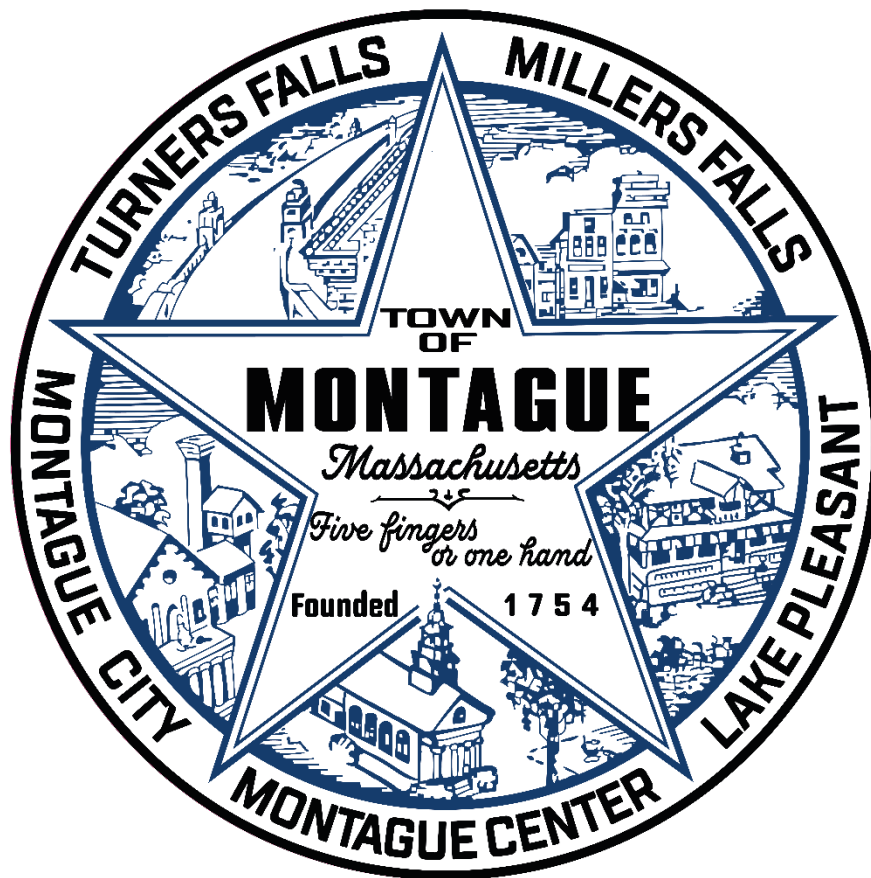


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# ZONING BYLAW

## Town of Montague



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Effective: March 13, 2026

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**SECTION 1. PURPOSE**

The Purpose of this Zoning Bylaw (this “Zoning Bylaw” or “Bylaw”) is to promote the health, safety, convenience, amenities, and general welfare of the inhabitants of the Town of Montague, through encouraging the most appropriate use of the land as authorized by Article 89 of the Amendments to the Massachusetts Constitution (the Home Rule Amendment) and Chapter 40A of the Massachusetts General Laws with the following objectives:

To conserve health; to secure safety from fire, flood, panic and other dangers; to lessen congestion in the streets and ways; to provide adequate light and air; to prevent overcrowding of land; to avoid any undue concentration of population; to recognize the need for housing for persons of all income levels; to facilitate the adequate provision of transportation, water supply, drainage, 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 throughout the town, including consideration of town plans and programs, and to preserve and increase amenities available to the citizens of Montague.

**SECTION 2. DEFINITIONS**

In this Bylaw the following terms shall have the meaning here assigned to them. Additional definitions relating to specific sections of these bylaws can be found in their respective sections.

**BUILDING:** an enclosed structure, either a principal building or shed, garage, stable, greenhouse, or other accessory building.

**BUILDING, PRINCIPAL:** a building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING, ACCESSORY:** any subordinate building located on the same lot with the principal building or use, the use of which is customarily incidental to that of the main building or to use of the land. Any accessory structure shall not include any structures which are attached to the principal building.

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**BUILDING HEIGHT:** shall mean the vertical distance from the mean finish grade of the ground adjoining the building at the street side to the highest point of the roof for flat or shed roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip, and gambrel roofs.. Not included are spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space.

**CRAFT WORKSHOP:** Refers to the space used by an artist for the creation of art or craft, including but not limited to, painting, drawing, photography, sculpture, jewelry-making, basket weaving, pottery, or other art or craft. Retail sales of art produced on-site and arts instruction by the artist are allowable accessory uses.

**DRIVE-THROUGH:** shall mean the provision of retail sales or services to customers who remain in their vehicles.

**DWELLING:** shall mean a building designed or used exclusively as the living quarters for one (1) or more households.

**DWELLING UNIT:** shall mean living quarters for a single household, with cooking, living sanitary and sleeping facilities, independent of any other unit. For the purposes of this bylaw, a single-family dwelling unit shall consist of one (1) unit, a two-family dwelling unit shall consist of two (2) dwelling units and multi-family dwelling unit shall consist of three (3) or more units.

**DWELLING UNIT, TWO FAMILY DETACHED (DUPLEX):** A single residential building containing two (2) dwelling units, arranged vertically one above the other, or horizontally side by side, each with a separate entrance.

**FRONTAGE:** the uninterrupted length of the front lot line, as defined herein, whether straight or not, which conforms to the minimum lot frontage requirement and is on:

- A public way or a way which the Town Clerk certifies is maintained and used as a public way; or
- A way shown on a previously approved subdivision plan which has been constructed to the standards required when subdivision approval was granted; or
- A way that predates subdivision control that has, in the Planning Board's opinion, suitable width, grades, and construction adequate and reasonable for vehicular traffic, including emergency vehicles and snow removal vehicles, and the installation of utilities.

For the purposes of this bylaw, if a lot has frontage on more than one street, frontage on only one street shall be used to satisfy the minimum lot frontage requirement.

**GROSS FLOOR AREA:** The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches, and similar spaces.

**HOTEL:** a building designed as a temporary abode for more than twelve (12) persons or providing six (6) or more sleeping rooms in which lodging is provided with or without meals.

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**HOTEL, BOUTIQUE:** Small lodging facility with 40 or fewer guest rooms that are rented to occupants on a daily basis. Such uses may provide additional services such as restaurants, meeting rooms and/or recreation facilities. The boutique hotel may be housed within a single building or a group of buildings. Rooms shall be rented for no more than thirty consecutive days. Access to each guest room shall be through an inside lobby supervised at all hours.

**LIGHT ASSEMBLY WORKSHOPS:** A workspace for assembling, packaging, or treating goods inside a fully enclosed building. It may be used by one or multiple users and can include shared tools like 3D printers, laser cutters, or woodworking equipment. Selling products made on-site is allowed as an accessory use.

**LODGING HOUSE:** shall mean living quarters, accommodating more than five unrelated individuals, whether as a licensed lodging house, dormitory, co-op, commune or similar arrangement. It does not include hotels or group residences regulated by agencies of the Commonwealth under § 71 of chapter 111.

**LOT:** a parcel of land held in fee simple ownership designated on a plan or deed filed with the Franklin County Registry of Deeds or Land Court; however, contiguous lots in common ownership may not be divided except in conformance with these bylaws. Two or more contiguous lots in common ownership may be treated as one lot for the purposes of this chapter; provided that the combined lots are used as a single lot would customarily be used. The following shall not be counted toward land within the minimum lot area: land under permanent water bodies; land within public ways, and land within private ways and rights-of-way where the general public has the right of access by automotive vehicles.

**LOT LINE:** a line dividing one lot from another, or from a street or any public place.

**MIXED-USE DEVELOPMENT:** A combination of two or more distinct land uses, which must include a commercial use such as, lodging, research, cultural, artistic/creative production, artisanal fabrication, with residential dwelling units in a single multi-story structure or within more than one building per lot to maximize space usage and promote a vibrant, pedestrian-oriented live-work environment.

**MULTI-UNIT DWELLING:** A building that consists of four (4) or more dwelling units.

**OPEN RECREATIONAL ENTERPRISE--**shall include golf courses, ski facilities, picnic areas, campgrounds or similar activities with structures and paving covering not more than 5% of lot area.

**OPEN SPACE:** Refers to any outdoor area on a property that is intended for people to use, whether for recreation, relaxation, or gathering.

**OPEN SPACE, LANDSCAPE:** Open space designed and planted for pleasant appearance with trees, shrubs, ground cover and grass. Such space may not include lot area used for parking, loading, access drives, walks and terraces or other areas with hard surfaces.

**OPEN SPACE, PRIVATE:** An outdoor area accessible only to the tenants or residents of the building or project with which the Private Open Space is associated.

**OPEN SPACE, PUBLIC:** Open Space which is accessible to the public.

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**PERMEABLE SURFACE:** Permeable surface allows water to infiltrate through the surface down to underlying layers of soil and gravel. Such space includes but is not limited to landscaped areas, porous asphalt, pervious concrete, paving stones, gravel, or grass pavers.

**PUBLIC UTILITY:** shall include power lines, power transmission, power generation facilities, and telecommunication facilities (See Section §8.6) but shall exclude solar energy installations, solar energy facilities, small scale battery energy storage systems, and battery energy storage facilities (See §8.9). A public utility may be privately owned but is otherwise regulated by the Mass Department of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, or other governmental agencies.

**ROWHOUSE:** A single-family attached dwelling unit that shares one or both side walls with adjacent units, with each unit located on its own individual lot. Rowhouses are arranged in a linear configuration, with a minimum of two units per development. Each unit has direct access to the street and may include a private yard or outdoor space.

**SELF-SERVICE STORAGE FACILITY:** a business establishment consisting of a structure or group of structures containing separate storage spaces leased to individuals for storage of goods, products, materials or other objects.

**SPECIAL PERMIT:** a permission granted in writing by the Special Permit Granting Authority for a use or structure that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would be compatible with the public health, safety, welfare, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning district as special permits, if specific provision for such special permits is made in this Zoning Bylaw.

**STREET RIGHT-OF-WAY:** a general term denoting land, property, or interest therein, usually a strip acquired for or devoted to a planned roadway. A street right-of-way should be sufficient to accommodate the ultimate roadway, including, but not limited to: the street pavement, shoulder, grass strip, sidewalk, public utility facilities, street trees, and snow storage.

**THREE-FAMILY DWELLING:** A building that is divided into three (3) dwelling units. Each unit has an independent entrance, either directly from outside the building or through a common vestibule.

**TOWNHOUSE:** A residential use consisting of one or more buildings containing no fewer than three attached dwelling units, each of which has a separate private entrance on the ground level and where no building is more than three stories in height. Individual townhouse dwelling units extend from foundation to roof, and may consist of more than one floor, with each unit having fully exposed walls on at least two sides for access, light, and ventilation. A Townhouse does not have its own lot; each group of attached Townhouses is on a single lot.

**VARIANCE:** a grant of relief from the requirements of this Bylaw which permits construction in a manner that would otherwise be prohibited by the Bylaw. Grants of relief are for dimensional and construction requirements only and do not include relief from the requirements of this Bylaw governing the use of land and premises.

## **SECTION 3. ADMINISTRATION**

### **3.1 Scope and Authority**

#### 3.2.1 Enforcement Authority

The Inspector of Buildings shall act as the Zoning Enforcement Officer and shall be charged with the enforcement of this Zoning Bylaw.

#### 3.2.2 Building Permits

No building or structure shall be built, moved, located or externally altered in size, shape, and no use of land or a building shall be begun or changed without a permit having been issued by the Inspector of Buildings or its designated agent; provided, however that no permit shall be issued for such construction, alteration or use of any structure, land, or building in violation of any provisions of this Bylaw or 310 CMR 15.000 (Title 5) as enforced by the Board of Health.

#### 3.2.3 Enforcement Request

If the Zoning Enforcement Officer is requested in writing to enforce the provisions of this Bylaw against any person allegedly in violation of this Bylaw and the Zoning Enforcement Officer declines to act, he shall notify, in writing, the party requesting such enforcement of any action, or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.

#### 3.2.4 Appeals

Any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from the Zoning Enforcement Officer or other administrative officer under the provisions of this Bylaw, or any person including an officer or board of the Town, aggrieved by an order of decision of the Zoning Enforcement Officer, or other administrative officer, in violation of the provisions of Chapter 40A of the General Laws or any provision of this Bylaw, may file an appeal to the Zoning Board of Appeals in accordance with the provisions of Chapter 40A of the General Laws.

#### 3.2.5 Penalty

- (a) Whoever violates any provision of this Bylaw, or any condition of a decision issued pursuant to this Bylaw, may be punished by a fine imposed by a Court of Law not exceeding three-hundred (\$300) dollars for each offense and each day that such a violation continues shall constitute a separate offense.
- (b) As an alternative means of enforcement, the Inspector of Buildings may impose noncriminal penalties pursuant to G.L. c.40, § 21D and Article VI of the Town's General Bylaws, in accordance with the following schedule:
  - i. First offense: fifty (\$50) dollars
  - ii. Second offense: one hundred (\$100) dollars
  - iii. Third offense: two hundred (\$200) dollars
  - iv. Fourth and each subsequent offense, per violation: three hundred (\$300) dollars

#### 3.2.6 Zoning Board of Appeals

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There is hereby established a Zoning Board of Appeals (ZBA) of five members and three associate members, to be appointed by the Selectboard, which Board of Appeals shall act on all matters within its jurisdiction under this Bylaw, Chapters 40A and 40B of the Massachusetts General Laws in the manner prescribed by said laws and this Bylaw. The Zoning Board shall adopt rules governing the conduct of its business and shall place said rules on file with the Town Clerk. The Zoning Board of Appeals shall have the following powers:

- (a) Appeals. To hear and decide appeals, as provided in MGL c 40A, including an appeal taken by any person aggrieved by his inability to obtain a permit or enforcement action
- (b) Special Permits. To hear and decide applications for special permits as provided in this Zoning Bylaw. See §9.
- (c) Variances. To authorize upon application a variation from the terms of this Zoning Bylaw except that no variation to the district boundaries or uses permitted therein shall be allowed.
- (d) Comprehensive Permits. To hear and decide applications for comprehensive permits as provided in Chapter 40B of the General Laws and this Zoning Bylaw.

### 3.2.7 Planning Board

There is hereby established a Planning Board of five members and one associate member, to be appointed by the Selectboard, which Planning Board shall act on all matters within its jurisdiction under this Bylaw and Chapters 40A and 41 of the Massachusetts General Laws in the manner prescribed by said laws and this Bylaw. The Planning Board shall adopt rules governing the conduct of its business and shall place said rules on file with the Town Clerk. The Planning Board shall have the power to hear and decide application for special permits as provided in the Zoning Bylaw. See §9.

### 3.3 Amendment

This Bylaw may be amended from time to time at any annual or special town meetings in accordance with Chapter 40A of the Massachusetts General Laws.

### 3.4 Validity

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

### 3.5 Effective Date

Upon its effective date, March 13, 2026, this Bylaw shall amend and be substituted for the existing Zoning Bylaw of the Town of Montague, but shall not affect such rights or duties that have matured, penalties that were incurred, proceedings that were begun or appointments made before its effective date, pursuant to the previously effective Zoning Bylaw, except as otherwise provided by Chapter 40A of the General Laws.

## **SECTION 4. ESTABLISHMENT OF DISTRICTS**

### 4.1 Types of Districts

For the purposes of this Zoning Bylaw, the Town of Montague is hereby divided into the following districts:

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<b>Abbreviation</b>	<b>District Name</b>	<b>Statement of Purpose</b>
<b>RE</b>	Recreation-Education	To allow for public enjoyment and use of parks and schools.
<b>AF</b>	Agriculture Forestry	To allow for a viable farming and forestry industry, protect natural resources, and preserve rural character
<b>AF-2</b>	Agriculture Forestry- 2	To allow for a viable farming and forestry industry, protect natural resources, and preserve rural character
<b>AF-4</b>	Agriculture Forestry- 4	To allow for a viable farming and forestry industry, protect natural resources, and preserve rural character
<b>RS-1</b>	Residential - 1	To allow for livable and walkable residential neighborhoods on generally smaller lots serviced by municipal sewer
<b>RS-2</b>	Residential - 2	To allow for livable and walkable residential neighborhoods that are generally not serviced by municipal sewer
<b>RB</b>	Rural Business	To allow small and natural resource based businesses that are compatible with existing agricultural and residential uses and scenic character
<b>NB</b>	Neighborhood Business	To allow for compatibility of residential and business uses in village areas
<b>CB</b>	Central Business	To allow for pedestrian-oriented downtown areas with mixed-use buildings and a range of retail and commercial services
<b>GB</b>	General Business	To allow for commercial activity that enables access to a broad range of products and services
<b>ID</b>	Industrial	To allow high quality employment opportunities through manufacturing, production, and research
<b>HI</b>	Historic Industrial	To allow for adaptive reuse of historic industrial buildings and sites
<b>MU-VC</b>	Village Center Mixed-Use	The purpose of the MU-VC District is to provide areas within the village centers of Montague that allow for a mix of uses, including retail, commercial, office, and housing of moderate to high density.
<b>Overlay Districts</b>		
<b>FP</b>	Flood Plain	To prevent loss of life, damage to private property, and lessen the impacts of flooding
<b>WSP</b>	Water Supply Protection	To prevent contamination of the surface water and ground water resources providing present and significant potential public water supplies for the Town of Montague
<b>AB</b>	Agricultural Business	To maintain the viability of agricultural businesses by conserving land with productive soils in large, contiguous blocks and minimizing conflicts between agricultural operations and residential uses, and to identify an area of town where other policies should be developed to promote and facilitate commercial agriculture
<b>DOD</b>	Design Overlay District	The DOD is intended to guide the transition from single-family homes to more mixed-use and higher-density areas, while encouraging walkable and bike-friendly environment. It helps shape a strong sense of place through design standards and ensures high-quality design and site planning throughout the district.

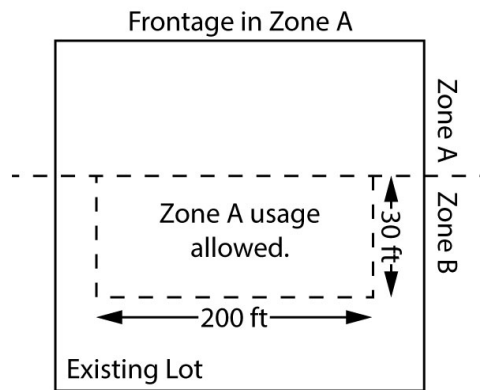
## **4.2 District Boundaries**

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The boundaries of these districts are defined and bounded as shown on the map entitled "Official Zoning Map" that is on file with the Town Clerk's office. The map, as revised, and all explanatory matter therein are made a part of this Zoning Bylaw. Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad or utility easement center or layout lines, boundary or lot lines, water body shoreline or the channel of a stream shall be construed to be actually at those lines. When shown approximately parallel, perpendicular or radial to such lines, they shall be construed to be actually parallel, perpendicular or radial thereto. When not located in any other way, boundaries shall be determined by scale from the map.

4.2.1 Existing lots

Where a zoning district boundary line divides any lot existing at the time such line is adopted, a use and principal structure permitted in one (1) district may be extended into the other district in which the lot has lot frontage, no more than thirty (30) feet with a width of no more than two hundred (200) feet.



## **SECTION 5. DISTRICT REGULATION**

### **5.1 Existing Uses, Structures, and Lots**

The lawful use of any structure or lot existing at the enactment or subsequent amendment of this Bylaw may be continued although such structure or use does not conform to the provisions of this Bylaw, subject, however, to the following exceptions:

#### **5.1.1 Restoration**

In any event that a non-conforming structure is destroyed by fire or other natural cause, the same may be reconstructed or repaired at the same location for the same non-conforming use, provided the new building will be equal in appearance and character to the original structure and that such construction is commenced within twenty-four (24) months from the occurrence of such natural cause.

#### **5.1.2 Abandonment**

A non-conforming use which has been abandoned or not utilized for a period of twenty-four (24) months shall not be re-established.

#### **5.1.3 Alterations**

No non-conforming use shall be changed or extended, and no non-conforming building or structure shall be altered or replaced by a new building, except as authorized in §5.1.1, or unless granted a Special Permit by the Board of Appeals subject to a finding that the alteration shall not be substantially more detrimental than the existing nonconforming use and/or structure to the neighborhood, pursuant to M.G.L. Chapter 40A, §6.

### **5.2 Use Regulations**

- (a) Permitted Uses in all districts:
  - i. Agriculture and forestry on parcels of land exceeding 5 acres
  - ii. Religious, educational and other uses expressly exempt under M.G.L. Chapter 40A, § 3
  - iii. Governmental facilities and services
  - iv. Public parks and off-road recreational paths for walking and cycling
- (b) Prohibited uses in all districts:
  - i. Collection, treatment, storage, burial, incineration, or disposal of radioactive wastes, including, but not limited to low-level waste.

