

Chapter 230. Zoning

[HISTORY: Adopted by the Town Meeting of the Town of Marion 4-23-1984 ATM by Art. 32 (Art. X of the Bylaws).
[1] Amendments noted where applicable.]

GENERAL REFERENCES

Numbering of buildings — See Ch. 122.

Soil removal — See Ch. 192.

Streets and sidewalks — See Ch. 196.

Unregistered vehicles — See Ch. 210.

Water main installation — See Ch. 218, Art. I.

Subdivision regulations — See Ch. 300.

Attachment 1 - Zoning Map

[1] *Editor's Note: The Town adopted the Zoning Bylaw as Ch. 230 of the 2017 Town Code 5-8-2017 ATM by Art. 43; and adopted certain changes to the text of the Zoning Bylaw 5-8-2017 ATM by Art. 44. The codification of the Zoning Bylaw is reflected in the document entitled "Town of Marion Final Draft," dated 3-1-2017; the changes to the text are reflected in the document entitled "Town of Marion Final Draft (Red Line)," dated 3-1-2017. Said drafts are on file in the office of the Town Clerk. At the 10-23-2017 STM, by Art. S7, the Town voted to recodify the Town's Zoning Bylaw, including specific changes indicated either by underlined text (new text) or strike-through text (deleted text) as set forth in a document entitled "Town of Marion Final Draft," dated August 16, 2017. Said draft is on file in the Town offices.*

Article I. Title, Authority and Purpose

§ 230-1.1. Title.

This bylaw shall be known and cited as the "Zoning Bylaws, Town of Marion, Massachusetts."

§ 230-1.2. Authority.

This bylaw is authorized and may be changed or amended in the manner provided in the Zoning Act (MGL c. 40A).

§ 230-1.3. Purpose.

[Amended 4-23-1985 ATM by Art. 21; 3-28-1989 STM by Art 1; 6-18-1990 STM by Art. 4]

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

Board and the Comprehensive Plan, if any, of the Regional Planning Agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

§ 230-1.4. Validity.

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

Article II. Administration

§ 230-2.1. Enforcement; certificates of occupancy and use permits; violations and penalties.

[Amended 6-18-1990 STM by Arts. 10, 13; 4-25-1994 ATM by Art. 24]

- A. This bylaw shall be enforced by the Building Commissioner. No building shall be built or altered or a building begun or changed without a permit having been issued by the Building Commissioner.
- B. No building, whether residential or nonresidential, shall be occupied until a certificate of occupancy has been issued by the Building Commissioner.
- C. For any proposed new or change of nonresidential use of land or buildings, and any home occupations requiring use of buildings or lot space outside of the principal residential building, the Building Commissioner shall issue a use permit stating that the use is in conformance with the requirements of this bylaw. Applications for a use permit shall be filed with the Building Commissioner prior to changing the use of the property and shall be allowed or denied in writing, including the cause of the action taken, within seven days of receipt of the application. No such new or changed use shall be allowed except upon the issuance of a use permit.
- D. Any person violating any of the provisions of this bylaw may be fined not more than \$300 for each offense. Each day that such violation continues without abatement shall constitute a separate offense.

§ 230-2.2. Board of Appeals.

A Board of Appeals shall be appointed as provided in MGL c. 40A consisting of five members for terms of five years each and three associate members for terms of three years each. The term of one member and one associate member will expire on May 31 of each year. When a vacancy occurs by resignation or otherwise, it shall be filled within 30 days for the unexpired term in the same manner as an original appointment.

§ 230-2.3. Powers of Board of Appeals.

- A. Permits. Applications may be made directly to the Board of Appeals for any permit which said Board is authorized to grant by virtue of this bylaw.
- B. Appeals.
[Amended 6-18-1990 STM by Art. 10]
 - (1) Appeals may be taken to the Board of Appeals by any officer, or board of the Town, or any person aggrieved by an order or decision in violation of, or being unable to obtain a permit under, any provisions of MGL c. 40A or any provisions of this bylaw.
 - (2) Appeals from decisions of the Building Commissioner relative to the location of district boundaries shall be considered as follows:

- (a) Zone boundary lines designated by property lines, street lines, easement lines, without giving dimensions, are the nearest to such lines existing when this zone was established.
 - (b) Zone boundary lines drawn nearly parallel to street lines shall be considered parallel and at the given offset dimension measured at right angles to the street.
 - (c) Zone boundary lines not otherwise defined shall be determined by the measured distance from adjacent map features.
- C. Special permits. The Board of Appeals shall hear and decide applications for special permits for specific uses for which the Board is the designated special permit granting authority.
- D. Variances. Variances may be granted by the Board of Appeals with respect to particular land or structures from the terms of the applicable Zoning Bylaw when a particular use or dimensional variance is sought and when it specifically finds that, owing to circumstances relating to the soil condition, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw. Variances properly granted prior to January 1, 1976, but limited in time may be extended on such terms and conditions that were in effect for such variances upon said effective date.

§ 230-2.4. Public hearings.

Special permits, variances, permits and relief may be granted by the Board of Appeals only after a public hearing, for which posting and proper notification has been given, as provided in MGL c. 40A.^[1]

[1] *Editor's Note: Original Sec. 2.5, Nonresidential Plan and Site Evaluation, which immediately followed this section, was repealed 3-28-1989 ATM by Art. 2.*

Article III. Districts

§ 230-3.1. Types of districts.

[Amended 4-4-1989 STM by Art. 6; 6-18-1990 STM by Arts. 1, 4; 5-13-2013 ATM by Art. 31; 5-12-2014 ATM by Art. 39]
For the purposes of this bylaw, the Town of Marion is hereby divided into the following types of use districts:

Residence A
Residence B
Residence C
Residence D
Residence E
General Business
Marine Business
Limited Industrial
Limited Business
Flood Hazard District
Water Supply Protection District
Aquifer Protection District
Open Space Development District
Surface Water District
Wireless Communications Facilities Overlay District

§ 230-3.2. Zoning Map.

[Amended 12-15-1987 STM by Art. 14; 4-4-1989 STM by Art. 8; 6-18-1990 STM by Arts. 3, 14; 10-25-1999 STM by Art. S2; 5-21-2012 ATM by Art. 31; 10-28-2013 STM by Art. S11; 5-12-2014 ATM by Art. 39]

- A. Location of districts. Said districts, with the exception of the Flood Hazard District, are located and bounded as shown on a map entitled "Zoning Map of the Town of Marion," dated May 12, 2014, and filed with the Town Clerk, together with the amendments thereto. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this bylaw. The boundaries of all land use zoning districts adjoining tidal waters shall extend to the low water mark as defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.
- B. Water Supply Protection Area (See § 230-8.2.): as delineated on the Zoning Map of the Town of Marion, dated May 12, 2014.
- C. Wireless Communications Facilities Overlay District: as delineated on the Zoning Map of the Town of Marion, dated May 12, 2014.

[1] *Editor's Note: A copy of the Zoning Map is included as an attachment to this chapter.*

Article IV. Use Regulations

§ 230-4.1. General provisions regarding permitted principal uses.

- A. Principal uses and districts in which they are permitted are identified in the Table of Use Regulations below. Uses which are necessarily and customarily incidental to principal uses, including accessory signs and off-street parking, are also permitted in compliance with the provision of this bylaw.
- B. Except as may be provided otherwise in this bylaw, no building or structure shall be constructed, and no building, structure or land or part thereof, shall be used for any purpose or manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by special permit in said district as so authorized.

§ 230-4.2. Table of Principal Uses.

Symbols Used

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

Table of Principal Use Regulations

[Amended 12-11-1984 STM by Art. 6; 11-19-1985 STM by Arts. 8, 9, 10; 12-15-1987 STM by Art. 15; 4-4-1989 STM by Art. 6; 6-18-1990 STM by Arts. 1, 4, 9, 11, 16; 3-10-1997 STM by Art. S11; 4-28-1997 ATM by Art. 32; 11-13-2000 STM by Art. S2; 4-22-2002 ATM by Art. 21; 11-3-2003 STM by Art. S19; 5-13-2013 ATM by Art. 31; 5-12-2014 ATM by Arts. 36, 37; 5-8-2017 ATM by Art. 35]

Principal Uses	Districts						
	R	RE	GB	LB	MB	LI	MSOD
A. Residential Uses							
Dwelling, single-family	Y	Y	Y	Y	Y	BA	N
Conversion to 2 dwelling units	BA	BA	BA	BA	BA	BA	N
Dwelling in same building as principal nonresidential use	N	N	Y	Y	N	N	N
B and B	PB	PB	PB	PB	N	N	N
Association piers	PB	N	N	N	Y	N	N
Piers, accessory	PB	N	N	N	PB	N	N
Conservation subdivision	PB		N	N	N	N	N
Multifamily residence (see § 230-5.3)		PB					
B. Institutional or Exempt Uses							
Use of land or structure for religious purposes	Y	Y	Y	Y	Y	Y	N
Use of land or structure for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation as allowed by MGL	Y	Y	Y	Y	Y	Y	N
Child-care facility in existing building	Y	Y	Y	Y	Y	Y	
Child-care facility in new building	PB	PB	PB	PB	PB	PB	N
Use of land for the primary purpose of agriculture, aquaculture, silviculture, horticulture, floriculture, or viticulture that complies with the acreage identified in MGL c. 40A, § 3	Y	Y	Y	Y	Y	Y	N
Facilities for the sale of produce, wine and dairy products meeting the criteria specified in MGL c. 40A, § 3	Y	Y	Y	Y	Y	Y	N
Hospital	PB	PB	PB	PB	N	PB	N

Table of Principal Use Regulations

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Principal Uses	Districts						
	R	RE	GB	LB	MB	LI	MSOD
Municipal facilities	Y	Y	Y	Y	Y	PB	Y
Essential services	PB	PB	PB	PB	PB	PB	N
C. Service Uses							
General service establishment	N	N	Y	N	N	PB	N
Personal service establishment	N	N	Y	PB	Y	PB	N
D. Recreational Uses							
Camp, nonprofit	PB	PB	PB	N	N	PB	N
Club, nonprofit	PB	PB	PB	N	N	PB	N
Club, for-profit	N	N	PB	N	N	PB	N
Commercial recreation, indoor	N	N	PB	N	N	PB	N
Commercial recreation, outdoor	N	N	PB	N	N	PB	N
E. Office Uses							
Bank or financial services office	N	N	Y	PB	Y	PB	N
Business or personal office	N	N	Y	Y	PB	Y	N
Medical office or clinic	PB	N	Y	PB	PB	PB	N
F. Restaurant Uses							
Restaurant	N	N	Y	PB	Y	PB	N
Restaurant, outdoor	N	N	PB	PB	N	PB	N
Restaurant, fast-food	N	N	PB	N	N	N	N
Restaurant, drive-in	N	N	N	N	N	N	N
G. Retail Uses (under 5,000 square feet)							
General retail establishment	N	N	PB	PB	PB	N	N
Storage and sale of building materials	N	N	N	N	N	Y	N
Storage and sale of fuel oil	N	N	N	N	N	Y	N
Nonexempt roadside farm stand	Y	Y	Y	Y	Y	PB	N
Nursery	PB	PB	Y	Y	Y	PB	N
Commercial greenhouse	PB	PB	Y	Y	Y	PB	N

Table of Principal Use Regulations

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	Districts						
Principal Uses	R	RE	GB	LB	MB	LI	MSOD
H. Major Commercial Uses (any use allowed in the Table of Principal Uses under Subsection G, Retail Uses, with a gross floor area of more than 5,000 square feet)	N	N	PB	PB	PB	PB	N
I. Motor Vehicle Related Uses							
Motor vehicle service station	N	N	Y	Y	Y	PB	N
Motor vehicle general repair	N	N	Y	N	N	PB	N
Motor vehicle body repair	N	N	Y	N	N	PB	N
Motor vehicle sales or rental	N	N	PB	N	N	PB	N
Motor vehicle junkyard or graveyard	N	N	N	N	N	N	N
J. Marine-Related Uses							
Vessel or boat storage or sales	N	N	Y	PB	Y	PB	N
Marina	N	N	N	N	Y	N	N
Commercial pier	N	N	N	N	Y	N	N
K. Miscellaneous Commercial Uses							
Adult use	N	N	PB	N	N	N	N
Body art parlor or studio	N	N	PB	N	N	N	N
Art gallery	PB	PB	Y	Y	N	PB	N
Bed-and-breakfast	BA	N	BA	BA	N	N	N
Nonexempt educational use	PB	PB	Y	Y	N	PB	N
Nursing or convalescent home	PB	PB	PB	PB	PB	PB	N
Adult day-care facility	PB	PB	PB	PB	PB	PB	N
Contractor's yard	N	N	Y	N	N	PB	N
Landscaper's yard	N	N	Y	N	N	PB	N
Truck garden	Y	Y	Y	Y	Y	PB	N
L. Industrial Uses							
Light manufacturing	N	N	PB	N	N	Y	N
Research laboratory	N	N	N	N	N	Y	N
Warehouse	N	N	N	N	N	PB	N
Assembly	N	N	N	N	N	Y	N

Table of Principal Use Regulations

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Principal Uses	Districts						
	R	RE	GB	LB	MB	LI	MSOD
Manufacture of electronic components	N	N	N	N	N	Y	N
Fabrication	N	N	N	N	N	Y	N
M. Accessory Uses							
Home occupation	Y	PB	Y	PB	Y	PB	N
Accessory scientific use	PB	PB	PB	PB	PB	PB	N
Family day care, small	PB	PB	PB	PB	N	PB	N
Family day care, large	PB	PB	PB	PB	N	PB	N
Aboveground fuel storage accessory to nonresidential principal use	N	N	PB	PB	PB	Y	N
Underground fuel storage accessory to nonresidential principal use	N	N	PB	N	N	Y	N
Outside storage of more than 2 unregistered motor vehicles	BA	N	BA	BA	BA	BA	N
N. Other Uses							
Drive-in or drive-through window, excluding restaurant	N	N	PB	N	PB	PB	N
Wind turbine greater than 60 KW	Y	N	Y	Y	Y	Y	N
Medical marijuana dispensary, treatment centers	N	N	N	N	N	PB	N
Solar systems (1)	Y	Y	Y	Y	Y	Y	Y
Solar farms (2)	PB	PB	PB	PB	PB	PB	Y

NOTES:

In certain circumstances, solar systems require a special permit form the Planning Board. See Article XVI (1) of the Zoning Bylaw.

(2) Solar farms include ground-mounted solar PV systems as defined in § 230-8.13B and § 230-16.2 of the Zoning Bylaw.

Article V. Intensity of Use Regulations

§ 230-5.1. Lot, yard and height requirements.

[Amended 3-28-1989 STM by Art. 4; 4-4-1989 STM by Art. 7; 6-18-1990 STM by Arts. 1, 2, 4, 11, 15; 4-24-1995 ATM by Art. 36; 6-4-1996 STM by Art. S4; 10-28-1997 STM by Art. S3; 4-26-1999 ATM by Arts. 20, 21; 10-25-1999 STM by Art. S1; 11-13-2000 STM by Art. S3; 4-29-2003 STM by Arts. S4, S8; 4-25-2005 ATM by Art. 30]

A dwelling hereafter erected in any district and a building hereafter in any Business, Limited Industrial or Open Space Development District shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built on such a lot except as may be allowed in the Residence E and the Open Space Development District or by special permit where otherwise authorized by these Zoning Bylaws. No existing lot shall be changed in size or shape so as to result in the violation of the requirements set forth below.

**Table 5.1A
Dimensional Requirements Table**

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

Dimensional Table Notes:

- These dimensional requirements may be waived in accordance with the provisions of Article X, Conservation Subdivision, upon the issuance of a special permit.
- See § 230-5.3 for additional and special requirements for the Residence E, Multifamily Residence District.
- See Article XII for Open Space Development District requirements.
- These dimensional requirements may be waived in accordance with the provisions of § 230-5.5, Waterfront compounds.
[Amended 4-24-2000 ATM by Art. 26]
- (Reserved)
- (Reserved)
- Not less than 25% of the required front yard must be maintained with vegetative cover.
- Where a business use abuts a residential district, a landscape buffer five feet in width shall be provided along abutting side or rear lot lines unless otherwise specified under site plan review and approval.
- Majority of each lot must be contiguous upland as defined in Table 5.1B, Contiguous Upland Requirements. In computing the minimum lot area, land area as defined in the Massachusetts Wetland Regulations (310 CMR 10.00) as bordering vegetated wetlands, land under water bodies or waterways, salt marshes, or all land seaward of mean high water shall not be used in computing the minimum lot area requirements, as based on the following tables:

Table 5.1B Contiguous Upland Requirements

Lots serviced by both on-site sewage disposal system and private well

Zone	Required Upland Area (square feet)	Percent of Upland Area Required to Be Contiguous
RA	15,000	100%
RB	30,000	100%
RC	60,000	80%
RD	80,000	60%

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

Zone	Required Upland Area (square feet)	Percent of Upland Area Required to Be Contiguous
RA	15,000	100%
RB	30,000	80%
RC	60,000	70%
RD	80,000	60%

Lots serviced by both Town water and Town sewer

Zone	Required Upland Area (square feet)	Percent of Upland Area Required to Be Contiguous
RA	15,000	90%
RB	30,000	70%
RC	60,000	60%
RD	80,000	50%

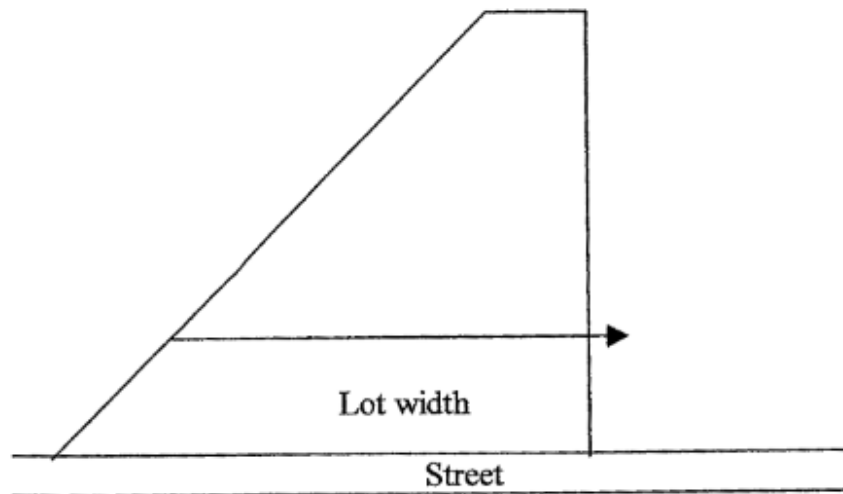
(This provision shall only apply to lots created on plans filed after March 6,1995.)

10. The rear yard setback requirements may be waived for piers where a pier is constructed in a nonresidential district or where a pier is allowed by special permit in a residential district.
11. Provided, however, that the Planning Board may grant a special permit to allow a minimum lot frontage on a common private way shown on an enclosed residential compound plan pursuant to the Subdivision Rules and Regulations of the Planning Board.^[1] In issuing any special permit for reduced frontage in a residential compound, the Planning Board shall require the applicant to demonstrate that, through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the common driveway within the residential compound shall remain perpetually the responsibility of the private parties, or their successors-in-interest, and that any breach of this condition shall be deemed noncompliant with the terms of any special permit issued hereunder. Any subsequent change to the roadway surface after the construction of a residential compound shall require a modification of the endorsed plan pursuant to MGL c. 41, § 81W and this special permit.
12. Provided, however, that the Planning Board may grant a special permit to allow a lesser setback. In issuing any special permit for reduced setbacks, the Planning Board shall require the applicant to provide parking, curbing, street trees, or other plantings, and pedestrian access in a manner acceptable to the Planning Board. Through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the sidewalk and street trees or other plantings on the property of the business shall remain the responsibility of the owner of said property.
13. Provided, however, that the Planning Board may grant a special permit to allow a use, other than a one- or two-family dwelling, as allowed by the Table of Principal Use Regulations on parcels equal to or greater than 5,000 square feet and with a minimum of 50 feet of frontage, provided that the project is otherwise in harmony with the provision of the Zoning Bylaw and the lot was in compliance with the applicable zoning at the time the lot was created or shown on a plan endorsed by the Planning Board.

Dimensional Table Explanations:

- A. The height of a building abutting a street shall be measured from the average finished grade on the street side(s) and if not abutting a street from the mean ground level along its front to the highest point of the exterior in the case of a flat roof or to the ridge in the case of a pitched roof.
- B. Front, side and rear yard setbacks shall be measured from the nearest point of any structure or dwelling to each front, side or rear lot line. Uncovered steps, ramps, and bulkheads or the construction of walls or fences not exceeding six feet in height shall not be considered part of the structure for the purposes of measuring setbacks. A chimney and all types of decks shall be considered part of a structure.
- C. A detached accessory building shall conform to the minimum setback from any boundary. Any building attached to a dwelling will be considered as part of the dwelling.

- D. All buildings on lots abutting Route 6 (Mill Street and Wareham Street) shall be set back at least 50 feet from said right-of-way. No building, except on lots on Route 6, need to be set back more than the average of the setback of the building next thereto (within 250 feet) on either side. A vacant lot, or lot occupied by a building set back more than the minimum setback requirements, shall be counted as though occupied by a building set back at this requirement.
- E. Frontage for the width of a lot shall be measured continuously along one street line between side lot lines, provided that the shape of the lot is capable of containing a rectangle with a width of at least 75 feet at the front of the property line and with sufficient length that the area of the rectangle contains no less than 50% of the minimum lot size requirement.
- F. Each lot shall have a width of not less than 80% of the required frontage at all points between the sideline of the right-of-way along which the frontage of the lot is measured and the nearest point on the front wall of the dwelling upon such lot. Such width shall be measured along lines which are parallel to such sideline. (See following figure.)



- G. The thinnest cross section of a lot must be greater than 70 feet as determined from the length of a line segment running parallel to the front lot line. Rear lot access is exempt from this requirement.
- H. On a corner lot, the frontage requirement shall be measured to the midpoint of the curve forming the intersecting streets. On a corner lot, an accessory use, including a visual screen, must comply with the setback requirements relating to both streets.
- I. (Reserved)
- J. The limitations of height in feet shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, and other accessory features usually carried above roofs, nor domes, towers, or spires of churches or other buildings, provided such features are in no way used for living purposes, and further provided that no structural feature of any building shall exceed a height of 65 feet from the ground except by special permit from the Board of Appeals.
- K. A detached accessory building shall conform to the minimum setback requirements of the lot on which it is located except where a dwelling exists on lots which are less than minimum requirements, in which case the Board of Appeals may by special permit authorize such reductions of setback requirements as may be reasonable with respect to the size and shape of the lot and not hazardous or detrimental to the neighborhood and the adjacent lots.

[1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-5.2. Exceptions to minimum lot requirements.

[Amended 4-25-1994 ATM by Art. 25]

- A. On any lot which is less than the minimum lot size or frontage set forth in § 230-5.1, but which is allowed by MGL c. 40A, § 6 to be built upon, coverage of the lot by the dwelling, accessory buildings and other impervious-type surfaces or structures may not exceed 40% of ground area.

