

ZONING BY-LAW

TOWN OF MANCHESTER-BY-THE-SEA

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INTRODUCTION

The Town of Manchester-by-the-Sea voted to amend the Zoning By-Law at the Annual Town Meeting held on May 1, 2 and 3, 1978, adopting a complete Zoning By-Law revision and new codification and organization. The Massachusetts Attorney General approved, with deletions in subsection 7.1.2 and section 7.2, this amended and recodified Zoning By-Law on August 18, 1978. The Zoning By-Law has subsequently been revised often by vote of Town Meeting.

Any editorial, typographical and transcription errors do not invalidate the Zoning By-Law. If errors are found, please report them to the Board of Selectmen's office.

GENERAL REQUIREMENTS

Chapter 40A of the Massachusetts General Laws as amended by Chapter 808 of the Acts of 1975, "The Zoning Act", sets forth certain requirements relating to zoning matters. For the convenience of those using the Zoning By-Law of the Town of Manchester-by-the-Sea, a few of these requirements are set forth below. However, nothing herein is intended to alter or vary the requirements of Chapter 40A, "The Zoning Act", provisions of which shall control in all instances.

1. A zoning change may be initiated by or submitted to the Board of Selectmen by a Selectman, the Zoning Board of Appeals, individuals owning land to be affected, ten registered voters, the Planning Board or a regional planning agency.
2. All zoning changes require approval of the Town Meeting by a two-thirds vote.
3. No proposed zoning by-law or change unfavorably voted upon shall be considered by the Town Meeting within two years unless there is a favorable Planning Board recommendation.
4. No appeal, application or petition which has been unfavorably acted upon by the Zoning Board of Appeals can be reconsidered within two years without consent of the Planning Board.
5. Rights acquired under a variance shall lapse if they are not exercised within one year.
6. Decision on an appeal or variance must be made within 100 days of the date of filing. Failure to make a decision within 100 days shall be deemed to be a grant of the appeal or variance.
7. Decision on a special permit must be made within 90 days of the public hearing thereon. Failure to make a decision within 90 days shall be deemed to be a grant of the special permit.
8. A special permit shall lapse within two years (or such shorter period as is deemed appropriate by the Zoning Board of Appeals or the special permit granting authority) if substantial use thereof has not commenced within such period except for good cause or if construction has not begun except for good cause.
9. The Zoning Board of Appeals consists of five members. By reason of Chapter 40A, all decisions must receive four votes.
10. The Board of Selectmen consists of five members. By reason of Chapter 40A, all decisions as special permit granting authority require a vote of at least four members.

INFORMATION RELATING TO LAWS AND REGULATIONS GOVERNING LAND USE

Land use in the Town of Manchester-by-the-Sea is subject to regulation under various Town By-Laws and statutes of the Commonwealth. Included among these are the Zoning By-Law of the Town of Manchester-by-the-Sea adopted pursuant to Chapter 40A of the General Laws as amended by Chapter 808 of the Acts of 1975, "The Zoning Act" of the Commonwealth of Massachusetts, and the following:

BY-LAWS OF THE TOWN OF MANCHESTER-BY-THE-SEA as amended and set forth as Board of Selectmen's Rules and Regulations. Included are the Earth Removal By-Law (Article XII), the Historic District By-Law (Article XVI), the General Wetlands By-Law (Article XVII), and By-Laws regulating swimming pools, signs and advertising devices, snow guards, road openings, and billboards (Article X).

TOWN OF MANCHESTER-BY-THE-SEA SUBDIVISION RULES AND REGULATIONS set forth the Planning Board's procedures and standards to be followed in the subdivision of land and the construction of ways pursuant to "The Subdivision Control Law," Chapter 41 of the General Laws.

STATE BUILDING CODE sets forth the regulations, administered by the Building Inspector, relative to the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of buildings and structures and use or occupancy thereof.

STATE ENVIRONMENTAL CODE - Title 5 as amended sets forth the minimum standards for the protection of public health and the environment when circumstances require the use of individual systems for the disposal of sanitary sewage in areas where municipal sewage systems are not available.

"MINIMUM REQUIREMENTS FOR THE DISPOSAL OF SANITARY SEWAGE IN UNSEWERED AREAS" sets forth the Board of Health's local rules and regulations pertaining to the construction or installation of on-lot sewage disposal systems in areas not connected to the municipal sewers.

HISTORIC DISTRICTS sets forth the boundary description of the Historic District and the regulations administered by the Historic Districts Commission pertaining to the preservation and protection of buildings, places and districts of historic significance in such zones through the development and maintenance of appropriate settings. Maps of the District are available in Town Hall.

STATE WETLANDS PROTECTION ACT is administered by the Manchester Conservation Commission and provides for public review of proposed projects which involve construction or other alterations of land in or near wetlands or land deemed subject to periodic flooding.

SECTION 1.0 AUTHORITY AND PURPOSE

1.1 PURPOSE

This Zoning By-law (“this By-law”) has been enacted to promote and protect the public health, safety, convenience, and general welfare of the inhabitants of the Town of Manchester-by-the-Sea and the public generally by:

- Encouraging the most appropriate use of land and water within the Town;
- Preventing overcrowding of land;
- Preventing undue concentration of population on the one hand, and preventing excessive scattering of population on the other;
- Encouraging various lot sizes and housing types for persons of various age and income levels;
- Minimizing traffic hazards and congestion;
- Providing for adequate light, air, and sanitation;
- Reducing hazards from fire, flood, panic, and other dangers;
- Assisting in the economical provision, utilization and expansion for all services provided to the public, including streets, drainage, water supply, sewage disposal, schools, parks and open spaces;
- Preventing blight and pollution of the environment;
- Maintaining and enhancing the natural and historical amenities of Manchester-by-the-Sea;
- Conserving the value of land and buildings;
- Promoting the development of a sustainable coastal community and encourage climate resiliency and adaptation, and
- Implementing the recommendations of the Town’s Master Plan as adopted by the Planning Board.

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

1.3 SCOPE. For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

1.4 APPLICABILITY. Except as set forth in The Administration and Procedures Section of this By-law or as otherwise provided herein, all buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of this By-law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the District in which such building, structure or land is located. When the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control.

1.5 AMENDMENTS. This By-law may from time to time be changed by amendment, addition, or repeal by the Town in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

1.5.1 Change of Zoning Boundary. If geographic change of a zoning boundary description is proposed, words of boundary description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the Town of the zoning map change proposed, together with three black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

1.5.2 Costs. The costs of publication and of mailing of notice of hearing and the costs of holding such zoning hearing and of making a public record of the proceedings at such hearing if such a record be made, shall be paid by the Planning Board. However, the Planning Board may determine whether a fee to cover such costs shall be required of the zoning amendment proponents.

1.6 SEVERABILITY. The invalidity of any section or provision of this By-law shall not invalidate any other section or provision herein.

(Special Town Meeting 11.14.2022 Article 4. Attorney General Approval 2/16/2023)

SECTION 2.0 DEFINITIONS

SECTION 2.0 DEFINITIONS

For the purpose of this By-law certain terms and words shall have the following meanings. Words used in the present tense include the future; the singular number includes the plural; the plural includes the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "building," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word "shall" is always mandatory and not merely directory. Terms and words not defined herein but defined in the Rules and Regulations Governing the Subdivision of Land in Manchester-by-the-Sea, Massachusetts shall have the meanings given therein unless a contrary intention clearly appears.

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

Accessory Dwelling Unit: A dwelling unit accessory to the principal unit as governed by Section 9.1

Affordable Housing: A dwelling unit available for rental by or sale to a low or moderate income household in accordance with the regulations of the Commonwealth's Department of Housing and Community Development and eligible for inclusion on the Subsidized Housing Inventory.

Agriculture: The cultivation of ground for purpose of producing fruits and vegetables for the use of man and beast, or the act of preparing the soil, sowing and planting seeds, dressing plants and removing crops, and includes aquaculture, horticulture, silviculture, viticulture, and raising or feeding of cattle and other livestock.

Applicant: A person, business, or organization that applies for a building permit, Site Plan Review, or Special Permit. [Added 2024]

Area Median Income (AMI): The median family income for the metropolitan statistical region that includes the Town of Manchester-by-the-Sea, as defined by the U.S. Department of Housing and Urban Development (HUD). [Added 2024]

As of right: Development that may proceed under the Zoning in place at the time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval. [Added 2024]

Assisted Living Residence: A residential development subject to certification by the Executive Office of Elder Affairs under G.L. c. 19D and 651 CMR 12.00.

Boarder: An individual other than a family member occupying a dwelling unit who, for consideration, is furnished sleeping accommodations, meals, and may be provided personal care or other services, but excluding guests at a bed and breakfast.

Basement: That part of a building partly underground but having more than one-half of its entire wall area below the level of the adjoining ground. A basement shall be counted as a floor or story if used for business or dwelling purposes.

Building: A structure having a roof (including an awning or similar covering) adapted to permanent or continuous occupancy for assembly, business, education, industrial, institutional,

residential or storage purposes. The term "building" shall be construed where applicable as if followed by the words "or portion thereof".

Building Coverage: The maximum area of the lot that can be attributed to the footprint of the buildings (principal and accessory) on that lot. Building Coverage does not include surface parking. [Added 2024]

Building Height: See Height

Business or Professional Office: A business establishment which does not offer a product or merchandise for sale to the public, but offers a professional service to the public. However, general or personal service establishments are not to be included in the definition of business offices.

Cemetery: A burial ground; graveyard.

Child Care Center: A child care center as that term is defined in G.L. c. 15D, s. 1A.

Commercial Recreation, Indoors: Entertainment and recreational facilities operated as a business for gain, including but not limited to bowling alley, theater, fitness center, or sports arena, provided such use is housed indoors in sound-insulated structure protecting neighborhood from inappropriate noise in any season.

Commercial Recreation, Outdoors: Golf, swimming, tennis, or other outdoor recreational facility operated as a business for gain.

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

Drive-In or Drive-Through Establishment: A business establishment that includes service that is provided from a drive-up or drive-through window or other similar arrangement that allows the service of a patron while the patron remains in a vehicle, whether parked or live parked. The term shall include eating establishments and service establishments such as banks, dry cleaners, pharmacies, and the like, and automotive service stations and gasoline stations and the like.

Dwelling: A privately or publicly owned permanent structure containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family. The terms "one family," "two family," or "multifamily" dwelling shall not include hotel, lodging house, hospital, membership club, trailer, however mounted, or dormitory or structure solely for transient or overnight occupancy.

Dwelling Unit: One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit, with permanent provisions for cooking, living, sanitary, eating, and sleeping facilities.

Dwelling, Single Family: A dwelling designed for occupancy by one family.

Dwelling, Two Family: A building constructed to house two families, each occupying a single dwelling unit, with each dwelling unit being substantially connected to the other with fire separation assemblies such as walls or floors.

Dwelling, Multifamily: A building containing three or more dwelling units constructed on a single lot, substantially connected to the other with fire separation assemblies such as walls or floors.

Earth Removal: The following definitions shall apply:

Percent Slope: A rise in grade (in feet) over a horizontal distance of one hundred feet.

Best Management Practice (BMP): A structural, non-structural, or vegetative measure which reduces erosion, sediment, peak storm discharge, and/or improves the quality of stormwater runoff as described in the Massachusetts Stormwater Management Handbook.

Earth: Soil, sod, loam, peat, humus, clay, sand, gravel, stone, and ledge.

Electric Charging Station, Level Two: A facility equipped with a compatible cable such as J-1772, for the recharging of the batteries of motor vehicles.

Essential Services: Services and facilities offered by public utility or governmental agency by the erection, construction, alteration, or maintenance of underground or overhead gas, electrical, steam, or water transmission or distribution systems and structures, excluding power plants or transfer stations. Facilities necessary for the provisions of essential services include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith.

Family: One or more persons occupying a dwelling unit and living as a single, housekeeping unit.

Family Day Care Home, Large: An accessory use as defined in G.L. c. 15D, s. 1A.

Family Day Care Home, Small: An accessory use as defined in G.L. c. 15D, s. 1A.

Floor Area, Gross: The sum of all living areas of a building measured from the exterior faces of the structure excluding unenclosed spaces such as porches and unconditioned spaces such as mechanical rooms and those portions of basements or attics which are not finished and not provided with a heat source.

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

General Service Establishment: Shop for small appliance or tool repair, upholstery or furniture repair, bicycle repair, printer, blacksmith, builder, carpenter, caterer, electrician, mason, painter, plumber or roofer.

Grade - Average: The average elevation as taken at twenty-foot intervals around the full perimeter of the building including all attached garages, bays and building extensions.

Greenhouse: A greenhouse shall be defined as a glass or slow burning plastic enclosed building used for cultivating plants.

Height of Building: The height of a building is the vertical distance measured from the average grade of the existing ground level adjoining the building at each exterior wall to the highest point of the roof.

Home Occupation: Customary home occupations including photographers, artists, home-cooking, dressmaking, millinery, hairdressing, software developers and other similar occupations, by a person resident on the premises.

Hospital: A building providing 24-hour in-patient services for the diagnosis, treatment or other care of human ailments including, where appropriate, a sanitarium, nursing home, and convalescent home.

Hotel: A building or any part of a building containing rooming units without individual cooking facilities for transient occupancy and having a common entrance or entrances. A hotel may include a restaurant, bar or tavern, and accessory recreational facilities. It does not include a motel, boarding house, lodging house, or rooming house.

Impervious Surface: A surface or land covering that prohibits penetration of water into underlying ground layers. As a result, rain and snow are unable to infiltrate into the ground resulting in runoff.

Junk Yard: A yard, field or other area used as a place for storage for more than thirty days for three or more unserviceable, discarded, worn-out, or junk motor vehicles, plumbing, heating supplies, household appliances or furniture; and/or discarded, scrapped or junk lumber; and/or old scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, and/or scrap metal.

Kennel: An establishment as defined in G.L. c. 140, s. 137A.

Ledge: Contiguous boulder or rock formations, either exposed or underlying unconsolidated ground surface materials such as soil.

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

Lot: The whole area of a single area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings. A lot for the purpose of this Zoning By-law may or may not coincide with a lot of record title.

Lot Area: The horizontal area of a lot. For purposes of Section 5.0 the area of a lot shall not include: (1) The area within the limitation of the street right of way; or (2) tideland lying below Mean High Water (per U.S. Geodetic Survey), except that such tideland shall be included for determining minimum setbacks.

Lot Frontage: The continuous distance between opposing side lot lines where they intersect the street measured along, and following the angle or curve of, the street right of way.

Lot Width: The distance between side property lines of a lot measured parallel to the front property line and being measured at the location of the front property line setback.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

Medical Clinic: A facility as defined in 105 CMR 145.020, including a mobile clinic and urgent care facility.

Medical Office: A building designed and used as an office by physicians, dentists, or psychotherapists for the diagnosis and treatment of human patients that does not include overnight care facilities or licensing as a clinic.

Motel: A building or any part of a building containing rooming units without individual cooking facilities for transient occupancy and having a common entrance or entrances. Generally, does not include a restaurant, bar or tavern, or accessory recreational facilities. Does not include a boarding house, lodging house, or rooming house.

Motor Vehicle Hourly Rental Station: A facility at which, by contract, motor vehicles are made available for rent for a period not longer than 24 hours.

Motor Vehicle Light Service Station: A building or premises used for the dispensing, sales or offering for sale of motor fuels directly to users of motor vehicles. Other sales activities and any repairs shall be activities minor in scope and clearly subordinate to the sale of motor fuels, oils and lubricants.

Motor Vehicle Repair: A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance, or cleaning of motor vehicle equipment.

Motor Vehicle Sales: Premises for the sale of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

Municipal Yards and Facilities: Town yards and related storage facilities for de-icing, sand, construction materials, and the like.

Nonconforming Use or Structure: A lawfully pre-existing use or structure which does not conform to the regulations for the District in which such use or structure exists.

Long-term care facility: An institution licensed by the Department of Public Health as a nursing, convalescent or rest home, charitable home for the aged, hospital or sanitarium pursuant to G.L. c 3, ss. 51 and 71.

Parcel: An area of land in one ownership, with definite boundaries, generally not available for use as the site of one or more buildings without further Zoning relief.

Parking Space: An area in a building or on a lot available for parking one motor vehicle, having a width of not less than the area required in section 6.1.2, exclusive of passageways and driveways appurtenant thereto and with free and unimpeded access to a street over unobstructed passageways or driveways.

Parking, Structured: A structure in which vehicle parking is accommodated on multiple stories. Structured Parking does not include surface parking, single-level parking garages, or carports, including solar carports. [Added 2024]

Parking, Surface: One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition. [Added 2024]

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

Personal Wireless Telecommunications Service Facilities: The following definitions shall apply for the purposes of Section 8.1:

Personal Wireless Telecommunication Service: Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

Personal Wireless Telecommunication Service Facilities: Facilities for the provision of personal wireless telecommunication services.

Printing and Publishing: An establishment providing convenient services for printing or photocopying flyers, brochures, photographs, blueprints and the like.

Private club: A facility where the principal purpose is for members of a non-profit organization or group of people organized for a common purpose to meet to pursue common goals, interests and activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

Public Utility: Electrical, gas, steam, water, communication or public passenger transportation systems and their appurtenances. Excluded from this definition are all personal wireless service facilities.

Qualified Acre: Agricultural land on which the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

Recreational Club (Commercial, Indoor): A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Such facilities shall include health clubs or other commercial recreational centers conducted for profit.

Residential Conservation Cluster (RCC): A residential development in which the buildings are clustered together with reduced lot sizes and frontage.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility.

Retail: A facility selling new or used goods to an end user.

School-Aged Child Care Program: A school-aged child care program as that term is defined in G.L. c. 15D, s. 1A.

Senior Housing:

Assisted Living Facility: A residential development subject to certification by the Executive Office of Elder Affairs under G.L. c. 19D, and 651 CMR 12.00.

Continuing Care Facility: A facility regulated by G.L. c. 93, s. 76.

Independent Living Facility: A facility providing apartments for rent, with optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the facility.

Long Term Care Facility: A facility, including a convalescent or nursing home, rest home, infirmary maintained in towns, and charitable homes for the aged, as defined and regulated in 105 CMR 150.001.

Senior Housing: Housing for persons over the age of 55 subject to the Senior Housing Laws, as defined herein.

Senior Housing Facility: An Assisted Living Facility, Continuing Care Facility, Independent Living Facility, or Long Term Care Facility, whether operated as a free-standing facility or in combination with another type of facility on the same lot or adjacent lot in common control.

Senior Housing Laws: Collectively and separately, the Fair Housing Act, 42 USC Section 3607(b), 24 CFR Subtitle B, Ch. 1, Section 100.300 et seq. and G.L. c. 151B, s. 4.

Setback: The minimum distance which a building or other structure must be set back from a property boundary.

Special Permit: A specific authorized use within this Zoning By-law that may be granted upon application to the designated special permit granting authority.

Story: That portion of a building contained between any floor and the floor or roof next above it; it does not include either the lowest portion so contained if more than one-half of such portion vertically is below the mean finished grade of the ground adjoining such building, or the uppermost portion so contained if under a sloping roof and not designed or intended to be used for human occupancy.

Story, Half: A floor level with a roof above, the area of which at a height of four (4) feet above this floor level does not exceed two-thirds of the floor level immediately below it.

Street: Any accepted Town way; a way established by or maintained under county, state or federal authority; a way established by and constructed according to a subdivision plan approved

in accordance with the Subdivision Control Law; and a way determined by the Planning Board to have sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. A public or private way shall not be deemed to be a street relative to any lot that does not have rights of access to and passage over said way.

Structure: A combination of materials assembled at a fixed location to give support, shelter or utility, including but not limited to, buildings (whether principal or accessory), platforms and decks, swimming pools, tennis or similar courts, satellite dishes of three (3) feet diameter or greater, sheds, shelters, and display signs. The term "structure" shall be construed where applicable as if followed by the words "or portion thereof". The term "structure" shall not include walls or fence.

Subsidized Housing Inventory (SHI): A list of qualified Affordable Housing Units maintained by EOHLC used to measure a community's stock of low-or moderate- income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law. [Added 2024]

Swimming Pool: Any constructed pool, located above or below the ground, whether portable or fixed, used or capable of being used for swimming, wading, or bathing purposes. Pools having depth of two feet or more and having a capacity of two hundred cubic feet or more in volume shall be considered structures.

Toxic or Hazardous Materials: Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town, or as defined or regulated by federal or state law.

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

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

Warehouse, Mini- or Self-Storage: Establishment providing individual storage units for long- or short-term rental to persons or businesses.

Wind Energy Conversion Facilities (WECF): For the purposes of Section 11.2, the following definitions shall apply:

Distributed Generation: Energy generation that is located at or near the end-user.

Height: The height of a wind turbine measured from grade elevation at the base of the tower to the elevation at the tip of the blade at its highest point.

Nacelle: The frame and housing at the top of the tower that encloses the gearbox and generator and protects them from the weather.

Rotor: The blades and hub of the wind turbine that rotate during turbine operation.

Wind Energy Conversion Facility (WECF): All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use.

Wind Monitoring or Meteorological Test Tower (Met Tower): A temporarily installed tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

Wind Turbine: A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft. A wind turbine typically consists of a rotor, nacelle and supporting tower.

Wholesale: Sale of goods not at retail.

Yard: A portion of a lot, upon which the principal building is situated, unobstructed artificially from the ground to the sky, except as otherwise provided herein. An interior court shall not be considered to be a yard or any part thereof.

Yard, Front: A yard extending for the width of the lot between the front line of the nearest building wall and the front lot line.

Yard, Rear: A yard, except by an accessory structure or accessory use as herein permitted, extending for the full width of the lot between the rear line of the building wall and the rear lot line.

Yard, Side: Yard extending for the full length of a building between the nearest building wall and the side lot line.

Zoning Act: Chapter 40A of the Massachusetts General Laws, as amended by Chapter 808 of the Acts of 1975, and any amendments thereafter.

(Special Town Meeting 11.14.2022. Article 4. Attorney General approval 2/16/2023)

SECTION 3.0 ESTABLISHMENT OF DISTRICTS

3.1 **ESTABLISHMENT.** For the purpose of this By-law, the Town of Manchester-by-the-Sea is hereby divided into the following Zoning Districts, as shown on the Zoning Map(s):

Residential Districts:

Single Residence District A	SRA
Single Residence District B	SRB
Single Residence District C	SRC
Residence District D1	RD1
Residence District D2	RD2
Single Residence District E	SRE

General District	GD
Limited Commercial District	LCD

3.2 **ZONING MAP.** The location and boundaries of the Zoning Districts are shown on the map entitled “Zoning Map of Manchester-by-the-Sea” as prepared by AppGeo dated January 2022 or as may be amended.

3.3 ZONING MAP INTERPRETATION. For the purposes of interpretation of the Zoning Map, the following shall apply:

3.3.1 Center Line. Zoning District boundaries which appear to follow streets, railroads, wood roads or brooks shall coincide with the center line thereof.

3.3.2 Lot Line. Zoning District boundaries which appear to follow a property or lot line, the exact location of which is not indicated by means of dimensions shown in figures, shall coincide with the property or lot line.

3.3.3 Parallel. Zoning District boundaries which appear to run parallel to the sidelines of streets shall be regarded as parallel to such lines. Dimensions shown in figures placed upon said map between such boundary lines and sidelines of public or private ways are the distances in feet of such boundary lines from such lines.

3.4 SPLIT LOTS

3.4.1 By Town Boundary. When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this By-law shall be applied to the portion of such lot in the Town in the same manner as if the entire lot were situated in the Town.

3.4.2 By Zoning District Boundary. When a lot is transected by a Zoning District boundary, the regulations of this By-law applicable to the larger part of the area of such lot may also by the grant of a special permit from the Planning Board be deemed to govern in the smaller part beyond such Zoning District boundary but only to an extent not more than thirty (30) linear feet in depth beyond such Zoning District boundary. This provision shall not apply in the Residence District D2.

(Special Town Meeting 11.14.2022 Article 4. Attorney General approval 2/16/2023)

SECTION 4.0 USE REGULATIONS

4.1 PRINCIPAL USES

4.1.1 Applicability of Use Regulations.

Except as otherwise provided by law, in each District no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Uses and Parking Regulations. Any principal or accessory use not listed shall be construed to be prohibited.

1. No dwelling shall be erected except on a lot fronting on a street, and there shall be not more than one principal residential building on any lot.

4.1.2 Permitted Uses.

In the following Table of Uses, the uses permitted by right in the District shall be designated by the letter (Y). Uses designated (N) shall not be permitted in the District. Those uses that may be permitted by special permit in the District, in accordance with the relevant Sections of this By-law, shall be designated by identification of the Special Permit Granting Authority, which is either:

ZBA	Zoning Board of Appeals
PB	Planning Board
SB	Select Board

4.1.3 Uses Subject to Other Regulations.

Uses permitted by right or by special permit shall be subject, in addition to these use regulations, to all other provisions of this By-law.

4.2 TABLE OF USES

See Manchester-by-the-Sea Table of Allowed Uses at the end of Section 4.

4.3 ACCESSORY USES

4.3.1 Permitted Accessory Uses in All Districts.

Allowed permitted accessory uses are defined by the Table of Uses. In all the Districts, accessory uses not listed in section 4.3.2 or in the Table of Uses are prohibited.

4.3.2 Non-Residential Accessory Uses.

Any use permitted as a principal use is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Any use not allowed in the district as a principal use is also prohibited as an accessory use except as listed in 4.3.3. Accessory uses are permitted only in accordance with lawfully existing

principal uses. In all instances where site plan review and approval are required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 12.6 shall also require site plan review and approval.

4.3.3 Residential Accessory Uses.

In addition to the accessory uses allowed in the Table of Allowed Uses or that meet the definition of accessory use in Section 2, the following accessory uses are specifically permitted as of right or by special permit in a single or two-family residence whether in or outside a Residence District, as set forth herein:

1. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than four (4) persons in an owner-occupied single-family dwelling, with common cooking and living facilities, shall be a permitted accessory use.
2. Home Occupation.

4.2 Manchester-by-the-Sea Table of Allowed Uses

The uses permitted by right in the district shall be designated by the letter (Y). Uses not permitted in the District shall be designated (N). Those uses that may be permitted by special permit in the District, in accordance with Sections 6 and 12, shall be designated by identification of the Special Permit Granting Authority, which is either: Zoning Board of Appeals (ZBA) or Planning Board (PB). Uses subject to Board of Health regulations are designated by BOH. Uses permitted by right or by special permit shall be subject, in addition to these use regulations, to all other provisions of the By-law. Notes to the table are found following the Table.

USE	Districts							
	A	B	C	D1	D2	E	G	LCD(1)
	Single Residential 1A	Single Residential 1B	Single Residential 1C	Residential 1 District 1	Residential 1 District 2	Single Residential 1E	General	Limited Commercial
A. RESIDENTIAL								
1. One single family detached dwelling	Y	Y	Y	Y	Y	Y	Y	N
2. Two family dwelling	N	N	N	Y	ZBA	N	Y (2)	N
3. Conversion of a one-family dwelling into a two-family dwelling	N	N	N	Y	ZBA /Y (3)	N	Y	N
4. Conversion of an existing dwelling into a three-family	N	N	N	N	N	N	Y (4)	N

USE	Districts							
	A	B	C	D1	D2	E	G	LCD(1)
dwelling with no increase in gross floor area								
5. Multifamily dwelling with not more than four dwelling units (with conditions described in note 4 below)	N	N	N	N	N	N	PB (5)	N
6. Residential Conservation Cluster (6)	PB	PB	PB	PB	PB	PB	PB	N
B. COMMUNITY FACILITIES								
1. Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y
2. Use of land or structures for educational purposes (7)	Y	Y	Y	Y	Y	Y	Y	Y
3. Child Care Center/School Aged Child Care Program	Y	Y	Y	Y	Y	Y	Y	Y
4. Municipal uses including: parks, playgrounds, senior center, offices, fire and police stations, municipal recreational uses, municipal wells, water storage and processing, sewage lift stations, and related building and parking facilities	Y	Y	Y	Y	Y	Y	Y	Y
6. Charitable or philanthropic use; hospital, nursing care facility, sanitarium	PB	PB	PB	PB	PB	PB	PB	N
7. Community or private club	PB	PB	PB	PB	PB	PB	PB	Y
8. Cemetery, not conducted for profit	PB	PB	PB	PB	PB	PB	PB	N
9. Public utility or public communications building not including a service station or outside storage of supplies	PB	PB	PB	PB	PB	PB	PB	N
C. AGRICULTURAL USES								

USE	Districts							
	A	B	C	D1	D2	E	G	LCD(1)
1. Non-nuisance agriculture, horticulture and floriculture	Y	Y	Y	Y	Y	Y	Y	Y
2. Greenhouse, nursery uses for horticultural and floricultural purposes	N	N	N	N	N	N	Y	N
3. The raising or keeping of livestock, including poultry, horses, or cows as regulated by the Board of Health.	BOH	BOH	BOH	N	N	BOH	N	BOH
D. COMMERCIAL USES								
1. Business or professional office building; bank or financial institution	N	N	N	N	N	N	Y	Y
2. The office of a doctor, dentist or other member of a recognized profession (8)	Y	Y	Y	Y	Y	Y	Y	N
3. Medical office building for no more than three doctors (9)	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	Y
4. General retail uses	N	N	N	N	N	N	Y	N
5. Personal or general service establishment	N	N	N	N	N	N	Y	N
6. Restaurant	N	N	N	N	N	N	Y	N
7. Indoor recreational club or facility	N	N	N	N	N	N	N	Y
8. Printing and publishing establishment	N	N	N	N	N	N	Y	N
10. Yacht storage, construction, and service and related uses	N	N	N	N	N	N	Y	N
11. Fish and shellfish landing, storage, and handling (but not a fish processing or similar plant)	N	N	N	N	N	N	Y	N
12. Wind energy conversion systems	N	N	N	N	N	N	N	PB
13. WECF, Wind Monitoring	N	N	N	N	N	N	N	PB

USE	Districts							
	A	B	C	D1	D2	E	G	LCD(1)
and Meteorological towers								
14. Large-scale ground-mounted solar photovoltaic installation (See Section 11.1)	N	N	N	N	N	N	N	Y
15. Public parking or garaging of automobiles not incidental to another permitted use	N	N	N	N	N	N	PB	PB
16. Helicopter landing, storage or parking facility	PB	PB	PB	PB	PB	PB	PB	PB
17. Marijuana business and treatment center	N	N	N	N	N	N	N	PB
18. Adult Entertainment Establishments	N	N	N	N	N	N	N	PB
19. Laboratories, research and development, and related light manufacturing, assembly	N	N	N	N	N	N	N	PB (10)
E. ACCESSORY USES								
1. Up to four-boarders in a single-family dwelling with common cooking and living facilities (11)	Y	Y	Y	Y	Y	Y	Y	Y
2. Maintaining on any lot not more than one commercial vehicle	Y	Y	Y	Y	Y	Y	Y	Y
3. Garaging or maintaining of more than 4 automobiles when accessory to a dwelling	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	N
4. Tennis court, or similar court when accessory to a dwelling	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	N
5. Swimming pool accessory to a dwelling as defined in section 4.3.2	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	N
6. Accessory Dwelling Unit (12)	ZBA	ZBA	ZBA	N	N	ZBA	ZB A	N
7. As part of an existing garage, stable or other existing structure,	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	N

USE	Districts							
	A	B	C	D1	D2	E	G	LCD(1)
family living quarters for an employee of the owner/occupant (13)								
8. Customary home occupation conducted in a dwelling by a person residing on the premises (14)	Y	Y	Y	Y	Y	Y	Y	N
9. Accessory uses or structure on the same lot with and customarily incidental to a permitted main use on the same premises, including off-street parking	Y	Y	Y	Y	Y	Y	Y	Y
10. Family day care home, large	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	ZBA
11. Family day care home, small	Y	Y	Y	Y	Y	Y	Y	Y
12. Adult social day care	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZB A	ZBA
F. OTHER								
1 Matters (including the construction or alteration of any structure or the use thereof) all or any part of which is within tideland lying below Mean High Water (per U.S. Geodetic Survey) (15)	N/A	PB	PB	N/A	N/A	PB	PB	N/A

NOTES TO TABLE:

Note 1: Any allowed use within the LC District requires site plan approval from the Planning Board as provided in this By-law.

