New Marlborough Protective By-laws

Proposed By-Laws for Adoption

September 2013

Town of New Marlborough - Protective By-law

Effective Date ____

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SECTION 1: PURPOSE

1.1 The purpose of the By-law is to provide the Town of New Marlborough all the protection authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40A and any amendments thereof, and to protect the health, safety and general welfare of the inhabitants of New Marlborough.

SECTION 2: ZONING DISTRICTS

2.1 Types of Districts.

2.1.1 For the purpose of this By-law, the Town of New Marlborough is hereby divided into two districts as follows:

Rural Agricultural District (RAD)

Village Center District (VCD)

2.2 The Zoning Map

2.2.1 The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of New Marlborough, Massachusetts" with date of adoption, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matters thereon, is hereby made a part of this chapter.

2.3 Interpretation of District Boundary Lines

2.3.1 Street. For the purpose of interpretation of district boundaries as shown on the Official Zoning Map, where a street constitutes a zone boundary, the centerline of that street is the boundary.

2.3.2 Water Bodies. Boundaries indicated as following shorelines of lakes or ponds shall be construed to follow such shorelines.

2.3.3 Other Boundaries. Boundaries which appear to run parallel to the features indicated above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

2.3.4 Split Lots. Where a district boundary line divides a lot that was in single ownership on the effective date of this ordinance, the following rules shall apply:

2.3.4.1 The Board of Selectmen may permit, as a special permit, the extension of regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.

2.3.4.2 The Board of Selectmen may authorize an access road from the less restricted portion of the lot through the more restricted portion of the lot upon the grant of a special permit.

2.3.5 Interpretation. In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Zoning Board of Appeals.

SECTION 3: PERMITTED USES/USE REGULATIONS

3.1 No dwelling, structure or land or any part thereof shall be used for any purpose unless authorized in the Table of Permitted Uses below:

3.1.1 As a use by right

3.1.2 Under special permit granted by the Board of Selectmen

3.1.3 Under variance granted by the Board of Appeals

3.1.4 Under applicable law at the time such use began, and provided such use has continued until the present time

3.2 Table of Permitted Uses

LEGEND: TABLE OF PERMITTED USES

Y = by-right **SP = special permit from the Board of Selectmen** **N = not allowed**
RAD = Rural Agricultural District **VCD = Village Center District**

TABLE OF PERMITTED USES		
A. Residential Uses	**RAD**	**VCD**
1. Single-Family Dwelling	Y	Y
2. Two-Family Dwelling, subject to the requirements of § 5.2	SP	SP
3. Three-Family Dwelling, subject to the requirements of § 5.2	N	SP
4. Multi-Family Dwelling, subject to the requirements of § 5.2	N	SP
5. Accessory Dwelling, existing on or before May 5, 2003, subject to the requirements of § 5.4	Y	Y

TABLE OF PERMITTED USES		
A. Residential Uses (cont.)	**RAD**	**VCD**
6. Accessory Dwelling, either new construction or modification of an existing freestanding building constructed after May 5, 2003, subject to the requirements of § 5.4	SP	SP
7. Accessory Dwelling on a lot that does not meet the minimum lot size and frontage requirements as set forth in § 5.4 for the district in which the dwelling is located, subject to the requirements of § 5.4 and § 7.3.1	SP	SP
8. Travel Trailer, Mobile Home, subject to the requirements of § 5.1	SP	SP
B. Municipal, Non-Profit, Religious & Educational Uses	**RAD**	**VCD**
1. Any Lawful Residential, Municipal, or Non-Profit Recreational Purpose	Y	Y
2. Any Religious or Non-Municipal Educational Purpose, subject to § 7.1	Y	Y
3. Municipal and Public Service Building, Structure and Use	SP	SP
C. Agricultural Uses	**RAD**	**VCD**
1. Agricultural Uses, except fur farming	Y	Y
2. Farmers Market	Y	Y
3. Farm Stand	Y	Y
4. Custom Meat Processing Establishment	SP	N
D. Commercial Uses	**RAD**	**VCD**
1. Antique Shop, Craft Shop, Gift shop	SP	Y
2. Bank	N	Y
a. Bank, drive-through	N	N
3. Bed and Breakfast	Y	Y
4. Boarding House	Y	Y
5. Business or Professional Offices	SP	Y
6. Campground	SP	N
7. Cemetery, non-municipal	Y	Y
8. Child Care Center	N	SP
9. Commercial Greenhouse	SP	SP
10. Commercial Kennel	SP	N
11. Country Inn	SP	SP
12. Enclosed Veterinary Hospital	SP	SP
13. Facility for Generating Power from Wind, Sun or Water	SP	SP
14. Family Child Care Home, small	Y	Y
15. Family Child Care Home, large	SP	SP
16. Funeral Home	N	SP
17. Gallery	Y	Y
18. General Service Establishment	SP	Y
19. Healthcare Facilities	SP	SP
20. Home Occupations	Y	Y
21. Mixed Use, subject to the requirements of § 5.5	N	SP
22. Motor Vehicle Repair and Service Station	SP	SP

TABLE OF PERMITTED USES		
D. Commercial Uses (cont.)	**RAD**	**VCD**
23. Motor Vehicle Sales or Rentals	SP	SP
24. Museum	Y	Y
25. Extended Care Nursing Facility	SP	SP
26. Personal Service Establishment	SP	Y
27. Restaurant	SP	SP
a. Restaurant, drive-through	N	N
b. Restaurant, fast food	N	N
28. Retail, not to exceed 2,000 square feet of gross floor area	SP	Y
29. Retail, over 2,000 square feet of gross floor area	N	SP
30. Sawmill	SP	N
31. Scrap and Salvage Yard	SP	N
32. Summer Camp, Golf Course, Boat Livery, Riding Stable, Tennis Club or Ski Tow	SP	N
33. Wireless Communication Facilities, subject to the requirements of Section 9	SP	SP
E. Miscellaneous Uses	**RAD**	**VCD**
1. Conversion of a single family dwelling into a two-family, three family or multi-family dwelling, that does not meet the requirements of the Intensity Table and § 5.2 as to lot area, frontage and as to distance from property boundary line.	SP	SP
2. Any accessory use, not explicitly stated herein, that is customarily incidental and subordinate to the principle use or building, located on the same lot as the principle use or building.	Y	Y

3.3 Additional Safeguards and Requirements

3.3.1 The Board of Selectmen may impose additional safeguards and requirements for any use under this section as in their judgment are necessary for the protection of public health, safety and welfare.

