

Town of Cheshire

2015



Protective and Planning Zoning Bylaw

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SECTION 1 TITLE, AUTHORITY AND PURPOSE

1.1 Title

This Bylaw shall be known as the “Zoning Bylaw of the Town of Cheshire, Massachusetts, hereinafter referred to as “this Bylaw.”

1.2 Authority

This Bylaw is adopted in accordance with the provisions of Chapter 40A of the General Laws as amended to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of the present and future inhabitants of the town.

1.3 Purpose

The purpose of this Bylaw is to achieve greater implementation of the powers granted to municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interest of public health, safety and welfare, including but not limited to the following objectives:

- (a) To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers, to conserve health; to lessen congestion in the streets, to encourage housing for persons of all income levels.
- (b) To facilitate the adequate provisions of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- (c) To conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment.
- (d) To preserve and increase amenities by the promulgation of regulations designed to:
 - Protect the Town’s significant environmental features such as: flood plains and flood prone areas, wetlands, Hoosic River, reservoir, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.
 - Preserve the natural, scenic and aesthetic qualities of the community
 - Minimize the adverse effects of development on the Town’s unique environmental and historic features.
 - Employ cooperatively the various measures by the Town’s agencies under diverse legislative authority, including the State Sanitary Code, Wetlands Protection Act, Subdivision Control Legislation, and the State Building Code, for the protection and enhancement of the Town’s existing small-town character, open spaces, low density of population, and in the interests of the Town’s orderly growth at a deliberate pace.

SECTION 2 ZONING DISTRICTS

2.1 Types of Zoning Districts

For the purpose of this Bylaw, this Town of Cheshire is divided into the following districts in which the use, construction, alterations and locations of buildings, and the use of land is regulated to protect the public health, safety and welfare in accordance with Article 89 of the Constitution of the Commonwealth and Chapter 40A of the General Laws and amendments thereto:

Base Districts

| | |
|-----|-----------------------------------|
| R-1 | Residential District |
| A-R | Agricultural-Residential District |
| B | Business District |

Overlay Districts

| | |
|------|----------------------------------|
| FP | Flood Plain District |
| FHD | Flood Hazard District |
| WSPD | Water Supply Protection District |

2.2 Location of Districts

The districts set forth in Section 2.1 are defined and bounded as shown on a map entitled “Zoning Map of Cheshire, Massachusetts” dated June 8, 2015, and on file in the Office of the Town Clerk, said map and all explanatory matter thereon are hereby declared to be part of this Bylaw.

2.3 District Boundary Lines

The district boundary lines shall be as shown as the Zoning Map and indicated by the dimensions entered thereon.

2.4 Rules of Interpretation for District Boundary Lines

For the purposes of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:

- (a) Boundaries which appear to follow or run approximately parallel to the center line of streets, railroads or streams shall be construed to follow such lines or run parallel to them at a distance indicated on the Zoning Map.
- (b) Boundaries indicated, as following shorelines of lakes or ponds shall be construed to follow such shorelines.
- (c) Boundaries indicated, as approximately following plotted lot lines shall be construed as following such lot lines.

- (d) Boundaries, which appear to run parallel to the features indicated above, shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the Zoning Map.
- (e) In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Zoning Board of Appeals.

SECTION 3 USE REGULATIONS

3.1 Allowable Uses

Except as provided by law or in this Bylaw, no building or structure shall be erected 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 set forth in the accompanying Table of Use Regulations, Section 3.2, as permitted by right in the district in which such building, structure or land is located, or which may be permitted in said district and so authorized by the Special Permit Granting Authority (SPGA) as provided in Section 10.1 herein.

3.2 Table of Use Regulations

Special Permit Granting Authority (SPGA) and symbols used in the following table:

YES = Use permitted by-right

SPA = Use that may be authorized by special permit from the Zoning Board of Appeals in accordance with the provisions of Section 10.1 herein.

SPP = Use which may be authorized by special permit from the Planning Board in accordance with the provisions of Section 10.1 herein.

NO = Specifically excluded or prohibited use (see also Section 3.3)

| (a) Principal Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| <i>Residential Uses</i> | | | |
| 1. One-family dwelling. | YES | YES | YES |
| 2. Two-family dwelling, provided the lot area is at least twice the minimum lot area in the district if not serviced with community sewerage or water supply. | YES | YES | YES |
| 3. Multi-family dwelling. | NO | NO | SPP |
| 4. Conversion of a one or two-family dwelling existing on January 1, 1976 and containing 4,000 square feet or more of livable floor area may be authorized under this Bylaw by special permit in the district or any combination of such uses, as regulated in Section 10.1 of this Bylaw. | SPP | SPP | SPP |
| 5. Mobile home (as a permanent dwelling). | NO | SPP | SPP |
| <i>Institutional, Municipal and Community Uses</i> | | | |
| 6. Religious or educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by religious sect or denomination, or by a non-profit educational corporation. | YES | YES | YES |

| (a) Principal Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| 7. Municipal or governmental use. | SPA | SPA | SPA |
| 8. Public utilities such as telephone exchange, natural gas or electric power facility, pumping station, railroad or bus station. | SPP | SPP | SPP |
| 9. Non-profit library or museum. | SPP | YES | YES |
| 10. Hospital, sanitarium, nursing home, children's day care center or other similar use established and operated under the State Department of Health regulations. | SPP | SPP | SPP |
| 11. Private school, college, nursery school, trade or professional school. | SPP | YES | YES |
| <i>Recreational Uses</i> | | | |
| 12. Golf, tennis, swimming or sportsmen club, ski tow, livery or riding stable or other recreational use of similar character. | SPP | YES | SPP |
| 13. Summer camps for children or family type campgrounds established and operated under the State Sanitary Code Article IV and VIII respectively. | SPP | YES | SPP |
| 14. Private club (as defined in this Bylaw). | SPP | SPP | SPP |
| 15. Boat house for rental of boats and canoes. | SPP | YES | YES |
| <i>Business, Industrial and Other Uses</i> | | | |
| 16. Hotel, motel, guest house or restaurant where food is served primarily for consumption within the building. | NO | SPP | YES |
| 17. Antique or gift shop or art gallery. | SPP | YES | YES |
| 18. Automobile service station, commercial garage or sales garage. | NO | SPP | SPP |
| 19. Place of amusement or assembly. | NO | YES | SPP |
| 20. Sale or storage of feed, fuel, lumber or building supplies. | NO | YES | YES |
| 21. Research laboratory or light manufacturing activity where the major portion of the product is retailed on the premises or by mail. | NO | YES | YES |
| 22. The removal of sand, gravel, rock, loam, topsoil or other earth material as governed by Planning Board regulations. | SPP | SPP | SPP |
| 23. Office, bank, retail business or consumer service establishment, unless specifically otherwise regulated in this Bylaw. | NO | SPP | SPP |
| 24. Any lawful industrial, manufacturing, warehousing, service or utility use, including processing, fabrication, assembly or storage unless specifically otherwise regulated in this Bylaw. | NO | SPP | SPP |
| 25. Commercial greenhouse, nursery or landscape gardening. | NO | YES | YES |
| 26. The use of land or structure for the primary purpose of agriculture, horticulture or floriculture. | YES | YES | YES |
| 27. Kennel or veterinary hospital. | NO | SPP | SPP |