Note 2: Such alteration or reconstruction shall not include an increase in floor area or volume, except that shed and individual dormers shall not be considered to be an increase in volume.

Note 3: In the D2 district, the conversion of a single family residence in existence on the lot as of May 6, 1991 to a two-dwelling unit structure and the construction of a two-dwelling unit are permitted, if authorized by a special permit issued by the Zoning Board of Appeals. However, the conversion to a two-dwelling unit of a structure existing on the lot as of May 6, 1991, that

does not involve any increase in the size, height or volume of the structure, including the construction of exterior stairways, porches, patios or decks, shall not require a special permit as long as there is compliance with the following criteria.

- a. The units within the structure shall connect with the municipal sanitary sewer;
- b. The new or expanded structure is appropriate in terms of bulk, shape, location on the lot and relationship to abutting properties and existing structures within the immediate and general neighborhood;
- c. Off-street parking regulations of Section 6.1 of this By-law are met;
- d. The converted two-unit structure may not be substantially different in character from the existing building, except in a case where changes in building facade or design would better reflect the overall character of the surrounding neighborhood, and
- e. The resulting structure will be in harmony with the surrounding neighborhood.

Note 4: An existing dwelling which is altered or reconstructed so as to contain no more than three dwelling units. Such alteration or reconstruction shall not include an increase in floor area or volume. Except for shed dormers, individual dormers are not considered to be an increase in volume.

Note 5: A new or enlarged existing dwelling containing not more than 4 dwelling units if authorized by a special permit issued by the Planning Board in accordance with the special permit provisions of this By-law; in addition, the following stated provisions shall also apply. After the required public hearing, the Planning Board shall find and determine that such dwelling and use, including the site, plans and designs of the dwelling and any accessory buildings, constitute a desirable development in and will not be detrimental to the neighborhood, and subject further to the following conditions:

- a. Each unit shall have independent cooking facilities;
- b. No living quarters shall be located so that the floor elevation is more than 36 inches below the finished exterior grade;
- c. The dwelling and to the extent appropriate any accessory building shall connect with a municipal sanitary sewer;
- d. The density shall not exceed the rate of 15 dwelling units per acre of lot except for a dwelling constructed or enlarged on a lot of less than 12,000 square feet existing on January 25, 1974, and;
- e. Such other conditions and restrictions as the Planning Board may prescribe in the interest of the Town in carrying out the purposes of this By-law.

Note 6: See Section 9.2 for details

Note 7: Not for profit

Note 8: Provided there is no display or advertising except for a small professional sign not over one square foot in area.

Note 9: The offices within a single building for not more than three medical doctors, subject to the following conditions:

- a. The Board of Appeals determines that there is a need in the Town for such offices within a single building, that there is no reasonably available and suitable office space for such doctors within a single building, or land for such a building, in a district other than a Residence District, and that there is adequate and safe off-street parking for doctors and their staffs and patients;

- b. There is no display or advertising except for a small professional sign for each doctor not over one square foot in area;
- c. No more than one building with offices for more than one doctor shall be permitted in the Residence Districts, and
- d. Site plan approval is required by the Planning Board.

Note 10: By Special Permit from the Planning Board, and limited to the land areas west of Pine Street, a/k/a Pipe Line Road, and east of School Street, laboratories and establishments devoted to scientific research and development; light manufacturing, assembly and processing of materials related thereto and incidental accessory uses.

Note 11: Providing there is no sign or display to advertise such use. (But it shall not be permissible to construct or operate overnight camps.).

Note 12: See Section 9.1 for requirements

Note 13: As part of an existing garage, stable or other existing structure approved by special permit of the Zoning Board of Appeals, family living quarters for and to be occupied only by an employee of the owner occupant of the dwelling while such garage, stable or other existing structure, approved by the Zoning Board of Appeals, is an accessory use. Said employee must be employed on the premises.

Note 14: Provided there is no visible display of goods from the street and no exterior advertising, except a sign of not more than two square feet in area, and provided such occupation shall not be carried on in an accessory building.

Note 15: For which an application for a state license under G.L. c. 91, s. 18 is required thereunder to be submitted for comments to the Planning Board.

(Special Town Meeting 11.14.2022 Article 4. Attorney General approval 2/16/2023) Amended STM 6.28.2023, Attorney General Approved 9/29/2023

SECTION 5.0 DIMENSIONAL REGULATIONS

5.1 Adequate Frontage

In issuing building permits for construction on lot(s) with frontage considered by the Building Inspector to provide impractical vehicular access, or otherwise satisfying only technical and not practical frontage compliance, the Building Inspector shall be empowered to ensure that said lot(s) have access to that portion of the lot(s) to be constructed upon by means of easement or so-called "common driveways" which are, in his opinion and in the opinion of the Planning Board, of adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon and which meet the design standards contained in Section 8.4 of these By-laws. No more than two lots shall be served by a common driveway without a special permit from the Planning Board. [Amended 1987, 2001, 2007] Amended STM 6.28.2023, Attorney General Approved 9/29/2023

5.2 Area

For purposes of this Section 5.0 the area of a lot shall not include:

- (a) The area within the limitation of the street.
- (b) Tideland lying below Mean High Water (per U.S. Geodetic Survey), except that such tideland shall be included for determining minimum setbacks (see Sections 5.4 and 5.6). [Added 2006]

5.3 Setback

In the case of a lot abutting on more than one street, the minimum front setback shall be applicable to each street. The minimum setback requirements shall not apply to the projections of steps, eaves, chimneys and cornices, window sills or belt courses. The minimum setback for a wind energy conservation system from property lines or easements must be at least one (1) times the height of the energy conservation system. [Added 1982] (See 6.2.5)

5.4 Minimum Area and Dimensional Requirements

Except as provided in Section 5.6 (Accessory Structure) and 5.7 (Limited Commercial District), no building shall be erected on or moved to a lot having less than the minimum applicable frontage and area shown on the table below, and no building shall be located on a lot closer to the front, rear and side lines of the lot than the minimum setback distances shown on the table below. No lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in the table below.

DISTRICT	MINIMUM LOT AREA (SQ. FT.)	MINIMUM FRONTAGE	MINIMUM LOT WIDTH	MINIMUM FRONT SETBACK	MINIMUM SIDE SETBACK	MINIMUM REAR SETBACK
Single Res. District A	22,500	150 ft.	125 ft.	30 ft.	20 ft.	40 ft

Single Res. District B	15,000	75 ft	60 ft.	20 ft.	15 ft.	20 ft.
Single Res. District C	45,000	150 ft.	125 ft.	30 ft.	20 ft.	40 ft.
Res. District D	6,000	60 ft.	50 ft	10ft.	10 ft.	10 ft.
Single Res. District E	90,000	150 ft.	125 ft.	30 ft.	20 ft.	40 ft.
General District	6,000	60 ft.	50 ft.	5 ft	10 ft.	10 ft.

In the case of a lot abutting on more than one street, the minimum front setback shall be applicable to each street. (See Section 5.3)

LOT COVERAGE REQUIREMENTS		
DISTRICT COVERAGE	BY STRUCTURES	MAXIMUM % LOT BY STRUCTURES AND IMPERVIOUS SURFACES
Single Residence District A	15%	30%
Single Residence District B	20%	35%
Single Residence District C	15%	25%
Residence District D	40%	50%
Single Residence District E	15%	25%
General District	40%	70%*

*Except as noted within Section 4.3 of the Zoning By-Law.

5.5 Height Regulations

Residential Districts, General District, and the area of the Limited Commercial District west of School Street: No structure shall be erected or altered so that it exceeds 2-1/2 stories or so that the vertical distance measured from the highest point of the roof to the mean pre-construction grade exceeds thirty-five (35') feet, whichever is lesser. Chimneys spires or towers not used for human occupancy may exceed ten (10') feet above these height limits. Mean pre-construction

grade is defined as a reference plane representing the average elevation of pre-construction ground adjoining the building at all exterior walls. A half-story is defined as a story with a sloping roof, the area of which at a height of four (4') feet above the floor does not exceed two-thirds of the floor area of the story immediately below it.

Limited Commercial District in the area east of School Street: No structure shall be erected or altered so that the vertical distance measured from the highest point of the roof to the mean pre-construction grade exceeds fifty-five (55'). Chimneys, spires, towers and similar structures, tanks, HVAC equipment, solar panels, and mechanical appurtenances, not used for human occupancy may extend fifteen (15') feet above the fifty-five (55') foot height limit. Mean pre-construction grade is defined as a reference plane representing the average elevation of pre-construction ground adjoining the building at all exterior walls.

5.6 Accessory Structure

Notwithstanding the foregoing provisions of this Section 5.0, no accessory structure shall be erected or altered so that it exceeds one and one-half (1 1/2) story as defined in Section 5.5 above or twenty-five (25) feet, whichever is lesser. Accessory structures shall be set back from any street on which the lot has frontage at least the applicable minimum front setback for such lot plus ten (10) feet. [Amended 1982, 1986, 1987, 1989, 2007]

ACCESSORY STRUCTURES		
DISTRICT	MINIMUM DISTANCE FROM SIDE AND REAR LOT LINES	FRONT
Single Residence District A	10 ft.	*
Single Residence District B	5 ft.	*
Single Residence District C	15 ft.	*
Residence District D	5 ft.	*
Single Residence District E	15 ft.	*
General District	5 ft.	*

*Accessory structures shall be set back from the street(s) on which the lot has frontage at least the applicable minimum from setback for such lot plus ten (10) feet.

5.7 Limited Commercial District

Notwithstanding the foregoing provisions of this Section 5.0, the following requirements shall be met in the Limited Commercial District (See also Section 5.10 Performance Requirements within Limited Commercial District):

5.7.1 Each business, defined as a single use under one ownership, shall be located on a lot of not less than five (5) acres.

5.7.2 Maximum lot coverage by buildings and accessory structures: 40%; and maximum lot coverage by impervious surfaces 60%.

5.7.3 All structures shall be set back from any street at least one hundred and fifty (150) feet, and from any other lot line at least one hundred (100) feet, except said setback requirements may be reduced by Special Permit from the Planning Board where there is opportunity for better site design.

5.8 Special Exception

Any increase in area, frontage, width, yard, or depth requirements of this By-Law shall not apply to a lot for a dwelling having not more than two (2) dwelling units which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to existing requirements and had less than the proposed requirements but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

5.9 Blank

5.10 Performance Requirements within Limited Commercial District

Recognizing that the portion of Manchester-by-the-Sea zoned Limited Commercial may contribute significant recharge to the town's municipal drinking water supply, and recognizing further that inappropriate development, or development with inappropriate safeguards may threaten said water supply, no special permit or site plan approval for any use within the Limited Commercial District shall be granted without adherence to the following guidelines:

5.10.1 Design and Operations Guidelines:

The following design and operation guidelines shall be observed within the Limited Commercial District.

5.10.1.1 Safeguards: Provisions shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as: prohibition of underground fuel storage tanks; spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for such structure to prevent discharge of contaminated condensate into the ground water.

5.10.1.2 Disposal: For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of

disposal methods which are in conformance with Chapter 21C, MGL.

- 5.10.1.3 Drainage: All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of all contaminants.

5.10.2 Definition:

- 5.10.2.1 Toxic or Hazardous Materials:
Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radio-active or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners. Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Health and the Board of Selectmen:
- * Airplane, boat and motor vehicle service and repair
 - * Chemical and bacteriological laboratory operation
 - * Cabinet making
 - * Dry cleaning
 - * Electronic circuit assembly
 - * Metal plating, finishing and polishing
 - * Motor and machinery service and assembly
 - * Painting, wood preserving and furniture stripping
 - * Pesticide and herbicide application
 - * Photographic processing
 - * Printing [Added 1987]

Amended STM 6.28.2023, Attorney General Approved 9/29/2023

SECTION 6.0 GENERAL REGULATIONS

6.1 OFF-STREET PARKING

6.1.1 General.

Purpose: Off-street parking must be provided to service the net increase in parking demand created by new construction, additions or change of use. The regulations governing the design and maintenance of off-street parking facilities are intended to protect the health, safety and welfare of the users of the parking facility and of abutting properties, including pedestrians and motorists. Therefore, the regulations herein provide for internal and perimeter landscaping, planting, walls, fences and other improvements to reduce noise, glare or reflection from autos, lights, fumes and the like, and minimum standards for parking space and aisle dimensions to ensure safe traffic circulation within the parking facility and from entrances and exits. An additional goal of these regulations is to reduce land clearing and environmental harms from impervious surfaces and urban heat island, as well as to control development costs.

6.1.2 Number and Dimension of Spaces.

The standards set forth in the Table 6.1: Manchester-by-the-Sea Table of Uses and Parking must be met without counting any existing parking necessary for existing activities to meet these requirements. Off-street parking spaces shall be designed with minimum dimensions of nine (9') feet by eighteen (18') feet. In parking areas of more than six (6) spaces, one third of the spaces may be compact car spaces, with minimum dimensions of eight (8') feet by sixteen (16') feet. Parking facilities shared between two or more users are encouraged to minimize excess paving and the size and number of areas devoted to parking. Parking lots and associated improvements shall comply with ADA and the MA Architectural Access Board regulations (521 CMR). Traffic-calming measures such as crosswalks, bike lanes, rumble-strips and landscape islands may be required as necessary. For accessory uses not listed in this table, the required number of parking spaces to accommodate expected demand will be determined by the Inspector of Buildings, with the advice of the Planning Board.

Table 6.1: Manchester-by-the-Sea Table of Uses and Parking	
USE	Parking Spaces Required
A. RESIDENTIAL	
One single-family detached dwelling	2
Two-family dwelling	3
Three-family dwelling	5
Four- family or more dwelling unit	1.5 spaces per unit, rounded up
Residential Conservation Cluster	Same as required for equivalent dwelling unit
Senior Housing	1 for each independent residential unit; .75 for each assisted living unit

B. COMMUNITY FACILITIES	
Use of land or structures for religious purposes	1 space per every three seats and/or each 60 inches of permanent bench seating, or, where no fixed bench seats are used, one space per each four persons maximum occupancy
Use of land or structures for educational purposes or by a religious sect or denomination, or by a nonprofit educational corporation	1 space for each staff person, plus one space per each five persons of rated capacity in the largest auditorium, plus one space for each student vehicle which can be expected at any time on the premises
Child Care Center/School-Aged Child Care Program	1 space per 10 children maximum rated capacity, plus one space per employee on largest shift
Municipal parks, playgrounds, senior center, offices, fire and police stations, municipal recreational uses, municipal wells, water storage and processing, sewage lift stations, and related building and parking facilities	Spaces required for each component of the mixed use
Municipal yards and related facilities	Spaces required for each component of the mixed use
Charitable or philanthropic use; Hospital	1 space for each three persons of rated capacity
Community or private club, not conducted for profit	1 space for each three persons of rated capacity
C. AGRICULTURAL	
Greenhouse and nursery uses on parcels less than five acres or two qualified acres	1 space per 150 sq. ft. of gross sales or service floor area
D. COMMERCIAL	
Adult Entertainment Uses	1 space for each three persons of rated capacity
Business or professional office; bank or financial institution	1 space per 300 sq. ft. of gross floor area
Medical office building	1 space per 300 sq. ft. of gross floor area
General retail uses	1 space per 150 sq. ft. of gross sales or service floor area
Personal or general service establishment	1 space per 150 sq. ft. of gross sales or service floor area
Restaurant	1 space for each four persons of rated capacity
Fast-food restaurant	1 space for each four persons of rated capacity

Motor Vehicle Light Service Station	1 space per 100 square feet of area in service bays
Repair or body shop for motor vehicles	1 space for each three persons of rated capacity
Motor vehicle or boat sales and service	1 space per each three employees on duty during normal work period, plus 1 space per each company car or truck
Printing and publishing establishment	1 space for each three employees on duty during normal work period, plus 1 space per each company car or truck
Indoor recreational club or facility operated for profit	1 space for each three persons of rated capacity
Outdoor recreational club or facility operated for profit	1 space for each three persons of rated capacity
Veterinary office or clinic	1 space per 300 sq. ft. of gross floor area
Yacht storage, construction, and service and related uses	1 space for each three employees on duty during normal work period, plus 1 space per each company car or truck
Fish and shellfish landing, storage, and handling (but not a fish processing or similar plant)	1 space for each three employees on duty during normal work period, plus 1 space per each company car or truck
Large-scale ground-mounted solar photovoltaic installation (See Section 7.1)	Parking spaces adequate to accommodate all normal demand as determined by the Inspector of Buildings, with the advice of the Planning Board
Marijuana Business	Parking spaces adequate to accommodate all normal demand as determined by the Inspector of Buildings, with the advice of the Planning Board
E. ACCESSORY USES	
Up to four-boarders in a single-family dwelling	N/A
Garaging or maintaining of more than 4 automobiles when accessory to a dwelling	1 for each vehicle
Accessory Dwelling Unit	1
Family day care home	1 space per 10 children maximum rated capacity, plus one space per employee on largest shift
Adult social day care	1 space per 10 persons maximum rated capacity, plus one space per employee on largest shift

6.1.3 Location.

Required parking shall be either on the same premises as the activity it serves, or located within three hundred (300') feet of the building entrance on a separate parcel, not separated by a street having right-of-way width of sixty (60') feet or more, and in a Zoning District allowing the activity it serves. Parking is allowed in any driveway serving a single-family or two-family residence, subject to the requirements of this Section.

6.1.4 Backing.

Parking areas for commercial buildings or multi-family properties shall be designed and located so that their use does not involve vehicles backing onto a public way or way utilized for public access.

6.1.5 Setbacks.

Parking is allowed within the driveway for residential uses. No parking area shall be located in the front yard or within five (5') feet of any property line. Parking in any other location may be authorized only by Special Permit from the Planning Board. Any waivers of setback requirements shall be limited to only those situations where the applicant needs a reduction in setback to meet the parking requirements for the proposed use.

6.1.6 Parking Area Plantings.

Landscape treatment around the perimeter and interior of the parking lot is required and shall be used to break up large expanses of pavement and manage excess heat (heat island effect) and stormwater. Parking areas containing five (5) or more parking spaces shall have at least one (1) tree per every five (5) parking spaces, such trees to be located either within the lot or within ten (10') feet of it. Such trees shall be at least two (2") inches trunk diameter, with not less than forty (40) square feet of unpaved soil per tree, in landscape islands with no dimension less than four (4') feet in width. For any parking area having twenty (20) or more spaces, at least five (5%) percent of the interior area shall include landscaping, including trees in landscape islands of at least the dimensions of one (1) parking space with no more than ten (10) contiguous parking spaces between each island. Trees shall be so located as to provide visual relief and sun and wind interruption within the parking area, shade for pedestrian circulation routes, and to assure safe patterns of internal circulation. Trees shall be protected by curbs, bollards, or other barriers sufficient to prevent damage.

6.1.7 Short-Term Bicycle Parking.

To encourage alternative and sustainable modes of transit, adequate parking for bicycles shall be provided for all commercial and multi-family developments and shall be located in a publicly accessible space near pedestrian entrances to the uses they are intended to serve. Short-Term Bicycle Parking shall be intended primarily to serve visitors making trips of up to a few hours to a particular use; however, it may serve other bicycle users as needed.

6.1.8 Special Permit.

The Special Permit Granting Authority, or, if there is none, the Planning Board, may grant a special permit to waive any parking or loading requirement, when such waiver shall result in better design and cause no detriment to the neighborhood.

6.2 SIGNS

6.2.1 General.

Advertising and other signs shall be permitted elsewhere in this By-law. Signs shall also be subject to the applicable provisions of the General By-laws of the Town of Manchester-by-the-Sea.

6.2.2 Flashing, Animated, and Illuminated Signs.

No flashing, animated, or internally illuminated signs shall be permitted in any District. No illuminated sign of any kind shall be permitted in a Residence District.

6.2.3 Real Estate Signs.

A real estate sign not over six (6) square feet in area advertising for sale or rent the property on which it is placed is permitted in any district.

6.2.4 General and Limited Commercial Districts.

In the General District and Limited Commercial District, the following signs are permitted:

1. One firm name sign for each firm or enterprise located in a building, no larger than five (5') feet by twenty (20') feet, attached to or flush to the building.
2. One non-illuminated announcement sign no larger than three (3') feet by three (3') feet, at the entrance or gates of a building.
3. One non-illuminated sign for each firm or enterprise located in a building, no larger than two (2') feet by six (6') feet, located at least fifty (50') feet from any street.
4. In the General District, in addition to the signs permitted by this Section, one or more signs for advertising a business conducted on the premises is permitted, not projecting above the building on the premises and no larger than one (1) square foot for each linear foot of frontage up to a maximum of one hundred (100) square feet.

6.2.5 Special Permit.

The Special Permit Granting Authority, or, if there is none, the Planning Board, may grant a special permit to waive any signage requirement, when such waiver shall result in better design and cause no detriment to the neighborhood.

6.3 PERFORMANCE STANDARDS FOR SPECIAL PERMITS AND SITE PLAN REVIEW

6.3.1 Purpose.

The following Performance Standards are adopted in order to control the size, scale, and impacts of developments that require a special permit and/or site plan review. A special permit under this Section shall be granted only if the Planning Board or SPGA finds that it is in conformance with this Section generally and with Criteria, Procedure, and Conditions in Sections 12 of this By-law.

6.3.2 Procedures, Rules and Regulations.

In addition to the procedures and requirements detailed in Sections 12 of this By-law, applicants for special permits or site plan approval shall comply with these Performance Standards. The Planning Board or SPGA may waive any of these procedures or requirements for single-family residences or for multi-family properties of six units or less.

6.3.3 General Standards

1. Lighting. The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town.
2. Noise. The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise
3. Topographical Standards and Clearing. The proposed development will not unnecessarily alter the general topography and drainage, will minimize disturbance to natural habitat and ecosystems, and will provide natural buffers along property lines. The standards described in Section 6.4 shall apply to all applications for Special Permit or Site Plan Review.
4. Site Development Standards. To the extent feasible the proposed development shall be located to preserve and enhance the natural features of the site,
5. Pedestrian and Vehicular Access; Traffic Management, Parking. The proposed development shall be designed to maintain safety for pedestrians, bicyclists, and motor vehicle occupants.
6. Aesthetics. The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with abutting properties, with natural and built environment in the area and the surrounding neighborhood.
7. Landscaping, Walls, and Fences. The proposed development shall provide landscape amenities that contribute to human and environmental health, while providing adequate plantings and screening to mitigate the view of unsightly components of the development.
8. Utilities; Security; Emergency Systems. The proposed development shall be adequately served by public or private utilities, security systems, and emergency systems.
9. Fiscal Impact. The proposed development shall maintain a positive net fiscal position and social benefit to the Town for the long term.

6.3.4 Outdoor Lighting Standards.

Lighting practices and systems shall (i) reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; (ii) conserve energy and minimize lighting cost without decreasing nighttime safety, security, and productivity; and (iii) preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town. The proposed development shall not produce lighting that causes negative impacts such as light trespass, glare, light pollution, or energy waste, in order to protect from intrusion of unwanted light and to preserve and enhance the natural, scenic, and aesthetic qualities of the Town. Glare is not allowed, including within property boundaries. Glare is light that enters the eye directly from light fixtures or indirectly from reflective surfaces that causes visual discomfort or reduced visibility. Lighting practices and systems shall (i) provide sufficient lighting for public safety, (ii) mitigate light trespass, and glare for abutters and the public at large; (iii) conserve energy; and (iv) prevent light pollution and preserve the night sky as a natural resource in order to reduce negative impacts on wildlife and to protect views of the night sky.

1. **Shielding.** All outdoor light fixtures shall be shielded so as to meet the goals of this Section.
2. **Light Trespass.** All light fixtures shall be located, aimed, and shielded so as to minimize light pollution and light trespass across property boundaries including any buffer zones or setbacks. Lighting shall comply with International Dark Sky Standards.
3. **Light Intensity, Color, and Efficiency.** Lighting shall be designed to provide the minimum intensity needed at any particular time with a 0.5-foot candle average maintained. Color temperature shall not exceed 3,500 Kelvin. Lighting shall be LED or approved current technology to minimize energy use.
4. **Illuminated Surfaces.** Area lighting shall be reduced or eliminated outside business hours. The Planning Board or SPGA may require that parking areas be equipped to support shut-off for specific periods of time or unused areas to reduce lighting trespass.
5. **Flickering and Flashing Lights.** No flickering or flashing lights shall be permitted. Processes such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.
6. **Searchlights.** The operation of laser shows or searchlights for advertising is prohibited.
7. **Indoor Lighting.** Indoor light sources will not be projected outside in a manner to defeat the intent of this Section.
8. **Outdoor Signs.** Outdoor light fixtures used to illuminate an outdoor sign shall be mounted on top of the sign structure or otherwise restricted to prevent up-light and light trespass. Internally illuminated signage is prohibited.
9. **Height of Fixtures.**
 - a. **Wall-Mounted Fixtures** attached to a building for area lighting shall be mounted no higher than twelve (12') feet above grade;

- b. Pole-mounted exterior lighting fixture types shall be mounted no higher than fourteen (14') feet above grade for pedestrian walkway lighting and twenty (20') feet above grade for parking lot lighting.
- 10. Hours of Operation. Except as may be deemed appropriate for site safety or security, all external lighting, including lighting accessory to authorized signs, shall be extinguished one-half hour after the facility is closed for the business day. Such lighting may be timed to resume one-half hour prior to the arrival of the first employee on the premises. Motion activated lights are encouraged for security purposes.
- 11. Exemptions
 - a. Lighting within public ways for the purpose of illuminating public ways.
 - b. Lighting for outdoor recreational athletic facilities, with proper controls to minimize glare and light trespass, and automatic shutoff no later than 11:00 pm.
 - c. Lighting in swimming pools and other water features.
 - d. Lighting for public monuments, public art and statuary, flagpoles, or historic buildings at the discretion of the Planning Board or SPGA.

6.3.5 Noise Standards.

The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise. Practices and systems shall (i) reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; (ii) preserve property values; and (iii) preserve neighborhood character. The proposed development shall meet all Town, State, and Federal noise regulations as certified by a professional acoustical engineer if the Inspector of Buildings deems such certification necessary.

- 1. Limitation. No person or entity shall operate or cause to be operated any source of sound in a manner that creates a sound level of 10 dBA above ambient, as set forth in 310 CMR 7.10, measured at the property boundary of the receiving land use.
- 2. Hours of Operation. As a condition of any special permit or site plan approval, the SPGA or Planning Board may prohibit or regulate the following circumstances regarding hours of operation.
 - a. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or other objects or materials for sale or storage or use in a manner that causes a condition of noise pollution at any time but most specifically between the hours of 6:00 P.M. and 8:00 A.M. across a real property boundary in any district established under this By-law.
 - b. Operating or permitting the operation of tools or equipment used in construction, drilling or demolition work between the hours of 6:00 P.M. and 8:00 A.M. on weekdays or Saturday or at any time on Sundays or Holidays so that the sound creates a condition of noise pollution across a real property boundary.
 - c. The operation of construction devices between the hours 8:00 A.M. and 6:00 P.M. including such items as compressors, jackhammers, bulldozers, cranes, etc., in a manner that causes a condition of noise pollution that could be avoided by the

application of best available technology, which might include mufflers where commercially available.

6.3.6 Topographical Changes and Clearing.

The standards described in Section 6.4 shall apply to all applications for Special Permit or Site Plan Review.

6.3.7 Site Development Standards.

To the maximum extent feasible, the proposed development shall be located and designed to preserve and enhance the natural features and topography of the site, to avoid disturbances to existing healthy mature vegetation and environmentally sensitive areas, to maintain or mimic natural hydrologic conditions, to minimize adverse impacts of development on adjoining properties and the general public, to minimize the alteration of the natural features of the site, to adhere to the principles of resiliency and sustainability and to preserve and enhance scenic points and viewsheds, historic buildings and places, and similar community assets which add value and attractiveness to the development and the Town.

1. Land Disturbance. Site/building design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage on the site.
2. Replication. Cleared vegetation and alteration of topography shall be replicated with native woodland vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat and pre-development site characteristics.
3. Clearing for Utility Trenching. Clearing for utility trenching shall be limited to the minimum area necessary to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.
4. Site Design:
 - a. Placement of buildings, structures, or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape.
 - b. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to take advantage of the natural terrain.
 - c. Sites shall be designed in such a way as to prevent impacts to rare and endangered species and protect wildlife habitat on a site, and to maintain contiguous forested areas.
 - d. Site design shall be guided by energy conservation and sustainability principles and resiliency principles and best practices to protect human and environmental health.
5. Archeological or Historical Resources. The SPGA or Planning Board may require applicants to submit the proposed development plan to the Town's Historical Commission and/or the Massachusetts Historical Commission for review and comment regarding possible archaeological or historical resources on the site.
6. Preservation of Existing Vegetation. Priority shall be given to the preservation of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent

sites (particularly existing sites protected through conservation restrictions), and specimen trees. Understory vegetation beneath the dripline of preserved trees should be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing or other measures located a minimum of twelve (12”) inches outside of the dripline before any clearing or grading occurs and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state. No staging or stockpiling of construction materials or activities shall occur in tree root protection zones. All work within the root zone of existing trees to be preserved shall be carried out under the direction and supervision of a Certified Arborist.

7. **Revegetation.** Proper revegetation techniques shall be employed during construction using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur as soon as possible and shall occur during the planting season appropriate to the selected plant species.
8. **Limit of Clearing.** Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading. In order to minimize the clearing and grading on a site associated with construction activities such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, such activities may be limited to areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.
9. **Finished Grade.** Finished grades should preserve, match, or blend with the natural contours and undulations of the land to the greatest extent possible. Finished grade shall be no higher than the trunk flare(s) of trees to be retained.
10. **Topsoil.** A minimum of eighteen (18”) inches of topsoil shall be placed on all disturbed surfaces which are proposed to be planted with trees or other woody plant material. A minimum of six (6”) inches of topsoil shall be placed in lawn or grass areas.
11. **Irrigation.** The Planning Board or SPGA may require that water for the purpose of irrigation shall be provided by an onsite well, after consultation with the Water Department.
12. **Phasing of Development.** The Planning Board or SPGA may limit the extent of a site exposed at any one time through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

6.3.8 Pedestrian and Vehicular Access; Traffic Management Standards.

The proposed development and/or redevelopment shall be designed with a forecast for the next five (5) years from the time of application to (i) minimize hazards to public health and safety as a result of traffic; (ii) provide safe access and circulation on the site for expected vehicles, bicyclists, pedestrians, and emergency vehicles; (iii) provide off-site traffic mitigation, where required, to offset the impact of the development; (iv) reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and (v)

minimize the impact on scenic roads, historic districts, natural resources, and community character. The development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. Access. To the extent feasible, access to nonresidential uses and structures shall be provided via one of the following: (i) Access via a common driveway serving adjacent lots or premises; (ii) Access via an existing side street; (iii) Access via a cul-de-sac or loop road shared by adjacent lots or premises. Access via roadways abutting residential districts shall be avoided where possible. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Planning Board or SPGA.
2. Driveways. Each development shall be served by an adequate driveway. The Planning Board or SPGA may, in certain circumstances, allow additional driveways as a condition of approval where the access is shared or the project has frontage on two separate streets. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
3. Curb Cuts. Curb cuts shall be limited to the minimum width for safe entering and exiting as determined by the Planning Board in consultation with Town public safety departments. The location of driveway openings in relation to traffic and to adjacent streets shall provide for the convenience and safety of vehicular and pedestrian movement within the site. The number of curb cuts on state and local roads shall be minimized.
4. Interior Circulation. The proposed development shall assure safe interior circulation within its site by separating pedestrian, bikeways, and vehicular traffic.
5. Transportation Plan Approval. The proposed development shall be subject to Transportation Plan approval by the Planning Board or SPGA. The Transportation Plan shall consist of the following information:
 - a. A plan showing the proposed parking, loading, and traffic circulation within the site; access and egress points; and other features related to traffic generated by the proposed use.
 - b. A traffic study, prepared by a qualified traffic engineer licensed by the Commonwealth of Massachusetts, detailing the expected traffic impacts. For proposed development in excess of twenty-five thousand (25,000) gross square feet, the required traffic study shall substantially conform to the Institute of Transportation Engineers "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition (TIAS). The SPGA shall approve the geographic scope and content of the TIAS. In addition, the applicant shall submit a Transportation Demand Management (TDM) plan tailored to the specific uses and the geographic location of the site.
 - c. Proposed mitigation measures, if any, such as left-turn lanes, roadway widening, signage, signalization of intersections.

