 If the Adult Use allows for the showing of films or videos within the premises, curtains, doors or screens shall not close off the booths in which the films or videos are viewed. All booths must be able to be clearly seen from the center of the establishment.

5133.2 Application Requirements. The application for a Special Permit for an Adult Use must include the following information:

- (a) Name and address of the owner of record of the property;
- (b) Name and address of the legal owner of the proposed Adult Use establishment;
- (c) Name and address of all persons having a lawful, equity or security interest in the Adult Use establishment;
- (d) A sworn statement must be provided stating that neither the applicant, nor the manager, nor any person having a lawful, equity or security interest in the Adult Use establishment has been convicted of violating the provisions of Section 63 of Chapter 119 of the General Laws or Section 28 of Chapter 272 of the General Laws;
- (e) Name and address of the manager of the Adult Use establishment;

- (f) Proposed provisions for securing the safety of the public within and without the Adult Use establishment;
- (g) The number of employees; and
- (h) The present and proposed physical layout of the interior of the Adult Use establishment.

5133.3 No Special Permit for an Adult Use shall be issued to any person convicted of violating Section 63 of Chapter 119 of the General Laws or Section 28 of Chapter 272 of the General Laws.

5133.4 An Adult Use Special Permit shall only be issued following a public hearing held within sixty-five (65) days after the filing of an application with the Planning Board, a copy of which shall forthwith be given to the Town Clerk by the applicant.

5133.5 Any Adult Use Special Permit issued under this By-Law shall lapse within one (1) year 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; excepting only any time required to pursue or await the determination of an appeal from the grant thereof.

5133.6 Any Adult Use Special Permit issued under this By-Law shall require that the owner of such Adult Use shall supply on a continuing basis to the Building Inspector any change in the name of the record owner or address or any change in the name of the current manager; and that failure to comply with this provision shall result in the immediate revocation of such Special Permit. If anyone so identified is or is found to be convicted of violating Section 63 of Chapter 119 of the General Laws or Section 28 of Chapter 272 of the General Laws, such Special Permit shall immediately be null and void.

5133.7 No Adult Use Special Permit issued under this By-Law shall become valid or in full force and effect until and unless the owner of the property containing such Adult Use shall supply to the Building Inspector a notarized statement agreeing to all terms and conditions of said Adult Use Special Permit.

5140. Non-Conformity:

5141. Adult Use in existence prior to the adoption of this Section 5100 shall apply for a Special Permit as specified in this Section 5100 within ninety (90) days following the adoption of this Section 5100 and shall be required to comply in all respects with all requirements of this Section 5100.

5142. Any Adult Use in existence prior to the adoption of this Section 5100 which has applied for such Special Permit but which has not been granted such Special Permit may be permitted by a unanimous vote of the Planning Board following a public hearing to continue in operation at its present location for a period of time not exceeding six (6) months following the date of the application for such Special Permit provided that a written request therefore is made to the Planning Board.

The Planning Board, upon written application made prior to the expiration of any such period of time and following a public hearing may grant one additional extension period of time not to exceed six (6) months. The Adult Use owner must demonstrate undue financial hardship if forced to close immediately upon failure to obtain a Special Permit to the Planning Board in order to obtain any such extension.

5143. The provisions of this Section 5100 shall only apply to Adult Uses as defined in this Section 5100 which are also defined in Section 9A of Chapter 40A of the General Laws.

5150. Invalidity:

In the event that any provision of this Section 5100 shall be determined invalid by a Court of competent jurisdiction or otherwise, the remaining provisions of this Section 5100 not manifestly inseparable from the invalid provision(s) shall remain in full force and effect.

5200. Mill Reuse Overlay District

5210. Purposes and Intent. The purposes of the Mill Reuse Overlay District are to facilitate the redevelopment and reuse of historic mill buildings in a manner that is appropriate for each site and sensitive to surrounding land uses; to promote housing choices in Bellingham; to provide for regulatory flexibility and intensification of use in existing buildings in order to meet the Town's housing and community development needs; to prevent disinvestment and deterioration of buildings that have become obsolete for their original purposes; and to encourage sustainable mixed-use development.

