

# **Town of Tolland Ma Zoning Bylaw**

**Adopted at  
Special Town Meeting  
November 15, 2005**

Approved  
by the  
Attorney General of the Commonwealth of Massachusetts  
March 16, 2006

## **Tolland Planning Board**

**Steven McAlister, Chair  
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## **SECTION I PURPOSE**

These regulations are enacted to

1. Promote the health, safety and general welfare of the inhabitants of Tolland
2. Secure proper growth of the Town by encouraging the most appropriate use of the land throughout the Town
3. Stabilize the value of the land and buildings
4. Conserve the natural resources, protect scenic views, maintain the beauty of the Town, and protect the environment
5. Reduce the hazard of fire by regulating the locations and use of buildings in accordance with the General Laws of the Commonwealth of Massachusetts, Chapter 40A and any amendments thereof.

## **SECTION II PRESENTLY EXISTING USES PERMITTED**

- A. Presently Existing Structures and Uses Permitted:** This Bylaw shall not apply to any existing building or structure, nor to the continuation of the existing lawful use of any building or structure, nor to any land or premises or part thereof to the extent of the lawful use existing at the time of adoption of the December 7, 1970 and June 29, 1978 versions of the Town of Tolland Zoning Bylaw
- B. Applicability of Amendments and Revisions:** In accordance with the provisions of Massachusetts General Law (MGL), Chapter 40 A, Section 6, except as hereinafter provided, subsequent amendments or revisions of this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or Special Permit issued before the first publication of notice of the Public Hearing on such amendment or revision required by MGL 40 A, Section 5 as amended but shall apply to any change or substantial extension of such use, to a building or Special Permit issued after the first notice of said Public Hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said Public Hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where Alteration, reconstruction, extension or structural change to a single or two-family residential building does not increase the Non-conforming nature of such building.
- C. Conformance of Construction or Operations Under a Building or Special Permit:** Construction or operations under a Building Permit or Special Permit shall conform to any amendment or revision of this Bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the Permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **SECTION III ZONING DISTRICTS**

**A. Zoning Districts: The Town is hereby divided into the following Districts:**

<b>T-C</b>	<b>Town Center</b>
<b>A-R-I</b>	<b>Agricultural – Residential Zone</b>
<b>A-R-II</b>	<b>Agricultural – Residential Zone</b>

**B. District Location and Boundaries:** The location and boundaries of these Districts shall be as shown on the “Zoning Map”, Town of Tolland, Massachusetts, dated 14 June, 1978, and bearing the signatures of the members of the Planning Board; the original of which shall be on file in the office of the Town Clerk. Said Zoning Map, and such amendments thereto as shall be duly adopted, shall be considered an integral part of the Bylaw.

**C. Interpretation Assumptions:**

For purposes of interpretation, it shall be assumed that:

1. District boundaries which appear to follow streets or streams shall coincide with the center line thereof.
2. Boundaries which appear to follow public or institutional property lines shall coincide with such property lines
3. Where a District boundary shall include a numerical figure followed by the letters MSL, it is at that number of feet above mean sea level. The basic source for determining such a line shall be the U.S. Geological Survey (U.S.G.S.) or adequate field surveys, based on the U.S.G.S. benchmarks, or by Registered Land Surveyors.

## SECTION IV DEFINITIONS

Definitions	In this Bylaw the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:
<b>Accessory Use</b>	The use of a building or premises for a purpose customarily incidental to the main or principal use or building
<b>Accessory Building</b>	A building located on the same lot with the main or principal building whose use is customarily incidental to the Principal building. Accessory buildings include garages, sheds, studios, barns, equipment storage buildings, etc.
<b>Accessory Structure</b>	A structure located on the same lot with the main or principal building whose use is customarily incidental to the primary building. Accessory structures include tennis courts, swimming pools, etc.
<b>Adequate Access</b>	Adequate access allows entrance to the property by the fire or police department, and other agencies charged with the responsibility of protecting the public peace, safety and welfare.
<b>Adult Day Care</b>	Community-based or privately run group programs designed to meet the needs of functionally and/or cognitively impaired adults.
<b>Adult Uses</b>	Any of the following: Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, and Live Nudity Establishment or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition an adult use is any use or combination of uses which either have greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 sf, whichever is greater devoted to materials for sale or rent distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.
<b>Agriculture</b>	Agriculture shall include, but not be limited to, farming, animal husbandry, horticulture, floriculture, nursery, truck gardening, greenhouses, maple sugar production, and display and sale of natural products raised in the Town with the necessary structures, vehicles and equipment needed for these uses. This term does not include riding stables, kennels, or facilities for the commercial raising of fur-bearing animals.
<b>Alteration</b>	A change in external form, shape or size of a building or structure.
<b>Animal Feedlots:</b>	A plot of land on which twenty-five (25) or more animals are kept exclusively for the purpose of feeding. This definition shall not be construed as prohibiting farming lawfully being conducted under the provisions of the Town of Tolland Zoning Bylaw and/or Massachusetts General Laws, Chapter 40A, Section 3.
<b>Bed &amp; Breakfast</b>	An accessory use to a dwelling occupied as the owner's principal legal residence, in which at least one (1) and not more than five (5) rooms are commercially offered for transient occupants. Transient occupancy shall be defined as for not more than 90 consecutive days. Hotels, motels, inns and lodging houses (or boarding houses) are not classified as Bed and Breakfast establishments.

<b>Building</b>	Any roofed structure permanently located on the land and used for housing or enclosing persons, animals, material or goods.
<b>Building (Principal)</b>	A building in which is conducted the principal use of the lot on which it is situated.
<b>Building Height</b>	The vertical measurement of a building from the mean level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, excluding chimneys, steeples on religious buildings, antennae, water tanks, silos and similar structures.
<b>Child Care Facility</b>	A day care center, nursery, nursery school, kindergarten, child play school, child development center, or pre-school, or known under any other names which receives children not of common parentage under seven years of age or under sixteen years of age if such children have special needs, for non-residential custody and care during part or all of the day separate from their parents as defined in M, G.L. Chapter 28A, Section 9.
<b>Club or Association</b>	An association of persons which is the owner, lessee or occupant of an establishment operated solely for a recreational, social, fraternal, religious, political or athletic purpose, whose activities are confined to the members and guests and are not open to the general public. This includes the establishment so-operated. Where appropriate, this definition shall apply to camps organized on a similar basis.
<b>Commercial Animals</b>	Animals raised for sale as food, food products, breeding stock, or pets.
<b>Commercial Recreation</b>	Indoor or outdoor recreation facilities provided for the public where a fee is charged
<b>Commercial Waste Processing, Transfer or Disposal</b>	Commercial operations involving the processing, storage, transfer, recycling, or disposal of waste materials.
<b>Driveway</b>	A way lying within a lot or lots, which is used or intended to be used by registered motor vehicles as the primary access to a year-round or seasonal dwelling, a place of business, a group of residential or commercial buildings or any other principal building(s), whether publicly or privately owned. This definition shall not include any public way. Nor shall it include any private way which has been approved under the Subdivision Bylaw or any new access roadway for a Personal Wireless Service Facility approved under Section VIII of this Bylaw. Nor shall it include any farm lane, logging road, earth removal access road, foot trail, bridle path or other minor travel route which is not used as the primary vehicular access to a residential or commercial building.
<b>Dwelling, One-Family (or Residential Structure)</b>	A detached residential housing unit other than a mobile home, recreation vehicle or houseboat designed for and occupied by one family only. It shall include prefabricated and modular units that meet the State standards for building construction.
<b>Earth, Stone, Gravel or other Mineral Processing</b>	The crushing, screening, or other processing for commercial purposes of earth, stone, gravel or other mineral products not excavated on the site. This shall include the processing or reprocessing of bituminous concrete and other paving materials.
<b>Earth Removal</b>	Excavation, stock piling, processing and/or sale of gravel, sand, stone, peat and loam for commercial purposes.
<b>Family</b>	One or more persons, related by birth, marriage or legal adoption or not more than five (5) individuals who are not so related, living together as a single housekeeping unit.



<b>Family Day Care Home</b>	Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation thereof.
<b>Farm</b>	A tract of land devoted primarily to agriculture. Includes necessary personnel, structures, buildings, vehicles and equipment but not residential or commercial structures other than those directly related to farm operation.
<b>Garage (Private)</b>	A building used for the storage of one or more automotive vehicles, owned or used by the owner or tenant of the premises, and not exceeding two additional vehicles (not commercial) owned or leased by others. A private garage is considered an accessory building.
<b>Garage (Public)</b>	A building, not a private garage, used for the repair, servicing or storage of automotive vehicles.
<b>Home Occupation</b>	An activity conducted for gain primarily by residents of a dwelling unit, carried out inside the principal dwelling unit or inside a building of a type customarily accessory to a dwelling Unit. The activity is of such character that it does not produce outward manifestations which are incompatible with a residential neighborhood and does not produce a significant change in local vehicle traffic.
<b>Houseboat</b>	A boat, vessel or barge that is designed and equipped for use as a dwelling
<b>Junk Car</b>	An unregistered or unusable motor vehicle which is ready for destruction or has been collected or stored for salvage or conversion to some other use.
<b>Junk Yard</b>	Land or structures used commercially for collecting, storing or selling wastepaper, rags, scrap metal, or discarded material, or for collecting, dismantling, storing, salvaging or selling inoperative machinery, vehicles, or parts thereof.
<b>Kennel (Commercial)</b>	Any premises maintained or operating as an animal related business, including but not limited to the breeding, boarding, sale, training or daycare of companion animals or pet(s), or where eleven (11) or more dogs six (6) months of age or older are kept.
<b>Light Manufacturing</b>	A use involving the manufacture of a product, but not producing noisy or otherwise objectionable disturbances such as vibration, dust, odors, and heavy truck traffic, and not involving the use of heavy machinery.
<b>Line (Front Lot)</b>	The front lot line is the line, defined in the registered deed, as separating the lot from the street. If no such line is defined, it is assumed to be a line running parallel to the center line of the street and twenty-five (25) feet distant from the edge of the street.  See also, definition of "Street Line".
<b>Line (Rear Lot)</b>	The lot line opposite and most distant from the front lot line.
<b>Line (Side Lot)</b>	Any lot line connecting a front and rear lot line.
<b>Lot (Building) or Parcel</b>	A tract of land under separate ownership which is, or can be, occupied by a principal building and the structures and areas accessory to it having adequate frontage on a street and defined by measurements and/or boundaries in a deed or plan.
<b>Lot Frontage</b>	The length of a front lot line dividing a lot from a street as defined herein.
<b>Lot Line</b>	A division line between adjoining properties, or a division line between individual lots or between the lot and the street.
<b>Logging</b>	All operations associated with the cutting and removal of timber from the land for commercial purposes, but which shall not include milling or processing, or sawmill operations.

<b>Mobile Home</b>	A vehicle used or intended to be used for human habitation as a dwelling and designed to be drawn by a motor vehicle or propelled by a self-contained engine. If the unit is jacked or blocked so as to be immobile, it shall nevertheless be considered a mobile home.
<b>Mobile Home or Recreation Vehicle Village or Court</b>	Any lot, parcel or tract of land upon which two or more mobile homes or recreation vehicles, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations.
<b>Mortuary (or Funeral Home)</b>	A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation and subject to all pertinent laws regulating such use.
<b>Non-conforming Lots, Uses, Buildings or Structures</b>	Any lot, use, structure or building not meeting the requirements of this Bylaw, but in existence prior to the date of adoption of this Bylaw or amendments thereto.
<b>Nuisance</b>	An act or failure to perform a legal duty which causes or permits a condition to exist which injures or endangers the public health, safety or welfare or which is annoying, unpleasant or obnoxious to the inhabitants of the Town of Tolland.
<b>Owner Occupancy</b>	The owner of the principal dwelling who occupies either the primary dwelling or Accessory Apartment except for a bona fide temporary absence.
<b>Performance Bond</b>	A surety bond posted by the holder of a Special Permit to insure compliance with the terms of the Permit.
<b>Permit Granting (or Special Permit Granting) Authority</b>	The Planning Board is specifically named as the Permit Granting Authority (or Special Permit Granting Authority) for the Town of Tolland.
<b>Personal Wireless Services Facility (PWSF) and Related Definitions</b>	All equipment (including any Repeaters) with which a Personal Wireless Service Provider broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof. This Facility may be sited on one or more towers or structure(s) owned and permitted by another owner or entity. Technical definitions related to PWSF are contained in Section VIII of this Bylaw
<b>Principal Use</b>	The primary use to which the premises are devoted.
<b>Professional Offices and Personal Service Shops</b>	Offices for professions licensed by the State of Massachusetts or Shops for the provision of personal services such as hairdressing, manicures, massage, therapy, counseling or similar personal services; which offices or shops do not meet the definition or restrictions
<b>Recreation Vehicle</b>	A recreation vehicle shall mean any vehicle used or so constructed as to permit its being used as a conveyance on the public streets and highways whether licensed or not, and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons, and not designed to be used as a principal place of abode. A recreation vehicle under this Bylaw includes tent trailers, truck campers, vehicles converted to sleeping facilities other than a mobile home that normally constitutes a permanent dwelling unit.
<b>Restaurant</b>	A facility for the serving of food or beverages
<b>Sawmill</b>	A facility utilized to process logs into boards, beams or related wood stock
<b>Service Station</b>	Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used, for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning or servicing such motor vehicles. A service station <i>is not</i> a sales, major repair or rental agency for autos, trucks or trailers.
<b>Set-back</b>	The distance from the front, side or rear lot line to the nearest point of a building, excluding steps.

<b>Self-Storage Facility</b>	A building or group of structures consisting of individual, small self-contained units that are leased or owned for the storage of business and household goods or contractors' supplies.
<b>Sign</b>	Any permanent or temporary structure, device, letter, word display, pennant, insignia, or trade flat which is used as an announcement, direction, or advertisement and which is visible from any public way, or from abutting property.
<b>Small Business</b>	Any business employing no more than five people excluding the owner and his/her family.
<b>Special Permit</b>	An authorization or permit granted by the Planning Board (Tolland Special Permit Granting Authority) for any of the uses which require a Special Permit as listed in Section V and elsewhere in this Bylaw, when it shall be found that the use involved will not be detrimental to the neighborhood and town and subject to appropriate conditions or safeguards if deemed necessary.
<b>Story</b>	That portion of a building included between the surface of any floor and the surface of the next floor above it, or, if there be no floor above it, then the space between such floor and the ceiling next above it. Any portion of a story exceeding fourteen (14) feet in height from average ground level shall be considered as an additional story for each fourteen (14) feet or fraction thereof. One-half (1/2) story means any story or space situated wholly or partly in the roof, so designed, arranged, or built as to be used for storage or habitation.
<b>Street</b>	A thoroughfare used as a public right-of-way for general access purposes and which is maintained by the Town.
<b>Street Line</b>	The dividing line between a street and a lot, and in the case of a public way, the street line established by the public authority in laying out the way upon which the lot abuts. If the street line cannot be established, it shall be considered to be a line parallel with and twenty-five feet distant from the center line of the street.
<b>Structure</b>	A combination of material assembled at a fixed location to give support or shelter or for other purposes. Included are buildings, frameworks, sheds, platforms, swimming pools, tennis courts, towers, and similar objects
<b>Sub-Division</b>	The division of a tract of land into two or more lots, including re-subdivision, and, when appropriate to the context, the process of subdivision of the land or territory subdivided.
<b>Tolland Subdivision Regulations</b>	MGL Chapter 41, Sections 81K through 81GG inclusive as it may be amended from time to time and the Town of Tolland Sub-Division Regulations.
<b>Traveled Way</b>	That portion of a Street or road which is paved or is graded and surfaced with stone, gravel or other material and is the portion upon which vehicular traffic normally travels.
<b>Variance</b>	An authorization granted by the Board of Appeals to modify a permitted use when special physical conditions affect such use and where a literal enforcement of this Bylaw would involve substantial hardship to the owner. Provided also that such authorization shall not take away from the intent or purpose of the Bylaw. See Section IX.C. 4 <i>Authority to Grant a Variance.</i>
<b>Warehouse</b>	A building used to temporarily store or hold products or articles for use in assembly or manufacturing or for future transfer of said product or article to another location.
<b>Wetlands</b>	Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters (from Mass GL Chapter 131 Sec. 40)
<b>Yard (Front)</b>	The space across the full width of the lot and extending from the front line of any building located on such lot to the street line of such lot.
<b>Yard (Rear)</b>	The space across the full width of a lot and extending from the rear foundation line of any building located on such lot to the rear line of such lot.