[Amended 4-22-1996 ATM by Art. 26]

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

- C. One single-family dwelling may be constructed on any lot or combination of adjoining lots, provided that said lots were held in common ownership with that of an adjoining lot(s) that contains at least 5,000 square feet of area and 50 feet of frontage on a way, provided that:

- (1) The lot or combined lots are located in a residential zoning district;
- (2) The lots are shown on a plan of land as separate and identifiable lots of record on a plan or deed duly recorded on the Plymouth County Registry of Deeds or in the Land Court prior to January 1, 1996, and in compliance with the Zoning Bylaw at the time of creation.
- (3) The lots will accommodate a residential dwelling that, when constructed, will comply with side and rear setbacks of the Zoning Bylaw as follows:
 - (a) RA: 10 feet.
 - (b) RB: 15 feet.
 - (c) RC: 20 feet.
 - (d) RD: 20 feet.

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

- (4) All lots will comply with the front setback requirements under the Zoning Bylaw in effect at the time the lot was created.

[Added 10-25-2004 STM by Art. S15]

- D. An exception to the minimum lot frontage requirements may be allowed in any residence district in the case of a single rear lot which has insufficient frontage on an existing road or way by granting of approval pursuant to the procedures and standards established in § 230-8.4 of this bylaw.

§ 230-5.3. Multifamily residences.

[Added 4-4-1989 STM by Art. 6]

- A. Purpose.

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

- (2) The intent of these regulations is to encourage low-density multifamily housing designed to be compatible with the neighborhood in which it may be located. Pursuant to Article IX, Site Plan Review and Approval, all development exceeding a minimum threshold will be required to obtain site plan approval.
- B. Dimensional requirements.
- (1) Maximum lot coverage: 40%, the same to include the gross ground floor area of all buildings and all parking areas.
 - (2) Minimum usable open space. There shall be provided for each lot or building site area a minimum usable open space of not less than 40% of the lot area. Usable open space shall include all the lot area not covered by buildings, accessory buildings and/or structures, or surface parking areas. The area devoted to lawns, landscaping, walks, roadways, drives and exterior recreation areas shall be included as usable open space.
- C. Density requirements. The maximum allowable density shall be 12 dwelling units per acre in areas served by public water and sewer. In determining whether the density rate has been complied with, all land in the development lot or parcel not reasonably suited for residential development, such as wetlands, shall be excluded.
- D. A special permit from the Planning Board, in compliance with the requirements of § 230-7.2, shall be required for all residential developments greater than four dwelling units.
[Added 5-8-2017 ATM by Art. 35]

§ 230-5.4. (Reserved)

§ 230-5.5. Waterfront compounds.

[Added 10-28-1997 STM by Art. S4; amended 4-29-2003 STM by Art. S8]

- A. Purpose. Marion has a number of estate properties located along the waterfront, where large homes on large tracts of land, often along with several smaller homes on the same tract or in separate parcel ownership, have evolved as residential compounds served by a common, private access road. A number of the large homes, which were built for seasonal use originally, have been converted to year-round occupancy. It is the intent of this section to preserve the estate and open space characteristics of large tracts of land along the waterfront, including parcels in more than one ownership, in a manner which minimizes Town maintenance responsibility.
- B. Applicability. On tracts of 10 acres or more abutting tidal waters, a waterfront compound comprised of dwelling units sharing common frontage and a private access road or roads may be permitted, through the issuance of a special permit by the Planning Board, in any single-family residential district.
- C. Conditions. A waterfront compound shall meet all of the following conditions:
- (1) Tract ownership. For the purposes of making an application under this section, the minimum tract size may be comprised of parcels in more than one ownership, providing evidence of legal arrangements binding all property owners to the restrictions which may be imposed in the granting of a special permit are presented with an application for a special permit.
 - (2) Tract frontage. The tract shall have a minimum frontage on a public way equal to at least twice the minimum frontage required in the residential district in which it is located, unless an island surrounded by water.
 - (3) Maximum number of dwelling units. The waterfront compound shall not contain more than one dwelling unit per two acres of land. Conversion of larger estate residences to more than one dwelling unit is permitted in a waterfront compound.

- (4) Dimensional requirements. There shall be no minimum lot width or frontage requirements in a waterfront compound. On all lots which abut the peripheral boundary of the tract, the setback requirements from the peripheral boundary shall be the same as those which would be required for the residential district in which the land is located.
 - (5) Access. Each dwelling unit in the waterfront compound shall have adequate and legally enforceable rights of access to a public street via a private street or driveway or public waterway in case of an island surrounded by water.
- D. Open space requirements. A minimum of 10% of the tract shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the waterfront compound. The percentage of the open space which is wetlands, as defined pursuant to MGL c. 131, § 40, shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in the open space upon a demonstration that such inclusion promotes the purposes set forth above.
- (1) The required open space shall be used for conservation, outdoor recreational facilities of a noncommercial nature, agriculture, preservation of scenic resources and structures accessory to any of the above uses (including swimming pools, tennis courts, stables and greenhouses), and shall be served by suitable access for such purposes.
 - (2) Underground utilities to serve the waterfront compound may be located within the required open space.
 - (3) The required open space shall, at the owner's election, be conveyed to:
 - (a) The Town of Marion or its Conservation Commission;
 - (b) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
 - (c) A corporation or trust owned jointly or in common by the owners of lots within the waterfront compound. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Marion to perform maintenance of the open space and facilities if the trust or corporation fails to provide adequate maintenance and shall grant the Town an easement for this purpose. In such event, the Town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance, and if the trust or corporation fails to complete such maintenance, the Town may perform it. The owner of each lot shall be deemed to have assented to the Town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the Town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall thereafter be recorded in the Registry of Deeds.
 - (4) Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable to the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth in Subsection **D(1)** above and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.
 - (5) All deed restrictions with respect to ownership, use and maintenance of permanent open space shall be referenced on and recorded with the plan.
- E. Limitation on further subdivision. No waterfront compound for which a special permit has been issued under this section may be further subdivided and a notation to this effect shall be shown on the plan.

- F. Decision. A special permit may be granted under this section by the Planning Board, provided:
- (1) Adequate provision has been made for the disposal of sewage generated by the development in accordance with the requirements of the Board of Health;
 - (2) Due consideration has been given to the reports of the Board of Health and the Conservation Commission;
- G. Additional conditions. Any special permit authorizing a waterfront compound shall require that individual deeds for lots or dwelling units within the compound contain the following terms:
- (1) The land lies within an approved waterfront compound conservation area;
 - (2) The development of the land is permitted only in accordance with the land uses indicated in the Planning Board's special permit decision;
 - (3) The Town will not be requested to accept or maintain the private access, drainage, open space (except as may be determined during the course of site plan review) or other improvements within the waterfront compound.
- H. Relation to other requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

§ 230-5.6. Special permit and local initiative program dwelling units.

[Added 10-25-2004 STM by Art. S22]

- A. Purpose. The purpose of this section is to allow, upon receipt of both a special permit and approval from the Board of Selectmen, pursuant to 760 CMR 45.00 (Local Initiative Program), the development of a lot that has lot vested rights under the Zoning Act and/or the Marion Zoning Bylaw.
- B. The Board of Selectmen may grant a special permit to build one single-family dwelling on any lot or combination of existing adjoining lots, provided:
- (1) The Board of Selectmen votes to endorse the application pursuant to the Selectmen's authority contained within 760 CMR 45.00 and grants a special permit pursuant to § 230-7.2 of the Zoning Bylaw;
 - (2) Said existing lot or lots were held in common ownership with that of adjoining land, which, when combined with any other land, contains at least 5,000 square feet of area and 50 feet of frontage on a street, as defined in the Zoning Bylaw;
 - (3) The lot or combined lots are located in a zoning district where residential use is permitted;
 - (4) The lot(s) are each shown on a plan of land as a separate and identifiable lots of record on a plan or deed duly recorded in the Plymouth County Registry of Deeds or in the Land Court prior to January 1, 1996; and
 - (5) The lot(s) is subject to a deed restriction and regulatory agreement limiting, for a period of no less than 99 years, the sale or rental of the dwelling unit to a qualified individual pursuant to guidelines established by the Planning Board, said guidelines to be consistent with the purpose and intent of 760 CMR 45.00 and MGL c. 40B, §§ 20 to 23 and is approved by the Board of Selectmen, or its designee.

§ 230-5.7. Open space in General Business, Marine Business and Limited Industrial Districts.

In General Business, Marine Business and Limited Industrial Districts, it is desirable that a portion of each lot be left in an unpaved, unbuilt-upon condition, after allowing for the parking space required by § 230-6.5, with a goal of a minimum of 20% of the lot area in this open condition.

Article VI. General Provisions

§ 230-6.1. Nonconforming uses and structures.

[Amended 10-25-1999 STM, by Art. S4]

A. Applicability.

- (1) No provision of this Zoning Bylaw shall apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
- (2) If real property has been improved by the erection or alteration of one or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of action, suit or proceeding as to an alleged violation of this chapter or of a bylaw adopted under this chapter has been recorded in the Registry of Deed for the county or district in which the real estate is located or, in the case of registered land, has been filed in the registry district in which the land is located within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally nonconforming structures subject to MGL c. 40A, § 6, and any local bylaw related to nonconforming structures.

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

- (1) Change or substantial extension of the use;
- (2) Change from one nonconforming use to another, less detrimental, nonconforming use.

C. Nonconforming structures. The Board of Appeals may award a special permit to reconstruct, extend, alter or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- (1) Reconstructed, extended or structurally changed;
- (2) Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

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

E. Nonconforming single- and two-family structures.

- (1) Nonconforming single- and two-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following types of changes shall be deemed not to increase the

nonconforming nature of said structure; provided, however, that in no case shall the alteration to the nonconforming structure result in (a) a structure no more than the lesser of the maximum height allowable under these bylaws, or a ten-percent increase in existing height, or (b) a structure closer to the side or rear lot lines than 10 feet in Residence A, 15 feet in Residence B, 20 feet in Residence C or 20 feet in Residence D; said residential districts as shown on the Zoning Map of the Town of Marion, Massachusetts, February, 1984, final revision date July, 1999:

- (a) Alteration to a structure located on a lot with insufficient area, where such alteration complies with all current setback, yard, building coverage, and building height requirements.
 - (b) Alteration to a structure located on a lot with insufficient frontage, where such alteration complies with all current setback, yard, building coverage, and building height requirements.
 - (c) Alteration to a structure encroaching upon one or more required yard or setback areas, where such alteration will comply with all current setback, yard, building coverage and building height requirements.
- (2) In any other case, the Building Commissioner shall refer the matter to the Board of Appeals. The Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.
[Amended 4-29-2003 STM by Art. S2]
- F. Abandonment or non-use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Bylaw.
- G. Catastrophe or demolition. Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe or after demolition, provided that such reconstruction is completed within 24 months after such catastrophe or demolition caused by a catastrophic event, and provided that the building(s) as reconstructed shall be located on the footprint of the nonconforming structure and rebuilt to an extent only as great in volume or area as the original nonconforming structure unless a larger volume or area or different footprint is authorized by special permit from the Board of Appeals. The Board of Appeals may extend by 12 months the period of completion.
[Amended 10-15-2001 STM by Art. S11]
- H. Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert back to a nonconforming use.

§ 230-6.2. Signs.

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

- A. General requirements/procedures.
- (1) Illumination. Any illuminated sign or lighting device shall employ only lights emitting a constant light source.
 - (2) Maintenance. All signs, together with their supports, braces, guys and other anchors, shall be kept in good repair and in safe condition. The owner and the lessee, if any, of the premises on which the sign is erected shall be directly responsible for keeping such sign and the area around it in a neat, clean and safe condition.
 - (3) Design limitations:
 - (a) The bottom of freestanding or projecting signs shall be no closer than eight feet to the ground where people walk and 15 feet to surfaces where vehicles may drive.

- (b) The top of every sign shall be no higher than 18 feet from the ground or, if mounted on a building or roof, no higher than the highest point of the roof (such as the ridge line) or parapet, whichever is the higher.
- (c) Any sign attached to a building shall project no more than five feet from the building.
- (d) Any freestanding sign shall have a support structure which is of sufficient strength and which is securely attached to a foundation or the ground so that the sign and its support create no danger to life or limb.

B. Signs in residential districts. There shall be no advertising signs in any residential district, except for:

- (1) Real estate "for sale" and "for rent" signs and related directional signs.
- (2) Accessory use signs as provided in Subsection C of this section.
- (3) Signs for nonconforming businesses that are located in residential districts. These signs shall carry the same restrictions as signs in the Limited Business District (Subsection D).
- (4) Signs for proposed subdivision projects. These signs shall include the name of the developer, the size and scope of the proposed subdivision, as well as the date of the definitive subdivision hearing. The sign shall have an aggregate area of 48 square feet and shall be located on the subdivision's proposed access front.
[Added 4-28-1997 ATM by Art. 34]

C. Residential accessory use signs. Signs for residential accessory uses may be permitted as follows:

- (1) No more than one sign is allowed.
- (2) No sign shall be larger than two square feet of surface per side.
- (3) No illumination shall be greater than a 175 watt incandescent bulb, or equivalent, per side.
- (4) No illumination shall be directed anywhere but on the sign face, and the illumination source shall be suitably concealed by a reflecting shield.

D. Signs permitted in General Business (GB), Marine Business (MB), Limited Industrial (LI), and Limited Business Districts (LB).

- (1) Each business or industrial establishment may display at each of its locations a total of two signs selected from the following:
 - (a) One wall- or roof-mounted sign having an aggregate face area of not more than 24 square feet in the GB, MB and LI and not more than 12 square feet in the LB.
 - (b) One projecting double-faced sign, each face having an aggregate face area of not more than 12 square feet in the GB, MB, LI and LB.
 - (c) One freestanding double-faced sign, each face having an aggregate face area of not more than 12 square feet in the GB, MB, LI and LB.
 - (d) If a business faces and operates with more than one geographic front for public access, it may have any two of the above signs on one public access geographic front and any one of the above on its other public access front.
 - (e) If a business is required to display a brand name, an unilluminated wall-mounted sign showing the brand name and not exceeding four square feet may be displayed in addition to the signs allowed in Subsection D(1)(a), (b) and (c) above. A maximum of two brand name signs is allowed.

- (2) Where more than one business is located in a building or buildings on the same lot or contiguous lots, owned and operated as a unit, one freestanding sign for each main building, not exceeding 25 square feet of face area per side in the GB, MB and LI and 15 square feet of face area per side in the LB, may be provided in lieu of the individual business freestanding sign allowed in Subsection **D(1)(c)** and in addition to either the wall- or roof-mounted or projecting sign for each business allowed in Subsection **D(1)(a)** or **(b)** above.
 - (3) Non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.
 - (4) Temporary banners across a street or on a building, or any other temporary sign, may be displayed for a maximum of 15 days per event or activity when such sign is used to inform the public of an activity or event sponsored by any government agency or civic, charitable, religious, patriotic, fraternal or nonprofit organization.
 - (5) Real estate "for sale" and "for rent" signs and off-premises related directional signs.
 - (6) Signs associated with an approved stand for farm produce not exceeding 12 square feet in total area.
- E. Signs for gasoline filling and service stations and marine fuel stations. The following signs, customary and necessary to the operation of filling and service stations, are permitted:
- (1) All signs required by federal, state and municipal laws and regulations.
 - (2) A credit card sign not to exceed two square feet in area, affixed to the building, or the gasoline pumps or permanent sign structure or non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.
 - (3) One sign bearing the brand name or the trade name of the station, of a design specified by the vendor, permanently affixed to the building or its own metal substructure, said sign not to exceed 25 square feet in area in the GB, MB, and LI and 15 square feet in the LB.
- F. Signs allowed by special permit (See § 230-7.4.). The Zoning Board of Appeals, in evaluating requests for special permits for signs not permitted in Article VI, shall weigh equally the community's concern that commercial signage be minimized and the right of businesses to advertise and that departure from the limitations of Article VI shall not ordinarily be granted without a clear showing of business hardship. The following signs may be allowed by special permit:
- (1) Off-property directional or advertising signs other than those permitted in Subsection B.
 - (2) More than the number of signs allowed on a property as allowed in Subsection D.
 - (3) Signs larger than the permitted size.
 - (4) Community service signs that seek to inform the community of upcoming events are permitted, provided that no such sign shall be permitted which would habitually be detrimental or offensive or tend to reduce property values in the immediate neighborhood. Signs shall remain for no longer than 45 days. Such period may be extended for an additional forty-five-day period by the special permit granting authority upon the written request of the applicant.
[Added 4-28-1997 ATM by Art. 34]
- G. Prohibited signs. The below-listed signs and conditions are prohibited in all districts, unless specifically allowed in other sections of this bylaw:
- (1) Signs simulating those signs normally erected by various governmental agencies for the protection of public health or safety.
 - (2) Signs which interfere with the free and clear vision of any street or driveway.

- (3) Freestanding signs within 10 feet of any side or rear lot line, 30 feet to street corners and within 50 feet of any residential zoning boundary.
- (4) Signs or advertising devices, including lighting, which interfere with radio or TV reception.
- (5) Illuminated signs or lighting devices that allow light beams or reflected lights to cause glow or reflections that can constitute a traffic hazard or a public nuisance.
- (6) Billboards.
- (7) Animated signs and/or flashing signs or advertising devices which create intermittent or varying light intensity, and signs with movement, including revolving signs, actuated by mechanical or electrical devices. This prohibition also applies to signs and devices located within a building, but visible on its exterior. Signs must be stationary and shall not move nor oscillate nor contain any visible moving parts.
- (8) Illumination of a wall, roof or gable for purposes of advertising (Temporary holiday decorations are excluded from this prohibition.).
- (9) Portable or mobile type signs, including sandwich-type and cardboard signs.
- (10) A string of three or more banners, streamers, pennants and similar devices designed to attract attention through the use of bright colors or movement, natural or artificial.

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

§ 230-6.3. Accessory uses.

[Amended 6-18-1990 STM by Art. 12]

Accessory uses customarily incidental to the permitted principal uses on the same premises are permitted, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of noise, dirt, excessive vibration or odor. Accessory uses are permitted only in accordance with lawfully existing principal uses. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under special permit, its accessory use is also subject to the special permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in § 230-9.1, such addition shall also require site plan review and approval.

§ 230-6.4. Home occupations.

- A. General provisions. A home occupation is considered an accessory use to a residential property in all zones. A special permit is required in a Limited Industrial Zone. A home occupation shall be incidental to the principal use as a residence, but need not be a use that is customarily associate with residential use. Except as specifically authorized by special permit, home occupations, as defined in § 230-11 of this bylaw, are permitted subject to the following conditions.
- B. Limitation of area. The occupation or profession shall be carried on wholly within the principal building, provided that an area no larger than 25% of the floor area of the residence is used for the purpose of the home occupation or the professional use. Also permitted is the use of up to 2,000 square feet of a lot, including an accessory building thereon in connection with a trade.
- C. Permitted home occupations. Home activities may include, but are not limited to, the following: art studio, dressmaker, millinery, handcrafts, musician, professional office of lawyer, engineer, architect, landscape architect, clergyman, certified public accountant, information technology, clerical, telephone or mail services within a dwelling occupied by same. Also permitted are trades such as carpenter,

electrician, painter, plumber, or any other artisan, provided that no manufacturing or business use requiring substantially continuous employment is carried on. Farm, market garden, nursery or greenhouse and the sale of products, the major portion of which is grown on premises, are permitted.

- D. Prohibited home occupations. Home activities may not include, but are not limited to, the following: clinic, restaurant, convalescent home, or animal hospital.
- E. Requirements. The home occupation is allowed as-of-right, provided that it:
 - (1) Does not exhibit any exterior indication of its presence nor alter the residential appearance except for signage in compliance with these bylaws.
 - (2) Is conducted solely within a dwelling (permanent) or accessory building and solely by the person(s) occupying the dwelling as a primary residence and, in addition to the resident(s) of the premises, by not more than two employees.
 - (3) Is clearly incidental and subordinate to the use of the premises for residential purposes and does not produce vehicle traffic greater than that associated with a residential use.
 - (4) Does not create a health or safety hazard nor produce offensive noise, vibration, smoke, dust, odors, heat, lighting, and no electrical interference or environmental pollution.
 - (5) Provides adequate parking for additional vehicles associated with the home occupation.
 - (6) Is registered as a business with the Town Clerk.

§ 230-6.5. Off-street parking and loading.

[Amended 4-23-1985 ATM by Art. 20; 4-22-1996 ATM by Art. 28; 3-10-1997 STM by Art. S15; 4-28-1997 ATM by Art. 33]

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

- A. Reduction of parking requirement by special permit. Notwithstanding the provisions of § 230-6.5, the Planning Board may, by special permit, reduce the number of parking spaces required for nonresidential uses upon its determination that the intended use of the premises can be adequately served by fewer spaces. The Planning Board may consider on-street parking available near the premises as a factor in making this determination.
- B. Off-street parking in the Limited Business District. Notwithstanding the provisions of § 230-6.5, uses located within the Limited Business District need only supply 70% of the parking requirement set forth in the Table of Parking Requirements.
- C. Table of Parking Requirements. Parking shall be provided in accordance with the following schedule:

Principal Use	Minimum Number of Parking Spaces
General retail	1 per 200 square feet of gross floor area
Retail sales accessory to industrial use (less than 2,000 square feet of retail space)	1 per 500 square feet of gross floor area devoted to retail sales
Boat sales and service	1 per 5,000 square feet of indoor or outdoor area devoted to display, sales, service or storage
Printing and publishing	1 per 500 square feet of gross floor area
Medical office	1 per 150 square feet of gross floor area for medical and dental offices
General office	1 per 250 square feet of gross floor area

Principal Use	Minimum Number of Parking Spaces
Restaurant	1 per 2 seats, plus 1 per 2 employees on the largest shift
Research and development, manufacturing or industrial	1 per 500 square feet of gross floor area or 1 per employee, whichever is greater
Warehousing and storage	1 per 2 employees, but not less than 1 space per 5,000 square feet of area devoted to indoor or outdoor storage
Inn and bed-and-breakfast	1 per sleeping room, plus 1 per 2 employees, plus 1 for the owner
School or day-care facility	1 per 4 occupants, plus 1 per 2 employees
Church, library, museum or similar place of assembly	1 per 8 occupants, plus 1 per 2 employees
Bank	1 per 175 square feet of gross floor area
Home occupation	1 per room used for office, plus 1 per nonresident employee (in addition to parking spaces for the principal residential use)
Motor vehicle service station	2 per service bay, plus 1 per employee
Dwelling unit	2 per dwelling unit

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

D. Parking lot design.

- (1) Required parking areas shall not be located forward of any building front line on the lot, or on an adjacent lot;
- (2) Parking spaces shall be at least nine feet by 18 feet;
[Amended 4-22-1996 ATM by Art. 28]
- (3) In parking areas with eight or more spaces, individual spaces shall be delineated by painted lines, wheel stops or other means;
- (4) For parking areas of 15 or more spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per three parking spaces or fraction thereof. Such bicycle rack(s) may be located within the parking area or in another suitable location as deemed appropriate by the Planning Board.
- (5) Parking lot aisles shall be designed in conformance with the following:

Parking Angle	Minimum Aisle Width (feet)	
	One-Way Traffic	Two-Way Traffic
0° (parallel)	12	20
30°	13	20
45°	14	21
60°	18	23
90°	24	24

- (6) All artificial lighting shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. All parking facilities which are used at night shall be lighted as evenly as possible within the wattage limits established by the State Building Code. All light shall be confined to the site and shall comply with the dark skies provisions set forth in § 230-9.11, Site plan details.
[Amended 5-21-2007 ATM by Art. 24]

- (7) Access driveways to nonresidential premises shall meet the width and vertical clearance requirements of the National Fire Protection Association (NFPA). Driveways shall not exceed 24 feet in width; provided, however, that driveways serving two-way traffic may be reduced to 10 feet in width when the driveway does not exceed 50 feet in length, does not serve more than five parking spaces, and provides sufficient turnaround so as not to require backing onto a public way.
[Amended 10-15-2001 STM by Art. S12]
- (8) Parking facilities shall provide specially designated parking stalls for the physically handicapped in accordance with the Rules and Regulations of the Architectural Access Board of the Commonwealth of Massachusetts Department of Public Safety or any agency superseding such agency. Handicapped stalls shall be clearly identified by a sign stating that such stalls are reserved for physically handicapped persons. Said stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Adequate access for the handicapped from the parking facility to the structure shall be provided.
- (9) To the extent feasible, lots and parking areas shall be served by common private access ways, in order to minimize the number of curb cuts. Such common access ways shall be in conformance with the functional standards of the Subdivision Rules and Regulations of the Planning Board for road construction, sidewalks and drainage.^[1] Proposed documentation (in the form of easements, covenants or contracts) shall be submitted with the application, demonstrating that proper maintenance, repair and apportionment of liability for the common access way and shared parking areas has been agreed upon by all lot owners proposing to use the common access way. Common access ways may serve any number of adjacent parcels deemed appropriate by the Planning Board.
^[1] *Editors' Note: See Ch. 300, Subdivision Regulations.*

§ 230-6.6. Visual screening.

