

**~ TOWN OF SHUTESBURY ZONING BYLAW ~**

*Adopted May 3, 2008*

Amended March 24, 2009

Amended May 1, 2010

Amended November 13, 2012

Amended May 7, 2016

Amended May 5, 2018

Amended May 4, 2019

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## **ARTICLE I INTRODUCTION AND AUTHORITY**

### **SECTION 1.1 PURPOSES**

The purpose of this zoning bylaw is to implement the Town's planning and land use goals and recommendations as described in the Shutesbury Master Plan, adopted by the Planning Board in 2004 to the extent these may be achieved through zoning. Some of these goals and purposes include the protection of large contiguous tracts of forest land to maintain commercial forestry as a viable agricultural activity; the protection of water in the watersheds that supply drinking water to Amherst, Massachusetts, the Boston metropolitan area, and the Town of Shutesbury; the maintenance of a rural road system that includes many miles of unpaved roads; the protection of significant wildlife habitat in a healthy forest ecosystem; the allowance for mixed-use development in the Town Center area; the diversification of available housing types; greater affordability in housing; economic opportunities for residents including home-based businesses; and the clustering of residential development in compact settlements leaving large areas of open space undeveloped.

### **SECTION 1.2 USER GUIDE**

**1.2-1** This bylaw regulates land use by dividing the Town into zoning districts and establishing rules for the use of land in each district. This Article provides a brief overview of how to find information in the bylaw.

**1.2-2** The Use Table in Article III lists uses that are allowed in each district. The definitions in Article XIII explain what the different use categories in the table mean. The Dimensional Table and text in Article IV contain lot size, setback, and other requirements that indicate how much development is allowed on a lot and where it should be placed. Supplementary regulations in Article VIII contain additional requirements for specific types of uses and structures (such as home occupations, signs, and parking).

**1.2-3** Article V contains provisions for "Open Space Design" (sometimes referred to as flexible or cluster development), which is designed to ensure protection of open space when land is developed. Article VI contains rules for "grandfathering" buildings and uses that were legal under previous regulations but do not conform to this bylaw. Article VII regulates the rate of development in the Town to ensure that growth proceeds at a manageable rate. Articles IX and X explain the procedures for obtaining various types of permits from the Town, including Building Permits, Variances, Special Permits, and Site Plan approval. Article XI covers the process of amending this bylaw, Article XII addresses technical matters, and Article XIII contains definitions of terms.

### **SECTION 1.3 EFFECT OF THIS BYLAW**

Subject to applicable state laws and regulations, including the state building code, land shall be used and structures shall be located, constructed and used only as allowed in this bylaw.

### **SECTION 1.4 LEGAL AUTHORITY**

This bylaw is enacted to promote the health, safety and general welfare of the inhabitants of the

Town of Shutesbury as authorized by the Massachusetts Home Rule Amendment (Massachusetts Constitution, Amendment 89) and as regulated by state laws and regulations, including Chapters 40A and 41 of the Massachusetts General Laws. It is enacted for the purposes enumerated in Section 2A of Chapter 808 of the Acts of 1975 as well as for those additional purposes contained in Section 1.1 and in the Town's Master Plan that are within the Town's home rule powers to implement.

**ARTICLE II ESTABLISHMENT OF DISTRICTS**

**SECTION 2.1 LAND USE DISTRICTS**

**2.1-1** For the purpose of this bylaw, the Town of Shutesbury is divided into the following four land use districts:

Forest Conservation	FC	Town Center	TC
Roadside Residential	RR	Lake Wyola	LW

In addition, there shall be a Floodplain Overlay District as defined herein in Section 8.9.

**2.1-2** These land use districts are located and their boundaries are shown on a map entitled "Zoning Map of Shutesbury, Massachusetts," dated May 3, 2008, and on file in the office of the Town Clerk. The Zoning Map, with all the explanatory matter thereon, is hereby made a part of this bylaw. A reduction of this map is attached to copies of this bylaw for informational purposes only, and is not part of the bylaw.

**SECTION 2.2 PURPOSES OF LAND USE DISTRICTS**

**2.2-1** FC: The purpose of the Forest Conservation District is to preserve large areas of contiguous forest land shown on the Zoning Map as lying more than 500 feet from the centerlines of existing public roadways in order to maintain commercial forestry as a viable agricultural activity and to protect watersheds, recreational land, natural resources, and wildlife habitat (including BioMap Core Habitat and Estimated Habitat of Rare Wildlife designated by the Commonwealth of Massachusetts). The FC District is also intended to protect substandard rural roads from the traffic that would result from overdevelopment on interior land, while allowing limited development consistent with maintaining the rural density and character of Shutesbury.

**2.2-2** RR: The purpose of the Roadside Residential District is to maintain the Town's pattern of rural settlement (outside the TC and LW districts), characterized by large expanses of forested land with residences and small businesses scattered within 500 feet of the centerlines of those existing public roadways that are shown on the Zoning Map within the RR District. This district allows the Town to continue to develop according to this pattern and helps to ensure that development occurs primarily near existing public roads.

**2.2-3** TC: The purpose of the Town Center District is to enable the town center area of Shutesbury to maintain its existing character and settlement pattern as the center of community activity, and to allow centrally located residential, civic, and commercial uses, including a mix of those uses, to serve the local community.

**2.2-4** LW: The purpose of the Lake Wyola District is to allow landowners who own land in the vicinity of Lake Wyola to make effective use of their properties while protecting the water quality and aesthetics of the Lake. The purpose of the district is not to establish any duration of occupancy requirements.

### **SECTION 2.3 INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of districts shown on the Zoning Maps, the following rules apply:

**2.3-1** Boundaries indicated as following the center lines of the traveled surfaces of streets or highways shall be construed to follow such center lines.

**2.3-2** Boundaries indicated as following lot lines shall be construed to follow such lot lines.

**2.3-3** Boundaries indicated as following shorelines of ponds and lakes shall be established following such shorelines.

**2.3-4** Boundaries indicated as following centerlines of streams, as measured an equal distance between the banks, shall be established following such centerlines.

**2.3-5** Boundaries indicated as parallel to or extensions of features indicated in Subsections 2.3-1 through 2.3-4 above shall be so construed. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.

## **ARTICLE III ZONING DISTRICTS: USE REGULATIONS**

### **SECTION 3.1 ALLOWABLE USES**

This bylaw is intended to protect the character of Shutesbury's existing landscape and historic settlements, while allowing flexibility of land use and new development that is in keeping with the Town's rural character.

#### **3.1-1 Use Table**

The Use Table that follows indicates allowable uses in the districts shown. See Article XIII for definitions of the use categories. Uses that are not listed below are prohibited, unless state or federal laws preclude such prohibition. Unless otherwise provided for in this zoning bylaw, only one principal use or structure is permitted on a lot. For the purposes of this Section agriculture as defined herein shall not be considered a principal use, nor shall agricultural structures be considered principal structures. The meaning of the symbols is as follows:

- P Designates a use permitted by right. Usually requires a Building Permit and/or a certificate of occupancy from the Building Inspector.
- SPR Designates a use permitted by right subject only to Site Plan Review by the Planning Board (SPR-P) or the Zoning Board of Appeals, (SPR-Z) (see Section 9.2).
- SP Designates a use allowed by Special Permit, granted by the Zoning Board of Appeals (SP-Z) or by the Planning Board (SP-P) (see Section 9.3).
- N Designates a prohibited use.

The column entitled "Section Reference" refers to sections of the bylaw that contain additional provisions affecting the listed use category.

### USE TABLE

USE CATEGORY	USE DISTRICTS				SECTION REFERENCE
	RR	FC	TC	LW	
<b>RESIDENTIAL USES</b>					
Single-family Dwelling	P	P	P	P	
Accessory Apartment <sup>1</sup>	SPR-Z	SPR-Z	SPR-Z	SPR-Z	4.4-2
Two-family Dwelling <sup>1</sup>	SPR-Z	SPR-P	SPR-Z	SPR-Z	4.4-3
Multi-family Dwelling	SP-P	SP-P <sup>2</sup>	SP-P	N	4.4-3
Second-story Apartments	N	N	SP-Z	N	4.4-1
Assisted Living Facility	SP-P	SP-P	SP-P	SP-P	
Open Space Design	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	Art. V
<b>COMMUNITY USES</b>					
Cemetery	SP-P	SP-P	SP-P	SP-P	
Educational/Charitable/Religious <sup>4</sup>	P	P	P	P	8.5-3
Health Care Facility	SP-Z	SP-Z	SP-Z	SP-Z	
Membership Club	SP-Z	SP-Z	SP-Z	SP-Z	
Municipal Facility or Use <i>(not listed elsewhere in this use table)</i>	P	P	P	P	
Nursery or Private School, Kindergarten	SP-Z	SP-Z	SP-Z	SP-Z	

<sup>1</sup> If developed as part of an Open Space Design pursuant to Article V, the approving board will be the Planning Board. Within the FC District, two-family dwellings shall be permitted only within an Open Space Design.

<sup>2</sup> Within the FC District, multi-family dwellings shall be permitted only within an Open Space Design.

<sup>3</sup> If not developed as a subdivision, requires Site Plan Approval by the Planning Board

<sup>4</sup> Subject to limitations on municipal regulations in MGL. Ch. 40A, §3.

**USE TABLE (continued)**

USE CATEGORY	USE DISTRICTS				SECTION REFERENCE
	RR	FC	TC	LW	
<b>BUSINESS USES<sup>1</sup></b>					
Agriculture (includes forestry) <sup>2</sup>	P	P	P	P	
Commercial Campground	SP-P	SP-P	N	N	8.5-4
Commercial Hunting	SP-Z	P	N	N	
Child Care Facility <sup>3</sup>	P	P	P	P	8.5-3
Craft Workshop	SPR-Z	SPR-Z	SPR-Z	SPR-Z	
Home Occupation, Customary	P	P	P	P	8.5-1A
Home Occupation, Major	SP-Z	SP-Z	SP-Z	SP-Z	8.5-1B
Kennel	SP-Z	SP-Z	SP-Z	SP-Z	
Light Industry	SP-P	SP-P	N	N	
Lodging Facility	SP-P	SP-P	SP-P	SP-P	
Office	SPR-Z	SPR-Z	SPR-Z	SPR-Z	
Recreational Business	SP-Z	SP-Z	SP-Z	SP-Z	
Restaurant	SP-Z	SP-Z	SP-Z	SP-Z	
Soil Mining	SP-P	SP-P	N	N	8.5-5
Temporary Wind Monitoring System	P	P	P	P	
Vehicle Repair Station	SP-Z	SP-Z	SP-Z	N	
Veterinary Clinic	SP-Z	SP-Z	SP-Z	SP-Z	
Wireless Communication Facilities	SP-P	SP-P	SP-P	SP-P	8.7
Other Retail Business or Consumer Service	SP-Z	SP-Z	SP-Z	SP-Z	
<b>ENERGY AND UTILITIES</b>					
Large-Scale Ground-Mounted Solar					
Electric Installations	N	SP-P	N <sup>4</sup>	N	8.10
Public Utility Facility <i>(excluding wireless communication facilities)</i>	SP-P	SP-P	SP-P	SP-P	
Small-Scale Ground-Mounted Solar					
Electric Installations	SP-P	SP-P	SP-P	N	8.10
Small Wind Energy Systems	SP-P	SP-P	SP-P	SP-P	8.8

<sup>1</sup> Subject to floor area limitations in Section 4.2 (Dimensional Table) and additional regulations in Subsection 8.5-2.

<sup>2</sup> Other than as provided for under section 3 of chapter 40A of the General Laws: on lots of less than five acres in the TC, LW, or RR districts, the keeping of more than three pigs or the operation of a fixed-site sawmill shall require a special Permit from the Zoning Board of Appeals; and excluding poultry, the raising or keeping of livestock including horses, ponies, mules, donkeys, burrow, swine, cattle, sheep, goats, alpacas, and other similar domesticated animals used or available for commercial or food purposes shall be prohibited within 400 feet of the bank of Lake Wyola in the LW district.

<sup>3</sup> Subject to limitations on municipal regulations in MGL. Ch. 40A, §3.

<sup>4</sup> Except that proposals at a distance of greater than 500 feet from a public way, excluding access roads or driveways, may be proposed within the TC district.

### **SECTION 3.2 PROHIBITED USES IN ALL DISTRICTS**

The following uses, structures, and activities shall be prohibited, unless state or federal law provides otherwise:

**3.2-1** Proposed uses of land which create excessive traffic congestion, land erosion, or are hazardous, injurious, noxious, detrimental or offensive.

**3.2-2** Trailer or mobile home parks, facilities for the handling, storage, or disposal of hazardous waste, and commercial junk yards, landfills, and refuse disposal areas.

**3.2-3** An individual trailer or mobile home used as a dwelling, except:

- A. An individual trailer or mobile home occupied as an accessory structure to a dwelling for a maximum of fourteen (14) days per year; provided that :
  - 1. Adequate and lawful means are provided for health and safety, including written permission by the Board of Health, and
  - 2. During periods exceeding fourteen (14) days when such trailer or mobile home is not occupied, it shall either be removed from the premises or stored with no occupants or other use, indoors or outdoors in the rear yard of a dwelling at least twenty (20) feet from the rear and side lot lines.
- B. An individual trailer or mobile home occupied for a maximum of eighteen (18) months during the reconstruction of a dwelling on the same property which was destroyed by fire or other catastrophe, provided that a valid Building Permit has been issued for such reconstruction;
- C. Temporary use, not to exceed one year, of a camping vehicle as an on-premises field office or residence during the construction period of a project (including a single-family residence) with Board of Health approval. An extension of the one-year limitation may be allowed by Special Permit from the Zoning Board of Appeals.
- D. An individual trailer or mobile home used in a commercial campground or recreation area in compliance with the requirements of Subsection 8.5-4.

**3.2-4** Signs or floodlights which constitute a hazard to pedestrian or vehicular traffic because of the intensity or direction of their illumination.

**3.2-5** The commercial removal of stones from a stone wall, old field pile, or pre-existing cellar hole from any parcel for the purpose of transporting the stones out of Shutesbury for sale elsewhere.

### **SECTION 3.3 ACCESSORY USES AND STRUCTURES**

**3.3-1** In addition to the principal uses permitted in a district, accessory uses and structures which are subordinate and customarily incidental to such permitted uses shall be allowed on the same terms as the principal use (i.e. by right, with Site Plan Review, and/or by Special Permit).

**3.3-2** Renting rooms to lodgers, boarders or tourists shall be permitted as an accessory use, provided that no separate cooking facilities are maintained, and provided that no more than

three rooms are rented. Accommodations shall be limited to a total of six persons in addition to the resident family.

**3.3-3** For regulations on home occupations, see Subsection 8.5-1.

**3.3-4** Non-commercial garages shall be considered customary accessory structures to a residential use unless they are designed to accommodate more than five vehicles, in which case a Special Permit from the Zoning Board of Appeals shall be required for their construction.

**3.3-5** Drive-through facilities and common driveways shall be considered accessory uses, but shall require the issuance of a Special Permit by the Planning Board.

**3.3-6** Swimming pools shall be permitted as accessory structures provided that they are used only by residents of the premises and their guests, and provided that no portion of the water area is closer than twenty-five (25) feet to any property line.

#### **SECTION 3.4 MIXED USE**

The Town of Shutesbury encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Permit and/or Site Plan Reviews for a single project with mixed uses shall, where practical, be consolidated into one proceeding, which shall be a Special Permit. Where the Use Table provides that both the Planning Board and Zoning Board of Appeals must approve a proposed combination of uses, the Planning Board shall be the Special Permit Granting Authority (SPGA) for all of the proposed uses in the consolidated proceeding.

#### **SECTION 3.5 CHANGE OF USE**

See Subsection 9.3-1.

### **ARTICLE IV ZONING DISTRICTS: DIMENSIONAL AND DENSITY REGULATIONS**

#### **SECTION 4.1 PURPOSE**

The purpose of dimensional and density regulations is to establish lot size, setback, and related requirements, to maintain the rural and historic character of Shutesbury, to encourage development that protects open space, and to generally implement the Town's Master Plan.

#### **SECTION 4.2 DIMENSIONAL TABLE**

**4.2-1** The following Dimensional Table is adopted as part of this bylaw. Except as provided in Subsections 4.2-2 through 4.4-4 below, development in the Town of Shutesbury shall conform to the requirements of the Dimensional Table. No lot shall be reduced or altered so as to fail to satisfy any minimum area or yard required for a permitted principal use within the town, except as explicitly provided in this Bylaw. Different dimensional standards apply to Open Space Designs, which are described in Article V below. Within the FC, RR, and LW

Districts, all subdivisions shall be Open Space Designs unless the Planning Board grants a Special Permit to allow a development that deviates from the Open Space Design requirements (see Subsection 5.1-2).

**DIMENSIONAL TABLE**

	<i>DISTRICTS</i>			
	<b>RR<sup>2</sup></b>	<b>FC<sup>2</sup></b>	<b>TC</b>	<b>LW<sup>2</sup></b>
Minimum lot area <sup>1</sup>	90,000 sf	Variable <sup>6</sup>	90,000sf	90,000 sf
Minimum road frontage	250	250	250	250
Minimum front yard setback <sup>3</sup>	75	75	20	20
Minimum side yard setback <sup>3</sup>	25	25	20	15
Minimum rear yard setback <sup>3</sup>	25	25	20	15
Minimum lake setback (from mean high-water mark)	--	--	--	25
Maximum floor area for non-residential structures <sup>4</sup>	10,000 sf	20,000 sf	10,000sf	10,000 sf
Maximum height <sup>5</sup>	35	35	35	28

***ALL DIMENSIONS IN FEET UNLESS OTHERWISE INDICATED.***

- <sup>1</sup> "sf" means square feet. See Section 4.4 (accessory apartments, two-, three-, and four-family dwellings) and Article V (Open Space Design) for additional lot area and dimensional requirements.
- <sup>2</sup> The lot area, frontage, and setback requirements on the table do not apply to lots in subdivisions within the FC, RR, and LW Districts, which are subject to the dimensional and density standards for Open Space Design found in Article V.
- <sup>3</sup> For accessory structure setbacks, see Subsection 4.2-2B.
- <sup>4</sup> Excluding agricultural structures and municipally-owned structures and subject to any applicable limitations in MGL. Ch. 40A, §3; this limitation applies only to principal non-residential structures and not to accessory structures for residences such as garages or sheds.
- <sup>5</sup> For height exceptions, see Subsection 4.3-2.
- <sup>6</sup> No minimum lot area requirement in the FC district except where an FC lot has existing road frontage (see Subsection 4.2-2C).

#### **4.2-2 Interpretation of Dimensional Requirements**

- A. Corner Lots shall be deemed to have two front yards, two side yards, and no rear yard.
- B. Setbacks for Accessory Structures and Uses
  - 1. Any detached accessory structure, garage, studio, storage shed, barn, stable, tennis court, swimming pool (in addition to complying with the requirements of Section 3.3), or any accessory structure attached to the principal building shall comply with the minimum setback requirements of this bylaw for principal buildings. This provision shall apply to both conforming and lawfully nonconforming lots.
  - 2. Non-habitable detached or attached accessory structures which cannot meet the setback requirements of this Subsection 4.2-2B may be allowed by Special Permit from the Zoning Board of Appeals, provided that the Board finds such structures to be in harmony with the residential development in the zoning district and not detrimental to the neighborhood. This provision shall apply to both conforming and lawfully nonconforming lots.
- C. Dimensional Requirements for Lots in More than One District
  - 1. If a lot contains land lying within more than one district, the applicable minimum lot area and dimensional requirements shall be those for the district in which the principal building is located.
  - 2. If a zoning district boundary passes through the principal building, the requirements of the more restrictive district shall apply.
  - 3. Where a lot is created through the "Approval Not Required" provisions of the Subdivision Regulations and contains land in both the FC and the TC, RR, or LW districts, if the principal structure is located within the FC district, the minimum lot area shall be 435,600 square feet.

### **SECTION 4.3 EXCEPTIONS TO DIMENSIONAL AND DENSITY REQUIREMENTS**

The following exceptions to dimensional requirements are permitted in order to encourage the protection of open space and the provision of needed affordable housing.

**4.3-1** Lot size, setback, and frontage requirements in Subsection 4.2-1 (Dimensional Table) shall not apply in Open Space Designs. See Article V.

#### **4.3-2 Height Exceptions**

- A. Otherwise applicable height limitations shall not apply to television receiving antennas, chimneys, solar panels, and non-habitable roof-mounted structures such as spires and cupolas, which are customarily associated with residential, agricultural, religious, or municipal uses.
- B. Height limitations shall not apply to any free-standing flagpole or to any structure erected on a pole for nesting or feeding of birds. Height requirements for Wireless Communication Facilities are contained in Section 8.7. Height requirements for small wind energy systems are contained in Section 8.8.
- C. Barns and silos may exceed applicable height limits, pursuant and subject to the protections of agriculture under state law, provided that they comply with all other provisions of this bylaw, and provided that for every one foot by which such structures exceed the height limit, the minimum setback requirements are increased by one foot.

**4.3-3** Frontage requirements in Subsection 4.2-1 (the Dimensional Table) shall not apply to municipal facilities, structures or uses.