#### **5.2.1 RE. Recreation-Education Districts**

- (a) Permitted Uses:
  - i. Educational uses
  - ii. Public parks
  - iii. Seasonal commercial enterprises that are subordinate to a primary recreational or educational use (such as food vendors, camps, or events)
- (b) Uses allowed by Special Permit from the Board of Appeals:
  - i. Open recreational enterprise

- ii. Cemeteries not exempt by M.G.L. Chapter 40A

5.2.2 AF, AF-2, AF-4. Agriculture-Forestry Districts

(a) Permitted Uses:

- i. Farming and forestry
- ii. Single family dwellings

(b) Uses allowed by Special Permit from the Board of Appeals:

- i. Educational uses not exempt by M.G.L. Chapter 40A
- ii. Two-family dwellings
- iii. Retail sales and services accessory to agriculture or forestry as primary use
- iv. Social club or lodges
- v. Open recreational enterprises
- vi. Earth removal, per §8.2.3
- vii. Public utilities
- viii. Cemeteries not exempt by M.G.L. Chapter 40A
- ix. Marijuana Cultivation
- x. Other uses not listed here if similar to uses allowed in §5.2.2 (a) in externally observable attributes and compatibility with rural environs.

5.2.3 RS-1, RS-2. Residential Districts

(a) Permitted Uses:

- i. Single family dwellings

(b) Uses allowed by Special Permit from the Zoning Board of Appeals:

- i. Educational uses not exempt by M.G.L. Chapter 40A
- ii. Two-family dwellings
- iii. Multi-family dwellings not exceeding 4 units
- iv. Farming and forestry on 5 acres or less
- v. Social club or lodges
- vi. Cemeteries not exempt by M.G.L. Chapter 40A
- vii. Public utilities (power lines, transmission and generation facilities excluding solar)

5.2.4 RB. Rural Business District

(a) Permitted Uses:

- i. Single and two-family dwellings
- ii. Agriculture and forestry
- iii. Agricultural or forestry products processing with cumulative building area of up to 5,000 square feet
- iv. Retail sales and services with cumulative building area of up to 5,000 square feet and without an accessory drive-through component
- v. Craft workshops or light assembly shops with cumulative building area of up to 5,000 square feet

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- vi. Open recreational enterprises with cumulative building area of up to 5,000 square feet
- vii. Uses customarily accessory to the above, including parking areas with up to 25 spaces to the rear or side of the principal building

(b) Uses allowed by Special Permit from the Zoning Board of Appeals:

- i. Permitted uses in section (a) with cumulative building area exceeding 5,000 square feet
- ii. Multi-family dwellings not exceeding 4 units
- iii. Business, professional, or medical offices
- iv. Hotels
- v. Earth removal, per §8.2.3
- vi. Public utilities
- vii. Self-service storage facilities, per §8.7
- viii. Marijuana cultivation or production, per §8.10
- ix. Other uses similar to §5.2.4(a) in externally observable attributes.

(c) Special requirements

- i. Accessory parking areas exceeding 25 spaces require a Special Permit
- ii. Accessory parking area to the front (facing the street) of the principal building requires a Special Permit

5.2.5 NB. Neighborhood Business District

(a) Permitted Uses:

- i. Single and two-family dwellings
- ii. Retail sales and services less than 1,000 gross square feet of floor area and without an accessory drive-through component
- iii. Business, professional, or medical office less than 1,000 gross square feet of floor area

(b) Uses allowed by Special Permit from the Board of Appeals:

- i. Non-residential uses in § 5.2.5(a) exceeding 1,000 square feet of floor area and without an accessory drive-through component
- ii. Multi-family dwellings
- iii. Lodging houses
- iv. Hotels
- v. Non-profit clubs or lodges
- vi. Parking lots or parking garages, as a principal use
- vii. Craft workshop or light assembly shop
- viii. Farming and forestry on less than 5 acres of land
- ix. Public utilities
- x. Other non-industrial uses if similar to § 5.2.5(b) in externally observable attributes and compatibility with residential environs.

(c) Special Standards for non-residential uses:

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- i. Hours of retail operation are limited to the period between 7 a.m. and 9 p.m. Hours of non-retail operation, if wholly contained within the building premises, may extend beyond the hours of retail operation if the activity has no impact on adjoining residential uses or buildings.
- ii. Exterior lighting and signs may not be illuminated, except for safety, beyond the hours of retail operation. Lighting may not project beyond the sidewalk or roadway immediately in front of the business.
- iii. Noise, vibration, heat, glare, smoke, dust, strong or unhealthy odors, or air pollutants shall be wholly contained within the premises.
- iv. Projected traffic shall not adversely impact the surrounding neighborhood.
- v. Exterior changes shall have a design integrated with the surrounding neighborhood with respect to building placement, proportion, color, rooflines, façade and landscaping treatment and other design details.
- vi. In the instance of failure or inability to meet one or more of the standards, the Zoning Board of Appeals may grant a Special Permit for such use.

#### 5.2.6 CB. Central Business District

(a) Permitted Uses:

- i. Mixed-use with the street level as a commercial use and up to 4 dwelling units on upper floors
- ii. Retail sales and services of 5,000 square feet or less of floor area, without an accessory drive-through component
- iii. Business, professional, or medical offices
- iv. Social clubs or lodges

(b) Uses allowed by Special Permit from the Board of Appeals:

- i. Mixed-use with the street level as a commercial use and 5 or more dwelling units on upper floors
- ii. Retail sales and services that involve construction or alteration of more than 5,000 square feet of floor area, without an accessory drive-through component
- iii. Craft workshops or light assembly shops, with retail component
- iv. Hotels
- v. Parking lots or parking garages
- vi. Public utilities
- vii. Marijuana retailers, per §8.10
- viii. Other uses similar to §5.2.6 (a) in externally observable attributes.

#### 5.2.7 GB. General Business District

(a) Permitted Uses:

- i. Business, professional, or medical offices, up to 5,000 square feet of floor area
- ii. Retail sales and services that involve up to 5,000 square feet of floor area
- iii. Social clubs or lodges
- iv. Farming and forestry on land less than 5 acres, with a retail component

(b) Uses allowed by Special Permit from the Planning Board

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- i. Single and two-family dwellings
- ii. Multi-family dwellings, including mixed use
- iii. Hotels
- iv. Retail sales and services that involve construction or alteration of over 5,000 square feet of floor area or that includes an accessory drive-through component
- v. Business, professional, or medical offices that involve construction or alteration of over 5,000 square feet of floor area.
- vi. Lodging houses
- vii. Open recreational enterprises
- viii. Public utilities
- ix. Self-service storage facilities, per §8.7
- x. Marijuana retailer, medical marijuana treatment center, cultivation, production, research or testing, per §8.10
- xi. Craft workshops or light assembly shops
- xii. Manufacturing, processing, or research
- xiii. Other non-industrial uses if similar to §5.2.7 (a) in externally observable attributes

#### 5.2.8 ID. Industrial District

(a) Permitted Uses:

- i. Business office or professional office
- ii. Manufacturing, processing, or research
- iii. Bulk storage, warehousing, distribution
- iv. Agriculture or forestry products processing

(b) Uses allowed by Special Permit from the Planning Board

- i. All uses in §5.2.8(a) that involve the construction or alteration of over 20,000 square feet of floor area or the development of over 217,800 square feet (5 acres) of land.
- ii. Solar energy and battery energy storage facilities, per §8.9
- iii. Self-service storage facilities, per §8.7
- iv. Retail sales and services
- v. Hotels
- vi. Earth removal, per §8.2
- vii. Open recreational enterprises
- viii. Public utilities
- ix. Marijuana cultivation, production, research, or testing, medical marijuana treatment center, or retail if accessory to cultivation or production as a primary use, per §8.10
- x. Other uses similar to §5.2.8(a) in externally observable attributes.

#### 5.2.9 HI. Historic Industrial District

(a) Permitted Uses:

- i. Business, professional, or medical office in an existing building
- ii. Retail sales and services in an existing building
- iii. Manufacturing, processing, or research in an existing building

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- iv. Bulk storage, warehousing, distribution in an existing building
  - v. Craft workshop or light assembly shop in an existing building
- (b) Uses allowed by Special Permit from the Planning Board:
- i. Uses listed in § 5.2.9(a) that are in new structures or additions to existing buildings
  - ii. Multi-family dwelling
  - iii. Hotels
  - iv. Public utilities
  - v. Solar energy and battery energy storage facilities, per §8.9
  - vi. Marijuana retailer, medical marijuana treatment center, cultivation, production, research or testing, per §8.10
  - vii. Self-service storage facilities, per §8.7
  - viii. Open recreational enterprises
  - ix. Farming and forestry on 5 acres or less
  - x. Other uses similar to § 5.2.9(a) in externally observable attributes.
- (c) Special Requirements
- i. Demolition of an existing structure requires a special permit from the Planning Board, excepting structures that have been deemed unsafe by the Inspector of Buildings.

#### 5.2.10 MU-VC. Village Center Mixed-Use District

- (a) Permitted Uses. All Permitted Uses require Site Plan Review (See Section 9.1):
- i. Two-family, Three-family, Rowhouse and Multi-unit Dwelling (including Townhouse), any of which may include live/work units, if it meets the requirement under Section 8.3.
  - ii. Mixed-use Developments, incorporating multifamily residential uses and any of the permitted non-residential uses, where the minimum gross floor area devoted to residential uses shall be 51% of the gross floor area of the project. Non-residential uses shall be located primarily on the ground floor.
  - iii. Bakeries and artisan food or beverage producers.
  - iv. Boutique Hotel, accommodating 20 or fewer guest rooms.
  - v. Craft workshops or light assembly workshops, equal to or under 2,000 square feet of gross floor area.
  - vi. General service establishments and personal service establishments.
  - vii. Private Educational use, such as a dance studio, art or photography studio that gives classes, or similar use.
  - viii. Health, gym, or fitness club.
  - ix. Museum.
  - x. Offices, including medical offices and co-working facilities, equal to or under 2,000 square feet of gross floor area.
  - xi. Restaurants and cafes, indoor or outdoor, without an accessory drive-through component, equal to or under 2,000 square feet of gross floor area.
  - xii. Retail stores, including banks, but excluding wholesale establishments and establishments with drive-through windows, equal or under 2,000 square feet of gross floor area.

- (b) Uses allowed by Special Permit. The Planning Board is the Special Permit Granting Authority for all uses in this district that require a Special Permit (See Section 9.2):
  - i. Boutique Hotel, accommodating more than 20 and up to 40 guest rooms.
  - ii. Offices, including medical offices and co-working facilities, over 2,000 square feet of gross floor area.
  - iii. Parking Garage.
  - iv. Restaurants and cafes, indoor or outdoor, without an accessory drive-through component, over 2,000 square feet of gross floor area.
  - v. Retail stores, including banks, but excluding wholesale establishments and establishments with drive-through windows, over 2,000 square feet of gross floor area.
  - vi. Craft workshops or light assembly workshops, over 2,000 square feet of gross floor area.
  
- (c) Special Requirements.
  - i. Accessory uses to a permitted principal use above shall be allowed in accordance with Section 5.4.
  - ii. Within this district, retail sales of art produced on-site and arts instruction conducted by the artist shall also be considered allowable accessory uses.
  - iii. More than one (1) principal use is allowed per lot in the MU-VC District. If all uses are subject to Site Plan Review, then that process shall control. If at least one use is subject to a Special Permit, then the Special Permit process shall be used for the entire project.
  - iv. A management plan, as defined in terms of form and content in the Rules and Regulations adopted by the Permit Granting Board or Special Permit Granting Authority, shall be included as an integral part of any application made under this section.
  
- (d) Special standards for non-residential uses:
  - i. Noise, vibration, heat, glare, smoke, dust, strong or unhealthy odors, or air pollutants shall be wholly contained within the limits of the establishment.
  - ii. A management plan, as defined in terms of form and content in the Rules and Regulations adopted by the Permit Granting Board or Special Permit Granting Authority, shall be included as an integral part of any application made under this section.

### **5.3 Multiple Principal Uses**

Multiple principal uses on one lot are permitted provided that the dimensional requirements of § 5.5 are met for each building without counting any area, frontage or minimum side yard or minimum front or rear yard setback requirements twice. Setback requirements must be met for each building from property lines and from other building setback lines. Not more than one principal building shall be erected on a lot without a Special Permit issued by the Planning Board after determining that each such building has adequate access and services to be functionally equivalent to those required for separate lots by the Planning Board in its Subdivision Regulation. Developments meeting the applicability and dimensional requirements of a Planned Unit Development shall be subject to requirements of §8.12. The provisions of this section shall not apply to the MU-VC District. Instead, projects within MU-VC shall be governed by the standards and requirements of its Base District, Section 5.2.10, and the Design Overlay District, Section 6.4.

### **5.4 Accessory Uses**

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Any use which is, in Franklin County, customarily accessory and incidental to a permitted Principal Use shall be permitted on the same lot with said Principal Use, or on a lot adjacent thereto in the same ownership, subject to the general limitation that it shall not be detrimental to the neighborhood or the property in the vicinity, and subject further to the following provision: wherever a Principal Use is allowed by Special Permit then Accessory Uses to the Principal Use shall be subject to a Special Permit, unless otherwise provided in the bylaws. The following accessory uses have specific requirements in Section 8 SPECIAL REGULATIONS:

- Trailers, Mobile Homes, and Campers, §8.1
- Home Occupations, §8.3
- Boarding of Animals, §8.4
- Accessory Apartments, §8.5
- Solar Energy Installations, §8.9

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## **5.5 Dimensional Requirements**

### 5.5.1 Dimensional requirements schedule, principal use buildings

	<b>Minimum Lot Size (square feet)</b>	<b>Minimum Lot Frontage (linear feet)</b>	<b>Minimum Front Yard and Street Line Setback (a) (linear feet)</b>	<b>Minimum Side Yard Setback (linear feet)</b>	<b>Minimum Rear Yard Setback (linear feet)</b>	<b>Maximum Building Height (linear feet)</b>
<b>RE</b>	no minimum dimensional requirements					
<b>AF</b>	43,560, plus 22,500 per dwelling unit after first	150	25	15	30	28
<b>AF-2</b>	87,120	200	25	15	30	28
<b>AF-4</b>	174,240	250	25	15	30	28
<b>RS- 1</b>	15,000, plus 5,000 per dwelling unit after 2nd	100	15	10	30	28
<b>RS-2</b>	22,500, plus 5,000 per dwelling unit after first	150	25	15	30	28
<b>RB</b>	43,560, plus 22,500 per dwelling unit after first	200	25	15	30	28
<b>NB</b>	10,000	75	15	10	30	28
<b>CB</b>	no minimum lot size	no minimum lot frontage	Edge of sidewalk, OR 10 max if no sidewalk	0, if there is access to rear of lot over a drive at least 12 in width	15	36
<b>GB</b>	no minimum lot size	no minimum lot frontage	25	0, if there is access to rear of lot over a drive at least 12 in width OR 30 where a new commercial use abuts an existing residential use	30	36
<b>ID</b>	87,120	no minimum lot frontage	25	15 OR 50 where a new industrial use abuts an existing residential use	30	50

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<b>HI</b>	no minimum lot size	no minimum lot frontage	25	0, if there is access to rear of lot over a drive at least 12 in width	15	50
MU-VC <sup>1</sup>	4,000	30	0	10 feet	10 feet.	Any building whose principal façade is within 30 feet of the lot line contiguous with the public right-of-way for Cabot Street or Farren Avenue: three (3) stories, forty (40) feet. All other buildings: Up to four (4) stories, fifty (50) ft.

(a) No building need provide a street line setback greater than that of the principal buildings on 3 out of 4 adjoining properties on the same side of the street.

<sup>1</sup>· Within the MU-VC, a Rowhouse has no minimum lot size, a minimum lot frontage of 20 feet, and a side yard setback of 0 feet. All other dimensional standards for the MU-VC, as listed in Section 5.5 Dimensional Requirements, apply.

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#### 5.5.2 Dimensional Requirements, Accessory Structures

Accessory structures are any subordinate building or structures located on the same lot with the principal building or use, the use of which is customarily incidental to that of the main buildings or to use of the land. Examples of accessory structures include but are not limited to sheds, garages, stables, greenhouses and pools.

- (a) The minimum front yard and street line setback shall be the same as that for a principal building, per §5.5
- (b) The minimum side yard and rear yard setback from the property line shall be 10 feet.
- (c) Sheds with 120 square feet in floor area or less may have a minimum rear and side yard setback of 3 feet.

#### 5.5.3 Dimensional Relief

- (a) Minimum lot size and/or minimum frontage  
Relief may be granted by Special Permit for lots that are connected to both municipal sewer and public water and subject to finding that the relief given will not derogate from the public health, safety, or welfare or neighborhood character.
- (b) Minimum front yard, street line, side yard, rear yard or building height  
Relief may be granted for principal and accessory structures by Special Permit where special circumstances exist and can demonstrate that the improvement will not derogate from the public health, safety, or welfare or neighborhood character.
- (c) Special Permit Granting Authority  
The Zoning Board of Appeals shall be the Special Permit Granting Authority for dimensional relief pursuant to § 5.5 except the Planning Board shall be the Special Permit Granting Authority for dimensional relief in the Industrial (ID), Historic-Industrial (HI) and General Business (GB), and the Village Center Mixed-Use (MU-VC) Districts, unless otherwise specified in this Bylaw.

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## **SECTION 6. OVERLAY DISTRICTS**

The following Districts shall be superimposed on the other districts established by the Zoning Bylaw. All uses, dimensional requirements and other provisions of the Town of Montague Zoning Bylaw applicable to such underlying districts shall remain in force and effect, except that where the overlay district imposes greater or additional restrictions and requirements, such restrictions or requirements shall prevail. Any uses not permitted in the underlying districts shall remain prohibited.

### **6.1 Flood Plain Overlay District**

#### **6.1.1 Purpose**

The purpose of the Floodplain Overlay District is to prevent loss of life, damage to private property, and lessen the impacts of flooding.

#### **6.1.2 Applicability**

The flood plain district includes all special flood hazard areas designated as Zone A and A-1-30 on the Town of Montague Flood Insurance Rate Maps, and the Flood Boundary and Floodway Maps, dated August 15, 1979 as amended by the Federal Emergency Management Agency February 12, 1982.

#### **6.1.3 Standards**

The following requirements apply in the Flood Plain District:

- (a) Within Zone A, where the base flood elevation is not provided on the Flood Insurance Rate Maps, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Inspector of Buildings for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.
- (b) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood.
- (c) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.

### **6.2 Water Supply Protection District**

#### **6.2.1 Purpose**

To protect the public health, safety and welfare by preventing contamination of the surface water and ground water resources providing present and significant potential public water supplies for the Town of Montague.

#### **6.2.2 Definitions**

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**AQUIFER RECHARGE AREA:** Any area determined by a hydrological study to be of porous, permeable geologic deposits, especially, but not exclusively, deposits of stratified sand and gravel, through which water from any surface drains into an aquifer, and which includes any wetland or body of surface water surrounded by or adjacent to any such area.

**HAZARDOUS MATERIAL:** Any substance or combination of substances which, because of quantity, concentration or physical, chemical or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed of into or on any land or water in this town. Any substance designated a hazardous waste by the U.S. Environmental Protection Agency under 40 CFR 261 and the Regulations of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C shall also be deemed a hazardous material for the purposes of this bylaw.

**IMPERVIOUS SURFACE:** Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

**INTERIM WELLHEAD PROTECTION AREA:** The area encompassed by a 1,500 foot radius from a public water supply well for which a hydrological study has not been done

**LEACHABLE WASTES:** Waste materials including solid wastes, sludge and pesticide and fertilizer wastes capable of releasing water-borne contaminants to the environment.

### 6.2.3 Applicability

The Water Supply Protection District (“WSPD”) consists of the following areas referenced on the Official Zoning Map:

- (a) The aquifer recharge area for the Turners Falls Public Water Supply Tolan Well
- (b) The aquifer recharge area for the Turners Falls Public Water Supply Hannegan Brook Well
- (c) The Interim Wellhead Protection Area encompassed by a 1,500 foot radius from the Montague Center Public Water Supply Well

### 6.2.4 Standards

All uses permitted in the underlying zone are subject to the following standards:

- (a) The use of sodium chloride and other deicing materials for ice control shall be minimized, consistent with public highway safety requirements.
- (c) Fertilizers, pesticides, herbicides, and other leachable materials shall not be used in amounts which result in groundwater contamination levels exceeding Massachusetts Drinking Water Standards.
- (d) Any above-ground storage tanks for oil, gasoline, or other petroleum products, or for other hazardous materials, shall be placed on an impermeable surface, diked to 110% of the capacity of the tank, to prevent spills or leaks from reaching the groundwater. Floor faults shall be

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plugged to prevent discharges or leaks. No floor drains shall be allowed, only sump pumps to allow for pumped removal of any spilled materials into a contained and impermeable vessel for removal purposes.