- d. For proposed development in excess of twenty-five thousand (25,000) square feet of gross floor area, the applicant shall submit a Traffic Management Component (TMC) as part of the Transportation Plan. The TMC shall provide information on the number of expected person trips to and from the site, broken down by various travel modes (e.g., single occupancy vehicle, carpool, walk, bicycle, commuter rail, shuttle bus, etc.). The TMC may also incorporate one or more of the following techniques to reduce the number of single occupancy vehicle trips by employees coming to and departing from the proposed use:
 - (1) Establishment of or contribution to a Traffic Management Association (TMA) within the region, which provides shuttle services for employees and other services as may be appropriate;
 - (2) Employee carpools or vanpools sponsored by the employer or the TMA;
 - (3) Subsidized commuter rail passes, provided by the employer, and sold on the site or offered through payroll deduction;
 - (4) Monetary incentives to employees who do not use a parking space;
 - (5) On-site shower facilities and bicycle racks for employees who do not drive to work;
 - (6) Other techniques as may be deemed appropriate by the SPGA or Planning Board or its traffic consultant.
6. Reduction in Parking. In consideration of the applicant providing one or more of the above measures to reduce vehicular traffic to and from the site, the Planning Board or SPGA may reduce the number of required parking spaces below what would ordinarily be required by Section 6.1 of this By-law. To be considered for such a reduction, the applicant's traffic engineer shall determine and justify the parking demand for the project, as well as reduction in needed parking spaces attributable to each traffic management measure.
7. Level of Service Maintenance or Improvement.
 - a. If the proposed project will result in an intersection level of service below a rating of LOS D, the applicant may be required to provide detailed plans with a cost estimate (including reconstruction concepts), that when implemented would result in an intersection level of service rating of D or better.
 - b. If the proposed project will result in a reduction in level-of-service of one letter grade or an increase of ten (10) seconds of delay to a signalized or unsignalized intersection, the applicant may be required to provide detailed plans with a cost estimate that when implemented would result in a return to existing conditions.
8. Dangerous Intersections. The Planning Board or SPGA may require mitigation for any net increase in traffic volumes of ten (10%) percent or more at an intersection that has an accident history of more than five (5) accidents in the last three (3) years for which data is available.
9. Sight Distance. Acceptable sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the Development.

At a minimum, these site distances shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe-stopping sight distances.

10. Maximum Parking. The maximum parking allowed for a development shall be the minimum number of spaces required under this Zoning By-law. The SPGA may allow a greater number of parking spaces provided the need is supported by a transportation study completed by a qualified transportation planner.
11. Mitigation. The Planning Board or SPGA may require as a condition of any special permit off-site improvements to mitigate the impact of the proposed development. Such improvements include intersection widening and traffic signals or the Traffic Management Component of the Transportation Plan, referenced above.
- 11.
12. Pedestrian and Bicycle Safety. Pedestrian and bicycle circulation, and the amenities required thereof, on and off site, shall be in accordance with the following requirements:
 - a. All development and redevelopment shall provide for pedestrian and bicyclist connections on the property, and allow for possible future connections with adjoining properties, where deemed appropriate by the Planning Board or SPGA.
 - b. Pedestrian access shall connect to all building entrances with further connections to local sidewalks.
 - c. All road and intersection widening and new traffic signals or modification of existing traffic signals required as part of a Development or Redevelopment shall include appropriate bicycle and pedestrian accommodation.
 - d. The Planning Board or SPGA may require proposed development and redevelopment to provide sufficient rights-of-way on their properties to accommodate expected needs for bicycle and pedestrian use.
 - e. Sidewalks, crosswalks, walkways, bike racks or other pedestrian access shall be provided to allow access to adjacent properties and between individual businesses within a development.
 - f. If the property abuts a public bikeway/right-of-way, a paved access route to the bikeway may be required.
13. Location of Parking Areas. Where feasible, the Planning Board or SPGA may require parking areas to be located to the side or behind buildings so as to provide an appropriate setting for the building within the context of the site and neighborhood and allow parking areas to be shared with adjacent businesses. The Planning Board or SPGA may require alternative studies of parking area layouts. Except where physical constraints, site configuration, or safety considerations preclude strict compliance, all parking must be accessible by driveways to the parking areas of adjacent nonresidential uses and land zoned for nonresidential uses.
14. Parking in Required Front Setback. The Planning Board or SPGA may prohibit parking within the required front setback.
15. Traffic Calming Features. Traffic calming measures such as crosswalks, bike lanes, rumble strips and landscaped islands may be required.

6.3.9 Aesthetic Standards.

The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with and shall not adversely affect the livability or appropriate development of abutting properties, with natural and built environment in the area and the surrounding neighborhood.

1. Views. Existing scenic viewsheds shall be preserved or enhanced by the proposed development.
2. Compatibility with Neighborhood. The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with and shall not adversely affect the livability or appropriate development of abutting properties, with natural and built environment in the area and the surrounding neighborhood, with consideration to be given to the following:
 - a. harmony in scale, bulk, massing, and density;
 - b. consistency with the goals and objectives of the Master Plan and with any other plan that has been adopted by the Town.

6.3.10 Landscaping, Walls, and Fences

1. Purpose. This Section is intended to ensure that the proposed development shall, through green infrastructure landscaping practices using vegetation, soils, and natural features: reduce runoff and treat stormwater at its source; promote groundwater recharge; protect water and air quality; provide shade and cooling with canopy trees and plantings to mitigate urban heat island effect; and, provide landscape amenities that contribute to human and environmental health. Landscaping shall screen negative impacts from public and private views, shall avoid and/or minimize clearing of trees and mature vegetation, and minimize soil removal and grade change. Proposed landscaping shall require adaptive and drought-tolerant species and prohibit invasive plants. Plantings shall be laid out in informal drifts rather than formal rows and shall undulate with site topography. Planting of native trees, shrubs, and other plants is required in disturbed areas intended for natural re-growth. Site plans must conform with stormwater requirements in General Bylaws.
2. Street Trees. Street trees are shade trees located along a Road and/or Street. Where existing street trees are more than fifty (50') feet apart on average or do not exist along a Street or Road, the Applicant shall plant street trees. Street Trees shall be placed in a linear fashion along the Right-of-Way or way boundary, at a maximum spacing of forty (40') feet on center. Where the character of the site is predominantly wooded or pastoral, the Applicant may cluster trees informally along the lot line, with a maximum of seventy-five (75') feet between clusters of three or more trees.
3. Fencing. Fencing up to six (6') feet in height, may be allowed in conjunction with plantings. At least fifty (50%) percent in length of built fences that face a public way shall be softened with plantings. Design and height of such fencing, with accompanying landscaping, shall be subject to the approval of the SPGA or Planning Board.

4. **Retaining Walls.** Retaining walls shall be constructed to a maximum height of six (6') feet. If site conditions require elevation changes of greater than six (6') feet, retaining walls shall be terraced and landscaped. Any retaining wall greater than thirty-six (36") inches in height shall be designed by a structural engineer. The face of any retaining walls visible from residential districts shall be designed with textured or natural stone, solid fieldstone or fieldstone veneer or other similar material. At least fifty (50%) percent in length of built walls that face a public way shall be softened with plantings.
5. **Berms.** The Planning Board or SPGA may require a berm or berms in appropriate circumstances to promote the goals of this Section.
6. **Unsightly Uses and Areas.** Exposed storage areas, refuse disposal facilities, HVAC, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or wall or tight fence complemented by evergreen plantings.
7. **Maintenance.** All landscaping features, structures and areas required for buffering or screening shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season as a condition of approval. Green infrastructure systems shall be inspected and maintained to preserve stormwater management functions.
8. **Waiver.** The Planning Board or SPGA, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

6.3.11 Utilities; Security; Emergency System Standards.

The proposed development shall be adequately served by public or private utilities, security systems, and emergency systems.

1. **Wastewater Treatment and Disposal.** The SPGA or Planning Board may require a report from the Board of Health confirming that the proposed site development provides for wastewater treatment and or disposal in a manner that is consistent with regulations of the Commonwealth of Massachusetts and the Board of Health.
2. **Water.** There shall be sufficient water capacity to meet the flow demands of the proposed use without causing municipal water flow characteristics off-site to fall below the standards adopted by the Town.
3. **Site Security.** There shall be a certification by the Police Chief that the petitioner has provided a written plan for site security, which plan has been approved by the Police Chief.
4. **Underground.** All electrical, cable and telecommunications services shall be installed underground.
5. **Fire Alarm System.** There shall be sufficient municipal fire alarm system capacity to meet the operating requirements of the proposed site development and use under applicable codes, regulations, and statutes enforced by the Fire Chief.

6.3.12 Fiscal Analysis Standards.

The SPGA or Planning Board shall require a fiscal analysis of the proposed development to determine the long-term benefit and cost to maintain a positive net fiscal position, giving

consideration to revenue estimates and actual growth in municipal service costs induced by the proposed development. The long-term social benefit to the Town shall also be taken into consideration in this analysis.

1. The applicant shall provide an analysis of fiscal costs from the development, including increases in marginal costs, assessment of the capacity of existing municipal facilities to serve the new development, and, by order of magnitude, share of capital costs if improvements are needed.
2. The applicant shall identify an order of magnitude estimate as to the extent to which this development would generate the additional need for Town services including responses from police, fire, EMS, schools and affordable housing.
3. The applicant shall provide an estimate of future real estate tax revenue to be generated by the project based on reasonable estimates of assessed value and current tax rates.

6.3.13 Waiver of Standards.

The SPGA or Planning Board may, in the course of granting a special permit or site plan approval for nonresidential or multifamily development, waive any of these performance standards where such waiver is not inconsistent with public health and safety, and where such waiver does not derogate from the purposes of this Section because the proposed development will adequately serve the goals and objectives set forth in Section 6.3.1.

6.3.14 Enforcement.

The SPGA or Planning Board may ensure compliance with these performance standards at the application stage by requiring evidence of probable compliance, whether by example of similar facilities or by engineering analysis, verified by technical peer review. In addition, the SPGA or Planning Board may require a monitoring program post permit issuance for compliance purposes for a time period as may be specified in the special permit or site plan approval.

6.4 EARTH REMOVAL AND FILLING

6.4.1 Purpose:

Purposes of this By-law are to regulate earth removal and filling activities associated with land development, promoting responsible site planning practices without preventing the reasonable development of land:

1. Minimize Negative Impacts on the Area. Protect adjoining premises from seriously detrimental uses, including making provisions for stormwater management and surface water drainage, sound and sight buffers, and preservation of views, light, and air;
2. Protect public health, safety, and welfare. Promote the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets. If applicable, this shall include the location of driveway openings, access by emergency vehicles, the arrangement of parking and loading spaces, and provisions for persons with disabilities;

3. Be harmonious with the area. Promote land development and site planning practices that are compatible with and reinforce the Town's scenic character and are harmonious with existing natural landforms; and
4. Protect the natural landscape. Ensure that clearing and grading activities will not excessively alter existing landscape, vegetation, water resources or natural systems.

6.4.2 Applicability:

1. Definitions (for purposes of this Section 6.4):

Each lot within the Single Residence Districts A, B, C, and E, and Residence District D1 and D2, consists of two parts. One part [the "Setback Area"] is that portion of the lot from its exterior boundaries to the lines delimiting its minimum front, side and rear building setbacks as prescribed by Section 5.4. The other part [the "Interior Area"] is the rest of the lot. That portion of the Setback Area of a lot between the lines delimiting its minimum side building setbacks from its front exterior boundaries to the line delimiting its minimum front building setback, all as so prescribed, is the "Central Front Setback Area"; and the remaining portion of the Setback Area is the "Side/Rear Setback Area".

"Green Activities" means planting, trimming, harvesting, additions, subtractions or other changes of, in or to the trees, shrubs, grass, plants, vegetation or other non-nuisance agricultural, horticultural, floricultural or silvicultural products. Without limitation of the generality of the foregoing, "Green Activities" include the annual addition of up to twelve (12") inches of soil or other material to any area.

"Ledge" means a boulder or rock formation, whether or not cracked or broken into contiguous pieces, (1) which has a volume of three (3) or more cubic yards, or (2) the removal of all or any part of which, in the opinion of the Inspector of Buildings or as proposed by the lot owner, normally would involve either blasting or hoe-ramming. Such Ledge is an exposed ledge if its uncovered surface area is fifty (50) or more square feet.

"Authorized Structures/Drives Activities" means construction, maintenance or other changes (A) within the layout of any street, or sidelines of any easement for any common driveway on which the lot has frontage, or (B) under the Rules and Regulations Governing the Subdivision of Land in Manchester-by-the-Sea, Massachusetts or this Zoning By-Law within the footprint of buildings and other structures, and sidelines of driveways and turnarounds, authorized (with specific reference to any ledge removal permitted) by either the Planning Board or the Zoning Board of Appeals or (C) within the footprint of a residential building, provided that any excavation does not exceed a depth of fifteen (15') feet from the pre-construction grade and is authorized by a building permit issued by the Inspector of Buildings.

"Septic Activities" means construction, maintenance or other changes in a septic system authorized (with specific reference to any ledge removal permitted) after a public hearing by the Board of Health.

"Utilities Activities" means construction, maintenance or other changes in water, gas, sewer, electric, telephone, cable and other utilities installed underground within one or more trenches each not exceeding 4 feet in width (the number and location of such trenches to be as determined by the Planning Board under the Subdivision Rules and

Regulations, otherwise by the Inspector of Buildings) extending (a) from the front exterior boundary of the lot through the Center Front Setback Area to structures within the Interior Area, and/or (b) between structures within the lot.

2. General: As described in this Section 6.4.2, and except for certain *de minimis* or excluded activities, a special permit is required from the Planning Board for certain ledge removal and/or other topographical changes or disturbances within the Setback Area or (different criteria) the Interior Area of a lot in the residential zoning districts [Single Residence Districts A, B, C, and E, and Residence District D1 and D2].

3. Exclusions: No such special permit under this Section 6.4 is required for any or all of the following (collectively, the “Excluded Activities”):

- a. Authorized Structures/Drives Activities; and/or
- b. Septic Activities; and/or
- c. Utilities Activities; and/or
- d. Green Activities.

4. Setback Area Special Permits: Topographical changes (other than Excluded Activities) within the Setback Area for any lot in Single Residence Districts A, B, C, and E, and in Residence District D, may not be made without a special permit from the Planning Board if such changes:

- a. Involve within the Setback Area removal of either any portion of any pre-construction exposed ledges or more than five (5') feet vertically or horizontally of other ledges; and/or
- b. Result in a change in elevation (from the pre-construction elevation) of more than five (5') feet at any point (otherwise than within the footprint of any structure) within the Setback Area; and/or
- c. Result in the excavation, deposit or removal of more than twenty (20) cubic yards of earth, clay, sand, gravel and rock within the Setback Area, whether or not any such material so excavated, deposited or removed is relocated elsewhere either within the Setback Area or the lot; and/or
- d. Disturb more than ten (10%) percent of the Setback Area.

5. Interior Area Special Permits: Topographical changes (other than Excluded Activities) within the Interior Area for any lot in Single Residence Districts A, B, C, and E, and in Residence District D, may not be made without a special permit from the Planning Board (in addition to any Earth Removal Permit which may be required under Article XII of the Town’s General By-Law) if such changes:

- a. Involve within the Interior Area removal of any portion of any pre-construction exposed ledges; and/or
- b. Result in a change in elevation (from the pre-construction elevation) of more than ten (10') feet at any point (otherwise than within the footprint of any structure) within the Interior Area; and/or
- c. Result in the excavation, deposit or removal of more than one hundred (100) cubic yards of earth, clay, sand, gravel and rock within the Interior Area, whether or not any such material so excavated, deposited or removed is relocated elsewhere either within the Interior Area or the lot; and/or

d. Disturb more than thirty (30%) percent of the Interior Area.

6.4.3 Procedure:

Special Permits under this Section 6.4 shall be granted only if the Planning Board finds that it is consistent with the purpose and intent outlined in Section 6.4.1 of this Bylaw and in conformance with this Section 6.4 generally and Section 12 of the Manchester-by-the-Sea Zoning By-laws and the requirements of MGL Chapter 40A, Section 9. Each application shall be in the form and number of copies prescribed by the Planning Board, and shall be filed [each with a site plan as proposed for the lot] with the Planning Board by submission to the Town Clerk, together with such filing fee as the Planning Board shall determine. Applicants are encouraged to discuss their proposals informally with the Planning Board prior to filing.

6.4.4 Application Requirements:

Plans subject to Special Permit approval under this Section 6.4 shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer. The lot identification shall include its Assessors Map and Lot numbers. The site plan for the lot shall be prepared at a scale no greater than 1"=40', and shall show (except as otherwise prescribed or waived by the Planning Board) all existing and proposed contour elevations (at two (2') foot contour line intervals), structures, parking spaces, driveway openings, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, wetlands, vernal pools, streams, ponds and other surface water, areas subject to the 100-year flood, and landscape features such as exposed ledges, fences, walls, trees (having a diameter, four and a half (4 ½') feet from the ground, exceeding six (6") inches), planting areas, walks and lighting, both existing and proposed. The site plan also shall show the relation of locus map at a scale not greater than 1"=2,000'. The site plan also shall show all contiguous land owned by the applicant or by the owner of the property, and shall identify all abutters, by name and Assessors Map and Lot numbers. The applicant shall submit such material as may be required by the Planning Board regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding, and regarding design features intended to integrate the proposal into the existing landscape, to preserve the same, to enhance aesthetic, and to screen objectionable features from neighbors.

6.4.5 Expenses Incurred:

Expenses incurred by the Planning Board in connection with an application under this Section 6.4, including the reasonable fees and expenses of any consultants retained by the Planning Board, shall be paid by the applicant for such Special Permit.

(Special Town Meeting 11.14.2022 Article 8. Attorney General approval 2/16/2023)

SECTION 7.0

NONCONFORMING USES

7.1 Existing Use:

Any structure or use lawfully existing at the time of the adoption of this By-Law or any amendment hereto and any use or structure lawfully begun in respect of which a building or special permit has been issued before the first publication of notice of public hearing on this By-

Law or any amendment hereto may be continued or completed although such structure or use does not conform to the provisions hereof, provided that, in the case of the issuance of a building or special permit, construction or operation hereunder shall conform to the provisions of this By-Law or any amendment hereto unless the construction or use has commenced within a period of six months after the issuance of the permit and that in cases involving construction such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.2 Changes, Extensions and Alterations:

A nonconforming structure or use may be changed, extended or altered, provided that in each case the Board of Appeals grants a special permit therefor after finding that such change, extension or alteration is not substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure or use. The above requirement does not apply to such an extension, alteration, re-construction or structural change to a single family or two family residential structure that does not increase the nonconforming nature of that structure. [Added 1984]

7.3 Restoration:

Restoration of a nonconforming structure which has been damaged by fire, flood or other casualty or by vandalism may be made without conformance to the provisions of this By-Law or amendment hereto, provided that such restoration shall have commenced within six months of the date the damage was sustained and that such restoration continue through to completion as continuously and expeditiously as is reasonable, and provided that the structure as restored shall not exceed 100% of the floor area of the structure immediately prior to the damage unless the Board of Appeals grants a special permit therefor in accordance with Section 12.5 (Special Permits) after finding that such restoration is not substantially more detrimental or injurious to the neighborhood than the structure immediately prior to such damage.

7.4 Abandonment:

Any structure or lot, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district and the nonconforming use may not be thereafter resumed. A nonconforming use or structure not used for a period of 2 years shall be deemed abandoned and shall not again be revived or such structure used except in conformity with all applicable provisions of this By-Law or any amendment hereto.
(Special Town Meeting 11.14.2022 Article 7. Attorney General approval 2/16/2023)

Amended STM 6.28.2023, Attorney General Approved 9/29/2023

Section 8.0 SPECIAL REGULATIONS

8.1 Personal Wireless Telecommunication Service Facilities

8.1.1 Definitions

(1) The term "Personal Wireless Telecommunication Service" means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services;

(2) The term "Personal Wireless Telecommunication Service Facilities" means facilities for the provision of personal wireless telecommunication services.

8.1.2 Purpose and Intent

The increasing use of business and personal devices relying on Personal Wireless Telecommunication Service Facilities, often referred to as Wireless Telecommunications Service Facilities, has generated a significant number of applications for the placement, construction and modification of such facilities throughout the Commonwealth and the Cape Ann region. Therefore, and in reliance on the Town's authority under M.G.L. c.40A, and under the Massachusetts State Constitution and in keeping with its responsibilities to protect public health, public welfare and public safety, the Town hereby adopts this Bylaw.

8.1.3 Special Permit

All Personal Wireless Telecommunication Service Facilities shall require a Special Permit from the Planning Board.

This Bylaw creates an allowed use by Special Permit of the Planning Board for Personal Wireless Telecommunication Service Facilities. The Planning Board shall determine the minimum lot dimensions and setbacks appropriate to the use proposed.

No special permit shall be granted by the Planning Board, unless, in its judgment, following input from other municipal boards, departments, agencies and their staff, the Board determines that reasonable measures shall be or already have been taken to comply with the requirements of Section 12.5 and to:

- (1) mitigate against potential negative impacts on visual quality upon neighboring properties by incorporating reasonable design, siting and screening methods; and
- (2) protect against potential damage to neighboring properties from tower/structure failure or collapse and falling ice.
- (3) obtain a financial surety to cover the costs of (a) the remediation of damage to the landscape which occurs during the clearing of the site, and (b) the removal of the facilities and the remediation of the

landscape, should the facility cease to operate, as provided in section 8.1.5 below; and

- (4) provide for testing and monitoring of radio frequency emissions, as follows:
 - (a) Pre-testing. After a special permit is granted and before the applicant's Personal Wireless Telecommunication Service Facility begins transmission, the applicant shall pay for an independent consultant, hired by the Town, to test and monitor the ambient or background levels of radio frequency emissions around the proposed facilities site, using established protocols.
 - (b) Post-testing. After transmission begins, the owner(s) of any Personal Wireless Telecommunication Service Facilities located on any site shall pay for an independent consultant, hired by the Town, to test and monitor the radio frequency emissions from the site, using established protocols. Such testing and monitoring shall take place annually.
 - (c) Excessive emissions. Should the testing and monitoring of a facility site reveal that the site exceeds any applicable federal, state or local regulations, the owner(s) of all Facilities at that site shall be so notified. Any Personal Wireless Telecommunication Service Facility which does not comply with all applicable federal, state, and local regulations shall be removed upon failure to bring the facility into compliance within thirty (30) days from receipt of written notice.

8.1.4 Limited Commercial District

Within the Limited Commercial District, Personal Wireless Telecommunication Service Facilities under 200 feet in height and less than 10 feet in diameter above 35 feet above the ground shall be exempt from Section 5.5 of the Manchester-by-the-Sea Zoning Bylaws.

8.1.5 Cessation of Use

At the Planning Board's discretion within six (6) months of the cessation of use of any facility for use as a Personal Wireless Telecommunication Service Facility, the facility, all support buildings and/or structures, all foundations and pads and any other items installed under this Special Permit shall be removed by the owner/operator and the site shall be restored to a condition equal to or surpassing that which existed prior to construction.

8.1.6 Validity

The invalidity of one or more sections, subsections, sentences, clauses, or provisions of this Bylaw shall not invalidate or impair the Bylaw as a whole or any part thereof.

[Adopted 1997; amended 1998]

8.2 Helicopter landing, storage or parking facilities

In accordance with the Town's authority to regulate land and waterway uses and structures, the Town of Manchester-by-the-Sea hereby determines that it is in the public interest to regulate the on-the-ground placement and storage of helicopters.

Applicants shall be required to obtain a special permit from the Planning Board to use any lot or seaway for helicopter landing, storage or parking within the Town of Manchester-by-the-Sea. However, nothing herein shall prevent a temporary helicopter landing area for emergency purposes, such as air ambulance, search and rescue, fire fighting and similar public safety operations. [Adopted 2003]

8.3 Regulation of Marijuana Businesses

8.3.1 Purpose

The purposes of this By-Law are:

to exercise lawful oversight and regulation of Medical Marijuana Treatment Centers (also known as Registered Marijuana Dispensaries) and Marijuana Establishments, together referred to herein as Marijuana Businesses, consistent with Chapter 369 of the Acts of 2012, An Act To Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, all regulations which have or may be issued by the Department of Public Health and/or the Cannabis Control Commission, including, but not limited to 105 CMR 725.00 et seq. and 935 CMR 500.00, et seq., and the Town's regulatory powers; and to limit the siting and operation of Marijuana Businesses to locations appropriate to such use, and to regulate such use through conditions necessary to protect community safety while ensuring legitimate patient access.

8.3.2 Applicability

1. The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana is prohibited unless permitted as a Marijuana Business under this By-Law.
2. No Marijuana Business shall be established except in conformity with this By-Law and all applicable laws and regulations, including such regulations as may be promulgated by the Board of Health; and the requirements of 105 CMR 725.00 et seq. and 935 CMR 500.00, et seq.
3. Nothing in this By-Law shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of narcotic drugs.

8.3.3 Definitions

Where not expressly defined in the Zoning By-law, terms used in this bylaw shall be interpreted as defined in G.L. c.94I and G.L. c.94G and regulations promulgated and/or incorporated thereunder, and otherwise by their plain language.

Marijuana Business means a Medical Marijuana Treatment Center, Marijuana Establishment, or any combination or part thereof.

Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business for the non-medical, including recreational use of marijuana, as set forth in G.L. 94G, and any regulations promulgated thereunder.

Medical Marijuana Treatment Center as defined by 105 CMR 725.000, et al., as it may be amended or superseded, and pursuant to all other applicable state laws and regulations, means a not-for-profit entity registered under 105 CMR 725.100, otherwise known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers, as those terms are defined under 105 CMR 725.004. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of Marijuana.

Special Permit Granting Authority (SPGA) pursuant to this By-Law shall be the Planning Board.

8.3.4 Eligible Locations

1. Marijuana Businesses may be allowed by Special Permit in the Limited Commercial Zoning District, subject to all requirements of this Zoning By-Law, the requirements of the Board of Health, and applicable state laws and regulations.

8.3.5 General Requirements and Conditions

The following requirements and conditions shall apply to all Marijuana Businesses:

1. All Marijuana Businesses must obtain a special permit and site plan approval from the Planning Board pursuant to the requirements of Section 6.2 (Signs), 12.6 (Site Plan Review), Section 12.5 (Special Permits) and the requirements of Section 8.3. The Planning Board may grant a single special permit incorporating the requirements of Sections 6.2, 12.6, 12.5 and 8.3 for a Marijuana Business.
2. No Special Permit shall issue without demonstration by the applicant of compliance with all applicable state laws and regulations, and with all local regulations.

3. No Marijuana Business shall be located within 300 feet of a residential zoning district, or within 500 feet of any lot containing a school, child care facility, or playground.
4. No smoking, burning or consumption of any product containing Marijuana or Marijuana-infused products shall be permitted on the premises of a Marijuana Business except as may be expressly permitted by law.
5. No products shall be displayed in the facilities windows or be visible from any street or parking lot.
6. Signs for all Marijuana Businesses shall, at a minimum, comply with Section 6.2 of the Zoning By-Law, the provisions of 105 CMR 725.105(L) ("Marketing and Advertising Requirements"), the provisions of 935 CMR 500 et seq., and the terms and conditions of the special permit issued pursuant to Section 8.3, et seq.

8.3.6 Special Permit Requirements

A Marijuana Business shall be allowed only by Special Permit in accordance with G.L. c. 40A, s. 9; with the requirements of Section 12.5 of the Zoning By-Law, with the terms and conditions of the special permit issued pursuant to Section 8.3, et seq. and with the additional requirements contained in this Section (8.3.6), below.

1. Uses. A Special Permit for a Marijuana Business shall be limited to one or more of the uses for which RMD's and Marijuana Establishments are authorized to engage in by law.
2. Application. In addition to the application requirements set forth in the rules of the Special Permit Granting Authority, a Special Permit application for a Marijuana Business shall include the following:
 - A. The name and address of each owner of the establishment and property owner;
 - B. Copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the establishment;
 - C. Evidence of the applicant's right to use the site for the establishment, such as a deed, or lease;
 - D. Proposed security measures for the Marijuana Business demonstrating compliance with all requirements of 105 CMR 725.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to secure storage areas, limited access areas, security and alarm systems compliant with 105 CMR 725.110(D), and the requirements of 935 CMR 500 et seq. A copy of the approved security measures shall be provided to the Police Department.

The above information may be confidential and exempt from the provisions of G.L. c. 66, and as such shall not be part of the public record.

- E. As applicable, the Proposed Operations and Maintenance Manual for the Medical Marijuana Treatment Center demonstrating compliance with all requirements of 105 CMR 725.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to procedures for limiting access to the facility to persons authorized under 105 CMR 725.110(A); and procedures for transport of Marijuana and/or MIPs as provided under 105 CMR 725.110(E).

Pursuant to 105 CMR 725.200 (C), the above information may be confidential and exempt from the provisions of G.L. c. 66, and as such shall not be part of the public record.

3. Hours of Operation. The hours of operation of a Marijuana Business shall be established by the Special Permit Granting Authority.
4. Term of a Special Permit. Special Permits shall be valid for a period of two (2) years from the effective date of the special permit.
5. Transferability of a Special Permit. Special Permits may be transferred only with the approval by the Special Permit Granting Authority, in the form of an amendment to the Special Permit, conditioned upon satisfactory submission of all information required for an original Special Permit.
6. Renewals. A Special Permit may be renewed for successive two (2) year periods provided that a written request for renewal is made to the Special Permit Granting Authority not less than three (3) months prior to the expiration of the then-existing term. Any request for a renewal of a Special Permit shall be subject to publication notice requirements as required for an original application for a Special Permit. Such notice shall state that the renewal request will be granted unless, prior to the expiration of the existing Special Permit, a written objection, stating reasons for such objection, is received by the Special Permit Granting Authority.
 - 6.1. If any such objection is received, the Special Permit Granting Authority shall hold a public hearing on the renewal request and shall proceed in a manner consistent with the proceedings required for an original application.
 - 6.2. The Special Permit shall remain in effect until the conclusion of the public hearing and decision of the Special Permit Granting Authority either granting or denying the Special Permit renewal request.
 - 6.3. In granting any renewal, the Special Permit Granting Authority may alter or impose additional conditions, and/or may provide for revocation of the Special Permit if any identified violations of this By-Law or any other applicable regulation are not corrected within a specified time period.