[Amended 4-28-1997 ATM by Art. 35]

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

- A. Off-street open parking areas of 10 or more spaces or more than two trucks or other construction vehicles continually parked in or adjacent to a residential district.
- B. All exterior storage areas exceeding 400 square feet in or adjacent to a residential district.
- C. All exterior service areas of a business or industrial use.

§ 230-6.7. Mobile homes and trailers.

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

- A. A mobile home or trailer may be parked or stored on a lot occupied by the owners if located within a garage or an accessory building, or if located at least 25 feet from any property line in the rear half of the lot. Use and occupancy for living or business purposes is prohibited, except as permitted by MGL c. 40A, § 3 to accommodate an owner or occupier whose residence has been destroyed by fire or other natural causes while the residence is being rebuilt.
- B. Temporary use. Temporary occupancy of a trailer or mobile home by a nonpaying guest of the owner or occupant of the land may be permitted by the Board of Selectmen for a period not to exceed two weeks in any calendar year and an additional two-week permit may be granted by the Board of Selectmen. Temporary use and occupancy of a mobile home as an office or dwelling incidental to construction on the site may be authorized by special permit, which must be approved and signed by the Board of Health for a term not to exceed two years.

§ 230-6.8. Commercial utilities.

[Added 10-15-2001 STM by Art. S10]

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

Article VII. Uses by Special Permit

§ 230-7.1. Special permit granting authority (SPGA).

- A. The Board of Appeals or such other board designated a special permit granting authority shall hear and decide upon the applications for the specific special permits authorized by this bylaw.
- B. Distribution and review of special permit applications.
[Added 4-4-1989 STM by Art. 10]
 - (1) Within five days after receipt of an application for special permit, the special permit granting authority shall transmit copies thereof, together with copies of the accompanying plans, to the Planning Board (when it is not the special permit granting authority), the Conservation Commission, the Board of Selectmen (when it is not the special permit granting authority), the Board of Health and such other municipal boards or agencies as the special permit granting authority may designate by rule or regulation. All such boards shall investigate the application and report in writing their recommendations to the issuing special permit granting authority.
 - (2) The special permit granting authority shall not take final action on such application until it has received a report thereon from any of the boards listed above or until said boards have allowed 21 days to elapse after the receipt of such application without submission of a report; provided, however, that the Planning Board shall have 45 days from its receipt of a site plan to render and transmit its decision to the special permit granting authority. Such period may be extended upon the written request of the applicant, and, in such cases, the special permit granting authority shall request of the applicant a corresponding extension of time for its final action.

§ 230-7.2. General requirements.

[Amended 11-19-1985 STM by Art. 8; 3-10-1997 STM by Art. S14]

- A. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of each of the following:
 - (1) Social, economic or community needs which are served by the proposal;
 - (2) Traffic flow and safety, including parking and loading;
 - (3) Adequacy of utilities and other public services;
 - (4) Neighborhood character and social structures;
 - (5) Impacts on the natural environment; and
 - (6) Potential fiscal impact, including impact on Town services, tax base, and employment.
- B. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use as the special permit granting authority may deem necessary to serve the purposes of this bylaw. Special permits shall lapse 36 months following final action (plus such time required to pursue or await the determination of an appeal referred to MGL c. 40A, § 17, from the grant thereof) if a substantial use thereof has not commenced nor construction begun, except for good cause.

§ 230-7.3. Public hearings.

- A. A special permit granting authority shall grant special permits only after public hearings held in conformity with the provisions of Chapter 40A of the General Laws, including due notice to parties in interest, the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner, as shown on the most recent applicable tax list (including any such owner of property in another city or town), the Planning Board of the Town of Marion, and the Planning Boards of the Towns of Mattapoissett, Rochester and Wareham.
- B. The procedure for the issuance of special permits, including applications, notices, public hearing, filing of decisions and other procedural requirements, shall be as provided in Chapter 40A of the General Laws and in the rules to be adopted by the special permit granting authority and filed with the Town Clerk in accordance with said Chapter 40A.

§ 230-7.4. Uses authorized by special permit.

[Amended 11-19-1985 STM by Arts. 8, 9; 3-28-1989 STM by Art. 5; 4-22-1991 ATM by Art. 18; 4-22-1996 ATM by Art. 27; 3-10-1997 STM by Art. S14; 11-13-2000 STM by Art. S7; 10-15-2001 STM by Art. S13; 4-22-2002 ATM by Art. 21]
Where eligible for consideration in the Table of Principal Uses, applications for the following types of special permits shall be governed by these rules:

- A. Bed-and-breakfast establishments.
 - (1) An owner or owners of a residence may apply for a special permit for a bed-and-breakfast establishment.
 - (2) The special permit granting authority (SPGA):
 - (a) Shall make a finding that the issuance of a special permit use shall not result in increased congestion or other adverse impacts which will tend to reduce neighborhood amenities or the value of surrounding properties.
 - (b) Shall make a finding that the issuance of a special permit shall not make existing wastewater systems inadequate and will cause no undue crowding on or near the site in order to provide required parking space.
 - (c) May allow up to, but no more than, four guest rooms per property.
 - (d) Shall permit that breakfast may be the only meal served in such facility and that only guests residing in the structure may be served.
 - (e) Shall require that the off-street parking ratio be one space per guest room with no less than one additional space for the owner. Parking to accommodate bed-and-breakfast clients shall not be located within the front yard between the residence and the street line except where the Board of Appeals finds that due to the considerable setback of the building from the street or other unique conditions pertaining to the lot, alternative off-street parking arrangements, such as an existing driveway, will not be detrimental to the neighborhood.
 - (f) May find that in areas where there are small lots and a need to prevent excessive paving of yard areas, one or more of the required guest parking space requirements may be satisfied by the use of curbside parking where the Board of Appeals determines that there will be no significant adverse impact on the neighborhood or any individual abutter.
 - (g) Shall require that the residence shall be managed by an owner residing on the property.
 - (h) Shall state that the special permit shall not be transferable to a subsequent owner or another property.

- (i) Shall require that guests shall register upon arrival, stating their names and current residence address. The registration form shall be kept by the owner for a period of two years and shall be made available for a representative of the Town of Marion upon one day's notice.
- (j) Shall require that signs for bed-and-breakfast operations shall be consistent with those allowed for accessory uses in a residential district. See § **230-6.2**.
- (k) Shall require that the establishment must comply with all necessary state or local permits and licenses.^[1]

[1] *Editor's Note: Original Sec. 7.4.2, Conversion of a dwelling, which immediately followed this subsection, was repealed 4-26-2005 ATM by Art. 31.*

- B. Industry and manufacturing. No special permit shall be granted for any manufacturing use which would be detrimental, offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.^[2]

[2] *Editor's Note: Original Sec. 7.4.4, Nonconforming uses, which immediately followed this subsection, was repealed 4-29-2003 STM by Art. S6.*

- C. Piers as an accessory use. An accessory pier serving a single-family residence located on the same lot or an accessory pier in the Marine Business District may be approved by the Planning Board pursuant to the special permit regulations of this bylaw, provided that:

- (1) The Planning Board gives due consideration to the recommendations of the Marine Resources Commission and Conservation Commission.
- (2) The accessory use will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
- (3) Alternatives in the form of an association pier or public pier are not reasonably available.
- (4) The lot for which the permit is sought fully conforms with the current area and frontage requirements for the district in which it is located or was lawfully in existence on May 1, 1996, at which time the lot conformed with the then-current area and frontage requirements for the district in which it was located.

[Amended 5-21-2012 ATM by Art. 32]

- D. Association piers. An association pier may be granted a special permit, provided that:

- (1) Evidence is provided in the form of deed restrictions which restrict use of the pier to a defined geographical area or development. The developer shall include in the deed to the owners of individual lots within the defined areas beneficial rights to such association pier.
- (2) There are provisions assuring the maintenance of the pier facilities by the developer until taken over by a homeowners' association.
- (3) There are adequate provisions for assuring maintenance of the pier facilities by the homeowners' association. The Planning Board's attention is called to the requirements of § **230-8.5D**, which generally would be applicable to an association maintaining a pier.
- (4) Due consideration has been given to screening any parking areas from adjoining or nearby residences.
- (5) The lot meets the minimum requirements for a single-family house lot in the district or was lawfully in existence on May 1, 1996, at which time the lot conformed with the then-current area and frontage requirements for the district in which it was located.

[Amended 5-21-2012 ATM by Art. 33]

- (6) There is no clubhouse facility.

- (7) Due consideration has been given to the report and recommendations of the Marine Resources Commission and the Conservation Commission.
- E. Structural features exceeding 65 feet high. The Board of Appeals may grant a special permit where certain structures exceed 65 feet in height and are not in any way for living purposes. This applies to accessory features such as chimneys, ventilators, skylights, water tanks, bulkheads, domes, towers, and spires usually carried above roofs. It does not apply to wireless communications facilities.
- F. Multiple-unit rental housing. The Planning Board may grant a special permit to allow for rental housing units on the second or third floor of an existing structure lawfully in existence as of the date of adoption of this subsection, provided the following criteria are met:
[Added 4-26-2005 ATM by Art. 32]
- (1) The structure is located in one of the following zoning districts: Limited Industrial, Limited Business, Marine Business or General Business, and the first floor shall be used for commercial purposes.
 - (2) The structure was designed and principally constructed prior to 1931 or any structure constructed thereafter that can demonstrate historical significance to the Town of Marion.
 - (3) The structure has a preexisting second and/or third floor that can accommodate multiple rental units.
 - (4) The converted or altered structure shall conform to the historic architectural design and facade of the existing structure.
 - (5) The proposed conversion or alteration of the structure will not cause an increase in the height of the existing structure by more than 15% of the existing structure.
 - (6) The proposed conversion or alteration will not increase the total square footage of the interior area of the existing structure by more than 15% of the existing structure.
 - (7) The proposed conversion or alteration receives site plan review and approval from the Planning Board.
 - (8) The special permit shall become null and void and subject to immediate revocation if the rental units are ever converted to fee simple or interval ownership dwellings.
 - (9) The Planning Board may approve greater than two rental units, but shall require as a condition of said approval that no less than 25% of the rental units approved be rented as affordable housing units in compliance with the definition of "affordable housing unit" in § 230-8.12B.

§ 230-7.5. Special permits applicable to certain uses in Limited Business District.

[Added 11-19-1985 STM by Art. 8]

- A. A use designated by § 230-4.2 as subject to this § 230-7.5 or the change or expansion of such a use, or the construction of, or addition to, any structure associated with such a use, shall be permitted only upon the issuance of a special permit pursuant to this section.
- B. The Board of Appeals shall issue such a permit upon a finding that:
- (1) The intended use or structure will not cause any of the following:
 - (a) Congestion in the streets that causes an adverse impact on vehicular traffic flow;
 - (b) Danger to public health or safety;
 - (c) Demands on the supply of public services beyond their capacity;

- (2) The proposed structure is no higher than any building on all adjoining lots; and
 - (3) The distance between all points on the side and rear of the proposed structure and all points on the side and rear of all buildings on all adjoining lots shall be no less than 20 feet.
- C. Except as otherwise stated in this section, the provision of this § **230-7.5** shall be in addition to the requirements of any other provision of this bylaw, including the general and specific provisions of § **230-7.4** where applicable.

§ 230-7.6. Additional special permit regulations.

[Added 4-4-1989 STM by Art. 9; amended 4-27-1999 ATM by Art. 20]

Additional regulations of a more detailed nature in which special permits are authorized by this bylaw are included in other sections as follows:

- A. Section **230-8.2**, Water Supply Protection District.
- B. Section 230-8.3, Towers, windmills, radio transmitters, etc.
- C. Section **230-8.4**, Rear lots.
- D. Section **230-8.5**, Surface Water District.
- E. Section **230-8.6**, Accessory apartments.
- F. Section **230-8.8**, Adult uses.
- G. Section **230-8.9**, Driveways.
- H. Section 230-8.12, Inclusionary housing.
- I. Article **X**, Conservation Subdivisions.

Article VIII. Special Provisions

§ 230-8.1. Flood Hazard District.

[Amended 12-15-1987 STM by Art. 15; 4-25-1988 ATM by Art. 26]

The intent of this bylaw is to prevent unnecessary loss of life or injury to waterfront residents, to reduce the need for rescue efforts and to prevent destruction of property by ocean water, waves and debris landward by high-wind storms.

The Floodplain/Flood Hazard District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Marion designated as Zone A, AE, AO, or VE on the Plymouth County Flood Insurance 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 Plymouth County FIRM that are wholly or partially within the Town of Marion are panel numbers 25023Co468J, 25023Co469J, 25023Co556J, 25023Co558J, 25023Co566J, 25023Co586J, and 25023Co587J dated July 17, 2012, and panel numbers 25023Co557K, 25023Co559K, 25023Co567K, 25023Co576K, 25023Co578K, and 25023Co579K dated February 5, 2014. The exact boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 17, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Marion Town Clerk.

- A. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in the floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- B. All subdivision proposals must be designed to assure that:
- (1) Such proposals minimize flood damage;
 - (2) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (3) Adequate drainage is provided to reduce exposure to flood hazards.
- C. The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and nonstructural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, § 40, of the Massachusetts General Laws and with the following:
- (1) Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal hazard areas;
 - (2) Wetlands Protection Regulations, Department of Environmental Protection, DEP (currently 310 CMR 10.00);
 - (3) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
 - (4) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
 - (5) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.00).
Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.
- D. Within riverine floodplains, the Building Commissioner or his/her designee shall notify the following of any alteration or relocation of a watercourse: 1) abutting cities and towns; 2) NFIP State Coordinator (c/o Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104) and the 3) NFIP Program Specialist (c/o Federal Emergency Management Agency, Region I, 99 High Street, 6th Floor, Boston, MA)
- E. Specific Marion requirements:
- (1) There shall be no new residential construction of any sort on lots completely within the Marion Velocity Zone. The only exceptions are:
 - (a) Seawalls, piers, groins, wharves, weirs and similar structures are not prohibited by this section; and
 - (b) Lots created before the enactment of this bylaw whose areas lie completely within the Velocity Zone may be built upon, providing the structure(s) is located as far landward of mean high water as possible.
 - (2) In the case of lots created before the date of enactment of this bylaw and with areas both in the Velocity Zone and outside the Velocity Zone, all structures built after the enactment of this bylaw shall be located in the area outside the Velocity Zone. If this area is not sufficient to allow for the required zoning setbacks, the applicant may apply for a variance to allow lesser setbacks. The only exceptions are seawalls, piers, groins, wharves, weirs and similar structures.
 - (3) Every buildable lot created after the enactment of this bylaw shall have an adequate building area, plus the required setbacks outside the Velocity Zone, and all structures shall be placed within this area. The only exceptions are: seawalls, piers, groins, wharves, weirs and similar structures.
 - (4) New construction or substantial improvements of residential structures within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one-hundred-year flood.

- (5) New construction or substantial improvements of nonresidential building within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one-hundred-year flood, or together with attendant utility and sanitary facilities, be flood-proofed to meet applicable requirements up to the level of the one-hundred-year flood.
 - (6) The landward line of the Velocity Zone must be located on the official lot plan by a licensed surveyor and registered with the plan at the Massachusetts Registry of Deeds.
 - (7) Any use otherwise permitted or authorized by special permit in the district underlying the Flood Hazard District shall likewise be permitted or authorized by special permit in the Flood Hazard District subject to the special provisions of this section.
- F. Any use otherwise permitted or authorized by special permit in the district underlying the Flood Hazard District shall likewise be permitted or authorized by special permit in the Flood Hazard District subject to the special provisions of this section.

§ 230-8.2. Water Supply Protection District.

- A. District area (see Article III).
[Amended 6-18-1990 STM by Art. 3]
- (1) There is hereby established within the Town an aquifer protection area which is delineated on the Zoning Map of the Town of Marion, dated May 12, 2014.
[Amended 5-12-2014 ATM by Art. 39]
 - (2) Except as specifically provided otherwise, this section applies to the Water Supply and Aquifer Protection Districts hereby established. The Water Supply and Aquifer Protection Districts are superimposed on existing zoning districts. All uses, dimensional requirements, and other provisions of the bylaw applicable to such underlying districts shall remain in force and effect, except where the restrictions and requirements of the overlay district are more restrictive, the latter shall prevail.
 - (3) The purpose of the Water Supply and Aquifer Protection Districts is to promote the health, safety, and general welfare of the Town to protect, preserve, and maintain the existing and potential well sites and groundwater supply and watershed areas for the public health and safety; to preserve and maintain the existing and potential groundwater supply and ground water recharge areas within the Town for the public health and safety; to preserve and protect the streams, brooks, rills, marshes, swamps, bogs and other water bodies and watercourses in the Town; to protect the community from the detrimental use and development of land and water within the district; to preserve and protect the groundwater and water recharge areas within the Town; and to prevent blight and pollution of the environment.
- B. Permitted uses.
[Amended 6-18-1990 STM by Art. 3]
- (1) Within the Aquifer Protection District the only uses allowed are as follows:
 - (a) A single-family residence and uses accessory thereto connected to the municipal sewer prior to occupancy, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.
 - (b) A single-family residence and uses accessory thereto located on a lot not less than one acre in area, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.
 - (2) Within the Water Supply Protection District the requirements of the underlying districts continue to apply, except that uses listed in Subsection C are prohibited and all uses other than single-family residences and uses accessory thereto shall require a special permit pursuant to Subsection D.

- C. Prohibited uses. The following are prohibited as a principal or an accessory use in a Water Supply Protection District. Where lawfully existing, such uses may be continued but not expanded, added to, or enlarged:
- (1) Outdoor storage of salt, snow-melting chemicals, pesticides, herbicides, hazardous wastes or chemicals, and materials containing or coated with such chemicals susceptible to being carried into the surface or ground waters within the Water Supply Protection District.
 - (2) Junkyards, salvage yards, open and landfill dumps, manufacture of pesticides, fertilizers, weed killers and herbicides, and commercial facilities for the storage or treatment of hazardous waste.
 - (3) Disposal of hazardous toxic materials (as defined by federal and state regulations), solid waste, or hazardous toxic wastewater through an on-site subsurface disposal system.
- D. Uses by special permit.
[Amended 6-18-1990 STM by Art. 3]
- (1) All principal or accessory uses, other than those permitted in Subsection **B**, which are authorized in the underlying district and which are not otherwise prohibited by Subsection **C**, are permitted in a Water Supply Protection District upon issuance of a special permit by the Board of Selectmen, which shall consider the reports and recommendations of the Board of Health, Planning Board, and Conservation Commission.
 - (2) The Board of Selectmen may waive all or part of the submission requirements upon the submission of evidence by the applicant that the surface or groundwater drainage from the applicant's site is not contributory to a municipal well field.
 - (3) Submittals. The following information shall be submitted when applying for a special permit within the Water Supply Protection District:
 - (a) A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous material to be used and stored in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect them from vandalism, corrosion, and leakage and to provide for spill prevention and countermeasures.
 - (b) A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal method.
 - (c) For underground storage of toxic and hazardous materials, evidence of qualified professional supervision of system design and installation.
 - (4) Review and approval considerations.
 - (a) Special permits shall be granted only if the Board of Selectmen determined that at the boundaries of the premises the groundwater quality resulting from the on-site waste disposal, other on-site operations, natural recharge, and background water quality will not fall below the standards established by the DEP in "Drinking Water Standards of Massachusetts" or, for parameters where no standard exists, below standards established by the Board of Health, and wherever existing groundwater is already below those standards, upon determination that the proposed activity will result in no further degradation.
 - (b) A special permit issued by the Board of Selectmen shall be conditioned upon the following additional limitations to protect the water supply:
 - [1] Safeguards. Provisions shall be made to protect against toxic or hazardous materials discharged or lost through corrosion, accidental damage, spillage or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, secure storage areas for toxic or hazardous materials, and indoor storage provision for corrodible or dissolvable materials.

- [2] Location. Where the premises are partially outside the Water Supply Protection District, such potential pollution sources as on-site waste disposal systems shall, to the degree feasible, be located outside the district.
 - [3] 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 MGL c. 21C.
 - [4] Drainage. All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination.
 - [5] Monitor test wells. Where fertilizers, pesticides, herbicides or other potential contaminants are to be applied, utilized or stored, and in the opinion of the Board of Selectmen are a matter of concern, a groundwater monitoring program shall be established before the special permit is granted. Such a program shall adequately monitor the quality of the groundwater leaving the site through the use of monitor wells and/or appropriate groundwater sample analysis.
 - [6] Natural vegetation. Not more than 50% of natural vegetation, existing as of the effective date (June 18, 1990) of the adoption of this amendment to the bylaw on any lot, may be disturbed in any underlying district. However, to the extent that there is a finding that surface or groundwater drainage activity from the applicant's proposed use or activity on the site has decreasing, minimal or no impact on the municipal well field, the Board of Selectmen may relax the requirements of the preceding sentence, but in no event to a standard which is less restrictive than that set forth in the "minimum usable open space" paragraph of § 230-5.3B(2).
 - [7] Technical reference. The Board of Selectmen and applicants shall use the following technical references in the preparation and review of plans under this section: 310 CMR 22.00.
- (5) Additional rules and regulations. The Board of Selectmen shall adopt additional rules and regulations relative to the issuance of a special permit under this section. Such rules shall consider, but need not be limited to, requirements to control causes of pollution to underground surface water.