- (e) Any run-off from impervious surfaces shall be recharged on the site by being diverted toward 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. All recharge areas shall be permanently maintained in full working order by owner.
- (f) Where the premises are partially outside the WSPD, such potential pollution sources as on-site waste disposal systems shall, to the degree feasible, be located outside the District.

#### 6.2.5 Prohibitions

- (a) Business and industrial uses, not including permitted agricultural uses, which manufacture, use, process, store, or dispose of hazardous materials or wastes as a principal activity or in amounts exceeding the minimum threshold amount requiring compliance with Massachusetts Department of Environmental Protection Hazardous Waste Regulation 310 CMR 30. These uses include, but are not limited to:
  - i. dry cleaning
  - ii. metal plating, finishing or polishing
  - iii. chemical or bacteriological manufacturing
  - iv. electronic circuit assembly
  - v. photographic processing
  - vi. wood preserving
  - vii. furniture stripping
  - viii. printing
  - ix. auto body repair
  - x. machine shops
- (b) Business and industrial uses, not including permitted agricultural uses, which involve the on-site disposal of hazardous wastes from operations.
- (c) Motor vehicle gasoline and diesel sales.
- (d) Commercial and self-service laundries, unless connected to municipal sewer lines.
- (e) Sanitary landfills, dumps, septage lagoons, wastewater treatment facilities for municipal or industrial wastes, junk and salvage yards.
- (f) Disposal of liquid or leachable wastes, except for:
  - i. residential subsurface waste disposal systems;
  - ii. customary agricultural operations; and

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- iii. business or industrial uses which involve the on-site disposal of wastes from personal hygiene and food preparation for patrons and employees.
- (g) Underground storage of oil, gasoline, or other petroleum products excluding liquefied petroleum gas. Underground storage of any other hazardous materials.
- (h) Outdoor storage of salt, de-icing materials, pesticides or herbicides.
- (i) Disposal of snow from outside the WSPD.
- (j) The use of septic system cleaners.

#### 6.2.6 Uses allowed by Special Permit

The Zoning Board of Appeals may grant Special Permits for the following uses within WSPD according to the procedures specified in §6.2.8:

- (a) The rendering impervious of more than 20% of the area of any single lot.
- (b) Any use retaining less than 50% of the lot area, regardless of size, in its natural vegetative state with no more than minor removal of existing trees and vegetation.
- (c) Any use that involves trucking or bus terminals, commercial vehicle washes, commercial vehicle repair as primary or accessory use

#### 6.2.7 Special Permit Procedures

- (a) Required Findings. In addition to satisfying the criteria for a Special permit under §9.2 of this Bylaw, the Special Permit Granting Authority may grant a Special Permit for uses identified in §6.2.6 only upon finding that the proposed use will:
  - i. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water available in the WSPD, and;
  - ii. Be designed to minimize disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- (b) Required Submittals. The plan submitted shall at a minimum include the following information:
  - i. A complete list of the chemicals, pesticides, fuels, and other potentially hazardous materials to be used, stored, or generated on the premises in quantities greater than those associated with normal household use.
  - ii. Those businesses using, storing, or generating hazardous materials shall file a hazardous materials management plan with the Planning Board and Board of Health which shall include:

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- Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.
  - Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
  - Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30.
- iii. Drainage recharge features and provisions to prevent loss of recharge.
  - iv. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.

#### 6.2.8 Non-conforming Uses

Non-conforming uses which were lawfully existing, begun, or in receipt of a building or special permit prior to the first publication of notice of public hearing (June 3, 1991) for this bylaw and any amendments thereto may be continued. Such non-conforming uses may be extended or altered, as specified in §5.1 Existing Uses, Structures and Lots, provided that there is finding by the ZBA that such change does not increase the danger of ground water pollution from such use.

### 6.3 Agricultural Business Overlay District

#### 6.3.1 Purpose

The purpose of the Agricultural Business Overlay District is to maintain the viability of agricultural businesses by conserving land with productive soils in large, contiguous blocks and minimizing conflicts between agricultural operations and residential uses, and to identify an area of town where other policies should be developed to promote and facilitate commercial agriculture. The district is configured to include those lands which, by virtue of their soils, acreage, location adjacent to and contiguous with other farmland, and lack of protection under existing zoning, comprise the critical agricultural areas of the Town of Montague.

#### 6.3.2 Permitted uses

All uses, dimensional requirements and other provisions of the Montague Zoning Bylaw applicable to the underlying districts shall remain in full force and effect, except where conflicting provisions are applied by the overlay zone. Any uses not permitted in the underlying district shall remain prohibited unless stated otherwise.

#### 6.3.3 Uses allowed by Special Permit from the Planning Board

- (a) The rendering impervious of more than 25% of the area of any single lot or more than 21,780 square feet, whichever is less, for non-agricultural use.
- (b) Back Lot Development, pursuant to §8.7.
- (c) Governmental facilities and services
- (d) All uses allowed by Special Permit in the underlying district, with the exception that Earth Removal is not permitted except as accessory to agricultural uses.

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#### 6.3.4 Special Permit Standards

Special Permits and Site Plan Approval for uses in the Agricultural Business District may be granted upon a finding by the Special Permit Granting Authority that the proposed use meets the following standards and is otherwise consistent with the purposes of this section and the Special Permit section of the Montague Zoning Bylaws.

Proposed uses shall:

- (a) Be located on areas of the site with soils least suitable for agriculture
- (b) Minimize non-agricultural uses of prime and unique soils and soils of statewide and local importance
- (c) Maximize the distance of non-agricultural uses from permanently protected farmland and active agricultural operations and use buffering to avoid conflicts
- (d) Maximize the amount of contiguous farmland undisturbed by non-agricultural uses
- (e) Minimize impact on agricultural infrastructure, including barns and other agricultural buildings, farm roads, drainage, irrigation, etc.
- (f) Maintain views of open agricultural land from public ways
- (g) Be designed so that non-agricultural structures are integrated into the landscape

### **6.4 Design Overlay District**

#### 6.4.1 Purpose:

The purposes of this Overlay District are:

- (a) To promote a transition from single-family residential areas to those with a mix of uses and a range of residential unit types and densities.
- (a) Encourage a pedestrian- and bicycle-friendly environment so that commercial enterprises and consumer services do not rely on automobile traffic to bring consumers into the area.
- (b) Create neighborhood character and a sense of place through site and building design standards.
- (c) Provide an efficient permitting and review procedure that will ensure appropriate high-quality design and site planning.

#### 6.4.2 Applicability

The Design Overlay District, herein referred to as the “DOD,” is an overlay district having a land area of approximately 9 acres in size that is superimposed over the underlying zoning district(s) and is shown on the Zoning Map as set forth on the map entitled “Design Overlay District, dated

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September 2025, prepared by Franklin Regional Council of Governments.” This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk.

- (b) The provisions of the DOD are supplemental to any requirements or restrictions of the underlying zoning districts.
- (c) All applications for projects within the DOD that are subject to Site Plan Review or Special Permit are subject to the requirements of this DOD.
- (d) Routine maintenance and repairs that do not alter the exterior appearance of structures are exempt from these provisions.

#### 6.4.3 Additional Dimensional Requirements

- (a) Density.
  - i. Multi-Unit Dwellings and Mixed-Use Developments with at least 51% of the Gross Floor Area dedicated to the residential use shall have a minimum density of twenty (20) dwelling units per acre of Developable Land.
  - ii. Projects with any combination of Two-family Dwelling Units and Three-family Dwellings shall be developed at a minimum density of twelve (12) dwelling units per acre of Developable Land.
  - iii. All residential projects shall require Site Plan Review per Section 9.1.3.
- (b) Maximum Front Yard Setback. The maximum yard setback shall be applied in addition to the required minimum yard setback. The maximum allowable setback shall be determined based on the designated use on the ground floor as follows:
  - i. Residential use: Up to 10 feet from the minimum street setback is allowed for the purpose of creating a green landscape.
  - ii. Non-residential uses: Up to 20 feet from the minimum street setback is allowed for the purpose of creating an active public space. The setback may include one or more of the following features: terraces, seating areas, and rain gardens.
- (c) Open Space. A minimum of 20 percent of the lot area shall be open space. Such Open Space may be a combination of Public Open Space and Private Open Space. Landscaped areas contained within parking areas, such as islands, stormwater drainage areas, or other isolated areas not available for public or resident use, shall not count toward the required minimum open space.
  - i. Public Open Space. This space may be located at ground level or one or more upper levels, and may include landscaped, natural, or built elements, provided it is not used for habitable structures, sidewalks, driveways, or vehicle parking. Trails, paths, or similar pedestrian circulation within the Public Open Space shall count as Public Open Space. However, sidewalks adjacent to a street or parking area shall not count as Public Open Space. Structures intended for public use, such as gazebos, pergolas, or similar structures found in similar publicly-accessible landscaped areas shall be allowed.
  - ii. Private Open Space. This amenity space shall meet a minimum standard of twenty-four (24) square feet per dwelling unit. This required space may be provided individually,

such as through balconies, patios, or porches; or consolidated into one or more shared areas accessible to all residents. Shared amenity spaces may include patios, terraces, rooftop decks, or internal community areas. The total square footage of the combined Private Open Space shall be no less than the product of 24 square feet multiplied by the total number of dwelling units in the project.

(d) Permeable Surface, minimum.

A minimum of thirty percent (30%) of the total lot shall be permeable surface. The minimum shall be calculated by dividing the total area of pervious surfaces on the lot by the total area of the lot. Only the following shall be considered pervious surfaces for the purposes of calculating the pervious surface area:

- i. Grass, mulched groundcover, all areas of a vegetated roof planted with a growing medium, and other planted areas.
- ii. Permeable pavers or paving that facilitate the infiltration of water into the soil; and
- iii. Decks or porches constructed above the surface of the lot that are erected on pier foundations, and that maintain a permeable surface underneath that can facilitate the infiltration of water into the soil.

Two-thirds of the Permeable Surface shall be dedicated to Landscape Open Space. The remaining one-third of the required Permeable Surface may be walkways, terraces, overflow parking, or other hardscape surfaces comprised of permeable materials.

#### 6.4.4 Parking Requirements

(a) Shared Parking.

The use of shared parking to fulfill parking demands that occur at different times of day is strongly encouraged. Minimum parking requirements may be reduced by the Planning Board, if the Applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved studies) or the Planning Board is otherwise satisfied that the reduced parking is nonetheless sufficient and consistent with smart growth practices.

(b) Reduction in parking requirements.

Notwithstanding anything to the contrary in this Zoning Bylaw, any minimum required amount of parking may be reduced by the Planning Board through Site Plan Review or the Special Permit process, if the Applicant can demonstrate that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

- i. The availability of surplus off-street parking in the vicinity of the use being served and/or the proximity of a bus stop;
- ii. The availability of public or commercial parking facilities in the vicinity of the use being served;
- iii. Shared use of off-street parking spaces serving other uses having peak user demands at different times;

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- iv. To the extent consistent with 760 CMR 59.04(1)(i)1., age or other occupancy restrictions which are likely to result in a lower level of auto usage;
- v. Impact of the parking requirement on the physical environment of the affected lot or the adjacent lots, including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
- vi. Any applicable transportation demand management strategies that will be integrated into the Project or such other factors as may be considered by the Planning Board.

Any project that provides additional parking for bicycles may reduce its total parking requirements in the ratio of two (2) bicycle spaces to one (1) car space. Such reduction shall be no more than ten percent (10%) of the total required spaces. These additional bicycle parking spaces shall be located on-site and shall be available to residents and commercial tenants as long-term parking. This reduction may be used in addition to other reductions in parking requirements.

(c) Location of Parking.

Any surface parking shall be placed at the rear of the lot whenever possible. If rear placement is not feasible, as determined by the Planning Board, the surface parking may be located at the side of a building, relative to any principal street, public open space, or pedestrian way.

(d) Size of Parking Spaces.

Parking spaces shall be 9 feet x 18 feet. Parallel spaces shall be at least 9 feet x 20 feet. Up to thirty-five percent (35%) of the parking spaces may be designated as compact spaces (at least 8 feet x 15 feet).

6.4.5 Design Principles. Design of the proposed project shall:

- (a) Promote pedestrian access and safety by encouraging design strategies to reduce conflicts between drivers and pedestrians;
- (b) Provide retail, restaurant, and other lively pedestrian-friendly uses on the ground floor. These spaces should foster social interaction, support recreational activities, and contribute to the vibrancy and identity of the district.
- (c) Require buildings on a corner lot to have a façade that relates to both streets.
- (d) Create development strategies for buildings and site design that facilitate, accommodate, and encourage use by pedestrians.
- (e) Connect public open space to a continuous sequence integrated throughout the district. The primary purpose of public space is to activate the neighborhood by incorporating diverse elements such as playgrounds, event plazas, pocket parks, and other community-oriented features.

6.4.6 Design Guidelines. The Planning Board may adopt and, from time to time, amend, by simple majority vote, Design Guidelines, which shall be applicable to all rehabilitation, redevelopment, or new construction subject to this DOD.

#### 6.4. 7 Development Standards.

Development standards are mandatory regulatory requirements that must be adhered to.

- (a) Site Standards:
- i. **Connections.** Sidewalks shall provide direct connections among building entrances, the public sidewalk (if applicable), bicycle storage, and parking.
  - ii. **Sidewalk Materials.** Sidewalks shall be continuous across driveways, using the same materials and grade and level as the sidewalk on either side of the driveway.
  - iii. **Vehicular access.** Individual buildings or parcels within a project site shall have coordinated street access. Only one (1) driveway (curb cut) per 50 feet of frontage shall be permitted. Shared vehicular access is strongly encouraged. Curb cuts for one-way access shall be no more than twelve (12) feet in width, while curb cuts for two-way traffic shall be no more than twenty (20) feet in width. Designated drop-off and pick-up areas for deliveries and ride-sharing companies should be incorporated to reduce conflicts associated with double-parking and blocking of bicycle lanes, crosswalks, and bus stops. These areas should be clearly marked with signs and conveniently located near entrances to buildings and major destinations.
  - iv. **Circulation.** Parking and circulation on the site shall be organized to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto public rights-of-way.
  - v. **Open Space.** Open Space shall be contiguous and connected to the pedestrian network. Isolated pockets of space that cannot be accessed for maintenance are prohibited. Open Space may be either private or public.
  - vi. **Screening for Surface Parking.** Surface parking adjacent to a public sidewalk shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than six (6) feet. The buffer may include a fence or wall of no more than three (3) feet in height unless there is a significant grade change between the parking and the sidewalk. Chain-link and vinyl fences are prohibited.
  - vii. **Parking Materials.** The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.
  - viii. **Plantings.** Plantings shall include species that are native or adapted to the region, with “adapted” defined as capable of withstanding prevailing and anticipated climate conditions, including but not limited to drought, heat stress, and periodic flooding. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited. In addition, plant selections should prioritize species that support pollinators, to enhance ecological value and biodiversity within the development.
  - ix. **Lighting.** Light levels shall meet or exceed the minimum design guidelines defined by the Illuminating Engineering Society of North America (IESNA) and shall provide the illumination necessary for safety and convenience while preventing glare and overspill onto adjoining properties. Lighting design shall also minimize skyglow and comply with the principles for outdoor lighting defined by DarkSky International to reduce light pollution and preserve nighttime visibility.

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- x. **Mechanicals.** Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened if visible from a public right-of-way.
- xi. **Waste Management:** On-site storage and management of waste and recycling shall occur in the interior of the building of the Principal Use, within an attached garage or other accessory outbuilding, or screened appropriately from public view.
- xii. **Stormwater management.** Strategies shall be employed on-site that demonstrate the compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and the Town of Montague Stormwater System Policy. The applicant shall also provide an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.

(b) General Building Standards:

- i. **Position relative to the principal street.** The primary façade and entrance of the primary building is deemed to be the one facing the street with the highest pedestrian intensity.
- ii. **Entries.** Where feasible, entries shall be clearly defined and linked to a pedestrian network that includes the public sidewalk. The pedestrian network shall use ADA-accessible materials, such as paving or other firm and slip-resistant surfaces. Development shall be designed to encourage pedestrian and bicycle travel to and within the site and provide a safe and aesthetically attractive pedestrian and bicycle environment to the greatest extent practical.
- iii. **Multiple buildings on a lot.**
  - 1. Location of Mixed Uses. For a mixed-use development, uses may be mixed within the buildings or in separate buildings.
  - 2. Orientation. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
  - 3. Position relative to the street. Building(s) adjacent to a public street shall have a pedestrian entry facing that public street.
- iv. **Mixed-use development:**
  - 1. Access. In a mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.
  - 2. Connections. Pedestrian access from the residential component shall be provided to residential parking, amenities, and the public sidewalk, as applicable. The pedestrian network shall use ADA-accessible materials, such as paving or other firm and slip-resistant surfaces. Paved surfaces may include pervious paving materials.
  - 3. Material Storage. Materials for non-residential uses shall be stored inside or under cover and shall not be accessible to residents of the project.

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4. Shared Outdoor Space. Multi- Unit Dwellings and Mixed-Use Development shall have common outdoor space that all residents can access. Such space may be in any combination of ground floor, courtyard, rooftop, or terrace. All outdoor space shall count towards the project's minimum Open Space requirement. See Section 6.4.3(c)
  - v. **Corner Lots:** A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.
    1. Connections. Such entries shall be connected by a paved surface to the public sidewalk, if applicable.
    2. Façade Design. All façades visible from a public right-of-way shall be treated with similar care and attention in terms of entries, fenestration, and materials.
    3. Fire Exits. Exterior stairs for secondary fire access that serve more than one story shall not be located on either of the street-facing façades.
  - vi. **Parking.** Parking shall be subordinate in design and location to the principal building façade.
    1. Integrated garages. The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
    2. Parking structures. Above-grade parking structures (stand-alone or within a residential, commercial, or mixed-use building) shall be subordinate in design and placement to the primary uses. Ground-floor parking levels shall be wrapped with active uses such as commercial/retail, community spaces, or residential amenity spaces, unless the building does not face a street. Exposed facades of upper parking levels shall incorporate design treatments such as public art installations, vertical planting, or other architectural features for visual interest and to disguise the parking uses within. Vehicular openings shall have doors.
    3. Bicycle parking. For a Multi-unit Dwelling or a mixed-use development, a minimum of 50% of the required bicycle spaces shall be covered or integrated into the structure of the building(s).
- (c) **Waivers.** Upon the request of the Applicant, the Planning Board, as the Site Plan Review and Special Permit Granting Authority for all projects within this DOD, may waive one or more of the requirements of this Section **6.4.7. Development Standards**, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall design principles in Section **6.4.5. Design Principles**.

#### 6.4. 8 Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental to the existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw or provisions therein, shall apply.

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**SECTION 7. GENERAL REGULATIONS**

**7.1 Sign Requirements**

**7.1.1 Applicability**

No sign shall be erected except as provided by the Bylaws and after a permit has been issued by the Inspector of Buildings and, if required, a special permit issued by the Zoning Board of Appeals.

**7.1.2 Definitions**

**FLASH:** shall mean any change in lighting intensity or messaging by an illuminated device that is less than one minute (60 seconds). This shall further include any change in illumination that leaves the illusion of motion, including scrolling.

**SIGN:** shall mean any external device visible to the public and designed to inform or attract attention of persons to the premises on which the sign is located, but not including traffic directional signs or signs erected by public agencies.

**SIGN AREA:** shall mean the surface area within a single continuous perimeter enclosing all the display area of the sign, but not including structural members not bearing advertising matter, unless internally or decoratively lighted. One side only of flat, back-to-back signs shall be counted.

**SIGN, FREESTANDING:** a self-supporting sign not attached to any building, wall, or fence, but in a fixed location. This does not include portable or trailer-type signs.

**SIGN, BUILDING:** Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building.

**7.1.3 Off-Premises Signs**

Billboards or signs whose content does not relate exclusively to the premises on which they are located are prohibited.

**7.1.4 On-Premises Signs**

Signs whose content relates exclusively to the premises on which they are located, or to products, accommodations, services, or activities on those premises on which the signs are located, shall be allowed, subject to the following table. Exceptions are allowed by Special Permit from the Zoning Board of Appeals.

<b>District</b>	<b>Maximum sign size</b>	<b>Allowed signs</b>
Residential and Agriculture Forestry Districts	4 square feet per premises	One free standing OR one building sign
Central Business ,Neighborhood Business, Recreation-Education	24 square feet cumulative sign area per business	One building sign per business AND one building sign affixed perpendicular to the building OR one portable A-Frame sign up to 6 square feet in size.

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Rural Business, General Business, Industrial, Historic-Industrial	32 square feet cumulative sign area per business	One free standing sign per premises AND one building sign per business
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7.1.5 Sign Limitations

- (a) No sign shall, flash, or revolve, or consist of pennants, ribbons, spinners, strings of light bulbs, revolving beacons, searchlights.
- (b) No building or free-standing sign shall project above the eave of the roof.