3.4 Compliance with Other Regulations

3.4.1 Every use permitted by right or authorized by special permit under the provisions of this By-law shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health Regulations and any other applicable statutes, bylaws and regulations, including Parking and Sign Regulations.

3.5 Nonconforming Structures, Uses and Lots ("Grandfathering")

3.5.1 These procedures shall not apply to structures or uses lawfully in existence or lawfully begun at the time of the adoption of this By-Law as provided in M.G.L. c. 40A § 6.

3.5.2 Any pre-existing nonconforming structures or uses may be rebuilt or reestablished within two (2) years if damaged or destroyed by fire or other catastrophe.

3.5.3 Pre-existing nonconforming structures or uses may be extended, altered or changed to another nonconforming use by Special Permit from the Board of Selectmen provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

3.5.4 A nonconforming use of land or structure which has been abandoned or not used for a period of two (2) years or more shall not be reestablished, except by Special Permit and any future use of such premises shall be in conformance with these instructions.

3.5.5 Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this By-Law to the extent and as provided in M.G.L. c. 40A § 6.

SECTION 4: DIMENSIONAL REQUIREMENTS

4.1 Intensity Regulations

4.1.1 All buildings or structures hereafter erected, altered or added to in any district shall adhere to the requirements as set forth in the Intensity Table, except as noted in this section.

4.1.2 No more than one (1) principal dwelling shall be erected or placed on any such lot.

4.2 Intensity Table

Intensity Table									
Zoning District	**Minimum Lot Size (Acres)**	***Additional Land per Additional Dwelling Unit (Acres)[6]***	**Minimum Lot Frontage (Feet)**	***Additional Frontage per Additional Dwelling Unit (Feet)[6]***	**Minimum Setbacks (Feet)**			**Maximum Setbacks (Feet)**	**HEIGHT (feet)**
					Front[(4)]	**Side**	**Rear**	**Front**	
Rural Agricultural District[(1,2,5)]	**1**	**1**	**150**	**100**	**40**	**25**	**25**	**N/A**	**35**
Village Center District[(1,2,3,5)]	**1**	**0.5**	**75**	**55**	**0**	**10**	**10**	**See § 4.4.2**	**35**

Notes
1. See § 5.4 for dimensional regulations applicable to Accessory Dwellings.
2. See § 5.2 for dimensional regulations applicable to two-family, three-family and multi-family dwellings.
3. See § 4.4 for dimensional regulations applicable to the entire Village Center District.
4. Each street line on a corner lot shall be deemed a front lot line.
5. See § 5.3 for the requirements to convert an existing principal structure that does not comply with these dimensional regulations.
6. These additional requirements are only applicable to two-family, three-family and multi-family dwellings. For dimensional regulations applicable to Accessory Dwellings see § 5.4.

4.3 Buildings on Pre-existing Lots

4.3.1 Nothing in this By-Law, however, shall prohibit the construction, alteration or enlargement of a single family dwelling or other permissible building on a lot which contains a lesser area or frontage if the lot was separately owned and was so recorded in the Southern Berkshire Registry of Deeds at the time of the adoption or amendment of this By-Law.

4.4 Special Dimensional Regulations Applicable to the Village Center District.

4.4.1 The minimum lot size for lots located within the Village Center District may be reduced by the following factors:

4.4.1.1 Twenty-five percent (25%), if public sewer service is available and utilized.

4.4.1.2 Twenty-five percent (25%), if public water service is available and utilized

4.4.1.3 Fifty percent (50%) if both public sewer service and public water service are available and utilized.

4.4.1.4 Fifty percent (50%) if new technology for providing for adequate separation of sewage and water services under 310 CMR 15.000 "Title V" is available and utilized.

4.4.2 The maximum front yard setback for lots located in the Village Center District shall be the average setbacks of all principal buildings on the same side of the street within 100 yards on either side of the subject lot.

4.4.2.1 Vacant lots shall not be used to calculate the average setbacks of all principle buildings within 100 yards of the subject lot.

4.4.2.2 If no buildings exist on the same side of the street within 100 yards on either side of the subject lot then the maximum setback shall be thirty-five feet (35').

4.5 Exclusion from the Height Limitations

4.5.1 Limitations of height shall not apply to spires, domes, steeples, radio towers, chimneys, broadcasting and television antennae, bulkheads, cooling towers, ventilators, silos, cupolas, and other appurtenances usually carried above the roof.

SECTION 5: SPECIAL REGULATIONS

5.1 Travel Trailers/Mobile Homes

5.1.1 A Travel Trailer or Mobile Home may be permitted by the Board of Selectmen in accordance with the provisions of the General Laws, in their capacity as enforcing agents, to be occupied for temporary living quarters by the owner(s) of the premises on which it is located for one (1) year, provided that such owner(s) is in the process of constructing a dwelling for his/her own occupancy, and further provided that such Travel Trailer or Mobile Home is, and the dwelling being constructed will be, in conformity to the Sanitary Code of the Commonwealth of Massachusetts. Such permit may be extended if the work on the dwelling is proceeding in good faith.