8.3.7 Severability

If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable. [Added 2015] [Amended 2018]

8.4 Common Driveways

Frontage along the length of any way in existence when the Subdivision Control Law became effective in Manchester-by-the Sea shall in no way be used as frontage as specified in the Zoning By-Law unless the way meets the following minimum standards. Furthermore, no common driveway shall be accepted as a public road; nor shall the Town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway, unless by contract duly entered into by the Town and all landowners served by the common driveway.

Common driveways shall be built in accordance with the following standards:

1. Minimum driveway width: 16'(18' if over 100' in length) residential use; 24' all other uses. [Amended 2007]
2. Maximum driveway grade of 10%.
3. Maximum driveway length of 500'.
4. The common driveway, at its intersection with the street, must provide a leveling off area with a slope no greater than 1% for the first 20' and a slope no greater than 5% for the next 30'.

These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Zoning By-Law and these design standards.” [Amended 2001]

8.5 BLANK

8.6 Adult Entertainment Establishments

8.6.1 Purpose and Intent:

It is the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Manchester by the Sea in accordance with MGL chapter 272, Section 31 and MGL chapter 40A, Section 9A.; and, it is the intent to promote the health, safety and general welfare of the citizens of Manchester by the Sea; and it is the intent of this section that these provisions be utilized to prevent the problems of blight, deterioration and/or secondary impacts (increased crime, adverse impacts on health, adverse impacts on business climate of the Town, adverse impacts of property values of residential and commercial properties, and adverse impacts on the quality of life in the Town) which typically accompany and are brought about by the concentration of sexually oriented businesses. All of the said secondary impacts are adverse to the health, safety and general welfare of the Town and its residents.

Furthermore, the provisions of this By-law have neither the purpose or intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose and intent of this By-law to restrict or deny access by adults to Adult Entertainment Establishments or to sexually oriented matter or

materials that are protected by the Constitution of the United States of America or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this By-law to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

MGL Chapter 272, Section 31 and MGL Chapter 40A, Section 9A allow a municipality to issue and control special permits for adult bookstores, adult motion pictures theaters, adult paraphernalia stores, adult video stores or establishments which display live nudity.

8.6.2 Definitions: Definitions for this Section shall be as defined in MGL. Chapter 40A, Section 9A and in MGL Chapter 272, Section 31.

8.6.3 Applicability.

An Adult Entertainment Establishment may be permitted as set forth in the Table of Use Regulations by special permit of the Planning Board provided a written decision is issued by said Board that the special permit decision criteria of this bylaw have been met.

Adult Entertainment Establishments shall be allowed in the Limited Commercial District as a Special Permit only, provided that the following locational standards, site appearance criteria and other conditions are complied with:

8.6.3.1 No structure containing an Adult Entertainment Establishment shall be permitted within any of Manchester by the Sea's School Zones, 1,000 ft. of the property line of a church or place of worship, parish house or convent, a public, parochial or private school, another structure containing an adult use, a structure proposed to contain an adult use for which a building permit has been applied for, or 1,000 of a residence or child day care facility. The measure of distance between any Adult Entertainment Establishment and other named point of reference shall be measured in a straight line.

8.6.3.2 No sexually explicit material or advertising shall be visible from outside the building.

8.6.3.3 No private viewing rooms or booths shall be constructed unless one side is always open to a public central area.

8.6.3.4 No one under the age of eighteen (18) shall be permitted inside such a use and a procedure shall be developed to keep those under eighteen (18) from entering the building.

8.6.3.5 Adult Entertainment Establishments which have been established at their existing locations prior to the effective date of this By-Law and which are not in conformity with the requirements of this By-law, may continue to operate until one year after the effective date of this By-law. Thereafter, unless any such Adult Entertainment Establishment conforms to the provisions of this By-Law, it shall no longer be permitted to operate.

8.6.3.6 Said Board shall prohibit the issuance of such special permits to any person convicted of violating the provisions of MGL section sixty-three of chapter one hundred and nineteen or MGL section twenty-eight of chapter two hundred and seventy-two.

8.6.4. Restrictions on Other Retail Uses.

For those retail uses permitted by right in the General and Limited Commercial Districts which sell sexually explicit goods and paraphernalia but do not meet the 25% thresholds outlined in Section 8.6.2, such goods and paraphernalia shall be located either behind a counter, or in a separate room or enclosure where citizens under the age of 18 are not allowed to enter. Such sexually explicit goods and paraphernalia must be located so that the materials in question are not within view of minors or readily visible to children.

8.6.5 The measure of distance between any adult use and other named point of reference shall be measured in a straight line.

8.6.6 Once established in a permitted location under this Ordinance, an adult use operating as a conforming use is not rendered a non-conforming use by the subsequent location of:

- A. A church or place of worship, parish house or convent within 1,000 ft.
- B. A residence or child day care facility within 1,000 ft.
- C. A public, parochial, or private school within 1,000 ft. or the designation of a School Zone within 1,000 ft.

8.6.7 Violation of the use provisions of this ordinance is declared to be a public nuisance per se, which shall be abated by the Town by way of civil abatement procedures.

8.6.8 Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building or use which violates any Town of Manchester by the Sea bylaw or the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.

8.6.9 If any section, subsection, sentence, clause, phrase, or any portion of this Bylaw is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

(Adopted as Article 17 April 3, 2023, Attorney General approval as of June 15, 2023)
Amended STM 6.28.2023

Section 9.0 SPECIAL RESIDENTIAL REGULATIONS

9.1 Special Housing Provisions

9.1.1 Purpose:

This By-Law permits the construction of accessory dwelling units in Single Residence Districts A, B, C, and E in order to meet the following objectives:

- (a) To facilitate the availability of suitable private housing for moderate and lower income, elderly and younger citizens of the Town while preserving the existing character of single family districts.
- (b) To make it financially possible for existing homeowners to stay in their homes.
- (c) To provide security.
- (d) To provide regulations that are enforceable and bring illegal conversions under control.
- (e) To insure that all accessory dwelling units that are created will comply with the building codes and health, safety and fire regulations.
- (f) To allow the best use of older homes by encouraging the preservation of these homes.

9.1.2 Accessory Dwelling Units in Single Residence Districts A, B, C, and E:

- 9.1.2.1 An owner or owners of a single family dwelling in Single Residence Districts A, B, C, and E may apply to the Board of Appeals for a Special Permit for the construction of one accessory dwelling unit in such single family dwelling.
- 9.1.2.2 After notice and public hearing the Board of Appeals may grant such a permit provided that:
 - (a) Except in Single Residence District E, the lot size shall be two (2) times the minimum lot size as determined by the zoning regulations.
 - (b) The single family dwelling shall have existed on the lot as of March 1, 1984.[Amended 1987]
 - (c) Off-street parking for at least four (4) vehicles shall be provided in a manner consistent with the character of a single family dwelling.
 - (d) Either the accessory dwelling unit or the main dwelling shall be occupied by the owner of the property except for temporary absences of up to one year.
 - (e) The construction and occupancy of the accessory dwelling unit will not be detrimental to the neighborhood or injurious to persons or property.

- (f) The accessory dwelling unit is accessory to the principal residence. The floor area of the accessory dwelling unit will not exceed 35% of the floor area of the principal dwelling and the accessory dwelling unit combined.
- (g) No exterior changes shall be made which alter the single family character of the dwelling. Any additions made shall not increase the floor area or volume by more than 10% and shall meet all applicable setback requirements.
- (h) Adequate provisions shall be made for the disposal of sewage, waste and drainage caused by the occupancy of such dwelling unit.
- (i) There is no other accessory dwelling unit in the dwelling.

9.1.2.3 The Applicant for the special permit shall submit plans showing at a minimum the following items:

- (a) Lot size and location of parking.
- (b) Floor plan showing size and location of accessory dwelling unit with all means of egress, natural and mechanical ventilation, and location of all items required by the building code.
- (c) Elevations of building if exterior changes occur.
- (d) Additional information requested by the Board of Appeals.

9.1.2.4 The accessory dwelling unit shall not be occupied until a Building Permit and a Certificate of Occupancy are issued by the Building Inspector. [Added 1984; Amended 1987]

9.2 Residential Conservation Cluster

[Added 2005]

9.2.1 Purpose and Intent

1. Allow for greater flexibility and creativity in the design of residential developments.
2. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources.
3. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
4. Protect scenic vistas from the Town's roadways and other places.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.

8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.
12. Further the goals and policies of the Manchester-by-the-Sea Comprehensive Plan, as revised.

9.2.2 Definitions

In this Bylaw, the following words have the meanings indicated:

Residential Conservation Cluster (RCC) Development: A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. RCC Development is generally the preferred form of residential development and/or redevelopment in the Town for residential developments of five (5) or more acres and/or six (6) or more lots.

9.2.3 Applicability

A proposed subdivision of land into six (6) or more lots shall be filed in accordance with the provisions of Section 9.2.4, below. The Planning Board shall determine whether the proposed location is suitable for an RCC Development under the terms and provisions of this section. If the Planning Board determines that the proposed location is suitable for an RCC Development, any further subdivision of the land into six or more lots shall be accomplished only through the provisions of this Bylaw. If the Planning Board determines, after discussion and analysis provoked by Section 9.2.4, that the location is best suited for subdivision under a conventional subdivision design, the Planning Board shall so inform the applicant and the applicant may then proceed to design a subdivision plan under the provisions of the Subdivision Control Law and the Manchester-by-the-Sea Rules and Regulations Governing the Subdivision of Land (Subdivision Rules and Regulations) and the provisions of this section shall not apply. In cases where the Planning Board determines that the site is not suitable for an RCC Development, and where the proposed subdivision of land is for six (6) or more lots, the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 9.3 of the Zoning Bylaw. In either case, however, a special permit from the Planning Board shall be required.

Notwithstanding the provisions above, the Planning Board may grant a special permit for an RCC Development for any parcel or contiguous parcels of at least five (5) acres in any

district permitting single-family dwellings subject to the regulations and conditions herein. Determination of whether the proposed location is not suitable for an RCC Development shall be based upon the opinion and judgment of the Planning Board, after consultation with its advisors and staff and may include the following criteria:

1. The degree to which the topography of the locus will not be preserved by a RCC Development;
2. The degree to which stormwater runoff and erosion will not be minimized by a RCC Development;
3. The degree to which the RCC Development will result in inappropriate site planning, subdivision design and/or damage to the site's natural features;
4. The degree to which the RCC Development will not preserve or protect abutting properties and associated views and vistas;
5. The degree to which public safety will be threatened by a RCC Development;
6. The degree to which other site-specific attributes or site-specific concerns are not appropriately addressed by a RCC Development.

9.2.4 Procedural Requirements

1. Pre-Application Meeting: A pre-application meeting between the Planning Board and the applicant is strongly encouraged.

2. Preliminary (Conventional) Plan/RCC Sketch Plan: Applicants proposing the subdivision of land into six (6) or more lots shall submit a Sketch Plan for an RCC Development along with a Preliminary (Conventional) Subdivision Plan for review by the Planning Board. One of the purposes of this review is to determine the number of lots possible in the RCC Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required in Section 9.2.4.3 below be submitted at this stage. The Planning Board shall approve, approve with conditions, or disapprove the preliminary plan/RCC Sketch Plan within forty-five (45) days of receipt of a completed application. Upon receipt of the Planning Board's written decision regarding said plan, the applicant may submit a Definitive Subdivision/ RCC Development plan in accordance with the Planning Board's written decision. If the above-noted forty-five (45) daytime period has lapsed without a written decision being issued by the Planning Board, the applicant may submit a definitive subdivision/ RCC Development plan in accordance with Section 9.3.3 of this Bylaw.

3. Definitive Subdivision/ RCC Development Plan: The Definitive Subdivision/ RCC Development Plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells, drainage, proposed easements and methods of sewage disposal. A team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect shall prepare the plan. An accompanying Existing Conditions Plan shall depict existing topography, wetlands, waterbodies and the 100-year floodplain, all existing rights of way, easements, existing structures, the location of significant features such as woodlands, tree lines,

open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths. Submission of photographs depicting existing conditions, views and vistas from various locations on the property and from public and private ways shall accompany the plan submission. The Site Analysis shall also show locations of soil test pits and percolation tests, with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.

4. Density/Number of Dwelling Units: The total number of dwelling units in a Residential Conservation Cluster shall be determined by the following formula:

(a)
$$\frac{[\text{Total area of land subject to the application}] - [\text{Area of wetlands and waterbodies}]}{[\text{Applicable Land Area}] \times [.75]} \div \text{Minimum Lot Area Established for the Zoning District} = \text{Total number of dwelling units.}$$
 The number of dwelling units permitted in a Residential Conservation Cluster shall not exceed that which would be permitted under a conventional subdivision that complies with the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations.

5. Review and Decision: Upon receipt of the application and the required plans, the Planning Board shall transmit one copy each to the Board of Health, Historical Commission and Conservation Commission. Within 45 days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G. L. c. 40A, sec. 9. Notice shall be provided of hearings in accordance with Chapter 40A, sec. 11 and Chapter 41, sec. 81T. Public hearings for the subdivision application and the special permit application shall be conducted concurrently.

6. Criteria for Special Permit Decision:

(a) Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the RCC Development Bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:

1. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section 9.2.9 of this Bylaw.
2. Approximate building sites have been identified and are not located closer than 100 feet to wetlands and waterbodies.
3. Proposed streets have been aligned to provide vehicular access to each

dwelling unit in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide lots with views of and access to the open space.

4. All lots meet the applicable dimensional requirements of Section 9.2.5 of the RCC Development Bylaw and all other relevant provisions of the Zoning Bylaw.

5. The provisions of Section 9.3 of the Zoning Bylaw will be met.

The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

(b) Conditions: The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. Approval of an RCC Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land that increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the RCC Development Bylaw and the Subdivision Rules and Regulations.

(c) Time Limit: A special permit is granted for a period of two years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. In its sole discretion, the Planning Board may grant extensions to allow construction of subdivisions within the vested rights limits set forth in G.L. c. 40A, sec. 6 except where such extension would derogate from the intent and purpose of this Bylaw.

(d) Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of these Bylaws or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law.

9.2.5 Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements found elsewhere in this Bylaw, the requirements of this section shall prevail.

1. Minimum Lot Size: The minimum lot size shall be one-half the square footage otherwise required by the Zoning District in which the project is located.

2. Minimum Frontage: The minimum frontage may be reduced from frontage otherwise required in the Zoning District, provided however that no lot shall have

less than 50 feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways.

3. Setbacks: Provided that no objection to the contrary is raised by the Fire Department, the Planning Board may reduce by up to one-half the setbacks otherwise required by the Zoning Bylaw if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw, every dwelling fronting on the proposed roadways shall be set back a minimum of 15 feet from the roadway right-of-way, and a minimum of 50 feet from the outer perimeter of the land subject to the application. This 50-foot setback shall be maintained in a naturally vegetated state to screen and buffer the development and may be included within the open space. This setback may be eliminated where the proposed development abuts existing permanent open space. Wherever feasible, construction of the dwelling at the front setback line is encouraged.

4. Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as open space. A minimum of 60% of the upland area of the parcel (“applicable land area”) shall be provided as open space. As an exception, where the open space is proposed to be deeded to the Town or a qualified land trust pursuant to 9.2.7 of this Bylaw, and in fact, such a transfer occurs, a minimum of 50% of the upland area of the parcel shall be provided as open space. Applicants are encouraged to include wetlands and waterbodies within the open space; however, they do not count toward the open space requirement. Roadway rights-of way shall not count toward the area to be provided as open space.

9.2.6 Permissible Uses Of Open Space

1. Purposes: Open space shall be used solely for recreation, conservation, or agriculture purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

2. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or waterbodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development. No portion of the open space containing

components of a sewage disposal system(s) shall count toward the open space requirements of Section 9.2.5.4, nor shall any portion of said open space areas be accepted by the Town or conveyed to a nonprofit organization other than a corporation or trust described in Section 9.2.7(c).

9.2.7 Ownership of Open Space

1. Ownership Options: At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

- (a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town shall be open for public use;
- (b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified below. Such organization shall be acceptable to the Town as a bona fide conservation organization; or
- (c) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners' association") and placed under conservation restriction. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

2. Permanent Restriction: In any case when open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction, in accordance with G. L. c. 184 sec. 31, approved by the Planning Board and Board of Selectman, and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this Bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the Planning Board that describes

how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

3. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

4. Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

9.2.8 Design Process

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

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

2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

3. Designating the Contiguous Open Space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, to reflect an integrated community, with emphasis on consistency with Manchester-by-the-Sea's historical development patterns.

5. Lot Lines. The final step is to draw the lot lines.

9.2.9 Design Requirements

The location of open space provided through this Bylaw shall be consistent with the policies contained in the Manchester-by-the-Sea Comprehensive Plan and the Open Space and Recreation Plan, as amended. The following design requirements shall apply to open space and lots provided through this Bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
2. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
3. Open space may be in more than one parcel provided that the size, shape and locations of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the 100-foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
5. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
6. Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.
7. Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.
8. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.
9. Residential structures shall be oriented toward the street serving the premises.

9.2.10 Types of Buildings

An RCC Development may consist of a combination of single-family and two-family and residential structures. The architecture of all buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades.

9.2.11 Affordable Component

As a condition of the grant of any special permit for a RCC Development containing six (6) or more lots or dwelling units, the Planning Board shall ensure compliance with the provisions of Section 9.3 (“Inclusionary Housing”) of the Zoning Bylaw.

9.2.12 Special Permit Requirements

In reviewing an application under this Bylaw, the Planning Board shall rely, to the extent warranted, on the provisions of Section 12.5 of the Zoning Bylaw.

9.3 Inclusionary Housing

[Added 2005]

9.3.1 Purpose and Intent

The purpose of this Bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Manchester-by-the-Sea’s Comprehensive Plan, G.L. c. 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from this Bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town’s requirements under G. L. c. 40B sec. 20-23.

9.3.2 Definitions

1. Affordable Housing Unit. A dwelling unit that qualifies as a local initiative unit under the Commonwealth’s Local Initiative Program and meets the requirements of a subsidized housing unit for purposes of listing in the subsidized housing inventory under G. L. c. 40B Sec. 20-23.
2. Qualified affordable housing unit purchaser. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

9.3.3 Applicability

1. Division of Land. This Bylaw shall apply to the division of land into six (6) or more lots, and shall require a special permit from the Planning Board under Section 9.2 of the Zoning Bylaw. A special permit shall be required for land divisions under G. L. c. 40A sec. 9 as well as for “conventional” or “grid” divisions allowed by G. L. c. 41 sec. 81-L and sec. 81-U, including those divisions of land that do not require subdivision approval.

9.3.4 Mandatory Provision of Affordable Units

The Planning Board shall, as a condition of approval of any development referred to in Section 9.2, require that the applicant for special permit approval complies with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 9.3.5.

9.3.5 Provision of Affordable Units

The Planning Board shall deny any application for a special permit for development under Sections 9.2 and this section if the applicant for special permit approval does not agree that:

1) At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.

(a) Constructed or rehabilitated on the locus subject to the special permit;
(b) Constructed or rehabilitated on a locus different than the one subject to the special permit (see Section 9.3.7);

(c) An applicant may offer, and the Planning Board with the approval of the Board of Selectmen, may accept donations of land in fee simple, on or off-site, that the Planning Board determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this Bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value;

(d) For non-rental affordable housing units, a cash payment to the Affordable Housing Trust Fund may be made subject to Section 9.3.11 of this Bylaw.

The applicant may offer, and the Planning Board may accept, any combination of the Section 9.3.5.1(a)-(d) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this Bylaw.

9.3.6 Marketing Plan for Affordable Units

Applicants under this Bylaw shall submit a marketing plan or other method approved by the Planning Board, to the Planning Board for approval, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of

Selectmen, in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program.

9.3.7 Provision of Affordable Housing Units Off-Site

As an alternative to the requirements of Section 9.3.5.1(a), an applicant subject to the Bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 9.3.5 off-site. All requirements of this Bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the special permit review and approval process.

9.3.8 Maximum Incomes and Selling Prices: Initial Sale

1. The developer of the housing units or his/her agent shall verify prior to transferring title or executing a lease that each prospective purchaser or renter of an affordable housing unit created under this Bylaw is a household of low or moderate income, as defined by the Commonwealth's Local Initiative Program (LIP). Toward this end:

- a) The developer shall engage a qualified certifying agent acceptable to the Planning Board to receive purchase or rental applications, obtain and review documentation concerning sources and amounts of household income, and certify to the Town that all purchasers or renters approved for an affordable unit meet LIP income eligibility requirements.
- b) The developer is responsible for making arrangements acceptable to the Planning Board to provide annual certifications to the Town as may be required to place and maintain the affordable units on the Commonwealth's Chapter 40B Subsidized Housing Inventory.

2. The maximum allowable purchase price or maximum allowable rent for affordable units created under this Bylaw shall comply with the regulations and guidelines of the Local Initiative Program (LIP).

9.3.10 Preservation of Affordability; Restrictions on Resale

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability to qualified purchasers in the future. The resale controls shall be established through a deed rider or an affordable housing restriction as defined by G.L. c.184, Section 31, recorded at the Essex County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful. The affordable housing use restriction shall meet the requirements of the Local Initiative Program.

1. Resale price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property. For example, if a unit appraised for \$300,000 is sold for \$225,000 because of this Bylaw, it has sold for 75% of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$325,000, the unit may be sold for no more than \$243,750,

or 75% of the appraised value of \$325,000. Notwithstanding the foregoing, the resale price of an affordable unit shall in no event exceed that amount which will require a household earning 80% of the most recent area median income number, as published by the U.S. Department of Housing and Urban Development and adjusted for the household size that corresponds with the number of bedrooms in the affordable unit, to spend a maximum of 30% of the household's annual income on housing costs. Housing costs shall include principal, interest, property tax, insurance payments and association or condominium fees.

2. Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than the maximum period allowable under guidelines set by the Department of Housing and Community Development for Local Initiative Units as defined by the Local Initiative Program, to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

3. The Planning Board shall require, as a condition for special permit approval under this Bylaw that the deeds to the affordable housing units contain a restriction against renting or leasing said unit during the period for which the housing unit contains a restriction on affordability.

4. The Planning Board shall require, as a condition for special permit approval under this Bylaw, that the applicant comply with the mandatory set asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 9.3.10.2. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded at the Essex County Registry of Deeds or the Land Court.

9.3.11 Fees in Lieu of Affordable Housing Units

As an alternative to Section 9.3.5.1 (a) through (d), an applicant may contribute a cash payment to the Affordable Housing Trust Fund, to be used for the development of affordable housing by the Town or its designees, in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

1. Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay a fee in lieu of the construction of affordable units. For each affordable unit not constructed or provided through one or a combination of the methods specified in Section 9.3.5.1 (a) through (d), the fee shall be an amount equal to the difference between the median sale price for new single-family homes built in Manchester-by-the-Sea during the preceding three fiscal years, as determined and reported by the Board of Assessors, and the purchase price of a home that is affordable to a qualified purchaser.

a) For developments of multi-family condominiums, the Planning Board may substitute the median sale price for new condominiums built in

Manchester-by-the-Sea during the preceding three fiscal years for the median sale price of new single-family homes.

b) The methodology used to determine an affordable purchase price shall comply with Local Initiative Program guidelines in effect at the time of application for a special permit.

c) The assumptions used to determine an affordable purchase price, including but not limited to minimum down payment, mortgage interest rate, term, closing and other costs shall be consistent with first-time homebuyer mortgage products available from commercial lending institutions located in or serving Manchester-by-the-Sea at the time of application for a special permit, all in accordance with the Inclusionary Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk.

d) Upon adoption of this bylaw by town meeting, the Planning Board shall prepare and adopt an Inclusionary Housing Submission Requirements and Procedures Manual after holding a public hearing on the same.

Amended STM 6.28.2023, Attorney General Approved 9/29/2023

SECTION 9.4 COMMUNITY HOUSING OVERLAY DISTRICTS

9.4.1 Purpose

The purpose of the Community Housing Overlay Districts (CHOD) is to allow multi-family housing as of right in accordance with Section 3A of the Zoning Act (Massachusetts General Laws Chapter 40A), preserve the character of the Town, minimize the impact on the community, and add options for multi-family housing.

9.4.2 Establishment and Applicability

This CHOD is a combination of multiple districts with a total land area of approximately 39.7 acres in size that is superimposed over the underlying zoning district(s) and is shown on the Community Housing Overlay District Maps, Dated October 28, 2024 (Allen to Lincoln District; Beach to Sea St. District; Beaver Dam Rd. District; and Lower Pine St. to Powder House District) and on file in the Office of the Town Clerk (hereinafter “the CHOD Maps”).

1. **Applicability of CHOD.** An applicant may develop multi-family housing located within a CHOD in accordance with the provisions of this Section 9.4.
2. **Underlying Zoning.** The CHOD is an overlay district superimposed on underlying zoning districts. The regulations for use, dimensions, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right or by special permit in the CHOD. Uses that are not identified in Section 9.4 are governed by the requirements of the underlying zoning district(s).

3. **Districts.** The CHOD contains the following four districts and four sub-districts, all of which are shown on the CHOD Maps:
 - a. Lower Pine Street to Powder House District
 - i. Newport and Powder House Sub-district
 - ii. Lower Pine Street Sub-district
 - b. Allen to Lincoln District
 - c. Beach to Sea Street District
 - i. Beach Street Sub-district
 - ii. Sea Street Sub-district
 - d. Beaver Dam Road District
4. **Lot Division.** The division of a parcel of land in any CHOD District shall meet the minimum lot size and frontage requirements of the underlying base zoning district and no division of a parcel shall increase the maximum number of dwelling units allowed per lot in existence on November 18, 2024.

9.4.3 Definitions.

For purposes of this Section 9.4, the following definitions shall apply.

1. **Additional Lot Area Per Dwelling unit:** The amount of land required for each additional housing unit proposed for a parcel of land to be developed into multi-family housing.
2. **Affordable Unit:** A multi-family housing unit that is subject to a use restriction recorded in its chain of title limiting the sale price or rent or limiting occupancy to an individual or household of a specified income, or both.
3. **Affordable Housing:** Housing that contains Affordable Units as defined by this Section 9.4.
4. **Base Lot Size:** The amount of land required for the first multi-family housing unit proposed for a parcel of land to be developed into multi-family housing.
5. **Compliance Guidelines:** Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act.
6. **EOHLC:** The Massachusetts Executive Office of Housing and Livable Communities.
7. **Multi-family Housing:** A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
8. **Multi-family Zoning District:** A zoning district, either a base district or an overlay district, in which multi-family housing is allowed as of right.
9. **Residential Dwelling Unit:** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

10. **Section 3A:** Section 3A of the Zoning Act.
11. **Sub-district:** An area within the CHOD that is geographically smaller than the CHOD district and differentiated from the rest of the district by use, dimensional standards, or development standards.

9.4.4 Permitted Uses

1. **Uses Permitted as of Right.** The following uses are permitted as of right within the CHOD.
 - a. Multi-family housing.
 - b. In the CHOD Districts that overlay the General District, non-residential uses allowed as-of-right in the General District may be combined with multi-family housing to create a mixed-use building. Such non-residential uses shall be restricted to the ground floor with the multi-family dwelling units on the upper floors.
2. **Accessory Uses.** The following uses are considered accessory as of right to any of the permitted uses in Section 9.4.4.1.
 - a. Parking, including surface parking and parking within a structure such as an attached or detached above ground or underground parking garage on the same lot as the principal use.
 - b. Customary Home Occupation, as defined by Section 2.0 and Section 4.3.3.

9.4.5 Dimensional Standards

1. **Table of Dimensional Standards.** Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable in the CHOD are as follows:

Districts	Lower Pine St. to Powder House		Beach to Sea St.		Allen to Lincoln	Beaver Dam Rd.
Subdistricts	Lower Pine St	Newport & Powder House	Beach St	Sea St		
Minimum Lot Size (SF)	6,000	6,000	6,000	6,000	6,000	217,800
Base Lot Size (1 st Unit)	2,000	2,000	2000	2000	2000	4000
Additional lot area per dwelling unit	2,000	2,000	2,000	2,000	2,000	3,000

Districts	Lower Pine St. to Powder House		Beach to Sea St.		Allen to Lincoln	Beaver Dam Rd.
Subdistricts	Lower Pine St	Newport & Powder House	Beach St	Sea St		
Maximum dwelling units per lot	5			4		100
Minimum Frontage (ft)	60	60	60	60	60	N/A
Minimum Lot Width (ft)	50	50	50	50	50	N/A
Height - Max						
Stories	2.5	3.5	2.5	2.5	2.5	3.5
Feet	35	45	35	35	35	45
Lot Coverage - Max						
by Structures (%)	40	40	40	40	40	40
by Structures and Impervious Surfaces (Total) (%)	60	70	70	70	70	60
Setbacks - Min						
Front (ft)	15	5	5	10	15	50
Side (ft)	15	10	10	10	15	50
Rear (ft)	15	10	10	10	15	50

2. **Multi-Building Lots.** In the CHOD, lots may have more than one principal multi-family building.
3. **Building Unit Caps.** In the Lower Pine Street Subdistrict, Sea Street Subdistrict, and Allen to Lincoln District no more than three (3) units may be constructed within a single building.
4. **Lot Division.** The division of a parcel of land in any CHOD District shall meet the minimum lot size and frontage requirements of the underlying base zoning district and no division of a parcel shall increase the maximum number of dwelling units allowed per lot in existence on November 18, 2024.
5. **Accessory Structures.** In the CHOD, Accessory Structures shall be set back from the side and rear lot lines as required in the underlying zoning district. Accessory structures shall be set back an additional ten (10) feet from the required Front setback line. In the Beaver Dam Road subdistrict, Accessory Structures shall be set back no less than fifteen (15) feet from the Side and Rear lot lines and an additional fifteen (15) feet from the required Front setback line. Accessory Structures shall not exceed 25' from the ground or 1 ½ stories.
6. **Exceptions.** Chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes, may not exceed ten

(10”) feet above the height limit of the overlay district.

7. **Exceptions: Renewable Energy Installations.** The Site Plan Review Authority or Special Permit Granting Authority may waive the height and setbacks in Section 9.4.5. Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

9.4.6 Off-Street Parking

These parking requirements are applicable to development in the CHOD.

1. **Number of parking spaces.** The following **minimum** numbers of off-street parking spaces shall be permitted by use, either in surface parking or within garages or other structures:

Use	Minimum Spaces
Multi-family – Beaver Dam Road district	2 spaces per Residential Dwelling Unit
Multi-family – all other CHOD districts	1.5 spaces per Residential Dwelling Unit. Fractional spaces shall be rounded up to the next whole number.

2. **Bicycle storage.** For a multi-family development of 25 units or more, the Planning Board may require that adequate bicycle parking/storage be integrated into the structure of the building(s).

9.4.7 Site Plan Review

1. **Applicability.** Site Plan Review is required for any development project proposed under this Section 9.4. An application for Site Plan Review shall be submitted to the Planning Board for Review under Section 12.6 Site Plan Review.
2. **Procedure and Submission Requirements.** The requirements of Section 12.6.3 Procedure through Section 12.6.12 Appeal shall apply with the addition of the Site Plan Approval requirements below.
3. **Review Requirements.** The application and plans shall be reviewed by the Planning Board for consistency with the purpose and intent of Sections 9.4.4 through 9.4.6, Sections 9.4.8 through 9.4.10, and Section 6.3 Performance Standards for Special Permits and Site Plan Review.
4. **Design Review Committee.** The Planning Board shall appoint a Design Review Committee (DRC) of three members: one member of the Planning Board and two design professionals appointed by a majority of the Planning Board members. If a

member is disqualified because of a conflict of interest for a particular project, the Planning Board shall appoint a replacement.