#### **SECTION 4.4 HOUSING OPTIONS**

The Town of Shutesbury values being a diverse community that welcomes residents of varying income levels. As the cost of land and housing increases, many local residents are being priced out of the market for homes. The Town of Shutesbury desires to maintain and encourage housing that is affordable to the entire range of its residents, without encouraging excessive, unplanned growth that detracts from the Town's quality of life. The Town therefore establishes this section to allow the creation of apartments, two-family dwellings, and multi-family dwellings to help meet the Town's housing needs and to offer incentives for the creation of affordable housing in residential developments. All housing developments must comply with applicable requirements of the Board of Health.

##### **4.4-1 Second-story Apartments in the TC District**

Second story apartments over non-residential uses are permitted by Special Permit in the TC District. The apartments shall contain a total of no greater than four bedrooms in any combination (Examples: four 1-bedroom studio apartments, two 2-bedroom apartments, or one 1-bedroom studio apartment and a 3-bedroom apartment). The total area of apartments shall be counted toward the maximum floor area for the non-residential structure.

##### **4.4-2 Accessory Apartments**

- A. To help the Town meet its housing needs without detracting from its rural character, one accessory apartment per lot may be allowed after Site Plan review by the Zoning Board of Appeals, provided that all of the conditions below are satisfied. Conditions 1 through 10 below shall be ongoing conditions listed on the approved Site Plan.
1. The lot must have an area of at least 45,000 square feet.
  2. The principal one-family dwelling, including the accessory apartment, must satisfy all side and rear yard requirements for one-family dwellings in effect at the time the application for a Site Plan Review is submitted.
  3. Either the principal one-family dwelling or the accessory apartment must be occupied by an owner of the property. The owner must also own the entire lot, any structures thereon, and both dwelling units. Prior to conclusion of a Site Plan Review, the owner(s) must submit a notarized letter to the Building Inspector stating that they will occupy one of the dwelling units as their permanent or primary residence, except for bona fide temporary absences. Upon sale or transfer of the property to a new owner, the new owner must submit a substantially identical notarized letter to the Building Inspector. If such a letter is not submitted within thirty (30) days of the recording of the deed, the Site Plan Approval shall lapse.
  4. In addition to the accessory apartment, the lot may contain no more than a single, detached one-family dwelling and uses accessory to such dwelling that are permitted by this Zoning Bylaw.
  5. No more than one curb cut or driveway access shall be permitted, unless the lot already had multiple access points on April 1, 2005, or the Zoning Board of Appeals determines

that a second curb cut will improve public safety and not detract from the rural character of the road.

6. The lot must have a minimum of three off-street parking spaces, which may include internal garage bays.
  7. The accessory apartment shall contain no more than 800 square feet of floor area and no more than two bedrooms.
  8. An accessory apartment shall be a complete dwelling unit with a separate entry; kitchen facilities; at least one bedroom; and a bathroom with sink, toilet and bathing facilities.
  9. The creation and maintenance of the accessory apartment in an existing structure shall be accomplished in a manner that does not detract from its architectural character.
  10. An accessory apartment may be located within or attached to the principal dwelling, within a garage or barn that was in existence on April 1, 2005, or within a new accessory structure located no more than seventy-five feet from the principal one-family dwelling.
- B. A Site Plan Review for an accessory apartment may only be approved subject to obtaining any required approvals from the Board of Health.
- C. An application for Site Plan Review for an accessory apartment shall include, in addition to information required for a Building Permit, any information necessary to show proposed interior and exterior changes and to determine compliance with the conditions of this subsection, including a plot plan, floor plans, and exterior building elevations for any existing façade that will be altered. To ensure compliance with the requirements of Subsection 4.4-2, the approving board may require such plans to be prepared and stamped by qualified professionals.
- D. For purposes of Article VII of this Zoning Bylaw, Rate of Development, an accessory apartment shall be counted as one-half of a dwelling unit.
- E. An accessory apartment shall count as a full dwelling unit for the purposes of Subsection 8.6-2 B., Common Driveway Regulations. No accessory apartment shall be approved if it will result in an exceedance of the six dwelling unit limit thereunder (Examples: Only two accessory apartments may be built on an approved shared driveway serving four lots; whereas, no accessory apartments may be built on a shared driveway serving six lots). Approvals for accessory apartments on shared driveways shall be on first-come, first-served basis.
- F. Nothing in Subsection 4.4-2 shall be construed to change or reduce any dimensional or area requirements of this Zoning Bylaw relative to single-family dwellings and accessory structures thereto or to allow any uses not otherwise permitted by this Zoning Bylaw, other than accessory apartments as allowed herein.

#### **4.4-3 Two-Family and Multi-family Dwellings**

Two-Family and Multi-family dwellings shall satisfy the following lot requirements:

- A. Within the RR, TC, and LW Districts, allowed residential structures shall require a lot that is 90,000 square feet for the first dwelling unit and 40,000 square feet for each additional unit. Applicable frontage requirements for single-family dwellings shall be increased by 50% for the first additional dwelling unit and 25% for each additional unit thereafter. (For example, a multi-family dwelling with 3 units in any of these districts would require a lot that is 170,000 square feet in area (90,000 sf + 40,000 sf + 40,000 sf) and that has 437.5 feet of frontage (250 ft +125 ft +62.5 ft)).

- B. For two-family dwellings where any of the dwelling units are rented or leased, an owner must have their principal residence in the Town of Shutesbury.
  - 1. For multi-family dwellings where any of the dwelling units are rented or leased, at least one dwelling unit must be occupied by an owner of the property. The owner must also own the entire lot, any structures thereon, and all dwelling units.
  - 2. In the case of a condominium property ownership regime, no more than one-half of the dwelling units may be rented or leased at any one time.
  - 3. Prior to conclusion of a Site Plan or Special Permit process, an owner(s) must submit a notarized letter to the approving board or Special Permit Granting Authority stating that they will either reside in Shutesbury in the case of a two-family dwelling or occupy one of the dwelling units as their permanent or primary residence in the case of a multi-family dwelling, except for bona fide temporary absences.
  - 4. Upon sale or transfer of the property to a new owner, the new owner must submit a substantially identical notarized letter to the Special Permit Granting Authority. If such a letter is not submitted within thirty (30) days of the recording of the deed, the Special Permit shall lapse.
- C. See Subsection 4.2-2C. and Article V for FC District dimensional requirements.

**4.4-4 Compliance with Health and Parking Requirements**

All dwellings shall comply with regulatory requirements as follows:

- A. The sewage disposal system shall comply with Title 5 of the State Environmental Code, 310 Code of Massachusetts Regulations (CMR) 15.00, as the same may be hereafter amended or replaced; and
- B. The sewage disposal system and well shall comply with all local regulations of the Shutesbury Board of Health (including but not limited to inspection prior to conversion, pursuant to Section III of said Board of Health regulations), as the same may be hereafter amended or replaced; and
- C. Except as provided in Subsection 4.4-2, the lot on which the building or structure stands shall include a minimum of two (2) off-street parking spaces for each dwelling unit; and
- D. The dwelling shall meet the minimum standards of fitness for human habitation, as provided by the state "Minimum Standards of Fitness for Human Habitation" (State Environmental Code, Chapter II), 105 CMR 410 (adopted under authority of MGL. Ch. 111, §§ 3 and 127A), as the same may be hereafter amended or replaced.

**ARTICLE V OPEN SPACE DESIGN**

**SECTION 5.1 PURPOSE AND APPLICABILITY**

**5.1-1 Purpose**

The primary purpose of this Section is to preserve the open space resources of Shutesbury as identified in the Master Plan, especially large contiguous blocks of forested back-land that must be maintained as large-acreage holdings in order to remain economically viable for commercial forestry. This is necessary for the continuation of forestry as a significant resource-based local

agricultural activity and for the protection of the Town's water resources and other unique environmental assets.

- A. This Section is also intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design.
- B. The Town wishes to encourage the use of Open Space Design because Open Space Design results in the preservation of contiguous open space and important environmental resources, while allowing design flexibility.
  - 1. Open Space Design reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, hilltops, and historically significant areas.
  - 2. To encourage this type of development, Open Space Design is allowed by right, subject only to the requirements of the Regulations Governing the Subdivision of Land.
  - 3. An Open Space Design that does not require approval as a subdivision is allowed by right subject to Site Plan approval by the Planning Board.
- C. In order to encourage small subdivisions to follow Open Space Design principles, there is no minimum parcel size or number of lots required for an Open Space Design.

#### **5.1-2 Applicability**

- A. An Open Space Design may be proposed anywhere in Shutesbury, including TC district.
  - 1. Within the FC, RR, and LW District, all subdivisions shall comply with the Open Space Design provisions of this Article V, unless the Planning Board allows a development that deviates from the requirements of Article V by Special Permit.
  - 2. Such deviations may be approved if the applicant demonstrates that the proposed alternative development configuration provides adequate protection of the site's environmental resources and fulfills the purposes of this Article as well as or better than an Open Space Design.
- B. Subsection A above applies only to subdivisions of land as defined in MGL. Ch. 41, §81L, and not to construction of homes or businesses on individual lots that existed prior to May 3, 2008 or to lots created through the "Approval Not Required" process with frontage on public ways existing as such as of May 3, 2008 described in the Regulations for the Subdivision of Land (the "Subdivision Regulations").
  - 1. However, if subdivision approval is not required because a new roadway is not proposed, an applicant may nevertheless apply for an Open Space Design under this Article V. In such a case, the application shall be subject to Site Plan review as described in Article IX.
  - 2. If the proposed Open Space Design also involves one or more common driveways, density bonuses, transfer of development rights, and/or any other use that requires a Special Permit, the proceedings for all such Special Permits and the Site Plan review for the lot configuration shall occur in one consolidated Special Permit proceeding before the Planning Board.

### **SECTION 5.2 DEVELOPMENT IMPACT STATEMENT AND CONSERVATION ANALYSIS**

In order to enable the Planning Board to determine whether or not a proposed Open Space Design (or development by Special Permit that deviates from the requirements for Open Space

Design) satisfies the purposes and standards of this Article, an applicant must present sufficient information on the environmental and open space resources for the Board to make such determination. The required information shall be provided in the form of a Development Impact Statement, including a “conservation analysis” as described in the Subdivision Regulations (Section VIII, Subsection IX). In the case of an Open Space Design that is not a subdivision, and that is presented as a Site Plan review application, the applicant shall not be required to submit a full Development Impact Statement. However, the Planning Board may require the submission of all or part of a conservation analysis as described in the Subdivision Regulations.

**5.2-1 Conservation Analysis and Findings**

- A. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the conservation resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve and where development may be most appropriately located.
- B. In the case of a proposed plan that deviates from the requirements of this Article, if the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of an Open Space Design plan, the Planning Board shall deny the Special Permit for the deviation and require that the applicant submit a plan that complies with the requirements for an Open Space Design.
- C. The Planning Board, in consultation with the Conservation Commission and Open Space Committee, if any, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the “conservation findings”). The Planning Board shall deny any application that does not include sufficient information to make conservation findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the conservation analysis and findings.
- D. The Planning Board’s conservation findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The conservation findings shall show land to be permanently preserved by a conservation restriction, as well as recommended conservation uses, ownership, and management guidelines for such land. The conservation findings shall also indicate preferred locations for development if the Plan is denied based upon such findings.

**5.2-2 Minimum Preserved Open Space**

The Plan shall show that at least the percentages of the total acreage listed below will be preserved by conservation restriction, based upon the conservation findings.

FC District:	minimum of 80%
RR, LW, TC Districts:	minimum of 65%

**SECTION 5.3 ALLOWABLE RESIDENTIAL UNITS**

The maximum number of residential units in an Open Space Design is calculated by a formula based upon the net acreage of the property. This formula is intended to take into account site-specific development limitations that make some land less developable than other land. This

calculation involves two steps, calculating the net acreage and dividing by the base allowed density.

### **5.3-1 Net Acreage Calculation**

- A. The factors named below are included in this subsection for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw. To determine net acreage, subtract the following from the total (gross) acreage of the site:
1. half of the acreage of land with slopes of 20% or greater (2000 square feet or more of contiguous sloped area at least 10 feet in width); and
  2. the total acreage of lakes, ponds, land subject to easements or restrictions prohibiting development, FEMA 100-year floodplains, and all freshwater wetlands as defined in MGL. Ch. 131, §40, as delineated by an accredited wetlands specialist and approved by the Shutesbury Conservation Commission.
- B. Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook “Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act” (1995) (the “Handbook”).
1. The complete form shall be submitted including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form.
  2. If detailed vegetative assessments are not required by the Handbook for a particular site, the reasons must be noted on the Field Data Form.
  3. At the Planning Board’s discretion, any of the information described above may be taken from current geographic information systems data available from the Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources including delineations registered by the use of global positioning systems.

### **5.3-2 Unit Count Calculation**

To determine the base maximum number of allowable residential dwelling units on the site, divide the net acreage by three (3) in the RR, LW, or TC Districts, or by five (5) in the FC District. Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

### **5.3-3 Density Bonuses**

- A. The unit count determined in Subsection 5.3-2 above may be increased through density bonuses designed to advance important goals of the Shutesbury Master Plan. Density bonuses are given by Special Permit at the discretion of the Planning Board based upon the expected public benefit.
- B. Density bonuses are calculated by first determining the allowable unit count under Subsection 5.3-2 without rounding fractional units up or down, and then multiplying that number by 100% plus the percentages that follow. Resulting fractional units, if any, shall be rounded up or down as in Subsection 5.3-2.
1. If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational

- benefit to the Town (such as access to an important natural area or a trail system): a maximum of 10%.
2. If the applicant permanently restricts ownership and occupancy of units allowed by Subsection 5.3-2 as affordable housing (as defined in this bylaw), and makes a binding commitment to construct such affordable residences: a maximum of 25%.
  3. For every unit included in the allowable unit count under Subsection 5.3-2 that is built and dedicated as an affordable unit, two bonus market rate units may be permitted, up to the maximum of 25% of the allowable unit count.
  4. If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% density bonus per additional 5% of the parcel preserved as open space.

#### **5.3-4 Density Transfer (Transfer of Development Rights)**

- A. The Town of Shutesbury encourages flexibility in the location and layout of development, within the overall density standards of this Zoning Bylaw. The Town therefore will permit residential density to be transferred from one parcel (the "sending parcel") to another (the "receiving parcel") in Open Space Designs under this Article V.
  1. Density transfers may only be permitted from sending parcels in the FC district to receiving parcels in either the FC, RR, or TC districts.
  2. If a sending parcel is located in both the FC and another district, only those portions of sending parcel that actually lie within the FC District may be considered in determining the number of units allowed to be transferred. The process of density transfer is as follows.
- B. Procedure
  1. All density transfers require a Special Permit from the Planning Board.
  2. The Special Permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.
  3. The Special Permit application shall show a proposed development plan for the receiving parcel (subdivision and/or Site Plan) as well as a base unit count calculation prepared according to the provisions of Subsection 5.3.-2. For the sending parcel, the applicant may calculate the allowable number of units eligible to transfer by either:
    - a. Calculating the net acreage pursuant to Subsection 5.3-1 and dividing by 15; or
    - b. Dividing the total (gross) acreage by 25.
    - c. Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.
  4. Sending parcels existing as such on May 3, 2008 may have development rights calculated by either method a. or b. (above) at the applicant's election. Sending parcels which have been modified by lot line changes since May 3, 2008 must employ method a. The density calculation for the sending parcel shall not include any of the density bonuses available under Subsection 5.3-3.
  5. In reviewing an application for density transfer, the Planning Board shall first determine the number of allowable residential units permitted on the receiving parcel using all of the relevant standards in Subsection 5.3-2 and any density bonuses sought under Subsection 5.3-3. The Planning Board shall then determine the number of residential

- units available to transfer from the sending parcel(s) pursuant to Subsection 5.3-4A.(3.a.) or (3.b.).
6. The Planning Board may then grant a Special Permit allowing the transfer to the receiving parcel of some or all of the allowable residential units from the sending parcel(s).
  7. As a condition of approval of the density transfer, a conservation restriction on the sending parcel(s) satisfying the requirements of Section 5.6 shall be executed and recorded in the Registry of Deeds. The conservation restriction shall require that the total area of land used in the calculation required under Subsection 5.3-4A.(3.a.) or (3.b.) above be permanently restricted. (For example, if five units are transferred and the calculation is according to Subsection 5.3-4A(3.b.), at least 125 acres of the sending parcel would have to be permanently restricted.) Those portions of the sending parcel(s) not required to be subject to the conservation restriction may be used in accordance with this zoning bylaw.

#### C. Findings Required

The Planning Board shall not approve any residential density transfer unless it finds that:

1. All requirements for the granting of a Special Permit have been satisfied.
2. The addition of the transferred units to the receiving parcel will not increase the maximum allowable unit count under Subsection 5.3-2 by more than 50%, and will not adversely affect the area surrounding the receiving parcel.
3. The density transfer will benefit the Town by protecting a substantial area of developable land with conservation value on the sending parcel(s) in a manner that furthers the purposes of the FC District.
4. The density transfer will be consistent with the Master Plan.

#### **5.3-5 Maximum Density Bonus and/or Density Transfer**

The density bonuses and transfers of development rights allowed in Subsection 5.3-3 and 5.3-4 above may be combined to result in a total unit count increase not exceeding 25% of that established in 5.3-2 above. Density bonuses and/or transfers may be used only if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health.

#### **5.3-6 Lots in More than One District**

For lots in more than one district, the allowable unit count (excluding bonuses or transfers) and required open space for each district shall be computed separately first. These totals shall be added together and the allowable maximum bonus and transfer of development rights for the entire development shall be calculated based upon this combined total number of units. The permitted location of the units and protected open space shall be wherever the Planning Board determines best fits the characteristics of the land, based upon the conservation analysis and findings.

### **SECTION 5.4 TYPES OF RESIDENTIAL DEVELOPMENT**

The allowable residential units may be developed as single-family, two-family, or multi-family dwellings, provided that applicable Special Permit or Site Plan review requirements for the land use district are satisfied and that the number of dwelling units does not exceed the

allowable unit count in Section 5.3 above. The subdivision approval and Special Permit/Site Plan requirements shall be fulfilled concurrently in one proceeding to the extent practical. Any Open Space Design application involving two-family or multi-family dwellings shall include a Site Plan that shows the location, layout, height, and setbacks of such dwellings. Accessory apartments shall be permitted in Open Space Designs and shall not be counted toward the total allowable unit count. Such apartments shall comply with the requirements of Subsection 4.4-2, except that the requirements of Subsections 4.4-2A and 4.4-2B (lot area and setback requirements) shall not apply.

## **SECTION 5.5      DIMENSIONAL AND DESIGN REQUIREMENTS**

### **5.5-1      Minimum Lot Sizes in Open Space Designs**

The limiting factor on lot size in Open Space Designs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size for zoning purposes. This does not affect the powers of the Board of Health to require areas on a lot for the disposal of sewage and the protection of water supply.

### **5.5-2      Setbacks, Road Frontage, and Road Requirements**

- A. The minimum setback shall be 10 feet from any property line.
- B. There shall be no numerical requirements for road frontage in an Open Space Design, provided that each lot has legally and practically adequate vehicular access to a public way or a way approved under the Regulations Governing the Subdivision of Land across its own frontage or via a shared driveway approved under Section 8.6.
- C. All dwellings must comply with applicable Board of Health requirements.
- D. The Planning Board may modify the applicable road construction requirements for new roads within an Open Space Design as provided in the Regulations Governing the Subdivision of Land, if it finds that such modifications will be consistent with the purposes of this Article V and the Master Plan.

### **5.5-3      Arrangement of Lots**

- A. Lots shall be located and arranged in a manner that protects: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources, while facilitating pedestrian circulation. Generally, residential lots shall be located the minimum feasible distance from existing public roadways. The Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of lots.
- B. Lot, roadway, and driveway layouts, land alterations, and placement of structures shall follow applicable portions of the Rural Siting Principles in Section 8.3 and any design guidelines for Open Space Design which may be adopted by the Planning Board.

## **SECTION 5.6      PERMANENT OPEN SPACE**

Open space set aside in an Open Space Design or as a condition of any Special Permit or Site Plan approval (see Article IX) shall be permanently preserved from development as required by this Section 5.6. The Planning Board may not require such open space land to be accessible to the public, unless a density bonus is allowed under Subsection 5.3-3A. Any development

permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land, based upon the conservation findings of the Planning Board.

#### **5.6-1 Permanent Preservation of Open Space Land**

- A. All land required to be set aside as open space in connection with any Open Space Design shall be so noted on any approved plans and shall be protected by a permanent conservation restriction, as defined in Article XIII, to be held by the Town of Shutesbury, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under MGL. Ch. 184, §31 and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code.
  - 1. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development.
  - 2. The restriction may permit, but the Planning Board may not require public access or access by residents of the development to the protected open space land.
- B. Ownership of Open Space Land
  - 1. Protected open space land may be held in private ownership, owned in common by a homeowner's association (HOA), dedicated to the Town or State governments with their consent, transferred to a non-profit organization acceptable to the Planning Board, or held in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.
  - 2. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
    - a. The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.
    - b. Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
    - c. The HOA must be responsible for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways.
    - d. Property owners must pay their pro rata share of the costs in Subsection (c) above, and the assessment levied by the HOA must be able to become a lien on the property.
    - e. The HOA must be able to adjust the assessment to meet changed needs.
    - f. The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Board of Selectmen, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
    - g. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
    - h. Town Counsel shall find that the HOA documents presented satisfy the conditions

in Subsections (a) through (g) above, and such other conditions as the Planning Board shall deem necessary.