| (a) Principal Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| 28. Cemetery. | SPP | SPP | SPP |
| 29. Commercial race track, drive-in theatres, trailer parks, billboards or off-premise signs. | NO | NO | NO |
| 30. Used car lots or other automobile sales establishments where vehicles for sale are stored outdoors or junkyards. | NO | SPP | SPP |
| 31. Dump or other area for the disposal of rubbish, except for officially designated areas for such purpose by the Town of Cheshire. | NO | SPP | NO |
| 32. Radioactive Waste (see Section 8.2). | NO | SPP | NO |
| 33. Hazardous Waste (see Section 8.2). | NO | SPP | NO |
| 34. Wireless Telecommunication Facilities (see Section 8.3). | SPP | SPP | SPP |
| 35. Large Wind Energy Facilities (see Section 8.4). | NO | SPP | NO |
| 36. Solar Photovoltaic Installations (see Section 8.6). | SPP | SPP | SPP |

| (b) Accessory Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| 1. Occupation, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of the premises, as a use accessory thereto, and employing not more than two persons outside the household, and provided there is no external evidence of the conduct of such occupation, profession, craft or art except the permitted sign as regulated in Section 7 of this Bylaw. | YES | YES | YES |
| 2. The use of a room or rooms in a dwelling by resident thereof for business or profession involving the provision of services or sale of products, articles or goods made on the premises, and employing not more than one person outside of the household, provided there is no external evidence of the conduct of such business or occupation except the permitted sign as regulated in Section 7 of this Bylaw. | YES | YES | YES |
| 3. Use of premises by a resident carpenter, electrician, painter, plumber, or other artisan, for incidental work in connection with his off premises occupation, provided that no manufacturing or business requiring substantially, continuous employment may be carried on. | YES | YES | YES |

| (b) Accessory Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| 4. Storage of materials or equipment as part of a home occupation described in Sections 3.2 (b)(1), 3.2 (b)(2) or 3.2 (b)(3). The storage of materials or equipment shall be within the principal or accessory building or on the rear portion of the lot and properly screened from view from the street and adjoining properties. | SPP | YES | YES |
| 5. Rental of not more than four (4) rooms, with or without meals in a dwelling by a resident family, provided no separate kitchen facilities are maintained. | YES | YES | YES |
| 6. Roadside farm stand selling primarily agricultural, horticultural or floricultural products raised on the premises, provided that no products are displayed for sale within 20 feet of the street. | YES | YES | YES |
| 7. Greenhouse, tennis court, swimming pool or any such facility not for commercial purposes. | YES | YES | YES |
| 8. Stripping of topsoil when incidental to: the erection of a building or structure for which a building permit has been issued; the construction of a private driveway; any accessory use incidental to a permitted use; the construction of a private street in an approved subdivision; or municipal or government construction or operation. | YES | YES | YES |
| 9. The display of a sign or signs pertaining to a permitted use as regulated in Section 7 in this Bylaw. | YES | YES | YES |
| 10. The raising or keeping of domestic animals, for use by residents of the premises, not as a commercial venture, subject to the regulations of the Board of Health, provided all grounds used for pasturing or other purposes involving unrestrained animals shall be fenced. | SPA | YES | YES |
| 11. The raising and keeping of household pets by the residents of the premises not as a commercial venture. | YES | YES | YES |
| 12. Trailer of type intended only for camping purposes, stored within sight of a public way in excess of thirty (30) days in any calendar year provided it is not used for living purposes. | SPP | YES | YES |
| 13. Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in the connection with scientific research and development or related production, provided the Planning Board finds that the proposed accessory use does not substantially derogate from the public good. | SPP | SPP | SPP |
| 14. Radioactive Waste (see Section 8.2). | NO | SPP | NO |

| (b) Accessory Uses | Zoning Districts | | |
|--|------------------|-----|-----|
| | R-1 | A-R | B |
| 15. Hazardous Waste (see Section 8.2). | NO | SPP | NO |
| 16. Small Wind Energy Systems (see Section 8.5). | SPP | SPP | SPP |

3.3 Uses Prohibited in All Districts

Notwithstanding any provision of this Bylaw to the contrary the following uses shall be prohibited:

- (a) The distillation of bones, rendering of fat or reduction of animal matter
- (b) Commercial piggeries, fur farms and commercial slaughterhouses
- (c) Keeping of livestock or poultry in the R-1 District, provided, however, that the keeping of pets shall be permitted
- (d) Storage of treatment of ash or other similar material causing dust
- (e) Storage of more than two commercial vehicles in the R-1 District
- (f) Storage of one or more junk vehicles for a period of more than six (6) months in such a manner as to cause said vehicle to be observable from any place in which the public has a right to access
- (g) The use of any lot or tract of land for a mobile home park or the expansion of any mobile home park existing on the effective date of this Bylaw
- (h) Billboards and other non-accessory signs

3.4 Compliance with other Regulations

Every use permitted by right or authorized by special permit under the provisions of this Bylaw shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health regulations and all other applicable statutes, bylaws and regulations, including off-street parking regulations, sign regulations, and flood plain and wetlands regulations set forth in this Bylaw.

3.5 Uses Subject to the Flood Plain District/Wetland Area

Any use permitted and as regulated in the portion of any zoning district overlaid by a Flood Plain District or Wetland Area shall be permitted subject to the restrictions set forth in Sections 9.1 and 9.2.

3.6 Multiple Classifications

Where a structure or use might be classified under more than one of the listed uses or structures, the more specific classification shall determine permissibility and applicable regulations.

3.7 Accessory Structures & Accessory Uses

Subject to the limitations 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 on the same lot with the building, use or structure to which it is accessory.

3.8 Agricultural Buildings, Structures and Uses

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 same lot with the principal permitted use or on separate lots.

3.9 Environmental Performance Standards

Any use of land, buildings or structures which create excessive and objectionable noise, fumes, odor, dust, electrical interference, or undue traffic shall be prohibited in all districts.

SECTION 4 INTENSITY REGULATIONS

4.1 Principal Buildings and Structures

All buildings and structures other than accessory buildings and structures hereafter erected in any district shall conform to the specifications listed in the Table of Dimensional Requirements, Section 4.2.

4.2 Table of Dimensional Requirements

| Zoning District | Minimum Lot Dimensions | | Minimum Yard Dimensions (Setbacks) | | | Maximum % Lot Coverage ⁽¹⁾ | Maximum Height of Buildings | |
|-----------------|------------------------|----------------|------------------------------------|------------|------------|---------------------------------------|-----------------------------|-------|
| | Area (sq. ft.) | Frontage (ft.) | Front (ft) | Side (ft.) | Rear (ft.) | | Stories | (ft.) |
| R-1 | 60,000 | 200 | 50 | 20 | 30 | 25 | 3 | 40 |
| A-R | 60,000 | 200 | 50 | 30 | 40 | 20 | 3 | 40 |
| B | 60,000 | 200 | 50 | 20 | 30 | 25 | 3 | 40 |

Notes

(1) Including accessory buildings.

