

SECTION 1 AUTHORITY, PURPOSE AND DEFINITIONS

SECTION 1.1 AUTHORITY
SECTION 1.2 PURPOSE
SECTION 1.3 DEFINITIONS

1.1 AUTHORITY

The Town of Wilbraham hereby enacts this Zoning By-Law pursuant to and under the authority of the Zoning Act, Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended.

1.2 PURPOSE

The purposes of this By-Law are:

- 1.2.1** To promote the health, safety, convenience and general welfare of the present and future inhabitants of the Town of Wilbraham;
- 1.2.2** To protect the community and the town's natural resources;
- 1.2.3** To secure safety from fire, flood, pollution, overcrowding and other dangers by regulating the location and use of structures and the open spaces around them;
- 1.2.4** To lessen congestion in the streets;
- 1.2.5** To permit and promote planned, orderly growth;
- 1.2.6** To conserve the value of land and buildings;
- 1.2.7** To facilitate the adequate provision of public services;
- 1.2.8** To preserve and increase the town's amenities;
- 1.2.9** To reconcile the need and desire of Wilbraham's diverse and growing population for adequate housing with the preservation of natural resources and the prevention of overcrowding of land and undue concentration of population;
- 1.2.10** To encourage compatible development and the most appropriate use of the town's land and resources;
- 1.2.11** To provide for the expansion of suitable, economically and environmentally sound business and industry within the town in order to diversify the local economy and the tax base;
- 1.2.12** To establish a fair and reasonable set of standards for evaluating each development proposal impartially, on its own merit;
- 1.2.13** To develop rational land development alternatives through an equitable and prescribed negotiation process so as to establish a balanced land use pattern that is responsive to the needs of property owners while minimizing the adverse effects of development; and
- 1.2.14** To provide the town with the full protection authorized by Chapter 40A of the General Laws as amended.

1.3 DEFINITIONS

[Note: Diagrams are for convenience of reference only and do not constitute part of the adopted By-Law.]

For the purpose of this By-Law, the following words shall have the meanings given hereinafter: where appropriate the singular shall include the plural and the plural the singular; the word "occupied" includes "designed, arranged, or intended to be occupied," and the word "used" includes "designed, arranged, or intended to be used."

Accessory Apartment.* A second dwelling unit that is contained within or added to the structure of a single-family dwelling for use as a separate, independently functioning housekeeping unit, complete with its own means of egress, sleeping, cooking and sanitary facilities. The second dwelling unit is an accessory use to the principal single-family dwelling unit.

Accessory Building or Structure.* A building or structure customarily incidental and subordinate in extent and purpose, and substantially smaller in size, to a principal building on the same lot or on an adjoining lot under the same ownership, and not attached to the principal building by any covered or roofed structure.

Accessory Use. The use of a building or premises which is customarily incidental and subordinate to a principal permitted use.

Adult Care Facilities.* Any of the various types of development designed to provide some form of assisted living to elderly adults, the disabled, or chronically ill. This includes Adult Day Care Facilities, Assisted Living Residences, Congregate Living Facilities, Continuing Care Retirement Communities, Custodial Care Facilities, Elderly Housing, Group Care Facilities, Hospices, Independent Living Facilities, Long-term Care Facilities, Nursing Homes and similar developments, as well as medical offices and other ancillary facilities appropriate to the principal use.

Adult Day Care.* A facility offering daytime care for elderly adults or the disabled, providing health care and assessment, personal care, social programs, recreational activities, meals and transportation, but not providing overnight or residential accommodations.

Alteration. A change in or addition to a structure.

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

Assisted Living Residence.* A facility as defined by M.G.L. Chapter 19D, providing room and board, personal care services, and assistance with daily living activities. Assisted living facilities are for elderly and handicapped individuals who do not require 24-hour skilled nursing care. Assisted living residences are required to be certified by the Executive Office of Elder Affairs.

Automated Teller Machine (ATM) Kiosk.* A small, free standing building or structure, by whatever name, providing fully automated walk up and/or drive through banking services accessible to banking customers by means of a coded plastic card or similar device and including limited electronic banking transactions, such as cash deposits, withdrawals and balance inquiries.