§ 230-8.3.A. Towers, windmills and radio transmitters.

[Amended 5-7-2010 ATM by Art. 27]

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

- A. Generating capacity in residential areas. Windmills for generation of electricity in residential areas shall have a maximum generating capacity of twice the requirements of the property owner of the same lot.
- B. Setback requirements.
 - (1) Setback. The minimum setback distance for all towers from any abutter's property line shall be (and shall continue to be for the life of the installation) at least equal to the maximum height of the tower and its tower-mounted equipment plus 20 feet. Setbacks will be measured to the tower base.
 - (2) The Board of Appeals may grant a special permit for installations which do not meet the setback requirements if:
 - (a) All other conditions of this bylaw are met; and

- (b) The waiver of the setback requirement does not, in the opinion of the Board, create a safety hazard and/or derogate substantially from the public good.
- C. Tower height. All freestanding towers exceeding 35 feet in height and all towers exceeding 65 feet from grade when mounted on buildings require a special permit from the Board of Appeals. Special permits may be issued if the applicant can demonstrate to the Board that:
 - (1) It is necessary to extend higher than the limit for effective operation of the equipment to be mounted on the tower;
 - (2) The installation will not derogate substantially from the public good.
- D. Tower access. Climbing access to the tower shall be restricted by limiting tower climbing apparatus to no lower than 10 feet from the ground, or, for towers that are climbable without climbing apparatus, the lowest 10 feet shall be covered with a smooth, unclimbable surface.
- E. Maintenance. If a tower is designated a safety hazard by a registered professional structural or civil engineer, or if a tower is abandoned for more than two years, the owner of said tower shall be required to dismantle the tower. All tower-mounted equipment shall be operated in a safe and responsible manner.
- F. Radio/Television interference. The applicant shall furnish the Building Commissioner or the Board of Appeals, if required as a condition to a special permit, a written commitment that any interference caused by the tower or equipment on the tower to local radio and/or television reception will be corrected within 60 days at the applicant's expense. If, in the opinion of the Board of Selectmen, noise is found to be excessive, as observed at the lot line of the lot on which the device is located, the owner shall reduce the noise to an acceptable level. Failure to comply with this subsection shall constitute just cause requiring the structure to be immediately removed.
- G. Certification of structural design. Applicants for permits for towers must have the design of the tower certified as structurally safe by a registered professional structural or civil engineer before the permit can be issued.

§ 230-8.3.B. Land-based commercial and public-partnered wind turbines.

[Amended 5-17-2010 ATM by Art. 27]

- A. Application. This bylaw shall be limited in its use and application to only an applicant that has been formed and established as a partnership or similar business entity between a commercial or nonprofit organization and the Town of Marion pursuant to a written agreement which sets forth the terms and conditions of said partnership, and which has been approved and formally executed on behalf of the Town of Marion by the Board of Selectmen, with the advice and counsel of the Alternative Energy Committee.
- B. Generating capacity. Land-based commercial-sized wind turbine facilities are defined as those turbines with a rated power greater than 60 kilowatts (60kW).
- C. General requirements. Proposed wind turbine installations shall be consistent with all applicable Town, state and federal requirements, including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements. The installation and operation of a wind turbine shall require the issuance of a special permit issued by the Board of Appeals (ZBA) pursuant to the requirements of § 230-7.2 of the Zoning Bylaw and those additional conditions contained in § 230-8.3B, Subsection L, below.
- D. Dimensional requirements.
 - (1) Height. In no case shall the height of the tower exceed 480 feet. Site-specific requirements, see Subsection D(2) and (3) below, may require a lesser height. The height of a wind turbine shall be

measured from natural grade to the tip of the rotor blade at its tallest point, or blade-tip length.

- (2) Clear area: the area of a circle centered at the base of the wind turbine tower and having a radius equal to 1.0 times the height of the wind turbine. This area shall be clear of all buildings, critical infrastructure, or private or public ways that are not part of the wind turbine facility.
- (3) Setback. The minimum distance from the nearest property line or residence to the center or base of the wind turbine shall be equal to three times the height of the wind turbine. The ZBA may reduce the minimum setback distance as appropriate based on site-specific considerations or written consent of the affected abutter(s) if the project satisfies all other criteria for granting of a building permit under the provisions of this section.

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

F. Visual requirements.

- (1) Unless required by the Federal Aviation Administration (FAA), wind turbines shall not be lighted on a continuous basis. Lighting of equipment, structures, and any other facilities on site (except lighting required by the FAA) shall be shielded from abutting properties.
- (2) The wind turbine structure shall be free of all company logos, advertising, and similar promotional markings. Signs on the facility shall be limited to those needed to warn of any danger; and educational signs providing information on the technology. All signs shall comply with the requirements of the Town's sign regulations.^[1]
- (3) The applicant shall minimize any impact on the visual character of surrounding neighborhoods and the community by painting the wind turbine structure a nonreflective color that blends with the surroundings. Wind energy facilities shall be sited and/or operated in a manner that minimizes shadowing or flicker impacts on the neighboring or adjacent uses.

[1] *Editor's Note: See § 230-6.2, Signs.*

G. Safety.

- (1) No hazardous materials or waste shall be discharged on the site of any wind turbine facility. If any hazardous materials or wastes are to be used on the site, the special permit shall incorporate provisions for full containment of such materials or waste. An enclosed containment area, designed to contain at least 110% of the volume of the hazardous materials or waste stored or used on the site, may be required to meet this requirement.
- (2) The wind turbine structure and facility shall also be designed to prevent unauthorized access (for example, by construction of a fenced enclosure or locked access, anti-climbing provisions, etc.).

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

I. Modifications. All modifications to a wind turbine installation made after issuance of the special permit shall require prior approval by the ZBA pursuant to MGL c. 40A, § 9 and the terms and conditions of this bylaw.

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

- K. Monitoring and maintenance. The applicant shall maintain the wind turbine facility installation in good condition using a formal planned maintenance system based on historical experience, good engineering practice, and installed system and performance monitoring instruments. Such maintenance shall also include, but not be limited to, painting, maintaining the structural integrity of the foundation, support structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping, if present.
- L. Special permit.
- (1) A special permit issued by the ZBA for the construction or operation of any wind turbine shall be valid for 20 years, unless extended or renewed. Upon request, the ZBA may extend the time period or renew the special permit if there has been satisfactory operation of the facility. Any special permit issued under this bylaw shall lapse within one year from the grant thereof if construction has not sooner commenced except for good cause as determined by the ZBA. Upon the lapse of a special permit, a new special permit must be issued before construction or installation of the wind turbine may proceed. Upon expiration or termination of the special permit, the owner shall remove the wind turbine facility. A special permit granted for a wind turbine facility requires that the ZBA make written findings as set forth in § 230-7.2 of the Zoning Bylaw and, in addition, conclude that the wind turbine facility will not unreasonably interfere with the use or enjoyment of property abutting the proposed wind turbine facility and property within 300 feet of the location of the wind turbine facility.
 - (2) Pre-application conference. Prior to the submission of an application for a special permit under this regulation, the applicant is strongly encouraged to meet with the ZBA at a public meeting to discuss the proposed wind turbine installation in general terms and to clarify the filing requirements.
 - (3) Pre-application filing requirements. The purpose of the pre-application conference is to inform the ZBA as to the general nature of the proposed wind turbine. As such, no formal filings are required to be presented at the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary drawings or to present manufacturer's drawings and specifications to inform the ZBA of the location and overall design of the proposed facility, as well as its scale, noise levels, and proximity to abutting residential structures.
 - (4) Application filing requirements. At a minimum, the following shall be included with the application for a special permit for each wind turbine. The ZBA may require additional information where it deems necessary to render a decision in the application for a wind turbine.
 - (a) Name, address, telephone number, and original signature (photo-reproductions of signatures will not be accepted) of applicant and any co-applicants. Co-applicants may include the landowner of the subject property or the operator of the wind turbine.
 - (b) If the applicant or co-applicant will be represented by an agent, the name, address and telephone number of the agent shall be provided as well as an original signature authorizing the agent to represent the applicant and/or co-applicant. Photo-reproductions of signatures will not be accepted.
 - (c) Documentation of the legal right to install and use the proposed wind turbine and proof of control over the clear area, as required by Subsection D(1), (2) and (3) of this bylaw. A copy of the recorded deed to the property shall be sufficient for this purpose if the applicant is the record owner of the property.
 - (d) If the property is to be leased or subject to an easement, the applicant shall provide a copy of the lease or easement instrument.
 - (e) Identification of the subject property by including the name of the nearest road or roads, and street address, if any; Assessors map and parcel number of subject property; zoning district designation for the subject parcel with separately submitted locus map; a one-inch-equals-forty-feet vicinity plan, signed and sealed by a licensed professional land surveyor showing the following:

- [1] Property lines for the subject property, and all properties adjacent to the subject property within 300 feet.
- [2] Proposed location of the wind turbine(s), fencing, associated ground equipment, transmission infrastructure and access roads.
- [3] The outline of all existing buildings, including their purpose(s) (e.g., residential buildings, garages, accessory structures, etc.), on the subject property and all adjacent properties within 300 feet, and the distances, at grade, from the proposed wind turbine to each building on the vicinity plan shall be shown.
- [4] Existing (before) condition photographs. A color photograph of the current view shall be submitted from at least two locations to show the existing conditions.
- [5] Proposed (after) condition representations. Each of the existing condition photographs shall have the proposed wind energy conversion facility superimposed on it to accurately simulate the proposed wind energy conversion facility when built and illustrate its total height, width, and breadth.
- [6] For wind turbines with hub heights of 165 feet (50 meters) or greater, sight-line representations must be provided. A sight-line representation shall be drawn from representative locations that show the lowest point of the turbine tower visible from each location. Each sight-line shall be depicted in profile, drawn at one-inch-equals-forty-feet scale. The profiles shall show all the intervening trees and buildings. There shall be at least two sight-line representations illustrating the visibility of the facility from surrounding areas as the closest residence or place of business, or nearby public roads or areas. Documentation of the wind turbine manufacturer and model, rotor diameter, tower height, tower type and foundation type/dimensions. Tower and foundation drawings and specifications signed by a professional engineer(s) licensed to practice in the Commonwealth of Massachusetts. Materials of the proposed wind turbine shall be specified by type and specific treatment. This information shall be provided for the wind turbine tower and all other proposed equipment/facilities.
- [7] Colors of the proposed wind turbine shall be represented by a color board showing actual colors proposed. If lighting of the site or turbine is proposed by the applicant or required by the FAA, the applicant shall submit a copy of the FAA's determination to establish the required markings and/or lights for the structure. The applicant shall also submit a printout of a computer-generated, point-to-point simulation indicating the horizontal footcandle levels at grade, both within the property to be developed and 300 feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.
- [8] The applicant shall provide a statement listing the existing ambient noise levels at the property boundaries of the proposed wind turbine and the maximum future projected noise levels from the proposed wind turbine. Such statement shall be certified and signed by a professional engineer licensed in the Commonwealth of Massachusetts, stating that noise projections are accurate and meet the noise standards of this bylaw and the Massachusetts noise regulation 310 CMR 7.10 and are acceptable under Massachusetts Department of Environmental Protection guidance for noise measurements.
- [9] To ensure safe operation of the wind turbine, the applicant shall provide a statement from the wind turbine manufacturer giving the recommended maintenance procedures and schedule, and an operation and maintenance plan by the applicant to follow said procedures and schedule.
- [10] The applicant shall provide a detailed business plan for the project, including but not limited to the goals of the project, the stakeholders, and the time line of anticipated activities.

[11] The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a cost-of-living adjustment for removals after 10, 15 and 20 years. The ZBA shall require the applicant to provide a form of surety (i.e., post a bond, establish an escrow account, or other) at the ZBA's election at the time of construction to cover the costs of removal in the event the Town must remove the facility. The amount of such surety shall be equal to 150% of the anticipated cost of compliance with this section.

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

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

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

(5) Professional fees. The Town may retain a technical expert/consultant and legal services, pursuant to MGL c. 44, § 53G, to verify information presented by the applicant. The cost for such a technical/consultant and legal services, if needed, will be at the expense of the applicant pursuant to the terms and conditions of MGL c. 44, § 53G.

(6) Adjudication of special permit applications. The ZBA shall make a formal decision regarding each application for a special permit for a wind turbine. The ZBA shall base any decision pursuant to the requirements of § 230-7.2 of the Zoning Bylaw and the provisions of this bylaw.

M. Abandonment or discontinuation of use.

(1) Notification requirements. At such time that a wind turbine is scheduled to be abandoned or discontinued, the applicant will notify the ZBA and Building Commissioner by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. In the event that an applicant fails to give such notice, the facility shall be considered abandoned or discontinued if the wind turbine is inoperable for 180 consecutive days.

(2) Physical removal. Upon abandonment or discontinuation of use, the owner shall physically remove the wind turbine within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and the discretion of the ZBA. "Physically remove" shall include, but not be limited to: removal of the wind turbine and tower, all machinery, equipment shelters, security barriers and all appurtenances from the subject property, proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations, and restoration of the location of the wind turbine to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the "after" condition.

N. Change of owner. Once a special permit for a commercial wind turbine has been approved, the applicant shall duly record a copy of the special permit with the Plymouth County Registry of Deeds. All subsequent deeds to the property shall refer to the special permit and incorporate it by reference. All conditions under which the special permit was originally granted shall be binding on all successive owners of the property. In the event of a transfer of ownership, the original owner shall notify the Chief Executive Officer of the Town by certified U.S. Mail of the transfer in ownership within 30 days of the transaction.

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

§ 230-8.4. Rear lots.

[Added 3-28-1989 STM by Art. 4; amended 3-10-1997 STM by Art. S3; 10-25-2004 STM by Art. S20]

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

- A. The area of said lot is at least double the minimum area normally required for the district.
- B. A building line is designated on the plan, and the width of the lot at that line equals or exceeds the number of feet normally required for street frontage in the district.
- C. Lot width is at no point less than 35 feet, and lot frontage is not less than 35 feet. Frontage shall meet all of the requirements contained in the definition for "frontage" in Article XI herein.
- D. Not more than one rear lot shall be created from a property, or a set of contiguous properties held in common ownership as of March 10, 1997. Documentation to this effect shall be submitted to the Planning Board along with the application for approval not required or definitive subdivision plans under the Subdivision Control Law.^[1] The Building Commissioner shall not issue a building permit for any rear lot without first establishing that compliance with this provision has been determined by the Planning Board.
[1] Editor's Note: See Ch. 300, Subdivision Regulations.
- E. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.
- F. The applicant shall submit a plan to the Planning Board under the Subdivision Control Law depicting both the rear lot and the front lot from which the rear lot was created.
- G. Rear lots serving single-family structures shall have front, rear, and side yards equal to or in excess of those required in the district.
- H. Any lot lawfully in existence as of June 1, 2004, that complied with the requirements of § 230-8.4 at the time said lot was created shall be considered in compliance with the frontage, area and width provisions of the Zoning Bylaw in effect at the time a building permit is sought for said lot and therefore be eligible for a building permit as a lot that conforms to zoning; provided, however, that the resulting structure shall comply with the front, rear, and side yard setback requirements under the Zoning Bylaw in effect at the time the lot was created.

§ 230-8.5. Surface Water District.

[Added 6-18-1990 STM by Art. 4]

- A. Purpose.
 - (1) The purpose of this section is to provide municipal control of the use of coastal water areas which are not within any of the Town's land use zoning districts in order to protect and enhance the natural and man-made environmental qualities of the Town of Marion, encourage water-dependent uses where appropriate, and preclude uses which could evolve because other Town, state or federal laws and regulations do not provide sufficient protection of the public interest.
 - (2) All areas within the Surface Water District shall also be subject to the rules and regulations as are from time to time issued by the Marine Resources Commission or the Harbormaster in support of the authority granted under MGL c. 91 and further subject to any special bylaws as may be adopted by the Town, and further subject to the granting of licenses and/or permits required by the Town, state or federal boards or agencies exercising authority granted to them by laws other than MGL c. 40A.
 - (3) All traditional uses of the surface waters for recreational and commercial purposes shall be permitted except as otherwise set forth herein.

- B. District boundaries. The district defined by these regulations shall cover all water areas within the municipal limits of the Town of Marion seaward of the low water mark as said mark is defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.
- C. Prohibited uses. The following uses shall not be allowed within the Surface Water District:
- (1) Boatels and similar facilities offering temporary sleeping and/or eating accommodations.
 - (2) Residential uses, except that a vessel equipped with a Type 3 holding tank or other Coast-Guard-approved wastewater device, and anchored or moored in accordance with applicable Town mooring regulations, may be used for human habitation for a period which cumulatively shall not exceed nine months within any calendar year.
 - (3) Floating office, industrial, and commercial uses except as they may be accessory to and allowed by special permit under **§ 230-8.5D**.
- D. Special permit uses.
- (1) The Planning Board shall be the special permit granting authority. The following uses may be allowed within the Surface Water District only by special permit from the Planning Board:
 - (a) Boat launching ramps.
 - (b) Landing facilities.
 - (c) Marinas water-dependent, as defined by MGL c. 91, § 1.
 - (d) Piers, commercial.
 - (e) Service facilities for the repair or maintenance of vessels.
 - (f) Underwater sewer, water and electrical lines and pipes.
 - (2) The following uses may be allowed in both the Surface Water District and an adjoining residential land use district by special permit from the Planning Board:
[Amended 4-24-2000 ATM by Art. 26]
 - (a) Association piers subject to the provisions of **§ 230-7.4F**.
 - (b) Accessory use piers subject to the provisions of **§ 230-7.4E**.
- E. Special permit review procedure. Special permits shall be granted only after the Planning Board:
- (1) Reviews the written recommendations of the Marine Resources Commission, Harbormaster, Selectmen, Board of Health, and Conservation Commission. Upon receipt of the special permit application, the Planning Board shall forward a copy of the application to each of the above-named authorities for comment. Failure of any of the above-named authorities to submit written recommendations to the Planning Board within 35 days of the initial filing of the special permit application shall be deemed a favorable recommendation of said authority. If the Planning Board allows or denies a use which is contrary to the recommendations of the Marine Resources Commission, the Planning Board shall so state its reasons in writing when making the decision.
 - (2) Determines that the proposed use is consistent with the provisions of the Marine Land Use Plan or Master Plan and the Open Space Plan as they are from time to time adopted and amended.
 - (3) Determines that the proposed use is consistent with any Town of Marion Harbor Plan.
 - (4) Determines that the proposed use is a water-dependent use, meaning those uses and facilities which require direct access to or locations in marine or tidal waters and which therefore cannot be located inland (ref. MGL c. 91, Waterways Law).

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

§ 230-8.6. Accessory apartments.

[Added 11-13-2000 STM by Art. S7; amended 10-15-2001 STM by Art. S13; 4-29-2003 STM by Art. S8; 4-25-2005 ATM by Art. 31]

- A. Purpose. The purpose of accessory apartments is to provide additional dwelling units to rent without adding to the number of buildings in the Town or to alter substantially the appearance of the Town. An accessory apartment is intended to provide assistance in the provision of affordable housing opportunities for families and individuals of all ages.
- B. Procedure. A single-family dwelling, lawfully in existence as of the date of the adoption of this bylaw, or an accessory structure located on the same lot as a single-family dwelling lawfully in existence as of the date of the adoption of this bylaw, may be converted such that it contains an accessory dwelling unit (an accessory apartment), provided that requirements of § 230-7.2 of the Zoning Bylaw and the following terms and conditions are met.
- C. Minimum submittal and performance standards.
 - (1) The applicant shall submit a plot plan prepared by a registered land surveyor that shows the following: the existing dwelling unit, accessory structure(s) and/or proposed accessory apartment, location of any septic system, required parking, and all residential dwellings within 150 feet of the proposed accessory apartment. A mortgage inspection survey, properly adapted by a surveyor, shall be sufficient to meet this requirement.
 - (2) Any special permit shall be subject to review and approval by the Board of Health as to sanitary wastewater disposal in full conformance with the provision of 310 CMR 15.00 (Title V of the State Environmental Code), assurance that there is an adequate supply of potable water and the proposed drainage plans, if any, required due to the construction of new parking spaces or alteration to existing structures;
 - (3) The Board of Appeals shall require the owner of the property to provide an affidavit, subject to the pains and penalties of law, certifying that the owner of the property, except for bona fide temporary absence, shall occupy one of the two dwelling units.
 - (4) Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 1,200 square feet in floor space, must be smaller than the area of the main part of the dwelling and shall be located in the principal residential structure or within an accessory building.
[Amended 5-21-2012 ATM by Art. 34]
 - (5) The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:
 - (a) Any accessory apartment construction shall not create more than a fifty-percent increase in the gross floor space of the structure existing as of the date of the adoption of this bylaw.
 - (b) Any stairways or access and egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.
 - (c) Sufficient and appropriate space for at least one additional parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.
 - (d) The design and size of the apartment conforms to all applicable standards in the health, building, and other relevant codes and regulations.

- (6) The Board of Appeals shall require as a condition of the special permit that the special permit is not transferable or assignable and that it shall lapse, by operation of law, when the property (in whole or in part) that is subject to the special permit is transferred or sold.
- (7) The Board of Appeals shall take into consideration the reports of Town agencies, departments and boards and shall make specific findings as to the decision's consistency or inconsistency with the reports received from the Planning Board and Board of Health.
- (8) The Board of Appeals shall obtain a certification from the applicant that the apartment will be occupied by an immediate family member of the owner or shall be an affordable housing unit in compliance with the definition of "affordable housing unit" in § 230-8.12B of the Zoning Bylaw.

§ 230-8.7. Sippican River Protection Overlay District.

- A. Purposes. The purposes of the Sippican River Overlay District are to:
- (1) Prevent and control water pollution, especially from non-point sources, and thereby improve the water quality of the river;
 - (2) Promote the preservation of the scenic qualities of the natural landscape (indigenous vegetation) along the river;
 - (3) Prevent any additional disruptions to the natural flow of the river;
 - (4) Protect fisheries and wildlife habitat within and along the river;
 - (5) Control erosion and siltation;
 - (6) Enhance and preserve existing agricultural lands, floodplains and other environmentally sensitive areas along the shoreline;
 - (7) Conserve shore cover and encourage well-designed and environmentally sensitive developments and agricultural and other farming uses.
- B. Scope of authority. All existing regulations of the Marion Zoning Bylaws applicable to the underlying district shall remain in effect, except that where the Sippican River Protection Overlay District imposes additional regulations, such regulations shall prevail.
- C. District delineation. The area covered by this overlay district shall be all contiguous portions of the Sippican River in the Town of Marion, its shores and landward up to 200 feet from the normal high water line. All distances shall be measured in horizontal feet. The upstream boundary of the district is the Rochester Town line; the downstream boundary is a line drawn from the tip of Rose Point to the westerly line of the Town beach lot on River Road. This overlay district is shown on the Zoning Map of the Town of Marion, dated May 12, 2014.
[Amended 5-12-2014 ATM by Art. 39]
- D. Permitted uses. The following uses are permitted within the district, provided they are in conformance with the river protection standards in Subsection G:
- (1) Agricultural production, including raising of cranberries, livestock, poultry, nurseries, orchards, hay and other crops;
 - (2) Recreational uses, provided there is minimal disruption of wildlife habitat;
 - (3) Maintenance and repair usual and necessary for continuance of an existing use;
 - (4) Conservation of water, plants and wildlife, including the raising and management of wildlife;
 - (5) Emergency procedures necessary for safety or protection of property;

- (6) Single-family residences on lots fronting on a way not requiring approval under the Massachusetts Subdivision Control Law, MGL c. 41;
- (7) Maintenance of the river may be done under the requirements of MGL c. 131, § 40 and any other applicable laws, bylaws and regulations.