7.1.6 Illuminated and electronically controlled signs

- (a) No sign shall be illuminated between the hours of 11:00 PM and 7:00 AM, unless relating to an establishment open during those hours.
- (b) Signs may only be illuminated from external sources directed solely toward said sign, and only white lights shall be used for illumination. The lighting of any sign shall be so shaded, shielded or directed or shall be maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect the neighboring premises nor the safe vision of operators of vehicles moving on public ways.
- (c) No sign shall be internally or surface illuminated except as may be allowed by Special Permit in the Central Business, General Business and Historic Industrial District.

7.1.7. Nonconforming Signs

- (a) Continuanace. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this Bylaw may continue although such sign does not conform to the provisions of this section, but if the associated use to which a sign relates has been abandoned or discontinued for a period of two years or more, then the sign must be replaced with a conforming sign.
- (b) Maintenance. Any lawfully existing sign may be maintained, repaired, resurfaced, or repainted, but shall not be expanded, extended, or enlarged, in dimension or use, except in conformance with the provisions of this section.
- (c) Replacement. Any sign replacing a nonconforming sign shall conform to the provisions of this section, and the nonconforming sign shall not thereafter be displayed. If a nonconforming sign is destroyed by vandalism, act of God, or other reason beyond the control of the owner, it may be restored or replaced within two years in the same manner and dimensions as the previous, nonconforming sign.

7.1.8 Exempt Signs

- (a) Legal notices: identification, informational, or directional signs created or required by governmental bodies.

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- (b) Signs directing and guiding traffic and parking, but bearing no advertising matter, including name or products.
- (c) Signs indicating whether an establishment is open or closed, provided the sign does not flash and is not illuminated between the hours of 11:00 PM and 7:00 AM, unless relating to an establishment open during those hours.
- (d) Temporary signs and banners may be used in addition to the other signs, subject to the following size and duration limitation.
  - i. Public or commercial event signs. Temporary signs and banners are allowed for up to 30 days preceding a scheduled event and shall not exceed 16 square feet per location and must be removed within 5 days after the event.
  - ii. Tag Sale Signs. Allowed only during the period that the sale is in progress and the preceding 48 hours. Allowed only for tag sales that occur no more often than once each month. May be up to 3 square feet.
  - iii. Real Estate and Contractor's Signs. Remove within 14 days after the work, or closing is completed. May be up to 3 square feet.
  - iv. Traffic Control Signs for special events. Remove at the end of the event. Must be permitted by Department of Public Works.
  - v. Other Temporary Signs. Allowed for no longer than a 90 day maximum length of time and must be removed within five days after the event to which they apply. May be up to 4 square feet.

**7.2 Parking Requirements**

**7.2.1 Applicability.**

All parking demand created by new structures or uses, expansions of existing structures or uses, and change of use in existing structures must be provided in conformance with this section. The Site Plan Review Authority and Special Permit Granting Authority in this section and shall be consistent with § 9.

**7.2.2 Minimum Parking Space Requirements.**

All parking demand created by new structures or uses, expansions of existing structures or uses, and change of use in existing structures shall provide a minimum number of off-street parking spaces as specified in the table below. When the application of a unit of measurement for parking spaces to a particular use or structure results in a fractional space, any fraction under 1/2 shall be disregarded, and fractions of 1/2 or over shall be counted as one parking space. Where more than one (1) use occurs on one (1) site, the requirements of this section shall be cumulative.

<b>Principle Use Category</b>	<b>Parking Space Requirement</b>
Dwelling unit in Central Business or Neighborhood Business	1 per unit
Dwelling unit in all other districts	1.5 per unit

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Nursing Home	1 per 4 beds plus 1 space per employee on largest shift
Housing for Seniors and Persons with Disabilities	1.2 per unit
Retail or Office	1 per 200 square feet of gross floor area
Hotel or Lodging House	1 per each guest room
Theater, restaurant, or other place of assembly	1 per 4 seats
Industrial or Manufacturing	1 per 1,000 square feet of gross floor area or 1 per employee, whichever is greater

7.2.3 District Parking Requirements

- (a) Central Business District. All non-residential uses in the Central Business District are not required to provide off-street parking.
- (b) Rural Business District. A parking area that exceeds 25 spaces or is located between the street and the front of a principal building requires a Special Permit.
- (c) Village Center Mixed-Use.
  - i. Residential project: Minimum one parking space per residential unit, maximum 2 parking spaces per residential unit.
  - ii. Mixed-use Development: Same formula for residential units plus the applicable quantity computed in the following table:

Restaurant	1 per six (6) seats of the occupancy rating
Outdoor café	0.7 per guest table
All other uses	2 per 1,000 sq. ft. gross floor area.

7.2.4 Relief from Parking Requirements

- (a) Reductions. The required number of spaces may be reduced by special permit if the Special Permit Granting Authority makes a determination that the amount of spaces will meet all parking needs for the site. Reductions may be allowed for multiple-use parking areas subject to a determination that there is not a substantial overlap of parking periods between multiple uses on the site.
- (b) Off-Site Parking. A special permit may be granted to allow off-site parking spaces in a non-municipal parking area in order to meet the minimum parking requirements, subject to the following standards:
  - i. Off-site parking must be within reasonable walking proximity to primary use;
  - ii. Safe, well-marked pedestrian walkways, crossings, signage, and adequate lighting must be provided between the off-site parking and principal use;
  - iii. Multiple-use parking areas shall not have substantial overlap of parking periods for each use;

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- iv. Off-site parking spaces provided by a separate private property owner shall be subject to a legally binding agreement that shall be presented to the Special Permit Granting Authority as a condition of approval for a special permit.

#### 7.2.5 Parking Design Standards.

Parking areas shall be subject to the following requirements but are not applicable to driveways serving Single or Two-Family Dwellings:

- (a) Parking areas shall be designed so that their use does not require backing onto a public way.
- (b) Parking areas shall not be permitted in the required street line setback or closer than ten (10) feet to the front lot line, whichever is greater.
- (c) Individual space dimensions shall comply with generally accepted engineering practices and shall be painted, marked or otherwise delineated in a manner sufficient to visibly identify said spaces.
- (d) Handicapped parking spaces shall be provided in accordance with the Rules and Regulations of the Architectural Access Board of the Commonwealth of Massachusetts Department of Public Safety, as amended.
- (e) The minimum width of entrance and exit driveways shall be 10 feet for one-way use and 18 feet for two-way use. There shall be not more than two (2) driveway openings onto any street from any single premises. No driveway opening shall be located within fifty (50) feet of the street line of an intersecting way.
- (f) All parking areas and driveways shall be maintained with a dust free all-weather surface properly drained to dispose of all surface water accumulating within the area. Where soil conditions allow, permeable or porous paving may be used for parking stalls to infiltrate stormwater.
- (g) The layout of parking areas shall allow sufficient space for the storage of plowed snow unless removal from the site is provided.
- (h) Adequate lighting shall be provided for all parking areas to be used at night. All exterior lighting associated with parking areas shall be downcast and shall be directed or shielded to eliminate light pollution onto any street or abutting property.

#### 7.2.6 Parking Design Standards for Lots With 10 or More Spaces

All uses that involve the construction or expansion of a parking area that creates 10 or more new parking spaces is subject to Site Plan Review. The following standards apply to new parking areas with 10 or more parking spaces, in addition to the standards in § 7.2.5. Waivers to standards in this section may be granted by the Site Plan Review Authority.

- (a) Non-residential parking areas adjacent to a residential property shall be set back from the property line by at least 10 feet and shall have a continuous border of dense plantings or fencing at least 5 feet high, maintained to provide an effective visual screen.

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- (b) A minimum of 10 percent of the total parking area (exclusive of perimeter landscaped buffer strips) shall be landscaped open space. Internal landscaping shall be distributed throughout the lot for maximum shading and aesthetic improvement.
- (c) Parking areas shall be separated from the street line by a landscaped area including shade trees (at least three-inch caliper at a point 6 inches above the ground) planted every 20 feet on center.
- (d) One shade tree (at least three-inch caliper at a point 6 inches above the ground) shall be planted for every 10 parking spaces. Preservation of existing trees is desirable and may be substituted for planted trees. Parking spaces covered by solar photovoltaic canopies shall not count towards the shade tree requirement.
- (e) Landscaped islands a minimum of 8 feet in width shall be used to break up rows of parking with 15 or more parking spaces in single or double bays. Each island shall incorporate at least 2 shade trees. A sidewalk a minimum of 5 feet in width may be located within islands, and shall connect to public sidewalks, if applicable.
- (f) To the maximum extent possible, trees and other plant materials shall be native species. Trees, shrubs, ground covers and perennials used within parking lots should be of species able to withstand the harsh conditions and runoff of a parking lot. Any trees and shrubs that do not survive one year after planting shall be replaced in accordance with the requirements of this bylaw.
- (g) Low Impact Development (LID) features identified in the Massachusetts DEP Stormwater Management Manual such as swales, filter strips, structural soils, and bioretention areas that capture, treat, and infiltrate runoff from the parking area are encouraged and may be located within internal landscaping, landscaped islands, buffer strips and setbacks.
- (h) Bicycle parking shall be provided. The design, location, and number of bike racks shall be approved by the Site Plan Review Authority.

### **7.3 Loading Requirements**

Adequate off-street loading facilities and space must be provided to service all needs created by new structures or uses, additions to existing structures or uses, or change of use. Facilities shall be so sized and arranged so that no trucks need to back onto or off of a public way, or be parked on a public way while loading, or unloading, or waiting to do so. Loading facilities in the Central Business and Neighborhood Business Districts should maximize the use of existing alley ways. Loading docks may not face a public way unless said public way is considered an alley by the Department of Public Works, or a special permit is granted by the Special Permit Granting Authority for the Zoning District in which the principal use to which the loading dock relates is to be located.

### **7.4 Lot Access**

#### **7.4.1 Driveway Requirements**

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All new driveways connecting to public way require a driveway permit from the Montague Department of Public Works. The minimum side yard setback for a new driveway shall be at least 5 feet.

#### 7.4.2 Access over front lot line

Vehicular egress and access to a lot must be across the front lot line meeting the minimum frontage requirements. However, the Planning Board may issue a Special Permit permitting vehicular egress/access to a lot over a front lot line having less than the required minimum frontage, or over any side lot line or rear lot line. In the MU-VC district, a separate Special Permit shall not be required under this Section for access to parking over a side lot line or rear lot line. Such access shall be reviewed under the Site Plan Review and/or Special Permit process for uses in the MU-VC district, as applicable.

#### 7.4.3 Access over land zoned for such use

Egress and access to a lot or use must be over land zoned for such use. However, the Planning Board may issue a Special Permit, with appropriate conditions, permitting egress/access over land where the use is not otherwise permitted.

#### 7.4.4 Common Driveways

- (a) Purpose  
The purpose of Common Driveways is to enhance public safety by reducing congestion entering and leaving roadways, to conserve land and minimize impacts on agricultural and natural resources and to protect the value of real property.
- (b) Applicability  
A special permit from the Planning Board is required.
- (c) Special Permit Standards
  - i. Common driveways shall not be used to satisfy lot frontage requirements.
  - ii. The Planning Board may grant a special permit for a common driveway if it determines that the Town's interest is better served by a common driveway than by individual driveways or subdivision approval.
  - iii. The Planning Board may deny a special permit for a common driveway if it determines that access is not feasible across the frontage of each lot proposed to be served by the common driveway.
  - iv. Designs, plans, easements and maintenance agreements for common driveways shall be developed in accordance with Planning Board regulations and shall require a standard of construction, financing and maintenance adequate for the anticipated uses.

#### 7.4.5 Long Driveways

For residences with a setback of 500 feet or more from an accepted way, a driveway for such residence must meet the following standards. Exceptions may be granted by Special Permit from the Planning Board.

- (a) Width shall be no less than 16 feet in width over its entire length

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- (b) Grade shall not exceed 10%
- (c) Curve radius must not be less than 30 feet
- (d) Passing turnouts shall be provided with a width of 20 feet and a length of 35 feet and shall be spaced no more than 300 feet between turnouts or terminus of the driveway
- (e) Turn around area with a minimum 30 foot radius at terminus of driveway

## **SECTION 8. SPECIAL REGULATIONS**

### **8.1 Trailer, Mobile Home, and Camper Regulations**

#### **8.1.1 Purpose**

To regulate the use of trailers, mobile homes, and campers for residence or business purposes.

#### **8.1.2 Definitions**

**CAMPER:** shall mean a portable shelter eligible to be registered and insured for highway use, and designed to be used for travel, recreational and vacation use, but not for permanent residence; commonly called travel trailers, , motor homes, campers and tent trailers, but not mobile homes.

**MOBILE HOME:** shall mean a manufactured dwelling built on a chassis, brought to the site containing complete electrical, plumbing, and sanitary facilities, and designed without necessity of a permanent foundation designed for year round living.

**TRAILER:** shall mean a towed vehicle for non-residential use.

#### **8.1.3 Applicability**

The provisions of this section shall not be retroactive to apply to any mobile home located in the Town of Montague prior to 6/16/1973.

No person shall park, store or occupy a trailer, mobile home, camper or similar vehicle for living or business in the Town of Montague except in the following instances:

- (a) The owner of land may permit occupancy by a guest, using a mobile home or camper, for living purposes, for a period not to exceed 90 days in a calendar year, provided that a permit shall first be obtained from the Board of Health if such occupancy exceeds 30 days.
- (b) When a residence has been destroyed by a fire or other natural disaster, the owner or occupier of the residence may reside in a temporary mobile home for up to 24 months while the residence is being rebuilt.
- (c) An office that is incidental to construction or development of a premises on which the trailer is located is permitted, but must be removed within 30 days of completion of construction.
- (d) Replacement of a pre-existing Mobile Home by a larger unit shall require administrative approval by the Inspector of Buildings.

#### **8.1.4 Standards**

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Wherever a trailer, mobile home, or camper is parked for occupancy, said trailer must conform to local and state sanitation regulations and all trailers are subject to dimensional setback requirements for accessory buildings in the respective zoning district.

## **8.2 Earth Removal Regulations**

### **8.2.1 Purpose**

To preserve Montague's natural resources, protect the environment and water quality through the regulation of earth removal operations.

### **8.2.2 Applicability**

The removal from any premises of topsoil, borrow, rock, sod, loam, peat, humus, clay, sand, or gravel shall be done only in accordance with § 8.2. except that the following shall be exempted from these provisions:

- (a) The removal of less than 50 cubic yards of such material within any twelve-month period.
- (b) Removal, incidental to construction on the premises, where such removal is explicitly allowed under a currently valid building permit or under agreements governing road construction in an approved subdivision, or as a routine part of normal farming operations.

### **8.2.3 Special Permit Requirements**

Removal shall be allowed only under a Special Permit issued by the Zoning Board of Appeals following written application, a copy of which shall be forwarded to the Conservation Commission. The following shall be conditions for such issuance.

- (a) The application shall be accompanied by a plan showing all manmade features, property lines, names and addresses of all abutters, if available, from the Assessor's including those across any street or way, topography at 5 foot contour intervals of the site and all land within 100 feet of the area from which the above material is to be removed, together with the lowest grade at which the finished surface will lie, and the proposed cover vegetation and trees. If involving more than five (5) acres and/or 10,000 cubic yards of removal, the plan shall be prepared by a Registered Land Surveyor or Engineer.
- (b) A performance bond in the amount determined by the Zoning Board of Appeals shall be posted in the name of the Town assuring satisfactory performance in the fulfillment of the requirements of this Bylaw and such other conditions as the Zoning Board of Appeals may impose as conditions to the issuance of its permit.

### **8.2.4 Water Supply Protection District Standards**

Excavation for removal of earth, sand, gravel and other soils shall not extend closer than six (6) feet above the mean maximum ground water table for the site. This restriction shall not apply to excavations incidental to the permitted uses, including but not limited to, providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits, or on-site

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sewage disposal. Additionally, the following conditions must be met:

- (a) The owner of the excavation enterprise shall engage a registered professional engineer to determine the mean maximum ground water table for the site. The engineer's report shall include a map of the site detailing the mean maximum groundwater table elevations. The report, stamped, sealed, and signed by the engineer, shall be filed prior to the removal of any materials with the Building Inspector and the Board of Health.
- (b) Between March 1<sup>st</sup> and May 30<sup>th</sup> of each year of operation of the excavation enterprise, the owner shall employ a registered professional engineer or soil scientist to do a site inspection and issue a certified report concerning the maximum depth of removal or excavation relative to the mean maximum ground water table. The report, stamped, sealed, and signed by the engineer, shall be filed within 30 days of the site inspection with the Building Inspector and the Board of Health. The Building Inspector and a representative of the Board of Health shall accompany the engineer during the site inspection.

#### 8.2.5 Earth Removal Standards

- (a) Finish grade shall not lie below a level that would reasonably be considered a desirable grade for the later development of the area, or below the grades specified on the plan accompanying the permit application. The Zoning Board of Appeals may specify a base grade below which excavation shall in no event take place.
- (b) Provision shall be made for safe drainage of water, and for prevention of wind and water erosion carrying material onto adjoining properties.
- (c) One hundred (100) foot buffer strip shall be maintained at all boundaries, and not excavated unless at the termination of operations in order to improve overall grading.
- (d) The visibility, sound, and airborne particles from processing equipment shall be screened from adjacent premises through the design and location of such equipment, and through the use of natural vegetation planting, overburden piles, and surge piles as screening.
- (e) Dust shall be controlled through watering of roads, or other best practices, as determined by the Zoning Board of Appeals.
- (f) Excavation for removal of earth, sand, gravel and other soils shall not extend closer than six (6) feet above the mean maximum ground water table for the site in the Water Supply Protection District (§6.2).

#### 8.2.6 Restoration Standards

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

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- (a) All land shall be so graded that no slope exceeds one (1) foot vertical rise in three (3) feet horizontal distance and shall be so graded as to provide safety for drainage without erosion.
- (b) All boulders larger than one-half cubic yard shall be removed or buried, and all tree stumps removed.
- (c) The entire area excepting exposed ledge rock shall be covered with not less than four (4) inches of topsoil, which shall be planted with native perennial cover vegetation adequate to prevent soil erosion.

#### 8.2.7 Additional Conditions

Before granting a permit, the Zoning Board of Appeals shall give due consideration to the location of the proposed earth removal, to the general character of the neighborhood surrounding such location, to the protection of water supply, to the general safety of the public on the public ways in the vicinity, and to the recommendation of the Conservation Commission. The Zoning Board of Appeals may set additional conditions to the above standards, including but not limited to: duration of the permit, hours of the day during which removal may take place, hours during which vehicles may leave the premises, routes to be used by hauling vehicles, and trees to be planted.

#### 8.2.8 Renewal or Revocation of Permit

A Special Permit granted under this Section may be extended, without notice or a public hearing, but such extension shall not be for more than one year, provided the extension is requested prior to the expiration of the Special Permit. A permit may be renewed upon application for a new Special Permit, subject to the notice and hearing requirements of G.L. c. 40A, §9. Prior to renewal, inspection of the premises shall be made by the Building Inspector, or appointed agent of the Zoning Board of Appeals, to determine that the provisions of the Bylaw are being complied with.

#### 8.2.9 Enforcement

The Zoning Board of Appeals, after hearing and proof of violation of this Bylaw, may modify, suspend or revoke the permit, after which the operation shall continue in accordance with the modified permit or, if revoked, cease and the area restored in accordance with § 8.2.6.

### **8.3 Home Occupations**

#### 8.3.1 Purpose

The purpose of permitting home occupations is to allow home-based economic activity compatible with residential environments. It is the intent of this Section that home occupations are to be defined solely by the standards listed in §8.3.3.

#### 8.3.2 Applicability

All Home Occupations require a permit from the Inspector of Buildings, subject to finding that all the standards in §8.3.3 are met. Said permits may be revoked at any time by the Inspector of Buildings, if any of the standards are violated after issuance of the permit. Said permit shall not be transferable between persons or property locations.

#### 8.3.3 Standards

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- (a) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
- (b) Floor area equal to no more than (25%) of the floor area of the principal building shall be used for the purpose of the home occupation.
- (c) The home occupation shall be accommodated within an existing structure or within any extension thereto.
- (d) Not more than one person not a member of the household shall be employed on the premises of the home occupation.
- (e) There shall be no exterior display, no exterior storage of materials and no other exterior indication of the home occupation or other variation from the residential character of the principal building other than an unlighted sign not to exceed (2) square feet in area.
- (f) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.
- (g) Traffic generated shall not exceed volumes normally expected in a residential neighborhood.
- (h) Parking generated shall be accommodated off-street, other than in a required front yard, and shall not occupy more than 35% of lot area.