- a. Members shall be appointed annually.
 - b. Members may be reappointed.
 - c. The Planning Board may remove a member who misses more than 50% of the meetings in a single year or who otherwise fails to participate in the duties of the DRC.
 - d. The DRC shall provide a written advisory opinion to the Planning Board as to whether the application is consistent with Section 9.4.8 General Development Standards and Section 9.4.9. Design Guidelines. Such opinion shall be filed within 35 days of the receipt of the application by the DRC. If the DRC fails to provide such written opinion within said 35 days, the Planning Board shall assume that the DRC has no objection to the application and shall proceed with the Site Plan Review process.
5. **Design Review Process.** All projects subject to site plan review within the CHOD shall follow the following process.
- a. The Applicant shall provide the following additional information as part of the materials required under Section 12.6.4 Site Plan Requirements:
 - i. **Statement of design intent.** Written narrative describing how the design of the proposed development incorporates the design guidelines in Section 9.4.9 Design Guidelines. The narrative shall include the current use of the site and its condition, the proposed use of the site, and the name of the architect or designer. The narrative shall address the overall design concept; the relationship of the proposed design to the context of the surrounding District (including the architectural form and character, the natural environment, patterns of vehicular and pedestrian access and circulation); the proposed development's contribution to an inviting and safe public realm (including lighting, landscape, signage, and ground-level pedestrian experience); and the contribution of the architectural design to the District (including the contribution of building form and composition, façade form and composition and articulation, and materials, color, and lighting).
 - ii. Site plans, building elevations, floor plans, and three-dimensional views of the proposed site. For a project on a site with a grade change of 10% or more, a site section showing the relationship of the building(s) to existing buildings abutting the site shall be required. The relevant design elements specified in Section 9.4.9 shall be identified in these documents.
 - iii. Palette with samples of materials, proposed color scheme, and cut sheets of lighting fixtures and other architectural elements.

6. **Site Plan Approval.** Site Plan approval for uses listed in Section 9.4.4 Permitted Uses shall be granted upon determination by the Planning Board that the requirements and objectives of this by-law have been met. The Planning Board may impose reasonable conditions, at the expense of the applicant, to ensure compliance with Section 12.6 and Section 9.4 of the Zoning By-Laws.
7. **Project Phasing.** An Applicant may propose, in a Site Plan Review submission, that a project be developed in phases subject to the approval of the Planning Board provided that the submission shows the full buildout of the project and all associated impacts as of the completion of the final phase. The Approval for an unbuilt phase will be valid for two years after the issuance of the first occupancy permit for the previous phase. The Planning Board may extend Approval of unbuilt phases for 1-year periods provided that the phase is still in compliance with this By-Law. No project may be phased solely to avoid the provisions of Section 9.4.10 Affordability Requirements. In phased developments with affordable units the type, size, location, and timing of construction shall be reviewed and approved by the Planning Board.

9.4.8 General Development Standards

1. Development standards in the CHOD are applicable to all multi-family housing developments within the CHOD. These standards are components of the Site Plan Review process in Section 12.6 Site Plan Review unless otherwise modified by this Section 9.4.
2. Existing Requirements in the By-laws:
 - a. **Industrial Performance Standards.** Section 5.10 Performance Requirements within the Limited Commercial District shall not apply to the Beaver Dam Road district.
 - b. **Parking.** The requirements of Section 6.1 Off-Street Parking shall apply, with the following exception: the residential parking requirements in Table 6.1 are superseded by Section 9.4.6. Off-Street Parking.
 - c. **Performance Standards.** Section 6.3 Performance Standards for Special Permits and Site Plan Review shall apply to all developments under this Section 9.4 that are required to undergo Site Plan Review. The following components of this section do not apply:
 - i. Section 6.3.3 General Standards, paragraph 9. Fiscal Impact.
 - ii. Section 6.3.6 Topographical Changes. The reference to Section 6.4 Earth Removal and Filling shall not indicate a requirement for a Special Permit.
 - iii. Section 6.3.9 Aesthetic Standards.
 - iv. Section 6.3.12 Fiscal Analysis Standards.
 - d. **Other Sections Requiring a Special Permit.** The following sections in the Zoning Bylaws of the Town of Manchester-by-the-Sea require a Special Permit. For the purposes of this Section 9.4, the criteria for granting a Special Permit for

each of the Sections below are incorporated into the Planning Board's Site Plan Review Process, as described in Section 9.4.9. The Applicant for a development within the CHOD is not required to apply for a Special Permit for the purposes of the uses listed in Section 9.4.D.

- i. Section 6.4 Earth Removal and Filling.
- ii. Section 10.1 Flood Control District.
- iii. Section 10.3 Ground and Surface Water Resource Overlay Protection Districts.

9.4.9 Design Guidelines

1. **Purpose.** Manchester-by-the-Sea is a town defined by a diverse and heterogeneous architectural context. Despite the heterogeneous nature of the buildings, there is a consistent sense of quality, scale, materiality, and proportion. The purpose of these Design Guidelines is to encourage similar attention to these components in new construction, including extensions and additions. The Town does not encourage replication but rather interpretation and complementary design. In a town with a rich architectural environment, good design will respect and complement the surroundings.
2. **Applicability.** These Design Guidelines apply to all Districts and Subdistricts within the CHOD unless otherwise noted.
3. **Performance Standards.** Section 6.3.9 Aesthetic shall apply to all developments under this Section 9.4 that are required to undergo Site Plan Review.
4. **Building Placement and Relationship to Public Realm**
 - a. **Entries.**
 - i. Building entries shall be clearly expressed by design elements such as a roof overhang, porch, portico, or recessed entryway.
 - ii. Where feasible, entries shall be clearly defined and linked to a paved pedestrian network that includes the public sidewalk.
 - a. **Multiple buildings on a lot.**
 - i. Parking and circulation on the site shall be organized to reduce the amount of impervious surface.
 - ii. A pedestrian network shall connect parking to the entries to all buildings and the buildings to each other.
 - iii. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
 - b. **Corner Lots.** A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.
 - i. Such entries shall be connected to the public sidewalk, if applicable.
 - ii. All façades shall be treated with similar care and attention in terms of

- entries, fenestration, and materials.
- iii. Fire exits serving more than one story shall not be located on either of the street-facing façades.
- c. **Infill Lots.** If the adjacent buildings are set back at a distance that exceeds the minimum front yard requirements, infill buildings shall meet the requirements of Section 9.4 5. Dimensional Standards. Otherwise, infill buildings may match the front setback line of either adjacent building or at a point in between the front setback lines of the two buildings to provide consistency along the street.
- d. **Principal Façade and Parking.** Parking shall be subordinate in design and location to the principal building façade.
 - i. **Surface parking.** Surface parking shall be located at the rear or side of the principal building. Parking shall not be located in the setback between the building and any lot line adjacent to the public right-of-way.
 - ii. **Integrated garages.** The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
 - iii. **Parking structures.** Building(s) dedicated to structured parking on the same lot as one or more multi-family buildings or mixed-use development shall be subordinate in design and placement to the multi-family or mixed-use building(s) on the lot.
- e. **Site Lighting.** Lighting fixtures shall be designed to highlight pedestrian paths and building entrances. Site lighting shall use shielded and full cut-off fixtures to prevent glare and sky glow and shall comply with International Dark Sky Standards. The height of fixtures shall be between twelve feet (12 ft.) and seventeen feet (17 ft.), measured from the ground to the light-emitting flat glass of the luminaire.

5. Building Massing and Orientation.

- a. The building façade shall be organized with a base, middle, and top, and the structure shall be expressed using elements such as posts, columns, pilasters, lintels, or bays.
- b. The primary façade shall face the principal street or courtyard unless there is a site-driven reason for a side entry.
- c. Building massing should be scaled similarly to the adjacent context in width, height, and depth. Larger buildings should be modulated or broken up to provide a hierarchy of building elements and a sense of scale. Façades should be interrupted every 30 to 50 ft. along the length of the façade.

6. Roofs.

- a. Roofs of any structure should be limited to fifty feet (50') in ridge length. Adjacent massing should incorporate a change in direction from the primary roof or be offset vertically or horizontally by a minimum of two (2) feet.
- b. The roof type may be gable end, mansard, hip, or flat. It should be defined by architectural elements appropriate to its style.

- c. Dormers should reflect the context of the adjacent building(s) and should be set back at least three feet (3') from the edges of the primary roof.

7. Windows.

- a. Windows on any façade should align vertically and horizontally and respond to symmetries within the District where appropriate.
- b. Windows on upper stories should not be larger than windows on the ground floor.
- c. Windows should generally be taller than they are wide.
- d. Windows should be orientated vertically and be of a consistent size and detail.
- e. If retail is included on the first floor, larger storefront windows and a distinct entry that reflects the local context are encouraged.

8. Renovation and Expansion of Existing Buildings.

- a. The preservation of existing structures is encouraged where feasible, especially for buildings that are historically or architecturally significant, including those that are listed or eligible to be listed on the Massachusetts or National Register of Historic Places.
- b. Accurate restoration of original architectural detail is encouraged.
- c. The design of an expansion or addition shall be subordinate to the existing building in terms of massing and scale.
 - i. The principal façade of the expansion or addition shall be set back from the plane of the principal façade of the existing building.
 - ii. The expansion or addition shall not obstruct the visual integrity of the existing structure.
- d. The design of an expansion or addition shall be consistent with traditional architectural styles and development patterns commonly found in New England and in harmony with the original structure in scale, size, style, and materials.
- e. The use of historical details on contemporary structures should be included only when appropriate to the overall design.
- f. The use of dormers and/or other typical architectural elements to create additional space or a partial extra story is strongly encouraged to accommodate the conversion of an existing building to add new dwelling units or to provide additional space within an extension or addition. Such elements should be set back from the principal façade to preserve the form of the original building and allow sunlight to reach the street.

9. Materials.

- a. Pervious paving materials are strongly encouraged. The site design shall maximize the use of pervious materials where feasible.
- b. Primary building materials shall reflect the local context and may include shingles, clapboards, cementitious boards, and brick, or materials that represent similar dimensions and textures.
- c. Roof materials shall be asphalt, wood, slate, metal, or other materials of a similar size and scale as appropriate to the architectural style of the building.
- d. Exterior cladding materials shall incorporate trim, including corner boards, rake

boards, fascia boards, water tables, window casings, and window sills, appropriate to the building's architectural style.

- e. Exposed foundation walls, greater than three feet (3 ft.) in height, shall have cladding, or landscape cover and not be left as raw exposed concrete.
- f. All façades shall be articulated using shadow lines to emphasize architectural elements such as trim, roof overhangs, recessed windows or entries or soffits, and other projecting or recessed portions of the building volume.
- g. Windows should be divided into a well-considered mullion pattern that reflects the nearby local context or architectural style.

10. Architectural and Landscape Elements.

- a. The use of natural materials where feasible is strongly encouraged. Natural materials include those with texture and color variation and age over time. Such materials include stone, wood, brick, or copper.
- b. The use of texture and detail to enhance the building design and create more depth to the façade is strongly encouraged. Techniques include the use of shingle pattern variation, bracket detailing, trim, and panel moldings, pronounced eave projections, and column/pilaster capital detailing.
- c. Architectural forms and components that break up a building's massing are strongly encouraged. Such components include porches and other three-dimensional elements.
- d. Landscape elements, such as trees and other plantings, are strongly encouraged to soften the streetscape and create pedestrian zones.

11. Additional Design Guidelines for the Beaver Dam Road District.

- a. **Purpose.** The purpose of these design guidelines is to ensure that new development shall be of high quality and help form a cohesive neighborhood through construction of compatible building types, inviting streetscapes, and open spaces.
 - i. **Pedestrian Experience.** The Beaver Dam Road District should be highly walkable and have a distinct sense of place and community.
 - ii. **Integration with Nature / Sustainability.** The Beaver Dam Road District should minimize storm-water runoff to be sensitive to the adjacent wetlands and water resources.
 - iii. **Connectivity.** The Beaver Dam Road District should be safe and easy to walk or bike through a variety of paths, sidewalks, and traffic-calmed roadways. While safe and efficient vehicular access is also needed, the Beaver Dam Road District will prioritize pedestrians' needs.
 - iv. **Buildings.** The Beaver Dam Road District may offer a variety of building styles and types, unified by a consistent framework that emphasizes traditional design principles.

b. Relationship of development clusters.

- i. A development project may have multiple clustered areas. Each area shall be connected with a pedestrian network. Parking may be shared between clustered areas to improve the relationship between clustered areas.
- ii. The density and design of each area may vary, providing a range of building types and pedestrian experiences.

c. Parking.

- i. Parking shall be placed out of prominent view and located behind buildings, where feasible.
- ii. Parking lots shall be designed between buildings and open areas. Landscape buffers may include fences, gates, walls, or hedges.

d. Public Open Spaces.

- i. Public open spaces shall be designed, landscaped, and furnished to be compatible with or complementary to the character of the development.
- ii. Public open spaces may include plazas, parks, playgrounds, outdoor seating spaces, pedestrian corridors, open spaces left in their natural state, communal parkland, community gardens, and other types of open space intended to foster community cohesiveness and a distinct sense of place.

e. Connectivity.

- i. **Construction of access network.** Streets, driveways, and sidewalks shall meet the requirements of the Town of Manchester's Subdivision Rules and Regulations, as amended. Access points to Beaver Dam Road shall accommodate pedestrians and bicyclists.
- ii. **Sidewalk amenities.** Permanent street furniture, including light fixtures, benches, bike racks, trash bins, and recycling receptacles, shall be provided and integrated with street and sidewalk circulation as appropriate for safety and access.
- iii. **Bicycle parking.** Bicycle parking shall be provided at convenient locations, including near building entrances and open spaces. Bike racks shall be durable and support a bike by its frame in two places and accommodate a range of bike shapes and sizes.

f. Integration with Nature/Sustainability/Resiliency.

- i. **Plantings and Trees.** All plantings and trees should be species native to eastern North America with the goal of contributing ecological diversity to provide species diversity, adaptability, and habitat. Plants listed on the Massachusetts List of Invasive Plants, as amended, are prohibited. Plants located near streets, driveways, or parking lots should be salt-tolerant.
- ii. **Street Trees.** Street trees shall be provided as required in the Town of Manchester's Subdivision Rules and Regulations, as amended.
- iii. **Permeable paving.** The use of permeable paving systems is strongly

encouraged for low-traffic loading (less than 100 vehicles per day) and low-turning areas, including parking spaces; residential street parking; cart, bicycle, and pedestrian paths; driveways; and emergency-vehicle-access lanes.

- iv. **Stormwater management.** Strategies that demonstrate compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Town's stormwater bylaw and MS4 Permit for projects that disturb more than one acre and discharge to the Town's municipal stormwater system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirement.

g. Buildings.

- i. Design that creates a distinct sense of place while working within the framework of traditional building design is strongly encouraged.
- ii. A development consisting of more than one building should include a variety of styles and typologies compatible with traditional New England architecture.
- iii. Reducing the perception of overall massing by building orientation and design is strongly encouraged. Techniques include orienting the narrower side of the building to streets, drives, and open space; the use of architectural components such as the articulation of building bases and varying patterns of fenestration; and the use of elements such as pilasters, columns, cornices, canopies, dormers, shed dormers, and cross gables.
- iv. Canopies, awnings, and porches may be used to reinforce the human scale of the ground-floor façade and protect building entries.
- v. Awnings shall not obscure architectural details by crossing over pilasters or covering windows. Multiple awnings on a single building should be consistent in size, profile, location, material, color and design.
- vi. Additional materials may include clapboard, brick, concrete masonry, wood, cementitious fiber board, manufactured limestone, cast stone, masonry, stone, glass, terra cotta, cellular PVC trim, tile, and sustainable materials. Cementitious stucco may be appropriate when the building façade incorporates additional materials listed above. Materials on the façade that are subject to deterioration (plywood or plastic) are strongly discouraged. Poured-in-place concrete and pre-cast concrete are appropriate as a basic building material with special consideration to form work, pigments, and aggregates that provide texture and depth to surfaces.

- vii. Visible light fixtures shall be consistent with the architectural style of the building.

12. Waivers. Upon the Applicant's request and subject to compliance with the Compliance Guidelines, the Site Plan Review Authority may waive the requirements of this Section 9.4 9. Design Guidelines in the interests of design flexibility and overall project quality and upon a finding of consistency of such variation with the overall purpose and objectives of the CHOD.

9.4.10 Affordability Requirements.

1. The provisions of Section 9.3 Inclusionary Housing shall apply to developments within the CHOD with the following modifications:
 - a. **Applicability.** This requirement is applicable to all residential developments with five (5) or more dwelling units, whether new construction, substantial rehabilitation, expansion, reconstruction, or residential conversion (Applicable Projects). No project may be divided or phased to avoid the requirements of this section. This paragraph supersedes Section 9.3.3 Applicability.
 - i. Section 9.3.4 Mandatory Provision of Affordable Units and Section 9.3.5 Provision of Affordable Units do not apply to developments within the CHOD.
 - b. **Affordability requirements: Subsidized Housing Inventory.** All units affordable to households earning 80% or less of AMI created in the CHOD under this section must be eligible for listing on EOHLC's Subsidized Housing Inventory.
 - c. **Provision of Affordable Housing.** In Applicable Projects, not fewer than twenty percent (20%) of housing units constructed shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit shall be rounded down to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI. Affordable units shall be constructed on-site. Payment in Lieu of creating affordable units or proposed off site units are not permitted. If EOHLC determines in writing that the Town has not shown this twenty percent (20%) Affordable Housing Unit requirement to be feasible, at least ten percent (10%) of housing units in Applicable Projects, or such greater percentage as approved by EOHLC in writing and filed with the Office of the Town Clerk, shall be Affordable Housing Units.
2. **Development Standards.** Affordable Units shall be:
 - a. Integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of exterior and interior materials with the other units and/or lots;
 - b. Dispersed throughout the development;
 - c. Located such that the units have equal access to shared amenities, including light and air, and utilities (including any bicycle storage and/or Electric Vehicle

- charging stations) within the development;
 - d. Located such that the units have equal avoidance of any potential nuisances as [market-rate units] within the development;
 - e. Distributed proportionately among unit sizes; and
 - f. Distributed proportionately across each phase of a phased development.
 - g. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development, provided that occupancy permits for Affordable Units are issued simultaneously on a pro-rata basis.
3. **Administration.** The Inspector of Buildings shall be responsible for administering and enforcing the requirements in this section.

SECTION 10.0 SPECIAL DISTRICTS

10.1 Flood Control District

The Flood Control District will consist of those areas designated as A1, A2 and B1 in Figure 8 of a report prepared for the Town of Manchester-by-the-Sea by the consulting firm of Camp, Dresser and McKee entitled "Storm Drainage Improvements for the Bennett's Brook Drainage Area" dated October, 1971. [See Maps; original on file with the Department of Public Works.]

10.1.1 The Flood Control District shall overlay other districts in this By-Law. Any land lying within the Flood Control District shall be subject to the development and use regulations of the underlying district in which such land is situated but only to the extent not inconsistent with the regulations for the Flood Control District.

10.1.2 The purpose of the Flood Control District is to protect the public health and safety and property against the damages of flooding conditions caused by new development in areas with inadequate capacity of existing drainage systems, brook channels, and street culverts to accept storm runoff from the areas drained.

10.1.3 Any use otherwise permitted in the underlying district is permitted as a matter of right within the Flood Control District except those uses expressly regulated in this Section. The following uses are hereby regulated:

- 10.1.3.1 Dumping, filling, or placing of soil or other substance as landfill or surfacing the land with any type of impervious materials; excavation, dredging, or removing of natural resource deposits.
- 10.1.3.2 Erection or construction of new buildings and enlargement or moving of existing structures.

10.1.4 The portion of any lot within the Flood Control District may be used to meet the area and yard requirements for the district or districts in which the remainder of the lot is situated.

10.1.5 Any use designated by Section 10.1.3 of the By-Law shall be permitted by the Board of Appeals through the issuance of a special permit, if the Board finds that the proposed use will not result in the creation or aggravation of flooding conditions which this section seeks to prevent. In exercising its jurisdiction hereunder, the Board of Appeals may impose such conditions and restrictions on such use as it determines necessary or desirable in order to satisfy the requirements of this section. Prior to any hearing on an application for a special permit pursuant to this section, the Board shall request the opinions of the Board of Health, the Planning Board, and the Conservation Commission with respect to the use for which this special permit is sought. [Added May, 1984]

10.2 Flood Plain

10.2.1 Flood Plain District:

The purposes of the Flood Plain District are to:

- (a) Ensure public safety through reducing the threats to life and personal injury;
- (b) Eliminate new hazards to emergency response officials;
- (c) Prevent the occurrence of public emergencies resulting from loss of water quality, contamination, and pollution due to flooding;
- (d) Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- (e) Eliminate costs associated with the response and cleanup of flooding conditions;
- (f) Reduce damage to public and private property resulting from flooding waters.

10.2.2 Flood Plain District Boundaries and Base Flood Elevation and Floodway Data

- 10.2.2.1 The Flood Plain District is herein established as an overlay district. Any use otherwise permitted in the underlying district is permitted as a matter of right in the Flood Plain District, provided the use meets the following additional requirements and those of the Massachusetts State Building Code dealing with construction in flood plains and coastal high hazard areas as applicable. The Flood Plain District includes all special flood hazard areas within the Town of Manchester-by-the-Sea designated as Zone A, AE, AH, AO, or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Manchester-by-the-Sea are panel numbers 25009C0429F dated July 3, 2012; and panel numbers 25009C0431G, 25009C0432G, 25009C0433G, 25009C0434G, 25009C0441G, 25009C0442G, 25009C0451G, 25009C0453G, 25009C0454G, and 25009C0475G, dated July 16, 2014. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2013, as those documents were updated by FEMA Letter of Map Revision (LOMR) dated March 12, 2017, for panels 25009C0453G and 25009C0454G, effective as of July 25, 2017. The FIRM, FIS booklet, and LOMR are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Director of Public Works. [Amended 2012, 2014, 2017]

10.2.2.2

Base Flood Elevation and Floodway Data

(a) Base Flood Elevation Data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, which ever is the lesser, within unnumbered A zones.

(b) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. [Added 2012}

10.2.3 Notification of Watercourse Alteration

In a riverine situation, the following must be notified of any alteration or relocation of a watercourse:

- (a) Adjacent communities
- (b) NFIP State Coordinator
Massachusetts Office of Water Resources
251 Causeway Street
Suite 600-700
Boston, MA 02114-2104
- (c) [deleted 2002]
- (d) NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110 [Revised 2012]

10.2.4 Use Regulations

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

10.2.4.2 Located within the Flood Plain District are areas designated as coastal high hazard areas (Zone VE). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wash, all new construction shall be located landward of the reach of Spring High Tide. Spring High Tide shall be located as that elevation shown on the Army Corps of Engineers High Tide Chart (Tidal Flood Profiles New England Coastline, See ACOE, New England Division, Prepared by Hydraulics and Water Quality Section, Waltham, MA). All references to elevations should be to NGVD (National Geodetic Vertical Datum). Wave run-up as defined by the elevation of the one year flood surge

(Stillwater) as noted under section 404, shall be incorporated in to those elevations within V zones. [Revised 2012]

- 10.2.4.3 All development in the Flood Plain District, including structural and non-structural activities, whether permitted by right or by special permit, shall be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with the following:
- (a) Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas; [Revised 2012]
 - (b) Wetlands Protection Regulation, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
 - (c) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); [Revised 2012]
 - (d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00); [Revised 2012]
 - (e) 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 shall be granted only in accordance with the required variance procedures of these State regulations.

- 10.2.4.4 Other Use Regulations
- (a) Within Zone AO on the FIRM, adequate drainage paths are required around structures on slopes to guide flood waters around and away from proposed structures. [Revised 2014]
 - (b) Man-made alteration of sand dunes within Zone VE, which would increase potential flood damage, is prohibited. [Revised 2012]
 - (c) All development and/or uses within the Flood Plain District shall comply with all applicable local laws and regulations. [Revised 1998]
[Amended 2012, 2014]

10.3 Ground and Surface Water Resource Overlay Protection Districts

10.3.1 Findings:

The Town of Manchester-by-the-Sea finds that:

- (a) The groundwater underlying the Town is a major source of its existing and future water supply, including drinking water.
- (b) The aquifer system supplying Manchester-by-the-Sea with its groundwater supply is integrally connected with numerous surface waters, lakes, and streams.

- (c) The surface water supplies of Gravelly and Round Ponds supplement the Town's groundwater resource, and are similarly considered an indispensable natural resource.
- (d) Accidental spills and discharges of toxic and hazardous materials have threatened the quality of such water supplies posing public health and safety hazards.
- (e) Unless preventive measures are adopted to control the discharge and storage of toxic and hazardous materials within the Town, further spills and discharges of such materials will predictably occur and with greater frequency and degree of hazard by reason of increasing land development, population and vehicular traffic within Manchester-by-the-Sea.

10.3.2 Purpose:

The purpose of this section is to protect the public health, safety, and welfare through the preservation of the Town's water resources to ensure a future supply of safe and healthful drinking water for the residents and employees of the Town of Manchester-by-the-Sea and the general public. The designation of the Ground and Surface Water Resource Overlay Protection Districts and careful regulation of development activities within these districts can reduce the potential for ground and surface water contamination.

10.3.3 Ground and Surface Water Resource Overlay Protection District Maps:

The maps delineating the Ground and Surface Water Resource Overlay Protection District, dated April, 1990, prepared by Horsley Witten Hegemann, Inc., Scale: 1 inch = 3,000 feet,” and the maps entitled “Water Resource Protection District, Town of Manchester, Scale: 1 inch = 800 feet,” dated 1987, prepared by Whitman and Howard, are incorporated herein and made a part of this By-Law and collectively shall be referred to as the “Ground and Surface Water Resource Overlay Protection District Maps.” These Maps shall be on file and maintained by the Town Clerk's office. Any amendments, additions or deletions to said Maps shall be made only as provided for in M.G.L. c. 40A, §5. [See Maps]

10.3.4 Regulations:

Ground and Surface Water Resource Overlay Protection Districts, as shown on the maps described in §10.3.3, shall be considered to be superimposed over any other district established in this By-Law. Land in a Ground and Surface Water Resource Overlay Protection District may be used for any purpose otherwise permitted in the underlying district, subject to the additional restrictions presented herein. This By-Law shall not apply to land or activities located outside of the corporate boundaries of Manchester-by-the-Sea.

10.3.4.1 Determination of Location within Ground and Surface Water

Resource Overlay Protection Districts: In determining the location of properties and facilities within the Ground and Surface Water Resource Overlay Protection District, the following rules shall apply:

- (a) Properties located wholly within one zone reflected on the Ground and Surface Water Resource Overlay Protection District Maps shall be governed by the restrictions applicable to that zone.
- (b) Properties located such that the site lies within more than one zone as reflected on the Ground and Surface Water Resource Overlay Protection District Maps shall be governed by the restrictions applicable to the zone in which the greater part of the property is located.
- (c) Where a facility, building or accessory thereto including but not limited to sewage disposal systems is overlapped by different zones, the stricter zone shall apply.
- (d) Special permits, in accordance with the provisions of this By-Law, Section 12.5 of the Manchester-by-the-Sea Zoning By-Law and M.G.L. c. 40A, §9, may be granted by the Planning Board to exempt a location from the requirements of this By-Law, provided that the applicant demonstrates that the Ground and Surface Water Resource Overlay Protection District Maps incorrectly identify the location as being within the Ground and Surface Water Resource Overlay Protection District. The burden of proof shall rest upon the applicant for a special permit to demonstrate that the location is not within a delineated district. The applicant shall be required to present detailed hydrogeologic and hydrologic information to the Planning Board indicating that the location is, in fact, not within a Ground and Surface Water Resource Overlay Protection District. The applicant shall provide funds to the Planning Board to pay for the technical review by the Planning Board's choice of consultant(s) of said hydrogeologic and hydrologic information and the Planning Board shall base its decision, in part, on the report by said consultant(s).

10.3.4.2 Relationship to Other Laws:

This By-Law is supplementary to other laws and By-Laws within Manchester-by-the-Sea. Where this By-Law or any portion thereof imposes a greater restriction than is imposed by other regulations, the provisions of this By-Law shall control. Where this By-Law references statutes or regulations promulgated by the Commonwealth or its agencies, the statute or regulation shall be that in effect as of January 1, 2002.

10.3.4.3 Definitions:

"Applicant" means any person filing an application.

"Department" means the Massachusetts Department of Environmental Protection (DEP).

"Person" means any agency or political subdivision of the federal government or the Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons.

"Zone I" means the 400-foot protective radius required by the Department around a public water supply well or wellfield.

"Zone II" means that area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation), as defined in 310 CMR 22.00. It is bounded by the groundwater divides, which result from pumping the well, and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a ground water flow divide, a contact with till or bedrock, or a recharge boundary).

"Zone III" means that land area beyond the area of Zone II from which surface water and ground water drain into Zone II, as defined in 310 CMR 22.00. The surface drainage area as determined by topography is commonly coincident with the ground water drainage area and will be used to delineate Zone III. In some locations, where surface and ground water drainage are not coincident, Zone III shall consist of both the surface drainage and the ground water drainage areas.

"Zone A" means

- (a) the land area between the surface water source and the upper boundary of the bank;
- (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and
- (c) the land area within a 200-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

"Zone B" means the land area within one half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. However Zone B shall always include the land area within a 400-foot lateral distance from the upper boundary of the bank of the Class A surface water source.

“Zone C” means the land area not designated as Zone A or B that is either within the watershed of a Class A surface water source as defined by 314 CMR 4.05(3)(a), or contributes water runoff to Gravelly and Round Ponds.

"Regulated Substances" means those substances found in Exhibit A, attached hereto and incorporated herein.

"Spill" means the unpermitted release or escape of a Regulated Substance, irrespective of the quantity thresholds directly or indirectly to soils, surface waters, or ground waters.

10.3.5 Restrictions within Ground and Surface Water Resource Overlay Protection Districts

10.3.5.1. Prohibited uses in Zone I, Zone II, and Zone III, and Zone A, Zone B, and Zone C:

- (a) All underground storage tanks.
- (b) Automobile graveyards and junkyards, as defined in M.G.L. c.140B, §1.
- (c) Stockpiling and disposal of snow or ice removed from highways and streets located outside Zone II/Zone A that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- (d) Storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- (e) Storage of commercial fertilizers, as defined in M.G.L. c. 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- (f) Storage of animal manures, unless such storage is covered or contained in accordance with the specifications of the Natural Resource Conservation Service.
- (g) Residential approval not required (ANR) land divisions and/or subdivisions pursuant to M.G.L. c.41, §§81L, 81P, 81S, and 81U, at a density greater than one dwelling unit per 30,000 square feet unless connected to the municipal sewage treatment facility.
- (h) Landfills and open dumps, as defined in 310 CMR 19.006.
- (i) Landfills receiving only wastewater residuals and/or septage approved by the Department pursuant to M.G.L. c.21, §26 –53; M.G.L. c.111, §17; M.G.L. c.83, §6-7, and any regulations promulgated thereunder.
- (j) Petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed as of January 1, 2002

under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, “Standard Industrial Classification Manual”, and any subsequent amendments thereto.

