

# PROTECTIVE BY-LAWS

## TOWN OF NEW MARLBOROUGH

### MASSACHUSETTS



First Settled	1739
Incorporated	June 15, 1759
Area	28,046 acres
Population (2009 Town Census)	1301
Road Mileage	90
Elevation	1200 feet

# Protective By-law

For the

## Town of New Marlborough

Effective October 7, 1966

As amended STM December 14, 1987 with corrective amendment of June 30, 1994; Amended ATM May 5, 2003; Amended STM August 25, 2008; May 4, 2015

### SECTION 1: PURPOSE

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

### SECTION 2: DEFINITIONS

- 2.1 **ACCESSORY DWELLING:** A detached freestanding building located along with the principle dwelling unit on the lot shall be allowed as an accessory dwelling.
- 2.2 **AGRICULTURAL USE:** Any use of land for the purpose of raising agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This use does not include kennels, commercial stables or facilities for the commercial raising of swine or fur bearing animals.
- 2.3 **BUILDING:** A roofed or walled structure used or intended for supporting or sheltering any use occupancy.
- 2.4 **CUSTOMARY HOME OCCUPATION:** Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at the home and requiring no more off-street parking facilities that would ordinarily be used by the household, such as dressing making, preserving or home cooking, photography, the giving of private music and dance lessons or a one chair beauty parlor. Customary home occupation does not include gift shop, antique shop, art gallery or similar retail establishment.
- 2.5 **DWELLING UNIT:** One or more rooms constituting a separate independent housekeeping unit establishment with cooking, living, sanitary and sleeping facilities for the use of no more than one family.

- 2.5 DWELLING, SINGLE FAMILY:** A detached residential building designed for or occupied by one (1) family only, but not including mobile homes and trailers whether placed on foundations or not.
- 2.6 DWELLING, MULTI-FAMILY:** A residential building containing two (2) or more dwelling units.
- 2.7 FAMILY:** An individual or any number of individuals related by blood, marriage or other legal arrangement such as adoption, guardianship, foster care or up to six (6) unrelated individuals living in a single dwelling unit.
- 2.8 FRONTAGE:** That boundary of a lot, which lies along a road.
- 2.9 LOT:** An area of land in one ownership with definite boundaries, used or available for the use as the site of one or more buildings.
- 2.10 MUNICIPAL USE:** Any Town of New Marlborough use of land in accordance with the General Laws governing municipal powers and functions including participation in regional uses.
- 2.11 ROAD:**
- a. A public way or way which the Clerk of the Town certifies is maintained and used as a public way, or
  - b. A way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or
  - c. A way in existence when the subdivision control law became effective in New Marlborough on March 8, 1965 having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the building erected or to be erected thereon.
- 2.12 SETBACK:** The area of a lot extending inward from a lot line (or, in the case of front setback, the road line), for the distance specified in the zoning regulations in which no building or structures may be placed.
- 2.13 SETBACK, FRONT:** An area extending across the full width of the lot and extending inward from the road line of the lot.
- 2.14 SETBACK, REAR:** An area extending inward from rear of the lot between the side lot lines.

- 2.15 SETBACK, SIDE:** An area extending along a side lot line from the front line to the rear line.
- 2.16 STRUCTURE:** Any construction, erection, assemblage or other combination of material upon the land necessitating pilings, footings, or a foundation for attachment to the land, including swimming pools and recreational courts.
- 2.17 Maximum Gross Floor Area (GFA):** The sum of all enclosed or areas

### **SECTION 3: PERMITTED USES/USE REGULATIONS**

- 3.1** No dwelling, structure of land or any part thereof shall be used for any purpose unless authorized:
- 3.1.1** As a use by right
- 3.1.2** Under special permit granted by the Board of Selectmen
- 3.1.3** Under variance granted by the Board of Appeals
- 3.1.4** Under applicable law at the time such use began and provided such use has continued until present time
- 3.2 Town-Residential District**
- 3.3 Use by Right**
- 3.3.1** Single Family Dwelling
- 3.3.1.2** Accessory Dwelling, existing on or before May 5, 2003, subject to the following conditions:

- A. The exterior appearance of the building shall not be altered except for the purpose of safety (stairs for fire escape), health (weather protection for the main entry such as enclosed entry or drip edge protection) or handicapped accessibility requirements (ADA compliance) or to meet building code requirements, nor shall the footprint of the building be enlarged.
- B. The minimum lot size requirement shall be two (2) acres and the minimum frontage requirement shall be 150 feet.
- C. One of the two units on the lot shall be occupied by the owner of the lot, and

in the event of the sale of the property, the new owner shall occupy one of the two units as a primary residence.

