

**Town of Essex, Massachusetts**  
**Chapter VI of By-Laws**  
**Zoning**

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**6-1 General Provisions**

**6-1.1 Short Title.**

This chapter shall be known and may be cited as the zoning by-laws of the Town of Essex.

**6-1.2 Authority**

The power of the town to adopt acts concerning zoning is contained in M.G.L.A 40A et seq.

**6-1.3 Purpose.**

This chapter is enacted in accordance with the provisions of Chapter40A, Massachusetts General Laws, for the purpose of promoting the health, safety, and welfare of the inhabitants of the town.

**6-1.4 Severability**

Each provision of this Bylaw shall be construed as separate to the end that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

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**6-2 Definitions.**

**6-2.1 Rules of Interpretation**

Except as specifically designated herein, all words used in this chapter shall carry their customary dictionary meanings. The word "lot" shall include the words "plot" and "parcel". The word "building" shall include the word "structure". The terms "used" or "occupied" as applied to any land or building shall be construed to mean also, "intended, arranged or designed to be used or occupied."

**6-2.2 Definitions**

**ABUTTER**

Owners of property located across a street or road from any premises shall be considered to be abutters as well as the owners of adjoining abutting property.

**ACCESSORY BUILDING.**

A building on the same lot with and of a nature customarily subordinate to, and physically separated from the principal building.

**ACCESSORY USE.**

A subordinate use of land or buildings which is customarily incidental to the main building or to the principle use of the land and which is located on the same lot with the principle building or use.

**AQUIFER.**

A geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water.

**AUTOMOBILE OR MOTOR VEHICLE JUNK YARD.**

An area occupied by two or more unregistered, unserviceable, discarded or junked automotive vehicles or bodies, engines or other parts sufficient in bulk to equal two vehicles.

**BILLBOARDS.**

A structure, either freestanding or affixed to a building, the surface of which is for hire for advertising purposes.

**BUILDING AREA.**

The portion of a lot remaining after required yards have been provided.

**BUILDING.**

Any structure affording shelter.

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**BUILDING HEIGHT.**

The vertical height from the sidewalk or finished grade at the center of the front of the building to the highest point of the roof surface, if a flat roof; to the deck line for mansard roofs; and to the mean height between eaves and ridges for gables, hip, and gambrel roofs.

**DWELLING, MULTI-FAMILY**

A residential building designed to provide or otherwise accommodate three or more dwelling units, each independent of the others with independent cooking and toilet facilities, and allowed by special permit.

A multi-family dwelling is not otherwise permitted or permissible under this chapter.

**DWELLING, SINGLE FAMILY.**

A detached residential dwelling unit, other than a mobile home, designated for and occupied by one family only.

**DWELLING, TWO-FAMILY.**

A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

**DWELLING UNIT.**

A room or suite of rooms used by one family as a habitation which is separate from other rooms or suites of rooms and which contains independent cooking and sleeping facilities.

**FAMILY.**

Persons occupying a dwelling unit who are related to each other by blood, adoption or marriage in no less than the second degree.

**GROUNDWATER.**

All the water found beneath the surface of the ground (in this Bylaw, the term refers to the slowly moving subsurface water present in aquifers and recharge areas).

**HAZARDOUS MATERIALS.**

- a. A product, a waste or a combination of substances which because of quantity, concentration, or physical or chemical, or infectious or radioactive characteristics may reasonably pose, in the determination of the enforcing authority, a substantial present or potential hazard to human health, safety or welfare, or the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed;

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- b. Any substance which may create a special hazard in the event of a spill, leak, fire or exposure, and;
- c. All substances deemed to be hazardous waste as defined in M.G.L. Chapter 21C, s.2 and the Hazardous Waste Regulations promulgated hereunder by Massachusetts Department of Environmental Protection ("D.E.P.") at 310 CMR 30.010 in amounts in excess of that normally used in household maintenance or other materials which are listed as toxic, hazardous or a priority pollutant by the United States Environmental Protection Agency under any of the following laws:
  - (1) Toxic Substances Control Act, 15 U.S.C s.2601 et seq.;
  - (2) Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. s.136 et seq.;
  - (3) Resource Conservation and Recovery Act of 1976, 42 U.S.C. s.6901 et seq.;
  - (4) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42U.S.C. 2.9601 et seq.; and
  - (5) Federal Water Pollution Control Act, 33U.S.C. s.1251, et seq."

**HOME OCCUPATION.**

Any commercial activity conducted as an accessory use, in any dwelling unit which is the residence of the practitioner of the commercial activity, or in any accessory building to that residence, regulated under 6-5.11.

**IMPERVIOUS SURFACE.**

Material on the ground that does not allow surface water to penetrate into the soil.

**INDUSTRIAL LAND USE - CLASS A.**

Land on which there is located a building used for manufacturing purposes which is either greater than or equal to 2,500 square feet in are or within which 12 or more people are employed on one eight-hour shift.

**INDUSTRIAL LAND USE - CLASS B.**

Land on which there is located a building used for manufacturing purposes which is less than 2,500 square feet in area and within which 11 or less people are employed on any one eight-hour shift.

**JUNK**

Waste or discarded material which may be treated or prepared to be used again in another form.

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**JUNK YARD**

An open area used for storage, keeping, sorting, processing, baling or abandonment of junk including but not limited to scrap metals or other materials such as paper, rags, bottles, automobile or other vehicles, machinery or parts thereof.

**LEACHABLE WASTES**

Waste materials including solid wastes, sewage, and sludge that are capable of releasing water-borne contaminants to the surrounding environment.

**LOT**

For purposes of this chapter, a lot is a registered or recorded parcel of land of at least sufficient size to meet minimum land-use requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required

Such lot shall have frontage on a way or a street. In computing the area of a lot for the purposes of dimensional requirements set forth in the Table of Dimensional Requirements. Tidal marshlands and wetlands, as defined by Chapter 131, Section 40 of the MGL Wetlands Protection Act as “bogs, coastal wetlands, freshwater wetlands, swamps, wet meadows, and marshes”, shall be excluded.

Delineation of wetlands and tidal marshlands is required on all plans submitted for review, and shall be drawn and certified by a professional engineer or land surveyor.

**LOT OF RECORD**

Land designated as a separate and distinct parcel in a legally recorded deed and plan filed in the records of the county.

**LOT FRONTAGE**

The front of a lot shall be construed to be the portion nearest the street where reasonable and adequate access to the required parking facilities and principal buildings can be provided.

The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all sides of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under “Yards” in this section.

**LOT LINES**

- a. FRONT: The line separating any lot from a street

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- b. REAR: A lot line which is opposite and most distant from the frontline. In the case of a triangular or irregular lot, a line ten feet long within the lot, parallel to and farthest from the front line
- c. SIDE: Any lot line not a front or rear lot line.

**LOT MEASUREMENTS**

- a. DEPTH: Depth of a lot shall be considered to be the distance between the midpoint of straight lines connecting the foremost points of the side lot line in front and the rearmost points of a side lot line in the rear
- b. WIDTH: Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard.

**MINING OF LAND**

The removal or relocation of geologic materials such as topsoil, sand, gravel, or metallic ores or bedrock.

**NONCONFORMING USE**

Any structure or use which does not meet the requirements of this chapter.