#### 8.3.4 Relief from Standards

In the event that any person is unable to obtain a permit for a home occupation as defined above because of a failure or inability to meet any one or more of the standards contained in § 8.3.3 the Board of Appeals may grant a special permit to such person for such use. Special permits shall not be transferrable between persons or property locations.

### **8.4 Boarding of Animals**

#### 8.4.1 Purpose

The purpose of this section is to encourage homesteading and boarding of animals in a manner promotes the welfare of animals and minimizes nuisance to densely developed neighborhoods.

#### 8.4.2 Definitions

**KENNEL:** A Structure used for the boarding, grooming, and training of more than four 4 dogs, cats, or other pets that are more than 3 months old, whether commercially operated or not, except for farm dogs used for herding or protection of livestock from predators and breeding and raising of dogs for sale and activities incident thereto.

**LIVESTOCK:** All cattle or animals of the bovine species; all horses, mules, burros, and asses or animals of the equine species; all llamas or animals of the camelids species; all goats or animals of the caprine species; all swine or animals of the porcine species; and all sheep or animals of the ovine species, and other animals raised for profit.

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POULTRY: Any domesticated fowl, including, but not limited to chickens, ducks, geese, turkeys, and pheasants (including peafowl).

#### 8.4.3 Keeping of livestock

The raising or keeping of livestock for pets or for use by residents of the premises but not for commercial agricultural purposes is permitted on residential parcels with a single or two-family dwelling as follows:

- (a) The keeping of livestock, in accordance with applicable state laws, is allowed by right in Rural Business and all Agriculture Forestry Districts. A Special Permit is required from the Zoning Board of Appeals to keep livestock in the RS-1 and RS-2 District. The Zoning Board may impose a limit on the number of livestock animals that may be kept on the property as a condition of approval of a special permit.
- (b) All structures housing or sheltering livestock must be located at least 100 feet from any abutting residence, business, school, or church (the principal structure, not the property line or accessory structure).
- (c) All stormwater runoff from the pen or paddock and compost area shall be contained on the premises and must be maintained to control dust and odor so as to not constitute a nuisance or safety hazard. Feed must be secured in accordance with best management practices.
- (d) In all districts for parcels of 5 or more acres, if the keeping of livestock is an agricultural use, then the provisions of this section shall not apply.

#### 8.4.4 Keeping of poultry

The raising or keeping of poultry for pets or for use by residents of the premises but not for commercial agricultural purposes is permitted on residential parcels as follows:

- (a) Roosters (male chickens) are prohibited, with the exception of properties in the Agricultural-Forestry or Rural Business Districts.
- (b) The structures housing or sheltering the poultry must be located at least 30 feet from any abutting residence, business, school, or church (the principal building, not the property line or accessory structure).
- (c) The poultry must be restricted to the property.
- (d) All stormwater runoff from the coop, run, and compost area shall be contained on the premises and must be maintained to control dust and odor so as to not constitute a nuisance or safety hazard. Feed must be secured in accordance with best management practices.
- (e) In all districts, for parcels of 5 or more acres, if the keeping of poultry is an agricultural use, then the provisions of this section shall not apply.

#### 8.4.5 Kennels

Kennels are permitted by Special Permit in the Agriculture- Forestry Districts, Rural Business District and Industrial District provided the following standards are met:

- (a) Any structures housing the animals are either located in an area where sound will be buffered so as to not cause a disturbance to the neighborhood or the buildings are sound insulated and must be located a minimum of 100 feet from any abutting residence

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- business, school, or church (the principal building, not the property line or accessory structure).
- (b) All animal wastes shall be collected and properly disposed of in a manner to prevent pollution of surface or ground water.
  - (c) Dogs shall not be permitted to bark excessively at night (e.g. for periods longer than fifteen minutes) so as to create a nuisance.

## **8.5 Accessory Apartments**

### **8.5.1 Purpose**

The purpose of permitting accessory apartments is to:

- (a) Develop housing units in owner occupied single-family homes that are appropriate for households at a variety of stages in their life cycle;
- (b) Provide older homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise leave;
- (c) Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to low and moderate income households who might otherwise have difficulty finding housing;
- (d) Provide housing units for persons with disabilities;
- (e) Protect stability, property values, and the residential character of a neighborhood, and
- (f) Encourage increased housing density.

### **8.5.2 Definitions**

**ACCESSORY APARTMENT, WITHIN:** an Accessory Apartment that is within a single-family dwelling is a self-contained housing unit incorporated within the single family dwelling that is clearly a subordinate part of the single- family dwelling and complies with each of the criteria stated in this bylaw.

**ACCESSORY APARTMENT, ATTACHED:** an attached Accessory Apartment is a self-contained housing unit added as an addition to a single family dwelling that is clearly a subordinate part of the single family dwelling and complies with each of the criteria stated in this Bylaw. This definition does not include a trailer or mobile home, however mounted.

**ACCESSORY APARTMENT, DETACHED:** a detached Accessory Apartment is a self-contained housing unit that is located on the same lot as the structure of a single family dwelling and may be incorporated within a garage or carriage house or other accessory structure or as a stand-alone structure that is clearly subordinate to the primary use as a single family unit and complies with each of the criteria stated in this Bylaw. This definition does not include a trailer or mobile home, however mounted.

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### 8.5.3 Applicability

- (a) Accessory Apartment, Within. The Inspector of Buildings may issue a Building Permit authorizing the installation and use of an Accessory Apartment within an existing or new owner-occupied, single family dwelling unit.
- (b) Accessory Apartment, Attached. An attached Accessory Apartment shall require a Special Permit granted by the Zoning Board of Appeals.
- (c) Accessory Apartment, Detached. A detached Accessory Apartment shall require a Special Permit granted by the Zoning Board of Appeals.

### 8.5.4 Standards

- (a) Only one Accessory Apartment may be created within a single-family dwelling or on a house lot.
- (b) Utilities and water supply shall be integrated with the single-family dwelling.
- (c) The owner(s) of the residence in which the Accessory Apartment is created must continue to occupy at least one of the dwelling units as their primary residence. A covenant, in a form satisfactory to Town Counsel, stating the conditions of any permit issued under this Section must be recorded in the Franklin County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Inspector of Buildings, prior to the occupancy of the Accessory Apartment.
- (d) The Accessory Apartment shall be designed so that the appearance of the building remains that of a single-family residence as much as feasibly possible. Any new entrances shall be located on the side or rear of the building. A detached accessory apartment shall be compatible in design with the primary residence. Any stairways, access, or egress alterations serving the Accessory Apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.
- (e) The maximum gross floor area of Accessory Apartment shall be no greater than nine hundred (900) square feet.
- (f) A minimum of two (2) but no more than four (4) off-street parking spaces must be available for use by the owner-occupants and tenants.
- (g) When a property with an Accessory Apartment is sold, the new owner(s), if they wish to continue to exercise the Permit, must, within thirty (30) days of the sale, submit a notarized letter to the Inspector of Buildings stating that they will occupy one of the dwelling units on the premises as their primary residence. This statement shall be listed as a condition on any Permits which are issued under this Section.

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- (h) Prior to issuance of a Building or Special Permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.
- (i) For dwellings to be served by on-site septic system, the owner must obtain a letter from the Board of Health stating that the existing sewage disposal system is adequate for the proposed Accessory Apartment before a Building or Special Permit can be obtained.
- (j) Accessory Apartments in the AF-1, RS-2 and RB districts will not require additional minimum lot size requirements in § 5.5.1, provided that the standard in § 8.5.4 (i) is satisfied.
- (k) In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the Inspector of Buildings or the Zoning Board of Appeals may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

## **8.6 Telecommunication Facilities**

### **8.6.1 Purpose**

To allow telecommunication and wireless communication services with minimal effect to the safety and general welfare of the public primarily through the following methods:

- (a) Minimizing the required number of such facilities by maximizing the shared use of any new or existing structures.
- (b) Minimizing the adverse visual impacts through careful design, siting, and screening.

### **8.6.2 Definitions**

TELECOMMUNICATION FACILITIES: includes towers, antennas, buildings and accessory structures designed or modified to provide personal communications services, radio and television broadcast or reception, wireless communications, or similar communication services. Not included are antennas used for personal television and radio reception or radio facilities actively used under a Federal Communication Commission amateur radio license or antennas that are located on existing utility poles within a street right of way. A Telecommunication Facility shall be considered a Public Utility for the purposes of this Bylaw (See §2).

### **8.6.3 Applicability**

Telecommunication Facilities may be allowed by Special Permit pursuant to § 5.2 and § 8.6. No Facility shall be located in the RS-1 or RS-2 Residential Districts.

### **8.6.4 Submittal Requirements**

The following materials shall be submitted with the Special Permit application for Telecommunication Facilities:

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- (a) A site plan shall be prepared by a registered engineer. The plan shall include four (4) view lines in a one (1) mile radius from the proposed site, shown beginning at True North and continuing clockwise at ninety (90) degree intervals. In addition the applicant shall set a balloon at the location and height of proposed towers for a period of time as determined by the SPGA.
- (b) A report from a registered engineer shall:
  - i. demonstrate that the facility complies with all applicable standards of the State and Federal governments;
  - ii. describe the capacity of the tower or facility including the number and type of transmitter/receivers that it can accommodate;
  - iii. describes the planned layout of all facilities in Montague and abutting Towns;
  - iv. describes all accessory structures to be constructed on site.
- (c) A copy of the requests made by the applicant to the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission, including responses from those agencies, demonstrating compliance with applicable regulations related to the facility.
- (d) A locus map at an appropriate scale showing all buildings within 500 feet of the proposed facility.
- (e) A copy of the co-location agreements.

#### 8.6.5 Special Permit Standards

- (a) To the maximum extent possible, all service providers shall co-locate on a single structure. Structures shall be designed to accommodate the maximum number of users technologically practical. The intent of this standard is to reduce the number of towers located within the Town.
- (b) No Facility shall exceed 200 feet in height as measured from the mean finished grade at the facility base. Exterior lighting of the tower, except as required by the FAA, and lighting of accessory structures shall be prohibited.
- (c) New towers shall be free-standing monopoles.
- (d) Facilities shall not be located within 1,500 feet of the peak of Will's Hill, Chestnut Hill, Dry Hill, and Country Hill or located in such a way as to adversely impact the view of a one of these hills.
- (e) Siting shall be such that the view of the Telecommunication Facility shall be as limited as possible when viewed off site.
- (f) No telecommunication tower, inclusive of any attachments, shall be erected nearer to any property line than a distance equal to 125% of its vertical height.

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- (g) Facilities shall be screened year-round from abutters and residential neighborhoods.
- (h) Fencing shall be provided to control access to Telecommunication Facilities and shall be compatible with the scenic character of the neighborhood and landscape.
- (i) Existing on-site vegetation shall be preserved to the maximum extent possible.
- (j) All Facilities shall be painted, or otherwise colored, so that they will blend in with the surrounding landscape or the structure on which they are located. A different coloring scheme shall be used below and above the tree or building line.
- (k) There shall be no storage of vehicles on the site or exterior storage of equipment on the site.
- (l) To the extent feasible, all network interconnections and power lines, to and from the Facility, shall be via underground lines.
- (m) All Facilities, attachments, and accessory structures which have not been used for a period of one (1) year shall be dismantled and removed at the owner's expense. Such expense shall be secured with a performance guarantee in an amount determined by the Special Permit Granting Authority and posted in the name of the Town.

## **8.7 Self-Service Storage Facilities**

### **8.7.1 Purpose**

To allow for the limited construction and operation and maintenance of self-service storage facilities in areas where such use is not inconsistent with neighborhood character, and will have minimal impact on public health, safety and welfare, the environment and scenic and historic character. The Special Permit Granting Authority for Special Permits under this § 8.7 shall be that of the Zoning District in which the self-service storage facility is to be located.

### **8.7.2 Standards**

- (a) No activity other than rental of storage units and pick up and deposit of property shall be allowed at a facility, except for accessory or incidental uses required in administration and security of the site. The use of storage units for any purpose other than storage shall be prohibited.
- (b) All goods, products, materials and other objects stored shall be secured inside storage structures. Outdoor storage shall be prohibited.
- (c) The storage of flammable liquids including petroleum products, highly combustible or explosive materials, corrosive or hazardous chemicals shall be prohibited.

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- (d) Servicing or repair of motor vehicles, boats, trailers, lawnmowers or any similar equipment shall be specifically prohibited. Storage of motor vehicles, motor boats and similar equipment shall be prohibited in the Water Supply Protection District.
- (e) Hours of customer access shall be specified by the Special Permit Granting Authority and limited to minimize impact on neighboring properties and public safety services.
- (f) The site shall be secured by fence or other barrier to prevent unauthorized access. The Special Permit Granting Authority may require additional measures to monitor and limit access and ensure security.
- (g) Self-service storage facilities shall be designed and landscaped so that they are not immediately visible from a public way.
- (h) Adequate parking and unit access shall be provided, consisting of paved lanes and a minimum of three (3) spaces, plus one space for every five (5) individual storage units. If the access lane to the units and between structures accommodates temporary parking without blocking travel in the lane, additional per-unit parking is not required.
- (i) Drainage from impervious surfaces shall be fully accommodated onsite.
- (j) The Special Permit Granting Authority shall consider design and appearance of buildings, setbacks, visual impact, lighting, security issues, traffic circulation, consistency with current and abutting land uses and the market demand for self-service storage facilities in determining whether to grant, condition or deny this permit.
- (k) The Special Permit Granting Authority may require additional conditions and set standards for performance and maintenance or vary prescribed conditions upon finding that such action is consistent with accepted engineering and design practices and is reasonably necessary to meet the purpose and intent of the Zoning Bylaws.

## **8.8 Back Lot Development in Agricultural Business Overlay District**

### **8.8.1 Purpose**

The purpose of this section is to promote permanent protection of productive agricultural land by allowing landowners to develop property that is not valuable for agricultural purposes.

### **8.8.2 Applicability**

The Planning Board may grant a Special Permit under this section for development of back lots in the Agricultural Business District that do not meet the frontage requirements of the Montague Zoning Bylaws upon finding that the proposed development meets the standards set forth in this section and § 6.3 (Agricultural Business District) and is otherwise consistent with the purposes of this section and the Montague Zoning Bylaws.

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8.8.3 Access Requirements

- (a) Back lots shall have access to a public way or a “way in existence” as defined by Chapter 41, § 81L, definition of “subdivision”, or via driveways that are designed to standards adequate to ensure safe access for construction, passenger and emergency vehicles. There shall be no structures located in the driveway.
- (b) Up to four (4) back lots may share a common driveway pursuant to a Special Permit under this section and § 7.4.3 of the Montague Zoning Bylaws. Shared driveways shall meet all standards for Common Driveways under the Montague Zoning Bylaws and regulations of the Planning Board.
- (c) Access driveways may be incorporated into back lots or structured as legal rights-of-way across land of others. Planning Board approval of legal documents creating rights-of-way is required.
- (d) Access driveways may not be located within 250 feet of another access driveway to a back lot developed under this bylaw.

8.8.4 Dimensional Requirements

Minimum lot size (not including access drive)	22,500 square feet
Minimum lot frontage	0 feet
Maximum lot frontage	50 feet
Minimum street line setback	200 feet
Minimum front, side, and rear yard setback	Same as underlying district
Minimum setback from active farming operations	100 feet

8.8.5 Siting of dwelling units and drives

- (a) Back lots shall be located on land that due to soils, topography, location, size or other factors is unsuitable or undesirable for agricultural use. The burden shall be on the applicant to demonstrate that the land to be developed is not valuable for agricultural purposes.
- (b) Dwelling units shall be integrated into the existing landscape through placement of buildings within woodland along the edges of fields or in locations visually screened by natural vegetation or topography to the maximum extent possible.
- (c) The visual impact of back lots and the traffic impact of access driveways on abutting landowners shall be minimized.
- (d) Significant site features, including water courses, floodplains, wetlands, ponds and other water bodies, scenic views and historic sites shall be preserved.

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- (e) The Planning Board may require that building envelopes be designated within individual back lots and shown on plans.

#### 8.8.6 Agricultural land protection requirement

For each back lot allowed by Special Permit, the applicant shall secure permanent protection of a parcel of land that is at least two acres or equal to the area of the back lot, whichever is greater, and each with a minimum of 150 feet of frontage on a public way or a way in existence. The land to be protected shall:

- (a) Be located within the Agricultural Business District.
- (b) Be presently and primarily used in producing or raising agricultural, commodities including, but not limited to livestock, poultry, bees, fruits, vegetables, berries, nuts, feed, forage, seed, flowers, sod, greenhouse products and ornamental plants and shrubs.
- (c) Have soils classified as agriculturally "prime," "unique" or of "statewide or local importance" by the Natural Resources Conservation Service.
- (d) Be able to be developed for residential purposes under the Montague Zoning Bylaws and all applicable provisions of local, state and federal law.
- (e) Not include any structures or roads except those used for agricultural purposes.

Applicants are encouraged to protect parcels of land that are adjacent to land already protected by an Agricultural Preservation Restriction or Conservation Restriction. If multiple back lots are proposed, the Planning Board may require that parcels of land protected be contiguous to each other. Protection of land shall be accomplished by recording at the Franklin County Registry of Deeds or Land Court of a permanent agricultural preservation restriction, approved by the Planning Board, limiting use to agriculture and open space. The restriction shall be enforceable by the Town. Land permanently protected may be retained by the property owner or conveyed to others for active agricultural use.

#### 8.8.7 Subdivision

- (a) Back lots with at least 20 feet of frontage:  
The Planning Board may approve division of back lots with at least 20 feet of frontage on a public way or a way in existence pursuant to MGL Chapter 41, § 81P and § 3.2 of the Montague Subdivision Regulations, upon finding that access is adequate for the proposed use.
- (b) Back lots with less than 20 feet of frontage:  
For back lots with less than 20 feet of frontage on a public way or a way in existence, the applicant may seek (a) Planning Board waiver(s) to divide the lot(s) pursuant to MGL Chapter 41, § 81-P, 81-R and § 3.2 of the Montague Subdivision Regulations. The Planning Board shall hold a public hearing pursuant to MGL Chapter 41, § 81-T on the waiver request; this hearing may be

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concurrent with the Special Permit hearing. Waivers may be granted upon finding by the Planning Board that access is adequate for the proposed use.

#### 8.8.8 Special Permit Conditions

The following conditions shall apply to all special permits for back lot developments, in addition to any other conditions imposed by the Planning Board:

- (a) No lot shall be built upon without the provision of potable water and sewage disposal facilities approved by the Board of Health.
- (b) No further subdivision shall occur and the Planning Board shall record such condition on any approved Back Lot Site Plan clearly defining the lots upon which buildings can be placed and noting such condition in any Special Permit granted.
- (c) The access driveway shall provide the only vehicular egress/access to the lots served.
- (d) The Special Permit shall state that the access driveway is not a private road or a public road and that it does not meet the standards for a Town road.
- (e) The Special Permit shall state that the access driveway shall not be accepted as a public way and the Town of Montague shall not under any circumstances be held liable for construction, reconstruction, maintenance or snow removal on any access drive.
- (f) The Special Permit shall state that under no circumstances shall the Town of Montague be held liable in the event that emergency vehicles cannot get to their destination because of improper construction or maintenance of the access drive. It shall be the owners' responsibility to be sure that the driveway is passable for emergency vehicles at all times.
- (g) Each landowner served by the access driveway shall be jointly and severally responsible and liable for the repair and maintenance of all portions of the access drive to which more than one landowner holds a right-of-way.
- (h) Every deed conveying a back lot created under this section shall incorporate by reference the Special Permit authorizing the lot's creation, and all conditions imposed in said permit.
- (i) No building permit shall be issued for any back lot until (1) a Special Permit has been granted; (2) proof of recording at the Franklin County Registry of Deeds of the Special Permit and all required documents approved by the Planning Board, including rights of way, agricultural preservation restrictions, documents creating homeowners associations and maintenance agreements is submitted to the Planning Board and the Inspector of Buildings and (3) the lot has been legally divided and proof of recording at the Franklin County Registry of Deeds is submitted to the Planning Board and the Inspector of Buildings.

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**8.9 Solar Energy Installations & Facilities and Battery Energy Storage Facilities**

**8.9.1 Purpose**

To facilitate the transition from fossil fuels to renewable energy through the following:

- To encourage solar energy collection on roofs, over parking lots, and on degraded areas and to minimize the environmental impact when that is not otherwise practical.
- To allow properly sited battery energy storage facilities.

**8.9.2 Definitions**

**BUILDING MOUNTED SOLAR ENERGY INSTALLATION:** A solar energy installation that is permanently affixed to a building, as defined by the building code. This definition is inclusive of canopy structures.

**ACCESSORY GROUND MOUNTED SOLAR ENERGY INSTALLATION:** A solar energy installation that primarily supports on-site energy needs that is mounted on the ground, either directly or on supports which do not constitute a building under the building code.

**SOLAR ENERGY FACILITY:** a ground-mounted solar energy installation that exceeds 2,000 square feet of panel surface area. Solar Energy Facilities shall not constitute a Public Utility for the purposes of this bylaw.