E. Prohibited uses.

- (1) All uses of outboard motors, including jet skis, of any type on the river west of the County Road bridge;
- (2) See Subsection **G** for limitations with the buffer strip;
- (3) All other uses not specifically permitted or allowed by variance granted by the Zoning Board of Appeals within the overlay district are prohibited.

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

- (1) Are situated on a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip;
- (2) Are integrated into the existing landscape through features such as vegetative buffers and through retention of the natural banks of the river;
- (3) Will not result in erosion or sedimentation;
- (4) Will not result in water pollution.

G. River protection standards. All land uses, including all residences developed on riverfront lots, shall comply with the following standards:

- (1) A buffer strip extending 100 feet in depth, to be measured landward from the high water line of the Sippican River, shall be required for all lots within the River Protection Overlay District. If any lot existing at the time of adoption of this bylaw does not contain sufficient depth, measured landward from the high water line, to provide a one-hundred-foot buffer strip, the buffer strip may be reduced to 50% of the available lot depth, measured landward from the high water line.
 - (a) Within the buffer strip, no trees or other vegetation shall be harvested, cut, removed, thinned or otherwise disturbed other than:
 - [1] Cutting and removing of dead vegetation; or
 - [2] Selected cutting within the buffer strip when it will not cause significant adverse environmental impact with respect to the stability of the river bank and is subject to the following: no more than 50% of the live trees five inches or more in diameter breast height during any ten-year period, or the removal of more than 1/2 of the total vegetative cover within the portion of each parcel that is within the buffer strip.
 - (b) No building nor structures shall be erected or moved into the buffer strip.
- (2) On-site disposal systems shall be located as far from the Sippican River as is feasible and shall conform to the provisions of 310 CMR 15, Title V of the Massachusetts State Environmental Code and the Marion Sanitary Code.
- (3) All new development shall be integrated into the existing landscape on the property so as to minimize its visual impact and maintain the natural beauty of environmentally sensitive shoreline areas through use of vegetative and structural screening, landscaping, grading and placement on or into the surface of the lot.

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

H. Nonconforming use.

- (1) Any lawful use, building, structures or parts thereof existing at the effective date of this bylaw, or amendment thereto, and not in conformance with the provisions of this bylaw, shall be considered to be a nonconforming use.
- (2) Any existing use or structure may continue and may be maintained, repaired and improved but in no event made larger unless permission is granted by the Zoning Board of Appeals.
- (3) Any nonconforming structure which is destroyed may be rebuilt on the same location, but no larger than its overall original square footage unless permission is granted by the Zoning Board of Appeals.

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

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

K. Definitions. As used in this section, the following terms shall have the meanings indicated:

BANK

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

HIGH WATER LINE

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

§ 230-8.8. Adult uses.

[Added 3-10-1997 STM by Art. S8]

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

- A. Separation distances. Adult uses may be permitted only when located outside the area circumscribed by a circle which has a radius consisting of the following distances from specified uses or zoning district boundaries:
 - (1) One thousand feet from the district boundary line of any residence zone;
 - (2) One thousand feet from any other adult use as defined herein;
 - (3) Five hundred feet from any establishment licensed under MGL c. 138, § 2.
- B. Measurement of radius. The radius distance shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed adult use is to be located, to the nearest point of the parcel of property of the zoning district boundary line from which the proposed adult use is to be separated. In the case of the distance between adult uses [Subsection **A(2)**] and between an adult use and an establishment licensed under MGL c. 138, § 12 [Subsection **A(3)**], such distances shall be measured between the closest points of the buildings in which such uses are located.
- C. Maximum usable floor area. With the exception of an adult cabaret or an adult motion-picture theater, adult uses may not exceed 2,500 square feet of gross floor area.

- D. Parking requirements. The following parking requirements shall apply:
- (1) Parking for adult bookstores, adult paraphernalia stores, and adult video stores shall meet the requirements of § 230-6.5 for general retail.
 - (2) Parking for adult cabarets and adult motion-picture theaters shall meet the requirements of § 230-6.5 for restaurants.
 - (3) Parking shall be provided in the side or rear yard area only.
 - (4) All parking areas shall be illuminated, and all lighting shall be contained on the property.
 - (5) Parking areas shall be landscaped in conformance with the appropriate provisions of this Zoning Bylaw.
- E. Screening and buffers. A five-foot-wide landscaped buffer shall be provided along the side and rear property lines of an adult use establishment consisting of evergreen shrubs or trees not less than five feet in height at the time of planting, or solid fence not less than five feet in height.
- F. Visual access. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- G. Application for special permit. The Planning Board shall be the special permit granting authority for the purposes of this § 230-8.8. An application for a special permit for an adult use establishment shall include the following information:
- (1) Name and address of the legal owner of the establishment;
 - (2) Name and address of all persons having lawful equity or security interest in the establishment;
 - (3) Name and address of the manager;
 - (4) Number of employees;
 - (5) Proposed provisions for security within and without the establishment;
 - (6) The physical layout of the interior of the establishment.
- H. Prohibition. No adult use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28.
- I. Public hearing. An adult use special permit shall only be issued following a public hearing held within 65 days after the filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.
- J. Lapse. Any adult use special permit issued under the bylaw shall lapse within one year, not including such time required to pursue or await the determination of an appeal from the grant thereof, if substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
- K. Severability. Any provision of this § 230-8.8, or portion thereof, declared invalid shall not affect the validity or application of the remainder of said section of this Zoning Bylaw.

§ 230-8.9. Driveways.

[Added 3-10-1997 STM by Art. S4]

- A. General. For the purpose of promoting the safety of the residents of the Town, an application for a building permit for a residential structure shall include a plan, at a scale of one inch equals 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at ten-foot

or three-meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100 feet or less from the building site of the residential structure on the premises, for all vehicles, including but not limited to emergency, fire, and police vehicles. The Building Commissioner shall not issue a building permit for the principal structure on the premises unless all of the following conditions have been met.

- B. Except in access strips of less than 50 feet width to rear lots, no driveway shall be located within 10 feet of any side or rear lot line without written approval by the appropriate abutter(s), or by special permit by the Planning Board after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- C. The distance of any driveway measured from the street line to the point where the principal building is proposed shall not exceed a distance of 500 feet, unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- D. The grade of each driveway where it intersects with the public way shall not exceed 8% for a distance of 20 feet from the travel surface of the public way unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- E. Driveways serving the premises shall provide access through the required frontage of the serviced lot, except in the case of a "common driveway" under Subsection **F** herein.
- F. A common driveway with a single access point, serving not more than two lots, may be allowed on special permit by the Planning Board. A driveway with two access points, designed as a loop, serving three to six lots may be allowed on special permit by the Planning Board. A common driveway must satisfy all of the conditions in this § 230-8.9, as well as all of the following conditions:
[Amended 10-15-2001 STM by Art. S9]
 - (1) The center line intersection with the street center line shall not be less than 45°;
 - (2) A minimum cleared width of 12 feet shall be maintained over its entire length;
 - (3) A roadway surface of a minimum of four inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown, shall be installed;
 - (4) The driveway shall be located entirely within the boundaries of the lots being served by the driveway and not along a side or rear boundary line;
 - (5) Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest; and
 - (6) A common driveway may never be used to measure or determine lot frontage.

§ 230-8.10. Wireless Communications Facilities (WCF) Overlay District.

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

- B. Location. The WCF District shall be located as follows: Lot 14 on Assessor's Plan 6; Lot 54 on Assessor's Plan 15; Lots 9 and 18 on Assessor's Plan 24; Lot 14 on Assessor's Plan 26.
[Amended 10-28-1997 STM by Art. S2]
- C. Applicability. The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superseded herein.
- D. Submittal requirements. As part of any application for a special permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at Article IX. Applicants shall also describe the capacity of the facility, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.
- E. Special permit. A wireless communications facility may be erected in the WCF District upon the issuance of a special permit by the Planning Board if the Board determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts as to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
- (1) Communications needs served by the facility;
 - (2) Traffic flow and safety, including parking and loading;
 - (3) Adequacy of utilities and other public services;
 - (4) Impact on neighborhood character, including aesthetics;
 - (5) Impacts on the natural environment, including visual impacts;
 - (6) Potential fiscal impact, including impact on Town services, tax base, and employment;
 - (7) New monopoles shall be considered only upon a finding that existing or approved monopoles or facilities cannot accommodate the equipment planned for the proposed monopole.
- F. Conditions. All wireless communications facilities shall be subject to the following conditions:
[Amended 10-15-2001 STM by Art. S16]
- (1) To the extent feasible, service providers shall co-locate on a single facility. Monopoles shall be designed to structurally accommodate foreseeable users (within a ten-year period) where technically practicable.
 - (2) New freestanding facilities shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed 100 feet above mean finished ground elevation at the base of the mounting structure; provided, however, that a monopole may be erected higher than 100 feet where co-location is approved or proposed, not to exceed a height of 130 feet above mean finished ground elevation at the base of the mounting structure.
 - (3) Wireless communications facilities may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission lines, and the like. In such cases, the facility height shall not exceed 20 feet above the height of the existing structure or building.
 - (4) All structures associated with wireless communications facilities shall be removed within one year of cessation of use. The Board may require a performance guarantee to effect this result.
 - (5) To the extent feasible, all network interconnections from the communications facility shall be via land lines.
 - (6) Existing on-site vegetation shall be preserved to the maximum extent practicable.

- (7) The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.
- (8) Traffic associated with the facility shall not adversely affect public ways.
- (9) Fencing may be required to control unauthorized entry to wireless communications facilities.
- (10) The setback of the WCF from the property line shall be determined by the Planning Board based on the specific proposal presented. In no case will the setback be less than 40 feet.

§ 230-8.11. Erosion control.

[Added 10-28-1997 STM by Art. S7]

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

- A. Grading or construction which will result in final slopes of 15% or greater on 50% or more of lot area, or on 30,000 square feet or more on a single lot, even if less than half the lot area, shall be allowed only under special permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation.
- B. All such slopes exceeding 15% which result from site grading or construction activities shall either be covered with topsoil to a depth of four inches and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber.
- C. No area or areas totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity, or unless necessarily incidental to construction on the premises under a currently valid building permit, or unless within streets which are either public or designated on an approved subdivision plan, or unless a special permit is approved by the Planning Board on condition that runoff will be controlled, erosion avoided and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without a temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity or an emergency situation, such as storm damage, where such temporary cover would be infeasible.
- D. The Building Commissioner may require the submission of all information from the building permit applicant or the landowner, in addition to that otherwise specified herein, necessary to ensure compliance with these requirements, including, if necessary, elevation of the subject property, description of vegetative cover and the nature of impoundment basins proposed, if any.
- E. In granting a special permit, the Planning Board shall require a performance bond to ensure compliance with the requirements of this section.
- F. Hillside areas, except naturally occurring ledge or bedrock outcroppings or ledge cuts, shall be retained with vegetative cover, as follows:

Average Percentage Slope	Minimum Percentage of Land to Remain in Vegetation
10.0% to 14.9%	25%
15.0% to 19.9%	40%
20.0% to 24.9%	55%
25.0% to 29.9%	70%
30.0% and above	85%

§ 230-8.12. Inclusionary housing.

[Added 4-29-2003 STM by Art. S1]

A. 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 MGL c. 40B, §§ 20 through 23, and ongoing Town of Marion programs to promote a reasonable percentage of housing that is affordable to moderate-income buyers. It is intended that the affordable housing units that result from the bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development, and that said units count toward the Town's requirements under MGL c. 40B, §§ 20 through 23.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING UNIT

A dwelling unit that can be purchased at an annual cost that is no more than 30% of the homeowner's income, which is at or below 80% of the Town of Marion's median income as reported by the U.S. Department of Housing and Urban Development, including units under MGL c. 40B, §§ 20 through 23 and the Commonwealth's Local Initiative Program (LIP).

QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER

An individual or family with a household income that does not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

C. Applicability.

(1) Division of land. This bylaw shall apply to the division of land held in single ownership as of April 29, 2003, or any time thereafter into six or more lots, whether said six or more lots are created at one time or the cumulative of six or more lots created from said land held in single ownership as of April 29, 2003, and shall require a special permit under Article VII of the Zoning Bylaw. A special permit shall be required for land divisions under MGL c. 40A, § 9 as well as for "conventional" or grid divisions allowed by MGL c. 41, §§ 81L and 81U, including those divisions of land that do not require subdivision approval.

(2) Multifamily dwelling units. This bylaw shall apply to the construction of six or more multifamily dwelling units, whether on one or more contiguous parcels in existence as of April 29, 2003, and shall require a special permit under Article VII of the Zoning Bylaw.

(3) The provisions of Subsection C(2) shall not apply to the construction of six or more single-family dwelling units on individual lots, if said six or more lots were in existence as of April 29, 2003.

(4) The Planning Board shall be the special permit granting authority (SPGA) for all special permits under this bylaw.

D. Mandatory provision of affordable units. The SPGA shall, as a condition of approval of any development referred to in Subsection C, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this bylaw and more fully described in Subsection E.

E. Provision of affordable units.

(1) The SPGA shall deny any application for a special permit for development if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:

(a) At least 10% of the lots in a division of land or units in a multifamily unit development subject to this bylaw shall be established as affordable housing units in any one or combination of

methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six dwelling units shall require one affordable unit, a development proposing 11 dwelling units shall require two affordable units, and so on;

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

[1] The locus property; or

[2] A locus different from the one subject to the special permit (see Subsection I); or

(c) An applicant shall make a donation of land or pay a fee in lieu of affordable housing unit provision (see Subsection L below).

(2) The applicant may offer, and the SPGA may accept, any combination of the Subsection E(1) requirements, provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by the bylaw.

F. Provisions applicable to affordable housing units on- or off-site.

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

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

(3) Timing of construction or provision of affordable units or lots. The SPGA may impose conditions on the special permit requiring construction of affordable housing according to a specified timetable, so that affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-Rate Unit	Affordable Housing Unit
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

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

G. Local preference. The SPGA shall require the applicant to comply with local preference requirements, if any, as established by the Board of Selectmen.

H. Marketing plan for affordable units. Applicants under this bylaw shall submit a marketing plan or other method approved by the SPGA, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance to DHCD rules and regulations.

I. Provision of affordable housing units off site. Subject to the approval of the SPGA, an applicant subject to this bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Subsection E 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 SPGA as an integral element of the special permit review and approval process.

J. Maximum incomes and selling prices: initial sale.

- (1) To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns for the household and to certify in writing and prior to transfer of the title to the developer of the housing units or his/her agent, and within 30 days following transfer of title to the Marion Board of Selectmen or to another authority as stipulated by them that the annual household income level does not exceed the maximum established by the Commonwealth's Division of Housing and Community Development (DHCD) and as may be revised from time to time.
- (2) The maximum price of the affordable housing unit(s) created under this bylaw is established by DHCD under the Local Initiative Program (LIP) guidelines in effect at the time the unit(s) is built.

K. Preservation of affordability; restrictions on resale. Each affordable unit created in accordance with the bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction, acceptable to DHCD, on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for a period of 99 years.

- (1) Affordable housing unit(s) resale price. Sales beyond the initial sale to a qualified purchaser shall not exceed the maximum sales price as determined by the DHCD for affordability within the Town of Marion at the time of resale.
- (2) Right of first refusal of purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town of Marion's right of first refusal for a period not less than 180 days to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.
- (3) The SPGA shall require, as a condition for special permit approval under this bylaw, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed the maximum rental price as determined by the DHCD for affordability within the Town of Marion.
- (4) The SPGA shall require, as a condition for special permit approval under this bylaw, that the applicant comply with the mandatory set-asides and accompanying deed restrictions of affordability. The Building Commissioner shall not issue any building permit for any unit(s) until the special permit and deed restriction are recorded at the Plymouth County Registry of Deeds or the Land Court.

L. Donation of land and/or fees in lieu of the affordable housing unit provision. As an alternative to the requirements of Subsection E, an applicant may contribute a fee or land to the Marion Housing Trust Fund in lieu of constructing and offering affordable units within the locus of the proposed development or off site.

- (1) Calculation of fees in lieu of units. The applicant for development subject to this bylaw may pay fees in lieu of the construction or provision of affordable units in the amount of \$200,000 per unit. For example, if the applicant is required to construct two affordable income units, he/she may opt to pay \$400,000 in lieu of constructing or providing the units. The fee in lieu of construction of affordable units shall be reviewed annually by the Board of Selectmen on or before July 1 and adjusted to reflect the current cost of constructing an affordable dwelling unit.
[Amended 11-3-2003 STM by Art. S18]
- (2) Schedule of fees in lieu of payments. Fees in lieu of payments shall be made according to the schedule set forth in Subsection F(3) above.

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

§ 230-8.13. Municipal Solar Overlay District.

[Added 5-13-2013 ATM by Art. 31]

- A. Purpose; bylaw objectives. The purpose of the Municipal Solar Overlay District is to identify and include on the Marion Zoning Map, with corresponding inclusion in the Zoning Bylaw, Town-owned real property on which the installation of solar PV systems without the need for a special permit would be compatible and consistent with the Marion Zoning Bylaw.
- B. Definition. For the purpose of this bylaw and without intending to limit the interpretation of the same, "ground-mounted solar PV systems" shall include any engineered and constructed structure that converts sunlight into electrical energy through an array of solar panels that connect to a building's electrical system and/or the electrical grid.
- C. Overlay district locations. The Municipal Solar Overlay District shall be defined as and include Lots 8, 9, 9C, and 9D as shown on Marion Assessor's Map 24. The provisions of this district shall be considered superimposed on and over the Zoning Map of the Town of Marion and shall hereinafter be referred to as the "Municipal Solar Overlay District." The uses and structures permitted in the Municipal Solar Overlay District shall be considered an addition to, and not conflicting with, the uses and structures permitted by the Zoning Bylaw and Zoning Map.
- D. Allowable uses and structures. In addition to all other permitted and lawful uses and structures, within the Municipal Solar Overlay District the Town of Marion shall be permitted to construct, or have others construct, ground-mounted solar PV systems, provided that a building permit has been issued pursuant to the Massachusetts Building Code. No special permit shall be required for construction of ground-mounted solar PV systems within the Municipal Solar Overlay District. Submission to the Planning Board for minor site plan review and approval pursuant to § 230-9.1A of the Zoning Bylaw shall be as required by this bylaw (§ 230-8.13 et seq.), regardless of the minimum threshold requirements found in § 230-9.1A. In addition, a solar PV installation on the closed landfill within the Municipal Solar Overlay District also requires a MassDEP post-closure permit according to the MassDEP's Landfill Post-Closure Use Permitting Guidelines. All the provisions of the general or special laws relating to the use, lease and disposal of municipally owned property shall apply to any use or application of the Municipal Solar Overlay District.

Article IX. Site Plan Review and Approval

[Added 3-28-1989 STM by Art. 2]

§ 230-9.1. Applicability; minor and major site plan review.

[Amended 6-18-1990 STM by Art. 15; 3-10-1997 STM by Art. S12]

- A. No permit to build, alter or expand any nonresidential building, structure or use of land in any district where such construction shall exceed a total gross floor areas of 500 square feet or require changes or alterations to a parking area shall be issued by the Building Commissioner until he or she shall have received from the Planning Board a written statement of site plan approval by the Planning Board in accordance with the provisions of this section. A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.

- (1) Pursuant to the provisions of § 230-2.1, all new uses and changes of use require a use permit issued by the Building Commissioner.
 - (2) The Building Commissioner shall enforce the fulfillment of any conditions which the Planning Board may impose. This section shall not include signs or normal maintenance.
- B. Minor site plan review. Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2,000 square feet, or will not generate the need for more than 10 parking spaces, or result in residential development of more than four dwelling units of multifamily residence (see § 230-5.3), shall require minor site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal of a minor site plan for review:
[Amended 5-8-2017 ATM by Art. 35]
- (1) All of the information set forth in § 230-9.11A; provided, however, that the scale of the site plan may be one inch equals 80 feet; the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey, and the plan need not provide the information set forth in Subsection A(11) of said section.
 - (2) All of the information set forth in § 230-9.11B.
 - (3) Such additional information as the Board shall require to determine compliance with the standards set forth in § 230-9.4.
- C. Major site plan review. Applications for permits to build, alter, or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 2,000 square feet, or generate the need for more than 10 parking spaces, shall require major site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal of a major site plan for review: all of the information set forth in §§ 230-9.4 and 230-9.11 in their entirety and §§ 230-9.6 and 230-9.12, if applicable.

§ 230-9.2. Board of Selectmen or Board of Appeals referrals.

[Amended 3-10-1997 STM by Art. S12]

When in accordance with § 230-7.1B of this bylaw, the Board of Selectmen or the Board of Appeals shall refer an application for a special permit to the Planning Board for review and comment, the Planning Board's written report to the Board of Selectmen or the Board of Appeals shall include, but not be limited to, all of the findings and determinations the Planning Board would make in reviewing a site plan under this section to the extent they are applicable to the information contained in the application for special permit. To the extent feasible, the Board of Appeals and the Board of Selectmen shall coordinate the submittal requirements for special permits under their jurisdiction with the Planning Board's submittal requirements for minor and major site plans, as set forth herein.

§ 230-9.3. Grounds for denial of application.

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

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

[Amended 3-10-1997 STM by Art. S12]

§ 230-9.4. Standards for review.

[Amended 6-18-1990 STM by Art. 15; 4-22-1996 ATM by Art. 29; 3-10-1997 STM by Art. S12]

- A. Site plan approval is designed to provide a balance between a landowner's rights to use his land with the corresponding rights of abutters and neighboring landowners to live or operate businesses without undue disturbance (e.g., noise, congestion, smoke, dust, odor, glare, stormwater runoff, etc.).
- B. Additional objectives include the preservation of the natural resources of the Town; the creation of a better and safer living environment and the enhancement of Marion's man-made resources, including the Town's architectural and historic heritage.
- C. Site plan approval shall be granted upon a determination by the Planning Board that the following considerations have been reasonably addressed by the applicant. The Planning Board may impose reasonable conditions, at the expense of the applicant, to secure this result. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.^[1]
 - (1) New building construction or other alteration shall be designed in the site plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points and other aspects of the development, so as to:
 - (a) Minimize the volume of cut and fill, the number of removed trees six inches' caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion and threat of air and water pollution;
 - (b) Maximize pedestrian and vehicular safety both on the site and egressing from it;
 - (c) Minimize obstruction of scenic views from publicly accessible locations;
 - (d) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
 - (e) Minimize glare from headlights through plantings or other screening; minimize lighting intrusion through use of such devices as cut-off luminaries confining direct rays to the site, with fixture mounting not higher than 20 feet;
 - (f) Minimize unreasonable departure from the character and scale of building in the vicinity, as viewed from public ways;
 - (g) Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.
 - (2) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses and roadways.
 - (3) Individual buildings shall be related to each other in design, masses, materials, placement, and connections to provide a visually integrated development. Buildings should be separated by a minimum of 30 feet or the height of the taller building, whichever is greater.
 - (4) Treatment of the sides and rear of all buildings shall be comparable in amenities and appearance to the treatment given street frontages of these same buildings.
 - (5) All buildings shall be oriented so as to ensure adequate light and air exposure to the rooms within.