**NONCONFORMING USE, PREEXISTING**

A structure or use lawfully in existence, lawfully begun, or a building permit having been applied for before the first notice of the public hearing on such ordinance or bylaw whose adoption has rendered the structure, use or permit nonconforming.

**PARKING SPACE, OFF STREET**

For the purposes of this chapter, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or way and maneuvering room.

Such space and appropriate maneuvering room shall be provided at approximately 300 square feet of individual space.

**PRINCIPLE OFFICERS**

The board of selectmen shall be the principle officers.

**RECHARGE AREAS**

Areas comprised of permeable stratified sand and gravel and certain wetlands that collect precipitation or surface water and carry it to aquifers.

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**SIGN**

Any notice of advertisement, pictorial or otherwise, used as an out-of-doors display for the purpose of making anything known.

**SOLID WASTE**

Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk refuse, inert fill material and landscape refuse.

**STORY**

That portion of a building included between the surface of any floor and the surface of the floor or the roof next above it.

A basement shall be considered as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

**STREET**

A public thoroughfare 30 feet or more in width established or maintained under public authority or a recorded way plotted and laid out for public use and which affords principle means of access to abutting property.

No new street shall be less than 44 feet in width.

**STREET-LINE**

The right-of-way line of a street.

**STRUCTURE**

Anything constructed or erected of more than one member requiring a fixed location on the ground.

Structures which are exempted from the requirement of a building permit in the Massachusetts State Building Code (780 CMR Section 110.3 Exemptions) shall also be exempt from the requirement of a building permit by this Chapter.

**TRAILER**

A building or structure designed, made, built, or used as a mobile home or trailer home or like building by whatever name so-called, or having the appearance of such a structure or building, which is used as a dwelling.

**VARIANCE**

A relaxation of the requirements of this chapter where such variance will not be contrary to the public interest and owing to conditions peculiar to the property and not the result of the actions of the applicant, and where a literal enforcement of this chapter would result in unnecessary and undue hardship.

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**WECS (WIND ENERGY CONVERSION SYSTEM).** A wind energy system consisting of a wind turbine, a tower, and associated control or conversion electronics.

**WECS, BUILDING-MOUNTED.** Any WECS unit, mounted on a building intended to generate power.

**WECS WIND TOWER.** The structure that supports the wind turbine.

**WECS TOTAL TOWER HEIGHT.** The vertical distance from current grade to the tip of the rotor blade when at its highest point.

**YARD**

A required opening unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided that fences, walls poles, posts and other customary yard accessories, ornament and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction and visibility.

**YARD, FRONT**

A required yard adjoining the front lot line, extending unobstructed between the side lot lines across the front of a lot between the principle building and the street.

**YARD, REAR**

A required yard adjoining the rear lot line, extending across the full width of the lot behind the principle building.

**YARD, SIDE**

A required yard adjoining a side lot line extending from the front to the rear yard.

**ZONING MAP**

A map of the town is on file at the selectmen's office.

**6-3 Land Use Regulations.**

**6-3.1 General.**

Residential, business, motel and hotel, and industrial land uses shall be permitted provided that they conform to the requirements for the use contemplated as hereafter specified for each use.

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6-3.2 Dimensional Requirements

**6-3.2.1 Table of Dimensional Requirements**

<b>Principal Buildings</b>	<b>Residential, Single and Two Family</b>	<b>Residential, Multi-Family</b>	<b>Business</b>	<b>Motel and Hotel</b>	<b>Industrial, Class A</b>	<b>Industrial, Class B</b>
Minimum Lot Area (sq. ft.)	40,000 (Notes a,b)	60,000 (3 units) 90,000 (4+ units) (Note d)	40,000 (Note a)	90,000	90,000	40,000 (Note a)
Minimum Lot Frontage (feet) (Note e)	150	300	150	200	300	150
Minimum Lot Width (feet)	150	-	-	-	-	125
Minimum Lot Depth (feet)	100	-	100	-	-	100
Minimum Front Yard, All Buildings	25	100	25	100	100 (Note c)	25 (Note c)
Minimum Side Yard	20	100	20	50	100 (Note c)	20 (Note c)
Minimum Rear Yard	30	100	50	100	100	30
Maximum Building Height (stories/feet)	2 ½ stories 35 feet	2 ½ stories 35 feet	2 ½ stories 35 feet	2 ½ stories 35 feet	35 feet	2 ½ stories 35 feet
Maximum Lot Coverage	25%	50% (Note f)	25%	-	33%	25%
<b>Accessory Buildings</b>						
Minimum Front Yard	25				25	
Minimum Side Yard	10				10	
Minimum Rear Yard	10	50			10	
Maximum Building Height	2 ½ stories 25 feet	1 story 15 feet		1 story 15 feet	2 ½ stories 25 feet	
Minimum Distance between Buildings		20		20		

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**6-3.2.2 Notes for Table of Dimensional Requirements**

- a. Lot area for land on street in existence on June 7, 1972, minimum 30,000 square feet.
- b. 40,000 square foot minimum per dwelling unit in the Water Resource Protection District.
- c. Any non-residential project comprised of buildings which in the aggregate occupy any area greater than 10,000 square feet shall meet the following:  
Front yard 50 feet, Side Yard 30 feet.
- d. Minimum land area per bedroom, 5,000 square feet. Maximum 8 bedrooms per building.
- e. Reasonable capability for adequate access to principal building is required over frontage.
- f. Maximum lot coverage for buildings and paved surfaces.

**6-3.3 Additional Use Requirements**

**6-3.3.1 Residential Land Uses, Single Family.**

- a. Accessory Building. Accessory buildings may be used for any purpose other than human habitation.
- b. Location of Parking. All parking for the above use shall be a minimum of 30 feet from the street.

**6-3.3.2 Residential Land Use, Two-Family.**

- a. Maximum dwelling unit size. One of the two dwelling units shall have no more than two bedrooms.
- b. Accessory Buildings. Accessory buildings may be used for any purpose other than human habitation, provided that they conform to the following:
  1. Accessory buildings shall be located in rear and side yards only.
- c. Location of Parking. All parking for the above use shall be off the street and other than in the front yard.
- d. Septic System Approval. Drawings of existing septic systems must be submitted for approval by the health inspector.

**6-3.3.3 Business Land Use.**

- a. Storage. All storage shall be in an enclosed building or screened from abutters view.

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**6-3.3.4 Motel and Hotel Land Use.**

- a. Storage. All storage shall be in an enclosed building or screened from abutter's view.

**6-3.3.5 Industrial Land Use, Class A.**

- a. Location of Parking and Loading. All parking for the above use shall be off street and other than in the front yard. Loading and unloading facilities shall be located on the side or rear of the building.
- b. Storage. All storage shall be in an enclosed building or screened from abutter's view and be in the rear or side yard.

**6-3.3.6 Industrial Land Use, Class B.**

- a. Accessory Buildings. Accessory buildings may be used for any purpose other than human habitation, provided that they conform to the following:
  - 1. Accessory buildings shall be located in rear or side yards only.
- b. Location of Parking and Loading. All parking for the above use shall be off street and other than in the front yard. Loading and unloading facilities shall be located on the side or rear of the building.
- c. Storage and Display. All storage and display shall be conducted in an enclosed building or screened from abutters.

**6-3.4 Special Permits.**

**6-3.4.1 Special Permit Granting Authority**

The Planning Board shall act as the Special Permit Granting Authority.