4.3 Additional Dwelling Units on a Lot

- (a) No more than one (1) dwelling shall be built upon any lot, except that additional dwelling units may be allowed by special permit on a lot that meets the frontage and setback requirements and has a minimum lot size of “n” multiplied by 60,000 square feet, where “n” equals the total number of dwelling units.
- (b) Adequate access, as determined by the Special Permit Granting Authority, must be provided for each dwelling unit.
- (c) Any roads constructed must meet the standards specified in the “Rules and Regulations Governing the Subdivision of Land” Cheshire, Massachusetts.

4.4 Setbacks for Accessory Buildings and Structures

- (a) No accessory building or structure shall be located within the required front yard area for a principal building or structure.
- (b) No accessory building or structure shall be located in any side yard nearer to the lot line than (10) feet.

(c) No accessory building or structure shall be located in a rear yard nearer to the rear lot line than ten (10) feet.

(d) No accessory building or structure shall be located nearer than ten (10) feet to another principal or accessory building.

4.5 Location of Driveways

No driveway shall be located any closer than ten (10) feet to the side lot line.

4.6 Visibility at Corners

On any corner lot there shall be no building, structure, fence, shrubbery or plantings such as will obstruct clear vision, in the space between three (3) and eight (8) feet above the ground within the triangular area formed by the corner and points twenty (20) feet from the corner along street lines.

4.7 Rule of Measurement for Front Yards

All measurements for the depth of front yards will be from the right-of-way line where a plan of the way is on file with the Registry of Deeds, or, in the absence of such plan, from a line twenty-five (25) feet from the parallel with the centerline of the traveled way.

SECTION 5 NON-CONFORMING STRUCTURES, USES AND LOTS

5.1 Exemptions

Except as provided herein, this Bylaw shall not apply to:

- (a) Structures and uses lawfully in existence prior to the effective date of this Bylaw. This shall include existing billboards.
- (b) A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning bylaw or amendment.
- (c) The alteration, reconstruction, extension or structural change to a one-family or two-family dwelling provided this does not increase the nonconforming nature of such structure.
- (d) The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
- (e) Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this Bylaw to the extent and as provided in Section 6 of Chapter 40A of the General Laws.

5.2 Requirements for Extension, Reconstruction or Change in Use

The Planning Board may authorize by special permit any extension, alteration or reconstruction of a nonconforming structure 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, provided that no such extension, alteration, reconstruction or change in use shall be permitted unless the Planning Board finds:

- (a) That such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood;
- (b) That such extended, altered, reconstructed structure or changed use shall not be in greater nonconformity with open space, yard and off-street parking requirements of this Bylaw.

5.3 Reconstruction of Nonconforming Structure Damaged by Fire, Explosion or Catastrophe

A nonconforming structure damaged by fire, explosion or any other catastrophe may be rebuilt provided such rebuilding, reconstruction or restoration shall be undertaken within two (2) years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this Bylaw. Such rebuilt, reconstructed or restored structure may be enlarged or changed in accordance with Section 5.2 herein.

5.4 Maintenance, Repair and Reconstruction of Unsafe Nonconforming Structure

Nothing in this Bylaw shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof, declared to be unsafe by any official charged with the protection of the public safety, upon the order of such official.

5.5 Abandonment

Any nonconforming use which has been abandoned or not used for two years or more shall not be reestablished, except by special permit from the Planning Board and any such future use of the premises shall conform to the provisions of this Bylaw.

5.6 Conditions, Safeguards and Limitations

The Planning Board may impose reasonable conditions, safeguards and limitations on applications for special permits under this section, designed to lessen any possible adverse impacts on adjacent uses or the neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend, or convert to another nonconforming use under the provisions of this section.

SECTION 6 OFF-STREET PARKING REQUIREMENTS**6.1 Off-Street Parking**

Suitable off-street parking shall be provided on the premises in accordance with the following Parking Schedule for each building or structure which is erected, altered or enlarged after the effective date of this Bylaw.

6.2 Parking Schedule

| Structure/Use | Minimum # of Spaces Required |
|-------------------------------------|---|
| Dwelling | 1 off-street parking space for each dwelling unit. |
| Accessory Home Occupation or Office | 1 parking space for each non-resident employee plus adequate parking for clients. |
| Business | Adequate space for employees, customers, service and supply areas. |

SECTION 7 SIGN REGULATIONS

7.1 Permitted Accessory Signs

- (a) One (1) sign, not exceeding six (6) square feet in area, for a permitted accessory use on the premises.
- (b) Signs for commercial or other nonresidential uses exceeding six (6) square feet in total area require a special permit from the Planning Board. No sign shall exceed twenty-five (25) square feet.

7.2 Sign Standards: All signs shall comply with the following standards:

- (a) No sign shall use moving parts, noise making devices or blinking, rotating, or flashing or red lights, or lights changing in intensity.
- (b) No sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.
- (c) No sign or light shall be placed so as to constitute a traffic hazard or nuisance.
- (d) A free-standing sign may not exceed twenty (20) feet in height above grade or be closer to the front lot line than twenty (20) feet, except with a special permit from the Planning Board where the Board finds that requirements of the particular location dictate greater height or a smaller setback.
- (e) No sign shall be located off the premises to which it applies, except that directional, informational or identification signs may be allowed by special permit by the Planning Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design.
- (f) No sign shall employ artificial lighting, except with a special permit from the Planning Board.

SECTION 8 SPECIAL REGULATIONS

8.1 Temporary Buildings

- (a) A temporary building including a mobile home or trailer may be used as a temporary residence or office during and incident to the construction of a permanent building on the premises.
- (b) A temporary building, including a mobile home or trailer may be used as a temporary office or storage facility during construction in adjacent areas for a period of one year.
- (c) No temporary building shall be used without first obtaining a permit from the building inspector.
- (d) A maximum one-year extension to a permit for a temporary building shall be permitted and in no case shall a temporary building be so occupied for a period exceeding two years from the date of permit.

8.2 Radioactive & Hazardous Waste Disposal

- (a) No land within the Town of Cheshire may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste including but not limited to waste classified as low-level radioactive waste, unless the site has been approved by a special permit issued by the Planning Board in accordance with the provisions of Section 10.1 of this Bylaw. Such special permits may be issued subject to conditions and limitations on the proposed use as the Planning Board may determine are necessary for the protection of the public health, safety and welfare.
- (b) No land within the Town of Cheshire may be used for the collection, treatment, storage, burial, incineration, or disposal of hazardous waste, unless the site has been approved by a special permit issued by the Planning Board in accordance with the provisions of Section 10.1 of this Bylaw. Such special permits may be issued subject to conditions and limitations on the proposed use as the Planning Board may determine are necessary for the protection of the public health, safety and welfare.