- (6) All buildings shall be arranged so as to avoid undue exposure to concentrated parking facilities wherever possible, and shall be oriented to preserve visual and audible privacy between adjacent buildings.
- (7) All buildings shall be arranged to be accessible to emergency vehicles.
- (8) All areas proposed to satisfy usable open space requirements shall be of a size, shape, soil characteristic, and slope suitable for the intended use.
- (9) Where common open space is to be provided, the organization proposed to own and maintain the open space shall include provisions which recognize the right of the Town of Marion to enforce the maintenance of common open space in reasonable order and condition and to assess property owners for the cost of such maintenance in the failure of the organization to maintain the common open space. Such assessment shall become a lien on the properties.

[1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-9.5. Pre-submission conference.

[Amended 6-18-1990 STM by Art. 15]

- A. Before submitting a site plan, an applicant shall meet informally with the Planning Board at a public meeting to review the information the applicant must submit and determine the required filing fee. At this meeting, the applicant shall request a written determination by the Planning Board of the amount of the filing fee and the need for and/or scope of an environmental assessment as described in § 230-9.6 below. The Planning Board shall advise the applicant in writing of the amount of the filing fee, the need for and/or scope of an environmental assessment, and any exceptions with respect to the site plan details under § 230-9.11 within 22 days of the pre-submission meeting. Any technical services required to assist the Planning Board in preparing its written response shall be included as part of the application fee under § 230-9.15.

[Amended 4-29-2003 STM by Art. S5]

- B. The applicant shall also notify the Tree Warden and Building Commissioner prior to any plan submission.
[Added 5-16-2006 ATM by Art. 21]
- C. The Planning Board may, taking into consideration the size and impact of the proposed project, waive any of the requirements in this section.

§ 230-9.6. Environmental assessment scope.

- A. An environmental assessment shall be prepared in all applications for site plan review within the Water Supply Protection District. An environmental assessment shall be prepared in support of all other development requiring site plan review, except that the Planning Board, as part of a pre-submission conference as described in § 230-9.5 above, may decide that the project is not of a size or nature requiring an environmental assessment or may scope an environmental assessment focusing on one or more significant impacts and advise the applicant of its decision in writing within 14 days of the pre-submission conference. The purpose of the environmental assessment is to assist the Planning Board in determining if the standards for review can be achieved.
- B. An applicant is encouraged to submit the suggested outline of an environmental assessment for review by the Planning Board during a pre-submission meeting.
- C. The environmental assessment, except as may be modified by the Planning Board following a pre-submission conference meeting, must be prepared by recognized professionals; the name, education, disciplines and experience of the professionals shall be included in the environmental assessment report.

- D. The environmental assessment shall include an evaluation of all influences, both positive and negative, which can be expected to impact the natural and man-made environment in the vicinity of the proposed project. Both direct and indirect impacts shall be evaluated.
- E. Methods designed to mitigate and, where appropriate, monitor the impacts shall be proposed; the party responsible for implementing the mitigating measures shall be identified.
- F. Where applicable and where acceptable to the Planning Board, an environmental impact report scoped and submitted in compliance with the Massachusetts Environmental Policy Act may be submitted in satisfaction of all or portions of the requirements under this section.
- G. The environmental assessment should assemble relevant material facts, identify the essential issues to be decided, evaluate all mitigating measures and reasonable alternatives, and make findings and conclusions. It should be concise and analytical, not encyclopedic.
- H. The following elements of a typical environmental assessment are identified to provide guidance and assistance to site plan applicants and the Planning Board in scoping an environmental assessment:
 - (1) A concise description of the proposed project, including its purposes and need.
 - (2) A concise description of the environmental setting of the area to be affected; sufficient to understand effects of the proposed project and alternatives.
 - (3) A statement of the important environmental impacts of the proposed project, including short- and long-term effects, and typical associated environmental effects.
 - (4) An identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed project is constructed.
 - (5) A description and evaluation of reasonable alternatives to the project which would achieve the same objectives.
 - (6) An identification of any irreversible and irretrievable commitments of resources which would be associated with the project should it be constructed.
 - (7) A description of mitigation measures to minimize the adverse environmental impacts.
 - (8) A description of any growth-inducing aspects of the project where applicable and significant.
 - (9) A list of any underlying studies, reports, and other information obtained and considered in preparing the environmental assessment.

§ 230-9.7. Application filing; Site Plan Review Manual.

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

and approval of site plan approval applications. Copies of the adopted manual shall be filed with the Town Clerk.

§ 230-9.8. Relationship to Subdivision Regulations.

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

[1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-9.9. Referrals to Town boards and commissions.

- A. The Planning Board shall, within five days of receipt of the site plan application, transmit two copies of the application and site plan to the following Town committees, departments, commissions, and boards for review and comment: Conservation Commission, Board of Health, Department of Public Works, Building Commissioner, Marine Resources Commission, Fire Chief, and Police Chief, as appropriate. Other committees, departments and commissions may be requested to review site plan applications and site plans if the Planning Board feels such review will help in its deliberations.
- B. If the Planning Board determines that the site plan application is not complete, it may so advise the applicant to avoid delays to the applicant due to the anticipated disapproval of an incomplete submission.
- C. The Conservation Commission and other agencies designated by the Planning Board shall consider the same and submit a final report thereon with recommendations to the Planning Board. The Conservation Commission shall review the application with particular reference to the Wetlands Protection Act and shall recommend as to the advisability of granting the site plan approval and as to the restrictions which should be imposed upon the development as a condition of such permit.
- D. The Planning Board shall not make a finding and determination upon an application until it has received the final report of the Conservation Commission and/or other agencies designated by the Planning Board thereon, or until 21 days shall have elapsed since the transmittal of said copies of the application and site plan to the Conservation Commission and other agencies designated by the Planning Board without such report being submitted. Failure of a commission or agency to submit a report within the allotted time shall be interpreted as non-opposition to the submitted site plan.

§ 230-9.10. Procedures and decision.

[Amended 6-18-1990 STM by Art. 15; 4-25-1994 STM by Art. 27; 3-10-1997 STM by Art. S12; 11-13-2000 STM by Art. S5; 4-29-2003 STM by Art. S7; 11-3-2003 STM by Art. S20]

- A. Uses as of right. For uses "as of right," the Planning Board shall provide notice of its decision on major and minor site plans to the applicant within 60 days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based on a majority of those present and shall be in writing. The Building Commissioner shall not issue a building permit without the written approval of the site plan by the Planning Board, unless 60 days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board.
- B. Uses available by special permit. For special permits, the Planning Board shall provide notice of its decision to the special permit granting authority within 45 days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based upon a majority of those present and shall be in writing. The Building Commissioner shall not issue

a building permit without the written approval of the site plan by the Planning Board, unless 45 days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board; however, no site plan review shall be required for single-family or two-family uses. Where the Planning Board approves a site plan with conditions and amendments subject to a special permit, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit by said granting authority.

C. Decision.

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

(a) The Planning Board shall approve an application if it finds that the proposed development is in conformance with this bylaw, after considering whether the proposed plan will comply, to the extent feasible, with the standards set forth in § 230-9.4. In granting approval of an application, the Planning Board may impose conditions, limitations and safeguards that shall be in writing and shall be a part of the approval; or

(b) The Planning Board may reject a site plan for the reasons set forth in § 230-9.3.

(2) In the event the Planning Board approves a site plan application under these provisions, any construction, reconstruction, substantial exterior alteration or addition shall be built or altered in conformity with any conditions, modifications and restrictions the Board shall have made in its findings and determination and as set forth in the application and site plan.

(3) No permit, or any extension, modification or renewal thereof, issued pursuant to this section shall take effect until the Town Clerk certifies that 20 days have elapsed and no appeal has been filed or that such appeal has been dismissed or denied.

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

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

F. If use permit required. A site plan review and approval decision shall not constitute a special permit where such special permit is required to establish or undertake a use.

G. Appeals. Persons aggrieved by a site plan review decision may appeal to the Board of Appeals, pursuant to § 230-2.3B and MGL c. 40A, § 15.

§ 230-9.11. Site plan details.

[Amended 6-18-1990 STM by Art. 15; 4-26-2005 ATM by Art. 33]

Each applicant shall provide 19 paper copies, or a combination of paper and downloadable electronic copies, as determined by the Planning Board, of the proposed site plan of the tract for each application for the site plan approval. Site plans shall include the following information, unless specifically waived by a vote of the Planning Board:

A. Site plan.

(1) General information.

- (a) Date of site plan and date of each subsequent revision.
- (b) The title, scale and block for the plan and the Assessors' lot and plan number of the site.
- (c) An arrow indicating North.
- (d) The name and address of the owners and/or applicant; the president and secretary, if the applicant or owner is a business entity.
- (e) The zoning boundaries and property lines within 100 feet, lot reservations, easements, rights-of-way and public grants or easements.
- (f) Public and private ways and driveways, with the name of said ways indicated on the plan.
- (g) A key showing the locus of the parcel(s).
- (h) Existing site condition contours at intervals of two feet for slopes between 3% and 15%; five-foot intervals for slopes greater than 15%. All existing grades shall be indicated with dashed lines and finished grades shall be indicated with solid lines.
- (i) Location of existing erratics, soil types, high points, vistas, depressions, water bodies, wetlands, floodplain designations, wooded areas and major trees (twelve-inch caliper or over) and other significant existing features, including previous flood elevations of watercourses, and wetlands, as determined by survey.
- (j) Location of existing structures that shall remain and all other existing structures, such as walls, fences, culverts, bridges, as well as roadways, with spot elevations. Structures to be removed shall be indicated in dashed lines.
- (k) All structures and any significant topography within 50 feet of the property lines shall be indicated.
- (l) The acreage of the tract(s) to the nearest 1/10 of an acre shall be indicated.
- (m) A signature block for the Chairman shall be provided.
- (n) The plan shall be stamped by the engineer or surveyor who prepared the plan.
- (o) Any areas that fall within the one-hundred-year floodplain or a Velocity (VE or V) Zone shall be shown with base elevations.

(2) Buildings and structures.

- (a) The proposed uses and layout of proposed and improved structures, including square footage of each use, as well as the totals for each structure.
- (b) Elevations for all sides of proposed or improved structure.
- (c) The location of solid waste bins and containers, including screening details.
- (d) The location of all signs, existing and proposed.
- (e) Height of buildings, including relationship to existing and proposed grades and sketches, as appropriate, to indicate the visual impact on the community.
- (f) The locations, housing type and density of land use to be allocated to parts of the site to be developed.

- (3) Landscaping. A plan showing all existing natural features, trees, forest and water resources and proposed changes to these features, including size and type of plant material. Water resources shall include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.
 - (4) Utilities and drainage.
[Amended 5-19-2008 ATM by Art. 24]
 - (a) The location of the proposed stormwater management system components with proposed grading, pipe sizes, invert elevations, and rates of gradient shall be provided. Typical cross sections and elevation details of all stormwater management and collection system components shall also be provided.
 - (b) The design of the proposed stormwater management systems and the required stormwater management plan (SWMP) submittals for all site plans, open space development plans and flexible development plans shall comply with the Subdivision Rules and Regulations of the Planning Board^[1] and the applicable requirements of the Board of Health and the Conservation Commission.
[1] Editor's Note: See Ch. 300, Subdivision Regulations.
 - (c) Pursuant to MGL c. 41, § 81R, strict compliance with the Subdivision Rules and Regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest, not inconsistent with the Subdivision Control Law, and promotes public health and safety. Requests for waivers shall follow the procedures set forth in § 300-2.8 of the Subdivision Rules and Regulations.
 - (5) Traffic and parking.
 - (a) All means of vehicular access to and from the site onto any public way shall be indicated and include the size and locations of driveways and curb cuts, traffic channels, acceleration and deceleration lanes, and any additional width or any other device necessary to ease the traffic flow.
 - (b) The location and design of any off-street parking areas or loading areas, showing the size and location of bays, aisles, barriers and proposed plantings.
 - (c) The total ground coverage by structures and impervious surfaces shall be identified and measured.
 - (d) All proposed streets and profiles, including grading and cross sections showing width of roadway and locations and width of sidewalks.
 - (6) Open space — maintenance.
 - (a) The location and size of common open space.
 - (b) All proposed easements.
 - (c) The proposed screening, landscaping and planting plan, including details of types of planting.
 - (7) Illumination. The proposed location, height, direction of illumination, bulb type, power and time of proposed outdoor lighting and methods to eliminate sky glare and glare onto adjoining properties must be shown. Dark sky compliant lighting fixture shop drawings are to be submitted for review, accompanied by a point-to-point photometric analysis.
- B. Additional documents required. In addition to the site plan, the following documents shall also be required, unless waived by the Board:
- (1) Copies of all existing or proposed agreements by which private roads shall be maintained, refuse collected, snow plowed and removed, and other supplementary services shall be provided.

- (2) The applicant shall prepare a circulation study both within the site and as it may affect the surrounding areas, including estimates of total automotive trips generated, peak-hour demand, present and anticipated traffic volumes on adjoining streets, existing street capacities and other elements which may influence and be influenced by the development.
- (3) A traffic impact study conducted as part of an environmental assessment required pursuant to this section shall consider the following:
 - (a) Analysis of roadways that may be influenced by the project. These roadways can be considered as adjacent roads and major intersections;
 - (b) The analysis shall be completed for the estimated year of completion, or, in the case of phased developments, for the first phase, with the understanding that each phase shall require an independent analysis; and
 - (c) Analytical efforts shall consider the following: safety, including accident data, sight distances, roadway conditions, etc.; capacity analysis using Transportation Research Board Report No. 209; existing volumes (traffic counting); site-generated and future traffic; and planned transportation improvements.
- (4) A copy of any covenants, deed restrictions or exceptions that are intended to cover all or any part of the tract;
- (5) All calculations necessary to determine conformance with bylaws and regulations;
- (6) A survey prepared by a Massachusetts licensed surveyor shall accompany the site plan and shall show the boundaries of the parcel and the limits of all proposed streets, recreation and conservation areas and other property to be dedicated to public use;
- (7) The names and addresses of all abutters; and
- (8) Such other information as may be required to show that the details of the site plan are in accordance with applicable standards of the Zoning Bylaw.

§ 230-9.12. Special provisions for phased developments.

- A. In the case of plans which call for development over a period of years, a schedule shall be included in the application showing the proposed times within which each section of the development may be started.
- B. The proponents of a phased development shall include assurances that each phase could be brought to completion in a manner which would not result in an adverse effect upon the Town as a result of termination at that point.
- C. All site plans previously approved by the Planning Board shall be submitted each time a new part or section is submitted for approval.

§ 230-9.13. Preparation of site plans.

[Amended 3-10-1997 STM by Art. S12]

- A. Preparation of major site plan.
 - (1) A major site plan shall be prepared by a licensed engineer, landscape architect or architect for general locations except where waived by the Planning Board because of unusually simple circumstances.
 - (2) For topographical and boundary survey information, the major site plan shall be signed and sealed by a licensed land surveyor.

- (3) For all elements of design, which shall include drainage, pavements, curbing, walkways, embankments, horizontal and vertical geometries, utilities and pertinent structures, drawings shall be signed by a licensed professional engineer.
- B. Preparation of minor site plan. Minor site plans may be submitted without the assistance of a licensed engineer, surveyor, architect, and/or landscape architect. However, at its first meeting in review of the minor site plan, the Planning Board may instruct the applicant, in writing, to have certain details of the plan prepared in accordance with any or all of the requirements of a major site plan set forth in § 230-9.13A.

§ 230-9.14. Endorsement of site plan.

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

§ 230-9.15. Application fee.

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

- A. Minimum review fee deposit. A minimum deposit, in an amount established by the Planning Board, shall be submitted at the same time the application and site plan are submitted to the Planning Board. The minimum review fee deposit shall be submitted in check form and made out to the Town of Marion. If, prior to action on the application, the Planning Board finds that the amount of the deposit is not sufficient to cover the actual costs incurred by the Town in its review of the application, the applicant shall be required, upon written notice, to submit forthwith to cover such costs. The Planning Board shall notify the applicant of such additional amounts in writing by certified mail. Failure to submit such additional amounts shall be deemed a violation of these regulations and shall be deemed reason to deny approval of the application. If the actual costs incurred by the Town or Planning Board for the review of the application are less than the amount of the deposit, the Planning Board shall authorize that such excess amount be refunded to the applicant concurrently with Planning Board action on the site plan application.
- B. Costs covered by fee. The review fee shall be applied to all costs associated with the proper review and administration of the site plan application, including, but not limited to, staff time in administration and review of the application, costs for legal notices, advertising costs, and public hearing costs. The Planning Board is authorized to retain professional planners, registered professional engineers, architects or landscape architects, attorneys or other professional consultants to advise the Board on any and all aspects of the site plan. The cost of the advice shall be borne by the applicant.
- C. Planning Board regulations. The Planning Board, following a public hearing, may adopt, and from time to time amend, procedures for establishing fees, including costs for in-house processing and review and the engagement of outside experts.
[Amended 6-18-1990 STM by Art. 15]

Article X. Conservation Subdivisions

[Added 3-28-1989 STM by Art. 3; amended 6-18-1990 STM by Art. 8; 6-4-1996 STM by Art. S4; 10-28-1997 STM by Art. S5; 4-26-1999 ATM by Art. 22; 10-15-2001 STM by Art. S8]

§ 230-10.1. Purpose.

The purposes of this article, Conservation Subdivisions, are:

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

§ 230-10.2. Definitions.

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

CONSERVATION SUBDIVISION

A residential development in which the buildings are clustered together with variable lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. A conservation subdivision is the preferred form of residential development in the Town of Marion.

CONTIGUOUS OPEN SPACE

Open space suitable, in the opinion of the Planning Board, for the purposes set forth in § 230-10.12 herein. Such open space may be separated by the road(s) constructed within the conservation subdivision. Contiguous open space shall not include required yards.

TOWNHOUSE

A unit of real estate located in a single building on a single lot, where said building contains more than one but not more than four units of real estate located in one row of houses connected by common walls, and where are combined fee simple title to the unit and joint ownership in the common elements shared with other unit owners.

§ 230-10.3. Applicability.

In accordance with the following provisions, a conservation subdivision project may be created from any parcel or set of contiguous parcels held in common ownership and located entirely within the Residence A, B, C or D Districts.

§ 230-10.4. Procedures.

- A. A conservation subdivision may be authorized upon the issuance of a special permit by the Planning Board. A pre-application meeting between the Planning Board and the applicant is strongly encouraged.
- B. Applicants for a conservation subdivision shall file the following with the Planning Board at the appropriate times:
 - (1) Seven copies of both a preliminary subdivision plan and a conservation subdivision sketch plan. One of the purposes of this submission is to determine the number of lots possible in the conservation subdivision.

- (2) Seven copies of the definitive conservation subdivision plan. The definitive conservation subdivision plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply, drainage, proposed easements, stormwater management systems, and methods of sewage disposal. The plan shall be prepared by a team including a registered civil engineer, registered land surveyor and a registered landscape architect.
 - (3) An existing conditions plan. An existing conditions plan shall accompany the definitive conservation subdivision plan. The existing conditions plan shall depict existing topography, wetlands, water bodies and the one-hundred-year floodplain, all existing rights-of-way, easements, existing structures, location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways and cart paths. The existing conditions plan shall also show locations of soil test pits and 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 the bylaw.
- C. The Planning Board may also require as part of the development plan additional information necessary to make the determinations and assessments cited herein. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.^[1]
- [1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-10.5. Design process.

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

- A. Understanding the site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, any historical districts in the vicinity, and to determine the connection of these important features to each other.
- B. 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.
- C. Designating the contiguous open space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks. Open space shall be planned as large, contiguous areas whenever possible.
- D. Location of development areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Marion's historical development patterns. The maximum number of house lots, compatible with good design, shall about the open space and all house lots shall have reasonable physical and visual access to the open spaces.
- E. Lot lines. The final step is simply to draw in the lot lines (if applicable).

§ 230-10.6. Modification of lot requirements.

The Planning Board encourages applicants for a conservation subdivision to modify lot size, shape, and other dimensional requirements for lots within a conservation subdivision, subject to the following limitations:

- A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the conservation subdivision; provided, however, that the Planning Board may waive this requirement

where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

- B. At least 50% of the required side and rear yards in the district shall be maintained in the conservation subdivision.

§ 230-10.7. Basic maximum number of dwelling units.

The basic maximum number of dwelling units allowed in a conservation subdivision shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

§ 230-10.8. Types of buildings.

The conservation subdivision may consist of any combination of single-family, two-family and townhouse residential structures. A townhouse structure shall not contain more than four dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gable roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

§ 230-10.9. Roads.

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

§ 230-10.10. Parking.

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

§ 230-10.11. Contiguous open space.

A minimum of 50% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable to the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, conservation, forestry, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

§ 230-10.12. Permissible use of open space.

- A. Purposes. Open space shall be used solely for agricultural, conservation, forestry, educational or recreational 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.

- B. Recreation lands. Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.
- C. Leaching facilities. Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants to insure that such facilities are adequately maintained by the lot owners within the development.
- D. Accessory structures. Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space, including parking.
- E. Wetlands. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in § 230-10.5A, above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
- F. Underground utilities. Underground utilities to serve the conservation subdivision site may be located within the contiguous open space.

§ 230-10.13. Ownership of contiguous open space.

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

- A. Conveyance. The contiguous open space shall, at the developer's option and subject to the approval of the Planning Board, be conveyed to:
 - (1) The Town of Marion, to be placed under the care, custody and control of the Open Space Acquisition Committee or its successor, or the Conservation Commission;
 - (2) A nonprofit organization acceptable to the Town, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
 - (3) A corporation or trust owned jointly or in common by the owners of lots within the conservation subdivision. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Marion to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. In such event, the Town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance, and if the trust or corporation fails to complete such maintenance, the Town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.
- B. Permanent restriction. In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with MGL c. 184, § 31, approved by the Planning Board and the Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to insure that such land shall be kept in an open or natural state

and not be built upon or developed for accessory uses. Restrictions shall provide for periodic inspection of the open space by the Town. A management plan may be required by the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

- C. Encumbrances. All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.
- D. Monumentation. Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

§ 230-10.14. Buffer areas.

A buffer area of 100 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement for one of the following situations:

- A. Where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least 50 feet in depth which may include such restricted land area within such buffer area calculation;
- B. Where the land abutting the site is held by the Town for conservation or recreation purposes;
- C. The Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

§ 230-10.15. Design requirements.