**6-3.4.2 Uses Requiring Special Permit.**

Upon approval of the planning board the following may be allowed:

- a. Airport.
- b. Recreational facilities for other than home use.
- c. Private schools.
- d. Public utility installations.
- e. Radio, Telecommunications, Cellular and Television Facilities, Including Free Standing Tower Type Structures (subject to the requirements as outlined below).
- f. Trucking terminals.
- g. Private hospitals.
- h. Nursing homes.

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- i. Accessory activities permitted as a matter of right which are necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities already permitted as a matter of right.
- j. Conversion of an existing dwelling into three-family unit provided that:
  - 1. No dwelling shall be altered to accommodate more than one family for each ten thousand square feet of area of the lot.
  - 2. The planning board finds that such conversion would not be substantially more detrimental to the neighborhood than the existing use.
  - 3. Except for creation of additional exits if required by law, the structure is not substantially changed or enlarged.
  - 4. Parking as required in the Parking section of this chapter is provided on the lot and behind the setback line.
- k. Multi-family dwelling and/or apartment land use, subject to at least the following requirements which shall in no way limit the right of the special-permit granting authority to impose stricter requirements and/or other conditions to the full extent permitted by law:
  - 1. Dimensional Requirements (see Table of Dimensional Requirements).
  - 2. Storage. All storage shall be enclosed and in the rear.
  - 3. All proposed multi-family, conversions to three-family, and multi-family, and/or apartment land use be required to provide the board of health with a septic system plan to be approved before permits are given.
- l. Wind Energy Conversion Systems (WECS).

Installation of Wind Energy Conversion Systems (WECS) except units which are building mounted, but including temporary wind monitoring towers, shall be permitted subject to the following requirements and such other conditions as the Special Permit Granting Authority may impose under MGL Chapter 40A and this bylaw.

- 1. Only towers not exceeding 150 feet in total tower height shall be allowed.
- 2. WECS towers shall be set back a distance equal to 1.25 times the Total Tower Height from
  - a. Any public road or private right of way
  - b. Any overhead utility lines, unless written permission is otherwise granted by the affected utility to reduce this requirement.
  - c. All front, side and rear property lines unless written permission is granted by abutters to reduce this requirement.

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3. Density of units: When more than one WECS may be installed on a lot there shall be a minimum of one acre allotted for each unit.
4. Color: WECS units shall be painted a non-reflective color that blends with sky and clouds.
5. Noise and electromagnetic interference: The WECS and associated equipment shall conform with the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality and Noise Regulations (310 CMR 7.10) as measured to the nearest lot line unless said abutter(s) give written permission otherwise. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference at the lot line unless said abutter(s) give written permission otherwise. After the installation, if neighbors can demonstrate that there is interference, the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference.
6. Lighting: The WECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). A temporary light used to inspect a WECS and associated equipment is permissible provided said light is used only for inspection purposes and not in operation for an extended period of time.
7. Access: All ground mounted electrical and control equipment shall be secured to prevent unauthorized access, and the tower shall be designed and installed so as not to provide step bolts or ladders readily accessible to the public for a minimum height of eight (8) feet above the ground.
8. Signs: All signs, other than manufacturers or installers identification, warning signs or owner identification on a WECS tower, or other structure visible from any public road shall be prohibited. All signs shall comply with Section 6-5.10 of Town of Essex bylaws.
9. Equipment shelters: All equipment necessary for monitoring and operation of the WECS should be contained within the turbine tower. If this is not feasible, ancillary equipment may be located outside of the tower, provided it is contained either within an underground vault or enclosed within a separate structure which shall be screened from view by year-round landscape or vegetated buffer.
10. Abandonment: A WECS that is out of service for a continuous 12-month period will be deemed to have been abandoned and the Building Inspector may issue a Notice of Abandonment to the owner. The owner shall have the right to respond to the Notice of Abandonment within 30 days of the receipt of the Notice. The Building Inspector shall withdraw the Notice and notify the owner of same if the owner provides information the demonstrates that the WECS has not been abandoned.

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11. Removal: If the WECS is determined to be abandoned, the owner shall remove the WECS equipment at the owner's sole expense within 90 days of the Notice of Abandonment. If the owner fails to remove the WECS the Building Inspector may pursue legal action to have the tower and equipment removed at the owner's expense.
12. Building Mounted Units: Any WECS unit mounted on a building, intended to generate power, is excluded from the provisions of 6-6.9(l) and may be granted a building permit if the following requirements are met:
  - a. The total height of the installed unit must not be more than 20% above the highest point of the building, and must keep in reasonable scale with the size of the building.
  - b. The color of the unit must blend with the building and the surroundings.
  - c. Noise and electromagnetic interference: The WECS and associated equipment shall conform with the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality and Noise Regulations (310 CMR 7.10) as measured to the nearest lot line unless said abutter(s) give written permission otherwise. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference at the lot line unless said abutter(s) give written permission otherwise. After the installation, if neighbors can demonstrate that there is interference, the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference
  - d. The WECS unit must be situated in a manner that minimizes shadow and flickering. The applicant has the burden of proving that this effect does not have an adverse impact on the neighboring or adjacent uses, through either site placement or mitigation.

**6-3.4.3 Application Requirements.**

Applications for special permits shall be filed with the planning board, and a copy of such application shall be filed by the applicant with the town clerk.

**6-3.4.4 Time Limits.**

Construction or operations must commence within two years from the date that a special permit is issued. Included within the specified time period is the time required to pursue or await the determination of an appeal.

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**6-3.4.5 Radio, Telecommunications, Cellular and Television Facilities,  
Including Free Standing Tower Type Structures.**

Installations of radio, telecommunications, cellular and television facilities, including free standing tower type structures, shall be permitted subject to the following requirements, and such other conditions as the special permit granting authority may impose under G.L.c.40A and this By-Law.

- a. Citizen band radio, VHF and short-wave (ham) radio towers for private use are excluded from the provisions of this section. Any change from such excluded use to a use not excluded by this section shall require a special permit.
- b. Only freestanding monopole towers (hereinafter referred to as "Towers") shall be allowed. No guyed Towers shall be permitted.
- c. No Tower shall be located closer than two (2) miles from any other Tower.
- d. No Tower shall exceed one hundred fifty (150) feet in height, as measured from the ground level at the base of the Tower, or ten (10) feet below the FAA height which requires permanent lighting, whichever height is lower.
- e. Towers shall be set back from the front, rear and side property lines a distance equal to at least one hundred twenty-five (125) percent of the height of the Tower.
- f. Towers shall be set back at least one hundred fifty (150) feet from the boundary of all wetlands, water bodies or areas designated under "Wetlands District Delineation" of this chapter.
- g. All Towers shall be located a minimum of five hundred (500) feet from the nearest residential structure. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.
- h. Accessory buildings shall be set back from the front, rear and side property lines a minimum of fifty (50) feet. Accessory buildings shall be of a common design and color. A maximum of ten (10) accessory buildings, each limited to four hundred (400) square feet in area and a maximum of ten (10) feet in height may be permitted per Tower. Multiple buildings shall be connected by a common wall.
- i. Lighting shall be limited to that needed for maintenance and emergencies.
- j. Where feasible, Towers shall be located within established wooded areas, with a minimum radius of at least one hundred fifty (150) feet measured from the base of the Tower to the edge of the woods. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.