<b>Yard (Side)</b>	The space extending from the front yard to the rear yard between any building and the adjacent side line of the lot on which said building is located.
<b>Zoning Districts</b>	The Zoning Districts and land uses therein as established by the Zoning Bylaws of the Town of Tolland, Massachusetts and delineated by the Official Zoning Map of the Town of Tolland.

## **SECTION V            TABLE OF LAND USE REGULATIONS**

Except as provided in the section on Non-conforming uses, Section VII.A and elsewhere in this Bylaw, no building or structure shall be constructed, and no building, structure, or land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses designated in Table 1 – Land Use as Permitted by Right, Permitted By Right with Site Plan Review, or Special Permit with Site Plan Review. Site Plan Review and Special Permits are granted by the Planning Board (Tolland Special Permit Granting Authority) as provided in Section IX.A and IX.B. herein.

### **A. Definitions of Uses and Requirements**

#### **B. Uses and Requirements** established in the Table of Land Use are defined as follows:

- 1. Permitted by Right:** Use Permitted. Approval not required.
  - 2. Permitted by Right with Site Plan Review:** Use which will be authorized by the Planning Board after review of a Site Plan in accordance with the provisions of Section IX.B herein.
  - 3. Permitted with Special Permit and Site Plan Review:** Use which may be authorized by Special Permit from the Planning Board (Tolland Special Permit Granting Authority) in accordance with the provisions of Section IX.A, herein.
  - 4. Prohibited:** Specifically excluded or prohibited use.
- C. Conformance with Massachusetts State Building Code and Laws:** Every use Permitted By Right or authorized by Special Permit under the provisions of this Bylaw shall be subject to the Massachusetts State Building Code, State Sanitary Code, the Town's Conservation Commission Regulations and The Town's Board of Health Regulations and all other applicable statutes, Bylaws and regulations.
- D. Multiple-Use Classifications:** Where a structure or use might be classified under more than one of the listed uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.
- E. Minor and Incidental Uses:** Subject to the limitation contained in this Bylaw, a related minor use building or structure which is customarily incidental and subordinate to any lawful Principal use shall be Permitted with Site Plan Review on the same lot with the building to which it is accessory, provided that it does not alter the character of the premises nor is detrimental to the neighborhood and that it conforms to all dimensional requirements established in Table 2, Dimensional Requirements
- F. Farm and Agricultural Buildings:** Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of this Bylaw. Such buildings and structures may be located on the lot with the Principal permitted use or on separate lots and are subject to the same Setback and related requirements for all buildings and structures. Site Plan Review is required for all Farm accessory buildings.
- G. Prohibited Conditions:** Any use of land, buildings or structures which creates excessive and objectionable noise, glare or offensive illumination, fumes, odor, dust, electrical interference, or undue traffic shall be prohibited in all districts.

TABLE OF LAND USE					
			Zoning District		Related Section
	Classification *	Use	Town Center	AR-I and AR-II	
Agricultural					
		Logging	Permitted by Right	Permitted By Right	
		Agriculture	Permitted by Right	Permitted by Right.	
		Farm Stand	Permitted by Right with Site Plan Review	Permitted By Right with Site Plan Review	
		Farm Animals	Permitted by Right with Site Plan Review	Permitted By Right with Site Plan Review	
		Farm Accessory Buildings	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	
Residential					
		Single Family Dwelling	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	
		Accessory Apartment	Special Permit with Site Plan Review	Special Permit with Site Plan Review.	VII. L Accessory Apartment`
		Home Occupation	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	VII. K Home Occupation
		Houseboats as residence.	Prohibited.	Prohibited.	
		Mobile Home or Recreation Vehicle Village or Court.	Prohibited.	Prohibited.	VII. D Mobile Homes and Recreation Vehicles

<b>TABLE OF LAND USE</b>				
<b>Classification*</b>	<b>Use</b>	<b>Town Center</b>	<b>AR-I and AR-II</b>	<b>Related Section</b>
<b>Institutional</b>				
	<b>Child Care Facility</b>	Permitted By Right with Site Plan Review	Permitted By Right with Site Plan Review	
	<b>Family Day Care Home.</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review	
	<b>Religious Use (Church)</b>	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	
	<b>Library-Museum</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Lodge or Club</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Cemetery</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Nursing Home, Hospital</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review.	
	<b>Educational Institution</b>	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	
<b>Public Service</b>				
	<b>Public Utility</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Aviation Field, Helipad or Heliport</b>	Prohibited	Prohibited	
	<b>Government Building or Park</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Water Supply Use</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	

<b>TABLE OF LAND USE</b>				
<b>Classification*</b>	<b>Use</b>	<b>Town Center</b>	<b>AR-I and AR-II</b>	<b>Related Section</b>
<b>Commercial/ Industrial</b>				
	<b>Animal Feedlot</b>	Special Permit with Site Plan Review to assure public health and safety.	Special Permit with Site Plan Review to assure protection of public health and safety.	
	<b>Commercial Recreation-</b>	Prohibited	Special Permit with Site Plan Review	<b>VII. E. Commercial Recreation</b>
	<b>Commercial Waste Processing, Transfer or Disposal</b>	Prohibited	Prohibited	
	<b>Earth Removal</b>	Prohibited	Special Permit with Site Plan Review	<b>VII. C. Earth Removal</b>
	<b>Junk Yard</b>	Prohibited	Prohibited	
	<b>Landscaper or Contractor</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review.	
	<b>Light Manufacturing, Packaging and Testing</b>	Prohibited	Special Permit with Site Plan Review	
	<b>Personal Wireless Services Facilities</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	<b>Section VIII – Personal Wireless Services Facilities</b>
	<b>Processing Earth Products</b>	Prohibited	Prohibited	
	<b>Radio, TV, Wind Generator Towers, Communication Stations or Relays (excluding Personal Wireless Services Facilities regulated in Section VIII).</b>	Prohibited	Special Permit with Site Plan Review	
	<b>Sawmill Operations</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review.	
	<b>Self-storage Facility</b>	Prohibited	Prohibited	
	<b>Warehouse (other than agriculture)</b>	Prohibited	Prohibited	



<b>TABLE OF LAND USE</b>				
<b>Classification*</b>	<b>Use</b>	<b>Town Center</b>	<b>AR-I and AR-II</b>	<b>Related Section</b>
<b>Retail Business</b>				
	<b>Adult Uses</b>	Special Permit with Site Plan Approval.	Special Permit with Site Plan Approval.	
	<b>Farm or nursery including the display and sale of natural products principally raised in Town.</b>	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	
	<b>Mortuary</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Professional Offices</b>	Site Plan Review	Site Plan Review	
	<b>Retail Store</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Restaurant</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Kennel</b>	Prohibited	Special Permit with Site Plan Review	
	<b>Craft or Gifts Shop</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	
	<b>Professional Office/Personal Service Shop</b>	Permitted by Right with Site Plan Review	Permitted by Right with Site Plan Review	``
	<b>Rental of rooms and/or furnishing board for not more than 4 persons in a dwelling not living as a single housekeeping unit.</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	`
	<b>Veterinary</b>	Special Permit with Site Plan Review	Special Permit with Site Plan Review	`
	<b>Garage, Vehicle Salesroom or Sales Lot</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review	`
	<b>Bed&amp;BreakfastSmall Business Antique Shop Laundromat Inn,</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review.	

<b>TABLE OF LAND USE</b>				
<b>Classification*</b>	<b>Use</b>	<b>Town Center</b>	<b>AR-I and AR-II</b>	<b>Related Zoning Bylaw Section</b>
<b>All Categories</b>				
	<b>Accessory Buildings</b>	Site Plan Review	Site Plan Review	<b>VII. M – Accessory Buildings</b>
	<b>Adult Day Care</b>	Special Permit with Site Plan Review.	Special Permit with Site Plan Review.	
	<b>Child Care Facilities</b>	Permitted by Right with Site Plan Review.	Permitted by Right with Site Plan Review.	<b>VII. N. Fences</b>
	<b>Farm Animals</b>	Permitted by Right with Site Plan Review.	Permitted by Right with Site Plan Review.	
	<b>Fences</b>	Permitted by Right with Site Plan Review.	Permitted by Right with Site Plan Review.	
	<b>Logging Lumbering</b>	Permitted by Right with Site Plan Review.	Permitted by Right with Site Plan Review.	

\* Classification headings are provided to aid readers in locating land uses. In themselves, they have no regulatory intent or effect. The Requirements associated with a given Land use will apply across classifications,

## SECTION VI TABLE OF DIMENSIONAL REQUIREMENTS

Every lot for dwelling purposes shall contain not more than one dwelling structure together with accessory buildings. The following minimum dimensions for lot frontage, area and open spaces adjacent to buildings shall be required.

TABLE 2: DIMENSIONAL REQUIREMENTS						
Zoning District	Basic Minimum Lot Size	Minimum Frontage (Feet)	Minimum Setback (Feet)	Minimum Rear and Side Yards (Feet)	Maximum Number of Stories *	Maximum Height (Feet) **
Town Center (TC-1)	2 Acres (87,120 sq. ft)	200	50	25	2 1/2	35
Agricultural Residential A-R-I	2 Acres (87,120 sq. ft)	200	50	25	2 1/2	35
Agricultural Residential A-R-II	2 Acres (87,120 sq. ft)	275	50	25	2 1/2	35

\* Walkout” type basements are not considered a story in this calculation.

\*\* Maximum height limitation prevails in all instances.

### Corner Lots and Lots Facing Two or More Streets

A lot having frontage on a corner or frontage on two or more streets must have the minimum frontage on at least one of the streets.

## SECTION VII      GENERAL REGULATIONS

### A. Non-conforming Uses and Structures

1. **Preexisting Non-Conforming Use:** The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this Bylaw may be continued subject to Massachusetts General Law Chapter 40A, although such use does not conform to the provisions of this Bylaw.
2. **Existing Non-Conforming Use Cannot be Changed:** An existing Non-conforming Use shall not be changed to any other Non-conforming Use.
3. **Abandoned Non-Conforming Use:** A Non-conforming Use which has been abandoned, discontinued or not used for two (2) years or more shall lose its protected status, and such protection shall be extinguished, and shall not be reestablished; all future use shall conform to this Bylaw.
4. **No Reversion to Prior, Less Restrictive Non-conforming Use:** A Non-conforming Use which has been changed to a more restrictive or conforming use shall not revert to its previous use.
5. **Non-conforming Structures Destroyed by Fire or Other Accidental Causes:** A Non-conforming structure which has been damaged or destroyed by fire or other accidental cause may be repaired or rebuilt and used as before, provided such restoration is carried out within two (2) years and does not exceed the size of the original Non-conforming structure; otherwise, such building or structure may be repaired, reconstructed and used only in conformity with the provisions of this Bylaw. The Board of Appeals may, however, in a specific case authorize a variance to extend the two- (2) year time limit, or authorize a special exception from the requirement of conformity, where, in the opinion of the Board, such limit or requirement will impose undue hardship.
6. **Transferability to new owner.** A Non-conforming Use may be continued by a new owner subject to the provisions of this section.
7. **Alteration of Pre-existing Non-conforming Structures or Expansion of Non-conforming Use:** The Planning Board may grant a Special Permit to extend or alter pre-existing Non-conforming structures or expand pre-existing Non-conforming Uses when it makes a finding that such extensions, Alterations or expansions are not substantially more detrimental than the existing non-conforming structure or use is to the neighborhood.

### B. General Provisions for New Buildings

1. **Conformance Requirements for New Buildings or Structures:** Any building or structure hereafter erected shall conform to the following:
  - a. Massachusetts State Building Code
  - b. Title 5 (Septic System Regulations) Environmental Code, Commonwealth of Massachusetts
  - c. Board of Health Regulations and other applicable Town of Tolland and State requirements.
  - d. Massachusetts Wetlands Regulations
2. **Occupancy of Dwelling during Construction:** A dwelling may be occupied by the owner and his/her family or agent during the construction thereof when the Building Inspector issues a Temporary Certificate of Occupancy as required by the Massachusetts State Building Code.

3. **Temporary Dwelling by Permit:** After a Building Permit has been granted the Planning Board may grant written approval for an owner or his/her family or agent to occupy a temporary structure for a six-month period during construction of a permanent residence. The temporary structure must conform to Board of Health Regulations as certified by the Health Agent and be approved by the Building Inspector before approval shall be granted. The Permit may be renewed for a maximum of six additional months.

### C. Earth Removal

1. **Special Permit Required:** The removal for sale of sod, clay, sand, gravel, mineral deposits and quarried stone, except when incidental to and in connection with the construction of a structure, or incidental to the grading and developing of contiguous property, shall be permitted only after issuance of a Special Permit by the Planning Board after a Public Hearing. The Planning Board in each instance shall impose such conditions as will protect the neighborhood and Town against permanent and temporary hazards because of conditions which may be left after operations are completed or because of the methods of handling such materials at the site or of transporting such materials through the Town.
2. **Additional Requirements for Earth Removal Special Permit:** In addition to regulations applicable to all Special Permits in Section IX. A and contained in the "Applicant's Guide to the Approval Process" ( a copy of which is on file in the Town Clerk's Office), the following conditions must be met:
  - a. No excavation shall be permitted below the grade of a road bounding the property at any point nearer than 150 feet to such road or within 15 feet of the seasonal high water table
  - b. No excavation below the natural grade of any property boundary shall be permitted nearer than 100 feet to such boundary
  - c. After reclamation, no slope created by the removal operation shall be finished at a grade in excess of 1: 2 feet: that is, one (1) foot vertical for each two (2) feet horizontal.
  - d. Within all zones, excavation of earth products shall be prohibited in cases where it is anticipated that such excavation will lower the level of the water table, interfere with the natural flow patterns, reduce the flood storage capacity of a stream, or infringe on a Wetlands or Wetlands buffer area.
  - e. No Special Permit for earth products removal shall be issued if such removal will: (1) endanger the general public health or safety or, (2) constitute a nuisance, or, (3) result in detriment to the normal use of adjacent property by reasons of noise, dust, or vibration, or, (4) result in traffic hazards in residential areas or excessive congestion or physical damage on public ways.
  - f. In approving the issuance of a Special Permit, the Planning Board shall impose reasonable requirements which shall constitute a part of the Permit and which may include: scope of operations, grading, seeding and planting, fencing necessary for public safety, methods of removal, location and use of structures, location and use of processing equipment, hours of operation, routes of transportation of material removed, control of drainage and disposition of waste incident to the operation. Restoration seeding and grading requirements shall also be part of the Special Permit.

- g. A Performance Bond or other security shall be required in an amount equal to a documented, verifiable estimate of cost to assure compliance with all provisions of this section and to reclaim the work site according to the site plan submitted. The estimate shall include an adjustment for projected inflation or other predictable factors as determined by the Planning Board over the term of the permit plus one year. Status of this Bond shall be certified in writing to the Planning Board annually.

**3. Limitations on Special Permits:** No Special Permit shall be required for the following:

- a. Moving earth products within the limits of an individual property or series of contiguous properties of land in single ownership.
- b. Removal of earth products from an operating farm, nursery, or cemetery to the extent that such removal is necessary to the operation of same.
- c. The moving and removal of earth products for any municipal purpose by, or on behalf of, any department of the Town of Tolland which actions shall be under the supervision of the Highway Superintendent who shall comply with Section A.2 to the degree applicable and feasible

**4. Application Requirements:** The application to the Planning Board for a Special Permit for earth resource removal shall include the following information.