**BATTERY ENERGY STORAGE FACILITY:** a physical container providing secondary containment to one or more battery cells for storing electrical energy that is equipped with cooling, ventilation, fire suppression, and an electronic battery management system. It may be a primary use or accessory to a solar energy facility, power generation facility, an electrical substation or other similar uses. Battery Energy Storage Facilities shall not constitute a Public Utility for the purposes of this bylaw. For the purpose of this bylaw, the aggregate rating of the facility shall exceed 80 kWh.

**SMALL SCALE BATTERY ENERGY STORAGE SYSTEM:** a battery storage system that is ancillary to a residential, commercial, or industrial use. For the purpose of this bylaw, the aggregate rating of the system shall not exceed 80 kWh.

**8.9.3 Building Mounted Solar Energy Installations**

Building Mounted Solar Energy Installations are permitted in all zoning districts.

**8.9.4 Accessory Ground-Mounted Solar Energy Installations**

Ground Mounted Solar Energy Installations shall be considered an accessory structure and shall meet the setback requirements of the Zoning District in which it is located. Ground-Mounted Solar Energy Installations are permitted in accordance with the following table:

<b>Zoning District</b>	<b>Requirement</b>
Neighborhood Business, Central Business, and Recreation-Education	Special Permit Required
RS-1	Special Permit Required if exceeding 150 square feet of panel surface area

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All other districts	Special Permit Required if exceeding 500 square feet of panel surface area
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#### 8.9.5 Solar Energy Facilities and Battery Energy Storage Facilities

Solar Energy Facilities and Battery Energy Storage Facilities are allowed in the Industrial and Historic-Industrial Districts by Special Permit and Site Plan Review from the Planning Board, subject to the submittal requirements and standards of this section. The Planning Board may require additional conditions or vary the prescribed conditions upon a finding that such action is reasonably necessary to meet the purpose and intent of the Bylaws.

- (a) Required Submittals. In addition to the required Site Plan elements in §9, the following materials are required for permitting approval of Solar Energy and Battery Storage Facilities:
- i. A plan for the general procedures of operation and maintenance of the installation including security measures, maintenance of emergency access and the clear and available means of shutting down the facility in the event of an emergency.
  - ii. A fully inclusive estimate of the costs associated with removal and site restoration, prepared by a professional engineer.
  - iii. Owners and successors in title shall provide a satisfactory form of surety, either through escrow account, bond or otherwise, to cover the cost of removal and restoration of the landscape, in an amount determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal. Such surety may be waived for municipally or state owned facilities. The form of surety shall be subject to review and approval of Town Counsel.
  - iv. A stormwater management report prepared by a professional engineer.
  - v. A native flowering planting and maintenance plan that supports pollinator habitat within the project area and its perimeter. Plan to be developing in consistency with UMASS Clean Energy’s Extension Pollinator Friendly Solar PV Guide.
- (b) Special Permit Standards
- i. Adequate access and parking shall be provided for service and emergency vehicles; however there shall be no exterior long term storage of equipment or service vehicles on the site.
  - ii. For every mature tree cleared for construction, measured in board feet of wood; at least an equivalent mass of living mature trees shall be retained on-site.
  - iii. An 8 foot security fence shall be installed no closer to a property line than the setback required for a principal building. In addition, the site and its fencing shall be screened by buffering vegetation from general view from the surrounding ground level unless the Planning Board determines that there is no public benefit from such screening.
  - iv. The facility shall provide a vegetated buffer strip of at least 100 feet from any street line property boundaries or from the property line of any abutting residential use.
  - v. To the extent feasible, all network interconnections and power lines, to and from the facility, shall be via underground lines.
  - vi. Drainage from impervious surfaces shall be fully accommodated onsite.

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- vii. No facility shall be floodlit.
- viii. Herbicides may not be used to control vegetation at the facility. The operator shall conduct annual monitoring of the pollinator plantings and will remove invasive species and replant native flowering plants as needed.
- ix. The owner of the facility must provide for and post a 24 hour emergency contact phone number and identification of the owner. The information shall remain current and shall also be provided to the Police Chief and Fire Chief.
- x. Decommissioning Requirements. Any facility which has reached the end of its useful life or has been abandoned shall be decommissioned by the owner or operator who shall notify the Board by certified mail of the proposed date of shut down and removal. Decommissioning shall consist of the following:
  - Physical removal of all panels, structures, equipment, security barriers and transmission lines from the site within 180 days following the date of notice to the Board.
  - Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - Stabilization and re-vegetation of the site and erosion prevention.
  - The Town shall have the right, upon determination of abandonment, but not the obligation, to claim the financial surety, enter the site and remove the facility in accordance with the requirements of this section.
  - All facilities, attachments, and accessory structures which have not been used for a period of two (2) years shall be considered abandoned. The removal expense shall be secured with the performance guarantee.
- xi. Battery Energy Storage Facilities are encouraged to co-locate with solar energy facilities, energy, power generation stations, and electrical sub-stations. Facilities that are a primary use shall be located within a physical building that is harmonious with the adjacent architecture. Relief from this requirement may be granted for exceptional screening or the provision of publicly accessible open space or recreational amenities.
- xii. All facilities must comply with the Massachusetts Electrical Code (527 CMR 12.00) and Fire Code (527 CMR 1.00).

#### 8.9.6 Small Scale Battery Energy Storage System

Small Scale Battery Energy Storage Systems that are ancillary to and located within a permitted primary use are allowed in all zoning districts. All such systems must comply with the Massachusetts Electrical Code (527 CMR 12.00) and Fire Code (527 CMR 1.00).

### **8.10 Marijuana Establishments**

#### 8.10.1 Purpose

The purpose of this Section is to provide for the orderly placement of medical and recreational marijuana establishments in areas where such a use is not inconsistent with the neighborhood character and in accordance with State law.

#### 8.10.2 Definitions

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For the purpose of this bylaw, the definitions of MARIJUANA ESTABLISHMENT, MARIJUANA RETAILER, MARIJUANA CULTIVATOR, MARIJUANA PRODUCT MANUFACTURER, MARIJUANA RESEARCH FACILITY OR TESTING LABORATORY, shall be consistent with the definition as found in G.L. c 94G and MEDICAL MARIJUANA TREATMENT CENTER shall be consistent with the definition as found in 955 CMR 501

### 8.10.3 Applicability

All uses incorporating marijuana cultivator, marijuana research facility or testing laboratory, marijuana product manufacturing, marijuana retail or Medical Marijuana Treatment Center shall be subject to Special Permit and Site Plan Review. The Special Permit Granting Authority shall be that of the Zoning District in which the use is to be located. The Special Permit Granting Authority shall consider the design of buildings, setbacks, visual impacts, outdoor lighting, security, hours of operation, odor control, traffic circulation, and consistency with current and abutting land uses.

### 8.10.4 Special Permit Standards

- (a) No Marijuana Establishment shall locate any buildings, or structures within 300 feet of a pre-existing public or private school providing education in kindergarten or grades 1 through 12, as measured from the nearest point of the school property.
- (b) Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the Marijuana Establishment is located. No outside storage is permitted, except for outdoor cultivation facilities.
- (c) No odor may be noxious or cause a nuisance, or impair public comfort and convenience. Marijuana Establishments shall incorporate odor control technology and provisions.
- (d) The special permit shall be limited to the current applicant and shall provide that the permit shall lapse if the applicant ceases operating the Marijuana Establishment or if the applicant's license with the Commonwealth of Massachusetts expires or is terminated.
- (e) The Special Permit Granting Authority may require additional conditions and set standards for performance and maintenance upon finding that such action is reasonably necessary to meet the purpose and intent of the Zoning Bylaws, provided such conditions are consistent with G.L. c. 94G, 935 CMR 500, 105 CMR 725, 935 CMR 501 and any amendments thereto.

## **8.11 Open Space Residential Development**

### 8.11.1 Purpose

The purpose of this section is to:

- (a) Promote and protect agricultural and forestry-related activities by preserving the most viable agricultural and prime forest land; and

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- (b) Encourage a less sprawling form of development that preserves open land and protects the natural and cultural features of the site.

#### 8.11.2 General Description

This optional bylaw provides residents and developers of land in the AF-4, AF-2, AF, RS-1 RS-2 and RB Zoning Districts with an alternative to a standard subdivision development that is often incompatible with agricultural and forested land use and operations. Open Space Residential Development refers to residential development in which lots for buildings and accessories are grouped together in one or more areas within the boundaries of a larger parcel of land. The building lots are of a reduced size and concentrated together, taking up only a portion of the parcel of land. A permanent conservation restriction or agricultural preservation restriction preventing future development is placed on the open space to be preserved. Single-family dwellings are allowed “By Right” with Site Plan Review in an Open Space Residential Development. Two-family dwellings may be allowed in an Open Space Residential Development if granted a Special Permit by the Planning Board.

#### 8.11.3 Procedures

- (a) The Planning Board may approve a plan for the construction of an Open Space Residential Development in the AF, AF-2, AF-4, RS-1, RS-2 and RB Zoning Districts (subject to the regulations and conditions set forth under this section and §9.1: Site Plan Review and Montague’s Subdivision Rules and Regulations.
- (b) Applicants are encouraged to contact the Planning Board prior to the application for Open Space Residential Development Review to discuss the applicant’s plans and promote better communication. Applicants are encouraged to submit a conceptual plan for review by the Planning Board prior to the application for Open Space Residential Development Review. Materials and information to be submitted with the conceptual plan shall be agreed upon by the applicant and the Planning Board.
- (c) Applicants for an Open Space Residential Development shall submit seven (7) copies of an Open Space Residential Development and the narrative required to meet the requirements of this Open Space Residential Development Bylaw, Section 8 Site Plan Review, and the requirements of Montague’s Subdivision Rules and Regulations for a preliminary plan, which plan shall show locations of proposed streets, building envelopes and Protected Open Space. The plan shall be prepared by a professional engineer, registered architect, registered landscape architect, or registered land surveyor.

The Planning Board approval for Open Space Residential Development Review shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve a related Definitive Plan for subdivision approval nor reduce any time periods for the Board consideration under that law. However, in order to facilitate processing, the Planning Board may, insofar as practical under law, adopt regulations establishing procedures to allow the applicant and Planning Board to agree on an application which shall satisfy this section and the Board’s regulations under the Subdivision Control Act, if applicable. In addition, to the extent permitted by law, the Planning Board shall

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coordinate the public hearing requirement for an Open Space Residential Development with the Public Hearing required for a Definitive Subdivision Plan. The applicant is also responsible for obtaining all applicable permits or approvals that may be required for the Open Space Residential Development from other Town Boards or municipal officials.

- (d) In addition to any information required by the above-referenced Subdivision Rules and Regulation, the application shall include the following information:
- i. The form of organization proposed to own, manage, and maintain the preserved land;
  - ii. the substance of covenants to be imposed upon use of land;
  - iii. a preliminary septic system design or approval from the Montague Department of Public Works to connect to the municipal sewer system;
  - iv. the proposed source of potable water;
  - v. a development schedule;
  - vi. measures to prevent soil erosion, increased runoff, and flooding, and to manage stormwater;
  - vii. preliminary drainage calculations (definitive calculations to be included with definitive subdivision plan);
  - viii. projected traffic flow patterns, the total number of building lots and the proposed number of Single or two-family dwellings;
  - ix. proposed design features intended to integrate the proposed development into the existing landscape; and
  - x. the proposed use (e.g. farming, forestry, etc.), size, shape, location, and natural resource value of the land to be permanently protected.
- (e) Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Planning Board, Conservation Commission, the Board of Health, the Highway Superintendent, the Fire Chief and the Police Chief. In addition, the Town Clerk will notify the Historical Commission, and Agricultural Commission that a copy of the application is available for review at Town Hall. Town Boards and municipal officials other than the Planning Board shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations. The Fire and Police Chief will review the application to ensure that the proposal provides adequate emergency vehicle access to all lots. If necessary to ensure compliance with this section, the Planning Board may require further reasonable engineering or environmental analysis to be conducted at the expense of the applicant.

After the opportunity for review of other boards and municipal officials has taken place, the Planning Board shall hold a Public Hearing under this section, in conformity with the provisions of M.G.L Chapter 40A, § 11 or § 9 if a Special Permit is required, and the provisions of the Zoning Bylaws and the regulations of the Planning Board. In addition, to the extent permitted by law, the Planning Board shall coordinate the public hearing requirement for the Open Space Residential Development with the Public Hearing required for a Definitive Subdivision Plan.

#### 8.11.4 Minimum Standards

- (a) The minimum area of land for an Open Space Residential Development is five (5) acres. All land within the Open Space Residential Development tract shall be under single ownership or control at the time of the application. Adjoining lots must be adjacent to or only separated by a public way from the other lot.
- (b) One single-family dwelling and accessory structures are permitted on each building lot. A two-family dwelling unit may be allowed on one or more building lots in an Open Space Residential Development if granted a Special Permit by the Planning Board. Multi-family dwelling units are not allowed in Open Space Residential Developments.
- (c) The maximum density of an Open Space Residential Development shall not exceed the allowed density for a conventional subdivision in any zoning district unless a density bonus is granted pursuant to § 8.12.8 Bonus Incentives. In an Open Space Residential Development, the maximum number of building lots will be determined by one of the following methods at the Applicant's option:
  - i. Method 1 - The maximum density for the Open Space Residential Development under Method 1 shall be calculated by taking the parcel area and subtracting out any acreage that is wetlands, floodplains, existing permanently protected open space, land with slopes greater than 25%, and 10% of the total parcel area for roads and drainage to find the Net Parcel Area. The Net Parcel Area shall be divided by the Minimum Lot Area of the zoning district in which the parcel is located to determine the maximum number of lots allowed. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.
  - ii. Method 2 - A preliminary plan for a conventional (non-Open Space Residential Development) subdivision for the site shall be submitted illustrating the number of lots that could be created under a conventional subdivision. If no sewer is available, the results of deep hole and perc tests indicating how many of these lots would be buildable. The perc tests shall be conducted under the supervision of the Board of Health, and in conformance with Title 5, percolation tests. The number of buildable lots will equal the maximum number of lots for the Open Space Residential Development.
- (d) Each lot shall have adequate road access. The Planning Board shall determine that each lot shown on the plan has practical access from the way upon which the lot fronts, in that there are no legal or physical impediments which will prevent access particularly for emergency vehicles such as fire engines and ambulances. The road serving the Open Space Residential Development shall comply with the Design Standards of Montague's Subdivision Regulations unless such compliance is waived by the Planning Board pursuant to § 6.3 of the Subdivision Regulations.
- (e) At least forty percent (40%) of the total lot area shall be preserved as Protected Open Space including agricultural or forested land. The minimum required Protected Open

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Space shall not include wetlands, floodplains, existing permanently protected open space, land with slopes greater than 25%, roadways or accessory uses. To the extent possible the preserved land shall form a contiguous tract to enable continued farming or forestry operations or open space corridors. The amount of land preserved may be reduced by Special Permit where the lot is connected to municipal water and sewer.

- (f) If there is no connection to sewer, with the Definitive Subdivision Plan, the applicant shall submit a septic system design for the Open Space Residential Development prepared by a Registered Professional Engineer and approved by the Board of Health, in conformance with Title 5 of the State Environmental Code, and a plan illustrating the location of water supply wells. An Open Space Residential Development may utilize shared septic systems designed, installed and maintained in accordance with the State Environmental Code Title 5, 310 CMR. Septic systems shared or otherwise should be located outside of all agricultural land supporting farming operations to the maximum extent possible.
- (g) Every Open Space Residential Development shall include a condition that the approved and recorded Definitive Subdivision Plan of said Open Space Residential Development shall have endorsed upon it a statement that the subdivision is an approved Open Space Residential Development and that no land within the subdivision may be further subdivided as to increase the number of building lots.
- (h) Each lot shall comply with the minimum dimensional requirements of this Open Space Residential Development Bylaw.

8.11.5 Dimensional and Density Requirements

An Open Space Residential Development must conform to the following minimum dimensional and density requirements:

Zoning District	Minimum Lot Size (square feet)	Minimum Lot Frontage (linear feet)	Minimum Front Yard and Street Line Setback (linear feet)	Minimum Side and Rear Yard Setback (a) (linear feet)	Maximum height (linear feet)
AF-4 and AF-2	32,000	100	25	10	35
AF, RS-1 and RS-2	8,000	50	15	10	35

- (a) Attached single family dwellings may be laid out with one side having no side yard setback. The opposite side yard shall be at least 10 feet.

8.11.6 Additional Site Design Standards

- (a) Wherever it is feasible, all residential buildings shall be located away from agricultural soils that are classified by the Natural Resources Conservation Service as prime farmland

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- and soils of state and local importance and placed on soils the least suitable for production of crops and livestock. This provision does not apply to the location of on-site septic disposal systems that must be placed on soils meeting the Massachusetts Environmental Title 5 Code.
- (b) The layout and construction of utilities, drainage systems, and roads shall be located to have the least possible impact on agricultural lands and uses or mature forest stands.
  - (c) To minimize conflict between agricultural operations, all residential lot lines shall be located at least one hundred (100) feet from agricultural activities. This area shall be made up of a buffer strip of trees or open space.
  - (d) To the maximum extent possible, residential units should be integrated into the landscape to avoid interrupting the view of the agricultural or forested landscape from adjacent public ways. Vegetative and structural screening, landscaping, grading, and building placement on the lot should be used to minimize visual interference with pre-existing landscape features.
  - (e) To the maximum extent possible, structures should be sited within any woodland contained on the parcel; along the edges of fields; or in locations where structures can be visually screened or absorbed into natural vegetative or topographic features.
  - (f) All principal and accessory structures and accessory uses within the development shall be set back from the property lines of the development by a buffer strip, to be kept in a natural, landscaped or managed condition, of at least fifty (50) feet in width in the AF-4 and AF-2 districts and twenty-five (25) feet in the AF, RS-1, RS-2 and RB districts.
  - (g) Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Regulations insofar as reasonably applicable, but the Board may vary those standards to meet the particular needs of the Open Space Residential Development and natural features.
  - (h) There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking. There shall be no parking in the buffer strip, or in areas not otherwise designated for parking.

#### 8.11.7 Open Space Requirements

The following standards shall apply to open space to be protected as part of the Open Space Residential Development:

- (a) The area to be preserved as agricultural or forested land, as required under § 8.11.4 (e) shall be made subject to a perpetual restriction of the type described in M.G.L. c.184 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Montague. To meet this requirement, a Conservation Restriction or Agricultural Preservation Restriction in accordance with M.G.L. Chapter 184 shall be placed on the Protected Open Space and recorded in the

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Registry of Deeds by the applicant at the time the approved Definitive Plan is submitted to the Registry of Deeds for recording. The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction or Agricultural Preservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The Conservation Restriction or Agricultural Preservation Restriction placed on the Protected Open Space shall be held by the Conservation Commission of the Town of Montague, a suitable State Agency, or by a non-profit conservation land trust the principal purpose of which is the conservation or preservation of open space. Any fees associated with the holding and enforcement of the Conservation Restriction or Agricultural Preservation Restriction by an entity such as a non-profit conservation land trust will be the responsibility of the Applicant or Homeowners Association as agreed to in writing prior to the recording of the Conservation Restriction or Agricultural Preservation Restriction.

- (b) The purpose of the Conservation Restriction or Agricultural Preservation Restriction will be to clearly identify the uses and restrictions which apply to the Protected Open Space in order to protect the value of the property within the development. The Conservation Restriction or Agricultural Preservation Restriction shall limit the use of the protected land to the following:
- i. Agricultural production, including but not limited to, the raising of crops and livestock, forest management activities, nurseries, orchards;
  - ii. Activities necessary to successful agricultural production, including but not limited to, farm equipment operations, manure storage, and use of pesticides, herbicides, and fertilizers as regulated by state and federal laws;
  - iii. Farm support operations, including but not limited to, farm equipment storage, agricultural processing, greenhouses, and farm animal veterinary services.
  - iv. Uses may also include passive recreation, easements for utilities, easements for future septic systems, and easements for private drinking water wells.

Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain additional restrictions on development and use of the land as the Planning Board may deem appropriate to meet the purposes of this Section.

- (c) The Protected Open Space may be conveyed in one of the following ways:
- i. Conveyed to an incorporated non-profit Homeowners Association made up of the owners within the development subject to a covenant, running with the land that provides for the following:
    - Ownership and membership within the Homeowners Association shall pass with conveyances of the lots in perpetuity.
    - Maintenance of agricultural open space shall be ensured by establishing a maintenance fee for each lot sufficient to cover maintenance expenses or through a comparable arrangement satisfactory to the Planning Board.

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The covenant established shall describe land management practices that will ensure that the existing fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will use the land for agricultural purposes. Such a land agreement document shall be submitted with the Definitive Subdivision Plan and shall be subject to approval by the Planning Board and Town Counsel. A tentative agreement should be established and presented with the Preliminary Subdivision Plan.