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- k. All Towers and accessory buildings shall be removed by the record owner of the real property upon which it is located, within ninety (90) days of the abandonment or discontinuance of the specially permitted use.
- l. Each provision of this section shall be constructed so that if any provision is held invalid for any reason, the remaining sections shall continue in full force and effect.

### 6-3.5 Site Plan Review

#### **6-3.5.1 Purpose.**

The site plan review bylaw regulates the development of structures and sites permissible under present zoning. The review process considers the following site specific concerns and where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:

- a. The convenience and safety of vehicular and pedestrian movement within the site adjacent areas and roads.
- b. The protection of historic and natural environmental features on the site under review, and in the adjacent areas.
- c. To ensure the placement and aesthetics of the proposed development is safe, healthy, and in keeping with the community and neighborhood character so as to avoid substantial detriment to the community and neighborhood.

#### **6-3.5.2 Projects Requiring Site Plan Review.**

No building permit for the new construction, reconstruction, or relocation of any building with a ground floor footprint of greater than or equal to 2,500 square feet, or any change of use for any building or site, shall be given except in conformity with a site plan approval by the Planning Board. Required approval includes proposals for commercial, industrial, office, multifamily dwelling, residential development, municipal, utility, and recreational purposes.

#### **6-3.4.4 Criteria.**

- a. Traffic: Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.
- b. Parking: Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic control, including any provisions for delivery, pick-up, and location of trash receptacle.
- c. Drainage Control: Adequacy of methods for surface waters and ground water control. This includes minimizing soil erosion both during and after construction. The applicant shall prove that the proposed project meets the

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minimum standards for state storm water management as specified in the most current edition of the Storm water Management Policy Handbook.

- d. Existing Vegetation: Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees and undergrowth.
- e. Amenities: The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.
- f. Town Character: The (building setbacks) area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape, neighborhood, and the natural landscape, as far as practicable by minimizing any grade changes and vegetation and soil removal.
- g. Screening: Screening consisting of a solid fence, wall or evergreen planting, in all cases not less than six (6) feet in height or as specified by the Planning Board, shall be provided, erected and maintained wherever feasible to shield the business and light and industrial uses for any residential property.
- h. Hazardous Material: Plans for use, storage, or disposal of any hazardous materials as defined by MEP.
- i. Site and or project-specific criteria may be considered in addition to the items above.

#### **6-4 Non-Conforming Uses.**

##### **6-4.1 Conforming Use.**

No building or structure shall be erected, altered, enlarged, moved or used, and no land shall be used except in conformity to the provisions of this chapter. The provisions of this chapter shall apply equally to all uses of land and to all buildings and structures.

##### **6-4.2 Existing Non-Conforming Uses.**

Any building or structure or use of a building, structure, a building with its adjuncts, or premises existing on or immediately previous to June 7, 1972, even if not in conformity with its provisions, may be continued, maintained, and rebuilt if damaged or destroyed, provided that such rebuilding takes place within two years of such damage or destruction. If authorized by the planning board said structure or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the planning board that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Extension of the time limit for rebuilding as

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herein provided may be granted upon proper application to the planning board where in the opinion of the board a delay in the reconstruction is caused by circumstances beyond the control of the owner.

A nonconforming use shall be deemed to be extended throughout any part of a building which were manifestly arranged or designed for such use on June 7, 1972, but no such use shall be extended to occupy any land outside such building without a permit from the planning board.

#### **6-4.3 Preexisting Non-Conforming Uses.**

Any preexisting nonconforming use may be continued, maintained, and rebuilt if damaged or destroyed provided that such rebuilding takes place within two years of such damage or destruction. If authorized by the Planning Board said structure or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Planning Board that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Alteration, reconstruction, extension or structural change to a single family or two-family residential structure which doesn't increase the nonconforming nature of said structure shall be permitted as a matter of right and not subject to said finding by the Planning Board. A preexisting nonconforming use shall be deemed to be extended throughout any part of a building which was manifestly arranged or designed for such use at the time said use was rendered nonconforming by changes in ordinances or bylaws. Extension of the time limit for rebuilding as herein provided may be granted upon prior application to the Planning Board where in the opinion of the board a delay in the reconstruction is caused by circumstances beyond the control of the owner.

#### **6-4.4 Abandonment.**

A nonconforming use which has been abandoned or discontinued for a period of two consecutive years shall not be re-established, and any future use shall conform with all applicable provisions of this zoning bylaw, except in the case of land used for agriculture.

### **6-5 Supplementary Provisions.**

#### **6-5.1 Relationship of Building to Lot.**

Every building erected after June 7, 1972 shall be located on a lot as defined in subsection 6-3.23, and so located on the lot to provide safe and convenient access for fire protection and required off-street parking.

#### **6-5.2 Prohibited Use of Open Space.**

No part of a yard or open space required about any building according to this chapter shall be included as a part of the yard or open space required for any other building.

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**6-5.3 Supplementary Height Provision.**

The provisions of this chapter governing the height of buildings shall not apply to chimneys, cooling towers, elevator bulkheads, skylights, ventilators, and other necessary appurtenances carried above the roofs, nor stacks or spires if not used for human occupancy and not more than 25 percent of the ground floor area of the building, nor to observation towers, wind energy conversion systems WECS, television and radio towers and antennae, nor to churches or public or institutional buildings.

**6-5.4 Visibility at Intersections.**

On a corner lot no obstruction shall be erected, placed, planted or allowed to grow at or near an intersection of two streets or ways in such a manner as to materially impede the vision of those using the ways.

**6-5.5 Erection of More than One Principle Structure on a Lot.**

More than one structure which is housing a permitted or permissible use may be erected on a single lot provided that the yard and lot requirements of this chapter be met. Notwithstanding the preceding, a second structure which is a single family residential use may be erected on a single residential lot of at least 70,000 square feet in area which lot has had a residential structure in use for at least five years from the time of issuance of a permanent Certificate of Occupancy, and a third residential structure may be erected on a single lot of at least 110,000 square feet in area on a lot which has had two residential structures in use for at least five years from the time of issuance of a permanent Certificate of Occupancy, provided that they house in aggregate no more than three dwelling units, that lot area equal to that required for a single structure could be allotted to each structure, and that the dimensional requirement of Section 6-3.2 of this by-law be met.

Each building must have access either jointly or separately by means of a driveway which is entirely within the lots that it serves. Any driveway must conform to the requirements of Section 6-5.14 and shall not be within 10 feet of a side or rear lot line, nor pass within 20 feet of a residential structure that such driveway does not serve.

**6-5.6 Screening of Open Uses.**

An area outside of a completely enclosed building which is occupied by the following uses shall be completely screened, except for access, by means of a slightly fence, or densely planted screen of evergreen shrubs or trees at least six feet in height.

- a. Storage yards, where such occupancy is located within 50 feet of any residential property
- b. Vehicle and machinery storage yards.