5220. Establishment of District. The Mill Reuse District is hereby established as an overlay district. The District is bounded on the map entitled, "Mill Reuse Overlay District," dated August 23, 2004 incorporated by reference in the Zoning Bylaw and on file with the Town Clerk and Building Inspector.

Note: Mill Reuse Overlay District Map on page 73-A of this by-law

5230. Relationship to Existing Zoning. In the Mill Reuse Overlay District, all requirements of the underlying district(s) shall remain in effect except where these regulations supersede or provide an alternative to such requirements. If a property is developed consistent with the Mill Reuse Overlay District, the regulations of the Mill Reuse Overlay District shall apply. Where the provisions of the Mill Reuse Overlay District are silent on a zoning regulation, the requirements of the underlying zoning district shall apply.

5240. Definitions. In addition to Article V of this Bylaw, the following definitions shall apply to development in the Mill Reuse Overlay District:

5241. Mill Reuse Project. A predominantly residential development comprised of one or more of the uses authorized under Section 5250 of this Bylaw, on a parcel of land with an existing mill building in the Mill Reuse Overlay District.

5242. Affordable Housing. A dwelling unit in a Mill Reuse Project, subject to a legally enforceable deed restriction that runs in perpetuity or for the maximum period allowed by law, and meets all of the following criteria:

- (a) The unit must be sold or rented to and occupied by a low- or moderate-income household, meaning a household with income at or below 80% of Median Family Income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of Bellingham, as determined by the U.S. Department of Housing and

Urban Development (HUD); and which meets the requirements of the Massachusetts Department of Housing and Community Development (DHCD), Local Initiative Program, under 760 CMR 45.00 et seq., for inclusion in the Chapter 40B Subsidized Housing Inventory as low- or moderate-income housing.

- (b) Deed Restriction. The affordability of low- or moderate-income units shall be protected by a Regulatory Agreement and, for homeownership units, by a Deed Rider acceptable to DHCD and approved as to form by Town Counsel. The Regulatory Agreement and, where applicable, the Deed Rider, shall be legally enforceable and recorded at the Registry of Deeds.
- (c) DHCD Certification. All low- or moderate-income units shall be eligible for listing on the Subsidized Housing Inventory, evidenced by an affordable housing restriction as defined under G.L. c. 184, Section 31, and certification signed by the Director of DHCD, both of which must be recorded at the Registry of Deeds.

5243. Existing Floor Area Ratio. The sum of the gross floor area on all floors of existing mill building(s), including the basement, measured in square feet, divided by the gross area of the existing lot excluding wetlands subject to control under the Wetlands Protection Act, measured in square feet.

5244. Proposed Floor Area Ratio. The sum of the gross floor area on all floors of all proposed buildings in a Mill Reuse Project, including basements, measured in square feet, divided by the gross area of the proposed lot excluding wetlands subject to control under the Wetlands Protection Act, measured in square feet.

5245. Maximum Gross Density. The total number of dwelling units on a parcel of land used for a Mill Reuse Project, divided by the size of the parcel in acres before dedication of any land for roads and other public uses and before the creation of common open space or other common amenities included or to be included as part of the development of the parcel of land.

5250. Use Regulations.

5251. Permitted Uses. In the Mill Reuse Overlay District, a Mill Reuse Project comprised of one or more of the following uses shall be permitted in an existing mill building:

- (a) Multi-family dwelling
- (b) Assisted elderly housing

Except that a permitted Mill Reuse Project may not exceed 100 units of multi-family or assisted elderly housing, including any combination thereof.

(c) Accessory uses

- (1) Adult day care
- (2) Other uses customarily incidental to a permitted use.