8.3 Wireless Telecommunication Facilities

- (a) **Purpose.** The purpose of this bylaw is to mitigate the impacts of towers and wireless telecommunication facilities in order to preserve the character and appearance of the Town; to protect the scenic, historic, environmental, natural, and man-made resources of the Town; and to protect property values, while providing for the responsible use of wireless technologies.
- (b) **Consistency with Federal Law.** This bylaw is intended to be consistent with the Telecommunications Act of 1996. In accordance with the Act, these bylaws are not intended

to 1) prohibit or have the effect of prohibiting the provision of personal wireless service; 2) unreasonably discriminate among providers of functionally equivalent services; and 3) regulate personal wireless services on the basis of the environmental effects of radio frequency emission to the extent that such facilities and emissions comply with the Federal Communication Commission's (FCC) regulations concerning such emission.

(c) **Definitions.**

Eligible Facilities Request: As defined in § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (HR 3630).

Substantial Changes: The following are considered substantial changes to the physical dimensions of a tower or base station, but shall not be deemed an exclusive list:

- (1) The mounting of a proposed antenna on a tower that would increase the existing height of the tower by more than 10%.
- (2) Any change, addition, modification or alteration to the tower or wireless telecommunication facility that would require the installation of Federal Aviation Administration (FAA) mandated obstruction lights.
- (3) The mounting of a proposed antenna that would involve adding an appurtenance to the tower that would protrude from the edge of the tower more than ten (10) feet.
- (4) Any change, addition, modification or alteration to the tower or wireless telecommunication facility that would violate the property line setback requirement set forth in Section 4.2 "Table of Dimensional Requirements."

Wireless Telecommunication Facility: Any equipment that broadcasts or receives radio frequency waves in order to provide wireless telecommunication services, including but not limited to antennas and repeaters.

Wireless Telecommunication Service: Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service, specialized mobile radio service, paging service, wireless data service, fixed wireless broadband internet service, or public or private radio dispatch.

Wireless Telecommunication Service Provider: Any person or entity providing wireless telecommunication services.

- (d) **Exemptions.** The following wireless telecommunication facilities are exempt from this bylaw: municipal radio dispatch service; emergency radio dispatch service; amateur radio; citizens band radio; AM/FM radio; or broadcast television. Otherwise non-exempt wireless telecommunication facilities shall not be considered an exempt use merely because it is installed on an exempt tower or structure.

(e) **Eligible Facilities Request under § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (HR 3630).**

- (1) Eligible facilities requests for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station requires site plan approval by the Planning Board prior to the issuance of a building permit by the Building Inspector.
- (2) The Planning Board shall review and act upon applications for site plan approval within ninety (90) days of the submittal of a complete application.
- (3) As part of the site plan approval process, the applicant shall provide all the information required by this bylaw.
- (4) The Planning Board shall approve an application for site plan approval for an eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station. However, the Planning Board may impose conditions on its approval of the site plan.
- (5) Eligible facilities requests for a modification of an existing wireless tower or base station that substantially changes the physical dimension of such tower or base station requires a special permit from the SPGA.

(f) **Special Permit Required.** No tower or wireless telecommunication facility shall be installed, constructed or substantially changed until a special permit has been issued by the Special Permit Granting Authority (SPGA) in accordance with Section 10.1 “Special Permits” and the requirements set forth therein. The SPGA shall adhere to the review and decision time limits set forth in M.G.L. Chapter 40A § 9, except where superseded by FCC Declaratory Ruling & Order, FCC 09-99.

(g) **General Requirements.**

- (1) Towers shall not be built on speculation. If the applicant is not a wireless telecommunications service provider then the applicant shall submit a contract or letter of intent showing that a wireless telecommunication service provider intends to install a wireless telecommunication facility on land owned or leased by the applicant.
- (2) Wireless telecommunication facilities shall be installed on existing towers or structures whenever feasible.
- (3) All towers shall be constructed and wireless telecommunication facilities installed so that the tower is able to accommodate additional wireless telecommunication facilities operated by additional carriers.
- (4) The wireless telecommunication facility shall comply with all FCC and Massachusetts Department of Public Health (MDPH) standards and requirements regarding radio frequency radiation.

- (5) The tower, wireless telecommunication facilities, access road, stormwater controls, vegetative screening and accessory storage building(s) shall be maintained in good condition.
- (6) The applicant and subsequent operator(s) shall submit and maintain at all times adequate liability insurance, as determined by the SPGA, against loss or damage to persons or property, including personal injury or death resulting from the wireless telecommunication facility or tower. The operator shall submit proof of a valid certificate of liability insurance on a yearly basis to the Building Inspector.
- (7) The applicant shall submit a removal plan prepared by a professional engineer licensed to practice in Massachusetts that includes a cost estimate and detailed plan for the removal of the tower and the wireless telecommunication facilities and for the restoration of the site to its pre-existing condition. The cost estimate must account for inflation.
- (8) The applicant and subsequent operator(s) shall submit and maintain at all times a form of surety in a form and amount approved by the SPGA to cover the cost of remediation of the site if damage occurs during construction and for the removal of the tower and wireless telecommunication facility should they become abandoned.
- (9) The applicant shall submit a letter of determination from the Massachusetts Natural Heritage & Endangered Species Program verifying that no rare or endangered species or species of special concern are present at the proposed site.

(h) Design Standards.

- (1) The wireless telecommunication facility and tower shall not exceed twenty (20) feet above the average elevation of the tree line measured within a fifty (50) foot radius from the base of the proposed tower, unless the applicant proves that additional height is necessary to provide adequate coverage or capacity.
- (2) The minimum distance from the base of the tower to any property line shall be 150% of the total height of the tower or wireless telecommunication facility, whichever is taller.
- (3) Any access road to be constructed shall be constructed in a manner that minimizes cut and fill, minimizes erosion, minimizes construction on unstable soils and steep slopes, and minimizes impacts on wetlands. The access road shall be constructed to allow access to the site by emergency vehicles.
- (4) Stormwater controls shall be installed at the site and on the access road in accordance with the Massachusetts Department of Environmental Protection's Stormwater Policy.
- (5) Whenever feasible all utilities shall be located underground to minimize visual impacts.
- (6) The accessory storage building shall be no larger than five-hundred (500) square feet and shall not exceed twelve (12) feet in height. The accessory storage building and all other

- appurtenant structures and equipment shall meet the setback requirements for primary structures set forth in Section 4.2 despite its designation as an accessory building.
- (7) A sign listing the emergency contact information of the wireless telecommunication facility operator shall be posted at all times in an easily accessible and noticeable location. The SPGA may require additional warning signs. No other signs or advertisements are allowed.
 - (8) The SPGA shall determine the type of tower to be constructed in order to mitigate its visual impact on the community.
 - (9) The SPGA may require that the tower and wireless telecommunication facility be camouflaged to mitigate its visual impact on the community.
 - (10) No night lighting of the tower or wireless telecommunication facility is allowed, unless required by the Federal Aviation Administration, except for manually operated emergency lights for use only when operating personnel are on the site.
 - (11) The tower and wireless telecommunication facility shall be constructed to prevent unauthorized persons from accessing the tower and wireless telecommunication facility.
 - (12) Vegetative screening shall be used to screen the tower base, accessory storage building(s) and other ground level structures and equipment from abutting properties and roadways.
- (i) **Prohibited Areas.** No tower or wireless telecommunication facility shall be located within any of the following prohibited areas:
 - (1) A federal, state or locally regulated wetland or vernal pool;
 - (2) One-hundred (100) feet from a wetland or two hundred (200) feet from a river or perennial stream; and
 - (3) A designated critical wildlife habitat area for endangered, threatened or species of special concern.
 - (j) **Visual Impact Analysis.** The applicant shall conduct a balloon test within thirty (30) days of submission of a complete special permit application. The applicant shall advertise the date, time and location of the balloon test in a newspaper with a general circulation in the Town at least seven (7) days prior to the test. The applicant shall also send notice of the balloon test via certified mail to all abutters entitled to notice of the special permit hearing.
 - (1) The applicant shall fly a four-foot diameter brightly colored balloon at the location and maximum elevation of the tower.
 - (2) The balloon shall be flown for at least eight consecutive daylight hours on two days.
 - (3) If visibility and weather conditions are inadequate for observers to clearly see the balloon, further tests may be required by the SPGA.