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**6-5.7 Fencing of Swimming Pools Required.**

- a. Any person owning land in the Town on which there is situated a swimming pool, in-ground or above-ground, shall erect and maintain thereon an adequate enclosure either surrounding the property or pool area, sufficient to make the pool inaccessible to small children. Any such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground. All gates must be self-latching with latches placed at least four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children. Any such enclosure shall be located at least a distance of five (5) feet away from the pool. Fences located on above-ground pool decks shall not be considered as meeting the requirements of this section unless specifically approved by the inspector of buildings. Above-ground pools with a wall height of five (5) feet or more will be exempt from the fencing requirement, but a gate must be placed around the access to any such pool.
- b. Any and all doors opening directly into the enclosed pool area from the living area of the dwelling shall be equipped with an audible alarm which will sound for at least ten seconds when the door and/or screen door is opened.
- c. This section shall apply retroactively to all in-ground and above-ground pools within the Town. Pre-existing, lawfully installed pools may be exempt from the above requirements if enclosures are provided which offer the same degree of protection as above and are acceptable to the inspector of buildings.

**6-5.8 Unregistered and Inoperative Motor Vehicles, Junk Yards.**

- a. There shall be no unregistered or inoperative motor vehicles permitted in a front yard.
- b. No more than two operative unregistered motor vehicles shall be permitted in a back yard or side yard.
- c. No inoperative cars shall be allowed unless they are in an enclosed building or screened from public view.
- d. Junk yards, as defined in subsection 6-3.6 shall not be permitted in the town.

**6-5.9 Trailers.**

- a. No trailer shall be placed, moved, erected, or allowed to remain upon a lot for more than three months.
- b. The Board of Selectmen for cause may grant a license for a trailer for more than three months, but not to exceed one year.

**6-5.10 Influence of Vacant Lots on Adjoining Lots.**

Where dimensional or other requirements for a use of a lot are influenced by the land use on adjoining lots, any adjoining lot not occupied by a use specified in subsection

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6-6.1 of this chapter shall assume the character of the lot being influenced for purposes of determining the aforementioned requirements.

**6-5.11 Home Occupations**

Home occupations shall be allowed only if meeting all of the following:

- a. Not more than two persons who do not reside in the dwelling unit shall be engaged in such occupation.
- b. There shall be no change in the outside appearance of the building or premises, except as provided by paragraph 3 below, or other visible conduct of such home occupation other than one sign as permitted accessory use.
- c. No traffic shall be generated by such home occupation in greater volumes than would be normally expected in the immediate neighborhood. The determination of such a situation shall be decided by the enforcement officer, and any need for parking generated by conduct of such occupation shall be met off the street and other than in a front yard.
- d. All home businesses and occupations conducted on residential property including storage and display shall be conducted in an enclosed building, except for the display and sale of shellfish, garden or poultry produce, or small homemade handcrafted items.
- e. Not more than two (2) vehicles requiring registration as taxis, buses, or commercial vehicles shall be regularly parked outdoors on the premises.
- f. No commercial vehicle with registered gross weights in excess of 17,000 lbs. shall be regularly parked outdoors on the premises.
- g. No more than three parking spaces, in addition to those required for residential use are allowed for the home occupation.
- h. No equipment or process shall be used which creates offensive light, noise, vibration, smoke, dust, odors, fumes, heat or glare detectable to the normal senses off the premises.
- i. No equipment or process shall be used which creates interference in household devices off the premises.

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**6-6 Off-Street Parking and Loading**

**6-6.1 Off-Street Parking Requirements**

Off-street parking by means of open air spaces each having an area not less than 200 square feet, plus necessary maneuvering space, or by garage space, shall be provided and maintained in accordance with the following table;

**6-6.1.1 Table of Parking Requirements.**

Type of Use	Minimum Parking Requirement
RESIDENTIAL STRUCTURES	One parking space for each dwelling unit.
MULTI-FAMILY DWELLING AND OR APARTMENT USE	One and one half parking spaces for each bedroom.
MOTELS AND HOTELS	One parking space for each sleeping unit.
BOARDING AND LODGING HOUSES	One parking space for each two guestroom.
HOSPITALS, NURSING HOMES	One parking space for each 500 square feet or major fraction thereof of floor area, exclusive of cellar.
AUDITORIUMS, THEATERS, ASSEMBLY HALLS, FUNERAL HOMES, CHURCHES.	One parking space for each 100 square feet of assembly space.
FRATERNITIES, PRIVATE CLUBS AND LODGES	One parking space for each five members.
RETAIL STORE	One parking space for each 150 square feet, or major fraction thereof of first floor retail space; and one parking space for each 400 square feet of retail space or major fraction thereof for each floor above the first floor.
RESTAURANTS	One parking space for each 100 square feet or major fraction thereof of floor area not used for storage or food preparation.
OFFICES, PROFESSIONAL AND PUBLIC BUILDINGS	One parking space for each 300 square feet or major fraction thereof of floor area, exclusive of cellar.
BUSINESS, MANUFACTURING AND INDUSTRIAL BUILDINGS NOT CATERING TO RETAIL TRADE	One parking space for each 500 square feet of floor area or major fraction thereof

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### 6-6.2 Parking Lots

When a required off-street parking space is in the form of a parking lot or other open air parking space, it shall not be located within five feet of any lot line or, if located within a front yard, within thirty feet of the street line.

Any such parking shall be located not more than 200 feet from the building to which it is assigned.

### 6-6.3 Driveways.

- a. No person shall hot top or construct a driveway or entrance from the traveled portion or from the curb of any public street or way for purpose of passing to or from abutting property, nor cut any curbing with out applying for and receiving a permit from the Department of Public Works, under conditions and restrictions the D.P.W commissioner deem proper.
- b. Common Driveways. Access driveways may be shared by no more than three lots with approved frontage on a public way. No building permits will be issued unless the following has been complied with:
  1. Curb cut approval has been obtained in accordance with a. above.
  2. A common driveway shall lie entirely within the lots to which it provides access, and shall comply with the minimum standards stated in c. below.
  3. No building permit shall be issued for any lot with access by a common driveway until an easement running with the land in perpetuity providing for maintenance and snow removal is executed by the owner(s) of the lots sharing the driveway, recorded at the Registry of Deeds, and evidence thereof is submitted to the Building inspector.
  4. Common driveways may never be used to satisfy zoning frontage requirements.
  5. Permanent signs shall be installed indicating the assigned street address of all lots. Street signs shall be placed within 10 feet of the intersections with the public way and individual driveways served by the driveway.
- c. Minimum driveway standards for new common driveways.
  1. Driveway access to the dwelling or other building site shall be indicated on the plans submitted to the Building inspector at the time of Building permit application.
  2. Driveways shall provide both access and turnaround for vehicles including moving vans, ambulance, fire and police vehicles without substantial hardship in construction.
  3. Such a driveway shall have:

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- A. Width of at least 12 feet, but shall be cleared to a width of at least 14 feet, applicable to the portion used by more than one lot.
- B. Centerline radius of at least 60 feet, Maximum grade of 10 percent.
- C. Adequate clearing at the intersection of the public way to provide a minimum of 100 foot sight lines.

## **6-7 Signs**

### **6-7.1 Signs and Billboards.**

#### **6-7.1.1. Billboards.**

Billboards shall not be permitted in the town of Essex.

#### **6-7.1.2. Public Safety Provisions.**

In the interest of public safety, the following signs and devices are not permitted;

- a. Signs with moving parts or flashing lights which suggest motion.
- b. Flashing illuminated signs.
- c. Noisemaking signs.
- d. Signs so located or colored or illuminated in any manner to attract attention from or obscure a traffic light or sign or to reduce in anyway its visibility and effect.
- e. Signs within view of a public street or highway so placed in such manner as to obstruct clear vision in any direction.
- f. Any device illuminating a sign which directs light toward a public way in such a manner as to cast its beams into the eyes of the oncoming motorist or pedestrians.