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

- A. 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.
- B. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forest land and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as coastal and inland floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
- C. Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
- D. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one-hundred-foot buffer to such areas shall be incorporated into the open space. Where it is appropriate, reasonable access shall be provided to shorelines.
- E. 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.
- F. 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.

- G. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

§ 230-10.16. Drainage.

Stormwater management shall be consistent with the requirements for subdivisions set forth in the rules and regulations of the Planning Board^[1] and shall comply with the requirements of the current edition of the Massachusetts Stormwater Management Handbook.

[1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-10.17. Decision on application.

The Planning Board may approve, approve with conditions, or deny an application for a conservation subdivision after determining whether the conservation subdivision better promotes the purposes of § 230-10.1 of this Conservation Subdivision Bylaw than would a conventional subdivision development of the same locus.

§ 230-10.18. Relation to other requirements.

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

§ 230-10.19. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Marion's Zoning Bylaws.

Article XI. Definitions

[Added 4-4-1989 STM by Art. 11; amended 6-18-1990 STM by Arts. 2, 9, 15; 4-25-1994 ATM by Art. 28; 3-10-1997 STM by Arts. S8, S9, S10, S17; 4-26-1999 ATM by Arts. 19, 21; 10-25-1999 STM by Art. S3; 11-13-2000 STM by Art. S1; 4-22-2002 ATM by Art. 21; 4-29-2003 STM by Art. S3]

§ 230-11.1. Word usage.

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

§ 230-11.2. Terms defined.

As used in this bylaw, the following terms shall have the meanings indicated:

ACCESSORY APARTMENT

A separate, complete dwelling unit which is:

- A. Contained substantially within the structure of a one-family dwelling unit, is served by a separate entry/exit and can be isolated from the principal one-family dwelling unit; or
- B. Contained entirely within an accessory building located on the same lot as a one-family dwelling.

ACCESSORY STRUCTURE

See "structure, accessory."

ACCESSORY USE

See "use, accessory."

ACRE

The area of land to be equal to 43,560 square feet, as measured by acceptable surveying practices.

ADULT BOOKSTORE

An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT CABARET

A nightclub, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity, or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT DAY CARE

A facility, whether principal or accessory, providing nonresidential day care to adults over the age of 16. Not more than 15 such persons shall be served at an accessory facility.

ADULT MOTION-PICTURE THEATER

An enclosed building or any portion thereof used for presenting material (motion-picture films, videocassettes, cable television, slides or any other such visual media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT PARAPHERNALIA STORE

An establishment having as a substantial or significant portion of its stock devices, object, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT USE

Adult bookstores, adult cabarets, adult motion-picture theaters, adult paraphernalia stores, and adult video stores as defined herein.

ADULT VIDEO STORE

An establishment having as a substantial or significant portion of its stock-in-trade for sale or rent motion-picture films, videocassettes, DVDs, and similar audio/visual media, which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ALTERATION

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

ASSISTED-LIVING FACILITY

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

BASEMENT

A story partly underground but having at least 1/2 of its height above the average level of the adjoining ground. A basement shall be counted in determining the floor area of a building.

BED-AND-BREAKFAST

A private owner-occupied residence in which lodging and the breakfast meal are offered to transients for a fee.

BODY ART PARLOR OR STUDIO

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

BUFFER or BUFFER STRIP

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

BUILDING

A structure, or portion thereof, either temporary or permanent, having a roof or other covering forming a structure for the shelter of persons, animals and property of any kind; no trailer or mobile home shall be used as a building, except as permitted by § 230-6.7 of this chapter and MGL c. 40A, § 3.

BUILDING CODE

The State Building Code of the Commonwealth of Massachusetts, as the same may be amended from time to time.

BUSINESS OR PROFESSIONAL OFFICE

A building or part thereof, for the transaction of business or the provision of services, exclusive of the receipt, sale, storage, or processing of merchandise.

CHANGE OF USE

See "use, change of." See also § 230-9.1.

CHILD-CARE FACILITY

A day-care center or school-age child care program, as those terms are defined in MGL c. 15D, § 1A.

CLUB, NONPROFIT

Buildings, structures and premises used by a nonprofit social or civic organization as defined by MGL c. 180 or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities occurring in said building or structures or on said premises, except as may be required generally for the membership and purposes of such organization. (See § 230-4.2D, Recreational Uses.)

COMMERCIAL GREENHOUSE

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

COMMERCIAL RECREATION, INDOOR

A structure for recreational, social or amusement purposes, including all connected rooms or space with a common means of egress and entrance, which may include as an accessory use the consumption of food and drink. Indoor commercial recreation shall include theaters, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

COMMERCIAL RECREATION, OUTDOOR

A lot or combination of lots used for recreational, social, or amusement activities. This definition shall include: drive-in theater, golf course/driving range, bathing beach, sports club, horseback riding stable,

boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this bylaw. (See § 230-4.2D, Recreational Uses.)

COMMON OPEN SPACE

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

CONSERVATION SUBDIVISION

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

CONTRACTOR'S YARD

Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment. (See § 230-4.2K, Miscellaneous Commercial Uses.)

COOKING FACILITIES

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

DRIVE-IN OR DRIVE-THROUGH WINDOW

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

DRIVEWAY

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

DWELLING

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

DWELLING UNIT

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

EDUCATIONAL USE (EXEMPT)

See "use, educational."

ENVIRONMENTAL ASSESSMENT

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

ESSENTIAL SERVICES

Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems, whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

FAMILY DAY CARE, LARGE OR SMALL

Any private residence operating a facility as defined in MGL c. 28A, § 9. (See § 230-4.2M, Accessory Uses.)

FEMA

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

FLOOR AREA RATIO

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

FUEL

A substance that produces useful energy when it undergoes a chemical reaction. For example, coal, wood, gas, or natural gas.

FUEL OIL

A fraction obtained from petroleum distillation, either as distillate or a residue and burned in a furnace or boiler for the generation of heat or used in an engine for the generation of power. For example, heavy oil, marine fuel or fuel oil.

GENERAL SERVICE ESTABLISHMENT

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

GROSS FLOOR AREA

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

GROUNDWATER

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

GROUNDWATER RECHARGE AREA

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

HAZARDOUS OR TOXIC MATERIAL

A material which is hazardous to human health or to the environment, as defined by the U.S. Environmental Protection Agency and under 40 CMR 250 and the regulations of the Massachusetts Hazardous Waste Act, MGL c. 21, § 1.

HOME OCCUPATION

An accessory use of a dwelling for customary craft occupations conducted by a resident occupant, or for the practice by a resident of a recognized profession or trade.

HOMEOWNERS' ASSOCIATION

A corporation or trust owned or to be owned by the owners of lots or residential units within a site approved for a conservation subdivision or open space development, which entity shall hold the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

HOUSING, AFFORDABLE

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

IMPERVIOUS SURFACE

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

LIGHT MANUFACTURING

Fabrication, assembly, processing, finishing work or packaging.

LOT

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

LOT AREA

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

LOT FRONTAGE

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

LOT LINE, FRONT

That property line which establishes frontage on a way.

LOT LINE, REAR

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

LOT LINE, SIDE

Any lot line not defined as a front or rear lot line.

MAJOR COMMERCIAL PROJECT

Any commercial use or combination of commercial uses set forth in the Table of Principal Uses under the heading "G. Retail Uses" with a gross floor area of more than 5,000 square feet.^[1]

MARINA

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

MARION WATERS

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

MAXIMUM LOT COVERAGE

Includes the gross ground floor area of all buildings and all impervious surfaces.

MEAN HIGH WATER

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

MEDICAL OFFICE OR CLINIC

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

MOTOR VEHICLE BODY REPAIR

An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies. Such establishment does not include the storage of vehicles for the cannibalization of parts.

MOTOR VEHICLE GENERAL REPAIR

Premises for the servicing and repair of autos, but not to include retail fuel sales. Such premises do not include establishments for motor vehicle body repair or motor vehicle junkyards or graveyards. (See § 230-4.2I, Motor Vehicle Related Uses.)

MOTOR VEHICLE JUNKYARD OR GRAVEYARD

The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

MOTOR VEHICLE SERVICE STATION

Premises designed for the supplying of motor vehicle fuel, and which may also provide oil, lubrication, or minor repair services. Washing shall be permitted only as an incidental or subordinate use. Not included in this definition are services designed for automobile body repair, painting or major vehicle repair. (See § 230-4.2I, Motor Vehicle Related Uses.)

MULTIFAMILY USE

Two or more dwelling units on a single lot, including any mix of single-family, two-family, or multifamily structures, whether or not attached, and regardless of form of tenure.

MUNICIPAL FACILITIES

Facilities owned or operated by the Town of Marion or facilities licensed by the Town to other entities.

NONEXEMPT ROADSIDE FARM STAND

Facility for the sale of produce, wine, other edible farm products, flowers, fireplace wood, preserves, dairy and similar products on property not exempted by MGL c. 40A, § 3. The footprint of such facility shall be less than 100 square feet for the sale of produce, flowers and firewood.

NURSERY

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

NURSING OR CONVALESCENT HOME

Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire. (See § 230-4.2K, Miscellaneous Commercial Uses.)

PARKING SPACE (HANDICAPPED)

An area, except for residences, suitable for parking a car, having adequate access for entry and exit while other adjacent parking spaces are occupied and one which complies with the standard set forth in 521 CMR 23.

PARKING SPACE (NON-HANDICAPPED)

An area measuring at least nine feet by 18 feet, suitable for parking a car, having adequate access for entry and exit while other adjacent parking spaces are occupied and one which complies with the standard set forth in 521 CMR 23.

PERSONAL KENNEL

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

PERSONAL SERVICE ESTABLISHMENT

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

PIER, ACCESSORY

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

PIER, ASSOCIATION

A pier used exclusively for noncommercial purposes by an association of boat owners.

PIER, COMMERCIAL

A pier available or used for commercial purposes.

RESEARCH LABORATORY

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

RESTAURANT

A building or portion thereof containing tables and/or booths for at least 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 areas designated for dining purposes, which are adjunct to the main indoor restaurant facility. The term "restaurant" shall not include "fast-food restaurant" or "drive-in restaurant."

RESTAURANT, DRIVE-IN

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

RESTAURANT, FAST-FOOD

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption on or off the premises, with food ordering at a counter, rather than at a table.

RESTAURANT, OUTDOOR

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

RETAIL, GENERAL

A facility selling goods but not specifically listed in § 230-4.2, the Table of Use Regulations, and less than 5,000 square feet of gross floor area.

ROOMING HOUSE

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

SIGN

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

SIGN, ACCESSORY

Any sign relating to an allowed accessory use of the premises.

SIGN, BILLBOARD

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

SIGN, BUSINESS

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

SIGN, DIRECTIONAL

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

SIGN, FACE AREA THEREOF

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

SIGN, FREESTANDING

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

SIGN, PORTABLE OR MOBILE

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

SIGN, PROJECTING

A sign which is attached to a building, extends more than 12 inches therefrom and provides necessary clearance for pedestrians and vehicles.

SIGN, ROOF

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

SIGN, WALL-MOUNTED

A sign which is attached directly to the wall of a building and does not extend more than 12 inches therefrom and provides necessary clearance for pedestrians.

SPECIAL PERMIT GRANTING AUTHORITY

The Board of Appeals, Board of Selectmen, or the Planning Board as designated in this bylaw.

STORY

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

STREET

An improved public way laid out by the Town of Marion, the Plymouth County Commissioners or the Commonwealth of Massachusetts, or a way which the Marion Town Clerk certifies is maintained by public authority as a public way, or a way in existence having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon. A way shall not be a "street" with respect to any lot which does not have appurtenant to it a recorded right of access to and over such way for vehicular traffic.

STRUCTURE

A combination of materials to form a construction, including, among others, buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, water tanks, play towers, swimming pools, trestles, sheds, shelters, fences over six feet high, display signs, flagpoles, masts for radio antennas, courts for tennis or similar games, backstops, backboards. A vessel shall not be considered to be a structure.

STRUCTURE, ACCESSORY

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

STRUCTURE, NONCONFORMING

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

TRACT

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

USE, ACCESSORY

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

USE, CHANGE OF

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

USE, EDUCATIONAL (EXEMPT)

Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation defined in MGL c. 180.

VARIANCE

Such departure from the terms of this bylaw which the Zoning Board of Appeals, upon appeal in specific cases, is empowered to authorize under the terms of Article II, § 230-2.3D, of these bylaws.

VEGETATIVE COVER

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

WAREHOUSE

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

WETLANDS

Area characterized by conditions described in MGL c. 131, § 40.

WIRELESS COMMUNICATION

The transmission of information over a distance without requiring wires, cables, or any other electrical conductors.

YARD

An open space on a lot not covered by a building or structure.

YARD, FRONT

A yard extending between lot side lines across the lot adjacent to each street it abuts.

YARD, REAR

A yard extending between the side lines of a lot adjacent to the rear line of the lot.

YARD, SIDE

A yard extending along each side line of a lot between front and rear yards.

[1] *Editor's Note: See § 230-4.2, Table of Principal Uses.*

Article XII. Open Space Development District

§ 230-12.1. Purpose; bulk requirements; allowable structures.

- A. The Open Space Development District is intended to apply to tracts of land of 50 acres or more located in the Residence C District and owned by one or more property owners where flexible development controls will allow residential uses and accessory uses incident thereto, which will preserve common open spaces, natural resources, or agricultural lands to the extent of at least 40% of the tract in accordance with the overall goals of the Marion Land Use Plan and the Marion Open Space Plan. Residential uses other than single-family homes on individual lots will be allowed within an Open Space Development District subject to assurances that such development will enhance the amenities in the neighborhood in which it occurs.
- B. There shall be no minimum lot area, frontage or yard requirements within an Open Space Development District. However, no building shall be erected within 40 feet of an existing public way or boundary line or an Open Space Development District.
- C. The Open Space Development District is intended to offer incentives to property owners through the offering of options to develop under standards which are unique to the site and not limited by the standards which generally apply to development within the Residence C District.
- D. The Open Space Development District allows for the construction of single-family (detached and attached) and multiunit structures of all types. The flexibility permitted with respect to types of ownership and housing types in an Open Space Development District should allow for a range of housing costs. The total number of residential units allowable on the site proposal for an open space development shall not exceed the number that would be allowed in the Residence C District. The Open Space Development District, however, also provides for an increase in density up to a maximum of 15% if a certain number of affordable housing units are provided in the district.

§ 230-12.2. Permitted uses; approval process.

- A. Unless and until any portion of the Residence C District is placed in an Open Space Development District, the permitted uses shall be those in effect from time to time in the Residence C District.
- B. Upon the submission of a preliminary open space development plan pursuant to § 230-12.3 and compliance with other requirements of this Article XII, any portion of the Residence C District of 50 acres or more may be placed, by a two-thirds vote of the Marion Town Meeting, in an Open Space Development District. Open Space Development Districts shall be numbered sequentially at the time of the Town Meeting vote.
- C. The Open Space Development District shall be considered an overlay district. If site plan approval is obtained for land within an Open Space Development District, the provisions of the overlay district shall apply thereafter.
- D. All of the definitions set forth in Article XI, and the provisions of any other overlay district in which such land may be located, shall apply within any Open Space Development District, and the requirements of other provisions of the Zoning Bylaw not limited in application to particular underlying zoning districts shall apply except to the extent expressly and conspicuously otherwise stated in the written portion of the preliminary open space development plan.

§ 230-12.3. Preliminary open space development plan application; fee.

- A. Rezoning land to the Open Space Development District shall be initiated by the preparation of a preliminary open space development plan application submitted, along with a filing fee, to the Board of Selectmen and signed by all of the owners of the affected land or their authorized representatives.

- B. Prior to filing the preliminary open space development plan application, the applicant shall attend a pre-submission conference with the Planning Board to review the information and specifications the applicant must submit and the amount of the filing fee. With respect to the fee, the Planning Board may be guided in part by the provisions of § 230-9.15, Application fee. The fee shall be sufficient to recompense the Town and the Planning Board for any or all of the out-of-pocket costs of reviewing and analyzing the application.
- C. Within five days of receipt of such application and petition for a revision in the Zoning Bylaw, the Board of Selectmen shall forward copies of the preliminary open space development plan application to the Planning Board for review and the conduct of the public hearing. Additional copies of the preliminary open space development plan application also shall be forwarded within five days to the Conservation Commission, Board of Health, Public Works Administration, Police and Fire Departments, and such other boards and commissions as the Board of Selectmen may designate, for review and comment to the Planning Board.
- D. The preliminary open space development plan application shall include the information which the Planning Board requires for the submission of a site plan under Article IX of this bylaw, and, as appropriate, information covered by § 230-10.13, Ownership of contiguous open space. The Planning Board, in the interest of encouraging this type of development, may, following a pre-submission conference, relax some of the submission requirements to the extent that they will not adversely influence the ability of the Town Meeting to make a reasoned decision in voting on the creation of an Open Space Development District. Since the Planning Board will review a final open space development plan under Article IX requirements as well as additional standards and criteria as listed in § 230-12.7, extensive detail may not be necessary or appropriate for a project which must be presented at Town Meeting.
- E. The preliminary open space development plan application shall provide information to allow a determination of the number of lots that could be developed on the land by utilizing a conventional subdivision plan in accordance with the Rules and Regulations Governing the Subdivision of Land in Marion.^[1] Wetlands, as defined under the Wetlands Protection Act, water bodies, and any land otherwise prohibited from development by local bylaw or regulation shall not be included in the overall area in calculating density. The burden of proof shall be on the applicant in determining the allowable number of dwelling units.
- [1] *Editor's Note: See Ch. 300, Subdivision Regulations.*
- F. The preliminary open space development plan application may provide that the number of dwelling units obtained through the computations described in the preceding subsection may be increased by 15% if between 15% and 30% of the dwelling units within the open space development plan are affordable (as defined in Article XI), "independence housing," or "starter housing."
- (1) "Independence housing" is defined as small-floor-area single-family detached or attached owner-occupied housing designed to serve families and individuals where the head of household is 55 years of age or older. Deed restrictions shall apply to maintain affordability and limit resale to those 55 and older as allowed by law.
- (2) "Starter housing" is defined as single-family detached or attached, owner-occupied housing. "Starter housing" shall be available for purchase to first-time homebuyer households earning at least 80% but less than 110% of the median income for the Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development. Long-term availability at affordable costs will be provided in the form of deed restrictions and other conditions as allowed by law.
- G. The preliminary open space development plan application shall include a statement identifying all respects in which the proposed development will not comply with any provision of the bylaw, not limited in application to the Residence C District.
- H. The applicant shall recognize that the preliminary open space development plan as submitted with the application will be in the form of a plan which will be the basis for binding action by the Town Meeting.

The applicant may provide specifications beyond those required by the Planning Board. Such additional specifications shall be binding to the same extent as those required by the Planning Board.

§ 230-12.4. Public hearing.

- A. Pursuant to the provisions of MGL c. 40A, § 5, the Planning Board shall give notice and hold a public hearing within 65 days after the submission of the preliminary open space development plan application to the Planning Board by the Board of Selectmen.
- B. In addition to the notices required by law, a description of the preliminary open space development plan and notice of such hearing, including reproductions of architectural renderings and of the site plan, all in a form approved by the Planning Board, shall be mailed to each registered voter of the Town at least 14 days prior to such hearing. The applicant shall pay the cost of reproduction and mailing of such notice. Failure of notice by mail shall not be a bar to action on the plan unless actual prejudice is shown.

§ 230-12.5. Change in application.

The Planning Board may recommend changes in the preliminary open space development plan at the Town Meeting if it finds that there is good cause for the change and that the change is not inconsistent with the information presented at the Planning Board hearing.

§ 230-12.6. Town Meeting.

- A. The preliminary open space development plan application shall be presented to the Town Meeting which considers the creation of an Open Space Development District for the area covered by the application, and shall be identified in any motion to create such a district. In the event that the procedures followed with respect to a preliminary open space development plan application do not conform in all of the requirements of this Article XII, such nonconformity may be waived upon the favorable recommendation of the Planning Board, by a two-thirds vote of the Town Meeting.
- B. The preliminary open space development plan application, as submitted to the Town Meeting, may be amended on the floor of the Town Meeting to add restrictions, limitations or requirements.

§ 230-12.7. Site plan approval.

- A. Final open space development plan. After the approval by the Town Meeting for the designation of an Open Space Development District and approval of a preliminary open space development plan application, the Planning Board may grant site plan approval for a final open space development plan for the development of the land within the Open Space Development District. At its option, the Planning Board may coordinate its site plan approval of a final open space development plan with any required subdivision review for land located within an Open Space Development District.
- B. The procedures outlined in Article IX, Site Plan Review and Approval, shall be followed in the issuance of site plan approval. In addition to the findings that the Planning Board may require under site plan review and approval, the Planning Board shall approve a final open space development plan if it finds the plan:
 - (1) Is substantially consistent in all respects with the approved preliminary open space development plan.
 - (2) Provides for no greater number of dwelling units than is provided in the approved preliminary open space development plan.
 - (3) Provides for no uses which are not permitted by the approved preliminary open space development plan.

- (4) Provides a suitable development which is in harmony with the objectives of the Zoning Bylaw and Land Use Plan and will not be detrimental to the surrounding neighborhoods.
- (5) Provides that land shown in the approved preliminary open space development plan as permanent open land shall be conveyed in the manner provided for ownership of open land under § 230-10.13, Ownership of contiguous open space.
- (6) Satisfies the following additional design standards and criteria:
 - (a) The existing land form shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and man-made features such as stone walls.
 - (b) The natural character and appearance of the Town shall be maintained and enhanced by screening views of the development from nearby streets and adjoining neighborhoods. Existing land forms and vegetation should be used where possible.
 - (c) Open space shall be located and designed so as to increase the visual amenities of the neighborhood as well as for the occupants of the open space development area. Where appropriate, links to open spaces, as proposed in the Land Use Plan and Open Space Plan, shall be provided.
 - (d) Buildings shall be located so as to be harmonious with the land form.
 - (e) Access points from driveways or new streets to the Town's existing street system shall be minimized.
 - (f) Utility systems should be located underground or as inconspicuously as possible.

§ 230-12.8. Amendment of site plan.

Amendments to approved final open space development plans shall be processed in accordance with the provisions of Article IX, Site Plan Review and Approval, and shall be subject to the findings required under § 230-12.7.

Article XIII. (Reserved)

[1] *Editor's Note: Original Sec. 13, Rate of Development, added 3-10-1997 STM by Art. S1, as amended, expired 1-1-2007 and has therefore been removed from the Zoning Bylaw.*

Article XIV. Subdivision Phasing

[Added 3-10-1997 STM by Art. S2]

§ 230-14.1. Purpose.

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

§ 230-14.2. Applicability.

The issuance of building permits for any tract of land divided pursuant to any provision of MGL c. 41, §§ 81K through 81GG, the Subdivision Control Law, into more than seven lots after the effective date of this bylaw

shall be subject to the regulations and conditions set forth herein. This provision shall apply to any proposed division or combination of properties which were in the same ownership and contiguous as of March 10, 1997.

§ 230-14.3. Phased issuance of building permits.

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

§ 230-14.4. Exceptions.