5252. Uses Authorized by Special Permit. In the Mill Reuse Overlay District, a Mill Reuse Project comprised of one or more of the following uses shall be allowed by Special Permit from the Planning Board:

- (a) Multi-family or assisted elderly housing in excess of the number of units allowed as a permitted use
- (b) New construction for uses otherwise permitted under Section 5251
- (c) Continuing care retirement community
- (d) Nursing home
- (e) Medical offices or medical clinic
- (f) Accessory uses
 - (1) Adult day care accessory to a special permitted use
 - (2) Retail or service establishment, or restaurant serving food and beverages only in the building or on a patio adjacent to and directly accessible from the building, primarily for residents, outpatients or employees of a permitted or special permitted use
 - (3) Indoor or outdoor recreation, primarily for residents, outpatients or employees of a permitted or special permitted use
 - (4) Other accessory uses customarily incidental to a special permitted use

5253. Exemption from Major Development and Special Residential Use Regulations. A Mill Reuse Project shall not be subject to Section 3400, Major Proposals, or to Section 4300, Major Residential Development, or to Section 4400, Special Residential Uses.

5254. Use Variances. Use variances shall not be allowed in the Mill Reuse Overlay District.

5260. Intensity of Use Regulations. The Intensity of Use Regulations for the underlying district(s) as set forth in Section 2600 of this Bylaw shall apply to the Mill Reuse Overlay District, except as follows:

5261. Yard Setbacks. There shall be no minimum front yard setback requirement.

5262. Gross Density. A permitted Mill Reuse Project may not exceed a gross density of nine (9) dwelling units per acre. For a Mill Reuse Project by Special Permit, the Planning Board may authorize a gross density of up to twelve (12) dwelling units per acre provided that the project meets the Public Benefits provisions of Section 5288 of this Bylaw, as determined by the Planning Board. For purposes of calculating gross density, areas subject to the Wetlands Protection Act, G.L. c.131, Section 40, for reasons other than being subject to flooding, shall be excluded from the total area of the parcel.

5270. Procedures for Mill Reuse Projects.

5271. Subdivision Control. Where applicable, development in the Mill Reuse Overlay District shall comply with the Planning Board's Rules and Regulations Governing the Subdivision of Land pursuant to the Subdivision Control Law, G.L. c.41, Sections 81K through 81GG. Planning Board

approval of a Development Plan under Section 1420 or a Special Permit for a Mill Reuse Project shall neither oblige the Planning Board to approve any related definitive plan nor substitute for such approval.

5272. Development Plan Approval. All uses in the Mill Reuse Overlay District require Development Plan Approval by the Planning Board and must comply with Section 1420 of this Bylaw and the following additional requirements.

- (a) Submittals. In addition to the requirements of Section 1423, the submittals for Development Plan Approval for a Mill Reuse Project shall include:
 - (1) Identification of existing trees of more than 8" caliper, rock outcroppings, wildlife habitats, existing and proposed trails and paths, open space, and proposed conservation and recreation easement areas.
 - (2) Floor plan to scale for each floor of each building, showing the following information as applicable:
 - (i) Number of dwelling units by type
 - (ii) Number of bedrooms per dwelling unit
 - (iii) Proposed use(s) of all floor space not used for dwelling units
 - (3) Table showing the total number of dwelling units and the number of affordable units by type and size on each floor of each building.
 - (4) Where applicable, a plan describing the care, custody and control of all dams and water rights.
 - (5) Where applicable, a plan for any proposed wastewater treatment facility in accordance with the requirements of the Massachusetts Department of Environmental Protection (DEP) and the Bellingham Board of Health.
 - (6) Proposed construction schedule by stage or phase of construction, from the approximate date that construction will begin through the estimated date of construction completion.
 - (7) Narrative description of any organization(s) the applicant proposes to form if the development is to be a condominium or other ownership organization, including forms and plans to be used to organize and manage the same, for approval by the Planning Board.
 - (8) Copies of all proposed covenants, easements, and other restrictions that the applicant proposes to grant to the Town of Bellingham, the Bellingham Conservation Commission, utility companies, any condominium or other

ownership organization and the owners thereof, including plans of land to which they are intended to apply, for approval by the Planning Board.