#### **6-7.1.3. Nonconforming Signs.**

- a. All signs in violation of this chapter, except as to size and number limitations, shall be removed or made conforming within one year from June 7, 1972.
- b. Any change of use or ownership shall required conformity to all sign regulations in this chapter within 30 days.
- c. Signs required for public safety shall not be included in the total sign area.

#### **6-7.1.4. Measurement.**

- 1. Area limitations refer to the total sign area.
- 2. In computing area only one side of a double-faced sign is to be included. Signs within a building are not included.

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3. Signs shall comply with the following dimensional requirements for each land use:

Type of Use	Sign Dimensions
Residential (1 to 2 family)	Maximum 6 square feet in area.
Residential (multi-family / apartment)	Maximum 6 square feet in area.
Non-residential	Maximum total area of 32 square feet. Internally illuminated signs shall not exceed 20 square feet.

**6-8 Administration.**

**6-8.1 Enforcement.**

The zoning bylaws shall be enforced by the Building Inspector.

**6-8.2 Building Permit.**

**6-8.2.1. Requirements.**

No building or structure shall be erected, added to, moved, or structurally altered without a permit in writing from the building inspector. No building permit shall be issued until the planning board shall have approved the site plans showing the buildings to be placed thereon and the proposed use there for, except in the case of a variance from the terms of this chapter by the board of appeals in accordance with the provisions of Chapter 40A, Massachusetts General Laws.

**6-8.2.2. Application for Building Permit.**

All applications for building permits shall be accompanied by two copies of a site plan drawn to a suitable scale and containing the following information:

1. Names and address of owner and applicant.
2. Date.
3. Graphic scale and north arrow.
4. The actual shape, size, height, and location of the lot to be built upon and its relation to abutting streets.
5. The actual shape, size, height, and location of any buildings to be erected, altered or removed.
6. The exact size and location of yard and buildings already existing.
7. Required off street parking and loading space, existing or proposed.
8. Location of any screening required by this chapter.

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9. Every application shall be signed by the owner or lessee of the land.
10. Any other information which may be required by the planning board or the building inspector in order that they may determine whether the provisions of this chapter are being complied with.

### 6-8.3 Certificate of Occupancy.

#### **6-8.3.1 Requirements.**

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof created, erected, enlarged, converted, or wholly or partly altered or enlarged in its use or structure after June 7, 1972 until a certificate of occupancy shall have been issued by the Building Inspector and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this chapter.

#### **6-8.3.2 Temporary Certificate of Occupancy.**

Proper endorsement by the building inspector upon the original building permit may constitute a temporary certificate of occupancy for a period of six months during construction or alterations for partial occupancy of a building pending its completion provided that such endorsement may require such conditions and safeguards as will protect the safety of the occupants and the public.

### 6-8.4 Records.

The Building Inspector shall maintain a public record of all such plans, permits and certificates of occupancy, and shall furnish copies of such permits and certificates to any person having a proprietary or tenancy interest in any building or premises affected. The planning board shall maintain and keep an up-to-date map and other records indicating the location in which plans have been approved in accordance with the provisions of this chapter and variances granted by the board of appeals in accordance with the provisions of this chapter.

### 6-8.5 Time Period.

Construction or operation must commence within six months after a building permit is issued. If construction or operations has not begun within the time period required or if construction is not continuing towards completion in as continuous and expeditious a manner as is reasonable, after the required time period the construction or operations must conform to any amendment to the ordinances or bylaws.

### 6-8.6 Violations.

If the Building Inspector is of the opinion that this chapter is being violated, he shall take immediate action to enforce its provisions by such means as he deems appropriate.

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**6-8.7 Penalty.**

Any person who shall violate any provision of this chapter shall be subject to a fine not to exceed \$20.00 for each day such violation exists.

**6-9 Board of Appeals.**

**6-9.1 Membership.**

The Board of Appeals shall consist of three members and two alternates who shall be appointed by the board of selectmen as provided in Chapter 40A of Mass. General Laws. Each member and each alternate shall have been a resident of the town for at least five consecutive years prior to his/her appointment.

Appeals Board members and alternates shall be appointed prior to February 1 of each year.

The term of office for members shall be three years. A member may be appointed to succeed himself, but may serve no more than two consecutive terms. A partial term shall not be counted as a term.

The term of office for alternates shall be two years. Alternates may be appointed to succeed himself without limit. An alternate term shall not be counted as a member term.

**6-9.2 Organization.**

The board shall annually elect a chairman and vice-chairman from its membership. The chairman shall preside at all meetings. The board shall appoint a secretary and shall adopt rules to govern its proceedings in accordance with this chapter and the provisions of Chapter 40A of the General Laws.

**6-9.3 Powers and Duties.**

The board of appeals shall have the following powers and duties;

**6-9.3.1 Administrative Review.**

To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the planning board or the building inspector or other administrative official in violation of the provisions of this chapter or of the provisions of Chapter 40A of the Massachusetts General Laws.

**6-9.3.2 Variances.**

To authorize upon appeal in specific cases a variance from the provisions of this chapter. Such variance may be granted only in accordance with the provisions of Chapter 40A, Section 15, Massachusetts General Laws, after application, notice

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and hearing as required by state statute. In granting a variance the board shall make findings that the reasons set forth in the application therefore comply with the statute permitting variance.

In granting by unanimous vote any variance, the board of appeals may prescribe appropriate conditions and safeguards in conformity with the provisions of this chapter regarding the location, character, fencing, screening, landscaping or other features as it may deem advisable in furtherance of the intent and purpose of this chapter and may require posting of bonds to insure performance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

#### **6-9.4 Authority of the Board of Appeals.**

The board of appeals may in conformity with the provisions of Chapter 40A of the General Laws, reverse or affirm, in whole or in part, or may modify any orders or decisions of any town officer and may make sure order or decision as ought to be made, and to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

#### **6-9.5 Appeal Procedure.**

In all cases, a person aggrieved by any decision of the planning board or the building inspector shall commence his appeal within 30 days after receipt of a written decision of the planning board or building inspector. He shall file his appeal on the forms prescribed therefore by the board of appeal, and shall specifically set forth his grounds for appeal in the application.

#### **6-9.6 Public Hearing and Fees.**

##### **6-9.6.1 Hearing.**

Before taking action on an appeal, the board of appeals shall hold a public hearing, after publication of notice of such hearing once in each of the two successive weeks, the last publication to be at least 14 days prior to the date of hearing in a newspaper of local circulation.

##### **6-9.6.2 Costs.**

All costs incurred by the board of appeals shall be paid by the applicant prior to issuing a decision; the board of appeals shall notify by mail the owners of all abutting property and of other property considered by the board to be reasonably affected, of the nature of the appeal and of the time and place of the hearing thereon.

#### **6-9.7 Failure to Notify shall not Invalidate Action.**

Failure of any property owners to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the board of appeals, except in

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cases of manifest error, negligence or fraud. For the purposes of this section, the owners of property shall be considered to be parties listed by the assessors of taxes for the town as those against whom taxes are assessed.