Automatic Amusement Device.* Any mechanical or electronic automatic amusement device, whether coin-operated or not, as defined under but not limited to MGL Chapter 140, Section 177A, including video games and mechanical devices for use as game, entertainment or amusement; but not including private, in-home use of such devices, and not including jukeboxes, pool or billiard tables and bowling alleys.

Automatic Amusement Facility, Family-Oriented.* An establishment which offers for public use or private membership use more than six (6) automatic amusement devices on premises not serving or selling alcoholic beverages.

Automatic Amusement Facility, General.* An establishment which offers for public use or private membership use more than six (6) automatic amusement devices on premises serving or selling alcoholic beverages.

Bed and Breakfast Home.* An owner-occupied, single-family residence with guest rooms where overnight lodging and breakfast are provided for compensation on a short-term basis. In a bed and breakfast no meals other than breakfast shall be served to overnight guests. The bed and breakfast is an accessory use to the principal residence.

Body Art Establishment.* A facility, whether public or private, that has been granted a permit from the Board of Health of the Town of Wilbraham, where the practice of physical body adornment is performed, whether or not for profit, including, but not limited to, the techniques of body piercing, tattooing, cosmetic tattooing, branding and scarification in accordance with regulations promulgated by the Wilbraham Board of Health.

Building. A combination of any materials forming a permanent, rigid, roofed enclosure intended for the shelter of persons, animals, or property, including any part of a building and porches and accessory buildings attached thereto.

- Building Coverage.** The percentage which the aggregate area of all buildings on the lot bears to the area of the lot.
- Building Envelope.*** The area within the clearing envelope which demises the intended footprint of the principal structure.
- Building Height.*** The vertical distance measured from the mean elevation of the finished grade within ten (10) feet of the walls of the building to the highest point of any roof or parapet; except that in the Hillside and Ridgeline District, said vertical distance is measured from the mean elevation at the foundation perimeter of the natural grade existing prior to construction grading or filling.
- Building Setback Line.** A line parallel to the street at a distance equal to the required front yard or at a greater distance when otherwise legally established by the municipality or by private covenant.
- Child Care Facility.*** Centers which provide day care or school age programs as defined in Section 9 of Chapter 28A of the General Laws of the Commonwealth of Massachusetts.
- Clearing Envelope.*** The area within a lot which demises the area to be developed including structures, driveway, lawns, septic system and well as applicable. The clearing envelope represents the area where trees and natural vegetation may be cut down and removed. The balance of the lot beyond the clearing envelope is to remain in its undisturbed state. The limit of clearing is not intended to follow building setback requirements and will generally be a smaller area. The limit of clearing will normally not include wetland areas and their buffer zone without the approval of the Conservation Commission.
- Co-location.*** The use of a single tower mount on the ground by more than one wireless communications facility carrier (vertical co-location) and/or several antenna mounts on an existing building or structure by more than one carrier.
- Congregate Living Facility.*** A non-institutional, shared living facility providing housing and service needs to functionally impaired or socially isolated elders who are otherwise in good health, can maintain a semi-independent life style, and do not require constant supervision or intensive health care. Each resident shall have an independent bedroom and bathroom, and may have a separate living room, kitchen, or dining area, but may share living and dining facilities with other residents, such as a common dining facility.
- Continuing Care Retirement Facility.*** A facility that includes combinations of independent living, congregate living, assisted living and nursing home or long-term care within a single development, offering lifetime housing and a variety of health care, social, and recreational services.

Corner Lot. A lot with frontage on two (2) streets. A corner lot is considered to have two (2) front yards, two (2) side yards, and no rear yard.

Custodial Care Facility.* A facility that provides nonmedical care addressing the individual's personal needs, such as bathing, dressing, and eating. Such care may be provided by people without professional medical skills or training.

Dwelling. A building occupied as a residence by one or two families.

Dwelling Unit. One or more rooms providing complete facilities for living, sleeping, cooking, and bathing for the exclusive use of the occupants of the dwelling unit.

Elderly Housing.* Any residential premises available for lease by elderly or disabled persons which is financed or subsidized in whole or in part by state or federal housing programs established primarily to furnish housing rather than housing and personal services, and which was never licensed under M.G.L. Chapter 111.

Family. Any number of individuals related by blood, marriage, or adoption, living and cooking together as a single housekeeping unit, provided that a group of not more than four persons living and cooking together, but not necessarily related by blood or marriage each to the other, may be considered a family.