- D. There shall be no more than one accessory dwelling per lot created under this bylaw.
- E. The maximum gross floor area (GFA) shall not exceed 1,200 square feet.

### **3.3.1.3 Accessory Apartment**

- A. Purpose.
  - 1. Add moderately priced rental units to the housing stock of the Town.
  - 2. Provide homeowner(s) with a means of obtaining rental income, accommodation for caregiver(s), companionship, security and/or services, thereby enabling him/her to stay more comfortably in their homes.
  - 3. Protect property values and the single-family residential character of neighborhoods by ensuring that accessory apartments are permitted by right only on owner occupied premises.
- B. Accessory Apartments. An accessory apartment may be permitted by right, as an accessory use where the principal use of the lot is an owner occupied single-family dwelling.
- C. Accessory Apartments, shall be subject to the following conditions:
  - 1. An accessory apartment shall only be constructed within an existing attached accessory building or structure, or an existing detached accessory building or structure.
  - 2. Only one (1) accessory apartment shall be permitted on a lot.
  - 3. The maximum gross floor area of an accessory apartment constructed within a principal building or structure shall not exceed forty percent (40% of the maximum gross floor area of principal building or structure. The maximum gross floor area of an accessory apartment shall not be less than 300 square feet. The principal dwelling unit shall not be reduced to less than 300 square feet.
  - 4. To qualify as an accessory apartment, the owner of the lot must occupy either the accessory apartment or the principal dwelling unit.
  - 5. The principal or accessory structure or building that will contain an accessory apartment shall not be enlarged or extended in connection with the

construction or modification of an accessory apartment, except to comply with building, safety or health codes as outlined in Section 3.3.1.2A of these Bylaws.

6. All parking for the occupant(s) of an accessory apartment shall be off-street in accordance with Section 7.3.1.4 of these Bylaws.
7. An accessory apartment shall meet all applicable standards of the State Building Code (780 CMR) and the State Environmental Code, Title V (310 CMR 15.00) and subsequent revisions thereof.

**3.3.2** Any lawful residential, municipal or non-profit recreational purpose.

**3.3.3** Any religious or non-municipal educational purpose subject to Section 6.1.

**3.3.4** Any agricultural use except commercial piggeries, fur farming, slaughterhouse or greenhouses.

**3.3.5** The following commercial purposes, but no others:

**3.3.5.1** The display and sale of natural products, the major portion of which are raised in the Town

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

**3.3.5.3** Renting of rooms and furnishing of board by an owner in his residence provided no independent kitchen facilities are maintained.

**3.3.6 Buildings or structures related to the above uses.**

### **3.4 Uses by Special Permit only**

**3.4.1 The following uses are permitted if approved, after a public hearing thereon, by permit from the Board of Selectmen who shall determine that the use will not be injurious, noxious or offensive, and that such use is consistent with the intent of the by-law.**

- 3.4.1.1 Commercial Greenhouses
- 3.4.1.2 Gallery
- 3.4.1.3 Sawmill
- 3.4.1.4 Antique, craft or gift shop
- 3.4.1.5 Summer camp, golf course, boat livery, riding stable
- 3.4.1.6 Ski tow
- 3.4.1.7 Restaurant
- 3.4.1.8 Facility for generating power from wind, sun or water
- 3.4.1.9 Enclosed veterinary hospital
- 3.4.1.10 Municipal and public service buildings, structures and use
- 3.4.1.11 Display and sale of natural products, the major portion of which are raised outside of Town
- 3.4.1.12 Scrap and salvage yard
- 3.4.1.13 Sales and service of vehicles
- 3.4.1.14 Accessory Dwelling either new construction or modification of a existing freestanding building constructed after May 5, 2003.

**3.4.2 Multifamily dwelling, subject to the following requirements:**

- 3.4.2.1 Construction plans elevations, and the location of the building(s) on the lot must be submitted to the Planning, Board of Health, Conservation Commission and the Building Inspector for their recommendations to the Board of Selectmen. The recommendations shall be submitted within thirty (30) days of the date the plans are submitted.
- 3.4.2.2 Design plans shall contain provisions for not more than six (6) dwelling units. No building shall exceed thirty-five (35) feet in height. Such plans shall also contain provisions for adequate water and sewage disposal facilities.