**6-9.8 Notification of Enforcing Officer and Planning Board.**

Following the filing of an appeal, the board of appeals shall forthwith notify the building inspector and the planning board, and the appeal shall be in order for hearing at the next meeting of the board of appeals following by at least 21 days the mailing of notices. The planning board, if it deems necessary, may be represented at the hearing.

**6-9.9 Repeated Applications for Variance.**

If the board of appeals shall deny an application for variance, reconsideration thereof may be had in accordance with the provisions of Chapter 40A, Section 16, Massachusetts General Laws.

**6-9.10 Notification of Variance.**

The board of appeals shall give the planning board, the board of selectmen and the building inspector written notice of its action with respect to all application for variance.

**6-10 Overlay Districts**

**6-10.1 Wetlands Overlay District.**

**6-10.1.1 Purpose.**

The purpose of the wetlands district is to:

- a. Protect the public health and safety of persons and property against the hazards of flood water inundation.
- b. Preserve and maintain the water table and water recharge areas within the town so as to preserve and protect potential water supplies for the public health and safety.
- c. Protect the community from costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, or in areas subject to floods.
- d. Conserve natural conditions, wildlife and open spaces for education, recreation and general welfare of the public.

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**6-10.1.2 Wetlands District Delineation.**

- a. The provisions applicable to the wetland district shall overlay other zoning districts. Any uses permitted in the portions of the district so overlaid shall be permitted, subject to all the provisions of this section.
- b. The boundaries of each wetland district are shown on the set of maps accompanying this bylaw prepared by the Autometrics Division of the Raytheon Corp., Wayland, Massachusetts, dated April, 1974(scale: one inch equals 600 feet) which are on file with the clerk of the town of Essex.
- c. The variance categories of wetlands comprising wetland districts are, lake, pond, river, fresh marsh, deep fresh marsh, shrub swamp, wooded swamp, barrier beach, tidal flat, salt marsh and estuary.

**6-10.1.3 Wetland Use Regulations.**

- a. Permitted Uses. The following uses are exempt from provisions of this by-law, and the only ones permitted as a matter of right and only insofar as not otherwise prohibited by other zoning bylaws and only insofar as these uses comply with provisions under Massachusetts General Law, Chapter 131, Section 40, and Title 5 of the Commonwealth of Massachusetts Sanitary Code.
  1. Conservation area for water, water supply, plants and wildlife and dams and management shelters necessary for achieving this purpose.
  2. Outdoor recreation including play and sporting areas, nature study, boating, fishing and hunting (where legally permitted), footpaths and any non-commercial recreational use.
  3. Forestry, raising of livestock, agriculture, aquiculture, nurseries, truck gardening, growing and harvesting of crops, fish and shellfish.
  4. Maintenance and repair of existing structures, roadways and utilities.
  5. Temporary non-residential structures used in connection with fishing or growing, harvesting, storage or sale of crops, fish and shellfish, raised on the premises.
  6. Accessory uses such as flower and vegetable gardens, lawn, fences, flagpoles and non-commercial signs when and as permitted in the underlying district.
  7. Dams, excavations, dredging, filling, or grading consistent with the purposes of this section to create or maintain ponds, pools, or other changes in water courses for swimming, fishing or other recreation uses, agricultural uses, aquiculture uses, scenic feature, or drain improvement, not otherwise prohibited.

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8. Duck blinds, private boathouses and landings.
  9. All existing non-commercial uses of land prior to the adoption of this bylaw and within the jurisdiction of this bylaw may remain. be maintained, sold, and operated to its fullest capacity by the owner provided that no action is taken to encroach further on the wetlands.
  10. Dredging required to maintain existing marine operations, not otherwise prohibited.
  11. Dredging, enlarging or draining for mosquito or flood control authorized by public agency.
- b. Restrictions. Except as provided under this chapter, none of the following shall be permitted in a wetland district:
1. Land fill or dumping.
  2. Construction of buildings or other structures.
  3. Dredging.
  4. Permanent storage of materials or equipment.

**6-10.1.4 Coverage.**

All provisions of the wetland district bylaw shall apply to land within the bank or boundary of any stream, river, water course or any wetland shown on the wetlands map of the Town of Essex.

**6-10.1.5 Appeals and Special Permits.**

- a. If there is a question as to the applicability or coverage of the wetland protection district and it is proven to the satisfaction of the Planning Board that the land is not generally wet or not unsuitable because of the hydrological topographic conditions for use which would otherwise be prohibited by this section and the planning board determines that the use of such land for such use will not interfere with the general purposes for which the district has been established and will not be detrimental to the public health, safety and/or welfare, the planning board may grant a special permit for such use which will comply in all respects with all other provisions of the underlying district or districts within which the land is located provided that any and all necessary permits, orders or approvals required by local, state or federal laws are obtained.
- b. Appeals on variances will be handled according to procedures setout in this chapter.
- c. The board of appeals and planning board prior to acting on any appeals or special permits covering the wetland district shall refer each question to the conservation commission, and the board of health and shall not act until these

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agencies have reported their recommendation or 35 days have elapsed after such referral and no report has been received, whichever shall first occur.

- d. The planning board or board of appeals in determining whether or not land within the boundaries of the wetland district is generally wet should use the following criteria:
  1. **LAKES.** Lakes are generally separated from ponds on the basis of size and vegetation. They have depth and area sufficient for developing wave action and thereby lack emergent and floating vegetation.
  2. **PONDS.** Ponds are relatively small shallow bodies of standing water in which relatively quiet water and extensive plant occupancy are common characteristics.
  3. **RIVERS.** Rivers are categorized in the "lotic" or running waters environment and differ from lakes in many ways, but primarily in terms of width, depth and singular direction of water flow.
  4. **DEEP FRESH MARSH.** This type has considerable open water interspersed with patches of floating or emergent vegetation. Water depth ranges from six inches to three feet through most of the growing season. It is too wet to support woody vegetation.
  5. **FRESH MARSH.** A place where the soil is usually waterlogged or covered up to six inches in depth during the growing season and characterized by emergent vegetation such as reeds, rushes, and cattails. There is usually little open water or woody vegetation present.
  6. **SHRUB SWAMP.** This type has variable water depths up to six inches during the growing season, and is characterized by such woody species as alder, buttonbush, dogwood and willows.
  7. **WOODED SWAMP.** This type has variable water depths (frequently a foot or more) and a wide variety of herbaceous and mature woody vegetation characterized primarily by red maple, black spruce, larch, hemlock and white cedar.
  8. **BARRIER BEACH.** This is not a rigorous wetland category, but describes a resource area which serves as a natural defense for the marshes behind it. The more recent and smaller barrier beaches are usually devoid of vegetation and pronounced physiographic features while the older and larger beaches have very well developed dunes, grass and shrub vegetation and numerous fresh water lenses.
  9. **TIDAL FLAT.** This type is frequently found in shallow bays and estuaries and offshore from sandy beaches. These areas are generally devoid of vegetation and have either sand, mud or rock bottoms. Of all the types, these are the most influenced by the tidal range and hence time of

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photography. Shallow depths, wave breakers and symbols on USGS sheets aid in the delineation of these areas.