Family Day Care Home.* A private home whose resident family receives children under seven years of age (or under sixteen years of age if such children have special needs) for temporary custody and care during part of the day on a regular basis; provided that the total number of children shall not exceed six (6), including participating children living in the residence. Family day care home is an accessory use to the principal use as a residence.

Farm.* A parcel or parcels of land under one ownership or lease, totaling more than five (5) acres, that is used primarily for the commercial, soil-dependent cultivation of agricultural crop production or the raising of livestock.

Frontage.* The continuous unbroken distance between the sidelines of a Lot measured along the street line at the common boundary between that portion of a "Lot" in the Town of Wilbraham and the right of way of a "Street" as defined hereinafter in this section, or in the case of a Corner Lot, the continuous unbroken distance between the side lot line and the intersecting street line (or the midpoint of the corner radius) measured on each street; and also provided that:

1. there are both legal rights of access and potential safe year-round practical vehicular access between the street line and a potential building site, that is unimpeded by:
 - A. wetlands, unless a wetlands crossing has been approved by the Wilbraham Conservation Commission; or
 - B. topography which prevents a proposed driveway from meeting the curb-cut requirements of the Town of Wilbraham; or
 - C. other natural barriers;
2. access from the street line extended inward to the setback line is provided with a minimum lot width of not less than seventy-five (75%) of the required minimum lot frontage distance measured horizontally along lines which are parallel to or concentric with the street line; and
3. the street has been determined by the Planning Board to provide adequate access to the lot under the provisions of the Subdivision Control Law and the Town of Wilbraham Subdivision Regulations.

For zoning purposes, however, on the turning radius of a cul-de-sac, lot frontage may be considered as the distance between side lot lines measured at the setback line, provided that the distance measured on the street line shall be at least 75 percent of the minimum frontage required for the zone in which the lot is situated.

Garage, Private. A building or part thereof used for the storage of motor vehicles and accessory to a principal building on the same lot. No business or occupation carried on for profit is permitted in a private garage.

Ground Water. All the water found beneath the surface of the ground. In this By-Law the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

Group Care Facility.* A type of group residence in which a group of individuals not related by blood, marriage, or adoption live together as a single housekeeping unit under a common housekeeping management plan in which some form of health care is provided.

Hazardous Material. A substance of material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce. Hazardous materials have been designated by the U.S. Department of Transportation under 49 C.F.R. parts 171.8 and 173.

Hazardous Waste. A solid, liquid, or combination of solid and liquid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

Home Occupation.* The accessory use of a portion of a home or of a building or structure accessory thereto by a bonafide resident of the premises for the public conduct of a vocation, trade, small business, craft, art or profession which, by nature of its limited size and scope, does not cause any significant outward manifestation (such as traffic generation, parking congestion, noise or air pollution, materials storage, public service, utility demand, etc.) which is uncharacteristic of or an additional disturbance to the particular residential neighborhood in which said property is located.

Home Office, Private.* The accessory use of a portion of a home by a bonafide resident of the premises as an office, studio or work space for the private conduct of a profession or trade. Such occupations shall include minimal office-type activity, conducted by telephone, modem, fax and mail or the production of goods, services or work customarily conducted in residential areas, with no signs, no storage other than samples or assembly of products on the premises, no employees, and no commercial vehicles or customers visiting the premises.

Home Professional Office.* The accessory use of a portion of a home by a bonafide resident of the premises as an office or studio for the public conduct of a professional occupation. Such professions shall include physicians, surgeons, dentists, artists, musicians, accountants, lawyers, engineers, architects, teachers, insurance brokers, builders, real estate brokers, or other like persons.

Independent Living Facility.* A facility that provides residential accommodations for senior adults. These residences may include common areas, a common dining facility, and space for social and educational programs. Home health care or other community-based services may be used on an individual basis. Meals, linen and housekeeping services may be offered.

Landscaped Buffer Strip. See requirements in Section 10.2 hereafter.

Land Usable for Residential Construction. The number of lots found by the Planning Board at the time of application for a special permit, building permit or subdivision approval, to be suitable for the construction thereon of residential dwelling units under the applicable laws and by-laws and rules and regulations of the Town of Wilbraham and the Commonwealth of Massachusetts. Said lots shall be shown on a plan submitted by the applicant together with such percolation tests, and any other information deemed appropriate by the Planning Board. Said Planning Board shall make such determination after receiving recommendations from the Board of Health, Town Engineer, Conservation Commission and such other persons as it deems appropriate. Any proposed lot which does not satisfy the lot area, frontage, or yard requirement under Section 4.4 and any lot on a proposed site plan which does not pass a percolation test, in an area not served by Town sewers, shall not be deemed usable for residential construction.