5.1.2 A Travel Trailer or Mobile Home issued a permit by the Board of Selectmen and located and occupied prior to the adoption of this By-Law, may continue to be

used, provided a certificate from the Board of Health is submitted to the Board of Selectmen stating compliance with the Sanitary Code of the Commonwealth of Massachusetts, and further provided that such Travel Trailer or Mobile Home may be replaced by another on the same premises and under the same conditions. Notwithstanding other provisions of this Section (5.1), a Travel or Mobile Trailer may be parked upon and owner's premises provided the same is not used for purposes of human habitation of such site.

5.2 Two-Family, Three-Family and Multi-Family Dwellings

5.2.1 Construction plans, elevations, and the location of the building(s) on the lot must be submitted to the Planning Board, Board of Health, Conservation Commission, and the Building Inspector for their recommendations to the Board of Selectmen. The recommendations shall be submitted within thirty (30) days of the date the plans are submitted.

5.2.2 Design plans shall contain provisions for no more than the allowable number of units. No building shall exceed thirty-five (35) feet in height. Such plans shall also contain provisions for adequate water and sewage disposal facilities.

5.2.3 In the Village Center District, a lot shall contain a minimum of one (1) acre for the first dwelling unit and one-half (0.5) of an acre for each additional unit. The lot shall contain a minimum of seventy-five (75) feet of frontage for the first unit and fifty-five (55) feet of frontage for each additional unit.

5.2.4 In the Rural Agricultural District, a lot shall contain a minimum of one (1) acre for the first dwelling unit and one (1) acre for the second unit. The lot shall contain a minimum of one hundred fifty (150) feet of frontage for the first unit and one hundred (100) feet of frontage for the second unit.

5.2.5 In the Rural Agricultural District only, dwelling units, parking areas, and playgrounds shall not be less than one hundred (100) feet from all property boundary lines.

5.3 Conversion of a Single Family Dwelling to a Two-Family, Three Family or Multi-Family Dwelling as allowed by § 3.2 (E)(1).

5.3.1 The single-family dwelling has not been substantially enlarged within four (4) years of the proposed conversion. Substantially enlarged shall mean expanded beyond thirty (30%) of the structure’s gross floor area.

5.3.2 The lot areas has not been reduced below the minimum within four (4) years of the proposed conversion.

5.3.3 Any fire escapes or outside stairways leading to a second story shall be located on any wall not facing a road and shall not occupy any part of the rear or side setback.

5.3.4 No exterior addition to the original dwelling shall thereafter be made other than fire escapes or outside stairways.

5.3.5 No structure shall be converted unless in connection therewith it is placed in a reasonable state of repair

5.4 Accessory Dwellings

5.4.1 The exterior appearance of the building shall not be altered except for purposes of safety (stairs for fire escapes), health (weather protection for the main entry such as enclosed entry or drip edge protection) or handicapped accessibility requirements (ADA compliance) or to meet building code requirements, nor shall the footprint of the building be enlarged.

5.4.2 In the Rural Agricultural District, the minimum lot size requirement shall be two (2) acres and the minimum frontage requirement shall be 150 feet.

5.4.3 In the Village Center District, the minimum lot size requirement shall be one and one-half acre (1.5) acre and the minimum frontage shall be 75 feet.

5.4.4 One of the two units on the lot shall be occupied by the owner(s) of the lot, and in the event of the sale of the property, the new owner(s) shall occupy one of the two units as a primary residence.

5.4.5 There shall be no more than one accessory dwelling per lot created under this By-law.

5.4.6 The maximum net living floor area shall not exceed 1200 square feet.

5.5 Village Center District Mixed Use

5.5.1 In the Village Center District dwelling units may be allowed by special permit above the first story of a principle structure that is primarily used for an allowable commercial use, subject to the requirements of § 7.3 and other applicable sections.

5.5.2. In the Village Center District, an allowable commercial use (in addition to the principal use) may be allowed by special permit in an accessory building, subject to the requirements of § 7.3 and other applicable sections.

SECTION 6: SIGN REGULATIONS

6.1 Permitted Accessory Signs

6.1.1 A sign not exceeding two (2) square feet in area and bearing only names of residents or their identification of premises not having commercial connotations.

6.1.2 One sign not exceeding six (6) square feet in area for a permitted accessory use on the premises with a permit from the Board of Selectmen.

6.1.3 No more than two (2) signs for a commercial or other non-residential use not exceeding sixteen (16) square feet in total area except by permit from the Board of Selectmen.

6.2 Sign Restrictions

6.2.1 No sign shall be illuminated by other than shaded or indirect white incandescent light of constant intensity and no sign shall be illuminated by flashing, intermittent, rotating, moving light or lights or have any visibly moving parts or noise- making devises.

6.2.2 No sign or light shall be placed so as to constitute a hazard or nuisance.

6.2.3 No sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.

6.2.4 A free standing sign may not exceed fifteen (15) feet in height above grade or be closer to the front property line than twenty (20) feet except with a permit from the Board of Selectmen where the Board finds that requirements of the particular location dictate greater height or smaller setback.

6.2.5 Temporary signs which do not comply with this By-law may be authorized for a period not over ten (10) days by the Board of Selectmen for special events such as an opening of a new business or industry or announcing a public event sponsored by a civic, fraternal, social or religious organization. The Board of Selectmen may, at their discretion, require the posting of a bond or cash deposit large enough to cover the cost of removal of temporary signs if signs are not removed promptly after expiration of the permit.