C. Maintenance Standards

1. Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.
2. If the Board of Selectmen finds that the provisions of Subsection (1) above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

## ARTICLE VI NONCONFORMITY OF PRE-EXISTING USES AND STRUCTURES

### SECTION 6.1 NONCONFORMING USES AND STRUCTURES

#### 6.1-1 Continuation

If the use of a structure or land was legal under the zoning bylaw when the structure was built or the use was commenced but is now nonconforming to this bylaw, it may be continued. Such a use may not be expanded, and such a structure may not be enlarged or altered, except as provided in this Section 6.1.

#### 6.1-2 Effect of Subsequent Amendments

Construction begun under a Building Permit or operation of a use begun under a Special Permit shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as reasonable. In all other respects, this bylaw and any amendments to it shall apply to existing uses and to uses or structures granted Building Permits or Special Permits to the extent provided in MGL. Ch. 40A, §6.

#### 6.1-3 Extension or Alteration

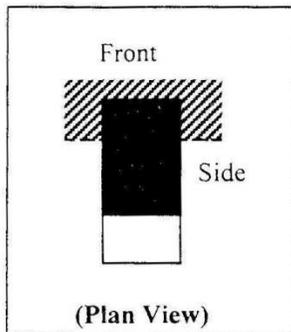
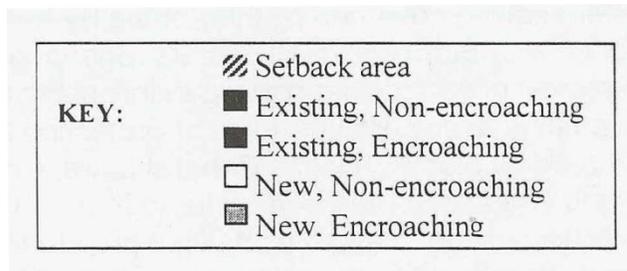
- A. Except as provided in D below, a nonconforming structure shall not be reconstructed, extended, or structurally changed, nor shall any major exterior alterations be made except by Special Permit from the Zoning Board of Appeals.
- B. Except as provided in D below, a nonconforming use shall not be expanded except by Special Permit from the Zoning Board of Appeals.
- C. The Zoning Board of Appeals may grant a Special Permit to allow such reconstruction, extension, structural change, or major exterior alteration of a nonconforming structure, or expansion of a nonconforming use, provided that the Board finds that such reconstruction, extension, structural change, major exterior alteration, or expansion is not substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

In granting such a Special Permit, the Zoning Board of Appeals shall not be required to consider the Special Permit review criteria contained in Subsection 9.2-2.

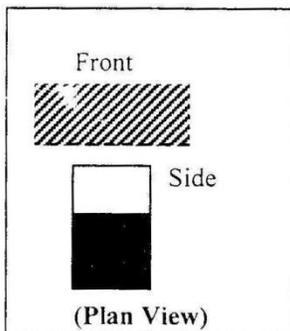
D. Reconstruction, extension, structural change, or major exterior alteration (collectively hereafter "alterations") to a nonconforming single or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances:

1. The proposed alterations comply with the setback requirements, or, if they do not comply, the proposed changes that encroach upon the setbacks satisfy the following conditions:
  - a. they do not decrease the distance between any lot line and the nearest point of the structure; and
  - b. the highest point on the roof line of these changes will be no higher than the highest point on the roof line of the existing structure; and
  - c. the proposed alterations do not violate or prevent compliance with any other applicable laws or regulations.

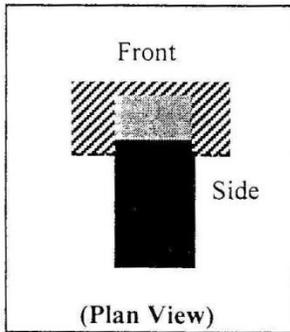
2. Examples:



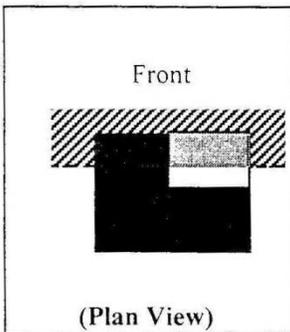
**A rear addition that complies with all setbacks.** This example proposes an addition on the rear of a house. Although the house encroaches upon the front setback, this proposed change is permitted by right since all of the changes comply with the setback requirements.



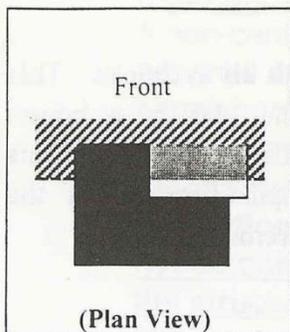
**A front addition that complies with all setbacks.** This example proposes an addition on the front of a house. Like the previous example, this proposed change is permitted by right since all of the changes comply with the setback requirements.



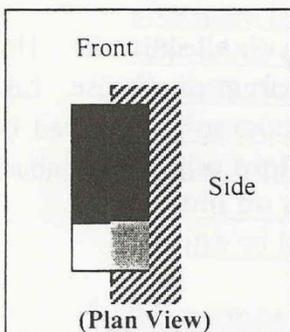
**A front addition that encroaches upon a setback.** This example proposes an addition on the front of a house. However, unlike the previous example, this addition is within the front setback and would decrease the distance from the front line to the house. Thus, this addition requires a special permit.



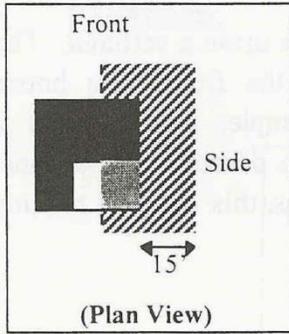
**An addition that encroaches upon the setbacks, but does not decrease distances from lot lines.** This example proposes the widening of a portion of the existing structure within a setback. Since the addition does not extend closer to any lot line than the existing structure, and assuming that the addition does not increase the height of the structure, this proposed change is permitted by right.



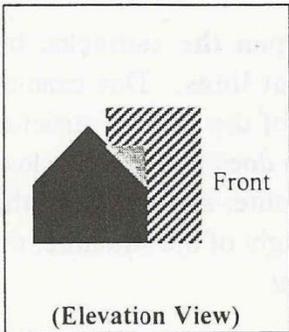
**An addition that encroaches upon the setbacks, but also decreases the distance from a lot line.** This example proposes the widening of a portion of the existing structure within a setback. Unlike the previous example, this addition extends beyond the existing structure. Since the addition would decrease the distance from the side lot line to the structure, this proposal requires a special permit.



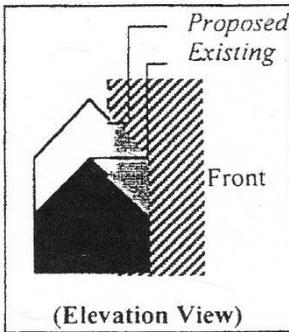
**An addition that encroaches upon a setback, but also decreases the distance from a lot line.** This example proposes an addition on the rear of a house that encroaches on the side setback. This proposed change requires a special permit, since the portion of the addition that is within the setback is closer to the rear line than the existing structure.



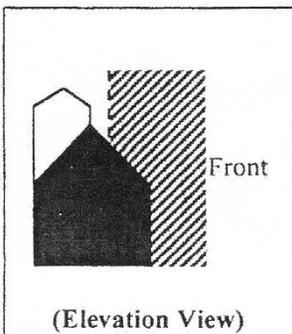
**An alteration that would prevent compliance with another regulation.** This example proposes to add a garage to the side of the house. Although the addition does not decrease the distance to any lot line, it prevents placing the driveway 15' away from the side lot line. Thus, this proposal requires a special permit.



**An alteration within a setback that does not increase the overall height of the structure.** This example proposes to add a dormer on the front of a house that encroaches upon the front setback. Since the addition does not decrease the distance to any lot line, and the top of the portion within the setback is no higher than the top of the existing structure, this addition is permitted by right.



**An alteration that increases the overall height of the structure.** This example proposes to add a second floor to a structure that encroaches upon the front setback. Since the height of the proposed addition within the setback (*Proposed*) is greater than the height of the existing structure (*Existing*), this alteration requires a special permit.



**An alteration that increases the overall height, but does not encroach upon any setback.** This example proposes to add a second floor to the portion of a structure that does not encroach upon any setbacks. This alteration is permitted by right.

#### **6.1-4 Discontinuance, Damage, and Destruction**

- A. A nonconforming use which has been discontinued for two years shall be considered to be abandoned and shall not be re-established. Any future use of the same property shall conform to this Bylaw. A nonconforming structure or any structure on a nonconforming lot which structure has not been used for two years may be used only as a single-family dwelling, upon the granting of a Special Permit by the Zoning Board of Appeals, provided that it complies with all requirements of the Board of Health.
- B. A nonconforming use or structure which has been damaged or destroyed by fire or other cause may be repaired or rebuilt and used as before, provided that such restoration is commenced within 18 months and completed within an additional 18 months, and does not exceed the size of the original nonconforming use or structure. If such restoration is not commenced within 18 months, a Special Permit may be granted as in (A) above.

#### **6.1-5 Conversion to Conforming Use or Structure**

Once a use or structure has changed to become conforming, such use or structure shall not be permitted to revert to a nonconforming use or structure.

#### **6.1-6 Signs**

Signs which were illegal under any prior bylaw and are illegal hereunder shall be considered to be violations of this bylaw. Signs which were legal when constructed but are prohibited by this bylaw shall be allowed to continue as provided in Subsection 8.4-4.

#### **6.1-7 Mobile Homes**

A nonconforming mobile home existing as of May 3, 2008 may be replaced by Special Permit if the replacement will meet the standards for a Special Permit contained in Section 9.2 and will not, in the opinion of the Zoning Board of Appeals, be substantially more detrimental to the neighborhood than the original structure.

### **SECTION 6.2 NONCONFORMING LOTS**

Nonconforming lots shall be governed by the Zoning Act. See Subsection 4.2-2 B. above for special provisions for accessory uses and structures on lawfully nonconforming lots.

## **ARTICLE VII RATE OF DEVELOPMENT**

### **SECTION 7.1 PURPOSES**

The purposes of this Section 7.1 are to (a) promote orderly residential growth in the Town of Shutesbury, not significantly in excess of the rate of growth over the last 5 years (expressed herein as Building Permits issued for the construction of new dwelling units); (b) phase growth so that it will not unduly strain the community's ability to plan for and provide basic public facilities and services; (c) provide the Town and its boards and agencies the information and reasonable time necessary to preserve and enhance existing community character, safety, health, and the value of property; (d) provide the opportunity at five-year intervals to reconsider this Zoning Bylaw and make adjustments and revisions based upon the Town's experience with the growth permitted by this Bylaw without risking a sudden increase in

development that could jeopardize the fulfillment of the purposes of this Bylaw and the Town's Master Plan; (e) ensure the greatest degree of fairness and equal opportunity to all in the distribution of available Building Permits; and (f) allow time for the Town to fully implement the Master Plan and monitor the effects of changes made to the Zoning Bylaw.

## **SECTION 7.2 REGULATIONS**

- A. Beginning on the date of the adoption of this bylaw, Building Permits (hereinafter, "permits") for no more than ten (10) new dwelling units shall be issued in each of the five (5) full calendar years following said adoption, those years being 2009, 2010, 2011, 2012 and 2013. See Subsection 7.2-1H below regarding the remainder of calendar year 2008.
- B. In addition, permits for no more than ten (10) new dwelling units created only under Article V (Open Space Design) or Subsection 8.6-2 B(4) (Flexible Frontage) shall be issued in each of the five (5) full calendar years following said adoption, those years being 2009, 2010, 2011, 2012 and 2013.
- C. Each set of ten (10) permits shall be treated as a separate group of permits, but each shall be administered according to the terms contained in this Section 7.2. More than ten (10) permit(s) may be issued in one year if Subsection 7.2-1E below applies.
  - 1. For the purposes of this Article VII, a one-family structure shall constitute one dwelling unit; a two-, three-, or four-family structure shall constitute two, three, or four dwelling units, respectively.
  - 2. An accessory apartment shall constitute one-half of a dwelling unit. In any calendar year, permits accounting for no greater than five (5) dwelling units shall be issued for any combination of two-, three-, or four-family structures
  - 3. (For example, in a calendar year permits may be issued for no more than one four-family structure, or two two-family structures, or one three-family and one two-family structure).

### **7.2-1 Procedures**

All permits shall be issued in accordance with the following procedures:

- A. Any natural person, partnership, corporation, realty trust, or legal entity may apply for no more than one permit in any given month. In the case of an application constituting two or more dwelling units, the aforesaid interval shall be one month for each dwelling unit. For the purposes of this Section, subsequent applications in the same one-month or two-month period, as the case may be, by any natural person, partnership, corporation, realty trust or legal entity which in any way has a common ownership, interest or control with previous applications in the same month or months shall be denied, and shall be returned to the applicant.
- B. Permits shall be issued on or before Friday (or in case of a holiday, on whatever day is the last day of the week that the Franklin County Cooperative Inspection Program offices are open for Building Inspector's business) of each week by the Building Inspector (following approval by the Building Inspector). The Building Inspector shall act on each permit in order of submission. Any permit application that is incomplete or inaccurate shall be returned to the applicant and shall require a new submission.
- C. From the first Friday in January through the tenth (10th) Friday of the year, either no (0) permit if there are no approved applications awaiting issuance, or one (1) permit if there is

one or more approved applications awaiting issuance, shall be issued in any given week. If all ten (10) permits have not been issued by the tenth (10th) Friday of the year, the remaining permits shall be issued for approved applications at the rate of one or more per week until all ten (10) permits are issued for that year. Should the Building Inspector issue nine (9) permits and subsequently receive a permit application for a two-, three-, or four-family structure, the application shall be passed over and retained by the Building Inspector (see 7.2-1G below). In circumstances where paragraph 7.2-1E below applies, there may be more than ten (10) permits available for issuance.

- D. The Building Inspector shall mark each application with the time and the date of submission, and shall act on each application in a timely manner. He/she shall issue approved permits in accordance with the schedule in paragraph 7.2-1C above. If the Building Inspector has more approved permits in any given week than he/she is authorized to issue, the Building Inspector shall retain said permits to be issued in the order in which the applications were submitted.
- E. If a Building Permit lapses or is declared invalid by the state board of building code appeals or a court in the same calendar year in which it was issued, it shall be returned and counted as an additional permit available for issuance during that same calendar year. A permit which lapses or is declared invalid in a calendar year different from the year in which it was issued shall be returned and counted as an additional permit to be issued during the calendar year in which it lapsed or was declared invalid only if 1) there were more approved applications for Building Permits than were issued in the year when the said Building Permit was issued, and 2) if there are any intervening years between the calendar year of issuance and calendar year in which said permit lapsed or was declared invalid, there were also more approved applications for Building Permits than were issued during all of those intervening years.
- F. Permits not issued in any calendar year shall not be available for issuance in any subsequent year.
- G. By the first Friday of January during any calendar year in which this Section 7.2 of this Bylaw is in effect, the Building Inspector shall determine whether or not each approved application for which a permit has not been issued during the previous calendar year shall be retained. Upon being informed in writing by the applicant before said first Friday in January that the applicant desires the application to remain in effect, the Building Inspector shall continue to treat said application as an approved but not issued application in accordance with this Section 7.2. All approved applications for which a permit has not been issued, and for which the applicant has not informed the Building Inspector in writing by the said first Friday in January of the applicant's desire for the application to remain in effect shall not be retained, and the application shall be returned to the applicant.
- H. The total number of permits to be issued for the calendar year 2008 shall be ten (10).

### **7.2-2 Affordable Housing**

Except as provided herein and upon a determination by the Planning Board, under a Special Permit, dwelling units that qualify as affordable housing, as defined in this Bylaw, shall be exempt from the provisions of this Section 7.2. Affordable dwelling units exempted under this Subsection 7.2-2 shall nevertheless be counted toward the ten (10) permit yearly maximum established in Section 7.2 above.

### **7.2-3 Exemptions**

Where no dwelling units are added, the provisions of this Section 7.2 shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, rehabilitation, or reconstruction of dwellings existing on lots as of the date of passage of this Bylaw.

## **SECTION 7.3 PERIODIC REVIEW**

During the period that this Rate of Development provision is in effect, the Planning Board shall monitor the effectiveness of this Bylaw in achieving the Town's goals and purposes, as expressed in the Master Plan, and shall report its findings, together with recommendations for modifications to this Bylaw if any, to the Town in its annual report and at the Annual Town Meeting. The Planning Board shall also monitor the effects of this Article VII on the growth and development of the Town of Shutesbury and surrounding towns to determine whether or not the limitation on Building Permits is serving the intended purposes and whether it is having the effect of displacing growth and its impacts onto other communities in the region. The Planning Board shall, no later than Annual Town Meeting in the year 2013, make recommendations concerning needed amendments to this Bylaw, including this Article VII, to ensure that this Zoning Bylaw is effectively implementing the Master Plan and that this article is not adversely affecting other towns in the region.

## **ARTICLE VIII SUPPLEMENTARY REGULATIONS**

### **SECTION 8.1 CLEARING, EXCAVATION, FILLING, AND GRADING**

**8.1-1** Clearing, excavation, filling, and grading necessary for the construction of a structure or accessory uses for which a Building Permit has been issued shall be permitted, provided that it is in full compliance with applicable wetland regulations, does not adversely affect natural drainage or structural safety of buildings or lands, cause erosion, sedimentation, or contamination of groundwater or surface water, or create any noxious condition or hazard to public health or safety. Burial or storage of stumps resulting from the cutting of trees shall not be visible from a public road.

**8.1-2** In the event that construction of a structure is stopped prior to completion and presents a danger to public health or safety, the premises shall be promptly cleared of any rubbish, debris, or building materials and restored to a safe condition.

**8.1-3** The Planning Board or Zoning Board of Appeals may, in connection with a Site Plan or Special Permit approval, require an applicant to post a bond or other form of security to guarantee reclamation of areas to be excavated or graded as in Subsection 8.5-5 A, B, and F. Such bond or other security shall be for an amount reasonably related to the potential cost of such reclamation, and shall be in a form deemed acceptable by Town Counsel.

**8.1-4** For regulation of Soil Mining, see Subsection 8.5-5 of this bylaw.

**8.1-5** Except as provided in Subsection 8.1-1 above, no substantial excavation, filling, grading, grubbing, or clearing in preparation for site development shall be undertaken prior to the grant of any Special Permit, Site Plan, or subdivision approval required for such development. Violators of this provision shall, in addition to being subject to enforcement action as provided in Section 10.2, be precluded from receiving any Special Permit, Site Plan, or Subdivision approval on the site for a period of three (3) years from the date such excavation, filling, grading, grubbing, or clearing occurred. This provision shall not prevent landowners from maintaining existing roads, driveways, or other facilities on their properties. The approving board may waive this restriction on future applications if the landowner in violation takes remedial action to restore the site to its condition as it existed prior to the unlawful excavation, filling, grading, grubbing, or clearing.

## **SECTION 8.2 PARKING**

All uses shall provide adequate off-street parking, which shall be determined by the approving board or Building Inspector at the time of Special Permit, Site Plan, or Building Permit approval. Off-street parking is inadequate if the parking demand cannot be accommodated on-site under normal conditions. Except in the case of accessory apartments under Subsection 4.2-2, a minimum of two off-street parking spaces, with adequate disposal of storm water, shall be provided for all uses. The approving board or Building Inspector may require additional off-street parking spaces if such spaces are deemed necessary for safe use of the property.

## **SECTION 8.3 RURAL SITING PRINCIPLES**

The following standards for land development shall apply to the siting of all uses and structures that are in Open Space Designs or subject to Site Plan or Special Permit approval. They are recommended but not required for the siting of individual residences on existing lots where no Site Plan or Special Permit review is required.

**8.3-1** Wherever feasible, retain and reuse existing old farm/woods roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls or where an existing road is aligned in a way that disrupts drainage or accelerates erosion.)

**8.3-2** Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.

**8.3-3** Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.

**8.3-4** Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner historically found in the Town. If vegetative buffers are used, a minimum depth of 50 feet of mixed ground-covers,

shrubs, and trees should be provided. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.

**8.3-5** Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.

**8.3-6** Site buildings so that they do not protrude above treetops and crestlines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

**8.3-7** Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

**8.3-8** Where feasible, site buildings and other areas to be developed in a manner that does not block trails or paths that have traditionally provided access to back land. This provision shall not be construed to create any public access rights that do not otherwise exist.

## **SECTION 8.4 SIGN REGULATIONS**

### **8.4-1 Purpose**

The purpose of sign regulations is to provide for the reasonable control of signs and advertising devices to preserve and enhance the historic appearance and scenic amenities of the Town without unduly restricting the conduct of lawful enterprises. These regulations are intended to protect public safety by allowing signs that clearly identify premises without distracting motorists or obstructing visibility and/or clearance.

### **8.4-2 Permitted Signs**

A. The following types of signs are permitted by right:

1. One sign for each family residing on the premises, indicating the name of the premises and the name of the owner or occupant provided such sign does not exceed two (2) square feet in area.
2. One sign, not exceeding four (4) square feet in area, for a permitted accessory use located on the premises.
3. Signs indicating the sale of agricultural or horticultural products, providing that the signs do not exceed 30 square feet in area.
4. Temporary signs pertaining to the construction, lease or sale of the premises provided such signs do not exceed twelve (12) square feet in total area.
5. Signs or bulletin boards not exceeding thirty (30) square feet in area in connection with public, charitable or religious uses.