- (k) Treatment or disposal works subject to 314 CMR 5.00 for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
 - (1) the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s); and
 - (2) treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05 (13); and
 - (3) publicly owned treatment works, or POTWs.
- (l) Facilities that generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000, except for the following:
 - (1) very small quantity generators, as defined by 310 CMR 30.00;
 - (2) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;
 - (3) waste oil retention facilities required by M.G.L. c. 21, §52A; and
 - (4) treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.
- (m) Storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
- (n) Storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is:
 - (1) above ground level; and
 - (2) on an impervious surface; and
 - (3) either:
 - (i) in container(s) or above-ground tank(s) within a building, or
 - ii) outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest

container's storage capacity, whichever is greater; however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.

- (o) The removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works.
- (p) Land uses that result in the rendering impervious of more than 15% or 2,500 square feet of any lot, whichever is greater, unless a system for artificial recharge of precipitation is provided, which is satisfactory to the Planning Board, that will not result in the degradation of groundwater quality.
- (q) Commercial outdoor washing of vehicles.
- (r) Commercial car washes
- (s) Motor vehicle repair operations.
- (t) Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00.
- (u) Any floor drainage systems in existing facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas, which discharge to the ground without a Department permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

10.3.5.2. Special Permit uses in Zones II and III, and A, B, and C

- (a) The use, handling, production, and storage of Regulated Substances.
- (b) Within Zone II and Zone III only, residential approval not required (ANR) land divisions, subdivisions, pursuant to M.G.L. c. 41, §§81L, 81P, 81S, and 81U with on-site disposal of effluent, at a density greater than one dwelling unit per 30,000 square feet provided that the nitrate-nitrogen concentrations described in Section 10.3.6.3(d), below, are not exceeded.

- (c) Any uses with on-site disposal of sewage effluent exceeding 2,000 gallons per day for the entire project provided that the nitrate-nitrogen concentrations described in Section 10.3.6.3(d) are not exceeded.
- (d) Land uses that result in the rendering impervious of more than 15% of any lot, unless a system for artificial recharge of precipitation is provided, which is satisfactory to the Planning Board, that will not result in the degradation of groundwater quality.

10.3.5.3. Additional Prohibited Uses: Zone A, Zone B, and Zone C:

- (a) Residential approval not required (ANR) divisions, subdivisions pursuant to M.G.L. c. 41, §§81L, 81P, 81S, and 81U, or residential development on lots less than 80,000 square feet of land area containing at least 200 feet of lot width and 150 feet of lot frontage.
- (b) No person shall wade or bathe in any source of drinking water supply, and no person shall, unless permitted by written permit by the Manchester-by-the-Sea Department of Public Works or like body having jurisdiction over such source of supply, fish in; enter or go in any boat, seaplane, or other contrivance; enter upon the ice for any purpose, including the cutting or taking of ice; or cause any animal to go in or upon such source of water supply or tributary thereto.
- (c) No stabling, hitching, standing, feeding or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of a surface water source or tributary thereto. Owners and operators of agricultural operations should consult the Massachusetts Department of Food and Agriculture's "On Farm Strategies to Protect Water Quality – An Assessment & Planning Tool for Best Management Practices" (December 1996, and any subsequent amendments thereto) for information about technical and financial assistance programs related to erosion and sediment control and nutrient, pest, pesticide, manure, waste, grazing, and irrigation management.
- (d) No burials shall be made in any cemetery or other place within 100 feet of the high water mark of a source of public water supply or tributary thereto except by permission in writing by the Manchester-by-the-Sea Department of Public Works or like body having jurisdiction over such source of supply. Lands not under the control of cemetery authorities and used for cemetery purposes shall not be taken or used for cemetery purposes if natural drainage from said lands flows into said source of water or tributary thereto, until a plan and sufficient description of the lands is presented to

the Department and until such taking or use is expressly approved in writing by the Department.

10.3.6 Special Permits:

This section provides the requirements and procedures for the issuance of Special Permits by the Planning Board as required by this By-Law.

10.3.6.1 Special Permits: The Special Permit Granting Authority (SPGA) under Section 10.3 of this By-Law shall be the Planning Board. Special permits shall be granted only in conformance with this By-Law, Section 12.5 of the Manchester-by-the-Sea Zoning By-Law, and M.G.L. c. 40A, §9.

10.3.6.2 Review by Other Town Agencies: Upon receipt of the special permit application, the SPGA shall transmit one copy to the Director of Public Works, the Town Administrator, the Building Inspector, the Board of Health, the Conservation Commission, and any other relevant Town board/agency or department for their written recommendations. Failure to respond in writing within 30 days shall indicate approval or no desire to comment by said agency. The applicant shall furnish the necessary number of copies of the application.

10.3.6.3 Special Permit Criteria and Decision: Special Permits may be approved by the SPGA provided that the SPGA determines, in consultation with other Town agencies as specified in Section 10.3.6.2, that the intent of this By-Law as well as its specific criteria are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed.

It shall then issue a written decision which describes its findings with respect to the following:

- (a) meets the intent of this By-Law as well as its specific criteria;
- (b) will not, during construction or thereafter, have an adverse impact on Zone I, Zone II, Zone III, or Zone A, Zone B, or Zone C;
- (c) will not cause the average quality of groundwater recharged on the property to violate Class 1 drinking water standards promulgated by the Department; and
- (d) will not cause the average concentration of nitrate-nitrogen in groundwater recharged on the property to exceed five (5) milligrams per liter.

10.3.6.4 Submittals: In applying for a special permit required by this By-Law, the information listed below shall be submitted to the SPGA, as the SPGA deems applicable:

- (a) A list of all Regulated Substances which are to be stored, handled, used or produced in the activity being proposed.
- (b) A detailed description of the activities that involve the storage, handling, use, or production of the Regulated Substances indicating the unit quantities in which the substances are contained or manipulated.

- (c) Evidence of approval by the DEP of any industrial waste treatment or disposal system or any wastewater treatment systems over 10,000 gallons per day capacity.
- (d) A site plan illustrating the location of all operations involving Regulated Substances.
- (e) A hydrogeologic assessment of the site which shall address, at a minimum, soil characteristics and ground water levels and direction of ground water flow relative to operating and future planned public water supplies.

10.3.6.5 Design and Operating Guidelines: As a condition(s) of granting a special permit, the SPGA may require adherence to any, or all of the following design and operation guidelines, where in its opinion, such adherence would further the purpose and intent of this By-Law.

- (a) Containment of Regulated Substances: Leak-proof trays under containers, floor curbing, or other contaminant systems to provide secondary liquid containment shall be installed. The containment shall be of adequate size to handle all spills, leaks, overflows, and precipitation until appropriate action can be taken. The specific design and selection of materials shall be sufficient to preclude any Regulated Substance loss to the external environment. Containment systems shall be sheltered so that the intrusion of precipitation is effectively prevented. The owner/operator may choose to provide adequate and appropriate liquid collection methods rather than sheltering only after approval of the design by the SPGA. These requirements shall apply to all areas of use, production, and handling, to all storage areas, to loading and off-loading areas, and to aboveground and underground storage areas.
- (b) Emergency Plan: An emergency plan shall be prepared and filed with the Special Permit application indicating the procedures which will be followed in the event of spillage of a Regulated Substance so as to control and collect all such spilled material in such a manner as to prevent it from reaching any storm or sanitary drains or the ground water.
- (c) Inspection: A responsible person designated by the permittee who stores, handles, uses or produces the Regulated Substances shall check on every day of operation, for breakage or leakage of any container holding the Regulated Substances. Electronic sensing devices may be employed as part of the inspection process, if approved by the SPGA, and provided the sensing system is checked daily for malfunctions. The manner of daily inspection shall not necessarily require physical inspection of each container provided the location of the containers can be inspected to a degree that reasonably assures the SPGA that breakage or leakage can be detected by the inspection. Monitoring records shall be kept daily and made available to the SPGA on a quarterly basis.

- (d) Reporting of Spills: Any spill of a Regulated Substance in excess of the non-aggregate quantity thresholds shall be reported by telephone to the Manchester-by-the-Sea Fire Department and the Department of Public Works within one (1) hour of discovery of the spill. Clean-up shall commence immediately upon discovery of the spill. A full written report including the steps taken to contain and clean up the spill shall be submitted to the Fire Department, Director of Public Works, and the Town Administrator within fifteen (15) days of discovery of the spill.
- (e) Monitoring of Regulated Substances in Groundwater Monitoring Wells: If required by the SPGA, groundwater monitoring well(s) shall be provided at the expense of the permittee in a manner, number and location approved by the SPGA. Except for existing wells found by the SPGA to be adequate for this provision, the required well or wells shall be installed by a water well contractor. Samples shall be analyzed and analytical reports prepared by a Commonwealth of Massachusetts certified laboratory of the quantity present in each monitoring well of the Regulated Substances.
- (f) Alterations and Expansion: The SPGA shall be notified in writing prior to the expansion, alteration or modification of an activity holding a Special Permit under this By-Law. Such expansion, alteration, or modification may result from increased square footage of production or storage capacity, or increased quantities of Regulated Substances, or changes in types of Regulated Substances beyond those square footages, quantities, and types upon which the permit was issued. Excluded from notification prior to alteration or modification are changes in types of Regulated Substances used in a laboratory or laboratories designated as such in the currently valid permit which do not exceed the non-aggregate limits and which are within the Generic Substances listed in said permit based upon the Generic List attached hereto and incorporated herein as Exhibit A. The introduction of any new Regulated Substance shall not prevent the revocation of any existing Special Permit if, in the opinion of the SPGA, such introduction substantially or materially modifies, alters or affects the conditions upon which existing Special Permit was granted or the ability to remain qualified as a General Exemption, if applicable, or to continue to satisfy any conditions that have been imposed as part of a Special Permit, if applicable.

10.3.7 General Exemptions:

10.3.7.1 Exemptions for Continuous Transit: The transportation of any regulated substance through Zones I, II, III, or A, B or C shall be exempt from the provisions of this By-Law provided the transporting motor vehicle is in continuous transit.

10.3.7.2 Exemptions for Vehicular and Lawn Maintenance Fuel and Lubricant Use: The use in a vehicle or lawn maintenance equipment of any regulated substance solely as fuel in that vehicle or equipment fuel tank or as lubricant in that vehicle or equipment shall be exempt from the provisions of this By-Law.

10.3.7.3 Exemptions for Application of Pesticides, Herbicides, Fertilizers, Fungicides and Rodenticides: The application of those Regulated Substances used as pesticides, herbicides, fertilizers, fungicides, and rodenticides in recreation, agriculture, pest control and aquatic weed control activities shall be exempt from the provisions of this By-Law provided that:

- (a) In all zones, the application is in strict conformity with the use requirement as set forth by the U.S. Environmental Protection Agency, and as indicated on the containers in which the substances are sold.
- (b) In all zones, the application of any of the pesticides, herbicides, fertilizers, fungicides, and rodenticides shall be noted in the records of the certified operator. Records shall be kept of the date and amount of these substances applied at each location and said records shall be available for inspection at reasonable times by the Building Inspector and Director of Public Works.
- (c) In all zones, the application of pesticides, herbicides, fertilizers, fungicides, and rodenticides for non-residential or non-agricultural purposes shall require a special permit.

10.3.7.4 Exemption for Retail/Wholesale Sales Activities: Except in Zone I, retail/wholesale sales establishments that store or handle Regulated Substances for resale in their original unopened containers shall be exempt from the provisions of this By-Law, provided however, that retail/wholesale sales establishments that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

10.3.7.5 Exemptions for Office and Commercial Uses: Except in Zone I, office and commercial use of Regulated Substances below the aggregate sum not exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be exempt from the provisions of this By-Law, provided, however, that office and commercial uses that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

10.3.7.6 Exemption for Construction Activities: The activities of constructing, repairing or maintaining any facility or improvement on lands within Zones I, II, III, or A, B, or C, shall be

exempt from the provisions of this By-Law provided that all contractors, subcontractors, laborers, and their employees, when using, handling, storing or producing Regulated Substances in Zones I, II, III, or Zones A, B, or C, use those applicable Best Management Practices set forth in Exhibit B, attached hereto and incorporated herein.

10.3.7.7 Exemption for Household Use: In addition to the exemptions provided for in Section 10.3.7.3 of this By-Law, the household use of Regulated Substances below the aggregate sum not exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be exempt from the provisions of this By-Law, provided, however, that household uses that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

10.3.7.8 Exemption for Municipal Use: In addition to the exemptions provided for in Section 10.3.7.3 of this By-Law, the municipal use of Regulated Substances in quantities exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be prohibited without receipt of a special permit from the SPGA.

10.3.7.9 Exemption for Underground Storage of Oils(s): The underground storage of oil(s) used for heating fuel shall be exempt from the provisions of Section 10.3 of this By-Law provided, however, that the container used for said storage shall be located within an enclosed structure sufficient to preclude leakage of oil to the external environment and to afford routine access for visual inspection (e.g., cement-floored basement), and sheltered to prevent the intrusion of precipitation.

10.3.8 Severability:

The provisions of this By-Law are severable from each other and the invalidity of any provisions or section shall not invalidate any other provision or section thereof.

10.3.9 EXHIBIT A: GENERIC SUBSTANCES LIST

Acid and basic cleaning solutions, Antifreeze and Coolants, Arsenic and arsenic compounds, Bleaches and peroxides, Brake and transmission fluids, Brine solution, Casting & Foundry chemicals, Caulking agents and sealants, Cleaning solvents, Corrosion and rust prevention solutions, Cutting fluids, Degreasing solvents, Disinfectants, Electroplating solutions, Explosives, Fertilizers, Fire extinguishing chemicals, Food processing wastes, Formaldehyde, Fuels and additives, Gasolines, Glues, adhesives and resins, Greases, Hydraulic fluid, Indicators, Industrial and commercial janitorial supplies, Industrial sludges and stillbottoms, Inks, printing and photocopying chemicals, Laboratory chemicals, Liquid storage batteries, Medical, pharmaceutical, dental, veterinary and hospital solutions, Mercury and mercury compounds, Metals finishing solutions, Oils, Paints, primers, thinners, dyes, stains, wood preservatives, varnishing, and cleaning compounds, Painting solvents, PCB's, Pesticides and herbicides, Plastic resins, plasticizers and catalysts, Photo development chemicals, Poisons, Polishes, Pool chemicals in concentrated form, Processed dust, and particulates, Radioactive sources, Reagents and standards, Refrigerants, Roofing chemicals and sealers, Sanitizers, disinfectants, bactericides

and algacides, Soaps, detergents and surfactants, Solders and fluxes, Stripping compounds, Tanning industry chemicals, Transformer and capacitor oils/fluids, Water and wastewater treatment chemicals.

10.3.10 EXHIBIT B: "BEST MANAGEMENT PRACTICES" FOR THE CONSTRUCTION INDUSTRY

1. The general contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For instance, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.
2. If any Regulated Substances are stored on the construction site during the construction process, they shall be stored in a location and manner that will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more, containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
3. Each contractor shall familiarize him/herself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
4. Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site by the responsible contractor, and shall be disposed of in a proper manner as prescribed by law.

[Added 1990] [Revised 2002][Revised 2021]

Amended STM 6.28.2023, Attorney General Approved 9/28/2023

SECTION 11.0 ENERGY REGULATIONS

11.1 Large-Scale Ground-Mounted Solar Photovoltaic Installations

[Adopted 2013]

11.1.1 Purpose

The purpose of this by-law is to authorize and regulate large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations such that these standards address public safety, minimize impacts on scenic, natural and historic resources and provide adequate financial assurance for the eventual decommissioning of such installations.

11.1.1.1 Applicability

This By-Law applies to large-scale ground-mounted solar photovoltaic installations, as defined herein, proposed to be constructed after the effective date of this By-Law. This By-Law also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Large-Scale Ground-Mounted Solar Photovoltaic Installations, as defined herein, shall be allowed by right in the Limited Commercial Zoning District as that district is defined by the Zoning By-Law.

Smaller scale ground or building-mounted solar photovoltaic installations which are accessory to a lawful principal use on the same lot are not otherwise subject to the requirements of this by-law, but must comply with the other provisions of the Zoning By-Law, as applicable.

11.1.2 Definitions

Large-Scale Ground-Mounted Solar Photovoltaic Installation (LGSPI): A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site Plan Approval Authority (SPAA): The site plan review authority as designated by the Zoning By-law.

Zoning By-Law: The Manchester Zoning By-Law.

11.1.3 General Requirements for all As-of-Right Large-Scale Ground-Mounted Solar Photovoltaic Installations (LGSPI)

11.1.3.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of LGSPI shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, environmental, Wetlands Protection Act, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State and/or Local Building Code.

No LGSPI shall be constructed, installed or modified without a building permit.

11.1.3.3 Site Plan Approval Required

LGSPI shall be constructed, installed, used and modified in conformity with a site plan approved by the SPAA in accordance with Section 12.6 of the Zoning By-Law and the further requirements set forth herein. The requirements set forth herein shall be applied coincident with and in addition to those requirements set forth in Section 12.6. The requirements of this section shall take precedence in the event of a direct conflict.

11.1.3.3.1 General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

11.1.3.3.2 Required Documents

Pursuant to the site plan review process, the project proponent shall provide the following documents:

- (a) A site plan showing:
 - i. Property lines and physical features, including structures and roads, for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all current National Electrical Code compliant disconnects and over current devices;
 - v. Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter;
 - vi. Name, address, and contact information for proposed system installer;
 - vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - viii. The name, contact information and signature of any agents representing the project proponent;
 - ix. How land clearing and construction shall be performed in accordance with Article XXIII (“Stormwater Management Special Permit”) of the General Bylaws, and Sections 5.10 of the Zoning By-Law governing storm water discharge, land disturbance, provision for handling toxic or hazardous materials, and post-construction storm water runoff;”
- (b) Documentation of actual or prospective access and control of the project site (see also Section 11.1.3.4);
- (c) An operation and maintenance plan (see also Section 11.1.3.4.1);

- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance written by companies licensed to provide such insurance in Massachusetts and with coverage limits at commercially acceptable levels;
- (f) Description of financial surety that satisfies Section 11.1.3.10.2. The project proponent 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) Public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan approval notification procedures and otherwise inform abutters and the community.

The SPAA may require additional information, data or evidence as it deems necessary pursuant to the site plan approval process or may waive documentary requirements as it deems appropriate.

11.1.3.3.3 Professional Review

The SPAA may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the SPAA with its review of the application, in accordance with the requirements of Section 53G of Chapter 44 of the Massachusetts General Laws. The SPAA may direct the applicant to deposit funds with the SPAA for such review at the time the application is accepted, and to add additional funds as needed upon notice. Failure to comply with this section shall be good grounds for denying the application. Upon approval of the application, any excess amount in the account attributable to that project, including any interest accrued, shall be repaid to the applicant.

11.1.3.4 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the LGSPI.

11.1.3.4.1 Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the LGSPI, which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operational maintenance of the installation.

11.1.3.5 Utility Notification

No LGSPI shall be constructed until evidence has been given to the SPAA that the utility company that operates the electrical grid where the installation is to be located has been informed of the LGSPI owner's or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

11.1.3.6 Dimension and Density Requirements

The LGSPI shall meet the dimensional requirements of the Zoning By-Law, except as set forth below.

11.1.3.6.1 Setback

An LGSPI shall be set back from property lines consistent with the applicable regulations for the Limited Commercial District, with the exception of necessary connection equipment to utility transmission facilities.

11.1.3.6.2 Accessory Structures

All accessory structures to an LGSPI shall be subject to the dimensional requirements of the Zoning By-Law. All such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, substations shall be architecturally compatible with each other and shall be landscaped and screened from view by vegetation, located underground, or behind berms, and/or clustered to minimize visual impacts.

11.1.3.7 Design Standards

11.1.3.7.1 Lighting

Lighting of an LGSPI shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of an LGSPI shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

11.1.3.7.2 Signage

Signs on LGSPI shall comply with the requirements of all applicable sign regulations, and shall be limited to:

- (a) Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- (b) Educational signs providing information about the LGSPI and the benefits of renewable energy.

Signs shall be limited to two dimensions (i.e. flat) and shall not be electronic or lighted.

11.1.3.7.3 Advertising

LGSPI shall not be used for displaying any advertising except for identification of the manufacturer or operator of the LGSPI in conformance with section 11.1.3.8.1.

11.1.3.7.4 Utility Connections

Reasonable efforts, as determined by the SPAA, shall be made to place all utility connections from the LGSPI underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

11.1.3.7.5 Screening

A buffer or greenstrip planted with live shrubs or trees, predominantly evergreen, shall if feasible be maintained between the perimeter of the LGSPI and any abutting property line or street unless the existing natural growth is adequate to provide an equivalent buffer. Such a buffer shall be designed so as not to create a hazard upon entrance or exit from the facility. The SPAA may vary or waive this requirement consistent with minimizing negative effects on abutting property.

11.1.3.8 Safety and Environmental Standards

11.1.3.8.1 Emergency Services

The LGSPI owner or operator shall provide a copy of the project summary, electrical schematic and approved site plan to the Fire Chief. Upon request the owner and/or operator shall cooperate with local emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have immediate, 24-hour access to the facility. All means of shutting down the LGSPI shall be clearly marked.

11.1.3.8.2 Land Clearing

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LGSPI or otherwise prescribed by applicable laws, regulations, and bylaws.

11.1.3.8.3 Drainage and Groundwater Protection

An LGSPI shall comply with the requirements set forth in Article XXIII (“Stormwater Management Special Permit”) of the General Bylaws, and Sections 5.10 of the Zoning By-Law, which requirements shall be imposed and conditioned as appropriate through the Site Plan Approval process. No LGSPI shall be required to obtain an independent special permit under either section.

11.1.3.9 Monitoring and Maintenance

11.1.3.9.1 Solar Photovoltaic Installation Conditions

The LGSPI owner and/or operator shall maintain the facility in good and safe working condition, and shall schedule inspections by a competent professional at least once every twelve (12) months or more often, pursuant to industry standards and practice. The results of the inspection and any resulting repair work shall be submitted to the SPAA and the Building Inspector within thirty (30) days of receipt by the owner or operator. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and emergency medical services. The owner and operator shall be responsible for the cost of maintaining the LGSPI and any access road(s), unless accepted as a public way.

11.1.3.9.2 Modifications

All material modifications to a LGSPI made after issuance of the required building permit shall require prior approval by the SPAA.

11.1.3.9.3 Contact

The owner and operator of an LGSPI shall each identify a responsible person for emergency purposes and public inquiry and shall at all times throughout the life of the installation maintain current contact information (name, address, telephone number, e-mail address) for such person(s) on file with the Building Inspector, the Fire Chief, and the SPAA.

11.1.3.10 Discontinuance and Removal

11.1.3.10.1 Removal Requirements

Any LGSPI, or any substantial part thereof, not in operation for a period of one hundred and eighty (180) continuous days or more without written permission from the SPAA, or that has reached the end of its useful life, shall be considered discontinued and shall be removed. Upon written request from the Building Inspector addressed to the contact address provided and maintained by the owner and operator as required above, the owner or operator shall provide evidence to the Building Inspector demonstrating continued use of the LGSPI. Failure to provide such evidence within thirty (30) days of such written request shall be conclusive evidence that the installation has been discontinued. The owner or operator of the installation shall notify the SPAA and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

The owner or operator shall physically remove the installation no more than ninety (90) days after the date of discontinued operations, which period may be extended with written permission of the Building Inspector for no more than sixty (60) days.

Removal shall consist of:

- (a) Remove all of the LGSPI in its entirety, including all associated structures, equipment, security barriers and transmission lines from the site.
- (b) Dispose of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilize or re-vegetate the site as necessary to minimize erosion. The SPAA may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- (d) Reinstall gravel or ground cover consistent with the surrounding landscape.
- (e) Remove all above-ground foundations and supports to a depth of one foot below existing grade.

If the owner or operator of the LGSPI fails to remove the installation in accordance with the requirements of this section, the Town shall have the right, to the extent it is otherwise duly

authorized by law, to enter the property and remove the installation at the expense of the owner of the installation and the owner(s) of the site on which the facility is located.

11.1.3.10.2 Financial Surety

The owner of an LGSPI approved in accordance with this By-Law shall provide to the Town, acting by and through the SPAA, security to cover the cost of removal in the event the Town must remove the LGSPI and remediate the landscape. Such surety shall be in an amount and form determined to be reasonable by the SPAA, which may be an escrow account, bond or otherwise, and shall be provided prior to construction. Surety will not be required for municipal or state-owned facilities. The project proponent 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.

11.2 Wind Energy Conversion Facilities

[Adopted 2011]

11.2.1 Purpose

It is the express purpose of this Section to permit distributed generation, wind energy conversion facilities in the Limited Commercial District (LCD), while addressing any adverse visual, safety and environmental impacts of the facilities. The intent of this Section is to enable the review of wind energy conversion facilities and wind monitoring or meteorological towers by the Planning Board in keeping with the Town's existing By-Law. Pursuant to G.L. c.40A, s.9, the Planning Board is hereby designated as the special permit granting authority for wind energy conversion facilities.

11.2.2 Definitions

Distributed Generation: Energy generation that is located at or near the end-user.

Height: The height of a wind turbine measured from grade elevation at the base of the tower to the elevation at the tip of the blade at its highest point.

Nacelle: The frame and housing at the top of the tower that encloses the gearbox and generator and protects them from the weather.

Rotor: The blades and hub of the wind turbine that rotate during turbine operation.

Wind Energy Conversion Facility (WECF): All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use.

Wind Monitoring or Meteorological Test Tower (Met Tower): A temporarily installed tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

Wind Turbine: A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft. A wind turbine typically consists of a rotor, nacelle and supporting tower.

11.2.3 District Regulations

11.2.3.1 Use Regulations: WECF, Wind Monitoring and Meteorological Towers.

WECFs under these Sections 11.2 and 4.2 shall be allowed only in the LCD, and then only upon issuance of a special permit by the Planning Board in accordance with the requirements of the Zoning By-law, including those requirements set forth in Sections 5.7, 5.10, and 12.5, irrespective of whether the use is a principal or accessory use. Met Towers shall be permitted in the LCD, subject to the issuance of a special permit in conformance with the Zoning By-law and a building permit for a temporary structure.

11.2.3.2 Site Control

At the time of application for a special permit, the applicant shall submit documentation of the legal right to install and use the proposed WECF on the subject lot. Documentation must list all lot owners and any encumbrances on the land that may affect the proposed use, and must demonstrate and act upon the applicant's sufficient legal authority to prevent the building of any structure unrelated to the WECF within the WECF's required set-backs.

11.2.3.3 Dimensional Requirements

WECF and Met Towers shall be subject to the following dimensional requirements:

11.2.3.3.1 Height

A WECF shall be no higher than four hundred fifty (450) feet above the elevation at its base.

11.2.3.3.2 Setback

Each free-standing WECF and Met Tower shall be set back from property lines, any structures permitting human occupancy, and roadways, excepting the access roadway, by at least one and one-half times the height of the WECF, and from any residential property lines, including those in abutting towns, by at least thirteen hundred (1300) feet.

11.2.4 Special Permit Regulations

The Planning Board shall grant a special permit only if it finds that the proposal complies with the provisions of Section 11.2 and with Section 12.5 of the Zoning By-Law.

11.2.4.1 General

WECFs and Met Towers shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements and the requirements of the relevant utility to which the WECF will be connected.

11.2.4.2 Design Standards

11.2.4.2.1 Visual Impact

The applicant shall demonstrate through project siting and proposed mitigation that the WECF or Met Tower minimizes impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting and cable layout. The Planning Board shall select between three (3) and six (6) sight lines, including from the nearest building with a view of the WECF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a two (2) mile radius of the WECF. View representations shall have the following characteristics:

- a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WECF (e.g. superimpositions of the WECF onto photographs of existing views).
- b) View representations shall include existing and proposed buildings and tree coverage.
- c) View representations shall include a description of the technical procedures followed in producing the visualization, including without limitation, distances, angles, lenses, etc.
- d) Within thirty (30) days of the date of application for the special permit, the applicant shall provide a balloon or crane test at the proposed site, or alternate test approved by the Planning Board, to demonstrate the height of the proposed WECF. The date, time and alternate date if needed due to weather, shall be announced in a newspaper having local circulation for the two (2) consecutive weeks prior to the test. Said announcement shall also be sent to all parties receiving notification of the Special Permit application at the applicant's expense.

11.2.4.2.2 Color

WECFs shall be white.

11.2.4.2.3 Equipment Shelters

All equipment necessary for monitoring and operation of the WECF should preferably be contained within the turbine tower. If this is infeasible, ancillary equipment may be located outside the tower, provided it is contained either within an underground vault, or enclosed within a separate structure or secured fence.

11.2.4.2.4 Lighting and Signage

- a) Wind turbines shall be lighted only as required by the Federal Aviation Administration (FAA) or other federal, state or county agency or authority. The applicant shall provide a copy of said authority's determination to establish the required markings and/or lights for the structure.
- b) Lighting of equipment structures and any other facilities on site (except lighting required by said authority) shall be shielded from abutting properties.
- c) Signs on the WECF shall be limited to those needed to identify the property and the owner, WECF manufacturer and model number, to warn of any dangers, and educational signs.
- d) All signs shall comply with the requirements of the Zoning By-Law.

11.2.4.3 Environmental Standards

11.2.4.3.1 Land Clearing/Open Space/Animal Species

WECFs and Met Towers shall be designed to minimize land clearing and fragmentation of open space areas and shall avoid impact on permanently protected open space when feasible. WECFs should be sited to make use of previously disturbed and/or developed areas wherever possible. WECFs and Met Towers shall also be located in a manner that does not have significant negative impacts on animal species in the vicinity (particularly avian species, bats, etc.).

11.2.4.3.2 Storm Water

Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and local regulations and the terms and conditions as imposed by the Planning Board.

11.2.4.3.3 Noise

The WECF and associated equipment shall conform to Massachusetts noise regulations (310 CMR 7.10) and IEC61400-14 as revised from time to time. An analysis, prepared by a qualified engineer, shall be presented to demonstrate compliance with these noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement. Notwithstanding the provisions of 310 CMR 7.10, the Planning Board may impose any reasonable limitation on noise generated by the WECF.

11.2.4.3.4 Shadowing/Flicker

WECFs shall be sited in a manner that does not result in significant shadowing or flicker impacts, in the sole opinion of the Planning Board.

11.2.5 Interference with Existing Services

WECFs may not interfere with radar, airport communications and guidance systems, point-to-point radio communication links, and other radio communications systems.

11.2.6 Modifications

Any modifications to a WECF made after issuance of the Special Permit shall require approval by the Planning Board pursuant to the Zoning By-Law and G.L. c.40A, s.9.

11.2.7 Monitoring and Maintenance

11.2.7.1 The applicant shall maintain the WECF in good condition and shall schedule inspections by a competent professional at least once every twelve (12) months or more often, pursuant to industry standards and practice. The results of the inspection and any resulting repair work shall be submitted to the Planning Board and the Building Inspector within thirty (30) days of the receipt of results of such evaluation by the applicant or WECF owner. Maintenance shall include, but not be limited to, required scheduled and unscheduled inspection, maintenance of all turbine components, including the structural integrity of the foundation, repair, painting, and maintenance of all equipment and support structures and security barriers, access, and landscaping.

11.2.7.2 The applicant shall provide to the Planning Board and the Building Inspector addresses, telephone numbers and any other necessary contact information for the special permit holder, each property owner, and each WECF owner. Notice shall be provided to the Planning Board and the Building Inspector of any change in this information.

Amended STM 6.28.2023, Attorney General Approved 9/29/2023

SECTION 12.0 ADMINISTRATION AND PROCEDURES

12.1 PERMITS.

12.1.1 Inspector of Buildings.

The office of the Inspector of Buildings is responsible for the issuance of building permits. The Inspector of Buildings shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this By-law and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this By-law. When a special permit, site plan approval, or variance has been granted with conditions, such conditions shall be enforced by the Inspector of Buildings.