- a. The location of the proposed excavation in relation to property boundaries and existing streets, roads and ways, public and private.
- b. The legal name and address of the owner of the property.
- c. The legal name and address of the petitioner.
- d. Names and addresses of all abutting property owners including those on the opposite side of any Streets and any land owners within 500 feet of the proposed earth removal property site.
- e. A plan or plans of the land involved showing
  - i. All man-made features, property lines, and existing topography by two-foot contours, plus proposed contours at two-foot intervals showing the finish grade of the site after the completion of the proposed excavation project and reclamation and restoration.
  - ii. Wetland areas, including perennial and intermittent streams, rivers, lakes, swamps, vernal pools and ponds within 200 feet of proposed work area.
- f. Scope of operations including the estimated quantity of material to be removed, proposed loads per day, any processing of materials to be removed, anticipated noise levels, and proposed lighting, structures and days and hours of operation.

5. **Notice to Planning Board before Ceasing Operations:** A written notice shall be filed with the Planning Board, six (6) months prior to ceasing operation in order to monitor reclamation and restoration and initiate any return of Performance Bond funds. Reclamation must be carried out in a manner that is consistent with plans approved by the Planning Board. All reasonable efforts shall be made to be consistent with municipal plans that are in existence at the time of reclamation regardless of whether they existed at the time the Special Permit was granted. Bond shall not be returned until certified reclamation has been completed as judged by the Tolland Zoning Enforcement Officer.
6. **Renewal of Special Permit**
  - a. Any Earth Removal Special Permit shall be in force for a period of no more than three (3) years and shall apply to only the parcel identified in the approved application Site Plan. Any extensions beyond three (3) years or expansion beyond the Planning Board-approved site shall require the permittee to submit a new application. Renewals of Permits for any reason will be subject to any new standards that have become applicable during the term of the original Special Permit.
  - b. An operator shall file an application for renewal or a notice of cessation of operations with the Planning Board six months prior to the expiration of an active Permit to allow for identification and remediation of non-compliance.
  - c. Non-compliance with any portion of the expiring Special Permit or of any other permits granted by the Town of Tolland, violations of any State or Federal laws, or of Town Bylaws or regulations shall be grounds for denying any further Permits.
7. **Enforcement/Non-compliance and Fines:** Any earth removal operation found to be in violation of this Bylaw shall be subject to a fine and requirements established by the Town of Tolland Bylaw on Criminal and Non-Criminal Disposition Bylaw and Regulations. The Planning Board may, at its discretion, suspend the Special Permit until proof of compliance is submitted. In the case of persistent noncompliance, the Permit may be revoked and immediate restoration of the site may be required. The Town may restore the site, using the owner's Surety Bond if the demands are not met within a reasonable time as judged by the Planning Board or the Zoning Enforcement Officer. Violations may be determined in the course of normal inspections carried out by the Planning Board or as a result of a complaint filed in writing with the Planning Board and found to be factual by the Zoning Enforcement Officer.
8. **Abandonment:** If no earth removal operations are conducted for a period of two or more years, the Town shall consider the facility abandoned and may revoke the Special Permit and use the Performance Bond to restore the site.

#### **D. Mobile Homes and Recreation Vehicles**

1. **Use as Dwelling:** Mobile Homes, Recreation Vehicles, motor homes, tents, campers, house or travel trailers shall not be kept within the boundaries of the Town of Tolland unless they are in bona fide storage or unless the Planning Board gives written approval for use as a temporary dwelling during construction of a permanent residence as provided in Section VII. B. 3 (Temporary Dwelling by Permit). Tents and campers shall not be used as dwellings.
2. **Existing Mobile Homes/Recreational Vehicles:** This prohibition does not apply to Mobile Homes/Recreation Vehicles used for living purposes at the time of the December 7, 1970 adoption of this Bylaw and maintained in continuous service since that time.

## **E. Commercial Recreation**

1. **Municipal Exception:** This section VII. E shall not apply to recreation events sponsored by Town Departments, Boards or Committees and approved by the Board of Selectmen.

2. **Facilities Covered:** The following types of facilities are considered:

**Commercial Recreation Area (general):** Predominantly outdoor recreation facility which may have, but does not necessarily have, hunting lodges or shelters and/or residential structures for participants and may present, but does not necessarily present, outdoor entertainment events for a fee. A Commercial Recreation Area (general) is at least 50 acres in area.

**Commercial Recreation Area (residential camp):** Predominantly outdoor recreation facility whose primary use is the provision of campsites and/or residential camping and activities customarily accessory thereto. A Commercial Recreation Area (residential camp) is at least 20 acres in area.

**Commercial Recreation Facility (other):** An indoor or outdoor recreational facility not meeting the definition of general or residential camp Commercial Recreation Area.

3. **Special Permits:** The Planning Board may issue a Special Permit for Commercial Recreation uses and facilities in accordance with the provisions of Section IX.A of this Bylaw and of this Section VII.E. Special Permits may be renewed upon application to the Planning Board. Changes in the nature or scope of operations shall require a new application for Special Permit to be filed with the Planning Board.

Special Permits already issued under previous bylaws which contain no provision for renewal or reapplication or expiration may be reviewed by the Planning Board at their discretion. The Planning Board may require a renewal period or reapplication for a Special Permit by the Special Permit holder. Such applications shall comply with the provisions of this bylaw.

4. **Requirements.** No Special Permit for Commercial Recreation shall be issued or approved unless the Planning Board finds that the proposed use meets all the applicable requirements for the issue of a Special Permit detailed in Section IX.A. and:
  - a. Will cause no hazards to health, safety, and property from fire, accident, sanitary and drainage conditions, nor will cause excessive traffic, noise, vibrations, odors, glare or other nuisance.
  - b. Shall not interfere with any public or private water supply.
  - c. If the proposed use includes the provision of campsites, hunting or other shelters, bunkhouses or dormitory structures for the participants the proposed site shall be not less than 20 acres in area and the said campsites and structures shall be for short term occupancy and shall not be used by any individual or group for more than one hundred and thirty (130) days in any twelve (12) month period. This restriction shall not apply to permanent residential structures provided for camp staff or caretakers.
  - d. If the proposed use is outside recreation beyond that accessory to residential camping or campsites and/or the provision of outside events or shows for which admission is charged the proposed site shall be not less than fifty (50) acres in extent.
  - e. Shall comply with all other applicable laws, regulations and codes set forth by the Commonwealth of Massachusetts and the Town of Tolland.



5. **Application.** Each Special Permit application for Commercial Recreation shall meet all applicable requirements of Section IX.A and the “Applicant’s Guide to the Approval Process.” The application shall also provide:
- a. A specific list of the proposed uses including location on the site, proposed times of yearly and daily operation, and the maximum number of individuals allowed to reside or participate
  - b. Location, proposed use, and description of all structures whether temporary or permanent.
  - c. Location and nature of any external lighting and sound systems and other utilities.
  - d. Proposed security and traffic control provisions.
  - e. Permanent and temporary sanitary provisions.
  - f. Existing roads and proposed roads indicating access and egress routes and all gates, fences and other control means.
  - g. All temporary and permanent parking facilities.
6. **Approval.** Approval by the Planning Board shall only be granted in accordance with the provisions of Section IX.A. All information in the application or otherwise submitted to the Board upon which they base their approval shall be incorporated as conditions of the Special Permit. Unless otherwise extended by the Planning Board, approval of a Special Permit shall become null and void after two years unless a substantial part of the facility is in operation. Amendments to the approved Site Plan must be submitted with an application to renew the Special Permit.
7. **Building Permits.** No Building Permit shall be issued for construction of a Commercial Recreation facility except in accordance with a Site Plan approved in connection with a Special Permit. No Certificate of Occupancy shall be issued until all protective requirements and public improvements shown on the approved Site Plan have been completed.

## F. Signs

### 1. Signs Permitted By Right

- a. **Residence/Dwelling:** Each family residing on the premises may have one 911 number designation not to exceed 3/4<sup>th</sup> square foot, plus one sign not exceeding an area of two (2) square feet.
- b. **Home Occupation or Professional Office or Personal Service Shop:** One (1) unlit sign of no more than six (6) square feet area may be displayed for a Home Occupation, and shall otherwise comply with this Section VII. F Two such signs mounted back to back shall count as one sign.
- c. **Building or Lot Sale, Lease or Rental:** The sale, lease or rental of a building or lot may be advertised by the use of not more than two signs, provided that a single sign shall not exceed six (6) square feet; if two signs are erected, each shall not exceed four (4) square feet. Two signs back-to-back shall be considered one sign.
- d. **Other Signs:** Hazard, warning and property posting signs.

## 2. Signs Allowed by Special Permit

Stores, farms, orchards, or other uses involving sales or services as permitted under Section V Table 1 – Land Use may advertise goods sold or services rendered on the premises by one or more signs on the property with a combined area not exceeding thirty (30) square feet. One directional sign may be located off the premises on private property with permission of the property owner. The directional sign may not exceed six (6) square feet.

## 3 Sign Prohibitions, Maintenance, Removal and Location

### a. Prohibited Types of Signs

The following types of signs, devices and lighting are prohibited:

- 1) Flashing, animated, noise-making or intermittently illuminated signs.
- 2) Companion signs advertising successively or repetitively.
- 3) Signs with reflective letters (excepting 911 signs)
- 4) Exposed neon or gas-filled tube-type signs.
- 5) Streamers, “whirligigs”, inflated balloon-like or animated objects, banners or other similar advertising devices
- 6) Pylon signs or special ground signs supported by tall mast-like members or pyramidal tower supports.
- 7) Exposed permanent lighting which outlines any part of a building or structure, such as a gable roof, side wall or corner, except temporary holiday lighting in use for a cumulative period of no longer than six (6) weeks in any calendar year.
- 8) Unshielded illuminated signs, including floodlighting, which result in high intensity light shining onto any street or adjoining or nearby property.

### b. Signs Allowed by Special Permit

- 1) **Repair and Removal.** Any sign which is dangerous unsafe or unsightly shall be repaired and made safe or be removed by the owner, lessee, agent or occupant of the building, land or property upon which it is located.
- 2) **Sold Signs:** “Sold” signs usually erected to indicate a completed sale of property must be removed not later than fifteen (15) days after the date of the sale.
- 3) **Construction or Contractor Signs:** Construction signs including builder or contractor information must be removed within fifteen (15) days after construction or work is completed and a temporary or permanent Occupancy Permit is issued.

### c. Location of Signs

- 1) **Distance from Pavement:** All signs adjacent to a public way shall be behind, that is on the private property side of, the street line as defined in Section IV. Definitions. 911 signs are exempt from this requirement.
- 2) **No signs on poles or traffic signs.** No signs shall be tacked, painted, posted or otherwise attached to a utility pole or traffic sign.

#### **G. View Obstruction and Corner Clearance**

No wall or other structure shall be erected and no hedge, tree or other obstruction exceeding a vertical height of 3 ½ feet from the road level shall be maintained on a lot which may cause danger to traffic on a public or private traveled way by obscuring the view.

#### **H. Parking Requirements**

Any building hereafter constructed for business use shall be so located on the lot so as to accommodate the construction of a parking area of a size and type as deemed necessary by the Planning Board to support anticipated service, loading and unloading, and customer and employee parking. The parking area shall have proper drainage and where deemed necessary shall be paved.

#### **I. Storage**

Equipment and supplies necessary for the operation of any business must be located and/or stored in a manner that will not detract from the external appearance of any building and the surrounding area.

#### **J. Driveways**

**1. Purpose:** This section is intended to govern the location, design and construction of driveways within the town of Tolland to maintain the integrity and safety of public ways and to insure that access for emergency vehicles is properly considered.

**2. Definition**

**Driveway:** A way lying within a lot or lots, which is used or intended to be used by registered motor vehicles as the primary access to a year-round or seasonal dwelling, a place of business, a group of residential or commercial buildings or any other principal building(s), whether publicly or privately owned. This definition shall not include any public way. Nor shall it include any private way which has been approved under the Subdivision Bylaw or any new access roadway for a Personal Wireless Service Facility approved under Section XII of this Bylaw. Nor shall it include any farm lane, logging road, earth removal access road, foot trail, bridle path or other minor travel route which is not used as the primary vehicular access to a residential or commercial building.

**3. Applicability:** This section shall govern the location, design and construction of driveways intersecting with any way open to the public. A driveway in existence and in regular use prior to the effective date of this Bylaw as provided in MGL 40A, Section 6 as amended shall not be subject to these requirements unless and until it is reconstructed or improved so as to alter its grades or paving. Any such alteration shall be in conformance with this Bylaw section VII.J to the extent possible. However, paragraphs 5.a. and 5.b. concerning the impact on Town roads caused by runoff and debris from driveways shall apply to every driveway in the town, regardless of the date of construction.

4. **Location and Dimensional Requirements:** A driveway entrance onto a public way shall be situated so that a driver has a minimum sight line of 75 feet in each direction when entering the way, except that a minimum sight line of 100 feet shall be provided for entrance onto State Highway 57 and for entrance to any other public way having a speed limit of 45 miles per hour or higher. If achieving adequate sight lines is made difficult by local topography the Highway Superintendent may require clearing, the placement of mirrors or other provisions to assure safe access between the driveway and the public way. No driveway entrance shall be located closer than 75 feet to any intersection of public ways.

- a. **Distance from Abutters:** No portion of a driveway, including its cuts, fills, culverts, etc. shall come closer than 10 feet to any abutting property.
- b. **Slope:** Driveways entering a public way shall have no grade steeper than 10% within the first 50 feet from the edge of the traveled roadway.
- c. **Apron:** Any new or additional driveway entering onto a paved public way must have a 4 inch concrete or 3 inch bituminous concrete (triple chip seal) or greater thickness apron not less than 15 feet wide and not less than 10 feet long connecting the driveway and the paved public way. Existing driveways being improved shall also comply with this requirement.
- d. **Width:** Driveways shall be a minimum of 12 feet wide with a surface of 6 inches of well compacted gravel or a suitable paved surface within the first 50 feet from the edge of the traveled roadway.
- e. **Drainage:** Driveways shall be adequately crowned to direct surface water runoff to appropriate gutters within the first 50 feet from the edge of the traveled roadway.
- f. **Gutters and Culverts:** Driveway gutters and culverts shall be of adequate size and location to handle all anticipated surface runoff, shall be directed to follow previous natural runoff patterns, and shall in no instance direct flow onto abutting property or public ways.
- g. **Slope of Cuts and Fills and Stabilization:** Driveway cuts and fills shall be sloped no steeper than 1 foot rise to 2 feet run. Cuts and fills must be stabilized with vegetation or stone covering, and protected from erosion until the vegetation or stone covering is effectively in place.

5. **Flow of Debris onto the Public Way:**

- a. **Discharge Creating Safety Hazards:** Every driveway and all associated earthworks and drainage structures shall be designed, constructed, stabilized and maintained to prevent the discharge of water, snow, ice, mud, gravel, or any other foreign material onto the traveled surface of any way open to the public. Faulty construction or maintenance of a driveway or associated drainage structures shall not be permitted to cause obstruction or overloading of any drainage structure or system lying within a public right-of-way. Violation of these requirements will be sufficient cause for emergency action by the Town to eliminate safety hazards to the public. The costs of any such emergency action shall be borne by the owner of the defective driveway.
- b. **Requirements to Repair:** The Highway Superintendent may require a driveway owner to install culverts, rip-rap, retaining walls, curbs or berms, or to take other appropriate measures to ensure that drainage related to the driveway does not adversely affect a public way. The Highway Superintendent may require this work to be completed within a specified time. The installation and maintenance of all such structures or improvements shall be the responsibility of the driveway owner. Failure to comply with the provisions of this paragraph after adequate notice shall constitute a violation of this Bylaw.

6. **Access for Emergency Vehicles:** Every driveway shall permit emergency vehicles to turn safely from public way to driveway and vice versa, in any direction. Driveways shall be

graded, laid out and have sufficient clearance from obstructions so that emergency vehicles have adequate access to structures on the lot.