6. Non-commercial signs promoting an idea, position, political candidate, or other form of non-commercial expression protected by the United States and Massachusetts Constitutions, provided that such signs do not exceed thirty (30) square feet in area.
- B. The following types of signs require a Special Permit from the Zoning Board of Appeals:
  1. Directional or identification signs where such signs will serve the public convenience and will not be detrimental to the neighborhood with respect to size, location or design.
  2. Signs for commercial activities, provided that they do not exceed twenty (20) square feet in total area for any retail or consumer service or more than thirty (30) square feet in total area for any other commercial use.

#### **8.4-3 Special Sign Restrictions**

- A. No sign or advertising device shall incorporate motion, be lighted by a change in light intensity, or have a message with movable or electronic letters that changes from time to time.
- B. Signs or other advertising devices may be illuminated, but such illumination shall be external to the sign and shall be either indirect or shielded by translucent material.
- C. Display of advertising painted on or attached to a vehicle is prohibited, when the primary use of the vehicle is for display rather than transportation, and where the vehicle is usually parked within sight of a public way.
- D. No sign shall be higher than ten (10) feet above the natural grade.
- E. No sign shall be located off the premises to which it applies except as indicated in Subsections 8.4-2A(3), (5), (6), and 8.4-2B(1).

#### **8.4-4 Nonconforming Signs**

An existing sign which was erected lawfully, but which does not conform to this bylaw may continue to be used. However, if it is enlarged, redesigned or altered in any way, it shall be brought into conformity with this bylaw.

### **SECTION 8.5 REGULATIONS FOR SPECIFIC USES AND ACCESSORY USES**

#### **8.5-1 Home Occupations**

##### **A. Customary Home Occupations**

A home occupation shall be permitted by right as an accessory use and no permit shall be required, provided that:

1. It is incidental to a permitted principal use on the same premises
2. It is not detrimental to a residential or rural neighborhood, and the existing character of the neighborhood is preserved
3. It is clearly secondary to the use of the premises for dwelling purposes
4. It has no more than three (3) non-resident employees working primarily on the premises
5. Adequate off-street parking is available
6. There are no exterior alterations that change the residential appearance of the dwelling
7. Except as provided in (8) and (9) below, there is no exterior indication of the accessory use and no exterior display of merchandise of greater than 100 square feet in total area.
8. All storage of materials, supplies, or equipment is within the principal building, suitable

accessory buildings, and/or within no greater than 500 square feet of total outdoor yard area.

9. No more than one sign, not exceeding four (4) square feet in area, is used to identify the home occupation.

**B. Major Home Occupations**

Home occupations that do not comply with the requirements in 8.5-1A above may be allowed by Special Permit if they satisfy the standards for a Special Permit in Subsection 9.2-2, provided that any numerical limits in A may not be more than doubled and such home occupations must comply with Subsections A(2) and A(5).

**8.5-2 Non-Residential Uses**

Non-residential uses, identified as Business Uses and Community Uses in the Use Table in Subsection 3.1-1, shall comply with following standards, unless such standards conflict with the restrictions on municipal regulatory authority contained in MGL. Ch. 40A, §3:

- A. Outdoor storage of materials or equipment shall be screened throughout the year from off-premises view by vegetation, grade or location.
- B. Parking for the use shall be located off-street and screened, unless the approving board modifies this requirement.
- C. No more than two vehicles in excess of 10,000 pounds GVW shall be parked on the premises longer than necessary for loading or unloading unless screened from view unless the approving board modifies this requirement.
- D. Traffic generated shall not be disruptive to the neighborhood considering volume, type and hours, unless the approving board agrees that reasonable modifications are justified by the size and location of the lot.
- E. The use must not cause or contribute to any erosion of land or increase surface water drainage from the lot.

**8.5-3 Educational, Religious, or Child Care Use**

Educational uses, religious uses, family day care homes, day care centers, and school age child care programs, as described in MGL. Ch. 40A, §3, are permitted by right subject to all applicable provisions of this bylaw. The review of such uses by the Building Inspector is limited to reasonable regulation of the bulk and height of structures and consideration of lot area, yard size, setbacks, open space, building coverage, and parking.

**8.5-4 Commercial Campgrounds**

- A. An individual trailer, mobile home, or camping vehicle may not be used as a dwelling, except as provided in Subsection 3.2-3 or in a commercial campground.
- B. A commercial campground of fifty (50) acres or more for cabins, cottages, tents, camper units or trailers may be allowed by Special Permit, provided that it is under single ownership and is used for seasonal or part-time occupancy only.
- C. Under the provisions of this Section, the sites, facilities or buildings may be used or occupied for a maximum of 180 days during any 12-month period for recreational purposes and shall not be subject to the lot area and yard requirements which pertain to other residential uses; however, such development shall not exceed an overall density of one camping unit per acre.

- D. Except for supervisory or maintenance personnel, no part of the premises shall be occupied on a permanent basis.
- E. Any such use of land for purposes of commercial camping and related recreation shall be subject to the granting of an appropriate permit by the Board of Health, under the provisions of the Manufactured Housing Act, MGL. Ch. 140, §§ 32 A-D and subject to approval by the Massachusetts Department of Public Health under the Environmental Code for Developed Type Camp Grounds.
  - 1. These approvals shall be obtained prior to the public hearing before the Planning Board.
  - 2. A detailed Site Plan showing all camping and tenting areas, trailer or building sites, water supply and sanitary facilities shall be submitted to the Planning Board and must be displayed at the public hearing.

### **8.5-5 Soil Mining**

- A. The following regulations apply to soil mining operations, subject to the rights and benefits accorded to agricultural uses under the laws of the Commonwealth.
- B. These regulations do not apply to lawfully pre-existing commercial soil mines existing as such on May 3, 2008 and the expansion of such pre-existing mines within the same parcel of land, provided that such expansion does not result in a mining area more than twice the area of the soil mine as it existed on the aforesaid date, and provided further that the requirements of Subsection 8.5-5B(1) below are met for any such expanded soil mining operation.
- C. The Special Permit Granting Authority shall impose conditions to:
  - 1. Screen the operation by any reasonable method such as fencing, berming, or planting if the operation is to continue for more than one year.
  - 2. Require that the site be partially reclaimed on an ongoing basis and fully reclaimed within three months after the use has been terminated or abandoned, by:
    - a. Regrading the land, replacing topsoil, and revegetating sections of the operation as excavation and mining are completed, to minimize erosion. Revegetation shall be performed in a manner that effectively holds the soil in place and prevents erosion. Final grading of the site shall not result in slopes steeper than 2:1 (50% slope).
    - b. Limiting the unvegetated area to a maximum of 5 acres at any one time.
    - c. Reserving sufficient topsoil during the operation to replace topsoil in the entire area of the operation to a depth of at least six inches after the use has been terminated.
    - d. Chipping and resspreading all cleared trees and brush on the site, unless otherwise permitted by the Special Permit granting authority.
  - 3. Establish setbacks requiring that excavated areas and processing operations be at least 100 feet from all property lines and any public or private way or right of way. Within this setback area, a 100-foot buffer zone of naturally existing vegetation shall be maintained.
  - 4. Protect groundwater resources, by:
    - a. Establishing through on-site investigations and soil observations the elevation of the seasonal high groundwater elevation.
    - b. Maintaining a minimum separation of four feet between the estimated seasonal high groundwater elevation and the bottom of pit excavation.
  - 5. Ensure proper disposal of stumps. Disposal by burial of stumps on site is not

- permitted. Surface composting or grinding of stumps is permitted, provided that the resulting materials are not visible from a public road in winter.
6. Contain and control stormwater runoff on-site. The off-site discharge of runoff from land disturbing activities in excess of one acre requires an EPA permit under the federal NPDES program.
  7. Ensure compliance with the conditions of the permit, by requiring the posting of a cash deposit, surety bond, or other security sufficient to meet the cost of the required reclamation work.

## **SECTION 8.6 CURB CUTS AND DRIVEWAYS**

### **8.6-1 Curb Cut Permit**

- A. A written curb cut permit shall be required for the extension of any road or driveway into a Shutesbury town way or into any public way which, by statute, the town is obligated to repair and maintain. This requirement shall apply to temporary driveways used to conduct percolation tests or otherwise to gain entry into a property from a public way.
  1. In cases where Site Plan review or a Special Permit is not required, such curb cut permit shall be issued by the Highway Superintendent having charge of the maintenance and repair of such public way.
  2. In cases where a Site Plan review or Special Permit is required, the curb cut permit shall be issued by the approving board after consultation with the Highway Superintendent.
- B. The Highway Superintendent or approving board shall, within 40 days of receiving a complete application, issue a decision in writing to grant or deny the the curb cut permit.
  1. If the recommendation or decision is to deny the permit, the Highway Superintendent or approving board shall specify the reason(s) for denial based upon considerations of public safety.
  2. The Highway Superintendent or approving board may recommend or impose conditions on any permit intended to promote public safety and convenience, as well as to preserve natural and man-made scenic or environmental features of the road and adjacent land.
  3. A curb cut permit shall not be granted unless the Highway Superintendent or approving board has determined that the proposed entrance provides adequate sight distance for exit and entry onto the town or public way in accordance with Massachusetts Highway Department standards.
- C. Any applicant for a curb cut permit shall provide a scaled and dimensioned drawing of the proposed road or driveway, showing all information that the Highway Superintendent or approving board, in his/her/their discretion and judgment, considers necessary or appropriate in order to make a decision. The Highway Superintendent or approving board may waive such requirements if he/she determines less information is required. Such information shall include, but is not limited to, the following:
  1. Scale, north point, and property boundaries;
  2. Name of intersecting town or public way;
  3. Location, design, dimensions (including length and width), intended use, and grade(s), of the proposed private road or driveway;

4. Surfacing and construction materials;
  5. Drainage provisions;
  6. Applicant's individual and/or firm name, with applicant's address, telephone number and signature;
  7. The Assessors' parcel number (from tax maps).
- D. Any person who violates this regulation shall be subject to enforcement action as provided in Section 10.2. If such violation or if any other action taken in implementing a curb cut permit causes damage to any road, culvert, roadside tree, stone wall, or other natural or man-made feature, such person shall be liable in tort to the Town of Shutesbury for all damages caused thereby, and for the cost and expense of remedying the condition, removing any obstructing material, and restoring the road and adjacent land to its former condition.
- E. An applicant for a curb cut permit shall comply with applicable regulations of the Conservation Commission pursuant to the Wetlands Protection Act, MGL. Ch. 131, §40.

### **8.6-2 Driveways and Common Driveways**

Every lot shall have vehicular access from its frontage, unless a Special Permit has been granted for the use of a common driveway to provide such access.

#### **A. Driveway Regulations**

1. The driveway shall be designed before a Building Permit for a newly constructed dwelling is approved, and the driveway construction shall be completed before any occupancy or use of the premises is permitted.
2. The traveled portion of the driveway shall be located no less than fifteen (15) feet from any abutting property lot line unless either a Special Permit or a permit for a Common Driveway is granted by the Planning Board.
3. The grade of each driveway where it intersects the street line (defined as the edge of the travelled lane) shall not exceed five percent (5%) for a distance of twenty (20) feet from the street line, nor shall it exceed five percent (5%) from the street line to the traveled portion of the street.
4. All driveways shall be designed and constructed in a manner to assure reasonable and safe access to all vehicles, including but not limited to emergency vehicles of all types. The traveled portion of a driveway shall be a minimum of twelve (12) feet wide in order to insure such access. The maximum grade of a driveway shall be 15% and the maximum length shall be 1,000 feet.
5. All driveways shall be designed and constructed so as to reasonably minimize any drainage problem upon or adjacent to any street or lot.
6. An applicant for a driveway permit shall comply with applicable regulations of the Conservation Commission pursuant to the Massachusetts Wetlands Protection Act, MGL. Ch. 131, §40.

#### **B. Common Driveway Regulations**

1. Common Driveways are allowed by Special Permit from the Planning Board. (*Added 2018*). At most, six (6) dwelling units (counting accessory apartments as separate dwelling units) may be served by or otherwise share a Common Driveway. A Common Driveway shall lie entirely within the lots being served or on open space land in Open Space Designs and shall, if serving more than two dwelling units, be

- named as a "way" (Example: "Wilson Way") with a sign placed in plain view from its intersection with a public way.
2. The applicant(s) must provide all of the following:
    - a. Evidence of deeded covenants for all affected lots which include provisions which are adequate in the opinion of the Planning Board and Town Counsel to (i) establish a maintenance association comprised of the owners of all lots served by the common driveway; (ii) ensure continued maintenance of the shared driveway surface and its drainage structures; (iii) provide for the collection of dues and assessments necessary for such ongoing maintenance, repair, and any plowing/sanding of the shared driveway; and (iv) provide an enforcement mechanism enforceable by the maintenance association in the event of non-payment of dues or assessments by a member.
    - b. Guarantees including but not limited to financial security as provided by the Shutesbury Regulations entitled "Regulations Governing the Subdivision of Land", that the Common Driveway will be constructed if the permit is issued;
    - c. A plan signed by a registered professional engineer for the Common Driveway showing alignments, grades, subsurface preparation, drainage facilities, and surface materials.
  3. The Common Driveway must be designed to safely handle the proposed traffic and provide year-round access for emergency vehicles, and must satisfy at least the regulations for driveways in this Bylaw. The Planning Board may require additional standards for subsurface preparation, drainage, alignment, and surfacing as it sees fit. Such standards may not be more stringent than the requirements for a "Minor Street," as defined in the "Regulations Governing the Subdivision of Land."
  4. A Common Driveway shall in no way exempt the applicant(s) from meeting applicable frontage requirements on a public or private way for each individual building lot unless the lots are in an approved Open Space Design or a reduction in frontage requirements is granted in accordance with Subsection (5) below.
  5. Flexible Frontage
    - a. In order to reduce the number of curb cuts onto Town roadways, preserve the natural and cultural resources visible along these roadways, facilitate the movement of wildlife across roadways, protect recreational access to backland, and improve the design and Site Planning of smaller residential neighborhoods, the Planning Board may approve in its Special Permit for a common driveway, a reduction or elimination in frontage requirements on a public or private way for one or more of the lots proposed to be served by the common driveway.
    - b. Such reduction or elimination of frontage requirements shall not affect any other dimensional requirement for the lots to be served by a common driveway or result in more than twice the number of lots otherwise possible without such reduction or elimination.
    - c. In order to take advantage of this option, an applicant shall obtain the required Special Permit for the common driveway prior to seeking approval for the creation of the subject lots under the "Approval Not Required" provisions of the Town's "Regulations Governing the Subdivision of Land." The Planning Board may

approve such frontage reductions or eliminations only if it finds that the goals listed in the first sentence of this paragraph (5.a) will be better achieved than without the reductions or eliminations. In addition to the standards for Special Permits under said Section 9.2, the Planning Board shall also apply the Rural Siting Principles under Section 8.3.

## SECTION 8.7 WIRELESS COMMUNICATION FACILITIES

### 8.7-1 Purpose and Intent

The purpose of this Section is to establish standards for siting wireless telecommunication towers and facilities in Shutesbury. The intent of this Section is to:

- A. Encourage the location of wireless communication devices on pre-existing structures so as to minimize the total number of towers and visual impact upon the community;
- B. Require the co-location of new and existing tower sites thereby reducing the need for new facilities;
- C. Locate towers and facilities, to the extent possible, in areas where adverse environmental, historic, and visual impact to the community and adjacent property is minimal;
- D. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently; and
- E. Make available wireless telecommunications tower locations on a preferential basis to local municipal agencies on the same financial terms as commercial providers.

### 8.7-2 Definitions

As used in this Section 8.7, the following definitions apply:

**Applicant** shall mean any person applying for a Special Permit to construct, erect, install, operate, or substantially modify a Wireless Communication Facility, Wireless Communication Device or Wireless Communication Structure, or such person's agent, representative, or successor in interest. An Applicant or at least one of the Co-Applicants if there is more than one Applicant in an application must be a Telecommunications Service Provider.

**Application** shall mean the process of submission, consideration, and action on an Applicant's request for a Special Permit to construct, erect, install, operate, or substantially modify a Wireless Communications Facility, Device, Structure or Building; and the forms, documents, and information presented to the town in the course of said request. The application includes verbal representations made by and on behalf of the Applicant to the Planning Board.

**Distance** shall mean horizontal distance, measured on a horizontal plane.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

**Height** shall mean the vertical distance measured from the pre-existing ground level to the highest point on the structure.

**Non-residential structures** shall mean structures that do not contain any dwelling units,

including but not limited to grain silos, water towers, and church steeples.

**Telecommunications service provider** shall mean a corporation or organization that provides wireless communications service to the public through explicit license by the FCC as contemplated by the "Telecommunications Act of 1996" in the term "carrier".

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

**Wireless communication device** shall mean any antenna, appurtenance, wiring or equipment used in connection with the reception or transmission of radio frequency electromagnetic radiation which is attached to a structure.

**Wireless communication facility** shall be used as a general term to include wireless communication building, wireless communication device, and wireless communication structure, and shall exclude communication relay structures, TV broadcast systems, radio broadcast systems and similar systems.

**Wireless communication structure** shall mean any structure or tower intended to support equipment used for the transmission and reception of radio frequency electromagnetic radiation, including antennae, wiring, or other devices attached to or mounted on a structure.

**Wireless communication tower** shall refer to any structure whose height greatly exceeds its width and which is used for the mounting of wireless communication devices.

### **8.7-3 Exemptions**

The following shall be exempted from this bylaw and are permitted by right:

- A. Wireless Communication Facilities used for town or state emergency services, subject to the standards in Subsections 8.7-4 C, 8.7-4D, and 8.7-5A below.
- B. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the FCC and used solely for that purpose.
- C. Wireless communication structures and devices used expressly for home television reception and personal wireless communications.

### **8.7-4 General Standards**

- A. Wireless telecommunications facilities may be located in the Town of Shutesbury upon the granting of a Special Permit from the Planning Board in accordance with the requirements set forth herein and the requirements for Special Permits contained in Section 9.2.

Upon written request by the applicant, the Planning Board may waive or reduce any requirement of this Section 8.7 by the same majority vote required for the permit itself upon written findings included in the permit of:

- 1. special circumstances of the site, its surroundings, or the proposal that negate the need for imposition of the requirement; or the objectives of this section may be met in an alternative manner; and
- 2. that such a waiver or reduction will not derogate from the public purposes and intent of

this zoning bylaw. In the case of a special permit, such requests must be made by the applicant no later than the close of the public hearing. An affirmative or negative vote under this paragraph shall not be construed as an approval or disapproval of the permit sought.

- B. Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- C. Wireless communication structures shall be built with structural integrity to accommodate devices operated by another carrier with little or no modification.
- D. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on site, and shall be used only for the housing of equipment related to the particular Wireless Communication Facility on site.

### **8.7-5 Siting and Height Requirements**

#### **A. Setbacks**

- 1. The minimum horizontal distance from the base of the wireless communication structure and any attached wireless communication devices to any property line or road right-of-way shall be the greater of the following:
    - a. the tower height plus 10 feet; or
    - b. the “fall zone,” as determined by a licensed professional engineer, plus 10 feet.
  - 2. The minimum horizontal distance between the wireless communication structure and existing abutting residences shall be three times the height of the structure.
  - 3. The wireless communication facility shall comply with applicable zoning setback requirements.
- B. The height of the wireless communication structure and any attached wireless communication devices shall be no greater than 100 feet. Tower height shall be measured from grade, and shall include the tower itself, its base pad, and any attached facilities.
- C. The wireless communication structure shall, when possible, be sited off ridge lines and where visual impact is the least detrimental to valuable historic and scenic areas. Valuable areas shall be determined by the Planning Board, and may be views that Shutesbury has identified as scenic in the Shutesbury Open Space and Recreation Plan or the Shutesbury Master Plan, or areas that are listed in the Massachusetts Landscape Inventory, MGL. Ch. 131, §.39A, conducted by the Massachusetts Department of Environmental Management, 1982.
- D. No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing wireless communication structure or other non-residential structure can accommodate the Applicant’s proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the Applicant’s proposed device may consist of any of the following where each such structure is specifically identified:
- 1. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the Applicant’s engineering requirements.
  - 2. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the Applicant’s requirements.

3. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be strengthened to support the proposed wireless communication device.
4. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
5. The fee, costs, or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable. Unreasonable cost would be twice the cost of building a new structure.
6. The Applicant demonstrates that there are other limiting factors that render use of existing structures unreasonable.