12.1.2 Certificate of Occupancy.

No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Inspector of Buildings stating that the use of land and structure, if any, complies with this By-law and other applicable codes in effect at the time of issuance.

12.2 ENFORCEMENT

12.2.1 Inspector of Buildings.

The office of the Inspector of Buildings is responsible for the enforcement of this By-law. The Inspector of Buildings is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance. If the Inspector of Buildings is requested in writing to enforce these By-Laws against any person allegedly in violation of same, and the Inspector of Buildings declines to act, he or she shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor within fourteen (14) days of receipt of such request.

12.2.2 Criminal Disposition.

Any person violating any provision of this By-law, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

12.2.3 Noncriminal Disposition.

In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this By-law may be enforced by the Inspector of Buildings by noncriminal complaint pursuant to the provisions of G.L. c. 40, s. 21D. The penalty for any person violating any provision of this By-law, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

12.3 ZONING BOARD OF APPEALS

12.3.1 Appointment; Organization.

The Zoning Board of Appeals shall consist of five (5) regular members and two (2) associate members appointed by the Select Board for three-year terms. The regular members shall be appointed such that the term of at least one member shall expire each year. Vacancies shall be filled in the same manner as appointments. The Zoning Board of Appeals shall elect one (1) of its members as chairman and one of its members as clerk, each to serve for a one (1) year term. The two (2) associate members shall be appointed such that their terms do not expire the same year.

12.3.2 Removal.

A member may be removed only for cause by the Select Board and only after a written statement of the facts on which removal for cause is based has been presented to such member and a public hearing has been held at which the member has been afforded the opportunity to be heard.

12.3.3 Powers.

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

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Zoning Board of Appeals shall serve as the special permit granting authority.
2. To hear and decide appeals or petitions for variances from the terms of this By-law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Zoning Board of Appeals shall not have the power to grant use variances.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
4. To hear and decide comprehensive permits for construction of low- or moderate-income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 22-23.

12.3.4 Regulations.

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

12.3.5 Fees.

The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

12.4 PLANNING BOARD

12.4.1 Establishment.

The Planning Board has been established in accordance with MGL c. 41, Section 81A. The Planning Board shall consist of seven (7) elected members, elected for three-year terms.

12.4.2 Powers.

The Planning Board shall have the following powers:

1. To oversee the contents of the Zoning By-Law of Manchester-by-the-Sea Zoning By-Law.
2. To hear and decide applications for special permits, when designated as the SPGA in this By-law.
3. To hear and decide applications for site plan approval pursuant to Sections 12.5 and 12.6.
4. To endorse Approval Not Required Plans.
5. To hear and decide applications for Subdivisions.
6. To administer the Subdivision Control Law.
7. To adhere to and oversee other planning functions as specified in MGL. c. 40A.

12.4.3 Regulations.

The Planning Board may adopt rules and regulations for the administration of its powers.

12.4.4 Fees.

The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review, as specified in G.L. c. 40A. and in G.L. c. 44, s 53G.

12.5 SPECIAL PERMITS

12.5.1 Special Permit Granting Authority.

When designated by this By-law and the General By-law, the Zoning Board of Appeals, the Select Board, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

12.5.2 Criteria.

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The Planning Board or SPGA shall rely on the Performance Standards included in Section 6.3 of this By-law. In addition to any specific factors that may be set forth in this By-law, the determination shall include consideration of each of the following:

1. Standards set forth in Section 6.3.
2. Social, economic, or community needs which are served by the proposal, if appropriate.
3. Traffic flow and safety, including parking and loading.
4. Adequacy of utilities and other public services.
5. Neighborhood character and social structures.
6. Preservation, enhancement, or creation of existing and proposed scenic viewsheds for the enjoyment of the general public
7. Impacts on the natural environment; and
8. Climate resiliency and adaption

9. Potential fiscal impact, including impact on Town services, tax base, and employment.

12.5.3 Procedures.

An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

12.5.4 Conditions.

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-law. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this By-law.
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;
3. Modification of the exterior features or appearance of any structure.
4. Limitation as to size, number of occupants, or method and time of operation of any proposed use.
5. Regulation of number, design and location of access drives and other traffic features.
6. Requirement of off-street parking and other special features.
7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit, if appropriate.

12.5.5 Referral.

When appropriate, the Zoning Board of Appeals, Select Board and Planning Board, when serving as the SPGA, may refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said special permit application. Referral to staff members of these departments, boards, or committees for comments shall be required in all instances. The SPGA may refer a special permit application to any other Town agency, board, or department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations and send copies thereof to the SPGA and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred board or agencies have been received or said thirty five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

12.5.6 Plans.

Unless otherwise provided by rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the

requirements of Section 12.5 and Section 6.3, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 7.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

12.5.7 Regulations.

The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

12.5.8 Fees.

The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits. The Planning Board or SPGA may require the establishment of an escrow account, pursuant to G.L. c. 44, s. 53G during the special permit process or site plan approval, to cover all or part of the cost of the technical review required by the project, including services provided by, but not limited to, attorneys, traffic engineers, landscape architects, civil engineers, fiscal analysts, and other professionals. An independent process for selection of consultants and use of escrow accounts shall be established and adopted by each SPGA.

12.5.9 Lapse.

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

12.6 SITE PLAN REVIEW.

12.6.1 Purpose.

The purpose of site plan review is to ensure the design and layout of certain developments permitted as a matter of right, by special permit, or by variance. Site plan review is intended to promote suitable development that will not result in a detriment to the neighborhood or the environment.

12.6.2 Applicability.

Each SPGA may conduct site plan review while in the process of conducting the Special Permit review. If a project is a “by right” development, then the Planning Board shall be the entity responsible for conducting the site plan review on that specific project.

1. Any new development, expansion, or change of use other than a single-family or two-family residence which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.1, require five (5) or more parking spaces, regardless of the number of parking spaces preexisting on the premises.

12.6.3 Procedure.

The SPGA or the Planning Board shall hold a public hearing for consideration of an application for site plan approval. Said hearing shall be conducted in accordance with the procedures set forth in G.L. c. 40A, s. 11 for special permits. The written decision of the SPGA or Planning Board shall be filed with the Town Clerk within 90 days of the close of the public hearing. Failure to file the decision within 90 days of the close of the public hearing shall be constructive approval of the site plan application.

12.6.4 Site Plan Requirements.

Plans subject to site plan review shall be prepared and stamped by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall be prepared at a scale no greater than 1"=40', and shall show the following:

1. Locus map at a scale not greater than 1"=2,000'
2. All existing and proposed buildings and structures.
3. All existing and proposed contour elevations.
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas.
5. All existing and proposed facilities for sewage, refuse, and other waste disposal.
6. All wetlands, surface water, and areas subject to the 100-year flood.
7. All existing and proposed facilities for surface water drainage.
8. All existing and proposed landscape features such as fences, walls, trees and planting areas, walks, and lighting.
9. All contiguous land owned by the applicant or by the owner of the property.

12.6.5 Additional Application Requirements.

The applicant shall also submit the following in accordance with Section 6.3.

1. Such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.
2. Such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors.
3. Such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.
4. Such material as may be required to evidence compliance with the Performance Standards of Section 6.3

12.6.6 Waiver of Technical Compliance.

The SPGA or the Planning Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

12.6.7 Decision; Criteria.

A majority **vote** of the SPGA or the Planning Board shall be required for site plan approval. The Planning Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Rules and Regulations Governing the Subdivision of Land in Manchester-by-the-Sea, Massachusetts. The SPGA or the Planning Board shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this By-law in considering all site plans, in order to promote the following goals:

1. Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air.
2. Convenience and safety of vehicular, bicycle, and pedestrian movement within the site and in relation to adjacent areas.
3. Adequacy of facilities of handling and disposal of refuse and other production by products.
4. Protection of environmental features on the site and in adjacent area.
5. Resiliency and adaptation to and mitigation of the adverse effects of climate change such as flooding, sea level rise, and heat island effect.
6. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood.
7. Coordination with and improvement of systems of vehicular, bicycle, and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood; and
8. Compliance with all applicable sections of this By-law.

12.6.8 Performance Guarantee.

As a condition of site plan approval, the SPGA or the Planning Board may require that construction and site alteration permitted and specified by said approval be secured by one, or in part by one and in part by the other, of the methods set forth in G.L. c. 41, s. 81U (except for the statutory covenant).

12.6.9 Release of Guarantee.

Performance guarantees may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the Planning Board. The Planning Board shall then release the interest of the Town in such bond and return any bond or deposit to the person who furnished the same. Request for all releases shall be by certified, return receipt letter to the SPGA or the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted site plan approval. If the SPGA or the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the

details wherein said construction or site alteration fails to comply with the site plan approval and upon failure to do so within forty-five (45) days after the receipt by said Town Clerk of said request by the applicant, all obligations under any bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said forty-five (45) day period expires without such specification, or without the release and return of the bond or return of the deposit as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

12.6.10 Regulations.

The SPGA or the Planning Board may adopt reasonable regulations for the administration of site plan review.

12.6.11 Fees.

The SPGA or the Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

12.6.12 Appeal.

Any decision of the SPGA or the Planning Board pursuant to this Section may be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

12.7 REQUEST FOR REASONABLE ACCOMMODATION

12.7.1 Purpose.

Under the Federal Housing Authority (FHA), it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. s. 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12112(b)(5). 267 See also G.L. c. 40A, s. 3. The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

12.7.2 Request.

Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

12.7.3 Zoning Board of Appeals.

All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

12.7.4 Information.

All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation.
2. Name and address of property owner.
3. Name and address of dwelling or facility at which accommodation is requested.
4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought.
5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and
6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).
7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

12.7.5 ZBA Procedures.

The ZBA shall decide a request for reasonable accommodation by majority vote. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice. The ZBA shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation is reasonable.
2. Whether the requested accommodation would require a fundamental alteration of a legitimate Town policy; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the Town government.

12.7.6 Decision.

After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request.
2. Grant the request subject to specified conditions; or
3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

12.7.7 Appeal.

The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with G.L. c. 40A, s. 17 or otherwise.

12.7.8 File.

The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

12.7.9 Other Laws.

While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

12.8 SITE PLAN REVIEW FOR DOVER AMENDMENT USES

12.8.1 Purpose.

The purpose of this Section is to provide for site plan review of religious uses, educational uses, and childcare centers otherwise “exempt” pursuant to G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use in Section 4.2 and Parking Regulations in Section 6.1.

12.8.2. Site Plan Review Required.

Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Allowed Uses in Section 4 shall require site plan approval from the Planning Board pursuant to this Section.

12.8.3 Scope of Site Plan Review.

Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

12.8.4 Required Information.

All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity.
2. Name and address of property owner.
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3.
4. Reason that relief is requested from otherwise applicable zoning requirements.
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

12.8.5 Site Plan; Contents.

In addition, the applicant shall submit a site plan with the following information:

1. Legend depicting all pertinent existing and proposed site features.
2. The date and north arrow shall be shown on the plans.
3. All site plans must be prepared and stamped by a Registered Professional Civil Engineer **or** a Professional Land Surveyor licensed in the Commonwealth of Massachusetts. The land surveyor shall perform an instrument boundary survey and shall certify the accuracy of the locations of the buildings, setbacks, and all other required dimensions to property lines.
4. Zoning Chart depicting "Required" vs. "Provided" for all applicable Zoning Criteria including Lot Size, Frontage, Setbacks, Building Height, Lot Coverage, Parking Spaces, Landscaping Requirements.
5. Locus map, at a scale of 1" = 600' or suitable scale to accurately locate the site in Town, oriented on the plan in the same way as the large-scale plan.
6. The location, width, status (public or private), and name of all streets within 100' of the project.
7. On-site and abutting lot lines. On-site lot lines shall be described by bearings and distance. Abutting lot lines shall be shown in a general way.
8. Zoning District lines, including overlay districts if applicable.
9. The location of existing or proposed building(s) on the lot shall be shown with total square footage and dimensions of all buildings.
10. Any streams, brooks, or wetland resource area boundaries within 100' of the property lines.
11. Information on the location, size and type and number of existing and proposed landscape features. Provide Diameter at Breast Height (DBH) for all existing site trees $\geq 6"$ DBH --within the project site disturbance limits
12. Information on the location, size and capacity of existing and proposed on-site and abutting utilities, (water, sewer, drainage, natural gas, electrical cable, etc.) including utilities in abutting side streets, if applicable.
13. Detailed locations and dimensions of all existing and proposed buildings and uses on site and on abutting properties, including exterior details relating to the building footprint. All existing and proposed setbacks from property lines. Any minimum, or below minimum, setback distances shall be clearly noted as such on the plan.
14. Information and details for all site and directional on-site signage shall be submitted.
15. Elevation and facade treatment plans of all proposed structures. Color renderings are required for new construction.
16. Information on the location, size and type of parking, loading, storage and service areas. A parking calculation schedule noting existing, required and proposed spaces for the entire site shall be provided.
17. Details and specifications (if applicable) for proposed site amenities, including, but not limited to fences, recreation facilities, walls or other barrier materials; and special paving materials.

12.8.6 Decision.

The Planning Board may approve, approve with conditions, an application for site plan approval. In making its decision, the Board shall be guided exclusively by G.L. c. 40A, s. 3. The Board

shall file a written decision with the Town Clerk within ninety (90) days after the close of the Public Hearing. Failure to file a decision within ninety (90) days after the close of the Public Hearing shall constitute approval of the site plan.

12.8.7 Appeal. Any appeal of the Planning Board's decision in this Section shall be made pursuant to G.L. c. 40A, s. 17.

(Accepted at the Special Town Meeting June 28, 2023 as Article 3, and Attorney General Approved 9/29/2023)

APPENDIX

History of the Manchester-by-the-Sea Zoning By-Law

Original By-Law and Map

February 13, 1945 (Town Meeting Action)
March 5, 1945 (Attorney General Approval)

Zoning Map

February 11, 1946 (Town Meeting Action)
May 1, 1946 (Attorney General Approval)

Brief Summary:

Articles 17 and 18; change area bounded by Gloucester, Summer Street, "Univ. Land" from General District to Single Residence.

Zoning Map

March 10-12, 1952 (Town Meeting Action)
December 23, 1952 (Attorney General Approval)

Brief Summary:

Changed property bounded by Summer, Raymond and Brook, from Single Residence to General District.

Zoning Map

March 8, 1954 (Town Meeting Action)
January 17, 1955 (Attorney General Approval)

Brief Summary:

Established as Single Residence area bounded by Route 128, Bennett Street, Pine Street and Pipeline Road.

Zoning Map

March 12, 1956 (Town Meeting Action)
June 8, 1956 (Attorney General Approval)

Brief Summary:

Established as Single Residence area bounded by Sea Street, Summer, Lincoln, Arbella, Rosedale Cemetery, Pleasant Street, School, Saw Mill Brook, Pope, Cat Brook, Mill Street, Essex Line, Gloucester Line.

Zoning Map

March 12, 1956 (Town Meeting Action)
June 8, 1956 (Attorney General Approval)

Brief Summary:

Article 23; added A and B to Single Family District and amplified the meaning of zoning. Changed area regulations of lots.

Zoning By-Law & Map

March 10, 1958 (Town Meeting Action)
April 10, 1958 (Attorney General Approval)

Brief Summary:

Article 24; meaning of word dwelling changed to omit use as overnight camp or mobile home. Article 25; Limited Commercial District added bounded by 128, School Street, Essex Line.

Zoning By-Law

March 13, 1961 (Town Meeting Action)

April 12, 1961 (Attorney General Approval)

Brief Summary:

Article 8; change in definitions of words street, erected, dwelling, floor area, rooms to persons, added enforcement section and changed procedure for amendments.

Zoning By-Law & Map

March 11, 1963 (Town Meeting Action)

June 21, 1963 (Attorney General Approval)

Brief Summary:

Articles 16-21; added District C, amended classes of Single Residence District and area requirements of each part of Commercial District to Single Residence, extended nonconforming uses in Commercial District.

Zoning By-Law

March 8-9, 1965 (Town Meeting Action)

October 29, 1965 (Attorney General Approval)

Brief Summary:

Articles 24 and 25; area regulations changes and regulations for apartment dwellings.

Zoning By-Law

March 14, 1966 (Town Meeting Action)

May 4, 1966 (Attorney General Approval)

Brief Summary:

Articles 16 and 17; junk car regulations.

Zoning By-Law

March 14, 1966 (Town Meeting Action)

May 16, 1966 (Attorney General Approval)

Brief Summary:

Articles 23-25; regulations of Single Residence Districts, municipal uses.

Zoning By-Law & Map

August 29, 1966 (Town Meeting Action)

October 19, 1966 (Attorney General Approval)

Brief Summary:

More than two-family housing prohibited in General District.

Zoning By-Law

March 13-14 1967 (Town Meeting Action)

June 21, 1967 (Attorney General Approval)

Brief Summary:

Articles 16, 27, 28, 30, 31; junk cars, added Section 111, building permits - duration, flashing signs, home industry, advertising, accessory building. Area in District D changed.

Zoning By-Law

May 27, 1968 (Town Meeting Action)

September 10, 1968 (Attorney General Approval)

Brief Summary:

Articles 7 & 8; accessory buildings, General District minimum lot size.

Zoning By-Law & Map

March 12-13, 1973 (Town Meeting Action)

June 6, 1973 (Attorney General Approval)

Brief Summary:

Article 45; off-street parking. Article 46; General District, uses. Article 47-58; "Purpose" added, District C extended to railroad property, islands, etc., pools and tennis courts zoned.

Zoning By-Law

March 11, 1974 (Town Meeting Action)

May 24, 1974 (Attorney General Approval)

Brief Summary:

Articles 18 and 19; billboards and 3-4 dwelling unit density controlled.

Zoning By-Law

May 3, 1976 (Town Meeting Action)

Brief Summary:

Wetlands District added.

Zoning By-Law

May 1, 1978 (Town Meeting Action)

August 18, 1978 (Attorney General Approval)

Brief Summary:

Articles 11 and 12; adopt mandatory provisions of Massachusetts Chapter 808, recodify and reorganize; minimum dimensions on old lots; increase Board of Appeals to five members and two associates; extended by two years grandfather provisions of lots having somewhat less than dimensions required; deleting "residing on premises for doctor, dentist or other professional;" added "existing" to garage or stable and added "other existing structure" as a permit use for employee dwelling; increased accessory use of autos in residence district from 3 to 4; clarified alteration and reconstruction in General District; required site plan approval and special permit in Limited Commercial District; off-street parking not allowed on public property; prohibited use variances except in Limited Commercial District and General District; 3-4 dwelling units density controlled; and other changes.

Zoning By-Law

May 7, 1979 (Town Meeting Action)

August 6, 1979 (Attorney General Approval)

Brief Summary:

Articles 18 and 19; restrictions for Manchester-by-the-Sea based medical offices. Articles 21 and 22; clarification of Building Inspector's duties.

Zoning By-Law

May 5, 1980 (Town Meeting Action)

September 18, 1980 (Attorney General Approval)

Brief Summary:

Article 43; permit use only for an employee of owner dwelling in an existing structure.

Zoning By-Law

May 3, 1982 (Town Meeting Action)

August 10, 1982 (Attorney General Approval)

Brief Summary:

Article 14; height regulations/accessory structures. Article 15; delete section 5.7.3. Article 16; regulations for wind energy conversion systems.

Zoning By-Law

May 2, 1983 (Town Meeting Action)

August 10, 1983 (Attorney General Approval)

Brief Summary:

Article 52; permit use only for an employee of owner dwelling in an existing structure.

Zoning By-Law

May 7, 1984 (Town Meeting Action)

October 5, 1984 (Attorney General Approval)

Brief Summary:

Article 31; provision allowing an alteration of a non-conforming structure that does not make the structure more non-conforming without a special permit. Article 32; permits construction of accessory dwelling units in single residence districts. Article 34; special provisions for Open Space Planning. Article 35; regulates reflecting antennas by special permit.

Zoning By-Law

May 7 and 8, 1984 (Town Meeting Action)

November 15, 1984 (Attorney General Approval)

Brief Summary:

Article 40; imposes a temporary moratorium on any further new development within the watershed areas southwest of Route 128. Article 41; specification for Flood Control District.

Zoning By-Law

May 6, 1985 (Town Meeting Action)

July 25, 1985 (Attorney General Approval)

Brief Summary:

Article 21, amend zoning map enlarging District D. Article 23; consultant fees shall be borne by applicant. Article 56; re-zone 7 School Street.

Zoning By-Law

February 3, 1986 (Special Town Meeting Action)

March 6, 1986 (Attorney General Approval)

Brief Summary:

Article 10; regulations for Limited Commercial District.

Zoning By-Law

May 5, 12, and 19, 1986 (Town Meeting Action)

September 30, 1986 (Attorney General Approval)

Brief Summary:

Article 25; permits planned residential development in District C. Article 26; eliminate certain uses in Limited Commercial District. Article 27; specifications for accessory structures. Article 52; specify permitted uses for Limited Commercial District

Zoning By-Law

May 4, 1987 (Town Meeting Action)

September 10, 1987 (Attorney General Approval)

Brief Summary:

Article 32; revised definition of "Lot Width". Article 33; revised definition of "Street". Article 34; revised definition of "Structure". Article 35; zoning map interpretation. Article 38; special housing provisions. Article 39; stipulations for common driveways. Article 40; lot coverage requirements. Article 41; provisions for accessory structures. Article 43; performance requirements within Limited Commercial District. Article 45; applicability of and procedure for Site Plan Approval. Article 46; qualifications for Site Plan Special Permit. Article 47;

enforcement of Administration By-Law. Article 48; use variance requirements. Article 49; include Planning Board as a special permit granting authority. Article 52; revisions in the wording of the General Wetlands By-Law.

Zoning By-Law

May 2, 1988 (Town Meeting Action)

July 13, 1988 (Attorney General Approval)

Brief Summary:

Article 34; off-street parking regulations. Article 35; referrals from other boards to special permit granting authorities.

Zoning By-Law

May 8, 1989 (Town Meeting Action)

(Attorney General Approval)

Brief Summary:

Article 39; redefined accessory structure. Article 40; new Sewer Connection Limitation By-Law. Article 41; new Water Resource Protection District By-Law. Article 42; increase amount of fines.

Zoning By-Law

October 23, 1990 (Town Meeting Action)

January 14, 1991 (Attorney General Approval)

Brief Summary:

Article 7: Ground and Surface Water Resource Overlay Protection District By-Law.

Zoning By-Law

May 7, 1991 (Town Meeting Action)

(Attorney General Approval)

Brief Summary:

Article 32: Revised Residence District D language.

Zoning By-Law

April 4, 1994 (Town Meeting Action)

(Attorney General Approval)

Brief Summary:

Article 23: Amended definition of "Structure".

Article 31: Miscellaneous amendments.

Zoning By-Law

April 7, 1997 (Town Meeting Action)

(Attorney General Approval)

Brief Summary:

Article 13: Substituted a new definition of "Lot Width".

Article 15: Added regulation for Telecommunication Service Facilities.

Zoning By-Law

November 17, 1997 (Town Meeting Action)

(Attorney General Approval)

Brief Summary:

Article 1: Added a new "Limited Commercial District" use.

Zoning By-Law

April 6, 1998 (Town Meeting action)

(Attorney General Approval)

Brief Summary:

Article 17: Substituted a new Personal Wireless Telecommunication Service Facilities Use Regulation.

Article 18: Substituted a new Flood Plain District Use Regulation.

Zoning By-Law and Map

April 3, 2000 (Town Meeting action)

(Attorney General Approval)

Brief Summary:

Article 21: Amended the issuance of Special Permits by assigning the Special Permit Granting Authorities.

Article 22: Amended Off Street Parking Regulations to include Driveway and Curb Cut Regulations.

Article 24: Created Single Residence Zoning District E.

Zoning By-law

April 2, 2001 (Town Meeting action)

(Attorney General Approval)

Brief Summary:

Article 16: Revised Section 5.1 Frontage as it pertained to common driveways and added a new section 6.28

Article 17: Amended Section 5.5 to measure height from pre-construction grade.

Article 18: Miscellaneous amendments and corrections.

Zoning By-law

April 1, 2002 (Town Meeting action)

(Attorney General Approved)

Brief Summary:

Article 16: Delete Sections 10.3 and 6.10 and substitute with revised Section 10.3 Ground and Surface Water Overlay Protection Districts

Article 17: Amends Section 10.2 “Flood Plain”

Zoning By-Law

April 7, 2003 (Town Meeting action)

Attorney General Approved

Brief Summary:

Article 22: Added Section 8.2 Helicopter landing, storage and parking facilities

June 2, 2003 (Town Meeting action)

(Attorney General Approved)

Article 1: Revised Section 8.2 Helicopter landing, storage and parking facilities

Zoning By-Law

April 4, 2005

(Attorney General Approved)

Brief Summary:

Article 17: Revised Section 7.4.4 by changing the words “75 days” to “100 days”

Article 18: Amended Section 6.9 Site Plan Review Special Permit

Article 19: Added new Section 6.12 Division of Land and Development of Multiple Dwellings and Section 9.2 Residential Conservation Cluster

Article 20: Added new Section 9.4 Inclusionary Housing

Article 21: Amended Section 4.1.10(i) requiring a Special Permit for raising and keeping livestock

Zoning By-Law

April 3, 2006

(Attorney General Approved)

Brief Summary:

Article 20: Added tidelands provisions to Section 5.2 and amended Section 4.1.10 by adding a new Section (j) concerning tidelands.

Article 22: Amended Section 6.2.2, “Off street parking spaces” by adding “with the advice of the Planning Board.”

Zoning By-Law

April 4, 2007

(Attorney General Approved)

Brief Summary:

Article 6: Added new Section 6.15, Stormwater Management Special Permit

Article 7: Amended Section 2.10 by deleting it and adding a new text portion.

Article 8: Amended Section 5.6, Accessory Structure, by adding the words “or twenty-five (25) feet whichever is lesser” at the end of the first section.

Article 10: Amended the Zoning Bylaw by adding the definition of lot frontage as Section 2.11, deleting the first two sentences in Section 5.1 “Frontage”, and renaming section 5.1 to “Adequate Frontage”.

Article 21: Corrected Section 4.1.10 by deleting the words “in paragraphs (a) through (h) in the first sentence.

Article 22: Corrected Section 4.1.2 by adding the words “except those requiring a special permit pursuant to Section 4.1.10(i).

Article 24: Amended Section 6.2.7 “Driveways/Curb Cuts” by adding requirement to notify abutters.

Article 25: Amended Section 4.3.11 by deleting 4.3.11.2, striking out “nor above the second story” in Section 4.3.11.3 and renumbering sections 4.3.11.2 through 4.3.11.5.

Article 32: Amended Standard 1 for common driveway width in Section 6.2.8.

Article 34: Added new Section 6.16, “Topographical Changes and Land Clearing Special Permit”.

Article 36: Added new Section 7.9 “Planning Board Fees and Expenses”

Zoning By-Law

April 4, 2011

(Attorney General Approved)

Brief Summary

Article 9: Added new Section 11.2 “Wind Energy Conversion Facilities”

Zoning By-Law

April 2, 2012

(Attorney General Approved)

Article 24 amended Section 10.2 to reflect changes required for the National Flood Insurance Program

Zoning By-Law

April 1, 2013

(Attorney General Approved)

Article 21: Added new Section 11.1, Large-Scale Ground-Mounted Solar Photovoltaic Installations, and renumbered existing Section 4.4.5 as Section 10.3.1 and added new section 4.4.5 Large-scale Ground-Mounted Solar Photovoltaic Installations, and amended line 5 of Section 5.10 Performance Requirements within Limited Commercial District by adding “or site plan approval”, and added Section 6.15.4.C.6 Large-Scale Ground-Mounted Solar Photovoltaic Installations (LGSPi).

Zoning By-Law

April 7, 2014

(Attorney General Approved)

Article 12: Replaced section 10.2.2 with a new Section 10.2.2 to reflect new flood maps as issued by FEMA and revised Section 10.2.4.4 by deleting Zone AH.

Zoning By-Law

April 6, 2015

(Attorney General Approved)

Article 14 Added new Section 4.10.1 and Section 8.3 Medical Marijuana Treatment Centers

Zoning By-Law

October 16, 2017 (Attorney General Approved on February 9, 2018)

Article 2: Imposed a temporary moratorium on Recreational Marijuana.

Article 3: Reduced the terms of the Zoning Board of Appeals from 5 years to 3 years.

Article 4: Adopted updated FEMA Panel Maps

Zoning By-Law

April 2, 2018 (Approved by the Attorney General on April 6, 2018)

Article 19: Repealed the Temporary Moratorium on Recreational Marijuana and Zoned it into the Limited Commercial District.