6.2.6 Any sign, which has been abandoned or advertises any product, business or activity, which is no longer, sold or carried on, must be removed within thirty (30) days by the owner of the premises after notice to that effect from the Board of Selectmen.

SECTION 7: ADMINISTRATION/GENERAL REGULATIONS

7.1 Non-Municipal Education or Religious Use

7.1.1 Any non-municipal educational or any religious use is subject to the following regulations.

7.1.1.1 Maximum building height two (2) stories or thirty-five (35) feet.

7.1.1.2 Maximum building coverage four percent (4%) of the land area.

7.1.1.3 Setback two hundred (200) foot buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.

7.1.1.4 Primary access roads and principal parking areas subject to frequent day or night use shall be approved by the Planning Board to meet subdivision requirements for safety and health of the community. Primary shall be at least twenty (20) feet wide and shall not exceed a six percent (6%) grade.

7.1.1.5 Parking areas shall be subject to Section 7.3.

7.1.1.6 Parking areas shall be within three hundred (300) feet of the building to be served.

7.2 Measurements

7.2.1 All distances in this By-law shall be measured horizontally and all heights shall be measured vertically.

7.3 Parking

7.3.1 Suitable off-street parking area shall be provided on all premises in accordance with the following schedule for each building or structure, which is erected, altered or enlarged after the effective date of this By-law.

7.3.1.1 Dwelling: off-street parking for two (2) cars per dwelling unit.

7.3.1.2 Accessory home occupation or office: one (1) space for each non-resident employee plus one (1) space per one hundred (100) square feet of floor area for clients.

7.3.1.3 Business: one (1) space for each employee plus one (1) space per one hundred (100) square feet of floor area for customers.

7.3.1.4 Accessory Dwelling: Two off-street parking spaces for the principal unit and at least one off-street parking space for the accessory dwelling. Each parking space and the driveway approach thereto shall be constructed with all-weather permeable gravel suffice. Shared parking with municipal or commercial uses can be considered to meet the requirements, if made a condition of the building permit.

7.3.1.5 To the extent feasible, off-street parking areas on lots located in the Village Center District shall be located to the rear or side of the principal building.

7.3.1.6 For mixed uses, there shall be adequate off-street parking to service both the commercial use and the residential use as set forth in § 7.3. Shared parking with municipal or commercial uses can be considered to the meet the parking requirements, if made a condition of the building permit.

SECTION 8: ZONING BOARD OF APPEALS AND SPECIAL PERMITS

8.1 Membership and Authority

8.1.1 There shall be a Zoning Board of Appeals consisting of three (3) members and two (2) associate members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40A of the General Laws. The Board shall act within its statutory powers as provided in Section 14, Ch. 40A (MGL) and on matters within its jurisdiction under this By-law in a manner prescribed in Section15, Ch. 40A (MGL). The Zoning Board of Appeals shall act also as the Board of Appeals under the Subdivision Control Law as provided in Chapter 41, Section 81Z of the General Laws.

8.2 Statutory Powers of the Zoning Board of Appeals

8.2.1 **Appeals**

The Board is authorized to hear and decide an appeal, as provided in Section 8, Ch. 40A (MGL) taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement from any administrative officer under the provision of Ch. 40A (MGL) by the Berkshire County Regional Planning Commission, by any person including an officer or Board of the Town, of an abutting Town, aggrieved by an order or decision of the Building Inspector or other administrative official, in violation of any provision of Ch. 40A (MGL) or of this By-law. Any such appeal must be taken within thirty (30) days of the date

of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section 15, Ch. 40A (MGL).

8.2.2 **Variances**

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this By-law where the Board specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-law.

8.2.3 **Decision by the Zoning Board of Appeals**

The decision of the Zoning Board of Appeals shall be made within seventy-five (75) days of the date of the filing of an appeal, application or petition of the Town Clerk, except in regard to Special Permits as provided herein. Failure by the Zoning Board of Appeals to act with said seventy- five (75) days shall be deemed to be the grant or relief application or petition sought.

8.2.4 **Expiration of Variance**

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, they shall lapse and re-established only after notice and a new hearing as provided herein.

8.3 Special Permit Granting Authority

8.3.1. The Board of Selectmen are designed as Special Permit Granting Authority to hear and decide on applications for Special Permits upon which such Board is specifically authorized to act in accordance with the provisions of Section 9, Ch. 40A of the General Laws.

8.3.2 **Required Hearing and Notice**

Special Permits may only be issued following public hearings held within sixty-five (65) days after filing of an application with the Board of Selectmen. Notice of Public Hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing and by mailing it to "Parties in interest" as provided in Section 11, Ch. 40A (MGL) which includes the petitioners, abutters, owners of land of land directly opposite on any public or private street or way and the owners of land within three hundred (300) feet of the property line, all as they appear on the most recent applicable tax list.

8.3.3 **Review by Other Boards and Agencies**

The Special Permit Granting Authority shall within ten (10) days of receipt of an application for a Special Permit, transmit a copy thereof for review to the Board of Health, the Planning Board, the Conservation Commission and any other municipal board or agency. Any board or agency to which such applications are referred for review shall make such recommendations, as it deems appropriate, in writing, provided however, the failure to make recommendations within thirty-five (35) days of receipt by such board or agency for review shall be deemed lack of opposition thereto.

8.3.4 **Findings Required**

Before granting a Special Permit for any use requiring such permit under a provision of this By-law, the Special Permit Granting Authority shall find that the proposed use.

8.3.4.1 Is in compliance with all other provisions and requirements of the Town of New Marlborough By-laws and in harmony with its general intent and purpose

8.3.4.2 Is essential or desirable to the public convenience or welfare at the proposed location.

8.3.4.3 Will not be detrimental to the adjacent uses or to the established or planned future character of the neighborhood.