#### **8.7-6 Design Requirements**

- A. Wireless communication structures shall be designed to accommodate the maximum number of users technologically possible, consistent with the requirements and limitations of this bylaw (e.g., limitations on tower height).
- B. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving the phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication structures and devices shall be colored, molded, and/or installed to blend into the structure and/or landscape.
- D. Wireless communication facilities shall be fenced to control access (not necessarily the entire property).
- E. Night lighting of wireless communication facilities shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring night lighting shall be submitted with the application.
- F. There shall be a maximum of one parking space for each facility to be used for parking in connection with maintenance of the site and not to be used for storage of vehicles or other equipment.
- G. Existing on-site vegetation shall be preserved to the maximum extent possible.
- H. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

#### **8.7-7 Application Process**

- A. The Shutesbury Planning Board is hereby designated the Special Permit Granting Authority to grant Special Permits for wireless telecommunications towers and facilities in accordance with MGL. Ch. 40A, §9, applicable provisions of this bylaw, and in accordance with any rules and regulations that the Planning Board may adopt relative hereto.
- B. A Special Permit granted under this bylaw shall expire within two (2) years of the date of issuance of the permit, if no Wireless Communication Facility is constructed.
- C. Failure to provide all of the required materials and information shall be grounds for denial of an application. The Planning Board may require additional or supplemental information at its discretion, and the Applicant's failure to timely provide such information shall also be grounds for denial of the application.
- D. The applicant or Co-Applicant must be a telecommunications service provider or a tower

construction company that holds a current contract with a telecommunications service provider for use of the proposed tower to provide wireless communication services to the public.

- E. Submission requirements for a new Wireless Communication Facility shall include:
1. Site Plans and engineering plans, prepared by a professional civil engineer licensed to practice in Massachusetts, on 24" by 36" sheets at a scale of 1"=40' or 1"=200', where appropriate, on as many sheets as necessary which show the following:
    - a. north arrow, date, scale, seal(s) of licensed professional(s) who prepared the plans and space for reviewing engineer's seal
    - b. name and address of landowner and names and addresses of abutters
    - c. property lines and location of permanent structures and buildings, within a 500-foot radius of the proposed wireless communication structure
    - d. existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of two-foot contour intervals and spot elevations at the base of all proposed and existing structures
    - e. vegetation to be removed or altered
    - f. plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure
    - g. delineation of wetlands, if any
    - h. location of the wireless communication structure, including supports and guy wires, if any
    - i. plans for anchoring and supporting the structure, including specifications of hardware and all other building materials, and wind/ice survivability estimates
    - j. plans for accessory buildings
    - k. layout and details of surfacing for access road and parking
    - l. amenities such as lighting, fencing, and landscaping
    - m. four view lines in a one-to-three mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines from any historic, scenic, or other prominent areas of Shutesbury, as determined by the Planning Board, based on scenic views and areas identified in the Shutesbury Open Space and/or Master Plan.
  2. A map showing all areas covered/served by the proposed wireless communications structure and device of different signal strengths, and the interference with adjacent service areas.
  3. A narrative description of the type of service being provided, including the number of channels or number of supported communication links, maximum RF power level, effective radiated power, ranges of frequencies of operation both transmit and receive, and type(s) of modulation.
  4. A report setting forth the proposed power density of the Facility that demonstrates how FCC standards for RF emissions are met.
  5. If the service requires point-to-point links or other relay or RF communications not specifically between the subscriber and the facility, details of such additional communications requirements shall also be described.
  6. A locus map at a scale of 1"=1000', which shall show streets and landscape features

7. A description of the soil and surficial geology of the proposed site
  8. A narrative report written by the proposed operator of the Wireless Communication Facility and a licensed professional engineer which shall:
    - a. describe the justification of the proposed site,
    - b. describe the structure and the technical, economic, and other reasons for the facility design,
    - c. describe the capacity of the structure, including the number and type of additional facilities that it can accommodate,
    - d. describe the actions to be taken if the electromagnetic radiation from the facility should exceed levels designated by the FCC,
    - e. describe the projected future needs of the operator of the Wireless Communication Facility, and how the proposed wireless communications facility fits with future projections to serve Shutesbury and adjacent communities,
    - f. describe leasing agreement should another carrier desire to co-locate,
    - g. describe special design features to minimize visual impact of the proposed wireless communication facility, and
    - h. provide simulated graphical depictions of the appearance of the facility from all public ways where it may be seen.
  9. Proof of approval of all other necessary permits needed for construction and operation.
  10. Evidence that a valid license has been granted to the Applicant (or Co-Applicant) for the specific service in the specific location by the FCC. A photocopy of such license is sufficient for the application, although other evidence may be required prior to approval.
- F. Submission requirements for a wireless communication device located on an existing wireless communication structure or non-residential structure (including co-location with another carrier) shall include:
1. All information described in Subsection 8.7-7 E above except for the narrative report as described in Subsection 8.7-7 E(8).
  2. A narrative report written by the proposed Wireless Communication Facility operator and a licensed professional engineer which shall:
    - a. include a draft contract between the non-residential structure owner and the Applicant
    - b. demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such a device,
    - c. describe the actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
    - d. describe the projected future needs of the carrier, and how the proposed facility fits with future projections.
  3. If the proposed facility adds more than 5 feet to the height of the non-residential structure at the effective date of this bylaw, the Planning Board may require a demonstration of height with balloons, as described in Subsection 8.7-8A below.
- G. The information required in Subsection 8.7-7E or F shall be submitted along with the regular Special Permit application form, as follows:
- 1 copy to the Building Inspector,

- 1 copy to the Fire Chief,
- 1 copy to the Chief of Emergency Services or Department of Public Works, and
- 3 copies to the Planning Board.

#### **8.7-8 Review and Approval**

- A. The Planning Board may require the Applicant to perform an on-site demonstration of the visibility of the proposed tower by means of a crane with a mock antenna array raised to the maximum height of the proposed tower. A colored 4' minimum diameter weather balloon held in place at the proposed site and maximum height of the proposed tower may be substituted for the crane if approved by the Planning Board. The date and location of the demonstration shall be advertised at least 14 days, and not more than 21 days before the demonstration, and again in the public hearing advertisement in a newspaper with a general circulation in Shutesbury. Failure in the opinion of the Planning Board to adequately advertise the demonstration may be cause for the Planning Board to require another, properly advertised, demonstration.
- B. In the event that the Planning Board determines that circumstances necessitate expert technical review, the Planning Board reserves the right to select expertise for the review, and the expense of the review shall be paid by the Applicant, as provided in Section 9.6.
- C. In granting a Special Permit for Wireless Communications Facilities, the Planning Board shall find:
  1. That the Applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this bylaw have been met.
  2. That the size and height of the structure are the minimum necessary.
  3. That the proposed Wireless Communication Facility will not adversely impact historic structures or scenic views.
  4. That there are no feasible alternatives to the location of the proposed Wireless Communication Facility, including co-location, that would minimize their impact, and that the applicant has exercised good faith in permitting future co-location of Wireless Communication Facilities at the site.
- D. When considering an application for a Wireless Communication Facility, the Planning Board shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences, and the requirement to use existing structures wherever feasible.
- E. Any extension or construction of new or replacement towers or transmitters shall be require amendment of the Special Permit, following the same procedure required for siting a new wireless communication device on an existing structure.

#### **8.7-9 Conditions of Use**

- A. As provided in Subsection 9.2-3E below, the Applicant shall post an initial performance bond or other security to cover construction costs, as well as an annual maintenance bond or other security to cover maintenance for the access road, site and structures, and additional security to cover the removal of the facility in the event of non-operation. The amount of such performance bonds or security shall be determined by the Planning Board pursuant to Subsection 9.2-3E.
- B. Regulatory Compliance. The applicant shall comply with the following additional post-

approval requirements.

1. The Special Permit holder (or other owner or operator) shall demonstrate the structural integrity of the structure and continuing compliance with current standards of the FCC, FAA, and the American National Standards Institute with the Building Inspector, which shall be reviewed by a licensed professional engineer hired by the Town of Shutesbury and paid for by the Special Permit holder.
2. If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within 6 months or earlier if a more stringent compliance schedule is included in the regulation.
3. Failure to comply with any regulations shall be grounds for the Planning Board to revoke this Special Permit and require removal of non-complying structures, buildings, and devices at the owner's expense.
4. If a wireless communication device is moved lower on the structure and the top of the structure is no longer needed, the non-operational part of the structure shall be removed in 120 days.

C. Removal and Repair.

1. An Applicant shall execute a covenant with the Planning Board agreeing to remove, within 180 days of notice from the Town, any Wireless Communication Facility not in operation for a period of 12 months, unless the non-operation is a result of major damage not caused by the fault of the owner or operator.
2. If the facility is not removed within 180 days, the Town shall remove said facility at the owner's expense.
3. In the event of major damage not caused by the fault of the owner or operator, repair must begin within 6 months of such damage.

## **SECTION 8.8 SMALL WIND ENERGY SYSTEMS**

### **8.8-1 Purposes**

The purposes of this Section 8.8 are (a) to provide a permitting process for Small Wind Energy Systems (SWES) so that they may be utilized in a cost-effective, efficient, and timely manner to reduce the consumption of utility-supplied electricity; (b) to integrate these systems into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and (c) to protect health and safety, while allowing wind energy technologies to be utilized for citizens' general welfare.

### **8.8-2 Special Permit Requirement**

- A. Small wind energy systems that comply with the requirements of this Section may be allowed by Special Permit as provided in Article IX below. The SPGA may grant a Special Permit only if it finds that the application complies with the provisions of this bylaw and is consistent with the applicable criteria for granting Special Permits. The SPGA may waive or adjust any of the requirements outlined below, consistent with the purposes of this Section, except for the special requirements for the reduction of setbacks in Subsection 8.8-3B(4).
- B. The Site Plan described in Subsection 9.2-1B of this bylaw shall be prepared to scale and

stamped by a professional land surveyor, registered landscape architect, or licensed civil engineer showing, in addition to other applicable requirements for a Site Plan, the location of the proposed SWES and any associated buildings or appurtenances, distances to all property lines and abutting dwellings, existing and proposed structures, existing and proposed elevations, public and private roads including temporary access roads, above and below ground utility lines, any other significant features or appurtenances, and any measures designed to mitigate the impacts of the SWES. Any portion of this Subsection 8.8-2 may be waived if in the opinion of the SPGA the materials submitted are sufficient for the board to make a decision.

### **8.8-3 Design Requirements**

#### **A. Blade Tip Height**

On parcels of less than one acre, the blade tip (defined as combined tower and turbine) height shall not exceed 80 feet. For parcels of one acre or more, the blade tip height shall not exceed 160 feet. For purposes of this Section, tower height shall be measured from the average elevation of the existing grade at the base of the tower to the highest reach of the blade tip of the turbine.

#### **B. Setbacks**

1. The minimum horizontal distance from the base of the tower structure to any property line or road right-of-way shall be the greater of either: the blade tip height plus 10 feet; or the "fall zone," as determined by a licensed professional engineer, plus 10 feet.
2. No part of the SWES, including guy wire and anchors, may extend closer to the property boundaries than the setback for zoning districts in the dimensional table in Subsection 4.2-1.
3. The tower base shall be a minimum of three times its blade tip height from existing abutting dwellings, as abutting is defined in the Zoning Act, MGL. Ch. 40A.
4. The SPGA may reduce the above setback distances for the SWES in the course of its review of the application, consistent with the requirements of public health, safety, and welfare and the purposes of this Section 8.8. If the setback distances are reduced so that the "fall zone" of the tower includes land on abutting property, such reduction shall only be permitted if the affected abutting property owner(s) executes a recorded easement allowing the fall zone onto such abutting property.

#### **C. Access.** All small wind energy systems shall be designed and maintained to securely prevent unauthorized access.

#### **D. Color and Finish**

A non-reflective exterior color designed to blend with the surrounding environment is encouraged. No logos, designs, decorations, or writing shall be visible at or beyond the property line.

#### **E. Visual Impact**

Where a SWES would be visible from existing occupied structures, the applicant shall demonstrate through project Site Planning and proposed mitigation that the SWES minimizes impacts on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design or appearance, buffering, screening, or lighting. All electrical cables from the tower base to all connected facilities shall be underground.

#### **8.8-4 General Requirements**

##### **A. Construction**

The construction, operation, maintenance and removal of wind facilities shall be consistent with all other applicable Town, State, and Federal requirements, including all applicable health, safety, construction, environmental, electrical, communications and aviation requirements.

##### **B. Operation and Maintenance**

An application for a Special Permit for a SWES shall include a plan for the general procedures for safe and effective operation and maintenance of the facility.

##### **C. Approved Wind Turbines**

Small Wind Turbine makes and models must appear on the approved list of the California Energy Commission Lists of Eligible Small Wind Turbines or New York State Energy Research and Development Qualified Wind Generators, or a similar list approved by another state or by the Commonwealth of Massachusetts if available.

##### **D. Compliance with State Building Code**

Building Permit applications for small wind energy systems shall comply with the state building code and all applicable electrical codes.

##### **E. Utility Notification**

No small wind energy system shall be installed until evidence has been given to the electrical inspector that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator and has been approved for an intertie agreement. Off-grid systems shall be exempt from this requirement.

##### **F. Noise**

Small Wind Energy Systems shall comply with the Massachusetts Noise Regulations, 310 CMR 7.10.

##### **G. Compliance with FAA requirements**

All SWES towers shall also comply with applicable FAA regulations.

#### **8.8-5 Abandonment and Removal**

##### **A. Abandonment**

Unless authorized by written approval from the Planning Board, a SWES shall be considered to be abandoned if it is not operated for a period of two years, or if it is designated a safety hazard by the Building Inspector. If the Building Inspector determines that a SWES is abandoned, the owner shall be required to physically remove the SWES within 90 days of written notice from the Building Inspector. The owner shall have the right to respond to the written notice of abandonment within 30 days of such notice. If the owner can provide information to demonstrate that the SWES has not been abandoned, the Building Inspector may withdraw the notice of abandonment. If the property owner fails to remove the small wind energy system in accordance with the requirements of this Section after 90 days of such notice and the Building Inspector has not withdrawn said notice, the Town shall have the authority to enter the property and physically remove the facility at the owner's expense.

##### **B. Removal**

"Physically remove" shall include, but not be limited to:

1. Removal of SWES, any equipment shelters, and security barriers from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
3. Restoration of the location of the SWES to a stable condition with vegetation sufficient to prevent erosion and sedimentation.

## **SECTION 8.9 FLOODPLAIN OVERLAY DISTRICT (ADDED 2012)**

### **8.9-1 Purposes**

The purposes of the Floodplain Overlay District are (a) to ensure public safety through reducing the threats to life and personal injury; (b) to eliminate new hazards to emergency response officials; (c) to prevent the occurrence of public emergencies resulting from a reduction in water quality, contamination, and/or pollution due to flooding; (d) to avoid the loss of utility services if damages by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; (e) to reduce costs associated with the response and cleanup of flooding conditions; and (f) to reduce damage to public and private property resulting from flooding waters.

### **8.9-2 Floodplain District Boundaries and Base Flood Elevation and Floodway Data**

- A. The **Floodplain District** is herein established as an overlay district. The District includes all special flood hazard areas designated on the Shutesbury Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated June 18, 1980 as Zone A and A1, which indicates the 100-year regulatory floodplain. The exact boundaries of the District are defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated December 1979. The FIRM and FIS reports are incorporated herein by reference and are on file with the Town Clerk, Zoning Board of Appeals, Planning Board, Building Inspector, and Conservation Commission.
- B. **Floodway Data:** In Zones A and A1, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- C. **Base Flood Elevation Data:** Base flood elevation data is required for subdivision proposals or other developments greater than 3 lots or 5 acres, whichever is less, within unnumbered A zones.

### **8.9-3 Notification of Watercourse Alteration**

The Shutesbury Conservation Commission shall notify the following of any alteration or relocation of a watercourse, in a riverine situation:

- Adjacent Communities
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, Ma 02114-2104

- NFIP Program Specialist  
Federal Emergency management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

#### **8.9-4 Use Regulations**

##### **A. Reference to Existing Regulations**

All development in the Floodplain District, including structural and non-structural activities, whether permitted by right or by Special Permit, must be in compliance with the Wetlands Protection Act, MGL. Ch. 131, §40 and with the following:

1. Sections of the Massachusetts State Building Code (780 CMR) which address floodplain hazard areas;
2. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
3. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); and
4. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

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

##### **B. Other Use Regulations**

All subdivision proposals must be designed to assure that:

1. Such proposals minimize flood damage;
2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards.

### **SECTION 8.10 GROUND-MOUNTED SOLAR ELECTRIC INSTALLATIONS (ADDED 2016, AMENDED 2019)**

#### **8.10-1 Purpose**

The purpose of this bylaw is to facilitate and appropriately regulate the creation of Ground-Mounted Solar Electric Installations (a) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural, and historic resources and (b) to provide adequate financial assurance for the eventual decommissioning of such installations.

#### **8.10-2 Applicability**

A. This Section 8.10 applies to Large- Scale and Small-Scale Ground-Mounted Solar Electric Installations, as noted. Small-Scale Ground-Mounted Solar Electric Installations which are accessory to an existing residential or non-residential use which generate electricity principally used by such residential or non-residential use are permitted as of right, do not need to comply with this Section, but require a Site Plan Review from the Zoning Board of Appeals, as well as a building permit, and must comply with all other applicable

provisions of the Town of Shutesbury Zoning Bylaw.

- B. This Section 8.10 also pertains to physical modifications that materially alter the type, configuration, or size of Ground-Mounted Solar Electric Installations or related equipment.
- C. This Section 8.10 shall not apply to any special permit duly applied for and in process prior to its effective date.
- D. Upon written request by the applicant, the Planning Board may waive or reduce any requirement of this Section 8.10 by the same majority vote required for the permit itself upon written findings included in the permit of:
  - 1. special circumstances of the site, its surroundings, or the proposal that negate the need for imposition of the requirement; or the objectives of this section may be met in an alternative manner; and
  - 2. that such a waiver or reduction will not derogate from the public purposes and intent of this zoning bylaw.

In the case of a special permit, such requests must be made by the applicant no later than the close of the public hearing. An affirmative or negative vote under this paragraph shall not be construed as an approval or disapproval of the permit sought.

### **8.10-3 General Requirements**

#### **A. Compliance with Laws, Bylaws, and Regulations**

The construction and operation of all Ground-Mounted Solar Electric Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part thereof shall be constructed in accordance with the Massachusetts State Building Code.

#### **B. Mitigation for Loss of Carbon Sequestration and Forest Habitat**

If forestland is proposed to be converted to a Ground-Mounted Solar Installation the plans shall designate thereon an area of unprotected (meaning, not subject to MGL. Ch. 184, §s 31-33 at time of application) land on the same lot and of a size equal to four times (4X) the total area of such installation. Such designated land shall remain in substantially its natural condition without alteration, including unauthorized (by SPGA) forestry/tree cutting, until such time as the installation is decommissioned. The Special Permit may be conditioned to effectuate and make enforceable this requirement.

#### **C. Mitigation for Loss of Forest Habitat within the Installation**

If forestland is proposed to be converted to a Ground-Mounted Solar Electric Installation the plans shall show mitigation measures that create a wildflower meadow habitat within and immediately around the Solar Electric System and a successional forest habitat in the surrounding areas managed to prevent shading until such time as the installation is decommissioned. The Special Permit may be conditioned to effectuate and make enforceable this requirement.

#### **D. Mitigation for Installation of Perimeter Fencing**

Any perimeter fencing within winter sight of a public roadway, driveway, or dwelling existing at the time of the special permit application shall be entirely black in color. The Special Permit may be conditioned to effectuate and make enforceable this requirement.

- E. Mitigation for Disruption of Trail Networks  
If existing trail networks or woods roads are disrupted by the location of the Ground-Mounted Solar Electric Installation, the plans shall show alternative trail alignments to be constructed by the applicant. The Special Permit may be conditioned to effectuate and make enforceable this requirement, although no rights of public access may be established hereunder.
- F. All plans and maps shall be prepared, stamped and signed by a Professional Civil Engineer licensed to practice in the Commonwealth of Massachusetts.

#### **8.10-4 Required Documents**

The project applicant shall provide the following documents in addition to or in coordination with those required under Article IX below.

- A. Site Plan. A Site Plan additionally showing:
  - 1. Locations of wetlands and Priority Habitat Areas as defined by the Natural Heritage & Endangered Species Program (NHESP).
  - 2. Locations of local or National Historic Districts.
  - 3. Locations of all known, mapped or suspected Native American archaeological sites or sites of Native American ceremonial activity. Identification of such sites shall be based on responses, if any, to written inquiries with a requirement to respond within 35 days, to the following parties: all federally or state recognized Tribal Historic Preservation Officers with any cultural or land affiliation to the Shutesbury area; the Massachusetts State Historical Preservation Officer; tribes or associations of tribes not recognized by the federal or state government with any cultural or land affiliation to the Shutesbury area; and the Shutesbury Historical Commission. Such inquiries shall serve as a notice to the aforesaid parties and shall contain a plan of the project, specific identification of the location of the project, and a statement that permitting for the project is forthcoming. Accompanying the site plan shall be a report documenting such inquiries, the responses from the parties, a description of the characteristics, including photographs, of any Native American sites located, and the outcomes of any additional inquiries made based on information obtained from or recommendations made by the aforesaid parties. A failure of parties to respond within 35 days shall allow the applicant to submit the site plans.
  - 4. The project proponent must submit a full report of all materials to be used, including but not limited to the use of cleaning products, paints or coatings, hydro-seeding, fertilizers, and soil additives. When available, Material Safety Data Sheets will be provided.
- B. Blueprints. Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing:
  - 1. The proposed layout of the system and any potential shading from nearby structures.
  - 2. One- or three-line electrical diagram detailing the Ground-Mounted Solar Electric Installation, associated components, and electrical interconnection methods, with all Massachusetts and National Electrical Code compliant disconnects and overcurrent devices.
- C. General Documentation. The following information shall also be provided:
  - 1. A list of any hazardous materials proposed to be located on the site in excess of

household quantities and a plan to prevent their release to the environment as appropriate.