- ii. Conveyed to a suitable State Agency or non-profit land trust whose principal purpose is to conserve farmland and/or forest land, subject to the covenant requiring employment of land management practices which will ensure that existing agricultural fields and pastures will be plowed or mowed at least once per year; or
- iii. Conveyed to the Montague Conservation Commission, at no cost. Acceptance of such a conveyance shall be at the option of the town and shall require approval at Town Meeting; or
- iv. The Planning Board, at the request of Applicant, may consider granting a Special Permit to have the Protected Open Space retained by a private individual or a trust owned by private individuals provided that the interests of the residents of the Open Space Residential Development will be protected as outlined in the requirements of the Conservation Restriction or Agricultural Preservation Restriction. Such Special Permit shall meet the requirements of § 9.2 of the Zoning Bylaws and other requirements to be determined by the Planning Board. A Conservation Restriction or Agricultural Preservation Restriction shall be placed on the Protected Open Space as specified in §8.11.7.

#### 8.11.8 Bonus Incentives

In addition to the dimensional and density requirements of §8.11.5, Bonus Incentives are available in the form of extra buildings lots allowed within the development above the basic number of building lots allowed under §8.11.4(c). The total number of bonus lot(s) cannot be more than 20% of the maximum number of building lots allowed before the addition of bonus lots (e.g. 2 bonus lots for a 10-lot subdivision for a total of 12 lots). The Planning Board will determine, upon review of the development plan, the bonus lot total. Approval of an Open Space Residential Development shall be granted only if the Planning Board determines that the requirements of the Open Space Residential Development and the Site Plan Review bylaws have been complied with and if applicable, the Special Permit requirements have been met

- i. Any development that increases the amount of land permanently preserved to a minimum of 60% of the total parcel area earns a 10% building lot bonus.
- ii. An Open Space Residential Development plan that creates a minimum of 10% affordable housing units earns a 10% building lot bonus. Affordable housing units shall be eligible for inclusion in Montague's Subsidized Housing Inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the

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unit(s) shall count towards the Subsidized Housing Inventory to the satisfaction of the Planning Board.

## **8.12 Planned Unit Development**

### **8.12.1 Purpose**

To allow for “Planned Unit Developments” in designated areas of Town, whereby through a comprehensive site plan, a unified development containing a mixture of land uses and buildings is developed as a single entity. It is the intent of this provision to ensure sound planning and zoning practices while allowing certain desirable departures from the requirements of specific zoning provisions. The goals of the Planned Unit Development are:

- (a) Encourage flexibility in the design of development through a carefully controlled review process of detailed plans within a particular zoning district.
- (b) Promote the use of multiple-story buildings and campus-like clustering of buildings to maximize the amount of available open space.
- (c) Encourage a less sprawling form of development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land.
- (d) Provide an efficient procedure which will ensure appropriate high-quality design and site planning.
- (e) Promote high-quality coordinated building and site design which buffers adjacent residential uses and protects both scenic and natural features.
- (f) Maximize pedestrian circulation within the project and connection to surrounding compatible land uses, both through the design of circulation systems and through the design and layout of land uses.

### **8.12.2 Applicability**

A Planned Unit Development is a development of land as a single entity under the direction of a comprehensive site plan, in which a mixture of land uses, a variety of building types and designs, and open space are provided for in a coherent manner. A Planned Unit Development may occur in the Industrial (ID), General Business (GB), or Historic Industrial (HI) Zoning Districts by Special Permit from the Planning Board.

### **8.12.3 Dimensional requirements**

To be eligible for a planned unit development, the parcel must have a minimum lot area of 80,000 square feet. Building height must comply with the underlying district. Existing historic mill buildings being reused as part of a Planned Unit Development may have a building height equal to the height of the historic structure.

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#### 8.12.4 Use regulations

- (a) The uses allowed in a Planned Unit Development are any uses allowed either by right or special permit within the underlying zoning district.
- (b) Uses in a planned unit development shall comply with all other applicable sections of this Zoning Bylaw, including but not limited to 7.1 Signs, 7.2 Parking, and 7.3 Loading Requirements, in addition to the required provisions of this section.
- (c) More than one principal building and use is permitted on a lot.
- (d) One or more separate but contiguous parcels may be assembled to create a Planned Unit Development. Proposed Planned Unit Developments may include preexisting uses and buildings provided they are integrated into the development plan. Planned Unit Developments may consist of land in more than single ownership and may consist of separate parcels provided all current and future owners and lots are: (i) bound by the restrictive covenant(s) or conditions of the approved Planned Unit Development according to the Special Permit approval; and (ii) commit to maintain the project as a single Planned Unit Development.
- (e) Subdivision of lots within a Planned Unit Development after final approval of the Site Plan or Special Permit shall be considered an amendment to the Special Permit and will require approval by the Planning Board.

#### 8.12.5 Access requirements

- (a) Entrances to Planned Unit Developments shall be limited to one access point onto a public way. The Planning Board may grant additional access points to improve traffic circulation for public safety or emergency services purposes if deemed necessary.
- (b) Common driveways and parallel service drives may be required in the Planned Unit Development to minimize driveway openings.
- (c) Provision for safe and convenient pedestrian and bicycle access shall be incorporated into the Planned Unit Development. Walkways or bicycle paths shall be provided throughout the site, and shall connect to existing off-site pedestrian and bicycle paths.
- (d) Where public transit could serve the Planned Unit Development, access shall be facilitated by bus pullout areas, bus shelters, lighting, and/or other passenger amenities in coordination with the regional transit authority.

#### 8.12.6 Design requirements

- (a) Developments shall have an integrated design with respect to building placement, proportion, color, rooflines, and other architectural details.
- (b) Developments must incorporate human scale features such as landscaping, pedestrian

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- plazas and other public spaces, first floor windows, pedestrian level lighting, benches, awnings and architectural details.
- (c) Each building's main entrance shall be clearly defined with architectural details such as raised parapets, peaked roofs, arches, canopies, and overhangs.
  - (d) Rear or side facades visible from other uses, parking areas, or streets must be of finished quality and should be landscaped.
  - (e) Parking areas shall be located to the side or rear of buildings to the maximum extent feasible.
  - (f) All mechanical equipment including dish antennae, outdoor storage, and waste disposal areas shall be screened from public view.
  - (g) Wall signs in multi-tenanted buildings must be placed within the same sign band.

#### 8.12.7. Design guidelines

- (a) New buildings shall relate harmoniously to existing buildings on the site and to the surrounding neighborhood.
- (b) Boxy buildings should be softened with architectural details and landscaping. Pitched rooflines are encouraged.
- (c) Long unbroken facades must be avoided. The use of facade offsets, recesses, angular forms, and landscaping rather than ornamentation is encouraged to break up the mass of large or continuous walls.
- (d) The use of exterior building materials such as masonry, stone, wood, and brick is preferred.
- (e) Facade details and building elements shall be proportionate to the scale of the building.
- (f) Lighting fixtures should complement the architectural design of the Planned Unit Development.
- (g) The placement of wall signs on individual buildings should complement the architectural design of the Planned Unit Development.
- (h) Large expanses of parking should be broken up with internal landscaping and dedicated pedestrian walkways.
- (i) All utility lines shall be placed underground where physically feasible.

#### 8.12.8 Phasing requirements

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All applications for Planned Unit Developments shall include sufficient information to evaluate total build-out of the site. The Planning Board may permit a phased schedule in accordance with an approved "Comprehensive Site Plan" for the Planned Unit Development.

- (a) The initial construction phase shall provide sufficient on-site and off-site improvements to adequately serve the constructed portion independent of future phases, encourage completion of the build-out design, and minimize disruptions during future construction phases. Improvements shall include but are not limited to driveways, walkways or bicycle paths, parking, sewer, water, stormwater systems, lighting, and landscaping. The Planning Board may permit phased construction of improvements if deemed appropriate.
- (b) The applicant may be required to provide the Town with a performance guarantee to cover the costs of construction of the on-site and off-site infrastructure improvements and traffic mitigation measures, subject to approval from the Planning Board, in the form of a performance bond, letter of credit, or cash escrow.

#### 8.12.9 Procedural requirements

All Planned Unit Developments require a Special Permit and Site Plan Review. The Planning Board shall be the Site Plan Approval Authority and the Special Permit Granting Authority for all Planned Unit Developments. A Special Permit may be granted by the Planning Board for multiple uses allowed by right or by special permit if the Planning Board finds that the proposed uses will not have adverse effects which overbalance the beneficial effects according to the requirements and criteria of § 9.2, Special Permits. In addition to the Site Plan Review and Special Permit requirements of § 9 of this Bylaw, site plans shall include:

- (a) Color renderings of facade elevations of all sides of all proposed new construction and renovations including proposed mature landscaping.
- (b) Color photographs showing the proposed building site and adjacent properties and buildings.
- (c) Drawings/cut sheets of all proposed lighting, signs, and pedestrian amenities as they are to be located on the property.
- (d) A landscaping plan that includes all existing and proposed vegetation with elevation views and a description of all plantings (include common names), size (upon planting and upon maturity), spacing, and numbers of plants.
- (e) Description of how the project will impact traffic conditions on streets and intersections likely to be affected by the project including the level of service, traffic flow, turning movements, sight distances, traffic controls, pedestrian and bicycle movement and public transportation. Provide information on the average daily and peak hour traffic projections and directional distribution of site-generated traffic.
- (f) A description of the proposed uses and associated square footage.

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## **SECTION 9. SITE PLAN REVIEW AND SPECIAL PERMITS**

### **9.1 Site Plan Review**

#### **9.1.1 Purpose**

The purpose of the Site Plan Review process is to provide detailed review of certain uses and structures which have a potential for significant impact on the character, infrastructure, and natural resources of the Town of Montague.

#### **9.1.2 Applicability**

The following activities and uses are subject to site plan review:

- (a) All uses that involve the construction or expansion or change of use of over 3,000 square feet of floor area.
- (b) All uses that involve the development of over 130,680 square feet (3 acres) of land.
- (c) Any new structure, group of new structures, changes of use, or additions which result in an increase of 500 or more vehicle trips per day, as proposed in an applicant's business plan acceptable to the reviewing authority or estimated by a professional engineer.
- (d) All uses that involve the construction or expansion of a parking area that creates ten (10) or more new parking spaces, per §7.2.6
- (e) Specific Uses identified elsewhere in this bylaw:
  - Accessory Apartments within existing single family homes, per §8.5
  - Self-storage facilities, per §8.9
  - Solar energy and battery energy storage facilities, per §8.9
  - Medical Marijuana Treatment Center or Marijuana retailer, cultivation, production, research or testing, per §8.10
  - Open Space Residential Development, per §8.11
  - Planned Unit Development, per §8.12
  - All uses identified as requiring Site Plan Review in §5.2.10 Village Center Mixed-Use District.

#### **9.1.3 Authority**

The Planning Board shall be the Site Plan Review Authority in the General Business, Industrial and Historic-Industrial and Village Center Mixed-Use District. The Board of Appeals shall be the Site Plan Review Authority in all other districts, unless otherwise stated in the Bylaws.

#### **9.1.4 Procedure**

All uses and structures that require Site Plan Review shall be subject to the procedures and requirements set forth in this section. The Zoning Board of Appeals or Planning Board, as appropriate, may waive any requirement in § 9.1.5 that it deems inapplicable to the proposed

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project. Site Plan Review procedures will be based on whether or not a Special Permit is required:

- (a) **Special Permit Required**  
The Special Permit Granting Authority shall hold a public hearing, vote and issue decisions on any application filed under this section in accordance with procedures outlined in M.G.L. Chapter 40A, § 9 and 11.
- (b) **Special Permit Not Required**  
Site Plan Review shall be conducted by the Site Plan Review Authority for uses that are allowed as of right, unless otherwise noted. A public hearing is not required and approval requires a vote of a simple majority of the Site Plan Review Authority. Failure of the Site Plan Review Authority to act within sixty (60) days of submission shall constitute an approval of the site plan, unless extended by written agreement between the applicant and the Site Plan Review Authority.

#### 9.1.5 Site Plan Elements

Site plans shall be prepared by a professional engineer, architect, or surveyor and shall at a minimum, accurately include the following information, if applicable:

- (a) Building dimensions and design
- (b) Building location, lot boundaries, and adjacent ways
- (c) Natural features including topography, contours, wetlands, streams, waterbodies, and areas subject to flooding
- (d) Landscaping features including the location and description of screening, fencing, and plantings
- (e) Stormwater management
- (f) Circulation plan for vehicular, pedestrian, and bicycle access to the site and within the site
- (g) Parking and loading accommodations
- (h) Utility services and proposed connections
- (i) Location and intensity of exterior lighting
- (j) Exterior signage
- (k) On site waste management and snow removal
- (l) Hours of operation estimated daily, and peak hour vehicle trips, estimated volumes of water and wastewater.

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#### 9.1.6 Evaluation Guidelines

In reviewing the Site Plan, the following shall be considered:

- (a) Compliance with the Montague Zoning Bylaws.
- (b) Impacts to municipal infrastructure and services.
- (c) Safety and adequacy of vehicular and pedestrian movement.
- (d) Design features that integrate the proposed development into the existing landscape, maintain neighborhood character, enhance natural and aesthetic assets and screen objectionable features from neighbors and roadways.

#### 9.1.7 Decision

The site plan may be approved, approved with reasonable conditions, or rejected if a site plan fails to furnish adequate information required in § 9.1. Decisions are to be filed with the Town Clerk and the Inspector of Buildings.

#### 9.1.8 Appeals

Decisions on site plans may be appealed directly to Superior Court in accordance with MGL c. 40A, whether or not the Site Plan Review is for a project that requires a Special Permit.

#### 9.1.9 Modifications

Any proposed modifications to the approved site plan shall be submitted to the Site Plan Review Authority for approval at an open meeting.

#### 9.1.10 Expiration

Site plan approval shall expire within two (2) years if a substantial use thereof has not commenced. The approval may be extended by up to two (2) years at request of the applicant, provided the request for an extension is filed prior to the expiration of the Site Plan Approval.

### **9.2 Special Permit**

#### 9.2.1 Purpose

Special Permits are required for certain uses or structures, as designated in § 5.2. (Permitted Uses) and other sections of these bylaws. Special Permit review is intended to ensure that any proposed use of land or structure(s) will not have an adverse effect on other uses in a neighborhood or on the town and that the use is in harmony with the intent and purpose of this section.

#### 9.2.2 Procedure for Special Permits

##### (a) Special Permit Granting Authority

The Planning Board shall be the Special Permit Granting Authority (SPGA) in the General Business, Industrial and Historic-Industrial District. The Zoning Board of Appeals shall be the SPGA in all other districts, unless specifically designated otherwise in the Town of Montague Zoning Bylaws. Special Permits shall be granted, denied, or

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issued with conditions by the SPGA according to the provisions of Chapter 40A of the Massachusetts General Laws.

(b) Special Permit Granting Authority Rules and Regulations

Pursuant to §9 of Chapter 40A of the Massachusetts General Laws, each Special Permit Granting Authority may adopt rules relative to the issuance of Special Permits. The rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The SPGA may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

(c) Application

An applicant for a Special Permit shall file a completed application with the Town Clerk using the form specified by the Town. A copy of the application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the office of the Special Permit Granting Authority .

(d) Site plans

Site plans submitted with a Special Permit application shall be in conformance with the requirements of §9.1.

(e) Public hearing

Special Permits shall only be issued following a public hearing held within 65 days after filing an application with the Town Clerk. The Special Permit Granting Authority shall take final action on an application for Special Permit within 90 days following the closing of the public hearing. The required time limits for the public hearing and final action may be extended by written agreement between the applicant and the SPGA, and a copy of the written agreement shall be filed with the Town Clerk. The SPGA shall file the written decision with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. Failure of the SPGA to take final action within 90 days, or extended time if applicable, shall constitute approval of the Special Permit.

(f) Independent Consultants

Upon submission of an application for a Special Permit, the Special Permit Granting Authority is authorized to engage outside consultants to peer review the application, pursuant to G.L. c. 44, § 53G, whose services shall be paid for by the applicant.

### 9.2.3 Special Permit Criteria

Before granting a Special Permit, the Special Permit Granting Authority shall consider the proposed use in relation to the site and the adjacent uses and structures in the Town and shall find that there will be no significant adverse effects to the neighborhood or the Town, considering the following criteria:

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- (a) The degree to which the activity, site plan, and building design are consistent with suitable economic development activities in Montague, as identified in the Comprehensive Plan and other current Town plans.
- (b) Capability of and cost to the Town to provide municipal services for the proposed use and premises, including police, fire, emergency services, and road maintenance and the ability of existing infrastructure to support the proposed use including but not limited to existing roads and bridges and their condition.
- (c) Impact on the Town's school or other educational facilities and provision of housing for Town residents.
- (d) Consequences of sound, light, odor, noise, traffic congestion, or other disturbances for abutting and other properties that may be impacted.
- (e) Environmental impact of the proposal, including the degree to which the proposal results in water, air, noise or light pollution; topographic change; removal of mature trees or other botanical assets; removal of cover vegetation; risk of erosion or siltation; increased storm water runoff from the site; or displacement of natural habitats.
- (f) Impact on existing traffic conditions and vehicular and pedestrian safety, particularly at intersections with Town roads.
- (g) Degree to which the proposal is compatible with the character of the surrounding area and neighborhood.
- (h) Degree to which the proposal preserves scenic views and historic, natural and cultural resources through site design, landscaping and protection of resources.
- (i) Employment and fiscal consequences to the Town.
- (j) Impact on agricultural or forestry operations or the productivity of the land for those uses.
- (k) Degree to which the proposed use is consistent with the purpose(s) of the zoning district.
- (l) Capability of the Town or other public or private entities to provide water supplies, sewage treatment, and stormwater management.
- (m) Other impacts on the Town including support of local products and businesses, protection of open space, provision of recreational opportunities for Town residents, and energy conservation.

#### 9.2.4 Conditions, safeguards and limitations

In granting a Special Permit, the Special Permit Granting Authority may, in accordance with Chapter 40A of the General Laws, impose conditions, safeguards and limitations. Such

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conditions, safeguards and limitations shall be in writing and may include but are not limited to the following:

- (a) Setback, side and rear yards greater than the minimum required in this Zoning Bylaws.
- (b) Screening of parking areas or other parts of the premises from adjoining properties or from streets by the use of walls, fences, plantings or other such devices.
- (c) Limitations of size, method or time of operation or extent of facilities.
- (d) Modification of the exterior design or appearance of buildings, structures, lighting, signs or landscape materials.
- (e) Additional parking, loading or traffic requirements beyond the minimum required in this Zoning Bylaw.
- (f) Measures to protect against environmental pollution.
- (g) A performance bond or other security to ensure that the project meets the conditions specified in the special permit.

#### 9.2.5 Modifications

Any proposed modifications to the approved final plans, including but not limited to changes, alterations, or expansions shall be submitted to the SPGA for approval at an open meeting. Minor modifications may be approved without further hearing if the modification(s) are determined to be within the approved project scope, consistent with the findings and conditions of the Special Permit, and consistent with all other applicable sections of the zoning bylaw. The SPGA reserves the right to hold further public hearings on changes to the plans that are determined to be outside of the approved project scope, inconsistent with the findings and conditions of the Special Permit, or otherwise inconsistent with an applicable section of the zoning bylaws.

#### 9.2.6 Lapse of Special Permit

Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the Special Permit approval with the Town Clerk, excluding any time required for the adjudication of an appeal, if applicable.

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## **SECTION 10. SMART GROWTH OVERLAY DISTRICTS (SGODs)**

### **10.1 Purpose**

The purposes of this Section are:

1. To establish Smart Growth Overlay Districts (SGODs) to encourage smart growth in accordance with the purposes of G. L. Chapter 40R;
2. To encourage the revitalization of underutilized properties to benefit the general health and welfare of our residents and the region;
3. To encourage the creation of new multifamily and residential developments in appropriate locations at appropriate densities; and,
4. To maintain or increase the supply of affordable dwelling units;
5. To maintain a consistently high level of design quality.

### **10.2 Definitions**

For purposes of this Section the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Governing Laws or Section 2.0, or as set forth in the PAA Regulations. With respect to their application to Section 10, to the extent that there is any conflict between the definitions or terms set forth in, or otherwise regulated by, the Governing Laws and those defined or used in Section 10, inclusive of any applicable Design Standards, PAA Regulations, or any other applicable associated local zoning requirement (e.g., zoning requirement contained in another section of the Zoning Bylaw that is nonetheless incorporated by reference), the terms of the Governing Laws shall govern.

**AFFORDABLE HOMEOWNERSHIP UNIT:** an Affordable Housing unit required to be sold to an Eligible Household.

**AFFORDABLE HOUSING:** housing that is affordable to and occupied by Eligible Households.

**AFFORDABLE HOUSING RESTRICTION:** a deed restriction of Affordable Housing meeting the statutory requirements in G.L. Chapter 184, Section 31 and the requirements of Section 5.5 of this Bylaw.