8.3.4.4 Will not create undue traffic congestion or unduly impair pedestrian safety.

8.3.4.5 Will not overload any public water, drainage, sewer system or other municipal facility to such an extent than the proposed use or any existing use in the immediate area or any other area of the Town will be unduly subjected to the hazards affecting public health, safety general welfare.

8.4 Conditions, Safeguards and Limitations

8.4.1 Special Permits may be issued subject to such conditions, safeguards or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purpose of this By-law.

8.5 Decisions by Special Permit Granting Authority

8.5.1 The Special Permit Granting Authority shall act within ninety (90) days of the date of the public hearing. Failure to take final action upon an application for a Special Permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

8.6 Expiration of a Special Permit

8.6.1 A Special Permit shall lapse in one (1) year unless a substantial use or construction has begun under the permit by such date and, in the case of construction, the work is carried through to completion as continuously and expeditiously as is reasonable.

8.7 Special Permit for Accessory Use

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

SECTION 9: TELECOMMUNICATIONS

9.1 Purpose and Goals

9.1.1 The purpose of this By-law is to establish guidelines and the special permitting process for the siting of wireless communication facilities, towers and antennas. The goals of this By-law are to include: (i) minimizing adverse impacts of wireless communication facilities, satellite dishes and antennas on abutting properties, residential neighborhoods, traveled ways and areas of historic or

high scenic value, (ii) encourage the location of towers and antennas, to the extent possible, in areas where adverse impact on the community is minimal, (iii) encourage strongly the shared use of new and existing tower sites and to minimize the overall number and height of such facilities to only what is essential, (iv) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas, and (v) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

9.2 Definitions

ALTERNATIVE TOWER STRUCTURE: Man-made trees, clock tower, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ACT: The **Communications Act of 1934**, as it has been amended from time to time, including the **Telecommunications Act of 1996**, and shall include future amendments to the Communications Acts of 1934 and 1996.

ANTENNA: Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes and omni-directional antennas, such as whips but not including satellite earth stations.

ANTENNA HEIGHT: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

ANTENNA SUPPORT STRUCTURE: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting or receiving of radio frequency energy.

B. O. S.: Shall mean the Board of Selectmen.

CAMOUFLAGED ANTENNA: Any antenna and support structure that is manufactured as to be modeled after and mimic a tree. The support pole would look like “bark” and the antennas would be concealed as “branches”.

DISH ANTENNA: A dish like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

DISTANCE: Shall be measured on a horizontal plane.

EFFECTIVE RADIATED POWER (ERP): The product of the antenna power input and the numerically equal antenna power gain.

FAA: Shall mean the Federal Aviation Administration.

FCC: Shall mean the Federal Communications Commission.

GROUND STRUCTURE: Shall mean a wireless communication structure anchored to the ground.

GOVERNING AUTHORITY: Shall mean the governing authority of the Town of New Marlborough.

HEIGHT: Shall be the distanced measured from ground level to the highest point on the structure.

LATTICE TOWER: A guyed or self-supporting three or four sided, open, steel frame structure used to support telecommunications equipment.

MONOPOLE TOWER: A communications tower consisting of a single pole, constructed without guy wires and ground anchors.

NON-RESIDENTIAL STRUCTURE: Shall mean such structures as, but not limited to, buildings, grain silos, and water towers, but does not include houses, or apartments.

ROOF STRUCTURE: Shall mean a wireless communication structure mounted on a roof of a building or the top of a water tower.

SELF SUPPORT TOWER: A communication tower that is constructed without guy wires and ground anchors.

TOWER: Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting, lattice tower, guy towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

WIRELESS COMMUNICATION BUILDING: Shall mean any building or shelter used to house equipment primarily for the installation and operation of equipment for generation and detecting electromagnetic radiation, and is an accessory to wireless communication structure.

WIRELESS COMMUNICATION DEVICE: Shall mean any antenna, appurtenance, wiring or equipment used in connection with the reception or transmission of electromagnetic radiation which is attaché 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.

WIRELESS COMMUNICATION STRUCTURE: Shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

9.3 Exemptions

9.3.1 The following shall be exempt from this By-law:

9.3.1.1 Wireless communication facilities used for Town or State emergency services.

9.3.1.2 Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the federal Communication Commission and used solely for that purpose.

9.3.1.3 Wireless communication structures and devices used expressly for home television and radio reception.

9.4 General Guidelines

9.4.1 No wireless communication facility shall be erected, constructed, or installed without a Special Permit from the Board of Selectmen.

9.4.2 Only free-standing monopoles with associated antenna are allowed. Lattice style tower and similar facilities requiring three or more legs and/or guy wires for support are not allowed.

9.4.3 Alternative Tower Structures and Camouflaged Antennas shall be preferred over all other types of wireless communication structures and antennas as to minimize adverse impacts on abutting properties, residential neighborhoods, village centers, traveled ways and areas of historic or scenic value.

9.4.4 Wherever feasible, wireless communication devices shall be located on existing tower or other non-residential structures, minimizing proliferation of new towers.

9.4.5 Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification.

9.4.6 Wireless communication building shall be no larger than 500 square feet and 12 feet high, shall be designed to match other accessory building on the site, and shall be used only for the housing of equipment related to this particular site.

9.5 Siting and Height Requirements

9.5.1 **Setbacks**

9.5.1.1 The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.5 times the height of the structure to ensure adequate fall zone.

9.5.1.2 The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.

9.5.1.3 The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletic fields, and abutting residences to prevent the structure from appearing to “tower” over; adversely affecting property values.

9.5.1.4 No tower shall be situated within 600 feet of any residential structure.

9.5.2 The height shall be the minimum height necessary to accommodate anticipated and future use.

9.6 Design Requirements

9.6.1 Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.