7. **Administration and Enforcement:** The Highway Superintendent is responsible for the administration of this Bylaw Section. Responsibility for Enforcement is in accordance with Section IX A of this Bylaw.
  - a. **Driveway Permits:** Any property owner intending the construction, substantial alteration or paving of a driveway shall apply to the Highway Superintendent for a Driveway Permit in accordance with the Applicant's Guide to the Approval Process available in Town Hall.
  - b. **Driveway Permit Requirements:** The Highway Superintendent shall issue a Driveway Permit when satisfied that the driveway as described in the application will comply with the requirements of this section. The Superintendent may require the submission of engineering layouts of the driveway showing all curves, grades and nearby obstacles to assist in making this determination. He may request the opinion of the Fire Chief as to compliance with the requirements of paragraph 6. If the proposed driveway has any grade over 15% or is more than 750 feet in length, the Superintendent shall request the opinion of the Fire Chief as to compliance with the requirements of paragraph 6
  - c. **Enforcement Actions:** The Selectmen or their agent may order the cessation of any unauthorized driveway construction until a driveway Permit is issued for it. Failure to stop work after proper notification shall constitute a violation of this Bylaw. If the Highway Superintendent observes that a driveway has not been constructed in conformance with the driveway Permit, he shall so notify the property owner. Failure to bring the driveway into conformance after proper notification shall be deemed a violation of this Bylaw.
  - d. **Completion Required before Occupancy:** No dwelling or structure open to the general public may be occupied before the driveway is completed in accordance with the Driveway Permit. No final Certificate of Occupancy shall be issued until the Highway Superintendent determines that the driveway has been properly completed. A temporary Certificate of Occupancy may be issued by the Building Inspector for weather-related delays in completing the driveway.
8. **Appeal:** Any person aggrieved by his or her inability to obtain a Permit or by any other action taken under this Bylaw section VII.J may take an appeal in accordance with Section IX.C.3. (Appeals).

## **K. Home Occupations**

### **1. Purpose**

The purpose of permitting Home Occupations is to provide the opportunity for Tolland residents to perform on a full or part-time basis certain occupations which can be carried out entirely within dwellings or structures (e.g. private garages) customarily accessory to dwellings, provided that such occupations do not have outward manifestations incompatible with a residential neighborhood.

### **2. Definition**

An activity conducted for gain primarily by residents of a dwelling unit, carried out inside the principal dwelling unit or inside a building of a type customarily accessory to a dwelling unit. The activity is of such character that it does not produce outward manifestations which are incompatible with a residential neighborhood and does not produce a significant change in local vehicle traffic.

### **3. Typical Uses:** Home Occupations include but are not limited to the following:

- a. Typical Home Occupations:** Dressmaker or tailor, hairdresser, art studio, handicrafts, music studio, photographic studio, real estate or insurance agent, office of a sales or manufacturing representative, secretarial and other computer related services, small group instruction or tutoring, engineering and consulting
- b. Trades Home Occupation:** Use of premises or buildings thereon in connection with his or her trade by a resident carpenter, electrician, painter, plumber, television or computer technician, or other artisan, providing that no manufacturing requiring substantially continuous employment be carried on.
- c. Uses Requiring Special Permit Excluded:** Home Occupation shall not be interpreted to include any use which is designated "Special Permit with Site Plan Review" in Table 1 - Land Use in Section V. This Section, VII.K Home Occupation, does not apply to Farm Stands as defined in this Bylaw
- d. Merchandise Transactions Excluded with Exceptions:** Wholesale or retail merchandise transactions shall not be considered Home Occupations except for the sale of handicrafts, clothing, art work and similar goods produced entirely on the premises or wholesale or retail merchandise transactions made entirely by mail or by telephone or other electronic means.

### **4. Conditions**

- a. Number of Employees:** Not more than the full-time-equivalent of two persons other than residents of the premises are regularly employed in the activity.
- b. Accessory Use and Compatibility with Residential Neighborhood:** The Home Occupation is clearly accessory to the Residential use of the premises and does not occupy more than 25 percent of the floor area of the principal dwelling. The dwelling and accessory buildings or structures used in the Home Occupation shall be compatible with those typical of a single-family residential area. Visible external storage or display of material, equipment or finished goods is not permitted.

- c. **No Objectionable Conditions Created:** No equipment or process shall be used which creates noise, dust, fumes, vibration, glare, odors, electrical interference or other obnoxious effects to a degree not typical of residential neighborhoods.
- d. **Traffic:** No vehicle traffic shall be generated by the Home Occupation in greater volume than would normally be expected in a residential neighborhood.

**5. Signage.**

One (1) unlit sign of no more than six (6) square feet area may be displayed for the Home Occupation, and shall otherwise comply with Section VII.F of this Bylaw. Two such signs mounted back to back shall count as one sign.

**L. Accessory Apartments**

**Definition:** A self-contained second housekeeping unit within or attached to a single-family dwelling or a building accessory thereto. The Accessory Apartment shall have its own means of ingress and egress and be smaller than the principal dwelling, structure or accessory building. It must contain a bathroom, cooking facilities and no more than two bedrooms.

**1. Purpose:** The purpose of permitting Accessory Apartments are to:

- a. To provide the opportunity for use of a dwelling, structure or accessory building for rental; provide living quarters and economic support for family members, and provide housing for small households.
- b. Encourage a more economic and energy-efficient use of the Town's housing supply while protecting stability, property values, and appearance and character of the Town's single-family residential zones.

**2. Five (5) Year Renewable Special Permits**

- a. **Accessory Apartment in Owner-occupied Dwelling:** The Planning Board may authorize a five (5)-year renewable Special Permit for an Accessory Apartment in an owner-occupied dwelling or a building accessory thereto. The owner-occupant of the dwelling may apply to the Planning Board to renew the Special Permit within six months of the Permit expiration date by providing a notarized affidavit certifying continued owner-occupancy. The Special Permit shall expire upon sale of the property; the new property owner shall apply for a new Special Permit for the Accessory Apartment certifying owner-occupancy.
- b. **Accessory Apartment in Town Center Zone:** The Planning Board may authorize a five (5) year renewable Special Permit for an Accessory Apartment within a Commercial/Retail structure in the Town Center District. The Accessory Apartment need not be owner-occupied. The owner may apply to the Planning Board for renewal of the Special Permit within six months of the Permit's expiration date. The Special Permit shall expire upon sale of the property; the new property owner shall apply for a new Special Permit.

**3. Conditions: The following conditions must be met:**

- a. **Independent Dwelling Units:** The primary dwelling and the Accessory Apartment shall be independent living units, each containing a bathroom, cooking facilities and living and sleeping spaces. The Accessory Apartment may not exceed 1,000 square feet and shall not have more than two bedrooms.

- b. Owner-Occupancy:** In the AR I and AR II Zones, the owner of the principal dwelling shall occupy either the primary dwelling or Accessory Apartment except for a bona fide temporary absence. The owner-occupant shall certify owner-occupancy via a notarized affidavit at the time of the application for or renewal of the Special Permit.
  - c. Special Permit Null upon Changes in Ownership, Use or Title Transfer:** A Special Permit issued for an Accessory Apartment shall become null and void upon change of ownership, transfer of title, or change of use. Prior to, or upon change of ownership or transfer of title, a new owner or title holder must make application for a Special Permit hereunder to request the continued use of the Accessory Apartment.
  - d. No separate ownership:** No Special Permit issued hereunder shall be construed to allow separate ownership of the primary residence, structure and/or property, and the Accessory Apartment.
  - e. Appearance Consistent with Residential Neighborhood.** The construction and/or occupancy of the Accessory Apartment shall not be injurious to persons or detrimental to the neighborhood in which the lot is located. The Accessory Apartment shall be designed so the structure's appearance remains that of a one-family dwelling or the existing accessory building. When feasible, any new entrances shall be located on the side or rear of the building.
  - f. Parking:** At least four off-street parking spaces (including garage parking spaces) shall be available for use by the owner-occupant(s) and tenant(s) and should be located to the side or rear of the structure, to the extent feasible. Parking shall have vehicular access to the driveway.
  - g. One Accessory Apartment per Lot:** Only one Accessory Apartment is permissible per lot.
  - h. Cannot Create Non-Conforming Lot:** The lot on which the principal dwelling is located must meet the frontage and lot size requirements of the applicable Zoning District. The Accessory Apartment shall not create a non-conforming lot or increase the non-conformity of an already existing non-conforming lot or non-conforming structure. All additions shall comply with the Setback and Frontage requirements defined in Table 2: Dimensional Requirements
- 4. Compliance:** An Accessory Apartment shall comply with all applicable provisions of the Zoning Bylaw and Massachusetts State Building Code including Title 5 Septic System standards and requirements. Septic Systems shall be reviewed and approved by the Health Agent. The Building Inspector shall inspect the premises for compliance with the Massachusetts State Building Code before issuing a Certificate of Occupancy.



**5. Recording of Special Permit in Hampden County Registry of Deeds and Proof Thereof:**

- a. Town Clerk Certification** No Special Permit for an Accessory Apartment, or any extension modification or renewal thereof, shall take effect until a copy of the Planning Board decision bearing the certification of the Town Clerk that (1) twenty days have elapsed after the decision has been filed with the Town Clerk's office and no Appeal has been filed or (2) that if such Appeal has been filed, that it has been dismissed or denied, is recorded in the Hampden County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the Owner or applicant.
- b. Proof of Recording:** The Applicant/owner shall provide the Town Clerk and the Planning Board with satisfactory proof of recording Special Permit specifics in the Hampden County Registry of Deeds prior to the use of or construction of an Accessory Apartment hereunder.

**6. Application for Special Permit:** The Applicant must comply with all requirements and processes associated with Application for a Special Permit including Notices and Public Hearing as defined in Section IX.A of this Bylaw. In addition:

- a. Health Agent Certification:** Before a Special Permit can be obtained for an Accessory Apartment, the Applicant shall obtain approval by the Tolland Health Agent as to the existence of or capacity to develop a sanitary wastewater disposal system in full conformance with the provisions of 310 CMR 14 (Title 5 of the Massachusetts Environment Code). The Health Agent shall also approve water supply and drainage as adequate for the proposed construction.
- b. Site Plan Requirements:** The Application must conform to requirements established in the Applicant's Guide to the Planning Process available from the Town Clerk and must include Site Plans that conform with requirements in Section IX.B of this Zoning Bylaw.

**M. Accessory Buildings and Structures**

- 1. Required Setbacks:** Attached or detached accessory buildings, including membrane and tent structures, are subject to the same minimum front, rear and side yard setbacks or clearances applicable to the principal buildings as defined in Table 2: Dimension Requirements.

**Small Temporary Structures used by Children waiting for School Buses** shall be no larger than thirty two (32) square feet. These structures are exempt from roadside setback requirements that apply to other accessory buildings but must be at least ten (10) feet from the public or private traveled way, located on the applicant's property and approved by the Planning Board.

**Temporary Storage Containers:** Temporary storage containers, pods or bins used during construction or relocation may be exempt from setback requirements with written permission by the Planning Board. These containers must be at least ten feet from a traveled way. Such containers must be removed upon relocation or at the end of the construction period with a maximum of two years.

2. **Site Plan Review:** Site Plan Review by the Planning Board is required prior to construction, reconstruction, alteration, moving or extension for all attached and detached accessory buildings including membrane structures, garages, sheds, tents, carports and similar structures, including those of less than 120 square feet.
3. **Building Permits Required:** Building Permits are required for all attached and detached accessory buildings and structures except for sheds 120 square feet or smaller.

## **N. Fences**

Fences or walls need not comply with any of the setback requirements specified elsewhere in this Zoning Bylaw. They shall, however, be subject to the requirements defined in this section.

### **1. Applicability**

This section VII.N shall not apply to fences and walls in existence at the time of effectiveness of this section as defined in Section II.B of this Bylaw unless they are reconstructed to be of increased height. Nor shall it apply to Partition Fences and other agricultural pounding or dividing fences covered under Massachusetts General Law Chapter 49.

2. **Building Permit Requirements:** A Building Permit shall be obtained for all fences over six (6) feet in height.
3. **Setbacks:** All fences shall be set back a minimum of ten (10) feet from the traveled way or paved surface of any public way and a minimum of three (3) feet from the any boundary property line between private properties.
4. **Finished Sides:** The finished side of a fence or wall on or adjacent to a boundary property line between private properties shall face outward, away from the area/use being enclosed.
5. **Recreational and Athletic Facilities:** Fences required as part of athletic facilities such as, but not limited to, softball diamonds, swimming pools or tennis courts are permitted at heights in conformance with Massachusetts State Building Code.

## **SECTION VIII      PERSONAL WIRELESS SERVICES FACILITY (PWSF)**

### **A. Purposes and Intent**

The purposes and intent of this Personal Wireless Service Facilities (PWSF) Article are to:

1. Preserve and protect the character, appearance, scenic, historic, environmental, natural and man-made resources and property values of the town while allowing adequate personal wireless services to be developed in Tolland.
2. Assure that personal wireless service is provided to Tolland in the least visually intrusive manner considering siting, sharing, design, height, appearance, screening and camouflage of facilities and other feasible innovative techniques, which may be available.
3. Encourage co-location of Personal Wireless Service Facilities, the sharing of personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of PWSF that are stand-alone facilities.
4. Provide standards, requirements and responsibilities, including burden of proof, for regulation, siting, appearance, camouflaging, screening, construction, safety, monitoring, modification and removal of PWSF.
5. Provide a procedural basis for action within a reasonable period of time on requests for authorization to place, construct, operate, and modify or remove Personal Wireless Service Facilities..

### **B. Consistency with Federal and State Law**

These regulations are intended to be consistent with the Telecommunications Act of 1996 in that they

- do not prohibit or have the effect of prohibiting the provision of Personal Wireless Services;
- are not intended to be used to unreasonably discriminate among providers of functionally equivalent services;
- do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

### C. Definitions and Word Usage

As used in this PWSF Article, the following terms shall have the meanings indicated. The words “shall” or “will” indicate mandatory requirements; “may” is advisory and indicates recommendations that are not mandatory.

<b>Term</b>	<b>Definition</b>
<b>Above Ground Level (AGL)</b>	A measurement of height from the natural grade of a site to the highest point of a structure.
<b>Adequate Coverage</b>	Coverage for wireless telephony is “adequate” within that area where the predicted or measured field strength of the transmitted signal is such that most of the time, properly installed and operated transceivers will be able to communicate with the base station without calls being dropped due to objectionable noise (or excessive bit-error-rate for digital). It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage is that location past which the signal does not regain.
<b>Antenna</b>	The structure, device or surface from which wireless electromagnetic radio signals are sent and received by a PWSF.
<b>Available Space</b>	The space on a Tower or structure to which Antennas of a Personal Wireless Service Provider are both Structurally Able and Electromagnetically Able to be attached.
<b>Average Tree Canopy Height</b>	An average height found by inventorying the height aboveground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section VIII.G.6.b of this Bylaw.
<b>Base Station</b>	The primary sending and receiving site in a wireless telecommunications network. More than one Base Station and/or more than one variety of personal Wireless Service Carrier can be located on a single site.
<b>Camouflaged</b>	A PWSF that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "camouflaged."
<b>Co-Location</b>	The location of wireless communications equipment from more than one Carrier or other entity on a single Facility Site.
<b>Communications Equipment Shelter</b>	A structure located at a Base Station designed principally to enclose equipment used in connection with Personal Wireless Service transmissions.
<b>Distance</b>	Distance shall be measured on a horizontal plane.
<b>Electromagnetically Able</b>	The determination that the new signal from and to the proposed new Antennas will not significantly interfere with the existing signals from and to other Facilities located on the same Tower or structure as determined by a qualified professional telecommunications engineer. The use of available technologies to alleviate such interference shall be considered when making this determination.
<b>Elevation</b>	The measurement of height above sea level. The elevation at grade or ground level shall be given as Above Mean Sea Level (AMSL)
<b>EMF</b>	Electromagnetic Frequency Radiation
<b>FAA</b>	Federal Aviation Administration. The Government agency responsible for regulating aviation and related issues, facilities and standards.