(k) **Continuing Obligations for Tower and Wireless Telecommunication Facility Owners.**

(1) Every two years, the owner of a wireless telecommunication facility shall pay for an independent consultant, hired by the Town, to determine whether the wireless telecommunication facility is in compliance with all FCC and MDPH standards and requirements for radio frequency radiation during peak operation. The independent consultant shall prepare and submit a report of the inspection results to the Building Inspector within thirty (30) days of the inspection.

(2) Every five years, the owner of a tower constructed to support wireless telecommunication facilities shall pay for an independent professional engineer licensed to practice in Massachusetts, hired by the Town, to assess the structural integrity of the tower. The independent professional engineer shall prepare and submit a report of the inspection results to the Building Inspector within thirty (30) days of the inspection.

(l) **Application Requirements.** Applicants shall submit the following required information as part of its site plan approval application for an eligible facilities request or for its special permit application for a wireless telecommunication facility or tower.

(1) Contact information for the applicant, including name, address and telephone number. If the applicant is not the property owner, provide the written consent of the property owner on which the proposed tower and/or wireless telecommunication facility will be located.

(2) The most recent USGS Topographical Map (7.5-minute map) showing the proposed wireless telecommunication facility site and the surrounding area within at least two miles of the proposed site.

(3) A vicinity map showing the entire area within a 1,000 foot radius of the proposed tower and/or wireless telecommunication facility, including topography, public and private roads, driveways, buildings and structures, utilities, wetlands, critical wildlife habitat areas, historic sites, location of the tower and the property lines of the proposed site.

(4) Site plans at a scale of 1"= 40' or similar scale, prepared, sealed and signed by a professional engineer licensed to practice in Massachusetts, which show the following information:

(i) Contour intervals no greater than two feet.

(ii) Existing property lines, utilities, structures, stonewalls, fences and wooded areas.

(iii) Wetlands, floodplains and certified vernal pools within 200 feet from the proposed wireless telecommunication facility, tower and access road.

(iv) Location of critical wildlife habitat areas, if any.

(v) All proposed changes to the existing site, including but not limited to areas of temporary or permanent clearing, areas of grading and areas of cut and fill.

- (vi) Detailed plans for the drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
 - (vii) Location of the proposed tower, appurtenant equipment and accessory buildings
 - (viii) Location of proposed screening, landscaping, fencing, signage and exterior lighting.
 - (ix) Proposed spot elevation at the base of the proposed tower
 - (x) Proposed utilities, including the distance from the source of power and whether underground or above ground.
 - (xi) Plans for the proposed access road, including but not limited to grading, drainage, width, depth of gravel and surface material.
 - (xii) Plans for the accessory storage building, including a floor plan and representative elevation views, indicating the roof, facades, doors and other exterior materials.
- (5) A project narrative, including plans and elevations, prepared by a professional engineer licensed to practice in Massachusetts that:
- (i) Describes any tower's design, elevation and compliance with the state building code
 - (ii) Describes a tower's capacity, including the number, elevation and types of antennas that the tower is proposed to accommodate.
 - (iii) Documents the elevation above grade for all proposed mounting positions for antennas to be installed on a tower and the minimum distances between the antennas.
 - (iv) Details the tower foundation and anchoring system
 - (v) Details the proposed exterior finish and camouflaging of the tower and wireless telecommunication facility
 - (vi) Demonstrates that existing towers, structures, wireless telecommunication facilities and repeaters within five miles of the proposed site cannot reasonably be modified to provide adequate coverage and capacity to the community.
 - (vii) Describes potential changes or additions to existing towers or structures that would enable them to provide adequate coverage.
 - (viii) Describes the output frequency, number of channels, and the power output per channel for each antenna. Include a coverage map.
 - (ix) Demonstrates the proposed wireless telecommunication facility's compliance with the standards set forth in this bylaw.
 - (x) Proves that the proposed wireless telecommunication facility and the cumulative effect of all the wireless telecommunication facilities at the site will be in compliance with all FCC and Massachusetts Department of Public Health (MDPH) regulations, standards and requirements and includes a statement that the applicant commits to continue to maintain compliance with all FCC and MDPH regulations, standards and requirements for radio frequency radiation (RFR).

- (6) A letter of intent committing the applicant and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC and MDPH regulations, standards and requirements and the provisions of this bylaw.
 - (7) To the extent required by the National Environmental Policy Act as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed wireless telecommunication facility, or a written statement by the applicant that an EA is not required.
 - (8) Other information as requested by the SPGA or Planning Board.
- (m) **Waiver of Application Requirements.** Upon the written request of the applicant, the SPGA may waive any of the application requirements set forth in paragraph (l) above that the SPGA deems appropriate for the circumstances and type of wireless telecommunication facility or tower that is being proposed.
- (n) **Approval Criteria.** A special permit to construct, install or substantially change a wireless telecommunication facility or tower shall not be issued unless the SPGA finds that the following criteria will be met:
- (1) The proposed wireless telecommunication facility and/or tower will not have an undue adverse impact on historic resources, scenic views, residential property values and natural and man-made resources.
 - (2) The proposed wireless telecommunication facility and/or tower will comply with all requirements set forth in this Bylaw.
 - (3) The proposed wireless telecommunication facility and/or tower will comply with all federal, state and local laws, regulations and standards.
 - (4) The applicant has proven that it cannot provide adequate coverage or capacity by installing its equipment on an existing tower or structure or by using repeaters in conjunction with existing facilities.
 - (5) The proposed tower provides reasonable opportunity for collocation of other equipment
 - (6) The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the tower and/or wireless telecommunication facility.
 - (7) The proposed wireless telecommunication facility will not generate undue noise
 - (8) The proposed wireless telecommunication facility will comply with FCC 96-326 and 105 CMR 120 and any other applicable FCC or MDPH regulations, regarding emissions of electromagnetic radiation and that the required monitoring program is in place and will be paid for by the applicant.