9.6.2 There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.

9.6.3 All wireless communication devices shall be colored, molded, and/or installed to blend into the structure and/or the landscape.

9.6.4 The facility shall be fenced to control access to the tower structure, and accessory buildings. Fencing shall be between six feet (6') and eight feet (8') high. Fencing may be protective in nature, but shall not include a spun barbed wire design. A landscape buffer of evergreen shrubs or tree planting shall be provided on the outside of the fenced area. The shrub or tree planting shall mature to a minimum height equivalent to the fence height and be planted a height of at least four feet (4').

9.6.5 Night lighting of the facility shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring lighting shall be submitted with the application.

9.6.6 There shall be a minimum of one parking space for each facility to be used in connection with the maintenance of the site and not to be used for the storage of vehicles or other equipment.

9.6.7 Existing on-site vegetation shall be preserved to the maximum extent possible.

9.6.8 Vegetation screening shall be used to screen the facility from abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

9.7 Application Process

9.7.1 Application for a Special Permit for siting wireless communication facilities shall be filed in accordance with the rules and regulations already established in the Town's By-Laws and with the Board of Selectmen.

In the case of a proposal for siting a new wireless communication structure, the Board of Selectmen shall hold a public hearing within sixty-five (65) days of filing of an application and shall issue a decision with ninety (90) days following the date of the public hearing.

9.7.1.1 To site a new wireless communication structure, the applicant shall submit:

A. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200' where appropriate, on as many sheets as necessary which shows the following.

(1) North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for reviewing licensed engineer's seal.

(2) Name and address of landowner and name and address of abutters.

(3) Property lines and location of permanent structures or building, within 600 foot radius of proposed wireless communication structure.

(4) Existing (from a topographical survey completed within two (2) years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of two (2) foot intervals and spot elevations at base of all proposed and existing structures.

(5) Vegetation to be removed or altered.

(6) Plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.

(7) Delineation of wetlands, if any.

(8) Location of wireless communication structure, including supports or guy wires, if any.

(9) Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.

(10) Plans for accessory buildings.

(11) Layout and details of surfacing for access road and parking.

(12) Amenities such as lighting, fencing, and landscaping.

(13) 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 the Town as determined by the Board of Selectmen.

(14) Plans for a well or other water source, if any.

(15) Plans for septic system, if any.

(16) Plans for maintenance of roads necessary to access and maintain the property.

B. A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths and the interface with adjacent service areas.

C. A locus map at a scale 1” = 1000’ or larger if necessary, to show where in the Town the proposed tower is sited, which shall show streets, building, and landscape features.

D. A description of the soil and surficial geology at the proposed site.

E. A narrative report written by the carrier and licensed professional engineer which shall:

(1) Describe the justification of the proposed site.

(2) Describe the structure and the technical, economic, and other reasons for the facility design.

(3) Describe the capacity of the structure, including the number and type of additional facilities it can accommodate.

(4) Describe actions to be taken if electromagnetic radiation from the facility should exceed level designated by the FCC and/or the Act.

(5) Describe the projected future needs of the carrier, and how the proposed wireless communications facilities fit with the future projections to serve the Town and adjacent towns.

(6) Describe leasing agreement should another carrier desire to co-locate.

(7) Describe special design features to minimize the visual impact of the proposed wireless communication facility.

(8) Describe other carriers' purposes should they co- locate.

F. Proof of approval of all other necessary permits needed for construction and operation, other than the building permit, as the special permit granted by the Board of Selectmen is required before the issue of the building permit.

G. Written authorization or copy of contract from property owner of the proposed tower site.

H. After the application is submitted, and not less than 14 days or more than 21 days before the public hearing, the applicant shall arrange to fly a four-foot diameter balloon at the site of the proposed wireless communication structure at the maximum height of the propose installation, to photograph from various locations.

SECTION 10: BUILDING PERMITS

10.1 A Building Permit from the Board of Selectmen shall be required before the start of construction, alteration or expansion of a building or structure, which will create more than one hundred (100) square feet of area including basement and additional floors. Such a permit shall state that the structure, premises and the proposed use thereof and comply with the provisions of this By-law. All permits shall expire in one (1) year if construction is not substantially started during the period of time, and shall become void if the operation, once commenced, is discontinued for a period of six (6) months or more. The Board of Selectmen shall be notified in writing by the owner fourteen (14) days before a building shall be used or a dwelling occupied. Upon notification, the Board or its representative shall inspect the building for compliance with the building permit and regulations, and issue an occupancy permit within the

specified fourteen (14) day period, or instruct the owner which deficiencies, if any, must be corrected.

SECTION 11: DEFINITIONS

ACCESSORY DWELLING: A detached freestanding building located along with the principle dwelling unit on the lot shall be allowed as an accessory dwelling.

AGRICULTURAL USE: Any use of land for the purpose of raising agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This use does not include kennels, commercial stables, or facilities for the commercial raising of fur bearing animals.

BED AND BREAKFAST: An establishment, with up to ten (10) rooms available for overnight guests whose paid accommodations include breakfast. The establishment shall be the primary and legal residence of the owner(s). These establishments are intended for guests on intermittent visits and shall not be used as long-term rental units or apartments.

BOARDING HOUSE: Renting of rooms and furnishing of board by an owner in his or her residence provided no independent kitchen facilities are maintained.

BUSINESS OR PROFESSIONAL OFFICE: A single business establishment engaged in providing professional or business services, including legal, insurance, real estate, engineering, marketing, sales, advertising, financial advisory, tax advisory or other similar services.

BUILDING: A roofed or walled structure used or intended for supporting or sheltering any use occupancy.