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

- A. The owner of said land may apply for a special permit from the Planning Board for the issuance of more than seven building permits in any twelve-month period. The Planning Board may grant a special permit only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well as conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to MGL c. 41, § 81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of 50% or more.
- B. Where the tract of land will be divided into more than 40 lots, the Planning Board may, by special permit, authorize development at a rate not to exceed 10% of the units per year.

§ 230-14.5. Zoning change protection.

The protection against subsequent zoning change granted by MGL c. 40A, § 6 to land in a subdivision shall, in the case of a development whose completion has been constrained by this article, be extended to 10 years.

§ 230-14.6. Relation to real estate assessment.

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

Article XV. Flexible Development

[Added 10-28-1997 STM by Art. S4]

§ 230-15.1. Purpose.

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

§ 230-15.2. Applicability.

[Amended 5-21-2007 ATM by Art. 25]

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

§ 230-15.3. Application procedure.

Applicants for flexible development shall file with the Planning Board six copies of a development plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board.^[1] The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

[1] *Editor's Note: See Ch. 300, Subdivision Regulations.*

§ 230-15.4. Modification of lots.

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

- A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by subdivision involved.
- B. Lots may be reduced in area to a minimum of 85% of the otherwise applicable requirement for the district.
- C. Lot frontage may be reduced to 65% of the frontage required in the district, provided that all lots located within the flexible development shall average 85% of the frontage required in the district.
- D. Each lot shall have at least 85% of the required yards for the district.

§ 230-15.5. Visual buffer requirements.

A buffer area, not less than 200 feet in width, shall be provided between any public way adjacent to the flexible development and any home constructed therein. The buffer may be constituted as a "no build" zone with the site, and may serve as area for individual lots contained therein. No indigenous vegetation shall be removed from this buffer zone before or after the development of the residential compound (except for removal necessary for the construction of subdivision roadways and services and ordinary maintenance), nor shall any building or structure be placed therein.

§ 230-15.6. Compliance with other requirements.

The submittals and permits of this article shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

Article XVI. Solar Photovoltaic and Thermal Systems

[Added 10-28-2013 STM by Art. S10]

§ 230-16.1. Purpose.

The purpose of the Solar Bylaw is to provide standards and guidelines for the installation of solar photovoltaic (PV) and solar thermal systems in the Town of Marion, while protecting public health, safety, and welfare and preserving the character of the Town.

§ 230-16.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

APPLICANT

Includes:

- A. Fee owners of real property who also own the system; or
- B. Fee owners of real property who intend on leasing the system to a third party pursuant to a legally binding instrument; or
- C. Third parties who are not the fee owners of the real property but who have obtained written permission from the fee owners of the real property to submit an application for a system pursuant to the terms and conditions of this bylaw.

PHOTOVOLTAIC

The technology that uses a semi-conductor material to convert light directly into electricity.

SIZE OF SOLAR PANEL

All size limitations cited herein shall apply to the full-face areas of an array of solar panels themselves, not their projected areas on roofs or ground.

SOLAR FARM

Systems designed for the primary purpose of generating power for sale to third parties via the electric grid. These systems can be roof-mounted systems or ground-mounted systems that may or may not have accessory structures on the same lot.

SOLAR PANEL

Any part of a system that absorbs solar energy for use in the system's energy transformation process.

SOLAR SYSTEMS

[Hereinafter "system(s)."] Installed in Marion, whether roof- or ground-mounted, shall include any engineered and constructed structure that converts sunlight into:

- A. Electrical energy (PV systems) through an array of solar panels that connects to a building's electrical system or to the electrical grid; or
- B. Heat energy (thermal systems) through an array of solar panels that heats water to be used on site.

§ 230-16.3. General standards for solar systems.

The following represents the general standards that shall apply to systems installed pursuant to the provisions of this bylaw:

- A. Systems and solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways.
- B. A system shall not be used to display advertising, including signage, streamers, pennants, spinners, reflectors, ribbons, tinsel, balloons, flags, banners, or similar materials, with the exception of the following: Necessary equipment information, warnings, or indication of ownership shall be allowed on any equipment of the system or where required by the Building Code.
- C. No system or any of its components shall be illuminated, except to the degree minimally necessary for public safety and/or maintenance and only in compliance with the Marion Zoning Bylaw.
- D. All systems shall be considered either a "structure" or an "accessory structure" as defined in the Marion Zoning Bylaw and shall have setbacks on all sides in accordance with existing zoning requirements as

stated in the Dimensional Requirements Table found within § 230-5.1 of the Marion Zoning Bylaw or as further defined in this bylaw.

- E. A system installation shall limit the visual and other impacts on the adjacent properties. The systems shall be screened from ground and water level view of the line of sight from public ways or waterway and adjacent properties by appropriate year-round landscaping, fencing, screening, or other type of buffers consistent and compatible with the character of the neighborhood where the system is located.
- F. Large-scale clearing of forested areas for the purpose of constructing systems is prohibited.
- G. No system shall be used or constructed such that it becomes a private or public nuisance or hazard, and no system shall be abandoned or not maintained in good order and repair. Any system that is deemed a private or public nuisance or hazard or otherwise abandoned or not maintained in good order and repair shall be removed from the property at the property owner's sole expense.
- H. Stormwater and snowmelt runoff and erosion control shall be managed in a manner consistent with all applicable federal, state and local regulations and shall not impact neighboring properties.
- I. Wall mounting or any other form of face-mounted system on any building or structure is prohibited in all zoning districts.
- J. Utility connections. All electrical work shall be in accordance with the National Electrical Code and the Massachusetts Building Code and have received all applicable permits, including but not limited to environmental permits as may be required. All power transmission lines from a ground-mounted system to any building or other structure shall be located underground unless otherwise required by the State Building Code or impeded by special ground site conditions.
- K. Any deviation from the requirements set forth in design standards for all districts shall be subject to a streamlined special permit process as defined in § 230-16.9.

§ 230-16.4. Roof-mounted systems.

- A. Roof-mounted systems may be installed in all zoning districts by an applicant, requiring only that a building permit has been issued by the Marion Building Commissioner and that the system conforms to the Marion Zoning Bylaw and to Subsections **B**, **C** and **D** below.
- B. Within residential districts, roof-mounted systems shall conform to existing roof contours, extending not more than 12 inches above roof surfaces. Roof-mounted systems shall be set back a minimum of eight inches from all roof edges (eaves, gutter line, ridge) of the roof surface and 24 inches from adjacent roof or abutting roof or walls of adjoining property. All residential flat roof systems shall conform to requirements of § 230-16.3E.
- C. Flat roof mounted systems shall have a four-foot setback from the edge of the building perimeter. Screening is not a requirement.
- D. In nonresidential districts, roof-mounted solar panels as part of the system may be installed at angles of up to 50° from the horizontal on flat roofs (defined as having a roof pitch less than two inches per foot). The topmost points of the solar panels shall not exceed a total height of four feet above the roof surface. On a pitched roof system (roof pitch equal or greater than two inches per foot), the topmost point of the solar panel shall not exceed two feet measured perpendicular to the roof surface. Systems shall be set back from building edge a minimum of four feet. All these systems are considered to be building-mounted mechanical systems and shall meet all requirements thereof. All flat roof systems shall conform to requirements of Subsection **C** above.

§ 230-16.5. Ground-mounted systems in nonresidential districts.

This section of the bylaw applies to ground-mounted systems not classified as solar farms.

- A. Ground-mounted systems equal to or less than 900 square feet or 1.5% of lot size, whichever is larger, may be installed by an applicant via issuance of a building permit by the Marion Building Commissioner.
- B. A solar panel array greater than 900 square feet or 1.5% of lot size, whichever is larger, with a maximum system size of 1,500 square feet, shall be reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9, Streamlined special permits, and is subject to a minor site plan review (§ 230-16.7).
- C. A solar panel array greater than 1,500 square feet shall be reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9, Streamlined special permits, and is subject to major site plan review (§ 230-16.8).
- D. The maximum height above ground level of any portion of the system shall be six feet, measured as the vertical distance from the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Building Commissioner.

§ 230-16.6. Ground-mounted systems in residential districts.

This section of the bylaw applies to ground-mounted systems for on-site electrical use.

- A. A solar panel array limited in size to 600 square feet or 1.5% of lot size, whichever is larger, may be installed after obtaining a building permit from the Building Commissioner.
- B. System(s) greater than 600 square feet or 1.5% of lot size, whichever is larger, shall have been reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9, Streamlined special permits, and to a minor site plan review (§ 230-16.7).
- C. The maximum height above surrounding ground level of any portion of the system shall be six feet, measured as the vertical distance from the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Building Commissioner.
- D. At the expense of the applicant, all parties in interest shall be notified of the Planning Board meeting during which a minor site plan review application is to be held pursuant to the provisions of MGL c. 40A, § 11, notwithstanding that a public hearing shall not be required.

§ 230-16.7. Minor site plan review and approval.

Where required by this bylaw (Article XVI et seq.), submission to the Planning Board for minor site plan review and approval pursuant to § 230-9.1B of the Zoning Bylaw shall be as set forth herein and regardless of the minimum threshold requirements found in § 230-9.1B. In addition to the submission requirements found in § 230-9.1B of the Zoning Bylaw, the Planning Board may require, where in its sole judgment it deems relevant, the submission of one- or three-line electrical diagrams detailing solar PV systems, associated components, electrical interconnection methods, all National Electrical Code compliant disconnects and overcurrent devices, documentation of major system components to be used, including PV panels, mounting system, and inverter(s).

§ 230-16.8. Major site plan review and approval.

Where required by this bylaw (Article XVI et seq.), submission to the Planning Board for major site plan review and approval pursuant to § 230-9.1C of the Zoning Bylaw shall be as set forth herein and regardless of the minimum threshold requirements found in § 230-9.1C. In addition to the submission requirements found in § 230-9.1C of the Zoning Bylaw, the Planning Board may require, where in its sole judgment it deems relevant, the submission of one or three-line electrical diagrams detailing solar PV systems, associated components, electrical interconnection methods, all National Electrical Code compliant disconnects and overcurrent

devices, documentation of major system components to be used, including PV panels, mounting system, and inverter(s), the designed annual electrical output of the system and evidence of the annual on-site consumption in watt-hours. In addition, the Planning Board may require the applicant to provide the name, address, and contact information of proposed system installer, the name, contact information and signature of any agents representing the project proponent, require the provision of evidence of site control, evidence of utility notification, an operation and maintenance plan, emergency response plan, and a description of financial surety.

§ 230-16.9. Streamlined special permits.

Certain systems regulated by this bylaw may be subjected to a streamlined special permit procedure that obviates the need to comply with the four enumerated filing requirements contained in Article VII of the Zoning Bylaw (special permit requirements) and MGL c. 40A, § 9 of the Zoning Act as noted below. Specifically, where this bylaw designates an application to be subject to a streamlined special permit, a special permit from the Planning Board pursuant to Article VII of the Zoning Bylaw shall be required; however, the requirements of 1) a traffic study; 2) an environmental impact study, 3) a stormwater study, and 4) a peer review by the Town's engineer shall not be required.

§ 230-16.10. Modifications to existing systems.

Additions and alterations to any system lawfully in existence as of the effective date of this bylaw shall conform to the requirements of this bylaw. All the provisions of this bylaw, including review pursuant to streamlined special permit § 230-16.9, shall apply to any modification, expansion or alteration to or of a system installed or constructed pursuant to this bylaw or any system preexisting the effective date of this bylaw.

§ 230-16.11. Solar farms.

Ground-mounted solar farms are allowed in residential districts under the following conditions:

- A. In addition to requirements provided elsewhere in this bylaw, system(s) within a solar farm shall be subject to review and approval by the Planning Board pursuant to the provisions of § 230-16.8, Major site plan review and approval;
- B. System(s) within a solar farm shall require receipt of a special permit as defined in Article VII of the Marion Zoning Bylaws.
- C. Solar farms shall be located on lots with a minimum of three contiguous acres (no less than 130,680 square feet).
- D. Systems within solar farms shall comply with setbacks according to the Marion Zoning Bylaw except where an adjacent property has or could have a dwelling unit(s) within 100 feet of the system, in which case the setback must be a minimum of 100 feet along adjacent property lines. Access paths around the perimeter of the system may be located in the setback area.
- E. The maximum height of the ground-mounted solar arrays, support structures and any local berm below the structures shall be limited to eight feet above the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Planning Board.
- F. The Planning Board shall be the special permit granting authority. All modifications to a solar farm made after issuance of the special permit shall require approval by the Planning Board in accordance with the existing process for modifications to special permits.
- G. The following additional conditions apply and shall be included with an application for a special permit and major site plan review for a solar farm:

- (1) The name and affiliation of the electrical engineers or electricians who will design the connection to the grid or load.
- (2) Property lines for the subject property and all properties adjacent to the subject property within 300 feet.
- (3) A plan view to scale with elevations and sight line representations that shall include:
 - (a) The system, all existing buildings, including description of existing use, if known (e.g., residence, garage, accessory structure and so forth), located on the property and on all adjacent properties located within 300 feet of the proposed solar farm.
 - (b) Distances, at grade, from the proposed solar farm to each structure shown on the vicinity plan as well as a plan for screening.
- (4) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
- (5) A map or plan, as required, showing the connection to the grid or load, as applicable.
- (6) Colored photographs or Google Earth or equivalent view of the current conditions and view of the site from at least four locations from the north, south, east, and westerly directions shall be submitted.
- (7) Material safety data sheets identifying the presence of any hazardous or potentially hazardous materials.

§ 230-16.12. Abandonment or discontinuation of use of solar farms.

- A. At such time as the holder of a special permit issued or subsequent owner(s) elects to abandon or discontinue the use of the solar farm, the holder shall notify the Planning Board by certified mail, return receipt requested, of the proposed date of abandonment or discontinuance. In the event that a holder fails to give such notice, the solar farm facility shall be considered abandoned or discontinued if the solar farm has not been operational for 180 days unless the Planning Board has authorized an extension pursuant to MGL c. 40A, § 9.
- B. Upon abandonment or discontinuation of use, the owner shall physically remove the solar farm facility within 120 days from the date of abandonment or discontinuation of use. For good cause shown, this period may be extended at the request of the holder of the special permit at the discretion of the Planning Board. "Physically remove" shall include, but not be limited to:
 - (1) Removal of the solar collection panels frames, supporting structures, foundations, electrical equipment, and connections, all other equipment, equipment shelters and vaults, security barriers and all appurtenant structures from the solar farm site;
 - (2) Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations;
 - (3) Restoration of the location of the solar farm facility site to its natural condition, except that any landscaping consistent with the character of the site and neighborhood may remain.

§ 230-16.13. Financial surety; removal, decommissioning and abandonment of solar farms.

- A. Prior to the issuance of a special permit or building permit for any solar farm ground-mounted system as otherwise permitted pursuant to this bylaw, an escrow agreement (the "escrow agreement") in form and substance acceptable to the property owner and the Planning Board shall be executed by the applicant

for said special permit or building permit, the property owner, and an escrow agent (such party to be acceptable to the property owner, the applicant, and the Planning Board), with the Town of Marion named as a third-party beneficiary under such escrow agreement. The escrow agreement shall require, among other things, that the applicant shall deposit a specified sum of money in an escrow account (the "escrow account") to be held by the escrow agent. The escrow agent shall be a financial institution that regularly acts as an "escrow agent" or "trustee."

- B. The escrow amount shall be sufficient to cover the estimated cost to the property owner to remove the facility in full and remediate the landscape. Where the applicant is not the property owner, the escrow agreement shall contain a provision, to the satisfaction of the Planning Board, that any funds released from the escrow account following the expiration or earlier termination of the lease between the property owner and the applicant shall:
- (1) First be used by the property owner solely to complete said removal and remediation up to the amount set forth in the lease;
 - (2) Second be used by the property owner to complete any additional removal and remediation as prescribed by the Planning Board (and consented to by the property owner) up to the amount set forth in the escrow agreement; and
 - (3) Any excess be returned to the applicant.
- C. The escrow amount shall be established by the applicant to the satisfaction of the Planning Board and the property owner based upon the applicant's delivery of a fully inclusive estimate of the costs (the "removal cost estimate") associated with said removal and remediation (such amount not to be less than the amount set forth in the lease), prepared by a qualified engineer. The removal cost estimate shall be reevaluated every seventh anniversary of the building permit by the applicant's designated engineer and, in the event of any adjustments to said removal cost estimate that are approved in writing by both the Planning Board and the property owner, the escrow amount shall be correspondingly adjusted to reflect such updated removal cost estimate. Within 90 days of each said seventh anniversary, the property owner shall confirm in writing to the Planning Board the continued compliance and fully funded status of the escrow account in satisfaction of this condition.
- D. Any system that does not comply with the above-noted requirements, including the reevaluation requirements governing the removal cost estimate, and any system that has been abandoned or not used for a period of two years or more shall be deemed to no longer comply with the Marion Zoning Bylaws and shall be subject to the enforcement and penalty provisions of civil and criminal laws of the Town of Marion and Commonwealth of Massachusetts.

§ 230-16.14. Utility notification regarding solar farms.

Prior to the issuance of a building permit for the construction of a solar farm, the solar farm applicant shall provide the Building Commissioner with documentation that the utility company that operates the electrical grid where the solar farm is to be located has executed a noncontingent, binding and enforceable utility interconnection agreement with the solar farm owner and applicant for the electrical generation of the solar system.

§ 230-16.15. Recording of special permit; change in ownership of solar farms.

Once a special permit for a solar farm has been approved, the applicant shall duly record a copy of the special permit with the Plymouth County Registry of Deeds. All subsequent deeds to the property shall refer to the special permit and incorporate it by reference. All conditions under which the special permit was originally granted shall be binding on all successive owners and operators of the property.

§ 230-16.16. Severability.

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

Article XVII. Medical Marijuana Treatment Centers or Registered Marijuana Dispensaries

[Added 5-12-2014 ATM by Art. 35]

§ 230-17.1. Purpose.

The purposes of this bylaw are:

- A. To exercise lawful oversight and regulation of medical marijuana treatment centers (also known as registered marijuana dispensaries), consistent with Chapter 369 of the Acts of 2012,^[1] 105 CMR 725 et seq., and the Town's regulatory powers; and
[1] Editor's Note: See the Appendix to MGL c. 94C, § 1-1 et seq.
- B. To limit the siting and operation of medical marijuana treatment centers to locations appropriate to such use, and to regulate such use through conditions necessary to protect community safety while ensuring legitimate patient access.

§ 230-17.2. Applicability.

- A. The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana for medical use is prohibited unless permitted as a medical marijuana treatment center under this bylaw.
- B. No medical marijuana treatment center shall be established except in conformity with this bylaw; with all regulations promulgated by the Board of Health; and with the requirements of 105 CMR 725 et seq.
- C. Nothing in this bylaw shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of narcotic drugs.

§ 230-17.3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MARIJUANA

All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. Marijuana also includes marijuana-infused products (MIPs) except where the context clearly indicates otherwise.

MARIJUANA-INFUSED PRODUCT (MIP)

A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by an RMD, shall not be considered a food or a drug as defined in MGL c. 94, § 1.

MEDICAL MARIJUANA TREATMENT CENTER

A not-for-profit entity registered under 105 CMR 725.00, to be 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, cultivating, and preparation of marijuana.

MEDICAL USE OF MARIJUANA

The acquisition, cultivation, possession, processing (including development of related products such as tinctures, aerosols, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof, as those terms are defined under 105 CMR 725.004.

REGISTERED MARIJUANA DISPENSARY (RMD)

Has the same meaning as "medical marijuana treatment center."

SPECIAL PERMIT GRANTING AUTHORITY (SPGA)

Pursuant to this bylaw shall be the Planning Board.

§ 230-17.4. Eligible locations.

Medical marijuana treatments centers may be allowed by special permit in the Limited Industrial Zoning District, subject to all requirements of this Zoning Bylaw, the requirements of the Board of Health, and of 105 CMR 725.00 et seq.

§ 230-17.5. General requirements and conditions.

The following requirements and conditions shall apply to all medical marijuana treatments centers:

- A. All medical marijuana treatments centers must obtain a special permit from the permit granting authority, in compliance with all requirements of § 230-7.2 of the Zoning Bylaw, in addition to the particular requirements of § 230-17.6, below.
- B. All medical marijuana treatments centers must obtain site plan approval from the Planning Board in compliance with all requirements of Article IX of the Zoning Bylaw, pursuant to major site plan review under § 230-9.1C of the Bylaw.
- C. No special permit shall be issued without demonstration by the applicant of compliance with all applicable state laws and regulations, and with all local regulations.
- D. No medical marijuana treatment center 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.
- E. No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a medical marijuana treatment center.
- F. No products shall be displayed in the facilities' windows or be visible from any street or parking lot.
- G. Signs for all medical marijuana treatment centers must be approved by the special permit granting authority through site plan review pursuant to Article IX of the Zoning Bylaw, and consistent with the provisions of 105 CMR 725.105(L) ("Marketing and Advertising Requirements").

§ 230-17.6. Special permit requirements.

A medical marijuana treatment center shall be allowed only by special permit in accordance with MGL c. 40A, § 9; with all requirements of § 230-7.2 of the Zoning Bylaw; and with the additional requirements contained in this section (§ 230-17.6), below.

- A. Uses. A special permit for a medical marijuana treatment center shall be limited to one or more of the following uses:
- (1) Cultivating marijuana for medical use;
 - (2) Processing and packaging of marijuana for medical use, including marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments and other products; or
 - (3) Retail sale or distribution of marijuana for medical use to qualifying patients, as that term is defined in 105 CMR 725.004.
- B. Application. In addition to the application requirements set forth in the rules of the special permit granting authority, a special permit application for a medical marijuana treatment center shall include the following:
- (1) The name and address of each owner of the establishment and property owner;
 - (2) Copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the establishment;
 - (3) Evidence of the applicant's right to use the site for the establishment, such as deed, or lease;
 - (4) Proposed security measures 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 secure storage areas, limited-access areas, security measures shall be reviewed and approved by the Police Department. Pursuant to 105 CMR 725.200(C), the above information is confidential and exempt from the provisions of MGL c. 66; as such, it shall not be part of the public record.
 - (5) Proposed operations and maintenance manual for the medical marijuana treatment center demonstrating compliance with all the requirements of 105 CMR 425.110, "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 725.2200(C), the above information is confidential and exempt from the provisions of MGL c. 66; as such, it shall not be part of the public record.
- C. Hours of operation. The hours of operation of a medical marijuana treatment center shall be established by the special permit granting authority.
- D. Term of special permit. Special permits shall be valid for a period of two years from the effective date of the special permit.
- E. 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.
- F. Renewals. A special permit may be renewed for successive two-year periods, provided that a written request for renewal is made to the special permit granting authority not less than three months prior to the expiration of the then-existing term. Any request for 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 the reason for such an objection, is received by the special permit granting authority.
- (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 special permit renewal

request.

- (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.
- (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 bylaw or any other applicable regulation are not corrected within a specified time period.

§ 230-17.7. (Reserved)

§ 230-17.8. Severability.

If any provision of this article or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this article, to the extent it can be given effect, or the application of those provisions to the 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 article are severable.

Article XVIII. General

§ 230-18.1. Severability.

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