<b>FCC</b>	Federal Communication Commission. The Government agency responsible for regulating telecommunications in the United States.
<b>FCC 96.326</b>	A Report and Order that sets national standards for emissions of Radio Frequency emissions from FCC-regulated transmitters. This Report and Order is now contained within Code of Federal Regulations Title 47 Regulations, Section 1 §1.1307.
<b>Fall Zone</b>	The area on the ground within a prescribed radius from the base of a PWSF. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material or which is required for recovery operations.
<b>Guyed Tower</b>	A monopole or lattice Tower that is tied to the ground or other surface by diagonal cables.
<b>Height</b>	The vertical distance between the highest point of the structure, including any device attached, and the natural grade of a site.
<b>Lattice Tower</b>	A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
<b>Licensed Carrier</b>	A company authorized by the FCC to construct and operate a commercial mobile radio services system.
<b>Location</b>	References to site location as the exact longitude and latitude to the nearest tenth of a second with bearing or orientation referenced to true North.
<b>Major Modification of an Existing Facility</b>	Any change, or proposed change in power input or output, number of Antennas, change in Antenna type or model, repositioning of Antenna(s), change in number of channels per Antenna above the maximum number approved under an existing Special Permit. Change in the dimensions of an existing and permitted Tower or other structure designed to support Personal Wireless Service transmission, receiving and/or relaying Antennas and/or equipment or any other change, or proposed change, in any such Tower or structure or in any PWSF installed thereon that would have an impact on the interests specified in Section VIII.A. of this Bylaw as determined by the Planning Board.
<b>Major Modification of an Existing Repeater</b>	Any removal of or change in location of or any increase in the dimensions of any Repeater for which a Special Permit has been received.
<b>Monitor/Monitoring</b>	The measurement, by the use of instruments in the field, of the radiation from a Site as a whole, or from individual Personal Wireless Service Facilities, Towers, Antennas or Repeaters.
<b>Mount</b>	The structure or surface upon which Antennas and possibly other PWSF components are supported.
<b>Omni-directional (Whip or Unipole Antenna</b>	A thin rod that beams and receives a signal in all directions.
<b>Personal Wireless Services</b>	Commercial Mobile Services, unlicensed wireless services, and common carrier wireless services. These services include Cellular Services, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio Services, Specialized Mobile Radio Services and Paging Services.
<b>Personal Wireless Service Carrier</b>	An entity, licensed by the FCC to provide personal Wireless Services.
<b>Personal Wireless Service Facility Site, PWSF Site or Facility Site</b>	A property or any part thereof, upon which one or more PWSF are located. The Facility Site includes all required fencing, parking, signage, landscaping, screening, etc, but does not include the access road or utility and communications connections.

<b>Personal Wireless Service Facility (PWSF) or Facility</b>	Any facility for the provision of Personal Wireless Services. The Facility includes the Mount, Antennas, other communications equipment, Communications Equipment Shelters, Repeaters and other related equipment.
<b>Planning Board</b>	The Town of Tolland Planning Board that serves as the Special Permit Granting Permitting Authority (SPGA) under this Article.
<b>Poles or Towers (Types)</b>	Poles include <i><b>Masts</b></i> (thin poles that resembles a street light, standard, or telephone pole); <i><b>Micropoles or Unipoles</b></i> (a single self-supporting thin vertical pole with no guy wire anchors, within which Antenna and other appurtenances are enclosed); and <i><b>Monopoles</b></i> (a single, self-supporting vertical pole with no guy wire anchors to which Antenna and other appurtenances are attached).
<b>Radiated Signal Propagation Studies or Coverage Plots</b>	Computer-generated estimates or drive test results of the emanating signal and prediction of coverage from Antennas or Repeaters sited on a specific Mount. The height above ground, power input and output, frequency output, type of Antenna, Antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining a need and whether the telecommunications equipment will provide Adequate Coverage for an area. Other generally recognized methodology for assessing signals may also be employed.
<b>Radiofrequency (RF) Engineer</b>	An engineer specializing in electrical or microwave engineering, especially the study of radiofrequencies.
<b>Radiofrequency Radiation (RFR)</b>	The emissions from Personal Wireless Service Facilities
<b>Repeater</b>	A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.
<b>Repeater Site</b>	The location leased or otherwise used by one or more Personal Wireless Service Carriers and upon which one or more Repeater(s) and any required camouflage or screening are located.
<b>Residence</b>	As used in this Section VIII shall include: Dwelling, One-Family; Dwelling, Two Family Dwelling, Accessory Apartment and Seasonal Dwelling or Camp as defined in Section IV of this Bylaw.
<b>Special Permit Granting Authority (SPGA)</b>	The Tolland Planning Board shall be the SPGA for this Article.
<b>Structurally Able</b>	The determination that a Tower or structure is capable of carrying the load imposed by proposed new PWSF components under all reasonably predictable conditions as determined by professional structural engineering analysis.
<b>Tower</b>	A lattice structure or framework, Unipole, Micropole, Monopole, or Mast, that is designed to support Personal Wireless Service transmission, receiving and/or relaying Antennas and/or equipment. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.
<b>Tower - Unipole</b>	A mast-type Antenna mounting system with a fiberglass Antenna radome which accommodates multi-carrier configurations.

#### **D. Exempt Wireless Telecommunications Facilities**

This Article specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch; federally licensed amateur radio operator; and citizens band radio. No PWSF shall be considered exempt from this Article for any reason whether or not said Facility is proposed to share a Tower or other structures with such exempt uses.

#### **E. Independent Consultants: Selection and Payment**

Upon submission of an Application for a Special Permit under this Article, the Planning Board may hire independent consultants whose services shall be paid for by the Applicant.

#### **F. Application Requirements**

- 1. Special Permit Application Required.** No Facility, Tower or Repeater shall be erected, constructed, installed, or undergo Major Modification without first obtaining a **Special Permit** from the Planning Board in accordance with the requirements set forth herein.
  - a. New Facilities:** For **New Facilities** including Towers, Repeater Base Stations, Communications Equipment Shelters, and placement of new PWSFs on existing structures, the Applicant must submit all information specified in Section VIII.F.4 and VIII.F.5.
  - b. Major Modification, Co-location or Siting Repeaters:** For a Major Modification of an **Existing** Facility or Tower, for **Co-location** of another service carrier or expansion of a carrier services on an existing Tower or structure, or for the siting of **Repeaters**, the Applicant must submit all information specified by Section VIII.F.4 and VIII.F.6.
- 2. Pre-Application Conference.** Prior to the submission of an application for a Special Permit under this regulation, the applicant is strongly encouraged to meet with the Planning Board at a public meeting to discuss the proposed Personal Wireless Service Facility in general terms and to clarify the filing requirements. The purpose of the conference is to inform the Planning Board as to the planned nature of the proposed Personal Wireless Service Facility. As such, no formal filings are required for the pre-application conference; however, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the location of the proposed Facility, as well as its scale and overall design.
- 3. Request for Waiver of Application Requirements.** At a Pre-Application Conference, an applicant may request in writing a waiver of any requirements of this section VIII.F that the applicant believes are not applicable to his proposal. The Planning Board shall waive or modify said requirements only after determining that the requested information is clearly not needed for evaluation of the application. The Planning Board's finding on the waiver request shall be based on all the pertinent evidence and may include the opinion of Independent Consultants.
- 4. General Filing Requirements.** The Applicant shall file, in accordance with the Town's Zoning Bylaw Section IX.A.2, a Special Permit Application and the required fee together with two copies of all applicable documents, plans, and surveys listed below:
  - a. Proof of FCC Licensing**
  - b. A description of all other documents** filed with the State and Federal regulatory authorities

- c. **Any additional legal/regulatory filing documents** deemed necessary by the Planning Board
- d. **A map** showing the areas covered/served by the PWSF, and the interface with adjacent service areas.
- e. **Applicant information:** The exact legal name, address or principal place of business and phone number of the Applicant. If applicant is an organization or entity other than a person, the state under which it was created must be specified.
- f. **Applicant Principal Contact:** The name, title, address and phone number of the principal contact person to whom correspondence is to be sent. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
- g. **Property Owner Information and Consent:** Name, address, phone number and written consent to apply for the Special Permit of the owner of the property on which the proposed PWSF shall be located, or of the owner(s) of the Tower or structure on which the proposed Facility shall be located.
- h. **Site Visitation Consent:** Written consent to permit Planning Board representatives, Independent Consultants and their respective designees to conduct any site visits and inspections at the Facility site to exercise the Planning Board's or the Town of Tolland's rights under this Bylaw. Consent must be from landowners and all other relevant parties with an interest in the Facility site and be valid for so long as the Facilities are in existence.
- i. **Tax Map:** Tax map designation (map and lot number) and Zoning District of subject property.
- j. **Engineering Plans:** Engineering plans shall be prepared, stamped and signed by a Professional Engineer (P.E.) licensed to practice in Massachusetts. Survey plans shall be prepared, stamped and signed by a Professional land Surveyor registered in Massachusetts. All plans shall be on 24" x 36" sheets. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.
- k. **Hazardous Materials:** Identification and location of all fuel, batteries and other hazardous materials proposed for use or storage on the PWSF Site.
- l. **Noise:** Identification of and estimates of the magnitude of any noise arising from normal operation, routine testing and emergency operation of the PWSF and associated equipment which may be audible at the site property boundary. Estimates of noise magnitude at the boundary shall be certified and signed by an acoustical engineer.

##### 5. New Facilities/Tower, Base Station Application Requirements

- a. **Existing Structures - Burden of Proof:** The applicant shall have the burden of proving that there are no existing structures or structures currently under construction which are suitable to locate its Personal Wireless Service Facility so as to provide adequate coverage to Tolland. To meet that burden, the applicant shall take all the following actions to the extent applicable, and submit the listed documents to the Planning Board:
  - i. **List of Potential Site Owners:** A list of all contacts made with owners of potential sites regarding the availability of potential space for a Personal Wireless Service Facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.



- ii. **Inquiries to Owners of Existing Sites:** Copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Postal Service shall be provided for each owner of existing structures that was contacted.
  - iii. **Documentation of Site Rejection:** If the applicant claims that a structure is not capable of physically supporting a Personal Wireless Service Facility, this claim must be certified by a licensed Professional Civil Engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the Personal Wireless Service Facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- b. **Least Intrusive Site - Burden of Proof:** The applicant shall have the burden of proving that the selected site is visually the least intrusive site available to locate its PWSF so as to provide adequate coverage to the Town of Tolland. To meet that burden, the applicant shall take all the following actions to the extent applicable, and submit to the Planning Board:
  - i. **Contacts with Owners of Existing Sites:** A list of all contacts made with owners of less visually intrusive sites than the selected site which are suitable to locate its PWSF. If the Planning Board informs the applicant that additional sites may be satisfactory, the applicant shall contact the property owner(s) of those sites.
  - ii. **Inquiries to Owners of Existing Sites:** Copies of all letters of inquiry made to owners of visually less intrusive sites and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Postal Service shall be provided for each owner of less visually intrusive sites that was contacted.
- c. **Available Space Lease:** A written, irrevocable commitment valid for the duration of the existence of any proposed Tower, to rent or lease Available Space for co-location on the Tower at fair-market prices and terms, without discrimination to other Personal Wireless Service Carriers.
- d. **Carrier Contract:** If applicant is not a Personal Wireless Service Carrier, the applicant shall provide a lease or contract with such a carrier stating that the carrier will locate its equipment on the facility if the permit is granted. A PWSF Special Permit shall not be granted to an applicant that is not a Personal Wireless Service Carrier unless the applicant provides a lease or contract with a Personal Wireless Service Carrier so stating
- e. **Documentation of Existing Sites:** Written documentation of any Personal Wireless Service Facilities Sites in Tolland, and within five (5) miles of Tolland boundary lines, regardless of whether or not the applicant has a legal or equitable interest in the site. For each such Facility Site, the applicant shall document in writing why these Facility Sites are not already providing, or do not have the potential by adjusting the Site and/or by the use of Repeaters, to provide Adequate Coverage to the Town of Tolland. For each Facility Site listed, the documentation shall include:
  - i. the exact location (in Longitude and Latitude in degrees , minutes and tenths of seconds),
  - ii. ground elevation above Mean Sea Level,
  - iii. height of Tower or structure,
  - iv. type, manufacturer and model number of Antennae,

- v. Antenna Gain,
  - vi. height of Antennae on Tower or structure,
  - vii. output frequency,
  - viii. number of channels,
  - ix. power input,
  - x. maximum output per channel, and
  - xi. a map showing service coverage.
  - xii. Potential adjustments to these existing Facility Sites, including changes in Antenna type, orientation, Gain, and height or power output shall be specified. Coverage Plots from each of these Facility Sites, as they exist, and with adjustments as above, shall be provided as part of the Application.
- f. **Balloon Test:** Within 35 days of filing an application or such other time as the Planning Board may determine, the applicant shall arrange to fly, or raise upon a temporary mast, a four (4) foot diameter brightly colored balloon at the maximum height and at the location of the proposed Tower. The applicant shall inform the Planning Board and the Board of Selectmen, in writing, of the dates and times of the test, at least 21 days in advance. The notice shall include a second date in case of poor visibility on the initial date. The balloon shall be flown for at least four consecutive hours sometime between 9:00 am and 5:00 PM of the dates chosen.

The Planning Board shall inform the residents of Town of Tolland at least fourteen days in advance of the dates (including alternates), times and location of any scheduled balloon test via a bulk mailing and by publication in a newspaper with a general circulation in the Town of Tolland.

- g. **Maps and Plans:** The following plans and maps:
- i. **Location Map:** Copy of a portion of the most recent USGS Quadrangle map, at a scale of 1:25,000, showing the area within at least two miles from the proposed site. Indicate the location of the Facilities, Base Station and/or Tower; and give the exact Latitude and Longitude of any Tower in degrees, minutes and tenths of seconds.
  - ii. **Vicinity Map:** At a scale of 1" = 200' (1:2400) with contour intervals no greater than 10 feet (3 meters), showing the entire vicinity within a 2000 foot radius of the Tower site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, habitats for endangered species. Indicate the property lines of the proposed Tower Site Parcel and all abutters within 300 feet of the Tower Site Parcel, (from Assessors maps or available surveys). Include the names of all abutters within 300 feet of the Tower Site Parcel. Indicate any access easement or right of way needed for access from a public way to the Tower, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.
  - iii. **Existing Conditions Plan:** A recent survey of the Site at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) with topography drawn with a minimum of 2 foot (0.6 meter) contour intervals. Existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, individual trees with diameters greater than 12" within a 200 foot radius from the base of the proposed Facility/Tower (labeled with their current heights)

should be shown. Show the boundary of any wetlands or floodplains or watercourses within 200 feet from the Tower or any related facilities or access ways or appurtenances. A Professional Land Surveyor must have completed the survey plan, on the ground, within two years prior to the application date.

- h. Proposed Site Plans:** Proposed Facility Site Layout, grading and utilities at the same scale or larger than the Existing Conditions Plan.
  - i.** Proposed Tower location and any accessory buildings (Communications Equipment Shelter or other). Indicate property boundaries and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements.
  - ii.** Indicate proposed spot elevations at the base of the Proposed Tower and the corners of all accessory buildings.
  - iii.** Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.
  - iv.** Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
  - v.** Any direct or indirect Wetlands alteration proposed.
  - vi.** Detailed plans for drainage of surface and/or subsurface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
  - vii.** Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc; any exterior lighting or signs.
  - viii.** Plans of proposed access driveway or roadway and parking area at the Tower Site. Include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, and paving or surface materials.
- i. Proposed Tower and Appurtenances:**
  - i.** Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10' and tower location in degrees, minutes and tenths of seconds.
  - ii.** Two cross sections through proposed Tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing. Dimension the proposed height of Tower above average grade at Tower Base. Show all proposed Antennae, including their location on the Tower.
  - iii.** Details of proposed Tower foundation, including cross sections.
  - iv.** Detail proposed exterior finish and camouflage of Tower.
  - v.** Indicate relative height of the Tower to the Average Tree Canopy Height within a 150 foot radius.
  - vi.** A Professional Engineer's written description of the proposed Tower structure and its capacity to support additional Antennae or other communications facilities at different heights and the ability of the Tower to be shortened if future communications facilities and technologies no longer require the original height.

- vii. Sight Lines or Equivalent or Better Visibility Representation. A minimum of eight view-lines in a zero-to-two mile radius from the site shown beginning at True North and continuing clock-wise at forty-five degree intervals; or a plan map of a circle of two-mile radius of the Facility Site. Any visibility of the proposed Tower shall be indicated on the document. The applicant shall use the USGS quadrangle maps at a scale of 1:25,000 and view lines shall be on a horizontal scale of 1" = 400' with a vertical scale of 1" = 40'. The represented effects of foliage shall assume the seasonal defoliation of deciduous trees.