- (o) **Independent Consultants.** Upon submission of an application for site plan approval of an eligible facilities request or for a wireless telecommunication facility or tower special permit, the SPGA will be authorized to hire independent consultants at the applicant's expense, to assist the SPGA with the review of the application materials and to monitor the project to ensure that all work is conducted in accordance with the approved plans and conditions. The independent consultant may be hired pursuant to M.G.L. Chapter 44 § 53G.
- (p) **Removal Requirements.** An abandoned or unused wireless telecommunication facility or tower shall be removed and the site restored to its pre-existing condition within 180 days of abandonment. If the wireless telecommunication facility or tower is not removed within 180 days of abandonment, the Building Inspector, to the extent it is otherwise duly authorized by law, may cause the wireless telecommunication facility and/or tower to be removed. The cost of removal shall be assessed against the owners of the wireless telecommunication facilities and tower.
- (q) **Lapse.** Any special permit for a wireless telecommunication facility or tower shall lapse if the wireless telecommunication facility or tower is not installed and operating within one (1) year from the date of approval or the wireless telecommunication facility or tower is abandoned.

8.4 Large Wind Energy Facilities

- (a) **Purpose.** The purpose of this bylaw is to encourage the responsible development of the town's wind energy resources by providing standards for the design, placement, construction, monitoring, modification and removal of large wind energy facilities that address public health and safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurances for decommissioning.
- (b) **Applicability.** This bylaw applies to all large wind energy facilities to be constructed after the effective date of this bylaw. This bylaw also applies to physical modifications to any existing large wind energy facility that materially alter its type, number, location, height or configuration.
- (c) **Definitions.**
 - Height** – The distance between the natural grade of the land measured vertically to the tip of the wind turbine blade at its highest point.
 - Large Wind Energy Facility** – A wind energy facility with a rated nameplate capacity greater than 10kW and a height greater than one-hundred forty-feet (140') and/or the electricity generated is not primarily used on-site.
 - Small Wind Energy System (SWES)** – A wind energy facility with a rated nameplate capacity of 10 kW or less and a height of one-hundred forty (140) feet or less and the electricity generated is primarily used on-site. SWES are regulated by Section 8.5.

Wind Energy Facility – All equipment, machinery and structures utilized in connection with the conversion of wind energy to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, stormwater control measures, service roads and other appurtenant structures, facilities and equipment.

Wind Turbine – A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a nacelle body and a rotor with two or more blades.

- (d) **Use Regulations.** No large wind energy facility shall be erected, constructed, or installed without first obtaining a special permit from the Planning Board in accordance with Section 10.1. Physical modifications to an existing large wind energy facility that materially alter its type, number, location, height or configuration shall also require a special permit from the Planning Board.
- (e) **General Requirements.**
- (1) **Compliance.** The construction, operation, modification and removal of all large wind energy facilities shall comply with all local, state and federal laws.
 - (2) **Site Control.** The applicant shall demonstrate actual control over and legal access to the proposed site sufficient to allow for the construction and operation of a large wind energy facility.
 - (3) **Utility Provider Conditional Approval.** The applicant shall demonstrate that it has received conditional approval to connect the large wind energy facility to the electric grid from the utility provider. Off-grid facilities are exempt from this requirement.
 - (4) **Operation & Maintenance.** The operator of a large wind energy facility shall maintain the large wind energy facility, access road(s) and stormwater control measures in good condition. The applicant shall submit an operation and maintenance plan for the life of the expected large wind energy facility, showing how the operator will maintain the large wind energy facility, access road(s) and stormwater control measures in good condition.
 - (5) **Contingency Plan.** The applicant shall submit a contingency plan that outlines the protocols to be followed to mitigate unacceptable adverse impacts to the town, its residents and the environment. At a minimum, the plan shall include mitigation steps to address the possibility of excessive noise, excessive shadow & flicker and excessive wildlife injuries or mortalities as determined by the state or federal agency with jurisdiction over the impacted species.
 - (6) **Liability Insurance.** The operator of the large wind energy facility shall obtain and keep current an insurance policy, against loss or damage to persons or property, including personal injury or death resulting from the large wind energy facility. The Planning

Board shall determine the minimum amount of liability insurance required. The operator of the large wind energy facility shall provide the Planning Board with proof of liability insurance, in the amount determined by the Planning Board, prior to the issuance of a building permit. All subsequent owners/operators shall continue to provide proof of liability insurance in the form and amount approved by the Planning Board to the Building Inspector on an annual basis.

- (7) **Removal Plan & Cost Estimate.** The applicant shall submit a detailed plan for the removal of the large wind energy facility and restoration of the site to its pre-existing condition upon abandonment or decommissioning. The removal plan shall be prepared by a qualified professional and include a detailed estimate of the anticipated removal and site restoration costs that includes a mechanism to account for inflation.
- (8) **Financial Surety.** The amount and form of surety shall be determined by the Planning Board. The operator of the large wind energy facility shall provide the Planning Board with the following prior to the issuance of a building permit:
- (i) Surety to ensure that the proposed large wind energy facility project site is properly stabilized to protect downslope properties and public ways.
 - (ii) Surety to cover possible damage to public ways and public lands damaged during the transportation of the large wind energy facility components.
 - (iii) Surety to cover the cost of removal of the large wind energy facility and the restoration of the site in the event the town must remove the large wind energy facility and restore the site. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed one-hundred twenty-five (125%) percent of the total estimated cost of removal.
 - (iv) No less than ninety (90) days prior to the expiration of any financial surety required by this bylaw, the current operator of the large wind energy facility shall provide the Building Inspector with renewed, extended or replacement financial surety in an amount and form determined by the Planning Board in accordance with this bylaw.
- (9) **NHESP Letter.** The applicant shall petition the Massachusetts Natural Heritage & Endangered Species Program (“NHESP”) for a letter of determination as to the possible existence of rare or endangered species and species of special concern at the proposed site.
- (f) **Design Standards.**
- (1) **Height.** No large wind energy facility shall exceed 450 feet in height.
 - (2) **Appearance.** All large wind energy facilities shall be finished a neutral (white or gray) non-reflective color in order to be less visually obtrusive.

- (3) **Signage.** Signs listing the 24-hour contact information of the large wind energy facility operator shall be installed in easily accessible and noticeable locations at the large wind energy facility site. All signs shall comply with the Town of Cheshire's sign bylaw.
- (4) **Lighting.** Large wind energy facilities shall contain a beacon light only if required by the Federal Aviation Administration (FAA). A large wind energy facility may include lights necessary for the safe operation of the large wind energy facility. All operational lighting shall be directed downwards and screened from roadways and abutting properties with native vegetation. Evidence of the FAA requirement for the facility shall be submitted with the application.
- (5) **Shadow & Flicker.** All large wind energy facilities shall be located in areas that do not result in more than 30 hours of shadow/flicker per year on off-site inhabited buildings. The applicant has the burden of proving that any shadowing or flickering on off-site inhabited buildings is less than 30 hours per year. The Planning Board may waive the shadow/flicker limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (6) **Appurtenant Structures & Equipment.** All appurtenant structures and equipment (except the tower) shall comply with the dimensional requirements of the underlying zoning district, including but not limited to setbacks and height.
- (7) **Noise Regulations.** Operational noise of the large wind energy facility, as measured by the latest standards of the American National Standards Institute, shall not exceed 45 dB(A) or 5 dB(A) above ambient sound, whichever is less, for more than 15 minutes in any one day measured at the nearest property line. Temporary construction work and maintenance work shall be governed by the generally applicable noise bylaw in the town. The Planning Board may waive the noise limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (8) **Setbacks.** No large wind energy facility shall be located within one-quarter (1/4) mile of the nearest property boundary and one-half (1/2) mile of the nearest off-site inhabited building in existence on the date the application to construct a large wind energy facility is received by the Town Clerk. The Planning Board may waive the setback requirement as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (9) **Unauthorized Access.** All large wind energy facilities shall be constructed to prevent unauthorized persons from gaining access to the large wind energy facility.