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

CHILD CARE CENTER: Any facility operating as defined in MGL c. 15D § 1A.

COMMERCIAL KENNEL: A kennel facility in which three (3) or more dogs, which are three (3) months or older, are boarded or groomed.

COUNTRY INN: An establishment, with up to twenty (20) rooms available for overnight guests at which full food service may be provided as part of the accommodations. These establishments are intended for guests on intermittent visits and shall not be used as long-term rental units or apartments.

CUSTOM MEAT PROCESSING ESTABLISHMENT: A building or structure wherein animals are slaughtered, processed and/or prepared for sale or private use subject to all state and federal laws.

CUSTOMARY HOME OCCUPATION: Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at the home and requiring no more off-street parking facilities that would ordinarily be used by the household, such as dressing making, preserving or home cooking, photography, the giving of private music and dance lessons or a one chair beauty parlor. Customary home occupation does not include gift shop, antique shop, art gallery or similar retail establishment.

DRIVE THROUGH: Providing services directly to customers who remain in their automobiles from any window, counter or other appurtenance from either the principal or accessory building.

DWELLING UNIT: One or more rooms constituting a separate independent housekeeping unit establishment with cooking, living, sanitary and sleeping facilities for the use of no more than one family.

DWELLING, SINGLE FAMILY: A detached residential building designed for or occupied by one (1) family only, but not including mobile homes and trailers whether placed on foundations or not.

DWELLING, TWO FAMILY: A residential building containing two (2) dwelling units.

DWELLING, THREE FAMILY: A residential building containing three (3) dwelling units.

DWELLING, MULTI-FAMILY: A residential building containing four (4) to six (6) dwelling units.

EXTENDED CARE NURSING FACILITY: Extended care nursing facility, rehabilitation facility, convalescent facility, rest home or any other such institution, however named, whether conducted for charity or for profit, which is maintained for the purpose of caring for persons, requiring medium to intensive medical, rehabilitation, or convalescent therapy and who need assistance or monitoring on a regular basis.

FAMILY: An individual or any number of individuals related by blood, marriage or other legal arrangement such as adoption, guardianship, foster care or up to six (6) unrelated individuals living in a single dwelling unit.

FAMILY CHILD CARE HOME, SMALL: Any private residence operating as a facility as defined in MGL c. 15D § 1A.

FAMILY CHILD CARE HOME, LARGE: Any private residence operating as a facility as defined in MGL c. 15D § 1A.

FARM STAND: The display and sale of natural products, the major portion of which are raised in the Town.

FARMERS MARKET: A public market at which farmers and other vendors sell produce, crafts and other farm goods directly to consumers.

FRONTAGE: That boundary of a lot, which lies along a road.

FUELING STATION: A temporary parking space for re-fueling vehicles that is adjacent to a gas pump(s).

FUNERAL HOME: A facility for the conducting of funerals and related activities such as embalming.

GENERAL SERVICE ESTABLISHMENT: Any establishment or repair shop, the repair and maintenance of household items, not including motor vehicles, where crafts, skills or professional trades are performed, including but not limited to appliance repair, artisans, bakers, builders, caterers, carpenters, contractors, electricians, plumbers, upholsterers, and similar uses.

GRANDFATHERING: A term commonly used used to describe the rights that a property owner has to continue or convey an existing land use, lot or structure when subsequently enacted regulations prohibit the use, lot or structure. Those uses and structures are allowed to continue as they are, in perpetuity, unless a use is abandoned for two years. If after two years, the owner wants to re-engage in the old use, a special permit must be sought.

GROSS FLOOR AREA: The sum of the horizontal areas of the several floors of a structure. Gross floor area is measured from the exterior face of exterior walls (or from the center line of a wall separating two buildings or portions of buildings), including elevator shafts and stairwells at each floor and interior balconies and mezzanines, but not including interior vehicle parking or loading areas, cellars with walls more than 50% below grade, and areas having less than six feet floor-to-ceiling height.

HEALTHCARE FACILITIES: An outpatient facility or institution, whether public or private, principally engaged in providing services for health maintenance and treatment of mental or physical conditions. Health care facilities include, but are not limited to public health centers, diagnostic centers, medical offices, dental offices, treatment centers, rehabilitation centers, home health agencies, clinics and dispensaries. They may include laundries, cafeterias, gift shops and laboratories as accessory uses.

HOME OCCUPATION: The use of a room or rooms in a dwelling or accessory building, where the primary use of the property is a dwelling, by a resident occupant for the practice of a recognized profession or by a resident carpenter, painter, plumber, electrician, or other artisan in connection with his/her trade, including display and sale of products produced on the premises, or by a resident engaged in the customary home occupation, provided that there is no evidence of business other than a permitted sign.

LOT: An area of land in one ownership with definite boundaries, used or available for the use as the site of one or more buildings.

MOTOR VEHICLE SALES: Sales or rentals of new or used motor vehicles.

MOTOR VEHICLE REPAIR AND SERVICE STATION: A building, or part thereof, for the retail sale of gasoline, oil and motor vehicle accessories and repairs and servicing such as lubricating, tune-ups, adjusting and repairing brakes, tire service and general service. There shall be no more than two fueling stations at any Motor Vehicle Repair and Service Station. The sale or rental of motor vehicles shall be an allowed accessory use.

MUNICIPAL USE: Any Town of New Marlborough use of land in accordance with the General Laws governing municipal powers and functions including participation in regional uses.

PERSONAL SERVICE ESTABLISHMENT: Any establishment primarily engaged in providing services involving the care of, repair, maintenance, or customizing of personal properties that may be worn or carried about the person or are a physical part of the person, including but not

limited to barbers, body artists, clothes cleaners, decorators, florists, garment makers, hair dressers, manicurists, massage therapist, photographers, printers, shoe repairers, yoga and personal wellness studios; and similar uses.