2. Name, address, and contact information for proposed system installer.
3. The name, contact information and signature of any agents representing the project applicant.

D. Site Control

The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed Ground-Mounted Solar Electric Installation.

E. Operation and Maintenance Plan

The project applicant shall submit a plan for the operation and maintenance of the Ground-Mounted Solar Electric Installation, which shall include measures for maintaining safe access to the installation, stormwater management (consistent with DEP's and, where appropriate, Shutesbury's stormwater regulations and vegetation controls), as well as general procedures for operational maintenance of the installation.

F. Financial Surety

Applicants for Ground-Mounted Solar Electric Installations shall provide a form of surety, either through an escrow account, bond or otherwise, accessible to the Town of Shutesbury, to cover the cost of removal in the event the Town must remove the installation and remediate the site to its natural preexisting condition, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. The project applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

G. Utility Notification

No Ground-Mounted Solar Electric Installation shall be constructed until evidence has been provided to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has approved the solar electric installation owner or operator's intent to install an interconnected customer-owned generator and that the utility can and will connect the proposed generator into their power grid. Off-grid systems shall be exempt from this requirement.

H. Proof of Liability Insurance

**8.10-5 Dimensional Requirements**

A. Minimum setbacks for all Large-Scale Ground-Mounted Solar Electric Installations:

Front street setback: 500 feet (as required for Forest Conservation District)

Property line setback: 100 feet

B. Minimum setbacks for all Small-Scale Ground-Mounted Solar Electric Installations:

Front street setback: 100 feet

Property line setback: 50 feet

C. Required setback areas shall not be counted toward a facility's total acreage.

**8.10-6 Design and Performance Standards**

A. Lighting

Large- and Small-Scale Solar Electric Installations shall have no permanently-affixed exterior lighting.

B. Signage

1. Sufficient signage shall be provided to identify the owner of the facility and provide a 24-hour emergency contact phone number.
2. Signage at the perimeter warning pedestrians is allowable.
3. Ground-Mounted Solar Electric Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of such installation.

C. Control of Vegetation

Herbicides or pesticides may not be used to control vegetation or animals at a Ground-Mounted Solar Electric Installation.

D. Visual Impacts

1. Ground-Mounted Solar Electric Installation shall be designed to minimize visual impacts including preserving natural vegetation to the maximum extent possible, blending in equipment with the surroundings, and adding vegetative buffers to provide an effective visual barrier from adjacent roads and driveways, and to screen abutting residential dwellings.
2. When possible, a diversity of plant species shall be used, with a preference for species native to New England.
3. Use of exotic plants, as identified by the most recent copy of the "Massachusetts Prohibited Plant List" maintained by the Massachusetts Department of Agricultural Resources, is prohibited.
4. If deemed necessary by the Planning Board, the depth of the vegetative screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained.
5. The owner/operator shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the solar installation.
6. Landscaping shall be maintained and replaced as necessary by the owner/operator of the Ground-Mounted Solar Electric Installation.

E. Utility Connections.

Electrical transformers, wires, or other utility interconnections shall be constructed as required by the utility provider and may be above ground if necessary; provided, however, that every reasonable effort shall be made to place all utility connections underground, depending on appropriate soil conditions and topography of the site and any requirements of the utility provider.

F. All electric power generated at a Ground-Mounted Solar Electric Installation shall be from Solar Energy.

G. Access Driveways shall be constructed to minimize grading, removal of stone walls or roadside trees, and minimize impacts to environmental or historic resources.

**8.10-7 Safety and Environmental Standards**

A. Emergency Services

1. Ground-Mounted Solar Electric Installations owner or operator shall provide a copy of

- the project summary, electrical schematic, and site plan to the Shutesbury Fire Chief.
2. The owner or operator shall cooperate with local emergency services to develop an emergency response plan.
  3. All means of shutting down the solar electric installation shall be clearly marked.
  4. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- B. Land Clearing, Soil Erosion and Land Impacts
1. The facility shall be designed to minimize impacts to open agricultural land and fields, even if not in production. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Ground-Mounted Solar Electric Installation. In no event shall tree stocking on the parcel to be developed for the installation be reduced to below Level-C as defined in 304 CMR 11.03 and as measured at the time of application. Grading that substantially disturbs the existing soil profile and structure is prohibited; sites shall be selected where construction may be accomplished without such earth work.
  2. Prior to any site disturbance and construction, the limits of the work shown on the approved site plan shall be surveyed and clearly marked by a Professional Land Surveyor. Upon completion of the survey, the Professional Land Surveyor shall verify to the Planning Board, in writing, that the limit of work, as shown on the approved site plans, has been established on site.
  3. The design shall minimize the use of concrete and other impervious materials to the maximum extent possible. Ground-Mounted Solar Electric Installation shall be installed on water permeable surfaces.
  4. Locating Ground-Mounted Solar Electric Installations, including access driveways and any associated drainage infrastructure on original grades in excess of 15% is prohibited.
- C. Habitat Impacts
- Large-Scale Ground-Mounted Solar Electric Installations shall not be located on permanently protected land subject to MGL. Ch. 184, §s 31-33 Priority Habitat and Bio Map 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP.
- D. Wetlands
1. Where wetland delineation is in doubt or dispute, the Planning Board may require the applicant to submit a request for determination of wetlands to the Conservation Commission.
  2. The Planning Board may impose conditions to contain and control stormwater runoff that might negatively impact identified wetlands or other hydrologic features even if the proposed work area is outside the jurisdiction of the Conservation Commission.

### **8.10-8 Monitoring, Maintenance and Reporting**

#### **A. Solar Electric Installation Conditions**

1. The Ground-Mounted Solar Electric Installation owner or operator shall maintain the facility in good condition.
2. Maintenance shall include, but not be limited to, painting, structural repairs, and

- integrity of security measures.
3. Site access shall be maintained to a level acceptable to the Shutesbury Fire Chief and Emergency Management Director.
  4. The owner or operator shall be responsible for the cost of maintaining the Solar Electric Installation and any access driveways.
- B. Annual Reporting
1. The owner or operator of a Ground-Mounted Solar Electric Installation shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan, the requirements of this Section 8.9 and the approved special permit, including but not limited to continued management and maintenance of vegetation, compliance with the approved plans and any special permit conditions, continuation of liability insurance, and adequacy of road access.
  2. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility.
  3. The report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Commissioner, Board of Health and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.

#### **8.10-9 Abandonment or Decommissioning**

- A. Removal Requirements
1. Any Ground-Mounted Solar Electric Installation which has reached the end of its useful life or has been abandoned shall be removed.
  2. The owner or operator shall physically remove the installation no later than 150 days after the date of discontinued operations.
  3. The owner or operator shall notify the Special Permit Granting Authority by certified mail, of the proposed date of discontinued operations and plans for removal.
- B. Decommissioning shall consist of:
1. Physical removal of all components of the Ground-Mounted Solar Electric Installation, including but not limited to structures, foundations, equipment, security barriers, and on-site above-ground transmission lines. Associated off-site utility interconnections shall also be removed if no longer needed.
  2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  3. Restoration of the site to its natural preexisting condition, including stabilization or re-vegetation of the site as necessary to minimize erosion. The Special Permit Granting Authority may allow the owner or operator to leave landscaping or designated below-grade foundations and electric lines in order to minimize erosion and disruption to vegetation.
- C. Decommissioning by the Town
- If the owner or operator of a Ground-Mounted Solar Electric Installation fails to remove such installation in accordance with the requirements of this Section 8.9 within 150 days of discontinued operations or abandonment, the Town may enter the property and physically remove the installation at the owner's expense, drawing from the escrow account or upon the bond or other financial surety provided by the applicant.

### **8.10-10 Lapse of Approval**

Any special permit shall automatically lapse if the Large-or Small-Scale Ground-Mounted Solar Electric Installation is not installed and functioning within two (2) years of the grant of the special permit or if the installation shall be considered abandoned.

## **SECTION 8.11 ADULT USE RECREATIONAL MARIJUANA ESTABLISHMENTS (ADDED 2019)**

### **8.11-1 Purposes**

It is the purpose of this article to maintain public health, safety and general welfare; to promote commercial development that is appropriate to the size and rural character of the Town, environmentally sustainable and when feasible, locally owned and operated; and to support the availability of recreational marijuana in accordance with State law and regulations (935 CMR 500.000 *et seq.*). To mitigate potential impacts to adjacent areas, this bylaw will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods, and protect the safety of children and young people.

### **8.11-2 Special Permit Granting Authority & Site Plan Review**

The Zoning Board of Appeals or the Planning Board (see Use Table) shall be the Special Permit Granting Authority (SPGA) under this section in accordance with M.G.L. Chapter 40A, Sections 9, and Section 9.3 of this zoning bylaw. In the case of site plan review, the Zoning Board of Appeals or the Planning Board (see Use Table) shall be the Permit Granting Authority (PGA) in accordance with Section 9.2 of this zoning bylaw.

Marijuana establishments are prohibited as a customary home occupation under Section 8.5-1A, but may be proposed as a major home occupation under Section 8.5-1B if otherwise allowed in the district. The Use Table for single-use marijuana establishments shall determine the SPGA that presides over a consolidated special permit review under this section and Section 8.5-1B. In such cases the marijuana establishment shall be within buildings or on land distinctly separate from the residence and its immediate yard area and not operated within the residence. The portion of the lot operated as a marijuana establishment shall comply with all applicable state regulations and requirements of this Article. The residence and its immediate yard area shall not be considered to be a marijuana establishment.

Upon written request by the applicant, the SPGA or PGA may waive or reduce any requirement of this Article 8.11 by the same majority vote required for the permit itself upon written findings included in the permit that: 1) special circumstances of the site, its surroundings, or the proposal negate the need for imposition of the requirement; or that the objectives of this section may be met in an alternative manner; and that 2) such a waiver or reduction will not derogate from the public purposes or intent of this zoning bylaw. In the case of a special permit, such requests must be made by the applicant no

later than the close of the public hearing. An affirmative or negative vote under this paragraph shall not be construed as an approval or disapproval of the permit sought.

### **8.11-3 Definitions**

**Marijuana Establishment** means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any type of licensed marijuana-related business, except a medical marijuana treatment center.

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

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

**Marijuana Cultivator** means an entity licensed to cultivate, process, and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator. [**Process** or **Processing** means to harvest, dry, cure, trim, and separate parts of the cannabis or marijuana plant by manual or mechanical means.]

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

**Marijuana Product Manufacturer** means an entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers

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

**Research Facility** means an entity licensed to engage in research projects by the Commission.

**Independent Testing Laboratory** means a laboratory that is licensed by the Commission.

**Marijuana Products** means products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana, and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils, and tinctures.

**Licensee** means a person or entity licensed by the State Cannabis Control Commission to operate a marijuana establishment.

**Marijuana Establishment Agent** means a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant or contractor who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

**Visitor** means an individual, other than a Marijuana Establishment Agent authorized by the Marijuana Establishment, on the premises of an establishment for a purpose related to its operations and consistent with the objectives of St. 2016 Ch. 334, as amended by St. 2017 Ch. 55, and 935 CMR 500.000, provided, however, that no such individual shall be younger than 21 years of age.

**Greenhouse** means a structure, primarily of glass or sheets of clear plastic, in which temperature and humidity can be controlled for the cultivation or protection of plants.

**Host Community Agreement** – a marijuana establishment seeking to operate in Shutesbury shall execute an agreement with the host community, setting forth the conditions for having a marijuana establishment located within the host community in accordance with Massachusetts General Law Chapter 94G, §3(d).

#### **8.11-4 Requirements Regarding the Allowed Locations for Marijuana Establishments**

- A. See Use Table Section 3.1-1 for locations for permitted Marijuana Establishments.
- B. Marijuana Establishments shall not be located within 250 feet of any existing public or private school, providing education in kindergarten or any of grades 1 through 12. This setback shall include the grounds on which said public or private school, providing education in kindergarten or any of grades 1 through 12 is located. The distance between any Marijuana Establishment and any public or private school, providing education in kindergarten or any of grades 1 through 12, shall be measured in a straight line, without regard to intervening structures, from the closest property line of any existing public or private school, providing education in kindergarten or any of grades 1 through 12 to the building, structure, growing area, work area or parking area of the Marijuana Establishment, whichever is closest.
- C. Marijuana Establishments shall not be located within 100 feet from any existing residential use if there is a closed loop water system for the establishment's operations or not within 250 feet from any existing residential use if there is no closed water loop for the establishment's operations. The distance between a residential use and a Marijuana Establishment shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the building,

structure, growing area, work area or parking area of the Marijuana Establishment, whichever is closest.

- D. Marijuana establishments shall comply with age restrictions established by Massachusetts 935 CMR 500 that prohibit access by marijuana agents and visitors under the age of 21 to marijuana establishments at all times.

**8.11-5 Site Development, Permitting Standards & Application**

Pursuant to Chapter 40A §9, the following site improvements and amenities are required to protect public safety and neighboring property values, in addition to the Special Permit requirements found in Section 9.3 and the Site Plan Review requirements found in Section 9.2. The SPGA or PGA are empowered hereunder to review and approve Special Permit applications and site plans for Marijuana Establishments and impose requirements for: buffering; odor control; noise; outdoor lighting; parking and loading; access to the site from public roads; hazardous materials; solid waste disposal, water management, environmental and energy controls, and landscaping and buildings. The purpose of these requirements is to avoid site development that may result in negative environmental, neighborhood, or public safety impacts.

- A. **Dimensional Requirements:** Any building or structure containing a Marijuana Establishment shall meet the setback requirements of this Section and any additional dimensional controls of the appropriate district as specified in Section 4.2. In the case of differing provisions between the two sections, the more restrictive dimensional requirements shall apply.
- B. **Parking and Loading Requirements:** All Marijuana Establishments must comply with parking requirements set by Section 8.2. For any property proposed to contain a Marijuana Establishment, the applicant for a permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.

Marijuana establishments involved in transport shall provide adequate parking for employees and all transport vehicles. Marijuana establishments involved in retail shall provide adequate parking for customers and employees based on an estimated average daily visit rate and must submit a plan for parking overflow. Marijuana establishments involved with cultivation, manufacture, testing and research shall provide adequate parking for employees and business-related visitors. All parking and loading shall be onsite.

- C. **Site Screening:** The Special Permit and Site Plan granting authorities shall have the ability to require appropriate screening from abutters whose land is not vacant at the time of application.

For marijuana establishments involved in retail, manufacture, transport or cultivation, rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening may be by a solid stockade fence that is 3½ feet tall within 20 feet of the street and 6 feet tall elsewhere on the property and/or a 10 foot wide vegetated planting of hardy evergreens and

deciduous trees and shrubs no more than six (6) feet on center and no less than five (5) feet in height, or other method as approved by the SPGA/PGA.

- D. **Lighting & Security:** Security cameras covering external areas shall include cameras with the capability to function with minimum to no lighting at night.

External lighting should be minimized and consistent with public safety requirements and hours of operation. Internal lighting in greenhouses and lights used for outdoor cultivation shall be fully screened from abutters after sunset.

- E. **Energy Efficiency:** Except for Tiers 1 and 2 and outdoor cultivation, transport, and retail uses, Marijuana Establishments shall be required to submit a detailed energy use and efficiency plan. Except for Tiers 1 and 2, cultivators in buildings and greenhouses shall generate a minimum of 50% of their projected energy use on site, where feasible.
- F. **Water Management & Efficiency:** Marijuana Establishments involved in cultivation, manufacture and research/testing are required to submit a plan for water management and water efficiency which shall include providing information on run-off, recapture, and reuse, if deemed appropriate.

All Marijuana Establishments shall ensure high water quality for any run-off, discharge or re-absorption from the property.

To preserve and protect reasonably sufficient access to water resources for abutters and neighboring landowners, all Marijuana Establishments involved in cultivation, manufacture, and research/testing shall submit information regarding estimated use of water for regular and peak operation. Wellheads for Marijuana Establishments involved in cultivation, manufacture, and research/testing must be located at least 250 feet from the nearest existing wellhead. The distance between the wellhead of the Marijuana Establishment and the wellhead of an abutting property shall be measured in a straight line, without regard to intervening structures.

No Marijuana Establishment shall create a reasonable risk that groundwater on abutting land becomes significantly diminished such that an existing water well on an abutting property is no longer sufficient to reasonably meet current uses.

- G. **Noise/Odor:** All Marijuana Establishments shall ensure that public nuisances – including odors and noise – to neighboring properties are minimized.
- H. **Hazardous Materials:** For Marijuana Establishments involved in cultivation, transport, research/testing, and manufacture, submission of a complete list of chemicals, pesticides, 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 is required. Depending on the quantities proposed to be used or stored on site, the SPGA or PGA may request that a Hazardous Materials Management Plan be prepared to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism. The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces and must be approved by

the Fire Chief.

- I. **Solid Waste:** For all Marijuana Establishments, waste shall be managed in accordance with 935 CMR 500.105, §12.
- J. **Driveways and Parking Lots:** No driveway to or parking lot for a Marijuana Establishment shall be within 125 feet of any existing residential use. The distance between residential use and a driveway or parking lot shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the driveway or parking lot, whichever is closest.
- K. **Signs:** All signs for a Marijuana Establishment must meet the requirements of Section 8.4 of this bylaw and the State Regulations (935 CMR 500.000 *et seq.*).
- L. **Buildings:** Appearance of buildings for Marijuana Establishments shall be consistent with the appearance of other buildings in Shutesbury, not employing unusual color or building design that would attract attention to the premises.
- M. **Cultivation:** Marijuana cultivation is allowed both indoors, in buildings or greenhouses, or outdoors.
- N. **Applications:** The applicant requesting permission to operate any Marijuana Establishment must file an application with the SPGA/PGA and the Town Clerk. Such application shall contain the information required by Section 9.3.1 Special Permit and any rules and regulations established by the SPGA/PGA and the State Cannabis Control Commission. The application shall also include:
  - 1. Name, Address, Phone Number and Email Address of the legal owner(s) and Licensee(s) of the Marijuana Establishment;
  - 2. Name, Address, Phone Number and Email Address of all persons having lawful, equity, or security interests in the Marijuana Establishment;
  - 3. The number of proposed employees;
  - 4. The proposed hours of operation; and
  - 5. Proposed security and environmental precautions.
- O. **Site Plan Review:** No Marijuana Establishment shall be established prior to submission and approval of a site plan by the SPGA/PGA, pursuant to Section 9.2. The site plan shall, at the minimum, depict all existing and proposed buildings and permanent structures, parking spaces, driveways, service and work areas, and other open uses shown at scale. The site plan shall show the distances between the proposed Marijuana Establishment and all existing uses within 1,000 feet of the property lines of the proposed Marijuana Establishment. The site plan shall be accompanied by all additional documentation required in this Section, including plans for energy use, water use, security and lighting, solid waste management, parking and traffic flow, as appropriate.
- P. In the event that the SPGA or PGA determines that circumstances necessitate expert technical review, the Planning Board or Zoning Board of Appeals reserves the right to select expertise for the review, and the expense of the review shall be paid by the Applicant, as provided in Section 9.6.
- Q. **Hours of operation:** In no event shall a Marijuana Establishment operate between the hours of 7:00 pm and 8:00 am. The hours of operation shall be set by the SPGA/PGA.
- R. **Reporting:** All marijuana establishments shall provide contact information of the managerial staff to the Town Administrator. All such contact information shall be annually submitted to keep it current and accurate, or more frequently if significant

staffing changes are made. The Town Administrator may distribute or publicize this information for purposes of public safety, to notify other marijuana or hemp growers to minimize occurrences of cross-pollination, or for other purposes that the Select Board sees fit and directs the Town Administrator to act upon.

- S. **Retailer limits:** No more than two Marijuana Retailers will be permitted to operate in the Town of Shutesbury.
- T. Failure to provide all of the required materials and information shall be grounds for denial of an application. The SPGA or PGA may require additional or supplemental information at its discretion, and the Applicant's failure to timely provide such information shall also be grounds for denial of the application.
- U. **Change in License or Owner:** The Owner and Licensee of any Marijuana Establishment issued a permit under this bylaw shall report to the SPGA or PGA, Building Inspector, and Town Administrator, in writing, within 30 business days any change in the name of the legal owner of the Marijuana Establishment. Any failure to meet this requirement of this bylaw may result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the permit cease immediately. The Owner and Licensee of any Marijuana Establishment issued a permit under this bylaw shall report, in writing, within 10 business days any expiration or suspension of a state-issued license to the SPGA or PGA, Building Inspector, and Town Administrator. Any failure to meet this requirement of this Bylaw may result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the permit cease immediately
- V. **Change of Ownership:** A permit issued under this Article shall lapse upon any transfer of ownership or legal interest of more than 25% or change in contractual interest in the subject premises or property. The permit may be renewed thereafter only in accordance with this section and Section 9.3 (Special Permit) and Section 9.2 (Site Plan Review) of these bylaws.

#### **8.11-6 Conflicting Provisions**

In any case of conflict between the provisions within this section, or between this section and any other section in this zoning bylaw, the more restrictive provision shall apply.