Zoning By-Law

November 13, 2021 (Approved by the Attorney General on April 26, 2022 under the defect waiver provisions of Chapter 299 of the Acts of 2000)

Renumbering via Article 4: Create Section 7: Intentionally Left Blank , Create Section 8: Special Regulations , Renumber section 4.10 to 8.1 , Renumber section 4.11 to 8.2 , Renumber 6.19 to 8.3, Renumber 6.2.8 to 8.4 , Renumber 6.3 to 8.5 , Create new Section 9: Special Residential Regulations , Renumber 4.6 to 9.1 , Renumber 6.13 to 9.2 , Renumber 6.8 to 9.3 , Renumber 6.14 to 9.4 , Create a new Section 10: Special Districts , Renumber 4.7 to 10.1 , Renumber 4.8 to 10.2 , Renumber 4.9 to 10.3 , Renumber 4.9 Exhibits A and B to 10.3.9 and 10.3.10 , Create a new Section 11: Energy Regulations , Renumber 6.18 to 11.1 , Renumber 6.17 to 11.2 , Create an associated Table of Contents

Deletions via Article 5: Section 6.6: Reflecting Antennas, Section 6.8:Planned Residential Development, Section 6.10Water Resources Protection District , Section 6.11Development Scheduling – Sewer Connection Limitations, Section 6.12 Division of Land and Development of Multiple Dwellings, Section 6.14.3 Applicability (of Inclusionary Housing), Section 6.20.1 Temporary Moratorium on Recreational Marijuana

Zoning By-Law

April 25, 2022 (Approved by the Attorney General on June 27, 2022 after the required additional posting)

Changed wording in 4.4.6, 5.5, 5.7.1, 5.7.2, 5.7.3, 6.2.5

Zoning By-Law

November 18, 2024 (Approved by the Attorney General on March 5, 2025 after the required additional posting)

Added Section 9.4: Community Housing Overlay Districts

Added Applicant, Area Median Income (AMI), As of right, Building coverage, Parking Structured, Parking Surface, and Subsidized Housing Inventory (SHI) to Section 2.0 Definitions

Special Town Meeting 11/14/2022

Deleted Sections 1, 2, 3 and 4 in their entirety and replaced them with new sections titled, Section 1: Purpose and Authority, Section 2: Definitions, Section 3: Districts, and Section 4: Use Regulations; added definitions; inserted a Table of Uses that categorizes by type, district and permit granting authority all allowed principal and accessory uses and clarifies regulations of other accessory uses – Article 4

Deleted Section 8.5 Junk Cars, deleted Section 6.15 Stormwater Management Special Permit, and deleted Section 6.2.7 Curb Cuts to allow regulation by the General By-law – Article 6

Renumbered Section 7.0 Administration to Section 12.0 Administration and Procedures, and renumbered Section 6.1 Non-Conforming Uses and its subsections to Section 7.0 Non-Conforming Uses – Article 7

Deleted Section 6.0 Special Provisions and replaced it with a new Section 6.0 General Regulations – Article 8

Attorney General Approved 2/16/2023

Annual Town Meeting 4/3/2023

Article 17 added section 8.6

Attorney General Approved 6/16/2023

Special Town Meeting 6/28/2023

Article 3 replaced Section 2.0

Article 5 made scrivener's errors and omissions in Sections 4, 5, 7, 8, 9, 10, and 11

Attorney General Approved 9/29/2023

MAPS

[Maps for official use are on file at Town Hall]

Zoning Districts [Section 3.2]

“New” District D [Section 4.2]

Bennett’s Brook Drainage Area [Section 10.1]

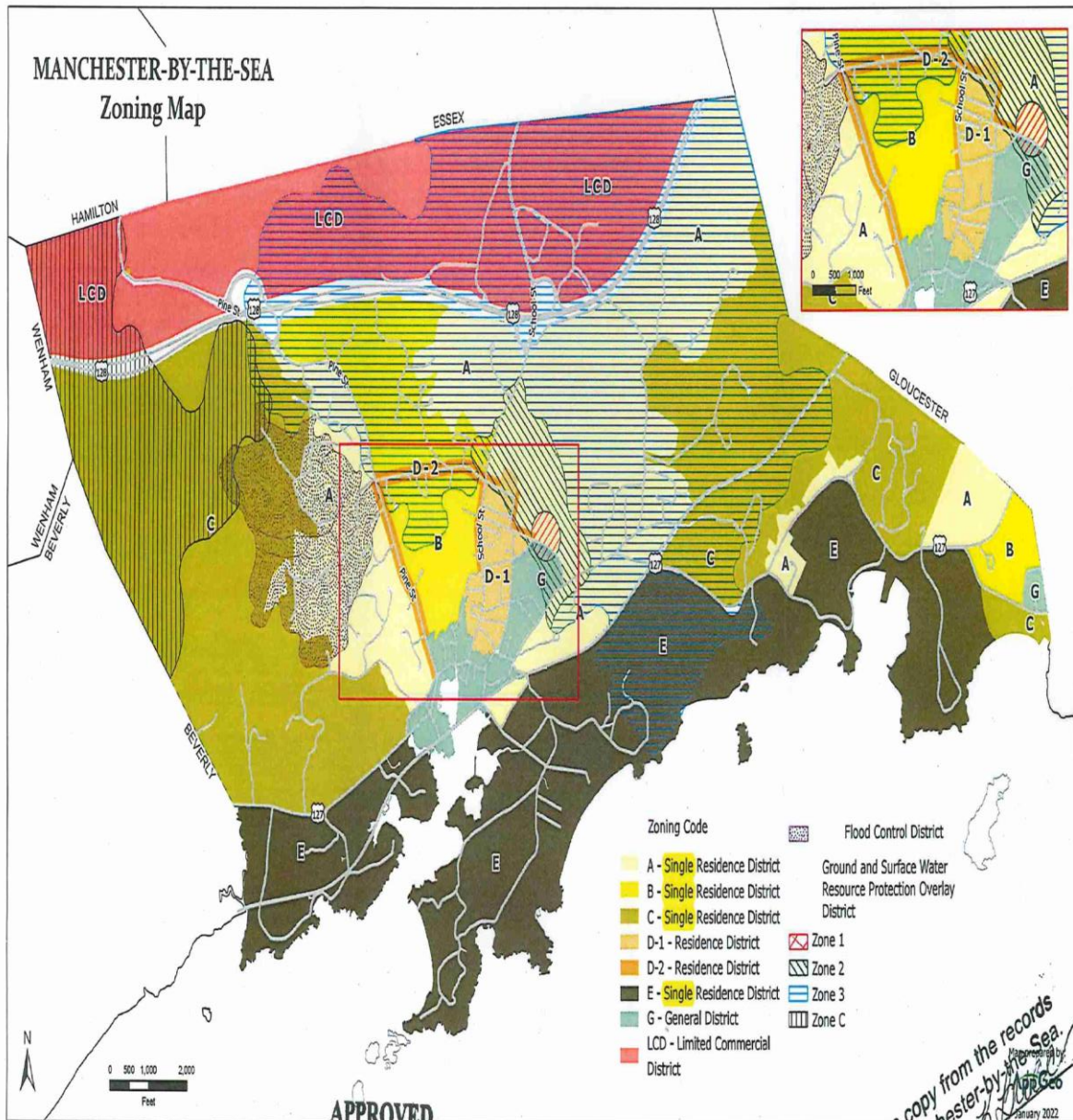
Water Resource Overlay Protection Districts [Section 10.3]

Watershed for Gravelly Pond/Round Pond [Section 10.3]

Zone of Contribution to Lincoln Street Well [Section 10.3]

Community Housing Overlay Districts [Section 9]

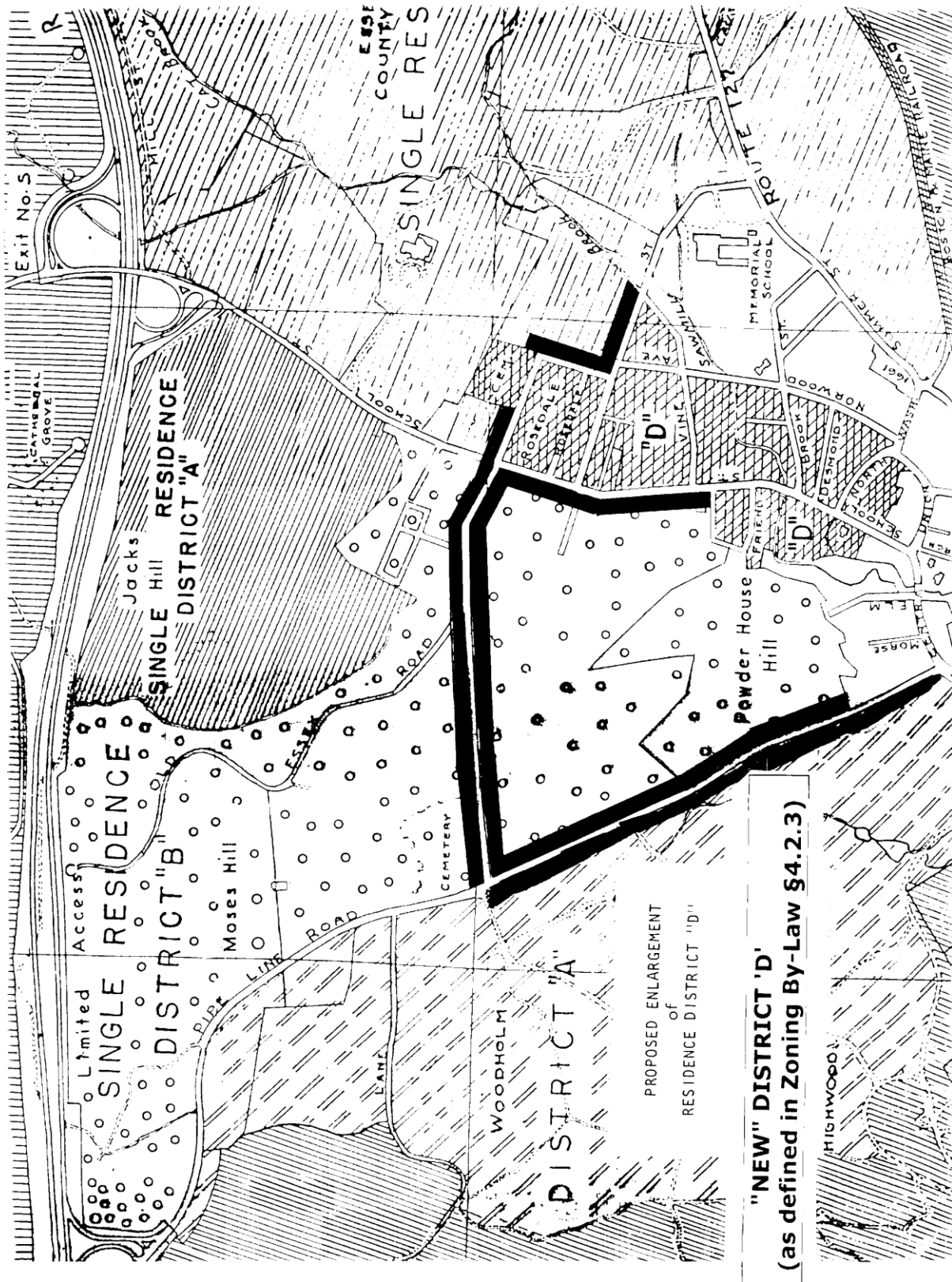
MANCHESTER-BY-THE-SEA Zoning Map

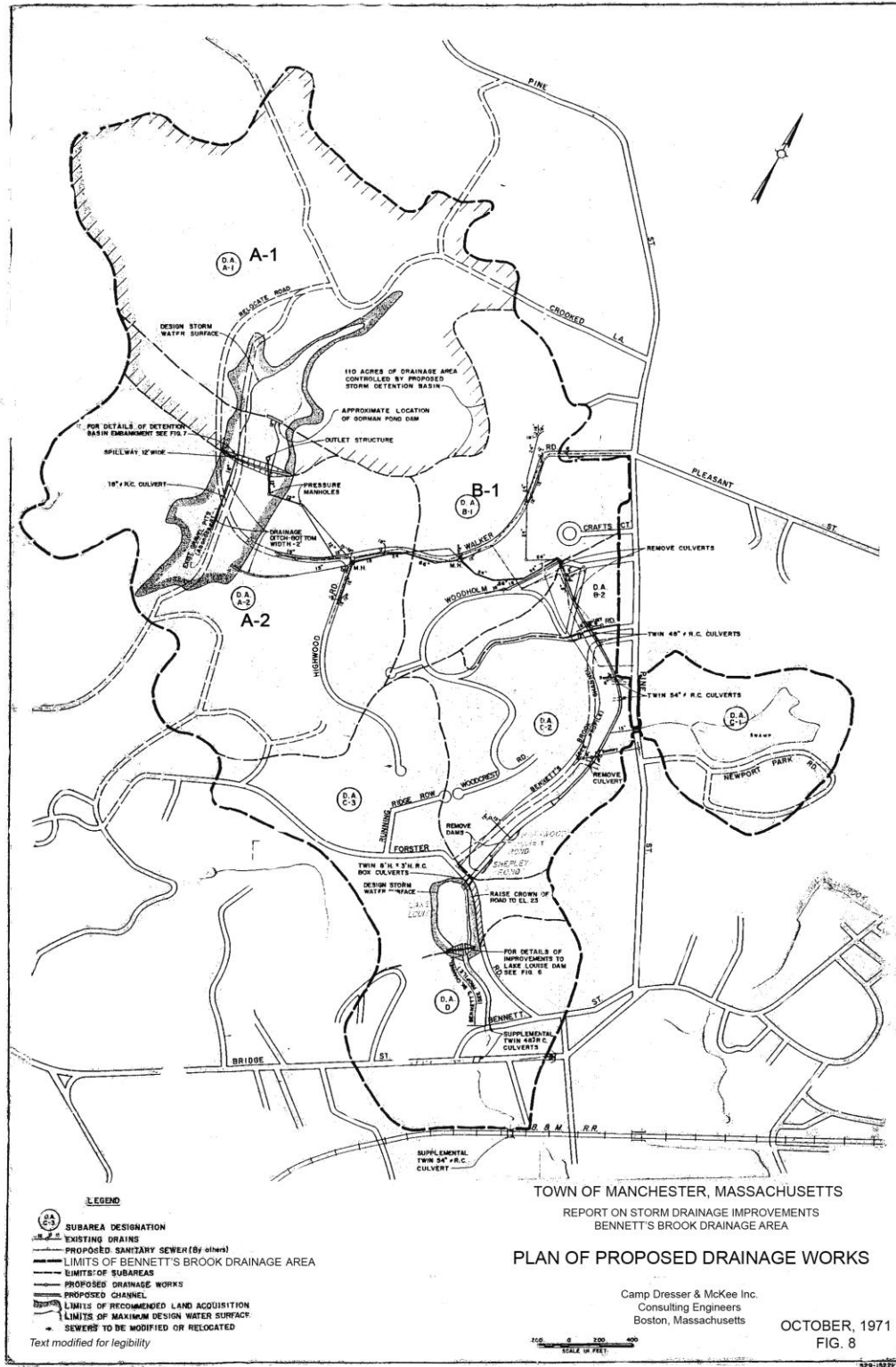


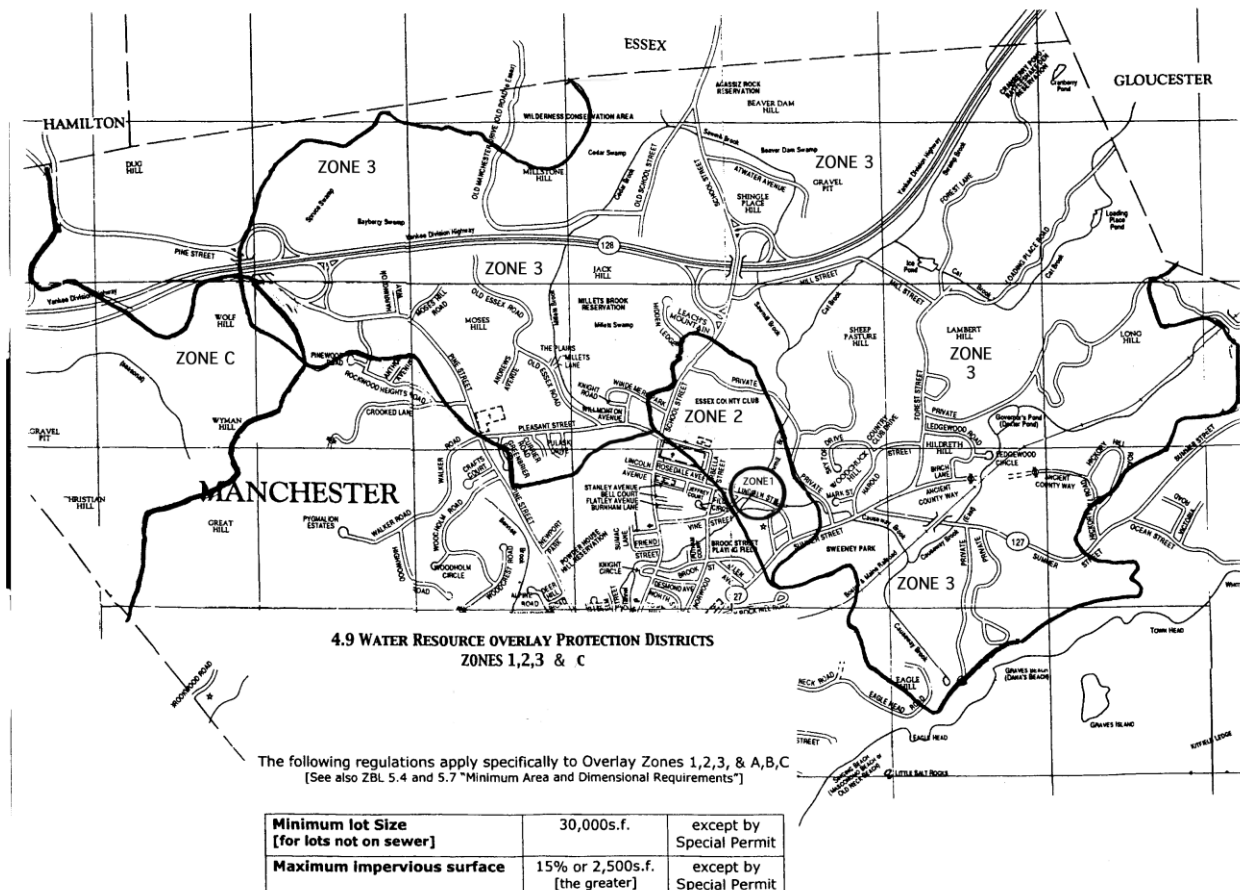
APPROVED

Attorney General's Office
By K. G. Murphy
Date 2/14/23
Art 4 Town Meeting Date 1/17/22

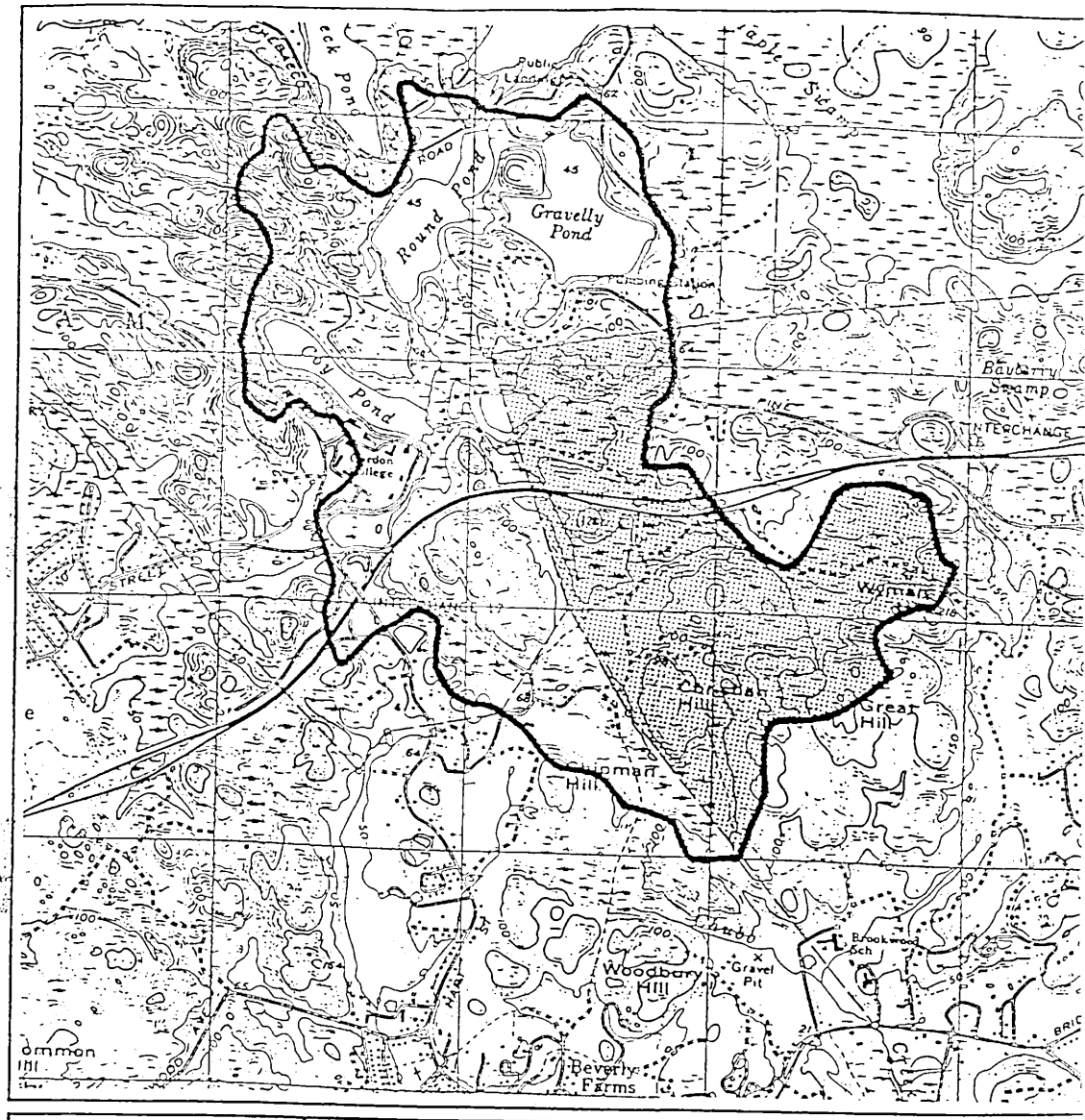
ATTEST: A true copy from the records
In the Town of Manchester-by-the-Sea
Town Clerk [Signature] January 2022







(Prepared by Horsley Witten Hegemann, Inc., April 1990)



EXPLANATION

— Watershed Boundary

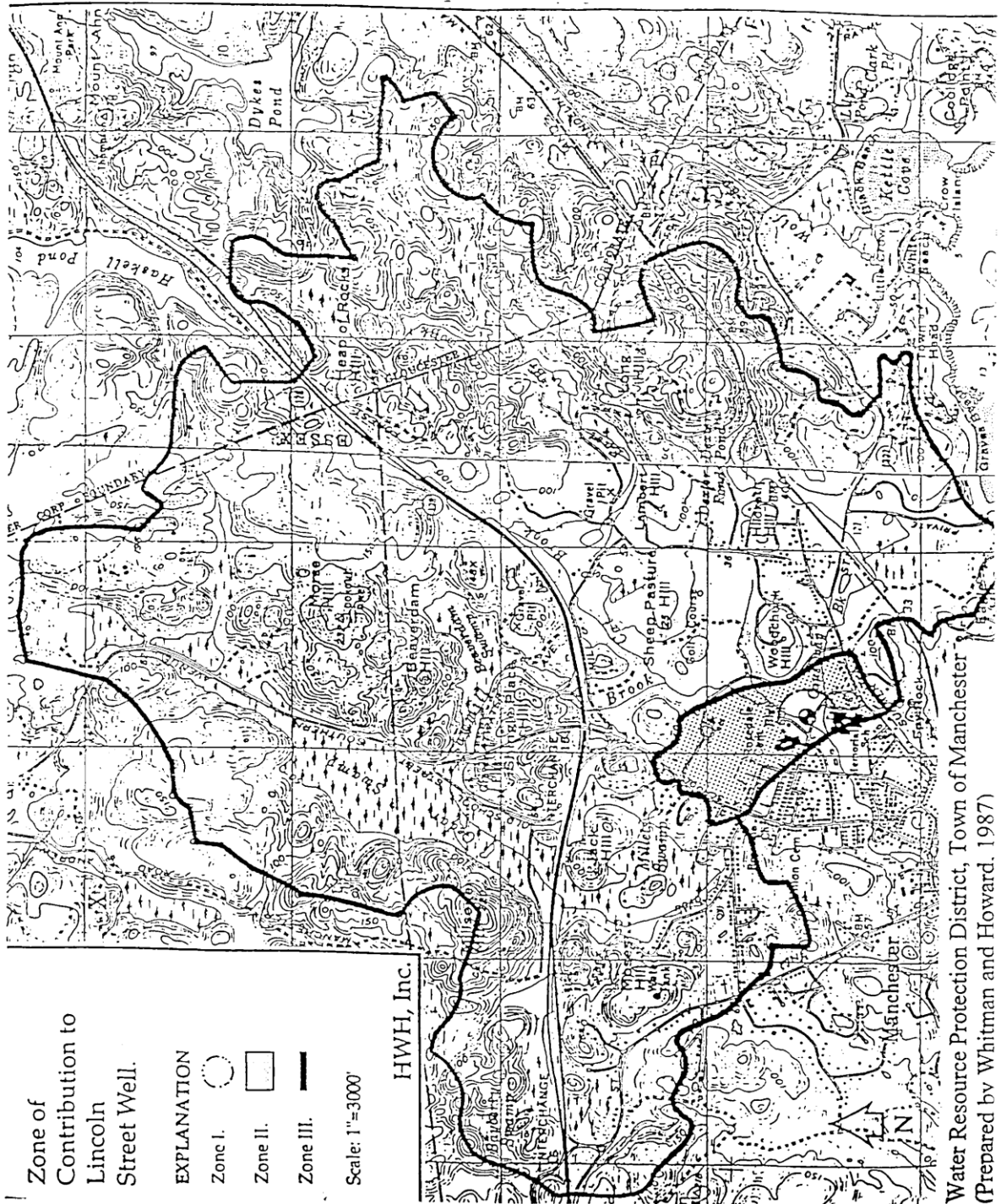
□ Area of Watershed Inside Manchester Boundary

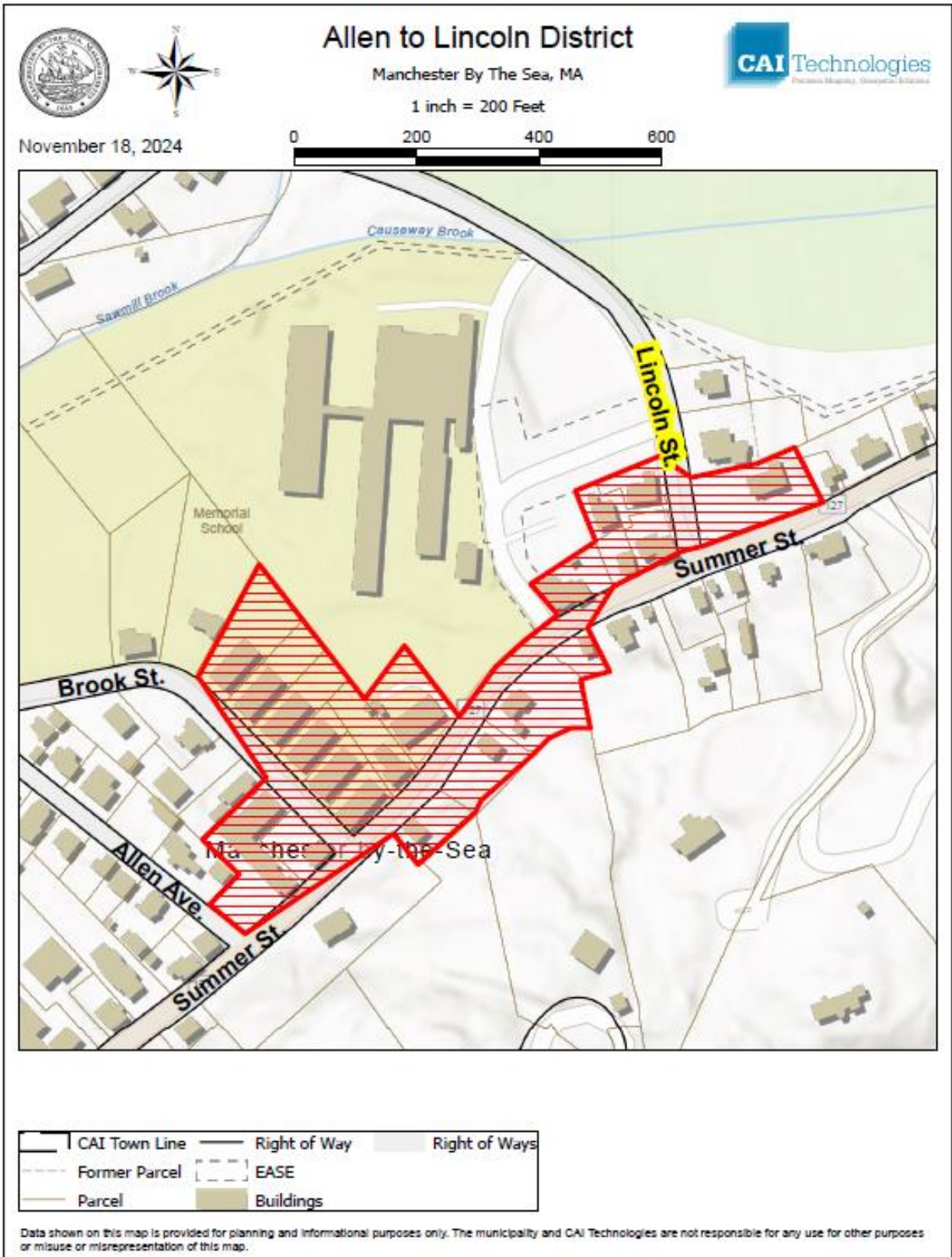
Watershed for Gravelly Pond/
Round Pond

Scale: 1"=3000'



HWH, Inc.







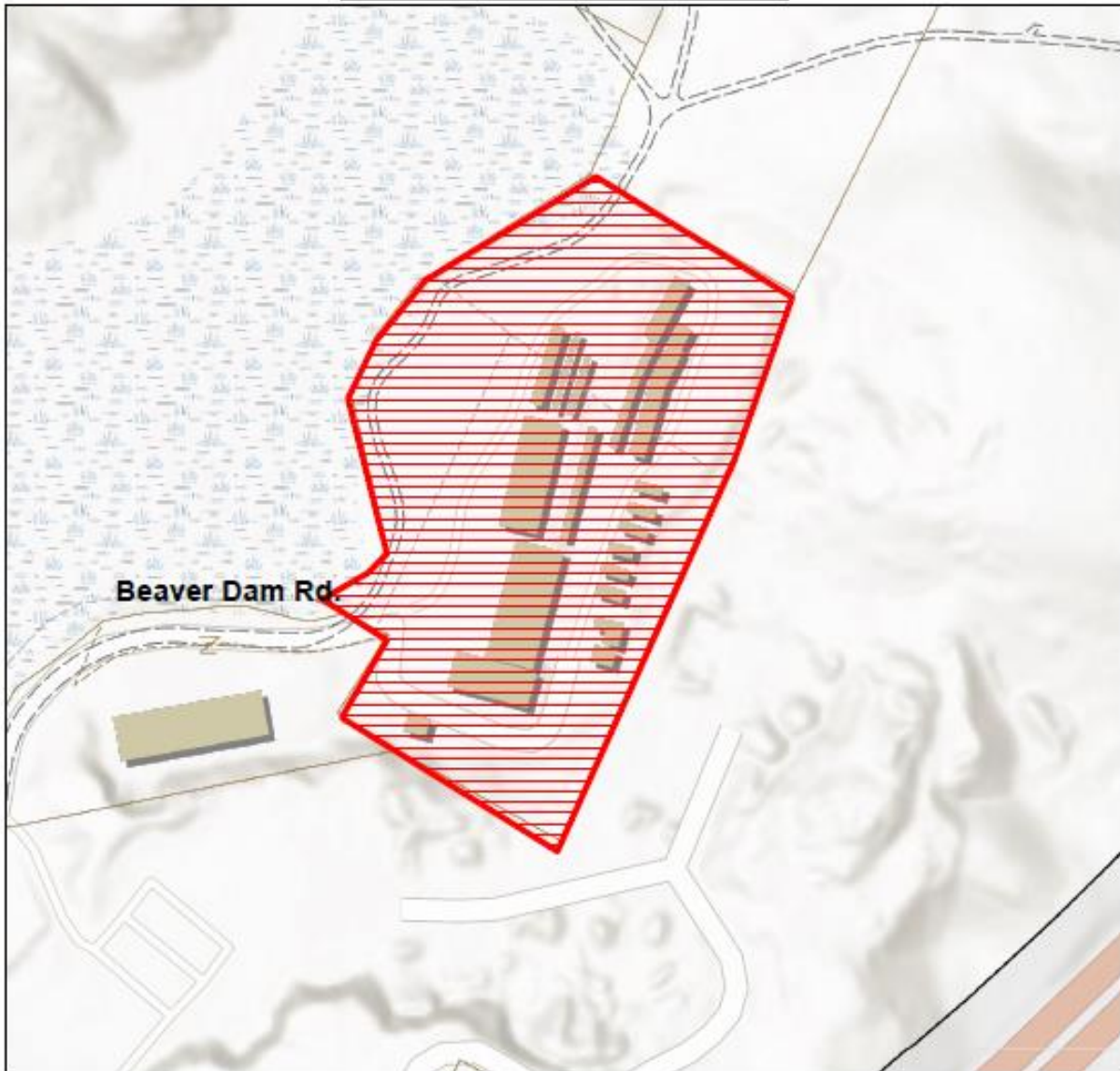
Beaver Dam Rd. District

Manchester By The Sea, MA

1 inch = 200 Feet



November 18, 2024



CAI Town Line	Parcel	PRIV_ROW
Combined Parcel	Right of Way	Buildings
Former Parcel	Parcel Hooks	Right of Ways

Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