RESTAURANT: An establishment, the principal activity of which is the service or sale of food or drink for on-premises consumption.

RESTAURANT, FAST FOOD: An establishment, the principal activity of which is the sale of pre-prepared or quickly prepared foods or drinks, often using disposable containers or wrappers, for consumption either on or off premises.

RETAIL: An establishment selling goods not specifically listed elsewhere in the Table of Permitted Uses.

ROAD:

a. A public way or way which the Clerk of the Town certifies is maintained and used as a public way, or
b. A way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or
c. A way in existence when the subdivision control law became effective in New Marlborough on March 8, 1965 having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the building erected or to be erected thereon.

SETBACK: The area of a lot extending inward front a lot line (or, in the case of front setback, the road line), for the distance specified in the zoning regulations in which no building or structures may be placed.

SETBACK, FRONT: An area extending across the full width of the lot and extending inward from the road line of the lot.

SETBACK, REAR: An area extending inward from rear of the lot between the side lot lines.

SETBACK, SIDE: An area extending along a side lot line from the front line to the rear line.

STRUCTURE: Any construction, erection, assemblage or other combination of material upon the land necessitating pilings, footings, or a foundation for attachment to the land, including swimming pools and recreational courts.

SECTION 12: AMENDMENTS

This By-law may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Section 6, Ch. 40A of the General Laws

SECTION 13: SEPARABILTIY

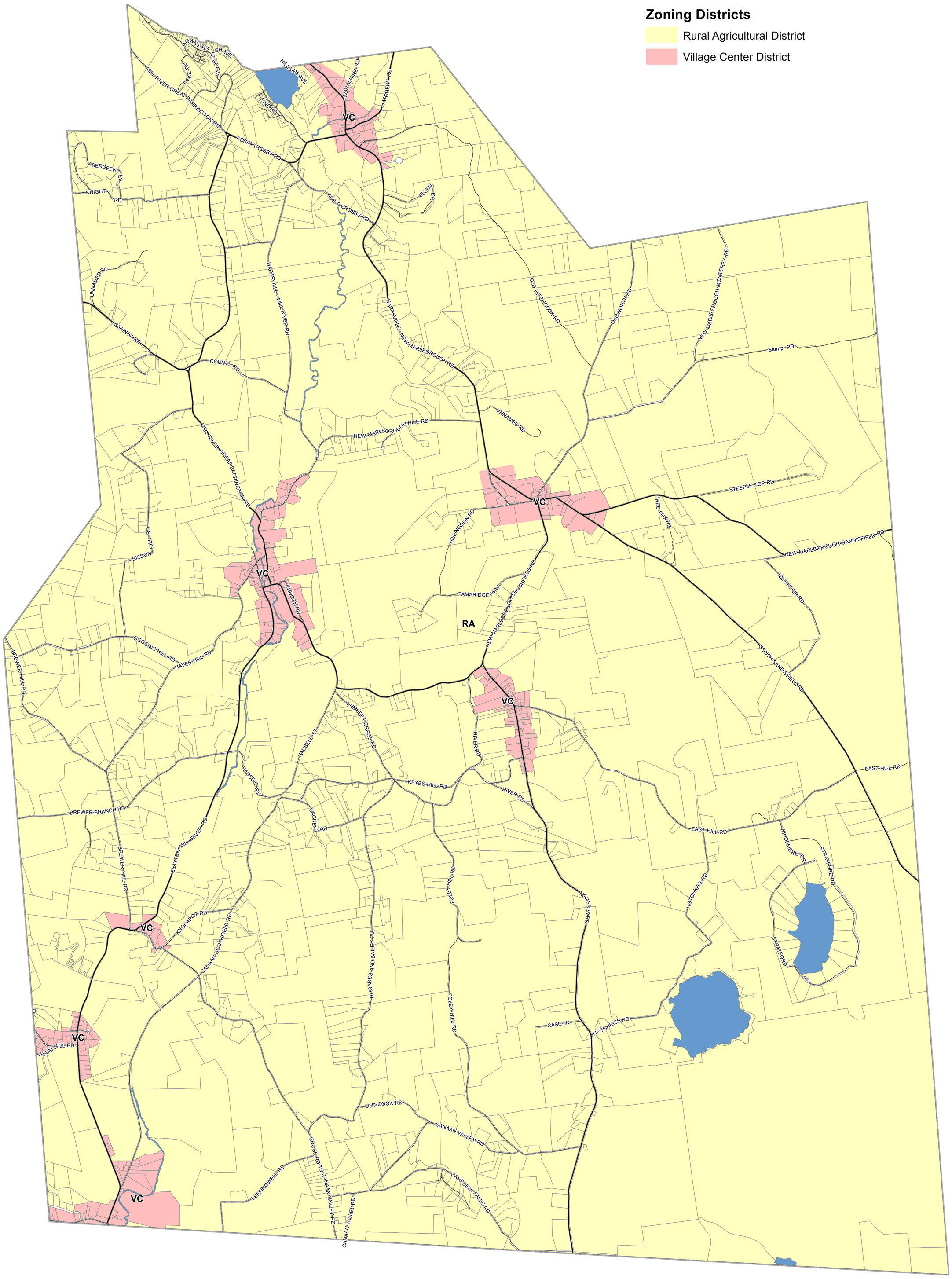
The invalidity of any Section or provision of this By-law shall not invalidate any other Section or provision thereof.

Appendix A

Zoning and Village Center Maps

Zoning Map of New Marlborough, Massachusetts

Approved at Town Meeting:_____



Berkshire Regional Planning Commission