- (10) **Emergency Response Access.** The large wind energy facility and access roads shall be constructed and maintained to allow for safe access by local emergency vehicles. Local public safety officials shall be provided with the ability to access the facility as needed to respond to emergencies.
 - (11) **Habitat Fragmentation.** To the extent possible, large wind energy facilities, associated roadways and transmission lines shall be located in or adjacent to areas where land is already cleared to avoid habitat fragmentation.
 - (12) **Vegetation Clearing.** The clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the large wind energy facility, associated roadways and transmission lines and is otherwise prescribed by applicable laws. Revegetation plans shall be provided for restoration areas required for construction but not necessary for ongoing maintenance and operations. Only native species typically found in the facility's environment may be used for restoration.
 - (13) **Wetlands.** All large wind energy facilities, associated roadways and transmission lines shall be constructed in compliance with all applicable local, state and federal laws pertaining to wetlands.
 - (14) **Wildlife.** All large wind energy facilities, associated roadways and transmission lines shall be constructed to avoid or minimize impacts to wildlife, with particular attention paid to avian and bat species, as well as rare species, endangered species and species of special concern.
 - (15) **Stormwater Management.** All stormwater controls installed at the large wind energy facility site and on associated roadways shall be constructed and managed according to the Massachusetts Department of Environmental Protection's Stormwater Policy.
 - (16) **Invasive Species Management.** The applicant and subsequent large wind energy facility operator shall utilize best management practices during construction and post-construction to control invasive species at the large wind energy facility site and along the associated roadways and transmission lines.
- (g) **Large Wind Energy Facility Site Studies.**
- (1) **Balloon/Crane Test.** Within twenty (21) days after the filing of an application to construct a large wind energy facility the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed large wind energy facility . The balloon or crane shall remain raised in place for a period of eight (8) consecutive daylight hours between sunrise and sunset. The date, time and location of such test shall be advertised in a newspaper of general circulation in the town and at the town hall at least seven (7) days prior to the date of the test. If visibility and weather conditions are inadequate for observers the Planning Board may require additional tests.

- (2) **Sight Line Simulations.** The Planning Board shall select up to five (5) locations from which the applicant shall conduct and submit sight line simulations from the chosen location to the proposed large wind energy facility site. All simulations shall be in color and provide an accurate representation of the height, width and breadth of the proposed large wind energy facilities.
 - (3) **Project Viewshed Map.** The applicant shall submit a viewshed map showing all areas within five (5) miles of the proposed large wind energy facility site that will be able to view the large wind energy facility. The viewshed map shall identify streets, historical resources, cultural facilities, recreational resources, publicly owned land, and other local landmarks.
 - (4) **Noise Analysis.** The applicant shall submit the results of a noise analysis to the Planning Board. The noise analysis shall be conducted in accordance with American National Standards Institute standards and be certified by a qualified independent acoustical engineer. The noise analysis shall contain sufficient information for the Planning Board to determine whether the operation of the proposed large wind energy facility will comply with Section 8.4 (f)(7) “Noise Regulations” of this Bylaw and the Massachusetts Department of Environmental Protection’s Noise Pollution Policy. In completing the noise analysis, the acoustical engineer shall consider the unique topography of the surrounding area, location of dwellings, prevailing wind direction and atmospheric conditions, such as high wind shear or thermal inversion that may affect the propagation of sound emitted from the large wind energy facility. The noise analysis shall also include an analysis and discussion of the anticipated impacts of low frequency noise emitted from the large wind energy facility.
 - (5) **Shadow & Flicker Analysis.** The applicant shall conduct a shadow and flicker analysis and submit its findings to the Planning Board. The shadow and flicker analysis shall, at a minimum, include a list of all off-site inhabited buildings estimated to receive thirty (30) or more shadow/flicker hours per year.
 - (6) **Avian & Bat Species Analysis.** The applicant shall submit the results of an avian and bat species analysis to the Planning Board. The avian and bat species analysis shall be conducted and certified by a qualified independent wildlife biologist. The avian and bat species analysis shall contain sufficient information to fully characterize and determine the risk posed by the proposed large wind energy facility to avian and bat species. Applicants are strongly encouraged to comply with the most recent United States Fish & Wildlife Service Land-Based Wind Energy Guidelines when planning and conducting studies to meet the requirements of this section. The Planning Board may require the large wind energy facility operator to conduct one year of post construction monitoring to document avian and bat species injuries and mortalities.
- (h) **Pre-application Conference.** Prior to the submission of an application for the construction or modification of a large wind energy facility, applicants are strongly encouraged to meet

with the Planning Board at a public meeting to discuss the proposed large wind energy facility project and to clarify the filing requirements and permitting process.

- (i) **Reasonable Conditions & Mitigation.** The Planning Board may impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the large wind energy facility should they occur.
- (j) **Application Requirements.** The applicant shall submit the following required information as part of the application for a large wind energy facility special permit. All site plans shall be signed and sealed by a registered professional engineer and a licensed surveyor.
 - (1) **Contact Information.** Name, address, phone number, e-mail and signature of the applicant, as well as all co-applicants or property owners, if any and the name contact information and the signature of any agents representing the applicant.
 - (2) **Site Identification.** Identify the location of the proposed large wind energy facility. Provide the street address, if any, and the tax map and parcel number(s). Provide a list of abutters to the subject property.
 - (3) **Location Map.** A relevant portion of the most recent USGS Quadrangle Map at a scale of 1" = 25,000' or similar scale showing the proposed large wind energy facility site, associated roadways, transmission lines and the area within at least a two mile radius of the proposed site.
 - (4) **Vicinity Map.** A map of the proposed large wind energy facility site at a scale of 1" = 300' or similar scale, with existing contour intervals no greater than ten (10') feet showing the entire area within a three thousand (3000') foot radius of the proposed large wind energy facility and shall include: existing topography, exact location of each wind turbine, public and private roads, recreation trails, property lines of all abutters within one thousand (1000') feet, structures including their use, historic sites, cultural sites, wetlands, known bat hibernacula, known critical habitat areas, other environmentally sensitive areas, location of existing and proposed electric distribution lines, transformers, substations, and access easements.
 - (5) **Site Plan.** A site plan with a scale of 1" = 40', or other appropriate scale with contour intervals no greater than two (2') feet showing the following:
 - (i) Property lines of the proposed large wind energy facility site and adjacent parcels within ½ mile of the large wind energy facility.
 - (ii) Outline of all existing structures, including their uses, located within ½ mile of the large wind energy facility.
 - (iii) Existing and proposed public and private roads, driveways, and recreational trails within ½ mile of the large wind energy facility.