- 3.4.2.3** Lot shall contain a minimum of one (1) acre for the first dwelling unit and three (3) acres for each additional unit. The lot shall contain a minimum of one hundred fifty (150) feet of frontage for the first unit and one hundred (100) feet of frontage for each additional unit.
  - 3.4.2.4** Dwelling units, parking areas and playgrounds shall not be less than one hundred (110) feet from all property lines.
    - 3.4.2.4.1** Conversion of a single family dwelling into a multifamily dwelling of two (2) or more units, without meeting the requirements of 4.1 as to lot area, frontage and as to distance from property boundary line may be permitted by the Board of Selectmen provided that:
  - 3.4.2.5** The single-family dwelling has not been enlarged within seven (7) years of the proposed conversion.
  - 3.4.2.6** The lot area has not been reduced below the minimum within seven (7) years of the proposed conversion.
  - 3.4.2.7** Any fire escapes or outside stairways leading to a second story shall be located on any wall not facing a road and shall not occupy any part of the rear or side setback.
  - 3.4.2.8** No exterior addition to the original dwelling shall thereafter be made other than fire escapes and outside stairways.
    - 3.4.2.8.1** Accessory dwelling on a lot with less than two (2) acres or less than 150 feet or frontage, subject to the conditions set forth in Section 3.3.1.2 and Section 7.3.1.1
  - 3.4.2.9** No dwelling shall be converted unless in connection therewith it is placed in reasonable state of repair.
- 3.4.3** Any other use determined by the Board of Selectmen to be similar in character to one or more uses specifically authorized herein, provided the Board finds that the proposed use is in harmony with the general purpose and intent of this by-law and not offensive or detrimental to the neighborhood.

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

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

### **3.5 Nonconforming Structures, Uses and Lots**

**3.5.1** These procedures shall not apply to structures or uses lawfully in existence or lawfully begun at the time of adoption of this by-law as provided in Section 6, Chapter 40A (MGL).

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

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

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

### **SECTION 4 LOT SIZE AND FRONTAGE**

**4.1** No dwelling or accessory building shall be erected or placed on a lot having less than one (1) acre in area or having less than one hundred and fifty (150) feet in frontage or be placed closer than forty (40) feet to the street line or twenty five (25) feet from side or rear lot line. No more than one (1) dwelling shall be erected or placed on any such lot.

**4.2** Nothing in this By-law, however, shall prohibit the construction, alteration or enlargement of a single family dwelling or other permissible building on a lot which contains a lesser area or frontage if the lot was separately owned and was so recorded in the

Southern Berkshire Registry of Deeds at the time of the adoption or amendment of this By-law.

## **SECTION 5 TRAVEL TRAILER, MOBILE HOME**

- 5.1** A Travel Trailer or Mobile Home may be permitted by the Selectmen in accordance with the provisions of the General Laws, in their capacity as enforcing agents, to be occupied for temporary living quarters by the owner of the premises on which it is located for one (1) year, provided that such owner is in the process of constructing a dwelling for his occupancy, and further provided that such Travel Trailer or Mobile Home is and dwelling being constructed will be in conformity to the Sanitary Code of the Commonwealth of Massachusetts. Such permit may be extended if the work on the dwelling is proceeding in good faith.
- 5.2** A Travel Trailer or Mobile Home issued a permit by the Board of Selectmen and located and occupied prior to the adoption of this By-law, may continue to be used provided a certificate from the Board of Health is submitted to the Board of Selectmen stating compliance with the Sanitary Code of the Commonwealth of Massachusetts, and further provided that such Travel Trailer or Mobile Home may be replaced by another on the same premises and under the same conditions. Notwithstanding other provisions of this Section (5), a Travel or Mobile Trailer may be parked upon the owner's premises provided the same is not used for purposes of human habitation of such site.

## **Section 6 Sign Regulations**

### **6.1 Permitted Accessory Signs**

- 6.1.1** A sign not exceeding two (2) square feet in area and bearing only names of residents or their identification of premises not having commercial connotations.
- 6.1.2** One sign not exceeding six (6) square feet in area for a permitted accessory use on the premises with a permit from the Board of Selectmen
- 6.1.3** No more than two (2) signs for a commercial or other non-residential use not exceeding sixteen (16) square feet in total area except by permit from the Board of Selectmen.

### **6.2 Sign Restrictions**

- 6.2.1** No sign shall be illuminated by other than shaded or indirect white incandescent light of constant intensity and no sign shall be illuminated by flashing, intermittent, rotating, moving light or

lights or have any visibly moving parts or noise-making devices.