**j. Proposed Communications Equipment Shelter and/or Repeater Base Station:**

- i. Plans, elevations and cross sections at a scale of no smaller than  $\frac{1}{4}" = 1'$  (1:48) of any proposed appurtenant structure.
- ii. Representative elevation views indicating the roof, facades, doors and other exterior appearance and materials.

**k. Proposed Equipment Plan:**

- i. Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.
- ii. Number of Antennae and Repeaters, as well as their exact locations located on a map and specified by Latitude and Longitude (in degrees, minutes and seconds) for Antennae, and by pole number for repeaters.
- iii. Mounting locations on Tower or structure, including height above ground.
- iv. Antenna type(s), manufacturer(s), model number(s)
- v. For each Antenna, the Antenna Gain and Antenna radiation pattern.
- vi. Number of channels per Antenna, projected and maximum.
- vii. Power output, in normal use and at maximum output for each Antenna and all Antennae as an aggregate.
- viii. Output frequency of the Transmitter(s).

**6. Major Modification of an Existing Facility/Tower, Co-location, (including on Existing Structures), and Repeater Application Requirements**

**a. Maps and Plans:**

- i. **Location Map:** Copy of a portion of the most recent U.S.G.S. Quadrangle map, at a scale of 1:25,000 and showing the area within at least two miles from the Facility Site. Indicate the location of the PWSF proposed or undergoing Modification, and the exact Latitude and Longitude (in degrees, minutes and tenths of seconds). For Repeaters, specify the pole numbers.
- ii. **Proposed Facility Site Plan:** A recent survey of the Facility Site at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing: **a)** Horizontal and radial distances of Antennae to nearest point on property line and horizontal and radial distances of Antennae to nearest dwelling; **b)** Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground; **c)** Any changes to be made to the existing Facility's landscaping, screening, fencing, lighting, drainage, Wetlands, grading, driveways or roadways, parking, or other infrastructure as a result of this proposed Modification of the Facility or addition of a Repeater.

- iii. **Proposed Modifications to Communications Equipment Shelter and/or Repeater Base Station:** a) Floor Plans, elevations and cross sections at a scale of no smaller than  $\frac{1}{4}'' = 1'$  (1:48) of any proposed appurtenant structure. b) Representative elevation views indicating the roof, facades, doors and other exterior appearance and materials.
- iv. **Proposed Equipment Plan:** as specified in XII.F.5.k
- b. **Balloon Test.** Whenever a proposed modification increases the height of a tall Tower (i.e., one over 35 feet tall), a balloon test as described in XII.F.5.f must be performed with notification as specified therein.
- 7. **Additional Requests:** In addition, the applicant shall provide such other documents as the Planning Board may reasonably request.

#### **G. General Requirements and Criteria**

- 1. **Coverage to Tolland.** A Special Permit may be denied if the primary coverage (greater than 50%) from the proposed PWSF is outside Tolland unless the Applicant can show that they are unable to locate within the towns which will primarily receive service from the proposed Facility.
- 2. **Minimize Visual Impact:**
  - a. **Location and Configuration.** The location and configuration of Towers and Personal Wireless Service Facilities shall minimize and mitigate adverse visual and other impacts on the interests and values specified in the Purposes section of this Article. The Planning Board will use the following criteria to assess the visual impacts of Towers and PWSFs:
    - i. Changes in local scale: the relationship between the proposed PWSF or Tower's relative height, mass or proportion to its proposed surroundings;
    - ii. How any proposed new visual elements contrast with their background or against the sky;
    - iii. How different colors and textures of proposed materials appear against a contrasting background; the effect of Camouflaging techniques.
    - iv. Use of materials that are foreign to the existing built environment
    - v. Existing or proposed vegetative screening as it appears during all seasons of the year. Seasonal defoliation of deciduous species may increase visual impact and must be considered.
    - vi. Visibility from residences and traveled ways of facilities proposed for hilltops or ridgelines.
  - b. **Landscaping/Buffers:** All ground-mounted Towers over 35 feet shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount and screens views of the facility in all directions. Access drives are exempt. These trees must currently exist on the subject property, be planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate or alter the required buffer based on site conditions if the location otherwise satisfies the visibility and other requirements of this Bylaw. The one hundred and fifty-foot (150) vegetative buffer shall not be removed or topped unless the trees are dead or dying and present a hazard to persons or property

3. **Co-location of PWSFs is Preferred:** Applicants seeking approval shall demonstrate a good faith effort to co-locate with other carriers on existing non-residential structures. These structures include, but are not limited to buildings, existing telecommunications facilities, utility poles, Towers and related facilities and water towers. These shall be permitted in all Zoning Districts except that only Repeaters are permitted in (T-C) Town Center. The Applicant shall have the burden to first evaluate existing structures for PWSF siting. Only after finding that there are no suitable existing structures pursuant to Section VIII. F.5.a, shall a new ground mounted Facility be proposed. Any installation on existing structures must preserve their character and integrity and conform to existing Zoning requirements. In particular, the applicant is urged to consider use of existing telephone and electric utility masts and poles as sites for one or more Repeaters. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
4. **Other Existing Structures – Requirements:** PWSFs may be mounted on or in existing non-residential structures other than wireless Towers. The Planning Board shall review such proposed mounts considering the issues of visibility (including screening and Camouflage), structural integrity, access, attractive nuisance, signage, security and other applicable issues as defined in the Section A: Purposes and Intent and Section G: Requirements and Criteria sections of this Article. Except for Repeaters, no Facility shall be mounted on or in an existing structure closer than 750 feet to a residence.
5. **Public Safety Communications System:** The Town of Tolland public safety communication systems will be allowed access to co-locate on PWSFs if such access is feasible and the Town Police and/or Fire Chief deem it necessary.
6. **Location, Specifications, Dimensions and Camouflaging**
  - a. **Location:** Recognizing that Tolland contains substantial areas that are remote from residences and traveled ways in which PWSFs can be sited, the following location and specification criteria apply.
    - i. **Distance from Existing Residences:** PWSF Towers exceeding 35 feet in height shall be located no closer than 1500 feet from existing residences and shall be sited and configured to minimize visibility from residences and traveled ways. Other PWSFs less than 35 feet in height (except Repeaters) shall be located no closer than 750 feet from existing residences. Repeater requirements are detailed in Section VIII.G.6.e.
    - ii. **Hilltops and Ridgelines:** The siting of new Towers in open areas without trees, on hilltops or on ridgelines should be avoided.
    - iii. **Prohibited Areas: No Tower or PWSF shall be located within any of the following prohibited areas:**
      - a) Massachusetts or Federally regulated Wetland;
      - b) Within 100 feet horizontally from any Massachusetts or Federal regulated Wetland;
      - c) A Massachusetts Certified Vernal Pool;
      - d) The habitat of any State or Federal listed Rare or Endangered Wildlife or Rare Plant Species
      - e) Within 200 feet horizontally of any Outer Riparian Zone;
      - f) Within 250 feet horizontally from any Historic District or property listed or eligible to be listed on the state or Federal Register of Historic Places; if the Historic Place is a residence, residence distance requirements prevail;
      - g) Within 50 feet horizontally from any archaeological site

- b. **Height:** New Towers above 35 feet in height shall be limited to 20 feet above the average tree canopy height in a radius of 150 feet from the Tower. The Planning Board may waive the height requirements if they determine that the taller Tower provides adequate service to Tolland in the least visually intrusive manner. They may require a location change, camouflage or screening. In no event may a new Tower exceed 150 feet in height
- c. **Fall Zone:** New Towers greater than 35 feet shall be located at least 1.5 times the height of the Tower from all boundaries of the site upon which the Tower is located
- d. **Type of Personal Wireless Service Facility (PWSF)**
  - i. Lattice Towers and guyed Towers are expressly prohibited.
  - ii. Repeaters. The use of Repeaters and Base Stations is encouraged to provide adequate coverage to Tolland and nearby towns.
  - iii. Unipole, Micropole and Monopole Towers and Masts, suitably camouflaged, are permitted.
  - iv. Alternative Technologies: Should other less intrusive technologies and/or equipment become available, the Applicant must propose the least intrusive technology to achieve adequate coverage
- e. **Repeater Requirements**

The use of Repeaters and Base Stations to provide Adequate Coverage is encouraged as is the use of Town or utility rights of way for the location of Repeaters.

  - i. **Location:** It is preferred that Repeaters be located in Town or Utility rights of way mounted on existing utility poles or on new poles or masts erected in these ways. Repeaters may also be located on masts, poles or suitable non-residential structures in other areas. No repeater shall be located on any residence or within 100 feet of any residence. Repeaters shall be located to minimize the impact on views from residences.
  - ii. **Heights.** When located on existing poles, masts or other structures, the Repeater shall not increase the overall height of the structure by more than 10 feet. When installed on a new poles or masts, the overall height of Repeater and Mount shall not exceed 35 feet. No Repeater shall be installed less than 25 feet from the ground.
  - iii. **Camouflage.** The Planning Board may require painting, screening, or other camouflage to reduce the visual impact of Repeater installations.
  - iv. **Fall Zone.** Poles and masts supporting Repeaters shall be located at least 1.5 times the height of the Pole or Mast from all boundaries of the site except that Repeater installations in town or utility rights of way shall be exempt from such requirements.
  - v. **Base Stations.** Repeater Base Stations located in Tolland shall meet the PWSF requirements of this Section VIII.
- f. **Communications Equipment Shelters and Accessory Buildings:** Communications Equipment Shelters and accessory buildings shall be architecturally similar and compatible with each other and be no more than 12 feet high. Whenever possible, the buildings shall be joined or clustered to appear as one.

Communications Equipment Shelters shall be Camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building, and/or security barrier. The Planning Board shall determine compatible landscape buffer requirements.

- g. Camouflage and Screening:** The Planning Board may specify for any proposed PWSF the type, size and color of Camouflage, painting, finish and screening (including the types and sizes of trees and shrubs used in screen). The Planning Board may require a Tower over 35 feet to resemble or mimic a native coniferous tree to minimize its visual impact or may require other innovative camouflage techniques which may become available.
- 7. Aviation Hazards.** Towers and PWSFs shall present no hazard to aviation as defined by the FAA.
- 8. Lighting:** No lighting of a Tower, PWSF or Repeater is permitted except for manually operated emergency lights for use only when operating personnel are on-site unless the FAA requires that lighting be installed.
- 9. Power Lines and Network Connections:** To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. Any necessary utility lines shall be designed and located to protect, and minimize or prevent debasement of, the scenic character or beauty of the area.
- 10. Access Requirements:** An access roadway must be supplied to the PWSF or Base Station. The roadway shall not be wider than 12 feet, should respect the natural terrain and minimize erosion and run-off. Gravel or crushed stone surface is encouraged. The Planning Board will consult with the Chiefs of all emergency services in the Town of Tolland to assure emergency access. If available, existing entrances and access roads to serve a PWSF shall be utilized unless the applicant demonstrates that a new entrance and access road will result in less visible traffic and environmental impact.
- 11. Security Requirements**
  - a. Fencing:** A six-foot high gated security fence shall surround the area around the Tower, PWSF and Communications Equipment Shelter(s). No razor wire shall be used. If fencing is visible from traveled roadways or residences, appropriate landscape screening shall be installed.
  - b. Signage.** The following signs shall be posted: A sign no greater than two (2) square feet indicating the name of the PWSF owner(s) and 24-hour emergency telephone numbers shall be posted adjacent to the gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signs shall otherwise conform to current Town of Tolland Zoning Bylaw. Commercial advertising is prohibited.
- 12. Maintenance:** Owner(s) and operator(s) must maintain the Facility, buildings and security barriers in good condition: maintenance includes painting, structural integrity, buffer area and landscaping.
- 13. Noise:** The Planning Board may impose noise measurement, muffling, sound barriers, enclosures or such other modifications and restrictions as they may reasonably require to protect residences and other interests from noise generated by the PWSF and associated equipment.



## H. Approval Criteria.

- 1 **Special Permit Procedure:** In acting on any application, the Planning Board shall proceed in accordance with the procedures and timelines established for Special Permits as provided in Article VIII of this Zoning Bylaw
- 2 **Requirements:** In addition to the findings required in Article VIII of this Zoning Bylaw, the Planning Board shall make all applicable findings before granting the Special Permit, as follows:
  - a. That the proposed PWSF will not have undue adverse effect on the character, appearance, scenic, historic, environmental, natural and man-made resources and property values in Tolland;
  - b. That the applicant has demonstrated to the satisfaction of the Planning Board that they have examined Co-location, alternate sites, the use of other existing structures, Repeaters and other feasible technologies and has proposed the least visually intrusive manner of providing adequate Personal Wireless Service to Tolland;
  - c. That the applicant has agreed to implement all reasonable measures to mitigate the potential visual and other adverse impacts of the proposed PWSF; and
  - d. That the proposed PWSF complies with the other requirements of this Zoning Bylaw.
- 3 **Requirements for Denying Permit:** Any decision by the Planning Board to deny an application for a Special Permit under this Article shall be in conformance with 47 U.S.C. sec. 332 (c) (7)(b)(iii) of the Act in that it shall be in writing and supported by substantial evidence contained in a written record. In addition to other requirements in this Bylaw the Planning Board shall consult with legal counsel and other appropriate Independent Consultants, including Engineering Consultants, to review the written explanation of denial to assure that the denial is accurate and complete and conforms to all Town, State and Federal laws and regulations.

## I. Monitoring and Compliance

- 1 **EMF Radiation Monitoring** of the PWSFs (other than Repeater or Repeaters) to determine FCC Compliance. An Independent Consultant shall monitor and report in writing to the Planning Board. Monitoring will be paid for by PWSF owner(s). The monitoring shall consist of the following requirements:
  - a. After the granting of a Special Permit and before the Facility begins transmission;
  - b. Within thirty (30) days of initial transmission;
  - c. Ongoing as follows: Every two years from the beginning of transmission from the Facility and following any Modification of an existing Facility which might increase emissions.
- 2 **Repeater Certification:** For each Repeater, an RF Engineer shall certify that emission levels to be generated satisfy FCC 96-326 and any and all other applicable FCC standards and regulations. Repeaters shall be re-certified every two years following initial transmission and after Modification.
- 3 **Excess Emissions:** Should Monitoring or Certification reveal that the Site exceeds FCC 96-326 or any other applicable FCC standard, the owner(s) and operator(s) of all facilities using that site shall be so notified in writing and shall reduce the emissions to compliant levels

within 15 business days of notification. Failure to achieve compliance within 15 business days of initial notification shall be a violation of the Special Permit(s) and subject to penalties and fines as specified in Article IX.A and B of this Bylaw.

#### **4 Structural Integrity:**

- a. Inspections:** The Planning Board may cause an Independent Consultant (a licensed structural engineer) to inspect the structural integrity and safety of any Tower that exceeds 35 feet in height once every five years and, in addition, after the apparent occurrence of damage to the Tower or any Modification which might affect the structure. The PWSF owner(s)/operator(s) shall pay for such inspections.
- b. Defects and Remediation:** Should the inspection of any Tower or structure reveal any structural defect(s) which in the opinion of the Independent Consultant render(s) the Tower or structure unsafe, the following actions shall be taken. The Town and the owner shall be notified of the defect in writing upon identification of the defect. Within ten (10) business days of notification of unsafe structure, the owner(s) and operator(s) of the Tower or structure shall submit a plan to remediate the structural defects to the Planning Board and the Building Inspector. The plan shall be initiated within ten (10) days of the submission of the remediation plan and completed as soon as reasonably possible as determined by the Planning Board. Failure to so accomplish this remediation of structural defect(s) shall be a violation of the Special Permit subject to penalties and fines as specified in Article IX A.. and B. of the Bylaw.

#### **J. Discontinuation of Use, Abandonment, and Removal**

If the PWSF, Repeater and related equipment are not performing their normal functions on an ongoing basis and continuously for one year, it will be considered abandoned or ceasing to operate. Owner(s)/operator(s)/Licensed Carrier(s) shall meet the following requirements.