- (9) Copies of the proposed Regulatory Agreement for affordable housing units, and where applicable, the proposed deed rider for affordable homeownership units.
- (10) Narrative analysis prepared and documented by a preservation consultant concerning the mill building, associated structures and context. The narrative will include the following information:
 - (i) Information required for Massachusetts Historical Commission Survey Form B and, where applicable, Form F;
 - (ii) Information required for Massachusetts Historical Commission National Register of Historic Places Criteria Statement Form;
 - (iii) An analysis of the Mill Reuse Project's consistency with the U.S. Secretary of the Interior's Standards for Rehabilitation.

- (b) Decision Standards. In addition to the Decision Standards under Section 1425 of this Bylaw, the Planning Board shall base its decision on the following determinations:
 - (1) The proposed Mill Reuse Project preserves or enhances the historic significance of existing mill buildings and their context and, where applicable, the eligibility of the same for listing on the National Register of Historic Places as an individual property or a contributing property to an area.
 - (2) The common open space is usable and functional for the purposes listed in this Bylaw and meets all minimum design standards under Section 5283.

5273. Special Permit. The Planning Board shall be the Special Permit Granting Authority for uses in the Mill Reuse Overlay District. The Planning Board's actions shall be based upon the considerations in Section 1500 of this Bylaw.

5280. Mill Reuse Project Development Standards.

5281. Expansion of Existing Buildings or New Construction. Expansion of existing mill buildings or new construction on the same lot may be allowed for a Mill Reuse Project provided that all of the following conditions are met:

- (a) The total gross floor area in the proposed project may not result in a proposed floor area ratio that is more than 1.25 times the existing floor area ratio;
- (b) Any expansion is consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation, as determined by the Bellingham Historical Commission.
- (c) Recognizing that a purpose of the Mill Reuse Overlay District is to redevelop property that has become obsolete for its original use, the Planning Board may grant a Special Permit to allow new buildings in a Mill Reuse Project only upon finding that:

- (1) The new buildings do not detract from the historical significance of existing buildings or reduce the property's potential eligibility for listing on the National Register of Historic Places, as determined by the Bellingham Historical Commission; and
- (2) The new buildings are necessary for essential services such as space for security personnel or a wastewater treatment facility; or components of a continuing care retirement community that cannot reasonably be accommodated in the existing mill building(s), such as independent living units or a nursing home.

5282. Affordable Housing. A Mill Reuse Project shall include affordable housing units, as follows:

- (1) At least 5% of all dwelling units shall be affordable housing as defined in this Bylaw. Any fraction shall be rounded up to the nearest whole number.
- (2) No building permit shall be issued for a Mill Reuse Project until the applicant has entered into a Local Initiative Program (LIP) Regulatory Agreement with the Town of Bellingham and the Department of Housing and Community Development to assure that all low- or moderate-income housing units meet LIP requirements and qualify for inclusion in the Chapter 40B Subsidized Housing Inventory.
- (3) Homeownership units shall be subject further to a deed rider that preserves affordability upon resale. The deed rider shall be approved in writing by the Department of Housing and Community Development, approved as to form by Town Counsel, and recorded at the Registry of Deeds. No occupancy permit shall be issued for affordable homeownership units until the Building Inspector receives evidence satisfactory to the Planning Board that the deed restriction or deed rider has been approved by DHCD.
- (4) The affordable units shall be sold or rented under a marketing plan approved by the Planning Board.
- (5) Failure to record the Regulatory Agreement and/or any deed rider at the Registry of Deeds shall be deemed a violation of this Bylaw and is subject to the enforcement and penalty provisions of Section 1200.
- (6) The Planning Board shall adopt and from time to time may amend regulations necessary to administer the affordable housing requirements of this Bylaw.