- 6.2.2** No sign or light shall be placed so as to constitute a hazard or nuisance.
- 6.2.3** No sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.
- 6.2.4** A free standing sign may not exceed fifteen (15) feet in height above grade or be closer to the front property line than twenty (20) feet except with a permit from the Board of Selectmen where the Board finds that requirements of the particular location dictate greater height or smaller setback.
- 6.2.5** Temporary signs which do not comply with this By-law may be authorized for a period not over ten (10) days by the Board of Selectmen for special events such as an opening of a new business or industry or announcing a public event sponsored by a civic, fraternal, social or religious organization. The Board of Selectmen may, at their discretion, require the posting of a bond or cash deposit large enough to cover the cost of removal of temporary signs if signs are not removed promptly after expiration of the permit.
- 6.2.6** Any sign, which has been abandoned or advertises any product, business or activity, which is no longer, sold or carried on, must be removed within thirty (30) days by the owner of the premises after notice to that effect from the Board of Selectmen.

## **SECTION 7 ADMINISTRATION/GENERAL REGULATIONS**

### **7.1 Non-Municipal Education or Religious Use**

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

- 7.1.1.1** Maximum building height two (2) stories or thirty-five (35) feet.
- 7.1.1.2** Maximum building coverage four percent (4%) of the land area.
- 7.1.1.3** Setback two hundred (200) foot buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.
- 7.1.1.4** Primary access roads and principal parking areas subject to frequent day or night use shall be approved by the Planning Board to meet

subdivision requirements for safety and health of the community. Primary shall be at least twenty (20) feet wide and shall not exceed a six percent (6%) grade.

**7.1.1.5** Parking areas shall be subject to Section 7.3.

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

## **7.2 Measurements**

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

## **7.3 Parking**

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

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

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

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

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

## **SECTION 8 ZONING BOARD OF APPEALS AND SPECIAL PERMITS**

### **8.1 Membership and Authority**

**8.1.1** There shall be a Zoning Board of Appeals consisting of three (3) members and two (2) associate members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40A of the General Laws. The Board shall act within its statutory powers as provided in Section 14, Ch. 40A (MGL) and on matters within its jurisdiction under this By-law in a manner prescribed in Section 15, Ch. 40A (MGL). The Zoning Board of Appeals shall act also as the Board of Appeals under the Subdivision Control Law as provided in Chapter 41, Section 81Z of the General Laws.

## **8.2 Statutory Powers of the Zoning Board of Appeals**

### **8.2.1 Appeals**

The Board is authorized to hear and decide an appeal, as provided in Section 8, Ch. 40A (MGL) taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement from any administrative officer under the provision of Ch. 40A (MGL) by the Berkshire County Regional Planning Commission, by any person including an officer or Board of the Town, of an abutting Town, aggrieved by an order or decision of the Building Inspector or other administrative official, in violation of any provision of Ch. 40A (MGL) or of this By-law. Any such appeal must be taken within thirty (30) days of the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section 15, Ch. 40A (MGL).

### **8.2.2 Variances**

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

### **8.2.3 Decisions by the Zoning Board of Appeals**

The decision of the Zoning Board of Appeals shall be made within seventy-five (75) days of the date of the filing of an appeal, application or petition of the Town Clerk, except in regard to Special Permits as provided in Section 7, number 6, herein. Failure by the Zoning Board of Appeals to act with said seventy-five (75) days shall be deemed to be the grant or relief application or petition sought.

### **8.2.4 Expiration of Variance**

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, they shall lapse and re-established only after notice and a new hearing as provided in Section 7, number 3 herein.

### **8.3 Special Permit Granting Authority**

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

#### **8.3.2 Required Hearing and Notice**

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

#### **8.3.3 Review by Other Boards and Agencies**

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

#### **8.3.4 Findings Required**

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

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

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

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

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

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

**8.4 Conditions, Safeguards and Limitations**

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

**8.5 Decisions by Special Permit Granting Authority**

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

**8.6 Expiration of a Special Permit**

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

**8.7 Special Permit for Accessory Use**

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

**8.8 Telecommunications**

**1. Purpose and Goals**

The purpose of this by-law is to establish guidelines and the special permitting process for the siting of wireless communication facilities, towers and antennas. The goals of this by-law are to include: (i)

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

## **II: Definitions**

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

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

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

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

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

**B. O. S.:** shall mean the Board of Selectmen.

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

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

**DISTANCE:** shall be measured on a horizontal plane.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WIRELESS COMMUNICATION FACILITY:** shall be used as a general term to include wireless communication building, wireless communication device, and wireless communication structure.

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

### **III. Exemptions**

The following shall be exempt from this by-law:

- A. Wireless communication facilities used for Town or State emergency services.
- B. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the federal Communication Commission and used solely for that purpose.
- C. Wireless communication structures and devices used expressly for home television and radio reception.