**AFFORDABLE RENTAL UNIT:** an Affordable Housing unit required to be rented to an Eligible Household.

**APPLICANT:** the individual or entity that submits a Project application for Plan Approval.

**AS-OF-RIGHT:** a use allowed under Section 10.4.0 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Project that requires Plan Approval by the PAA pursuant to Sections 10. 8.0 through 10. 12.0 shall be considered an as-of-right Project, subject to review and approval by DHCD of any Municipal 40R regulations, guidelines, application forms, or other requirements applicable to review of Projects by the Plan Approval Authority under the 40R Zoning and 760 CMR 59.00.

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DEPARTMENT or DHCD: the Massachusetts Department of Housing and Community Development, or any successor agency.

DESIGN STANDARDS: provisions of Section 12 made applicable to Projects within the SGOD that are subject to the Plan Approval process.

ELIGIBLE HOUSEHOLD: an individual or household whose annual income is less than or equal to 80 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

GOVERNING LAWS: G.L. Chapter 40R and 760 CMR 59.00.

MIXED-USE DEVELOPMENT PROJECT: a Project containing a mix of residential uses and non-residential uses, as allowed in Section 10. 4.2, and subject to all applicable provisions of Section 10.

MONITORING AGENT or ADMINISTERING AGENT: the PAA or a qualified housing entity designated by the PAA, pursuant to Section 10. 5.2, to review and implement the Affordability requirements affecting Projects under Section 10. 5.0.

PAA REGULATIONS: the rules and regulations of the PAA adopted pursuant to Section 10. 8.3.

PLAN APPROVAL AUTHORITY (PAA): The local approval authority authorized under Section 10. 8.2 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

PROJECT: a Residential Project or Mixed-use Development Project undertaken within the SGOD in accordance with the requirements of Section 10.

RESIDENTIAL PROJECT: a Project that consists solely of residential and any allowed or required parking and/or accessory uses, as further defined in Section 4.1.

SGOD: A Smart Growth Overlay District established in accordance with Section 10 and as shown on the Smart Growth Overlay District Map referenced in Section 3 herein and as shown of the Town's Zoning Map.

ZONING BYLAW: the Zoning Bylaw of the Town of Montague.

### **10.3 Applicability of SGODs**

**10.3.1 Establishment.** The Smart Growth Overlay District, herein referred to as the "SGOD," is an overlay district having a land area of approximately 4 acres in size that is superimposed over the underlying zoning district(s) and is shown on the Zoning Map as set forth on the map entitled "Smart Growth Overlay District, dated May 2022, prepared by Franklin Regional Council of

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Governments.” This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk.

10.3.2 Subdistricts. The SGOD contains the following Sub-Districts:

- Sub-District A: Griswold Mill comprising approximately 3.02 acres and;
- Sub-District B: First Street comprising approximately 1.16 acres.

10.3.3 Applicability of SGODs. An applicant may seek development of a Project located within the SGOD in accordance with the provisions of the Governing Laws and Section 10, including a request for Plan Approval by the PAA. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, such application shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations. To the extent that there is any conflict between the Governing Laws and Section 10, inclusive of the Design Standards, the PAA Regulations, and any otherwise applicable associated local zoning requirement (e.g., zoning requirement contained in another section of the Zoning Bylaw that is nonetheless incorporated by reference), the Governing Laws shall govern.

10.3.4 Underlying Zoning. The SGOD is an overlay district superimposed on all underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to Section 10. Within the boundaries of the SGOD, an Applicant may elect either to develop a Project in accordance with the requirements of the SGOD, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

10.3.5 Administration, Enforcement, and Appeals. The provisions of Section 10 shall be administered by the Building Inspector, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under Sections 8 through 12 shall be governed by the applicable provisions of G. L. Chapter 40R. Any other request for enforcement or appeal arising under this Section shall be governed by the applicable provisions of G. L. Chapter 40A.

## **10.4 Permitted Uses- General**

The following uses are permitted As-of-Right for Projects within SGODs unless otherwise specified under the corresponding section of the District-specific requirements.

10.4.1 Sub-District A (Griswold Mill). The following uses are allowed:

- (a) Multifamily residential uses
- (b) Mixed-use Projects, incorporating multifamily residential uses and any of the following non-residential uses, where the minimum gross floor area devoted to residential uses shall be 51% of the gross floor area of the Project:
  - Offices, including medical offices.

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- Retail stores, including banks, but excluding wholesale establishments and establishments with drive-through windows.
  - General service establishments and personal service establishments, including daycares.
  - Bakeries and artisan food or beverage producers.
  - Restaurants and cafes, indoor or outdoor.
  - Hotels.
  - Community, education, or recreational uses, including museums, parks, playgrounds, health clubs and gym/fitness centers.
  - Municipal facilities.
  - Craft workshops or light assembly shops.
- (c) Accessory uses, including home occupations, and parking accessory to any of the above permitted uses

**10.4.2 Sub-District B (First Street).** The following uses are allowed:

- (a) Single-family, two-family, three-family, or multifamily residential uses, any of which may include live/work units.
- (b) Mixed-use Projects, incorporating multifamily residential uses and any of the following non-residential uses, where the minimum gross floor area devoted to residential uses shall be 51% of the gross floor area of the Project:
- Offices, including medical offices and co-working facilities
  - Retail stores, including banks, but excluding wholesale establishments and establishments with drive-through windows.
  - General service establishments and personal service establishments.
  - Bakeries and artisan food or beverage producers.
  - Restaurants and cafes, indoor or outdoor.
  - Hotels
- (c) Accessory uses, including home occupations, and parking accessory to any of the above permitted uses.

**10.5 Housing and Housing Affordability**

**10.5.1 Number of Affordable Housing Units.** For all Projects, not less than twenty percent (25%) of housing units constructed shall be Affordable Housing. For purposes of calculating the number of units of Affordable Housing required within a Project, any fractional unit of .5 or greater shall be deemed to constitute a whole unit.

**10.5.2 Monitoring Agent.** A Monitoring Agent which may be the PAA or other qualified housing entity shall be designated by the PAA. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the designating official or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the designating official. In any event, such Monitoring Agent shall ensure the following, both prior to issuance of a Building Permit for a Project within the SGOD, and on a continuing basis thereafter, as the case may be:

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- (a) prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
- (b) income eligibility of households applying for Affordable Housing is properly and reliably determined;
- (c) the housing marketing and resident selection plan conform to all requirements, have been approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR 59.00, and are properly administered;
- (d) sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
- (e) Affordable Housing Restrictions meeting the requirements of this section are approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR. 59.00, recorded with the proper registry of deeds.

10.5.3 Submission Requirements. As part of any application for Plan Approval for a Project within the SGOD submitted under Sections 10, the Applicant must submit the following documents to the PAA and the Monitoring Agent:

- (a) evidence that the Project complies with the cost and eligibility requirements of Section 10.5.4;
- (b) Project plans that demonstrate compliance with the requirements of Section 10. 5.5; and
- (c) a form of Affordable Housing Restriction that satisfies the requirements of Section 10.5.6.

These documents in combination, to be submitted with an application for Plan Approval, shall include details about construction related to the provision, within the development, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

10.5.4 Cost and Eligibility Requirements. Affordable Housing shall comply with the following requirements:

- (a). Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- (b). For an Affordable Rental Unit, the monthly rent payment, including applicable utility allowances, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless another affordable housing program methodology for calculating rent limits, as approved by DHCD, applies.
- (c). For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, and insurance, shall not exceed 30 percent of the maximum

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monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless another affordable housing program methodology for calculating rent limits, as approved by DHCD, applies.

Prior to the granting of any Building Permit for a Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to Montague.

10.5.5 Design and Construction. Units of Affordable Housing shall be finished housing units. With respect to the minimum required number for a given Project, units of Affordable Housing shall be equitably integrated and proportionately dispersed throughout the residential portion of the Project of which they are part, across all residential buildings, floors, distinct unit types, and with respect to the gross floor area devoted to residential units, in accordance with the affordable housing restriction and marketing and tenant selection plan approved by DHCD and be comparable in initial construction quality, size, amenities, and exterior design to the other housing units in the Project. Unless expressly required otherwise under one or more applicable state or federal housing subsidy programs, the bedroom-per-unit average for the Affordable Housing must be equal to or greater than the bedroom-per-unit average for the unrestricted/market-rate units.

5.6 Affordable Housing Restriction. Each Project shall be subject to an Affordable Housing Restriction which is approved by DHCD pursuant to the Governing Laws and recorded with the appropriate registry of deeds or district registry of the Land Court and which contains the following:

- (a) specification of the term of the Affordable Housing Restriction which shall be stipulated in the Plan Approval decision but in no case be less than thirty years;
- (b) the name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction;
- (c) a description of the Affordable Homeownership Unit(s), by address and number of bedrooms in a Project or portion of a Project which is homeownership; and a description of the overall quantity, initial unit designations and number of bedrooms and number of bedroom types of the Affordable Rental Unit(s) in a Project or portion of a Project which is rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project with the initially designated Affordable Rental Units identified in, and able to float subject to specific approval by DHCD in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and DHCD's AFHMP guidelines.
- (d) reference to an affirmative fair housing marketing and resident selection plan, to which the Affordable Housing is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. Such plan shall be consistent with DHCD guidance and approved by DHCD. Consistent with DHCD guidance, such plan shall include a preference based on need for the number of bedrooms in a unit and a preference based on need for the accessibility features of a unit where applicable, and may only provide for additional preferences in resident selection to the extent such preferences are also consistent with applicable law and approved by DHCD.

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- (e) a requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
- (f) reference to the formula pursuant to which rent of an Affordable Rental Unit or the maximum resale price of an Affordable Homeownership Unit will be set;
- (g) a requirement that only an Eligible Household may reside in Affordable Housing and that notice of any lease of any Affordable Rental Unit shall be given to the Monitoring Agent;
- (h) provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent;
- (i) provision that the AHR on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
- (j) provision that the AHR on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
- (k) provision that the owner[s] or manager[s] of Affordable Rental Unit[s] shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the Affordability provisions of this Bylaw and containing such other information as may be reasonably requested in order to ensure affordability; and
- (l) a requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request in order to ensure affordability.

**10.5.7 Costs of Housing Marketing and Selection Plan.** The housing marketing and selection plan or any associated Monitoring Services Agreement may make provision for payment by the Project applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.

**10.5.8 Age Restrictions.** Nothing in Section 10 shall permit the imposition of restrictions on age upon Projects unless proposed or agreed to voluntarily by the Applicant. However, the PAA may, in its review of a submission under Section 10. 5.3, allow a specific Project within the SGOD designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable Housing units.

**10.5.9 Phasing.** For any Project that is approved and developed in phases in accordance with Section 10.8.4, the percentage of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section 10. 5.1. Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section 10. 5.5 shall be applied proportionately to the Affordable Housing provided for in each respective phase.

**10.5.10 No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in Section 10. 5.0 shall not be waived.

## **10.6 Dimensional and Density Requirements - General**

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10.6.1 Residential Density. Multifamily Residential (four or more dwelling units) and Mixed Use Development Projects in a SGOD, and in any Sub-District, may be developed as-of-right at a minimum density of 20 dwelling units per acre of Developable Land. Two-family and three-family residential Projects may be developed as-of-right in Sub-District B at a minimum density of 12 dwelling units per acre of Developable Land. Single-family residential use Projects may be developed as-of-right in Sub-District B at a minimum density of 8 dwelling units per acre of Developable Land.

10.6.2 Lot Area, Frontage, and Yard Setbacks

Each Project shall have:

Minimum Project area: 4,000 square feet

Minimum length of frontage: 30 feet

Minimum front yard setback: 0 feet

Maximum front yard setback: no maximum setback

Minimum side yard setback: no requirement between buildings within a Project; 10 feet between any Project building and the boundary of the applicable Sub-District

Minimum rear yard setback: no requirement between buildings within a Project; 10 feet between any Project building and the boundary of the applicable Sub-District

For the purposes of this subsection, frontage and front yard setbacks shall be determined with respect to public and private streets, as well as to private ways providing similar access.

Access: Individual buildings or parcels within a Project site shall have coordinated street access. There shall be not more than one driveway (curb cut) per 50 feet of frontage.

10.6.3 Open Space. A minimum of 20 percent of the total Project area shall be open space. For the purpose of this subsection, “open space” shall be defined as yards, playgrounds, walkways and other areas not covered by parking and driveways; such open space need not be accessible to the public. This minimum percentage may be reduced by the PAA through the Plan Approval process only if the Project provides for direct access or enjoyment of the Connecticut River.

10.6.4. Building Height, maximum:

Subdistrict A: 60 feet

Subdistrict B: 40 feet

**10.7. Parking Requirements - General**

The parking requirements applicable for Projects within the SGOD are as follows.

10.7.1 Number of parking spaces. Unless otherwise found to be Unduly Restrictive with respect to Project feasibility and approved by the PAA, the following minimum and maximum numbers of

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off street parking spaces shall be provided and allowed, respectively, by use, either in surface parking, within garages or other structures, or on-street:

Residential Project: Minimum One parking space per residential unit, maximum 2 parking spaces per residential unit.

Mixed-use Project: Same formula for residential units plus the applicable quantity computed per Section 7.2.2 of the Town's Zoning Bylaws for non-residential uses.

The PAA may allow for additional visitor parking spaces beyond the 2 maximum spaces per unit if deemed appropriate given the design, layout and density of the proposed residential or other development. The PAA may allow for a decrease in any required parking as provided in Sections 7.2 and 7.3 below.

10.7.2 Shared Parking. Notwithstanding anything to the contrary herein, the use of shared parking to fulfill parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA through the Plan Approval process, if the Applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved studies) or the PAA is otherwise satisfied that the reduced parking is nonetheless sufficient and consistent with smart growth practices.

10.7.3 Reduction in parking requirements. Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced by the PAA through the Plan Approval process, if the Applicant can demonstrate that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

- (a) the availability of surplus off-street parking in the vicinity of the use being served and/or the proximity of a bus stop or transit station;
- (b) the availability of public or commercial parking facilities in the vicinity of the use being served;
- (c) shared use of off-street parking spaces serving other uses having peak user demands at different times;
- (d) To the extent consistent with 760 CMR 59.04(1)(g) and 760 CMR 59.04(1)(i)1., age or other occupancy restrictions which are likely to result in a lower level of auto usage;
- (e) impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
- (f) Any applicable transportation demand management strategies that will be integrated into the Project or such other factors as may be considered by the PAA.

10.7.4 Location of Parking. Any surface parking lot shall, to the maximum extent feasible, be located at the rear or, where such location is deemed infeasible by the PAA, the side of a building, relative to any principal street, public open space, or pedestrian way.

## **10.8 Plan Approval of Projects: General Provisions**

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**10.8.1 Plan Approval.** An application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Section 10. Such Plan Approval process shall be construed as an As-of-Right review and approval process as required by and in accordance with the Governing Laws. Any Project with uses allowable in Section 4 shall be subject to the Plan Approval Process.

**10.8.2 Plan Approval Authority (PAA).** The Montague Planning Board consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the “PAA”), and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

**10.8.3 PAA Regulations.** The Plan Approval Authority may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof must be approved by the Department of Housing and Community Development.

**10.8.4 Project Phasing.** An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission shows the full buildout of the Project and all associated impacts as of the completion of the final phase, and subject to the approval of the PAA. Any phased Project shall comply with the provisions of Section 10.5.9.

## **10.9 Plan Approval Procedures**

**10.9.1 Preapplication.** Prior to the submittal of a Plan Approval submission, a “Concept Plan” may be submitted to help guide the development of the definitive submission for Project buildout and individual elements thereof. Such Concept Plan should reflect the following:

1. Overall building envelope areas;
2. Open space and natural resource areas; and
3. General site improvements, groupings of buildings, and proposed land uses.

The Concept Plan is intended to be used as a tool for both the Applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGOD.

**10.9.2 Required Submittals.** An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA and approved by DHCD, along with application fee(s) which shall be as set forth in the PAA Regulations. The application shall be accompanied by such plans and documents as may be required and set forth in the PAA Regulations. For all Projects, the application shall be accompanied by all materials required under Section 10. 5.3. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of [one inch equals forty feet (1"=40') or larger], or at a scale as approved in advance by the PAA.

**10.9.3 Filing.** An Applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the PAA Regulations with the

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Montague Clerk and a copy of the application including the date of filing certified by the Montague Clerk shall be filed forthwith with the PAA.

10.9.4 Circulation to Other Boards. Upon receipt of the application, the PAA shall immediately provide a copy of the application materials to the Select Board, Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Department, Department of Public Works, the Monitoring Agent (if already identified, for any Project subject to the Affordability requirements of Section 10. 5.0), and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

10.9.5 Hearing. The PAA shall hold a public hearing for which notice has been given as provided in Section 11 of G.L. Chapter 40A. The decision of the PAA shall be made, and a written notice of the decision filed with the Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The required time limits for such action may be extended by written agreement between the Applicant and the PAA, with a copy of such agreement being filed in the office of the Town Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.

10.9.6 Peer Review. The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

## **10.10 Plan Approval Decisions**

10.10.1 Plan Approval. Plan Approval shall be granted where the PAA finds that:

- (a) the Applicant has submitted the required fees and information as set forth in the PAA Regulations; and
- (b) the Project as described in the application meets all of the requirements and standards set forth in Section 10 and the PAA Regulations, or a waiver has been granted therefrom; and
- (c) any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

For all Projects, compliance with condition (2) above shall include written confirmation by the Monitoring Agent that all requirements of Section 10. 5.0 have been satisfied. Any Plan Approval decision for a Project shall specify the term of such affordability, which shall be no less than thirty years. The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with Section 10, or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties.

10.10.2 Plan Disapproval. A Plan Approval application may be disapproved only where the PAA finds that:

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- (a) the Applicant has not submitted the required fees and information as set forth in the Regulations; or
- (b) the Project as described in the application does not meet all of the requirements and standards set forth in Section 10 and the PAA Regulations, or that a requested waiver therefrom has not been granted; or
- (c) it is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.

10.10.3 Waivers. Upon the request of the Applicant and subject to compliance with the Governing Laws and Section 10. 5.10, the Plan Approval Authority may waive dimensional and other requirements of Section 10, including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGOD, or if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses, and/or physical character allowable under Section 10.

10.10.4 Project Phasing. The PAA, as a condition of any Plan Approval, may allow a Project to be phased at the request of the Applicant, or it may require a Project to be phased for the purpose of coordinating its development with the construction of Planned Infrastructure Improvements (as that term is defined under 760 CMR 59.00), or to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, unless otherwise explicitly approved in writing by the Department in relation to the specific Project, the proportion of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section 10. 5.1.

10.10.5 Form of Decision. The PAA shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the Town Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the Applicant.

10.10.6 Validity of Decision. A Plan Approval shall remain valid and shall run with the land indefinitely, provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is other good cause for the failure to commence construction, or as may be provided in a Plan Approval for a multi-phase Project.

## **10.11 Change in Plans after Approval by PAA**

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**10.11.1 Minor Change.** After Plan Approval, an Applicant may apply to make minor changes in a Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision and provide a copy to the Applicant for filing with the Town Clerk.

**10.11.2 Major Change.** Those changes deemed by the PAA to constitute a major change in a Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to Sections 10. 8.0 - through 10. 12.0.

## **10.12 Design Standards- General**

**10.12.1. Design Standards.** The Plan Approval Authority may adopt, by simple majority vote, Design Standards which shall be applicable to Development Projects subject to Plan Approval by the Plan Approval Authority. Such Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. DHCD may, at its discretion, may require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

**10.12.2. DHCD Approval.** After adopting Design Standards, the PAA shall submit Design Standards to DHCD for approval. Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk. In submitting proposed Design Standard for DHCD approval, the PAA shall also submit sufficient documentation clearly showing that the proposed Design Standards will not add unreasonable costs to Development Projects or unreasonably impair the economic feasibility of a Development Project. A letter from a developer, property owner or other interested party indicating that the Design Standards will not add unreasonable costs or unreasonably impair (as such term is defined under 760 CMR 59.02) the economic feasibility of a Development Project shall not constitute sufficient documentation. At its discretion, DHCD may disapprove Design Standards if it finds that the PAA has not adopted objective Design Standards or has not submitted such documentation.

**10.12.3. Plan Approval.** An application for Plan Approval that has been submitted to the Town Clerk pursuant to this Section 10 shall not be subject to Design Standards that have not been approved by DHCD and filed with the Town Clerk.

## **10.13 Severability**

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If any provision of Section 10 is found to be invalid by a court of competent jurisdiction, the remainder of Section 10 shall not be affected but shall remain in full force. The invalidity of any provision of Section 10 shall not affect the validity of the remainder of the Montague Zoning Bylaws.