5283. Common Open Space. At least 30% of the parcel used for a Mill Reuse Project shall be protected, usable common open space that is functional for the purposes described below. The common open space shall have no structures, parking, private yards, patios, or gardens that are restricted for the exclusive or principal use by residents of individual dwelling units. The following standards apply to the common open space in a Mill Reuse Project:

- (a) Use, Space and Location. To the maximum extent feasible, the open space shall be undisturbed and left in its natural condition. It shall be appropriate in size, shape, dimension and location to assure its use as a conservation or recreation area that serves as a visual and natural amenity for the project and the Town.
- (1) Common open space shall be functional for wildlife habitat, passive recreation, forestry, agriculture, access to open water resources, or preservation of views from the road.
 - (2) To the maximum extent feasible, the common open space shall be linked as a unit, with links at least sixty (60) feet wide.
 - (3) Not more than 50% of the common open space in a Mill Reuse Project may consist of wetlands as defined in G.L. c.131, Section 40.
 - (4) Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade exceeds twenty-five (25) percent.
 - (5) Existing rights of way and utility easements may not be counted as common open space.
 - (6) The location(s) of the common open space shall be subject to approval by the Planning Board.
 - (7) Land used for shared wastewater disposal or a package treatment plant may count toward the minimum common open space requirement.
- (b) Ownership. The common open space shall be conveyed in accordance with the procedures under Section 4360 of this Bylaw, except that land used for wastewater disposal shall be conveyed in accordance with requirements of the Board of Health.

5284. Landscaping. For purposes of landscaping requirements, a Mill Reuse Project shall comply with Section 3500 of this Bylaw to the maximum extent practical.

5285. Accessory Commercial Use Limitations. Accessory commercial uses are encouraged in a Mill Reuse Project in order to make ordinary daily activities accessible to residents, particularly to residents who do not drive. At the same time, it is not the intent of this Bylaw to promote mill reuse that is predominantly commercial. Accordingly, accessory commercial uses such as retail, personal service or restaurant uses may occupy up to ten (10) percent, but in no event more than 20,000 square feet, of the total leasable floor area in a Mill Reuse Project. An individual accessory commercial use may not exceed 5,000 square feet of leasable floor area.

5286. Internal Circulation, Parking and Loading Requirements.

- (a) Roadways. The internal roadway(s) serving a Mill Reuse Project shall be adequate for the proposed use as determined by the Planning Board, and shall be maintained by an association of unit owners, the applicant or the entity that owns and manages the development.

- (b) **Parking Spaces.** A Mill Reuse Project shall provide off-street parking spaces for each use in the development in accordance with the following minimum requirements:
- (1) Assisted elderly units: 1 space per unit, plus one space per two employees on the largest shift and one space for each three units.
 - (2) Multifamily units: 1 space per studio or one-bedroom unit, 2 spaces per unit with two or more bedroom except for age-restricted multi-family units, in which case there shall be an average of 1.5 spaces per unit; plus 1 visitor space for each three units.
 - (3) Nursing home: 1 space per three beds, plus one space per two employees on the largest shift, plus one space per two visiting staff (e.g., attending physician, specialists, etc.)
 - (4) Accessory Retail, Service or Bank Establishment: 1 space per 500 square feet of gross floor area but not fewer than three spaces per separate enterprise.
 - (5) Accessory Restaurant: 1 space per four seats based on the legal seating capacity of the facility, including seasonal outdoor seating, plus one space per two employees on the largest shift.
 - (6) Accessory Adult Day Care: 1 space per each four persons not residing in the Mill Reuse Project plus one space per two employees.
 - (7) Medical Offices or Medical Clinic: in accordance with Section 3320(h).
 - (8) Other Uses: in accordance with Section 3320(k).
 - (9) Mixed Uses: Requirements for each use shall be added, unless the Planning Board determines that a smaller number is adequate.
- (c) **Reserve Parking.** During the Development Plan Approval process under Section 1420, the Planning Board may authorize a decrease in the number of off-street parking spaces required for a Mill Reuse Project, subject to the following conditions:
- (1) The decrease in number of parking spaces is no more than thirty percent (30%) of the total number of spaces required under Section 5264(i). The waived parking spaces shall not be used for building area and shall be labeled as "Reserve Parking" on the site plan.
 - (2) The decrease in number of required spaces will not create undue congestion, traffic hazards, or a substantial detriment to the neighborhood, and does not derogate the intent and purpose of this Bylaw.
 - (3) The reserve parking spaces shall be properly designed as an integral part of the overall parking development, and in no case shall any reserve parking spaces be located within areas counted as setbacks or common open space.