Lattice Tower.* A type of structure upon which antennas and other wireless communications devices are mounted that is self-supporting with multiple legs and cross bracing of structural steel.

Leachable Wastes. Waste materials including solid wastes, untreated sewage, agricultural wastes, petroleum products, solid or liquid chemical products and fuels that are capable of releasing waterborne contaminants to the surrounding environment.

Livestock. Shall mean domestic animals including horses, ponies, cows, sheep and goats.

Long-term Care Facility.* An institution which is licensed or approved by the Massachusetts Department of Public Health to provide 24-hour health care under medical supervision to individuals who, by reason of advanced age, chronic illness, severe disability or infirmity are unable to care for themselves. For the purposes of this bylaw it includes: convalescent home, extended care facility, hospice, intermediate care facility, nursing home, and rest home.

Lot.* A continuous area or parcel of land in undivided common ownership, with legally definable boundaries, and not divided by a street. For zoning purposes, when a lot crosses the town boundary, only that portion of the lot situated in Wilbraham shall be considered in determining conformity to the dimensional requirements specified under this By-Law.

Lot Frontage. See the definition of "Frontage" above.

Lot Line. The established division line between lots or between a lot and a street.

Lot Line, Front. All dividing lines between a street and the lot shall be considered front lot lines.

Lot Line, Side. The line or lines bounding a lot which extend from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots, or through lots, all lines extending from streets shall be considered side lot lines.

Mobile Home. Any vehicle or object whether resting on wheels, jacks or other foundation and having no motive power of its own, but which is drawn by, or used in connection with, a motor vehicle, and which is so designed and constructed as a dwelling unit which permits its transportation and relocation as a complete unit on its own wheels. This shall not include the type of vehicle known as a "travel trailer", "tent-type camp trailer" or "motor home".

Monopole.* The type of structure upon which antennas and other wireless communications devices are mounted that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.

Motel-Motor Inn. A building designed and used for lodging transients in non-housekeeping units with not less than twelve (12) units in any one building. One permanent housekeeping dwelling unit is permitted for occupancy of a manager or custodian. Rooms for assembly, a swimming pool for the use of guests, and the serving of food shall be deemed to be accessory uses.

Multiple Dwelling. A building or structure occupied by more than two families.

Non-Conforming Building. A building legally existing at the effective date hereof, but which does not conform to all of the applicable requirements of this By-Law regarding area and width of lot, frontage of lot, percentage of building coverage, required yards and parking facilities and building height limit.

Non-Conforming Use. A use of land, building, or premises which is not a use permitted by the provisions of this By-Law for the district in which such land, building, or premises are situated, but which was legally existing at the effective date hereof.

Occupant. The word "occupant" shall include one or more individuals, a partnership, a business associate, an association and a corporation.

Open Space. Land set aside by an owner, to be retained in its natural state or used for agricultural, park or recreational purposes, or similar uses as specified in said special permit creating said open space. Said land shall be owned by the Town, a conservation trust, the owner (by way of a deed restriction) or some other entity and with such other conditions as are specified by the Planning Board. No building permit for a dwelling unit shall ever be issued thereafter for Open Space.

Penalties. A fine imposed for violation of the Zoning By-Law.

Planned Unit Residential Development.* A residential development on a tract of twenty (20) acres or more under single ownership with

definite boundaries ascertainable from a recorded deed or plan, which consists of a mixture of residential uses and building types, including one family detached dwellings, two family dwellings, town houses, or multi-family dwellings, and which is planned and developed as an integral unit with a significant area of common open space and/or recreation land. The PURD includes streets, utilities, buildings and other site features and improvements for the common use by some or all of the occupants of the development, but which will not be provided, operated or maintained at general public expense.

Premises. The portion of a lot or building actually in use for the specific purpose or use under consideration.

Private Stable. A building or part of a building in which one or more horses or ponies are kept for the private use of the owner and in which no horses or ponies are kept for sale, rent, hire, breeding, or for commercial cartage, trucking, or other business purposes.