- 1. Notification:** The carrier(s) will notify the Town in writing via certified U.S. mail of any proposed date of abandonment or discontinuation of operations no less than thirty (30) days prior. If no notice is received and it is determined by the Building Inspector that the facility has ceased operations, the Town will consider the PWSF abandoned and will establish a time frame for facility removal.
- 2. Removal:** The owner(s)/operator(s)/Licensed Carrier(s) shall physically remove or cause to be removed the PWSF, Repeater and related equipment within six months from the date of abandonment or discontinuation of use at their expense. If the Facility is shared with other carriers, the abandoning Licensed Carrier's unique components (e.g. Antennas) must be removed. The last Owner(s)/operator(s)/Licensed Carrier(s) to operate the PWSF is responsible for removing all remaining equipment and restoring the site. "Physically remove" shall include, but not be limited to:
  - a. Removal** of Towers, PWSFs, Antennas, Mount, Communications Equipment Shelter(s) and security barriers from the subject property. Proper disposal of the waste materials from the site in accordance with local and state waste disposal regulations.
  - b. Restoring** the PWSF site to its natural condition. Grading and landscaping shall remain in the after-condition unless it is necessary to remove part of the landscaping or existing trees for equipment removal. .

3. **Failure to Remove:** By accepting a Special PWSF Permit, a Licensed Carrier agrees that the Town shall have the authority to enter said facility and property to exercise its rights under any or all applicable Performance, Payment, Removal and Restoration or Maintenance Bond. The Town shall also have access to the property for the purpose of removing the PWSF in the event of discontinuance of use or abandonment and the failure of the permit holder to remove the PWSF. If the Town must remove the PWSF, the bond posted at the time of construction will be used to pay for removal.

#### **K. Fees**

The Planning Board shall establish a fee schedule for Tower, PWSF and Repeater applications and renewal fees. The Planning Board shall require a separate fund in the amount as it shall reasonably determine, to cover Independent Consultant fees which shall be replenished in such amount and at such times as the Planning Board may reasonably require.

#### **L. Bonds, Indemnities and Insurance**

1. **Bonds:** The Special Permit holder shall post and maintain in effect the following bonds at all times commencing with the construction or installation of a PWSF, Repeater or Tower. Each bond listed below shall be in an amount and on terms satisfactory to the Town of Tolland.
  - a. **Performance Bond** covering the costs of remediation of the Facility Site if damage or non-performance occurs during construction or installation; and
  - b. **Removal and Restoration Bond** to cover the costs of removal of the Personal Wireless Communications Facility site, Repeater and/or Tower and remediation of the Facility Site should the Tower, Facility and/or Repeater cease to operate.
2. **Insurance:** No construction or installation of any PWSF, Repeater or Tower shall be commenced, and none of the foregoing shall be put in operation, unless the Planning Board shall have received:
  - a. **An agreement from each of the PWSF owner(s) and operator(s)** indemnifying the Town of Tolland and its officers, agents, boards and employees on terms satisfactory to the Town of Tolland. Indemnification must cover all liability, cost and expense (including legal fees and expenses) incurred in connection with the construction, operation and removal of such equipment; a
  - b. **Evidence that appropriate insurance has been obtained** and is in effect by all appropriate parties (including, without limitation, owners, operators, contractors and subcontractors).
  - c. **The Town of Tolland shall be named as an additional insured.** All insurance shall be in effect for the entire period the PWSF, Repeater(s), Base Station, Tower and all connected or installed Facilities exist. Satisfactory certificates of insurance shall be filed annually with the Planning Board and Town Clerk.

#### **M. Permit Expiration and Renewal**

1. **Commencement of Construction Requirements:** In accordance with Section IX. A. 8 of this Bylaw, any Special Permit granted under this Article shall lapse if the applicant fails to begin construction of the Facility or Tower or Repeater within a two-year period of said grant.
2. **Ten Year Special Permit Period:** All Special Permits granted under this Section shall be granted for ten years. The Planning Board may renew said Special Permit if it determines that the Tower, and/or Facility and/or Repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this Bylaw and of any conditions placed upon the original Special Permit at the time of granting.

#### **N. Transfer of Permits**

Each holder of a Special Permit issued under this Bylaw shall give the Planning Board not less than thirty (30) days prior written notice of each transfer by the permittee of any ownership, leasehold or other interest. Notice shall include the right of use but not any stock, limited partnership or other similar indirect interest in any PWSF, Repeater or Tower covered by the Special Permit. Such notice shall specify the transferee's name and address and describe the transferred item(s) and interests. The transferor and transferee shall provide the Planning Board with such documents and information relating to the transfer of such item(s) and interest as the Planning Board may reasonably request. Effective at the time of transfer, the transferee shall be bound by all of the obligations of this Bylaw and any documents executed under the Special Permit by the transferor that relate to the transferred item(s). The transferee shall execute and deliver to the Planning Board such documents as the Planning Board may reasonably request confirming that it is bound by and subject to such obligations and conditions.

#### **O. Severability**

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

#### **P. Acceptable Use**

Notwithstanding any other Town of Tolland Bylaw or Zoning Bylaw, an existing structure or use on the same lot shall not preclude the installation of a Personal Wireless Service Facility (PWSF) on such lot. In the event that a PWSF is the sole use of the lot, the lot shall not be subject to the provisions of Section V. Paragraph. 4 in that the lot may have two principal uses, one of which may be a PWSF

#### **Q. Prevailing Provisions**

To the extent that any other provision of the Tolland Bylaws may be in conflict with Section VIII, Personal Wireless Service Facilities (PWSF), the provisions of Section VIII. shall prevail regarding PWSFs.

## SECTION IX SPECIAL PROVISIONS

### A. Special Permits

Special Permits are required for certain uses, structures or conditions as specified in Section V, Table of Land Use Regulations.

#### 1. Special Permit Granting Authority (Planning Board)

The Planning Board is the Special Permit Granting Authority in this Bylaw and may hear and decide applications for Special Permits upon which such Board is specifically authorized to act under this Bylaw, in accordance with the provisions of Section 9, Chapter 40A of the General Laws, as amended.

#### 2. Actions by Applicant

- 1) **Pre-application Meeting.** Applicants are encouraged to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board.
- 2) **Application Filing Requirements:** The requirements and forms to apply for a Special Permit are detailed in the "Applicant's Guide to the Planning Process" available from the Town Clerk.

The applicant shall file the following with the Town Clerk:

- 1) a Special Permit Application
- 2) a filing fee to cover the expense of legal notices and administrative costs as set by the Planning Board
- 3) a list of abutters or property owners within a three hundred (300) foot radius of the site as defined by Chapter 40A General Laws (as amended)
- 4) five (5) copies of the Site Plan

Furthermore, the Applicant shall file with the Planning Board, four copies of the complete application, including the date and time of filing as certified by the Town Clerk using the procedure specified in the Applicant's Guide.

**Personal Wireless Services Facilities Applications:** Applications for a Special Permit for a Personal Wireless Facilities Service have specific requirements and fees in addition to those required for other Special Permits. Section VIII. of this Bylaw details these requirements.

- 3) **Effective Date:** The Effective Date of filing of the application is the date the Town Clerk certifies receipt of a complete set of required documents and fees. If the Planning Board finds required information to be incomplete, the Effective Date of the Application shall be postponed until all required information has been received.
- 4) **Filing Fee:** The filing fee to cover the expense of legal notices and administrative costs shall be set by the Planning Board. The fee payment shall be delivered to the Planning Board with the Application. The check shall be made payable to: Planning Board, Town of Tolland.

### **3. Actions by Planning Board**

- a. Public Hearing and Notice Contents:** Before exercising any of its powers the Planning Board shall hold a Public Hearing on the matter referred to it with sixty five days from receipt of notice, application or petition by the Planning Board. Notice of the Public Hearing shall be:
  - 1) Published in a newspaper of general circulation in the Town of Tolland once in each of the two successive weeks. The first publication may not be less than fourteen (14) days before the day of the Hearing. The day of the Public Hearing should not be counted in the fourteen (14) days;
  - 2) Posted in a conspicuous place in the Town Hall, for a period of not less than fourteen days before the day of the Hearing. The day of the Public Hearing shall not be counted in the fourteen (14) days;
  - 3) Mailed to “parties of interest” (via Certified Mail - Return Receipt) who shall include: the petitioner or applicant, abutters, owner of land directly opposite on any public or private street or way, the owners of land within three hundred feet of the property line, and the Planning Boards of every abutting Town. The Assessors shall certify the names and addresses of “parties of interest”;
  - 4) Mailed to other individuals, boards or agencies if required by the Town or at the discretion of the Planning Board.
- b. Notice Contents :** Such notice must identify the subject matter of the Hearing and the following information:
  - 1) The name of the petitioner.
  - 2) The location of the area of premises which are the subject of the petition including a street address, if any;
  - 3) The time and place of the Public Hearing; and
  - 4) The nature of the action requested.
- 4. Public Hearing Completion.** The Planning Board shall conduct the Public Hearing no later than sixty five (65) days after the date of the filing of a complete Special Permit Application, and shall take action on the Application within ninety days (90) days of the close of the Public Hearing.
- 5. Other Approvals:** The Planning Board shall, within ten (10) days after receipt of an Application for Special Permit, transmit a copy thereof for review to the Board of Health, the Board of Selectmen, the Conservation Commission, the Highway Department and any other municipal board or agency at the discretion of the Planning Board. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate in writing, provided however, that failure to make recommendations within thirty-five (35) days of receipt by such board or agency of the Application for review shall be deemed lack of opposition thereto.
- 6. Compliance with Chapter 40A:** In exercising its jurisdiction under this Section, the Planning Board shall conform to all requirements of procedure applicable to the Special Permit Granting Authority when deciding requests for Special Permits under this Bylaw and under Chapter 40A General Laws, as amended , including the imposition of conditions.

7. **Additional Information:** The Planning Board may require additional information in order to review an application adequately and make a decision.
8. **Site Visits:** The Planning Board, the Health Department, Conservation Commission, the Highway Superintendent, the Fire Chief and other appropriate Town Officials and their agents and consultants may, in the review of the Special Permit Application, visit and examine the site covered in the Application at reasonable times.
9. **Expert Advice:** Should the assistance of expert consultants be warranted due to the size, scale, complexity or import of a proposed project, the Planning Board may require the Applicant to pay a "project review fee" in advance based on reasonable estimates of costs to be incurred by the Planning Board to employ expert consultants for project review. This fee shall be replenished in such amounts and at such times as the Planning Board may require.
10. **Specific Findings Required.** The Planning Board may grant a Special Permit authorized by this Bylaw if said Board finds, when applicable, that the proposal:
  - a. Protects neighboring premises and/or the Town as a whole, whichever is deemed appropriate by the Planning Board, against any possible detrimental or offensive uses on the site, including unsightly or obnoxious appearance.
  - b. Would not constitute a nuisance due to air and water pollution, flood, noise, dust, vibration, smell, lights, or visually offensive structures and accessories.
  - c. Provides for convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements.
  - d. Provides adequate methods of disposal of sewage, refuse and other wastes resulting from the uses permitted or permissible on the site, and of drainage for surface water.
  - e. Provides adequate space for off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.
  - f. Provides adequate landscaping and screening of adjacent residential uses.
  - g. Protects from flood hazards, considering such factors as: elevation of buildings, drainage, adequacy of sewage disposal, construction methods, erosion and sedimentation control, equipment location, refuse disposal, storage of buoyant materials, extend of paving; effect of fill, roadways or other encroachments on flood runoff and flow, storage of chemicals and other hazardous substances.
  - h. Protects, to the extent feasible, unique or important natural, historic or scenic features.

#### 4. Site Plan Requirements for Special Permits

- a. **Requirements:** In all instances where a Special Permit is required for the proposed uses as specified in Section V. Table 1 - Land Use, no building or structure shall be erected or externally enlarged, or operation conducted and no area for parking, loading or vehicular service (including driveways giving access thereto) shall be established or changed, except in conformity with a Site Plan bearing the endorsement of approval of the Planning Board. Said Site Plan shall be drawn by a registered engineer or other qualified professional. It shall show, among other things
  - all existing and proposed buildings and structures and their uses,
  - parking areas
  - loading areas,

- driveway service areas
  - all other open space areas,
  - all facilities for sewage, refuse and other waste disposal and for surface water drainage
  - Zoning District boundaries,
  - all wetland areas, including perennial and intermittent streams, rivers, lakes, swamps, vernal pools and ponds within 200 feet of proposed work area, and
  - all landscape features (such as walks, planting areas, trees, fences, and signs) on the lot.
- b. **Waiver of Requirements:** The Planning Board may waive or modify any of the foregoing requirements if they determine that the requirement is not applicable or is clearly not needed for evaluation of the Site Plan. Said Site Plan shall be subject to such rules relating to scale, dimensions, legend, form and preparation as may from time-to-time be promulgated by the Planning Board and published in the Applicant's Guide to the Approval Process available from the Tolland Town Clerk.

## 5. Conditions, Safeguards and Limitations

Special Permits may be issued subject to such conditions, safeguards, or limitations as the Planning Board may impose for the protection of neighboring uses or otherwise serving the purposes of this Bylaw. Any conditions, safeguards or limitations shall be imposed in writing, and shall be made a part of the Special Permit. Such conditions, safeguards or limitations may include, but are not limited to the following:

- a. Front, side and rear yards greater than the minimum required by this Bylaw; screening buffers or planting strips, fences or walls as specified by the Planning Board.
- b. Limitations upon the size, number of occupants, method and time of operation, time duration of the Special Permit, or extent of facilities.
- c. Regulations of number and location of driveways or other traffic features; and off-street parking or loading or other special features beyond the minimum required by this Bylaw.

## 6. Decisions and Vote Requirements

The Planning Board shall act within ninety (90) days following the date of Public Hearing. Failure to take final action upon an application for Special Permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

Special Permits issued by Planning Board shall require an affirmative vote of at least four (4) members of a five-member Board per Chapter 40A of Mass. General Law.

7. **Town Clerk Certification and Registration:** Upon the granting of a Special Permit or any extension, modification or renewal thereof, the Planning Board shall issue to the land owner or applicant a notice, certified by the Town Clerk, containing the name and address of the land owner, identifying the land affected and stating that a Special Permit, variance or extension or modification thereof has been granted which is set forth in the decision of the Board on file at the office of the Town Clerk. No Special Permit, or any extension modification or renewal thereof, shall take effect until a copy of the Planning Board decision bearing the certification of the Town Clerk that
- twenty (20) days have elapsed after the decision has been filed with the Town Clerk's office and no Appeal has been filed or
  - that if such Appeal has been filed, that it has been dismissed or denied, is recorded in the Hampden County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's Certificate of Title.



The fee for recording or registering shall be paid by the owner or applicant. The applicant/owner shall provide the Town Clerk and the Planning Board with satisfactory proof of recording Special Permit specifics in the Hampden County Registry of Deeds prior to the use of or construction of an Accessory Apartment hereunder.

#### **8. Construction Period**

If construction or operations have not begun within six (6) months or if construction is not continuing towards completion in as continuous and expeditious manner as reasonable, after six (6) months the construction or operations must conform to any amendment to this Bylaw.

#### **9. Lapse of Permit**

If substantial use or construction has not commenced without good cause within two (2) years from the date of a Special Permit being granted, excluding the time required to pursue or await the determination of an appeal, the Special Permit will lapse. Site Plans, whether amended/changed or not, must be submitted with any application to renew any Special Permits.

#### **10. Accessory Uses**

Special Permits may be granted for accessory uses which are necessary in connection with scientific research, scientific development, or related production activities which are permitted by right. The accessory use does not have to be on the same parcel as the principal use, and the proposed use shall not substantially derogate from the public good.

#### **11. Renewal of Special Permits**

- a. The following Special Permits require renewal
  - 1) **Accessory Apartment Special Permits** expire at the end of five years and may be renewed by affidavit of owner occupancy. See Section VII.M.2.a for information on renewing Special Permits for an Accessory Apartment.
  - 2) **Earth Products Removal Special Permits** expire at the end of three years. See Section VII.C.6 for information on renewing Earth Product Removal Special Permits.
  - 3) **Personal Wireless Services Facilities Special Permits** expire at the end of ten years. See Section VIII.
- b. When Special Permits are renewed the Special Permit shall be registered with the Hampden County Registry of Deeds per Section IX. 7. Town Clerk Certification and Registration.