- (4) If, after one (1) year from the date of issuance of a certificate of occupancy, the Building Inspector and/or Planning Board find that all or any of the increased reserve spaces are needed, the Planning Board may require that all or any portion of the spaces identified as increased reserve spaces on the site plan be constructed within a reasonable time period as specified by the Planning Board. A written notice of such a decision shall be sent to the applicant within seven (7) days before the matter is next discussed at a Planning Board meeting.
- (d) Increase in parking spaces. The Planning Board may require provisions for an increase in the number of parking spaces required under Section 5264(i), provided that:
- (1) The increase in the number of parking spaces is no more than twenty percent (20%) of the total number of parking spaces required under Section 5364(i) for the use(s) in question.
 - (2) Any such increase in the number of required parking spaces shall be based upon the special nature of a use or building.
 - (3) The increased number of parking space shall be labeled "Increased Reserve Parking" on the Site Plan and shall be properly designed as an integral part of the overall parking layout, located on land suitable for parking development and in no case located within an area counted as yard setback or common open space along the perimeter of the parcel.
 - (4) The applicant shall not be required to construct any of the spaces labeled as "Increased Reserve Parking" for at least one (1) year following the issuance of a certificate of occupancy. Where the increased reserve parking area is required by the Planning Board and the applicant has otherwise provided the number of parking spaces required under Section 5264(i), the area of land reserved for the increased number of parking spaces may be deducted from the minimum common open space required under Section 5283.
- (e) Parking for commercial vehicles. Commercial vehicles owned or operated by owners or tenants of the Mill Reuse Project, or their agents, employees, licensees, or suppliers shall be parked inside a garage, or in a suitably screened and designated area, except for commercial vehicles in the active service of receiving and delivering goods or services.
- (f) Parking Area Design and Location. A Mill Reuse Project shall comply with Section 3300 of this Bylaw except as follows:
- (1) All off-street parking areas shall be located to the rear or side of all buildings and shall not be located in front setbacks or common open space, except that the Planning Board may waive these requirements for existing parking lots or existing buildings.
 - (2) Landscaping of parking areas shall conform to Section 3533 of this Bylaw to the maximum extent practical.
 - (3) Pedestrian crosswalks shall be provided in appropriate locations and shall be clearly recognizable through the use of raised, textured or color surface treatments in order to aid pedestrians in crossing traffic within a parking area.

- (g) Paths. Wherever feasible, a Mill Reuse Project should include attractively designed paths that separate vehicular, bicycle and pedestrian traffic, provide access to amenities and facilities in the development, and connect to pathways or sidewalks to adjacent sites.

5287. Emergency Systems. A Mill Reuse Project shall have an integrated emergency call, and/or telephone and/or other communications system for its residents and/or other tenants. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Bellingham Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

5288. Public Benefits. The Planning Board may grant a Special Permit to increase the maximum gross density of a Mill Reuse Project, up to the limit established under Section 5262, as follows.

- (a) Eligible Public Benefits. To be considered eligible for an increase in the maximum gross density under Section 5262, a Mill Reuse Project shall provide at least one of the following public benefits in furtherance of the purposes of this Bylaw and in a manner satisfactory to the Planning Board:

- (1) Affordable Housing. A project in which at least 10% affordable housing units meet the requirements of Section 5282.
- (2) Common Open Space. A project that preserves at least 50% of the parcel as common open space meeting the requirements of Section 5283.
- (3) Green Building Design. A project that is LEED certified by the U.S. Green Building Council.
- (4) Neighborhood Facilities. A project that provides a facility or significant amenity usable by its own residents and residents of the surrounding neighborhood, such as a public park that is landscaped, furnished and accessible to persons with disabilities, or an outdoor recreation area with playing fields and facilities for spectators, or a neighborhood community center.

- (b) Limitations. A Mill Reuse Project that involves expansion of existing buildings or new construction must comply with the maximum floor area ratio under Section 5281 regardless of any increase in gross density authorized by Special Permit.

5290. Separability. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.