#### **8.11-7 Expiration**

A permit to operate a Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but may be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the SPGA or PGA at least six months prior to said expiration; that no substantial objection to said renewal is made and sustained based upon compliance with all conditions of the permit; that public safety factors are applied at the time the permit renewal is requested; and that the Purpose and Intent outlined in 811-1 of this Section will continue to be met with a renewal for operation.

#### **8.11-8 Severability**

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

**USE TABLE**

**Proposed New Section: Marijuana Establishments**

<b>Marijuana Uses</b>	<b>Roadside Residential (RR)</b>	<b>Forest Conservation (FC)</b>	<b>Town Center (TC)</b>	<b>Lake Wyola (LW)</b>
Retail	N	N	SP-Z	N
Marijuana (Tier 1 and 2 by state regulation) cultivation - small, including microbusiness and craft coops	SP-Z	SPR-Z	SP-Z	N
Marijuana (Tier 3 to 6 by state regulation) cultivation- medium, including microbusiness and craft coops	N	SP-P	N	N
Marijuana (Tier 7 to 11 by state regulation) cultivation - large	N	N	N	N
Marijuana Manufacture or Processing, including microbusiness and craft coops	SP-P	SP-P	N	N
Marijuana Transport	SP-Z	SP-Z	SP-Z	N
Marijuana Research/ Testing	SP-Z	SP-Z	SP-Z	SP-Z

**N =Prohibited**

**P = by right (apply directly for building permit)**

**SP-P = Special Permit with PB**

**SP-Z = Special Permit with ZBA**

**SPR-P = by right with site plan review by PB**

**SPR-Z = by right with site plan review by ZBA**

**ARTICLE IX SITE PLAN REVIEW AND SPECIAL PERMITS**

**SECTION 9.1 PURPOSE AND INTENT**

The purpose of Site Plan review and Special Permits is to provide a review process tailored to the scale of a proposed development that enables the Town of Shutesbury to minimize the impact of proposed uses on their surroundings. Such review is also intended to ensure that development is designed in a way that fulfills the goals of this bylaw and the Shutesbury Master Plan.

The Use Table in Subsection 3.1-1 indicates which uses are subject to Site Plan only or Special Permit review, and which board is responsible for the review and approval. Subsection 3.1-1 describes how to interpret the symbols on the Use Table.

- Uses that are allowed by Site Plan only are presumed to be acceptable provided that their site design and layout is appropriate.
- Uses that are allowed by Special Permit are more discretionary and may or may not be allowed, depending upon whether they meet criteria established in this Bylaw.

The procedure for Site Plan approval is more streamlined than for Special Permits, involving shorter time frames, no public hearing, and vote of a simple majority of the approving board. The procedure for Special Permits generally takes more time, requires a public hearing, and requires a vote of a super majority of the approving board, the Special Permit Granting unless waived by the approving board.

## **SECTION 9.2 SITE PLAN REVIEW WHEN NO SPECIAL PERMIT IS REQUIRED**

### **9.2-1 Submission Requirements for Site Plan Review When No Special Permit is Required**

- A. The use table at 3.1-1 specifies which board shall act as the approving board. The approving board shall prescribe the content of the Site Plan, the number of copies to be submitted, and any review fees. The approving board may periodically amend or add rules and regulations relating to the procedures and administration of this Section.
- B. The Site Plan submission shall contain all information necessary to enable the approving board to conduct an informed review pursuant to the criteria in Section 9.2-2 below. This shall include maps showing Existing Conditions and Proposed Improvements.
  1. At the discretion of the approving board, the Existing Conditions and Proposed Improvements Maps may be required to include, without limitation, the following scaled and dimensioned information for both existing conditions and proposed improvements: locus map; adjacent streets and ways; lot boundaries; location and names of owners of adjacent properties; easements and restrictions; land use districts; overlay districts (if any); topography including contours; wetlands, waterbodies, watercourses, and FEMA 100-year floodplains; soil types; vegetation; farmland; trails; structures; unique natural site features – as well as driveways and walkways; access and egress points and distances to nearest driveways and intersections; parking/loading areas; sidewalks; utilities; septic and water supply systems; landscaping features including screening, fencing, and plantings; open space or recreational areas; lighting; natural and man-made drainage infrastructure; vehicular circulation; signs; building plans and elevations; clearing and grading limits; and any other information required by the approving board.
  2. The applicant shall also submit the following additional information: measures to prevent flooding, increased runoff, changes in groundwater levels, and pollution of surface water and groundwater; design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, enhance aesthetic assets and screen objectionable features from neighbors and roadways; and control measures to prevent erosion and sedimentation during and after construction and to specify the sequence of grading and construction activities, location of temporary erosion and sedimentation control measures, and final stabilization of the site.

3. If the land will be developed in more than one phase, the approving board may require the applicant to present a comprehensive plan for an entire property showing intended future development.
- C. An application shall not be considered complete until all information required by the approving board is submitted. The approving board, however, at their discretion, may waive the inclusion of information irrelevant to a particular application.

### **9.2-2 Review Criteria**

The following criteria shall be considered by the approving board in evaluating the Site Plan and related information submitted as part of the application:

- A. Compliance with all applicable provisions and requirements of this bylaw.
- B. Avoidance of excessive noise, dust, odors, solid waste, glare, electrical interference, or any other nuisances.
- C. Screening or location of unsightly features so as to be unobtrusive from neighboring properties and public roadways.
- D. Maintenance of pedestrian safety and road capacity, considering the current width, surfacing, and condition of roads.
- E. Provision of adequate parking pursuant to Section 8.2, adequate and safe vehicular and pedestrian circulation, and accessibility for fire, police, and emergency vehicles.
- F. Protection of the supply and quality of groundwater and surface water and natural resources and ecosystems.
- G. Provision of open spaces and pedestrian amenities available to the public.
- H. Avoidance of adverse impacts of stormwater runoff from the site. Drainage shall recharge ground water to the extent practical, and surface waters flowing off-site shall not adversely affect drainage on adjacent properties or roads.
- I. Avoidance of erosion or sedimentation.
- J. Compliance with the Rural Siting Principles in Section 8.3 and applicable design guidelines adopted by the approving board, if any.
- K. Integration of the project into the existing terrain and surrounding landscape by minimizing impacts on wetlands, steep slopes, and hilltops; protecting visual amenities and scenic views; preserving unique natural or historical features; minimizing tree, vegetation, and soil removal; minimizing grade changes, and integrating development with the surrounding neighborhood in a manner that is consistent with the prevailing pattern, design, and scale of development and that protects historic structures and features.
- L. Provision of underground utilities where feasible.

### **9.2-3 Review Procedure**

- A. The approving board shall transmit copies of the Site Plan application to such boards, agencies, committees, and officials as it may deem appropriate. These boards, agencies, committees, and officials shall report their findings and recommendations to the approving board within 35 days. Failure to respond within 35 days shall be deemed to constitute no objection to the application.
- B. The concurring vote of a majority of the full membership of the approving board shall be required for any decision on a use requiring Site Plan Review only. The approving board's

written decision shall approve the application as submitted, or subject to reasonable conditions or modifications necessary to ensure compliance with the requirements of this bylaw, or deny the application. Conditions or modifications that may be imposed include, but are not limited to the following:

1. Controls on location and type of access to the site.
  2. Requirements to screen or relocate buildings and parking/loading areas and provide buffers to protect adjoining property.
  3. Requirements to reduce the traffic impact of the proposed project.
  4. Requirements to minimize impacts on the capacity of infrastructure serving the site.
  5. Requirements to minimize environmental degradation during construction.
  6. Modifications to the proposed size and scale of the project.
  7. Other reasonable conditions designed to mitigate a project's impacts and ensure compliance with applicable review criteria, including the installation of on-site and off-site improvements.
- C. Unless an extension of time is mutually agreed to in writing, the approving board shall render a decision within 65 days of receiving a complete application, and shall promptly notify the applicant and the Building Inspector of its decision.
1. An authorized member of the approving board shall sign any approved Site Plan and transmit it to the Building Inspector's office within seven days of the decision to approve.
  2. If the approving board fails to render a decision within 65 days of the submission of a complete application, approval shall be deemed granted following the procedures for constructive approval of Special Permits in MGL. Ch. 40A, §9.
- D. For the purpose of securing the installation of required site improvements, including landscaping and on-site and off-site improvements, the approving board may require a performance bond, deposit of money, letter of credit, or other security in an amount determined by the board to be sufficient to cover the cost of all or any part of improvements required in a form acceptable to Town Counsel. Such security shall be under the control of the Town but not in its possession.
- E. The approving board may require review costs of a Site Plan Review application to be borne by the applicant if permitted by Section 9.6.
- F. Any Site Plan approved under this bylaw shall lapse within two years if construction has not begun, and is not carried forward to completion as continuously and expeditiously as is reasonable.
- G. Decisions of the approving board regarding a Site Plan may be appealed as set forth in MGL. Ch. 40A, §17.
- H. Any Site Plan approved under this bylaw shall lapse within two years if construction has not begun and is not carried forward to completion as continuously and expeditiously as is reasonable. For Site Plans approved under Article V of this bylaw, the period until lapse may be extended beyond two years if so authorized by the Planning Board in the approval document. (*Added 2018*)

### **SECTION 9.3 SPECIAL PERMITS**

The use table at Subsection 3.1-1 specifies which board shall act as the Special Permit Granting

Authority (SPGA) for a particular use. Other sections of this bylaw, including but not limited to Section 5.1 and Subsection 6.1-3, provide for additional Special Permits and designate which board will act as the SPGA.

- A. Where no specific board is designated as SPGA, the Zoning Board of Appeals shall function as SPGA. When either board is functioning as the SPGA, any references to the “approving board” in this bylaw shall mean the SPGA.
- B. For the purposes of its actions as an SPGA, the Planning Board shall have two (2) alternates elected as provided in the Zoning Act, with the duties and powers set forth in the Zoning Act, MGL. Ch. 40A, including but not limited to the power to hear and decide upon Special Permits.

### **9.3-1 Requirements and Procedures**

- A. Special Permit reviews shall be conducted according to MGL. Ch. 40A, §§ 9 and 11, as may be further detailed in any rules and regulations adopted by the SPGA. The SPGA may require review costs to be borne by the applicant as provided in Section 9.6. If a Special Permit is granted conditioned on the installation of required improvements, such improvements may be secured by a performance guarantee as provided in Subsection 9.2-3E.
- B. In conducting Special Permit reviews, the SPGA shall ensure compliance with all applicable provisions of this bylaw and other laws and regulations, including the criteria in Subsection 9.3-2. When the Zoning Board of Appeals is the SPGA reviewing a Special Permit application for a nonconforming structure pursuant to Subsection 6.1-3, it shall be subject to the criteria in Subsection 6.1-3 rather than those in this Section 9.3. The SPGA may impose any reasonable conditions it deems necessary to ensure such compliance.
- C. Any application for a Special Permit shall be accompanied by a Site Plan prepared in accordance with Section 9.2. This requirement may be waived by the SPGA for applications in which:
  - 1. A subdivision plan is submitted that contains the required Site Plan information,
  - 2. The Special Permit is for alteration of a nonconforming structure pursuant to Subsection 6.1-3, or
  - 3. No significant physical alterations to structures or to the site are proposed.
- D. Upon submission to the Zoning Board of Appeals or Planning Board, as the case may be, the Site Plan shall be referred to the other board for review immediately upon filing, unless the application is to the Zoning Board of Appeals for an alteration pursuant to Subsection 6.1-3. The Zoning Board of Appeals or Planning Board, as the case may be, shall make a written report to the other board on or before the date of the public hearing on the proposed Special Permit. The other board’s failure to report shall be deemed a favorable recommendation.
- E. Applications for Special Permits, except those covered by Subsection 6.1-3, shall also be referred to the Conservation Commission, Board of Health, Building Inspector, Highway Superintendent, Fire Department, and such other agencies and officials as may be deemed appropriate by the SPGA.

### **9.3-2 Review Criteria**

#### **A. General Findings**

The SPGA may approve a Special Permit application only if it makes written findings that:

1. The proposed use is in harmony with the general purpose and intent of this bylaw, in particular the Rural Siting Principles in Section 8.3.
2. The benefits of the proposed use to the Town outweigh its adverse effects.
3. The proposed use is consistent with the Shutesbury Master Plan.

#### **B. Specific Findings**

In order to approve a Special Permit, the SPGA shall also make specific written findings that the proposed use, with or without appropriate conditions:

1. Is consistent with the purposes and requirements of the applicable land use district, overlay districts, and other specific provisions of this bylaw (including Site Plan Review requirements) and of other applicable laws and regulations.
2. Is compatible with surrounding uses, if any, and protective of the natural, historic, and scenic resources of the Town.
3. Is accessible and serviceable by fire, police, and other emergency vehicles.
4. Will not create excessive off-premises noise, dust, odor, or glare.
5. Will not cause traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition.
6. Will not overload any municipal facility or any public or private water, sewage disposal, or drainage system.
7. Will not cause significant environmental damage due to flooding, wetland loss, habitat or ecosystem disturbance, or damage to valuable trees.
8. Will not cause other significant adverse environmental effects, including but not limited to:
  - a. Pollution of surface water or groundwater;
  - b. Inadequate water supply to meet the anticipated demand of the proposed activity or use or reduction of water supply to other properties;
  - c. Destruction of important wildlife habitats and damage to wetlands or forest ecology;
  - d. Noise and air pollution;
  - e. Damage to streams or lakes;
  - f. Construction which unnecessarily damages the visual amenities of the site and which is not in harmony with the landscape type;
  - g. Unnecessary decreases in agricultural or forestry use or potential land productivity;
  - h. Erosion resulting from or caused by development.
9. Will not adversely affect the availability of public services and the capacity of municipal services.

#### **C. Large-scale Structures**

Where practical, the SPGA may require a group of smaller buildings as an alternative to a single large building.

### **9.3-3 Lapse**

A Special Permit shall lapse if the Special Permit use (a) ceases for more than 24 consecutive months for any reason, (b) if the applicant fails to obtain the necessary Building Permits or fails to comply with the conditions of the Special Permit within 24 months of its issuance, or (c) if

the Special Permit is subject to a time limit which expires without renewal.

## **SECTION 9.4 CHANGES TO SITE PLAN APPROVALS AND SPECIAL PERMITS**

### **9.4-1 Change of Use**

Change of use is defined in Article XIII.

- A. Uses by Right. Any change of use of land or existing structures to a use permitted by right (without Site Plan Review) shall not require approval from the Planning Board or Zoning Board of Appeals.
- B. Uses by Right Subject to Site Plan Review. Any change of the use of land or existing structures to a use permitted by right subject to Site Plan Review only shall require Site Plan Review by the approving board.
- C. Uses by Special Permit
  - 1. A Special Permit shall be required for any change of use from a use that does not require a Special Permit to a use that does require a Special Permit.
  - 2. Once a Special Permit has been granted, it shall apply to the approved use, as well as to any subsequent use of the property that is not a change of use as defined in Article XIV of this Bylaw. Any change of use shall require the granting of a new Special Permit or a Special Permit amendment.

### **9.4-2 Rebuilding or Replacement of Structures**

The rebuilding or replacement on the same footprint of any structure for a use which requires Site Plan Review and/or a Special Permit shall require Site Plan Review, provided that it is a continuation of the same lawful use.

### **9.4-3 Amendment**

The terms and conditions of any Special Permit or Site Plan approval may be amended in the same manner as required for the issuance of the original approval. Any enlargement, alteration, or construction of accessory structures not previously approved shall require an amendment.

### **9.4-4 Enforcement of Permit Conditions**

A violation of the conditions of a Special Permit or Site Plan approval shall be deemed a violation of this bylaw, and shall be subject to enforcement action as provided in Section 10.2.

## **SECTION 9.5 PREMISES CONTAINING BYLAW VIOLATION**

No approval under this Article IX shall be granted if the premises contain a violation of this bylaw, unless such approval is necessary for the correction of the violation.

## **SECTION 9.6 PROJECT REVIEW FEES**

In connection with any application for a Special Permit from the Zoning Board of Appeals or Planning Board or Site Plan approval from the Zoning Board of Appeals, the board may require the applicant to pay fees in advance to cover the reasonable costs of reviewing such application. Such costs may include staff costs and/or consultant fees covering planning,

engineering, environmental analysis, wetland delineation, legal review, and other professional and technical services required for a proper and thorough review of the application. No permit shall be issued until all costs have been paid. The Town shall deposit such fees into a special account and return unexpended funds to the applicant as provided in MGL. Ch. 44, §53G and any regulations adopted pursuant thereto by the respective boards.

## **SECTION 9.7 SCIENTIFIC ACCESSORY USES**

A Special Permit may be issued for a use accessory to a use permitted by right, whether or not on the same parcel, if such accessory use is necessary in connection with scientific research or development or related production, provided the board granting the Special Permit finds that the proposed accessory use does not substantially derogate from the public good.

## **ARTICLE X ADMINISTRATION AND ENFORCEMENT**

### **SECTION 10.1 ADMINISTRATION**

This bylaw shall be administered by the Building Inspector except where otherwise indicated.

#### **10.1-1 Building, Demolition, and Sign Permits**

- A. No use of land, or erection, demolition, or enlargement of a structure shall be undertaken unless a required building, demolition, or sign permit, as appropriate, has been issued by the Building Inspector.
- B. An application for a building, demolition, or sign permit shall be accompanied by such plans, survey, or other data as may be necessary in the opinion of the Building Inspector, to insure full conformance with this bylaw and with the Rules and Regulations Governing the Subdivision of Land, the State Environmental Code, the Wetlands Protection Act (including the Rivers Protection Act, showing the 200-foot "Riverfront Area" regulated thereby), and other applicable laws and regulations. Procedures for issuance of Building Permits, demolition permits, and certificates of occupancy shall be as prescribed by state law.
- C. The Building Inspector shall refer applications, as appropriate, to the Zoning Board of Appeals, Planning Board, Conservation Commission, Board of Health, and any other agencies with jurisdiction.
- D. Compliance with Other Legal Requirements
  - 1. All applications for Building Permits, shall document compliance, by signature from all of the municipal agencies or officials listed below. If the Building Inspector has written indication from an agency or official that a signature is not required for specific types of projects or permits, then said signatures need not be obtained. Compliance requirements for minor remodeling or repair of existing buildings shall be at the Building Inspector's discretion. Listed below are the agencies and officials, with their legal requirements:
    - a. Massachusetts Wetlands Protection Act, any local wetlands bylaw and regulations implementing said bylaw -- Conservation Commission;
    - b. State Environmental Code and any local Board of Health regulation -- Board of

- Health;
  - c. Smoke detection system which is safe and appropriate in the opinion of the Fire Department ;
  - d. Curb cut provisions in Section 8.6 of these Zoning By-Laws -- Building Inspector;
  - e. These Zoning By-Laws -- Building Inspector;
  - f. State Building Code (including plumbing and electrical codes), and any other legal requirements not specified above -- Building Inspector.
2. As required by MGL. Ch. 40, §54, "No Building Permit shall be issued for the construction of a building which would necessitate the use of water therein, unless a supply of water is available therefor either from a water system operated by a city, town or district, or from a well located on the land where the building is to be constructed, or from a water corporation or company, as defined in section one of chapter one hundred sixty-five."
  3. Sanitation: No Building Permit shall be issued prior to issuance of a sewage disposal works permit by the Board of Health. The State Environmental Code of the Department of Environmental Protection shall be considered a part of these Zoning By-Laws and shall be strictly enforced by the Board of Health.

## **SECTION 10.2 ENFORCEMENT**

The Building Inspector shall be responsible for enforcing this bylaw and shall act on requests for enforcement of this bylaw as provided in MGL. Ch. 40A, §7.

### **10.2-1 Inspection**

In order to determine compliance with this local law, the Building Inspector is authorized, to the extent permitted by law, to enter, inspect, and examine any structure or land.

### **10.2-2 Notice of Violation**

- A. Upon finding any new construction, improvements, alterations, or uses to be in violation of this bylaw, the Building Inspector shall transmit a written Notice of Violation, in person or by certified mail, to the owner.
- B. If a person who has been notified of a violation fails to act to remedy the violation within five days, or fails to proceed expeditiously thereafter to remedy the violation, the Building Inspector shall so notify the Board of Selectmen. If the violation concerns a use subject to a Special Permit or approved Site Plan, the Board that granted the Special Permit or Site Plan approval shall also be notified.

### **10.2-3 Remedies**

The Board of Selectmen or Building Inspector, if authorized by the Board of Selectmen, may take any lawful action deemed necessary to prevent or remedy a violation. The following remedies are available for a violation of this bylaw:

- A. Fines
  1. A criminal fine of not more than \$100 for a first offense and \$300 for each subsequent offense. Each day such violation continues shall constitute a separate offense.
  2. A fine imposed through a non-criminal complaint pursuant to MGL. Ch. 40, §21D.

The fine for any violation disposed of through this procedure shall be \$100 for a first offense and \$300 for each subsequent offense. Each day such violation continues shall constitute a separate offense.

**B. Injunctive Relief**

The Town may enjoin a violation by bringing an action in a court of competent jurisdiction pursuant to MGL. Ch. 40A, §7.

**SECTION 10.3 ZONING BOARD OF APPEALS**

**10.3-1 Establishment**

There is hereby established a Zoning Board of Appeals (ZBA) consisting of three (3) members and two (2) associates appointed by the Board of Selectmen as provided in the Zoning Act, with the duties and powers set forth in the Zoning Act, MGL. Ch. 40A, included but not limited to the power to hear and decide upon appeals and Variances. The ZBA shall also have the power to review and decide upon applications for Special Permits and Site Plans where authorized in this Bylaw.