Public Vantage Point.* A view of land as seen from a public street or publicly identified and recognized public place (i.e., a view especially sensitive to visual change as viewed by the public).

Recharge Areas. Areas composed of permeable stratified sand and gravel and certain wetlands that collect precipitation or surface water and carry it to the underlying aquifer.

Septage. Liquid and solid material pumped from any individual on-site sewage disposal system.

Setback. The distance required from a street line to the nearest wall of a building.

Sewage. Any water carried putrescible waste resulting from the discharge of water closets, washing facilities, baths, showers and the like.

Sign.* Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation use as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye by means including intermittent or repeated motion of illumination.

Sludge. Accumulation of undigestible solids in water suspension removed from sewage during treatment.

Solar Energy Systems. Any solar collector and its ancillary system or any structural design of or addition to a new or existing building, the primary purpose of which is to provide for the collection, storage, conversion and distribution of solar energy for space heating, water heating or generation of electricity.

Solid Wastes. Discarded solid material with insufficient liquid content to be free-flowing. This includes but is not limited to rubbish, garbage, scrap materials, contained liquid or gaseous materials, inert fill material and landscape refuse.

Special Permit. A special permit is the permit granted by the Planning Board, the Board of Appeals or the Board of Selectmen acting as the Special Permit Granting Authority as hereinafter provided.

Special Permit Granting Authority. Special Permit Granting Authority shall mean the Board of Selectmen, Planning Board or the Board of Appeals as specified herein.

Story.* That portion of a building contained between any floor and the floor or roof next above it, but not to include the basement or attic.

Street.*

A. A public way or a way which the clerk of the town certifies is maintained and used as a public way; or

B. A way shown on a plan heretofore approved and endorsed in accordance with the subdivision control law, and actually constructed or to be constructed in accordance with said plan; or

C. The way in existence when the subdivision control law became effective in the town 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.

Street Line. The dividing line between a street and a lot, and in the case of a public street, the street line established by the public authority.

Structure. Any combination of materials located upon a lot and requiring pilings, footings, or a foundation for support. Swimming pools, tennis courts, basketball courts, and other similar recreational facilities, whether or not requiring foundations, shall be structures.

Subdivision. Including re-subdivision, shall be as defined in the Subdivision Control Law.

Swimming Pool. Any body of water greater than fifteen (15) feet in diameter, or equivalent area, and two (2) feet deep, above ground or below grade, contained in a natural, artificial, or semi-artificial ponded area, receptacle or container, for swimming or wading, whether permanent or temporary, and whether located indoors or outdoors.

Through Lot. A lot, other than a corner lot, which extends all the way between and abuts two (2) or more generally parallel streets. A through lot is considered to have two (2) front yards, two (2) side yards, and no rear yard.

Usable Land Area.* That portion of a lot which is not classified as a "wetland" as defined in Chapter 131, Section 40 of the Massachusetts General Laws and the regulations promulgated thereunder in 310 C.M.R. 10.00 and/or the Wilbraham Wetlands Bylaw and the regulations promulgated thereunder, and which does not consist of slopes having a grade of fifteen percent (15%) or greater.

Variance. A variance is an authorization by the Board of Appeals granting relief to owners of land or buildings from "substantial hardships" that arise from literal enforcement of the provisions of this Zoning By-Law. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

Wind Energy Conversion System. Any wind energy collecting device or system, the primary purpose of which is to provide for the collection, conversion, storage and/or distribution of wind energy for generation of electricity, water pumping or operating mechanical devices.

Wireless Communications Facilities.* The structures and devices designed to facilitate cellular telephone services, personal communications services and enhanced specialized mobile radio service as defined in Section 704 of the Federal Telecommunications Act of 1996. Included are towers, antennae mounted to towers or other structures, and accessory structures, such as sheds, which are directly required for facility operations. Not included in this definition are antennae and dishes used solely for residential television and radio reception; and amateur radio facilities used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission provided the tower is not used for commerce.

Yard. An open space, unoccupied except as hereinafter permitted, between a principal building and a street or a lot line. Any such space between a principal building and a street line shall be considered a front yard.

Zoning. The word "zoning" is used in this By-Law, adopted by the Town of Wilbraham, to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of the Town to protect the health, safety and general welfare of their present and future inhabitants.