### **IV. General Guidelines**

- A. No wireless communication facility shall be erected, constructed, or installed without a Special Permit from the Board of Selectmen.
- B. Only free-standing monopoles with associated antenna are allowed. Lattice style tower and similar facilities requiring three or more legs and/or guy wires for support are not allowed.
- C. Alternative Tower Structures and Camouflaged Antennas shall be preferred over all other types of wireless communication structures and antennas as to minimize adverse impacts on abutting properties, residential neighborhoods, village centers, traveled ways and areas of historic or scenic value.
- D. Wherever feasible, wireless communication devices shall be located on existing tower or other non-residential structures, minimizing proliferation of new towers.
- E. Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate

devices operated by another carrier with little or no modification.

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

## **V. Siting and Height Requirements**

### **A. Setbacks**

- 2. The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.5 times the height of the structure to ensure adequate fall zone.
- 3. The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
- 4. The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletic fields, and abutting residences to prevent the structure from appearing to “tower” over; adversely affecting property values.
- 5. No tower shall be situated within 600 feet of any residential structure.

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

## **VI. Design Requirements**

- A. Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.
- B. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.
- C. All wireless communication devices shall be colored, molded, and/or installed to blend into the structure and/or the landscape.
- D. The facility shall be fenced to control access to the tower structure, and accessory buildings. Fencing shall be between six feet (6') and eight feet (8') high. Fencing may be protective in nature, but shall not include a spun barbed wire design. A landscape buffer of evergreen shrubs or tree planting shall be provided on the outside of the fenced area.

- The shrub or tree planting shall mature to a minimum height equivalent to the fence height and be planted a height of at least four feet (4').
- E. Night lighting of the facility shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring lighting shall be submitted with the application.
  - F. There shall be a minimum of one parking space for each facility to be used in connection with the maintenance of the site and not to be used for the storage of vehicles or other equipment.
  - G. Existing on-site vegetation shall be preserved to the maximum extent possible.
  - H. Vegetation screening shall be used to screen the facility from abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

## **VII. Application Process**

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

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

- A. To site a new wireless communication structure, the applicant shall submit:
  - 1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200' where appropriate, on as many sheets as necessary which shows the following.
    - a. North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for reviewing licensed engineer's seal.
    - b. Name and address of landowner and name and address of abutters.
    - c. Property lines and location of permanent structures or building, within 600 foot radius of proposed wireless communication structure.
    - d. Existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a

maximum of 2 – foot intervals and spot elevations at base of all proposed and existing structures.

- e. Vegetation to be removed or altered.
  - f. Plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - g. Delineation of wetlands, if any.
  - h. Location of wireless communication structure, including supports or guy wires, if any.
  - i. Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
  - j. Plans for accessory buildings.
  - k. Layout and details of surfacing for access road and parking.
  - l. Amenities such as lighting, fencing, and landscaping.
  - m. Four view lines in a one to three-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines from any historic, scenic, or other prominent areas of the Town as determined by the Board of Selectmen.
  - n. Plans for a well or other water source, if any.
  - o. Plans for septic system, if any.
  - p. Plans for maintenance of roads necessary to access and maintain the property.
2. A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths and the interface with adjacent service areas.
  3. A locus map at a scale 1" = 1000' or larger if necessary, to show where in the town the proposed tower is sited, which shall show streets, building, and landscape features.
  4. A description of the soil and surficial geology at the proposed site.
  5. A narrative report written by the carrier and licensed professional engineer which shall:
    - a. Describe the justification of the proposed site.
    - b. Describe the structure and the technical, economic, and other reasons for the facility design.
    - c. Describe the capacity of the structure, including the number and type of additional facilities it can accommodate.
    - d. Describe actions to be taken if electromagnetic radiation from the facility should exceed level designated by the FCC and/or the Act.
    - e. Describe the projected future needs of the carrier, and how the proposed wireless communications facilities

- fit with the future projections to serve the Town and adjacent towns.
- f. Describe leasing agreement should another carrier desire to co-locate.
  - g. Describe special design features to minimize the visual impact of the proposed wireless communication facility.
  - h. Describe other carriers' purposes should they co-locate.
6. Proof of approval of all other necessary permits needed for construction and operation, other than the building permit, as the special permit granted by the B.O.S. is required before the issue of the building permit.
  7. Written authorization or copy of contract from property owner of the proposed tower site.
  8. After the application is submitted, and not less than 14 days or more than 21 days before the public hearing, the applicant shall arrange to fly a four-foot diameter balloon at the site of the proposed wireless communication structure at the maximum height of the propose installation, to photograph from various

## **SECTION 9 BUILDING PERMITS**

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

## **SECTION 10 AMENDMENTS**

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

## **SECTION 11 SEPARABILITY**

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