**10.3-2 Variances**

- A. Upon appeal or petition, the Board may grant a Variance from the terms of this bylaw with respect to particular land or structures, provided that the Board finds that literal enforcement of this bylaw would involve substantial hardship, financial or otherwise to the appellant or petitioner, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw.
- B. Such relief may only be granted from the dimensional requirements of this bylaw.
- C. This relief may only be granted upon specific findings made by the Board that the claimed hardship is due to circumstances relating to soil conditions, shape, or topography especially affecting the land or structures, which do not generally affect the zoning district in which the land or structures are located.
- D. Procedures for granting of Variances are as required by MGL. Ch. 40A, §§ 10 and 11, or as may be further detailed in any rules and regulations adopted by the ZBA.
- E. The Board may require review costs to be borne by the applicant as provided in Section 9.6. Use Variances are not allowed.

**ARTICLE XI AMENDMENT**

This bylaw may be amended at an Annual or Special Town Meeting in accordance with the provisions of MGL. Ch. 40A, §5.

**ARTICLE XII VALIDITY**

**SECTION 12.1 EFFECTIVE DATE**

This bylaw or any amendment thereto shall take effect on the date of adoption by the Shutesbury Town Meeting.

## SECTION 12.2 REPEAL OF PRIOR BYLAW

Upon adoption, this bylaw shall supersede the “Shutesbury Zoning Bylaw” in effect prior to the adoption of this Bylaw and all amendments thereto.

## SECTION 12.3 SEVERABILITY.

- A. If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.
- B. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Shutesbury Zoning Bylaw.

## ARTICLE XIII DEFINITIONS

### SECTION 13.1 GENERAL

- A. Except where specifically defined herein, all words used in this zoning bylaw shall carry their customary meanings as found in a standard dictionary.
- B. Words used in the present tense shall include the future.
- C. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
- D. The word *shall* is always mandatory. The word *may* is permissive.
- E. *Building* or *structure* includes any part thereof.
- F. The word *lot* includes the word *plot* or *parcel*.
- G. The word *person* includes an individual person, a firm, a corporation, a partnership, and any other agency of voluntary action.
- H. The word *he* shall include *she* or *they*.
- I. The phrase *used for* includes *arranged for*, *designed for*, *intended for*, *maintained for*, and *occupied for*.

### SECTION 13.2 DEFINITIONS IN THIS BYLAW

In this zoning bylaw, the following terms shall have the meanings indicated unless a contrary meaning is required by the context or is specifically prescribed:

**Accessory Apartment:** A dwelling unit occupying a maximum of 800 square feet of floor area on an owner-occupied lot. For purposes of this definition, “owner” shall mean any person holding an ownership interest of 10% or more in the property. See Subsection 4.4-2.

**Accessory Non-residential Structure:** An accessory structure used in connection with a principal use that is non-residential, including but not limited to storage buildings for merchandise, equipment, vehicles, or refuse, and structures housing mechanical equipment.

**Accessory Structure:** A structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use.

**Accessory Structure for a Residential Use:** A habitable or non-habitable accessory structure on a lot principally used for residential purposes, including but not limited to subordinate dwellings, detached bedrooms, studios, garages, storage sheds, garden sheds, gazebos, swimming pools, tennis courts, and other structures used for recreation by the residents of the

principal dwelling.

**Accessory Use:** A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.

**Affordable Housing:** Housing units that are eligible for inclusion in the Town's "subsidized housing inventory" for purposes of MGL. Ch. 40B.

**Agriculture** shall include forestry and farming in all of their branches and the cultivation and tillage of the soil, dairying, pasturage, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural, silvicultural, apicultural, or horticultural commodities, tree farming, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry, logging, portable or stationary milling or chipping, or wood processing operations, performed by one engaged in agriculture as herein defined, or on a farm or forestry land as an incident to or in conjunction with such agricultural operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market. The retail sale of agricultural products may be included with any of the above uses provided the major portion of the products for sale has been raised or grown on the premises, and provided that no products are displayed for sale within ten (10) feet of the edge of the traveled surface of a street.

**Alteration:** Any change in the size, shape or use of a building or structure.

**Alteration of the Land Form:** Any man-made change in the existing character of the land including filling, grading, paving, dredging, mining, excavation or drilling operation other than routine excavation or well-drilling, backfilling, grading, and paving incidental to the construction of a residence or other structure for which a Building Permit has been issued.

**Apartment:** A dwelling unit located within a portion of a building.

**Applicant:** Any person, corporation, or other entity applying for a Building Permit, use permit, sign permit, demolition permit, Certificate of Occupancy, Special Permit, Site Plan or subdivision approval.

**Approval Not Required ("ANR"):** The division of land into lots without requiring subdivision approval by the Planning Board pursuant to Section II.B. of the Regulations Governing the Subdivision of Land of the Town of Shutesbury.

**Approving Board:** The Planning Board or the Zoning Board of Appeals, as specifically designated in Subsection 3.1-1 or elsewhere in this bylaw, when it reviews and approves, denies, or approves subject to conditions, any application for a Special Permit or Site Plan approval. The approving board is the board making a final decision on an application under this bylaw, regardless of any other approval or advisory powers it may have under any state or local laws or regulations. When reviewing a Special Permit, the approving board may also be referred to as the "Special Permit Granting Authority" (SPGA) under MGL. Ch.40A, §9.

**Assisted Living Facility:** An "assisted living residence" as defined in MGL. Ch. 19D, including any entity that provides room and board and assistance with activities of daily living for three or more adult residents who are not related to the provider, and collects payments or third

party reimbursements from or on behalf of the residents.

**Barn:** A structure erected for the storage of farm products, feed, fertilizers, farm machinery, and the sheltering of farm animals.

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year (also known as the “one-hundred-year flood”).

**Base Flood Elevation (BFE):** The elevation of the flood that has a 1 percent chance of occurring in a given year. Also known as the 1 percent annual chance or the 100-year flood.

**Bedroom:** Any room, other than a kitchen, bathroom, living room, dining room, or unfinished cellar, that can be closed off for privacy and that does not provide access to another room (except a bathroom), including but not limited to a bedroom, study, den, family room, studio, or office.

**Building Inspector:** The town official charged with enforcing this Zoning Bylaw and state building code requirements (building commissioner).

**Building:** A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

**Building Height:** The vertical distance measured from the highest point of the roof to the average finished grade elevation at the walls. See Sections 8.7 and 8.8 for tower height measurements.

**Building, Principal:** A building or structure in which the primary use of the lot is conducted.

**Camping Vehicle:** A motor home, travel or camping trailer, slide-in camper attachment to a pick-up truck, or other motor vehicle, attachment to a vehicle, or trailer intended for temporary residence or office purposes, which can be driven, mounted on a motor vehicle, or pulled behind a vehicle on its own chassis and which is not used as a permanent year-round residence.

**Cemetery:** Land used or intended to be used for the burial of human bodies and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

**Change of Use:** The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the new use is different in nature, purpose, quality, character or degree, or is different in kind in its effect on the neighborhood, from the previous use.

**Charitable Organization:** A not-for-profit corporation or association organized for charitable purposes including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

**Child Care Facility:** An establishment which provides temporary care and custody of children, including a day care center and a school age child care program as defined in MGL. Ch. 28A, §9.

**Commercial Campground:** An area of land under single ownership used for recreational purposes, which includes commercial cabins, cottages, tents, camper units, or trailers used only for seasonal or part-time occupancy.

**Commercial Hunting:** A business or membership organization that permits and charges a fee or dues for hunting on private land it owns or leases.

**Commercial Use:** Any use of land by a business or other for-profit enterprise engaged in production, sales, or services to customers.

**Common Driveway:** A driveway serving as the primary vehicular access for no more than six (6) dwelling units, owned in common or created by reciprocal easements, and serving as the sole means of providing legal access required by the Subdivision Control Law or this Bylaw.

**Conformity/Conforming:** Complying with the use, density, dimensional, and other standards of this bylaw, or permitted to deviate therefrom by Special Permit, Site Plan, or Variance.

**Conservation Restriction:** A permanent restriction in the title to land of the type described in MGL. Ch. 184, §§ 31 – 33. As used in this bylaw “Conservation Restriction” also includes an Agricultural Preservation Restriction, a Watershed Preservation Restriction, or a Preservation Restriction as defined in MGL. Ch. 184, §31.

**Craft Workshop:** A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving.

**Development:** Any building, mining, dredging, filling, excavation, or drilling operation (excluding single-user residential wells); any material change in the use or appearance of any structure or in the land itself; the dividing of land into lots or parcels including through an Approval Not Required land division; alteration of a shore, beach, river, stream, lake, pond, or canal; demolition of a structure; the clearing of land; or the deposit of refuse, solid or liquid waste, or fill on a parcel of land.

**Driveway:** A private way providing vehicular access from a public or private road to a residence or to a commercial or non-commercial establishment.

**Dwelling:** A building used as living quarters for one or more families, containing sleeping, cooking, and sanitation facilities.

**Dwelling, Multi-family:** A dwelling containing separate apartments for three or four families, including townhouses and apartment buildings.

**Dwelling, Single-family:** A detached building designed for the use of one household, occupied by no more than one family.

**Dwelling, Two-family:** A detached building containing two dwelling units each of which exceeds 800 square feet in floor area (a dwelling unit of less than 800 square feet is considered an accessory apartment unless it is the principal building on a lot).

**Dwelling Unit:** A building or portion thereof providing complete housekeeping facilities for one family, with facilities for sleeping, cooking, and sanitation.

**Family:** One or more persons (not to exceed four unrelated by blood, marriage, or adoption) occupying a dwelling and living as a single housekeeping unit.

**Federal Emergency Management Agency (FEMA):** The federal agency that administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**Fence:** A hedge, structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

**Flood Insurance Rate Map (FIRM):** An official map of a community on which FEMA has delineated both the Special Flood Hazard Areas and the Risk Premium Zones applicable to the community.

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

**Floor Area (also referred to as "bulk"):** The gross floor area measured along the perimeter of the outside walls of a building without deductions for hallways, stairs, closets, thickness of walls, columns, or other features, including the combined total gross area of all floors. Basement or attic space used in connection with a principal or accessory use shall be counted in the calculation of floor area unless such space is used exclusively for storage or has a ceiling height of less than 54 inches.

**Front:** The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

**Frontage:** The distance between the sidelines of a lot measured along the street line (where the lot meets the right-of-way of the street), being an unbroken distance along a street, and also provided that both rights of access and potential safe year-round practical vehicular access to a potential building site exist on the lot, unimpeded by any of the following: (a) wetlands, unless a wetlands crossing has been approved by the Conservation Commission; (b) topography which prevents a proposed driveway from meeting the requirements of Subsection 8.6-2 of this bylaw, unless the Zoning Board of Appeals has granted a Variance from such requirements; or (c) other natural barriers between the street line and a potential building site that would prevent practical vehicular access. Frontage does not exist on a lot unless the Planning Board has determined that the street provides adequate access to the lot under the provisions of the Subdivision Control Law and the Town of Shutesbury Subdivision Regulations entitled "Regulations Governing the Subdivision of Land."

**Garage:** A building providing shelter of one or more motor vehicles.

**Glare:** Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

**Grading:** Any excavation, alteration of land form, grubbing, filling, or stockpiling of earth materials.

**Ground-Mounted Solar Electric Installation** shall mean a Solar Electric System that is affixed to the ground (not roof-mounted) and all appurtenant fencing, access driveways, drainage

infrastructure, electronics, and any surrounding shade management areas.

**Health Care Facility:** A nursing home, sanitarium, medical clinic, or office building for doctors, dentists, and other medical personnel or health providers.

**Home Occupation, Customary:** An occupation, trade, profession, or other business activity engaged in for compensation, conducted as an accessory use wholly or partly in a dwelling unit or accessory structure by a resident thereof, as provided in Subsection 8.5-1A.

**Home Occupation, Major:** A home occupation with a greater impact than permitted by Subsection 8.5-1A, as provided in Subsection 8.5-1B.

**Junk:** Any worn-out, cast-off, discarded, or neglected article or material which is ready for destruction or has been collected or stored for salvage, sale, or reuse. Junk does not include any article or material which unaltered or unchanged and without further reconditioning can be used for its original purposes as readily as when new, or any article stored for restoration or display as part of a bona fide hobby (such as antique automobiles, antique farm machinery, antique engines, special interest automobiles, etc.).

**Junk Car:** Any vehicle not operable on the public highway system, unless such vehicle is an antique or special interest automobile stored for restoration and/or display as part of a bona fide hobby.

**Junkyard:** The use of 400 square feet or more of area on any lot outside a fully enclosed structure for the storage or collection of junk or junk cars.

**Kennel:** Any establishment including cages, dog runs, and structures wherein more than three dogs which are over two months old are kept for boarding, care, or grooming, for which a fee is charged, and any establishment which sells dogs not raised or trained on the premises.

**Landfill:** A facility established (in accordance with a valid site assignment) for the purpose of disposing of solid waste into or on the land pursuant to 310 CMR 198.006.

**Large-Scale Ground-Mounted Solar Electric Installation** shall mean a Ground-Mounted Solar Electric Installation which occupies more than one and one-half (1.5) acres of land and no greater than fifteen (15) acres of land.

**Light Industry:** Manufacture, assembly, treatment, processing, or packaging of products in a manner that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

**Lodging Facility:** Any hotel, inn, or other establishment, not located within the owner's principal dwelling, providing sleeping accommodations for transient guests, with or without a dining room.

**Lot/Parcel:** An area of land in one ownership with definite boundaries, used or available for use as the site of one or more buildings, whether or not suitable for such use.

**Lot, Corner:** A lot at the junction of and abutting on two or more intersecting roads.

**MGL:** The Massachusetts General Laws.

**Mean Sea Level:** Whenever the Mean Sea Level appears in this bylaw, it shall be the Mean Sea Level Datum of 1929, known as the National Geodetic Vertical Datum.

**Mixed-Use Building:** A building containing a combination of residential and non-residential uses or other combinations of uses listed separately in Section 3.1.

**Membership Club:** Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

**Mobile Home:** A dwelling unit, built on a moveable chassis that remains in place after installation, containing complete electrical, plumbing, and sanitary facilities, designed to be installed on a temporary or a permanent foundation.

**Municipal Facility:** Any use of land by the Town of Shutesbury in accordance with the general laws governing municipal powers and functions. A municipal facility may consist of more than one principal use of or within a structure and/or more than one principal use or principal structure on a lot.

**Nonconforming Lot:** A lot of record which does not comply with the area, shape, frontage, or locational provisions of this bylaw for the district in which it is located.

**Nonconforming Structure:** A structure which does not satisfy the dimensional requirements of this bylaw for the district in which it is located, but which was not in violation of applicable requirements when constructed.

**Nonconforming Use:** Any use lawfully existing prior to and at the time of the adoption or amendment of this bylaw or any preceding bylaw, which use is not permitted by or does not conform with the permitted use provisions of this bylaw for the district in which it is located. See Article VI.

**Non-residential structure:** A structure in which a non-residential use or activity, such as a business, non-profit organization, or municipal use, is conducted.

**Office:** A building or room where clerical, administrative, or professional work of a business, trade, non-profit organization, profession, or other occupation is conducted, which may include alternative energy research and development, but shall not including manufacturing or trading in merchandise.

**One-Hundred-Year Flood:** See Base Flood.

**Open Space:** An area of land not developed with structures. (*Permanent Open Space* is defined and discussed in Section 5.6.)

**Open Space Design:** A development that results in the permanent preservation of a significant portion of a parcel as open space, in which otherwise required minimum lot sizes and other dimensional requirements do not apply. See Article V.

**Outdoor Storage Area:** Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

**Private Road:** A road providing access to lots that is not owned or maintained by the Town or the Commonwealth of Massachusetts.

**Public Road:** A road that is owned and maintained by the Town or the Commonwealth of Massachusetts.

**Public Utility Facility:** An installation used by a public agency or franchised public utility to

supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high voltage transmission lines, pump stations, water supply wells, water towers, communication towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

**Recreational Business:** A business which, for compensation, offers recreational services or entertainment, including but not limited to hunting clubs, tennis facilities, boat livery, summer camps, movie theaters, and other places of public or private entertainment for which a fee is charged.

**Regulatory Floodway:** See Floodway.

**Religious Use:** A church, synagogue, or other place of religious worship, as well as a monastery or other place of religious retreat.

**Residential Use:** A use of land and structures in which people live and sleep overnight on a regular basis.

**Restaurant:** A facility for the sale of food and drink for immediate consumption (whether or not for consumption on the premises), where staff serve customers at tables.

**Retail Business:** An establishment selling or renting goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, convenience store, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, video store, and variety store. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered a retail business.

**Riverine:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc..

**Sawmill, Fixed-Site:** A facility for the cutting, chipping, or splitting of saw logs that is not readily transportable to another site.

**Screen/Screening:** The location of structures in such a manner that they are not visible (as defined herein) from a public road or any other public place during the summer months, and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

**Service Business:** A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, auto repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, or other uses separately listed in the Use Table.

**Setback:** The area of a lot extending inward from a lot line for the distance specified in this bylaw, in which no building or structures other than fences, mailboxes, and permitted signs may be placed. Lake Wyola setbacks are measured from the mean high-water mark of the lake, which is 835.1 feet above mean sea level for Lake Wyola at the top of the spillway.

**Sign:** Any display of lettering, logos, colors or other designs visible to the public from outside

a building or from a traveled way, which either conveys a message to the public, or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted, goods, products or facilities available, either on the lot or on any other premises, excluding window displays and merchandise. For the purpose of this bylaw, mail boxes, governmental flags, and street and lot numbers shall not be considered signs.

**Sign Area:**

1. Sign measurement shall be based upon the entire area of the sign, with a single continuous perimeter enclosing the extreme limits of the actual sign area.
2. For a sign consisting of individual letters or symbols attached to a building, wall, or window, the area shall be considered to be that of the smallest rectangle or other shape which encompasses all of the letters or symbols.
3. The area of the supporting framework shall not be included in the area if such framework is incidental to the display.
4. In the case of a double-faced sign only one face shall be measured to determine sign area.

**Sign, temporary:** A sign that is used for special announcements such as fresh produce, hours of opening, special sale or event that may be displayed for no more than fifteen (15) days in a three month period.

**Single-family Dwelling:** See *Dwelling, Single-family*.

**Small-Scale Ground-Mounted Solar Electric Installation** shall mean a Ground-Mounted Solar Electric Installation which occupies one and one-half (1.5) acres or less of land.

**Small Wind Energy System (SWES):** Wind energy conversion system(s) consisting of a wind turbine however mounted, a tower or pole, electrical conductor cables, associated control or conversion electronics, storage batteries, associated buildings, safety devices, access roads, and any appurtenances thereto, which has a rated capacity of not more than 60 kW and which is intended to primarily reduce on-site consumption of utility supplied power.

**Soil Mining:** The extraction and sale of any geologic material, including but not limited to topsoil, sand, gravel and clay, not including activities associated with on-site road and building construction for which a subdivision approval or Building Permit has been granted.

**Solar Electric System** shall mean a group of Solar Photovoltaic Arrays for the generation of electricity.

**Solar Energy** shall mean radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

**Solar Photovoltaic Array** shall mean an active Solar Energy collection device that converts solar energy directly into electricity whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

**Special Flood Hazard Area:** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A or A1.

**Street/Road:** (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way; or (b) a way shown on a plan approved and endorsed by the Shutesbury

Planning Board in accordance with the Massachusetts Subdivision Control Law and which has been improved and constructed in accordance with the requirements of such approval, or (c) a way in legal and physical existence when the Subdivision Control Law became effective in Shutesbury in April, 1973, which had sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Structure:** A static construction of building materials affixed to the ground, including but not limited to a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, swimming pool, tennis court, storage bin, or wall. **For floodplain management purposes,** structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **For insurance coverage purposes,** structure means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a foundation. For the latter purpose, the term includes a building in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**Temporary Wind Monitoring System:** A tower bearing wind measurement and associated meteorological monitoring instruments and data communication devices conforming with all the design requirements of Subsections 8.8-3 (A) and (B) for a Small Wind Energy System (SWES) that is erected and operated for a maximum of two years at a specific site in order to evaluate the suitability for subsequent installation of a SWES in the vicinity of that site.

**Town:** The Town of Shutesbury.

**Use:** The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on the premises.

**Use, Accessory:** A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

**Use, Change of:** See *Change of Use*.

**Vehicle Repair Station:** Land and structures used for servicing or repairing motor vehicles, including auto repair garages and body shops.

**Veterinary Clinic:** A facility for the medical care of animals, including boarding of animals for the sole purpose of medical treatment or recovery from treatment.

**Visible/Visibility:** Able to be seen by a person of average height and with normal vision on a clear day. (See *Screen/Screening*.)

**Watercourse:** Any stream, pond, lake, drainage channel, or other area of land that is normally or seasonally filled with water.

**Wetland, Freshwater:** As defined in the Massachusetts Wetlands Protection Act, MGL. Ch. 131, §40.

**Zone A:** The 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data as outlined in the State Building Code.

**Zone A1:** The 100-year floodplain area where the base flood elevation (BFE) has been determined.

**Zones B and C:** Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard.

**Zoning Act:** MGL. Ch. 40A, as amended.