10. SALT MARSH. The following general classes of marine environment are in this group:
  - a. Salt meadows characterized by a few inches of water at high tide;
  - b. Irregularly flooded salt marsh.
  - c. Those areas covered with a few inches of water during the highest monthly tides and regularly flooded salt marshes; and
  - d. Those areas covered by up to a foot of water at high tide.
11. ESTUARY. A coastal reach, subject to tidal influence, through which a river enters marine waters and in which fresh and saltwater become mixed. Estuaries vary greatly in size, shape and border environment, but may serve as ports or harbors and are, therefore, characterized by and subject to the influence of dense cultural development. Where Estuaries are undisturbed by man, they are often multi-channeled, bordered by abundant vegetation, and richly inhabited by aquatic life. The Boundaries of this wetland category are normally included as part of an open water border, e.g. the shore of a bay or a river bank.

## 6-10.2 Flood Plain Overlay District.

### 6-10.2.1 Establishment.

The Flood Plain District is established, effective July 17, 1986, as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107, "Flood Resistant Construction")
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)
- c. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- d. Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- e. Minimum Requirements for the Subsurface Disposal of Sanitary Sewerage, DEP (currently 310 CMR 15, Title 5)

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Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30, V, and V1-30 on the Essex Flood Insurance Rate Maps (FIRM) dated July 17, 1986 and revised July 23, 1998 and July 2, 1992, and as revised by letter(s) of map amendment, and Flood Insurance study dated July 17, 1986, on file with the Town Clerk, Planning Board and Building Inspector. The Essex Flood Insurance Rate Maps (FIRM) and the accompanying Essex Flood Insurance Study are incorporated herein by reference.

**6-10.2.2 Development Regulations.**

The following requirements apply in the Flood Plain District:

- a. UN-NUMBERED ZONE: Within any unnumbered Zone A, since the base flood elevation is not provided on the Flood Rate Insurance Map (FIRM), the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood-proofing requirements, as appropriate, of the State Building Code. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is lesser, within unnumbered Zone A.
- b. ZONE V: Within areas designated as coastal high hazard areas (Zone V), all development shall be located landward of the reach of mean high tide, since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash.
- c. Zone V1-30: Man-made alteration of sand dunes within Zones V1-30, VE and V which would increase potential flooding damage are prohibited.
- d. SUBDIVISIONS: All subdivision proposals must be designed to assure that
  1. Such proposals minimize flood damage
  2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  3. Adequate drainage is provided to reduce exposure to flood hazards.

**6-10.2.3 Notification of Watercourse Alteration**

In a riverine situation, upon submission of the application to the planning Board, evidence shall be provided that the following entities have been notified in writing, including a copy of the application and plans, of a pending zoning permit to alter or relocate a watercourse:

- a. The adjacent communities of Gloucester, Hamilton, Ipswich and Manchester by the Sea.
- b. National Floor Insurance Program (NFIP) State Coordinator  
Massachusetts Dept. of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104

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- c. NFIP Program Specialist  
FEMA Region 1  
99 High Street, 6th Floor  
Boston, MA 02110

**6-10.3 Water Resource Protection Overlay District.**

**6-10.3.1 Purpose.**

The purpose of the Water Resource Protection District is to protect the public health, safety and welfare, by preserving and maintaining the existing and potential groundwater supply, groundwater recharge areas, and municipal wellfields providing water supply for the Town of Essex.

**6-10.3.2 Establishment and Delineation of Water Resource Protection District.**

For the purpose of this Bylaw there is hereby established a Water Protection District, which comprises all areas within Essex which are within the drainage basins of either Chebacco Lake or Cedar Swamp, as illustrated on the map "Water Resource Protection District" dated December 15, 1990, on file in the Office of the Town Clerk, and hereby made a part of this Bylaw.

Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should be properly located. At the request of the owner(s) the town may engage a Registered Land Surveyor or Professional Engineer to determine more accurately the location and extent of the drainage basins, and shall charge the owner(s) for the cost of the investigation.

**6-10.3.3 Use Regulations.**

The Water Resource Protection District shall overlay other zoning districts established in this Bylaw. Land in a Water Resource Protection District may be used for any use otherwise permitted at that location, subject to the following regulations:

- a. The following activities are prohibited within the Water Resource Protection District:
  - 1. Disposal of solid waste, other than brush and stumps;
  - 2. The operation of a solid waste transfer station;
  - 3. Storage of fuel oil, gasoline, or other refined petroleum products, except within buildings in which they are used or above ground, provided the storage and its containment is designed to contain spills and prevent any flow of petroleum product to floor drains or exposed soils;

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4. The disposal of liquid or leachable wastes, except sanitary sewage waste disposal systems;
  5. Commercial or industrial uses which discharge process waste water on site;
  6. Storage of road salt or other deicing chemicals except in confined and covered areas;
  7. Dumping of snow containing salt or other deicing chemicals which is brought in from outside the district;
  8. Mining of land except as necessary and incidental to a permitted use;
  9. The treatment, storage, discharge, or disposal of hazardous materials;
  10. Automobile or motor vehicle service, washing, or repair shops, used parts, and salvage yards;
  11. Junk yards;
  12. Dry cleaning or laundry businesses;
  13. Residential development which renders impervious more than 15percent of a building lot (including the portion of any new street abutting the lot) or which has a lot area of less than 40,000 square feet (excluding wetlands) for each dwelling unit;
  14. Earth removal to within 4 feet of historical high groundwater unless regarded to a higher level within 45 days, except for excavations for building foundations or utility works;
  15. Storage of animal manure unless covered and contained in accordance with US Soil Conservation Service specifications;
  16. Storage of commercial fertilizers and soil conditioners unless within a structure designed to prevent escape of leachate and runoff.
- b. The following uses are permitted by Special Permit, subject to the approval of the Special Permit Granting Authority under such conditions as they may require and also subject to section a. above, to be approved upon finding that the proposal as planned will not have adverse impact upon ground or surface water quality within the Water Resource Protection District, and that safeguards will be provided to adequately reduce risk of accidental water quality damage:
1. Except for single-family dwellings, on site sewage disposal systems having an estimated sewage flow exceeding 60 gallons per day per 10,000square feet lot area;

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2. Regardless of lot size, any on-site sewage disposal having more than 15,000 gallons per day of sewage;
  3. Any use having on-site disposal of industrial waste, as determined under Title 5 of the State Environmental Code: 310 CMR 15.00;
  4. The application of pesticides for non-domestic or non-agricultural uses provided that all necessary precautions shall be taken to prevent hazardous concentrations of pesticides in the water and on the land within the Water Resource Protection District as a result of such application (Such precautions include, but are not limited to, erosion control techniques, the control of runoff water or the use of pesticides having low solubility in water, the prevention of volatilization and re-deposition of pesticides and the lateral displacement, i.e. wind drift, of pesticides);
  5. The application of fertilizers for non-domestic or non-agricultural uses provided that such application shall be made in such a manner as to minimize adverse impacts on surface and groundwater due to nutrient transport and deposition and sedimentation;
  6. Those commercial and industrial activities otherwise permitted, with a documented procedure to prevent compaction and siltation, loss of recharge, exfiltration for sewer pipes and contamination by oil, chemicals, nutrients, or the generation of hazardous waste or storage of sludge and septage, except as allowed under DEP Wellhead Regulations (310 CMR 22.21) etc.;
  7. Rendering impervious more than 2500 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.
- c. Boundary Lots. For the purpose of this Bylaw, any lot which has one third or more of its total area falling within the Water Resource Protection District must meet all the requirements of the Water Resource Protection District.