#### **12. Transfer of Special Permits**

Each holder of a Special Permit issued under this Bylaw shall give the Planning Board not less than thirty (30) days prior written notice of each transfer by the permittee of any ownership, leasehold or other interest. Notice shall include the right of use but not any stock, limited partnership or other similar indirect interest in operation covered by the Special Permit. Such notice shall specify the transferee's name and address and describe the transferred item(s) and interests. The transferor and transferee shall provide the Planning Board with such documents and information relating to the transfer of such item(s) and interest as the Planning Board may reasonably request. Effective at the time of transfer, the

transferee shall be bound by all of the obligations of this Bylaw and any documents executed under the Special Permit by the transferor that relate to the transferred item(s). The transferee shall execute and deliver to the Planning Board such documents as the Planning Board may reasonably request confirming that it is bound by and subject to such obligations and conditions.

## **B. Site Plan Review for Applications Not Requiring Special Permits**

1. **Site Plan Review Authority:** The Planning Board shall be the Site Plan Review authority for the Town of Tolland and shall review and approve all Site Plans.

2. **Requirements for Site Plan Review**

Table 1: Land Use specifies all land uses that require a Site Plan Review and approval by the Planning Board before a Building Permit can be issued and proposed construction or change commences. No building or structure shall be erected or enlarged, no operation conducted, no driveway, parking, loading area or vehicle service established or changed that does not comply with the Town of Tolland Zoning Bylaw and the Site Plan approved by the Planning Board.

3. **Actions by Applicant**

- a. **Site Plan Requirements:** Site Plans shall comply with the requirements defined in the Applicant's Guide to the Approval Process available in the Town Clerk's office. The Applicant shall comply with Planning Board regulations about required scale, dimensions, legend, form and other information.
- b. **Pre-application Meeting for Complex Projects:** For complex projects Applicants are encouraged to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board.
- c. **Submission Requirements:** The Applicant shall provide the following to the Planning Board:
  - (i) Two (2) copies of the proposed Site Plan. Site Plans for Non-conforming Lots must be prepared and signed by a licensed engineer or surveyor
  - (ii) Driveway Permit approved by the Highway Superintendent
  - (iii) Conservation Commission approval.

4. **Actions by the Planning Board**

- a. **Information Requirements and Decision:** The Planning Board shall review the Application and determine whether the Site Plan complies with the Town of Tolland Zoning Bylaw requirements. The Planning Board may waive any information requirement it judges to be unnecessary to the review of an application; it may also request additional information. Wherever in "Table 1- Land Use" Site Plan Review is required and the proposed use is Permitted By Right, the requirement for a public notice and hearing does not apply. For the uses "Child Care Facility", "Educational Institution" and "Religious Use", the Site Plan Review shall comprise assurance that the Site Plan complies with content and form requirements, complies with reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, open space, parking and building coverage requirements, and other regulations concerning the health and safety of the public.

- b. **Site Considerations:** The Planning Board shall assure that the proposal conforms to the zoning bylaw and protects neighboring premises and the town as a whole against detrimental or offensive uses on the site, including unsightly or obnoxious appearance, and , public safety and protection of property.
  - c. **Site Investigation Allowed:** The Planning Board may, at its discretion, investigate the site covered in the Application.
  - d. **Expert Advice:** Should the assistance of expert consultants be warranted due to the size, scale, complexity or import of a proposed project, the Planning Board may require the Applicant to pay a “project review fee” in advance based on reasonable estimates of costs to be incurred by the Planning Board to employ expert consultants for project review. This fee shall be replenished in such amounts and at such times as the Planning Board may require.
  - e. **Vote Requirements:** Approval by the Planning Board shall require an affirmative vote of at least three (3) members of a five (5) member Board
5. **Building Permit Requires Site Plan Approval and Compliance with Zoning Bylaw:** No Building Permit shall be issued for new structures or additions to existing structures without a Site Plan approved by the Planning Board. The Building Inspector shall not issue a Building Permit or Certificate of Occupancy unless all provisions of this Bylaw are complied with.
  6. **Construction Period:** Construction must commence within six (6) months of the issuance of a Building Permit granted following endorsement of the Site Plan by the Planning Board. If construction does not commence within six (6) months or if construction is not continuing towards completion in as continuous and expeditious manner as reasonable, the construction must conform to any amendment to this Bylaw.
  7. **Lapse of Approved Site Plan:** The approved Site Plan shall lapse two (2) years after it is granted if the construction or changes specified in the Site Plan have not substantially commenced. The Planning Board may extend the approval period for good cause upon written request by the Applicant. Such extension shall be in writing.

### C. Board of Appeals

1. **Membership and Appointment:** The Zoning Board of Appeals consists of three (3) Members and three (3) Associate Members appointed by the Selectmen as provided in MGL Chapter 40A Section 12. The Board of Appeals shall act within its statutory powers as provided in MGL Chapter 40A, Section 14 and on matters within its jurisdiction under this Bylaw
2. **Terms:** In a manner prescribed in MGL Chapter 40A, Section 15 Members of the Board of Appeals shall be appointed for three year terms. Vacancies shall be filled by the Board of Selectmen for the balance of any unexpired terms. No Member shall act in any case in which he/she may have a conflict of interest including a personal or financial interest. An Associate Member shall be designated by the Chair of the Board of Appeals to sit on the Board in case of absence, inability to act or conflict of interest on the part of any member thereof or in the event of a vacancy on the Board of Appeals until said vacancy is filled by the Board of Selectmen.

3. **Appeals:** The Board of Appeals is authorized to hear and decide an appeal, as provided in MGL 40A, Section 8 taken by
- any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL 40A
  - the regional planning agency in whose area Tolland is situated,
  - or by any person, including an officer or board of the Town of Tolland or of an abutting Town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of MGL 40A or of this Bylaw.

No appeal to the Zoning Board of Appeals shall be taken for any approval or disapproval action taken by the Planning Board acting as the Special Permit Granting Authority.

Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed by filing a Notice of Appeal with the Town Clerk and other parties, as provided in MGL 40A Section 15.

#### 4. **Authority to Grant a Variance**

- a. **Powers:** The Zoning Board of Appeals has the power after public hearing for which notice has been given by publication, posting and mailing to all parties in interest as provided below, to grant a variance from the terms of this Bylaw upon appeal, or upon petition in cases where a particular use is sought for which no Special Permit is required, with respect to a particular parcel of land or to an existing building thereon. Such variance may be granted where the Board specifically finds that owing to unique circumstances relating to soil conditions, slope, or topography which specifically affect the land or structure in question, but not affecting generally the Zoning District in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. Desirable relief may be granted when there is no substantial detriment to the public good and the variance does not nullify or substantially derogate from the intent or purpose of this Bylaw, but not otherwise. The Zoning Board of Appeals shall not grant a variance which would constitute an amendment to this Bylaw.
- b. **Advisory Report from Planning Board Requested:** Upon receipt of a petition for a variance, the Zoning Board of Appeals shall request from the Planning Board a written advisory report on said petition.
- c. **Specific Findings Required:** The following findings shall be made by the Board of Appeals in writing before a Variance can be issued:
- 1) The variance is with respect to a particular parcel of land or to an existing building on the land.
  - 2) There are identified specific circumstances relating to the soil conditions, shape, or topography especially affecting such land or structure, but not affecting in general the Zoning district in which it is located.
  - 3) Literal enforcement of the ordinance or Bylaw involves a substantial hardship, financial or otherwise, to the petitioner or appellant.
  - 4) The desired relief if granted will not be to the substantial detriment of the public good, or nullify or substantially derogate from the intent and purpose of this Bylaw.

5) The Board of Appeals shall make a finding that the granting of the variance will be in harmony with the general purposes and intent of this Bylaw and will not be injurious to the neighborhood or Town, or otherwise detrimental to the public welfare.

d. **Limitations of Time and Use:** The Board of Appeals may impose limitations both of time and use, prescribe appropriate conditions and safeguards, and continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time-to-time thereafter. Violation of such limitations, conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of this Bylaw.

## 5. Meetings and Procedure

The meeting and procedure of the Board of Appeals shall be governed by the provisions of MGL 40A.

a. **Written Application Required:** The Board of Appeals shall not act on any matter unless and until a written application is submitted to such Board, indicating the section of this Bylaw under which it is requested to act and stating the grounds on which the request is based.

b. **Filing of Application:** Each application for a variance shall be filed in accordance with the Zoning Board of Appeals Rules and Regulations filed with the Town Clerk.

c. **Public Hearing and Notice Requirements:** Before exercising any of its powers the Board of Appeals shall hold a Public Hearing on the matter referred to it with sixty five days from receipt of notice, application or petition by the Board of Appeals. The Notice of Public Hearing shall be

- 1) Published in a newspaper of general circulation in the Town of Tolland once in each of the two successive weeks. The first publication may not be less than fourteen (14) days before the day of the Hearing. The day of the Public Hearing should not be counted in the fourteen (14) days;
- 2) Posted in a conspicuous place in the Town Hall for a period of not less than fourteen days before the day of the hearing. The day of the Public Hearing shall not be counted in the fourteen (14) days;
- 3) Mailed to "parties of interest" (via Certified Mail - Return Receipt) who shall include: the petitioner or applicant, abutters, owners of land directly opposite on any public or private street or way, the owners of land within three hundred feet of the property line, the Planning Board of the Town, and the Planning Boards of every abutting Town. The Assessors shall certify the names and addresses of "parties of interest";
- 4) Mailed to other individuals, boards or agencies if required by the Town or at the discretion of the Board of Appeals.
- 5) Such notice must identify the subject matter of the Hearing and include the following information:
  - a) The name of the petitioner.

- b) The location of the area of premises which are the subject of the petition including a street address, if any;
  - c) The time and place of the Public Hearing; and
  - d) The nature of the action requested.
- d. Responsibility for Costs:** Costs of publication and mailing notices shall be paid from the application fee paid by the applicant. The application fee is established in the Rules and Regulations of the Zoning Board of Appeals which shall be filed with the Town Clerk.
- e. Requirements for Decision:** The decisions of the Board of Appeals shall be made within one hundred (100) days after the date of filing of an appeal, application or petition. As provided in MGL 40A Section 15, the required time limits for a Public Hearing and Board decision may be extended by written agreement between the applicant and the Board of Appeals. Failure to act by the Board within one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application or petition, as further provided in said Section 15. The Board shall keep a detailed record of its proceedings showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact and setting forth clearly the reasons for its decisions, and of its other official actions. Copies of all such records shall be filed within fourteen (14) days in the office of the Town Clerk and in the office of the Planning Board, and notice of decisions shall be mailed forthwith to the parties of interest, to the Planning Board, the Selectmen, and to every person present at the Hearing who requests that notice be sent to him or her and states the address to which such notice is to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to MGL 40 A, Section 17 and shall be filed within twenty days after the date of filing of such notice in the office of the Town Clerk.
- f. Town Clerk Certification and Registration:** Upon the granting of a variance or any extension, modification or renewal thereof, the Board of Appeals shall issue to the land owner or applicant a notice, certified by the Town Clerk, containing the name and address of the landowner, identifying the land affected and stating that a variance or extension or modification thereof has been granted which is set forth in the decision of the Board on file at the office of the Town Clerk. No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the Zoning Board of Appeals decision bearing the certification of the Town Clerk that (1) twenty (20) days have elapsed after the decision has been filed with the Town Clerk's office and no Appeal has been filed or (2) that if such Appeal has been filed, that it has been dismissed or denied, is recorded in the Hampden County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's Certificate of Title. The fee for recording or registering shall be paid by the owner or applicant.

#### **D. Repetitive Applications and Petitions**

As provided by MGL Chapter 40A Section 16, as amended, no appeal, application or petition which has been unfavorably and finally acted upon by the Planning Board or by the Zoning Board of Appeals, shall be acted favorably upon within two (2) years after the date of the final unfavorable action unless, upon reapplication the Board which originally heard the matter and had taken the unfavorable action

1. Finds specific and material changes in the conditions upon which the previous unfavorable action was based, and

2. Describes such changes in the record of its proceedings, and
3. Consents to the reapplication by all but one of the members of the Planning Board or by a unanimous vote of the Board of Appeals after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.
4. No Building Permit shall be issued for new structures and additions to existing structures without verification that the placement of the structure or addition corresponds to an approved site plan.

## **SECTION X BYLAW ADMINISTRATION**

### **A. Enforcement**

This Bylaw shall be enforced by the Board of Selectmen and the Zoning Enforcement Officer acting as their enforcement agent. Enforcement shall be in accordance with Chapter 40A Section 7 Massachusetts General Laws as amended and this Bylaw. Immediate steps to enforce this Bylaw shall be taken based upon any well-founded information or complaint or direct observation of Bylaw violations.

**The Tolland Zoning Enforcement Officer is also the Building Inspector.** The Zoning Enforcement Officer/Building Inspector shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this Bylaw and Permits and Variances issued thereunder, including notification of non-compliance and request for legal action through the Selectmen to the Town Legal Counsel.

1. The Board of Selectmen and/or the Zoning Enforcement Officer/Building Inspector shall withhold a Building Permit or issue a cease and desist order on the construction or use of land in violation of this Bylaw. Any such use or construction shall be removed at the owner's expense.
2. No operating or business permit or license shall be issued by the Town Clerk for any new use of a building, structure or land without the required Special Permit with Site Plan Review or Site Plan Review issued by the Planning Board.

### **B. Penalties**

Any person or entity violating any Bylaw provision(s) shall be fined for each bylaw violation an amount established by the Board of Selectmen not exceeding the maximum established by Massachusetts General Law for each Bylaw violation. The fine shall commence ten (10) days following the date of receipt or refusal of the Certified mailing of written notice of violation from the Board of Selectmen or their agent. Each day that willful violation continues to exist shall constitute a separate and distinct offense.

### **C. Collection of Penalties**

Penalties shall be collected under the Town of Tolland Criminal and Non-Criminal Disposition of Penalties and Municipal Charges Bylaw in accordance with Massachusetts Laws, Chapter 40, Section 21D. The Town of Tolland shall impose a lien on real property for any local charge or fee, including fines and penalties, that has not been paid as defined in the Town of Tolland Municipal Charges Lien Bylaw in accordance with Massachusetts Laws, Chapter 40, Section 58. The Town may also deny or revoke licenses or Permits as defined in the including renewals and transfers to any person, corporation or business enterprise that has neglected or refused to pay fines, penalties or other Municipal Charges as defined in the Town of Tolland Bylaw on Failure to Pay Municipal Taxes or Charges as Grounds for Denial, Suspension, Revocation of License or Permit in accordance with Massachusetts General Law, Chapter 40, Section 57.



## **D. Approvals, Permits, Licenses and Completion Requirements**

### **1. Building Permits and Operating Licenses**

No building or structure shall be erected, moved or altered without a Permit issued by the Building Inspector. Application for a Permit must be on forms provided in the Applicant's Guide to the Approval Process and shall contain information defined by the Massachusetts State Building Code and Massachusetts General Laws.

No Building Permit or license shall be granted for a new use of a building, structure or land use which would be in violation of this Bylaw.

No Building Permit shall be issued for new structures and additions to existing structures without verification that the placement of the structure or addition corresponds to an approved site plan, or in case of a "Site Plan Review Required", a reviewed site plan.

Buildings or structures of less than 120 square feet which are not to be used for habitation, business or public gatherings require Planning Board Site Plan Review but do not require a Building Permit.

### **2. Construction Commencement and Completion**

A Building Permit shall become void unless construction is commenced within six (6) months of the date of issue

## **SECTION XI            BYLAW AMENDMENT**

This Bylaw may be amended from time-to-time at an Annual or Special Town Meeting in accordance with the provisions of Chapter 40A of the General Laws of the Commonwealth, as amended.

## **SECTION XII            VALIDITY**

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

## **STATEMENT**

The Tolland Subdivision Control Law is in effect. Copies of the Tolland Subdivision Control Regulations are available at the Office of the Planning Board, Tolland Town Hall.