- (iv) Representations, dimensioned and to scale, of the proposed large wind energy facility including, but not limited to, tower foundations, guy anchors, cable locations, associated equipment and structures, fencing, electric distribution infrastructure, parking and access roads.
 - (v) All proposed changes to the existing site, associated roadways and transmission lines, including but not limited to areas of temporary clearing, areas of permanent clearing, areas of grading, and areas of cut and fill.
 - (vi) Delineation of all wetland resource areas and buffers on the proposed large wind energy facility site, associated roadways and transmission lines.
 - (vii) Location of known habitat areas for rare species, endangered species and species of special concern.
 - (viii) A cross section of the proposed access road indicating its width, crown, depth of gravel, drainage, and paving or other surface material.
- (6) **Elevations.** Site elevations or views at grade from north, south, west and east, for a distance equal to 1.5 times the height of the large wind energy facility around the proposed large wind energy facility. Elevations shall be at one quarter inch equals one foot or similar scale and show the following:
- (i) The proposed large wind energy facility, associated equipment, existing and proposed structures, and security barriers with total elevation dimensions.
 - (ii) Existing and proposed trees and shrubs at the time of application with approximate elevations dimensioned.
- (7) **Technical Information.** Documentation of the large wind energy facility's nameplate capacity, manufacturer, model number, tower height, rotor diameter, braking mechanisms, other safety mechanisms, tower type, color, foundation type and foundation dimensions.
- (8) **Stormwater Control Plans.** Engineering plans showing the drainage of surface water and detailed plans to control erosion and sedimentation, during construction and as a permanent measure, which show conformance to the Massachusetts Department of Environmental Protection's Stormwater Policy.
- (9) **Transportation Plan.** A written transportation plan discussing the anticipated transportation issues created by the transportation of the large wind energy facility components, which shall include the following:
- (i) A map showing the anticipated transportation route commencing at the Massachusetts state line.
 - (ii) All locations in the Town of Cheshire where land alterations and clearing of vegetation will be required, regardless of ownership, including the approximate square footage of each land alteration.

- (iii) A detailed list of all bridges and culverts to be crossed in the Town of Cheshire during the transportation of the large wind energy facility components that include the applicable width and weight restrictions of each bridge and culvert.
- (iv) Detailed site plans for all anticipated road, bridge, or culvert alterations in the Town of Cheshire along the anticipated transportation route, regardless of ownership.
- (v) A list of the anticipated combined weight of the delivery vehicles and cargo.
- (vi) A list of the turning radii of the delivery vehicles with cargo.
- (vii) All anticipated road closures and traffic disruptions that may affect emergency response vehicles and plans to manage these road closures and traffic disruptions in cooperation with local emergency officials.
- (viii) Any overhead utility lines.

(10) **Other Information.**

- (i) Documents establishing legal access to and control of the proposed large wind energy facility site as required by Section 8.4 (e)(2).
 - (ii) Documents demonstrating that the utility provider has given conditional approval to the applicant to connect to the electric grid as required by Section 8.4 (e)(3)
 - (iii) Operation and maintenance plan as required by Section 8.4 (e)(4).
 - (iv) Plans and costs estimates for the removal of the large wind energy facility as required by Section 8.4 (e)(7).
 - (v) Studies and materials required by Section 8.4 (g).
 - (vi) Contingency plan as required by Section 8.4 (e)(5).
 - (vii) Certification of height approval from the FAA, including required lighting.
 - (viii) NHESP letter as required by Section 8.4 (e)(9).
 - (ix) Revegetation plan as required by Section 8.4 (f)(12).
- (k) **Waiver.** Upon written request of the applicant, the Planning Board may waive any of the application requirements contained in Section 8.4 (j), as the Planning Board, in its discretion, deems appropriate.
- (l) **Damage to Public Ways & Public Lands.** The applicant shall be responsible for the cost of repairing any damage to public ways and public lands in the Town of Cheshire caused by the use of the public ways or public lands in connection with the transportation, construction, operation, maintenance and decommissioning of the large wind energy facility.
- (1) In furtherance of this section, a qualified independent engineer, paid for by the applicant and selected by the town, shall document the condition of all public ways and public lands along the anticipated transportation route prior to the transportation of any large wind energy facility component.

- (2) Within thirty (30) days after all large wind energy facility components have been transported, the qualified independent engineer, paid for by the applicant and selected by the town, shall re-document the condition of all public ways and public lands along the actual transportation route to determine whether the public ways and public lands have been damaged by the applicant and if so, the total cost to repair such damage.

(m) **Abandonment & Removal of Large Wind Energy Facilities.**

- (1) A large wind energy facility shall be deemed abandoned when the large wind energy facility has not been in operation for a period of twelve (12) months.
- (2) After twelve (12) months of non-operation, the Building Inspector shall provide written notification to the owner/operator that such large wind energy facility is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the large wind energy facility has been in operation during the relevant twelve (12) month period.
- (3) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the large wind energy facility has been in operation for the relevant twelve (12) month period, then the large wind energy facility shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
- (4) The owner/operator of the large wind energy facility shall remove the large wind energy facility and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the large wind energy facility within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large wind energy facility and restore the site at the sole expense of the owner/operator.

- (n) **Technical Review.** Upon receipt of an application for a large wind energy facility, the Planning Board may engage professional and technical consultants, at the applicant's expense, pursuant to M.G.L. Chapter 44 § 53G to assist the Planning Board with its review of application materials. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this section shall be grounds for denying the special permit application. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued shall be refunded to the applicant.

- (o) **Lapse of Approval.** Any special permit approved to construct, operate or modify a large wind energy facility pursuant to this bylaw shall automatically expire if the large wind energy facility is not installed and operating within two (2) years from the date of approval or the large wind energy facility becomes abandoned as defined in Section 8.4 (m).

8.5 Small Wind Energy Systems

- (a) **Purpose.** The purpose of this section is to provide a permitting process for small wind energy systems (SWES) for individual homeowners so that they may be utilized in a cost-effective, efficient, and timely manner to increase the use of distributed generation; to integrate these systems into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing wind energy technologies to be utilized.
- (b) **Applicability.** This section applies to the construction of all SWES in the Town of Cheshire after the effective date of this bylaw. This bylaw also applies to physical modifications to existing SWES that materially alter its number, type, location, height, or configuration.

(c) **Definitions.**

AWEA Rated Sound Level – The sound level of a SWES calculated as set forth in the American Wind Energy Association’s Small Wind Turbine Performance and Safety Standard (AWEA 9.1 – 2009)

Small Wind Energy Systems (SWES) – A wind energy facility with a rated nameplate capacity of 10 kW or less and a height of one-hundred forty (140) feet or less and the electricity generated is primarily used on-site.

System Height – The height from existing grade of the fixed portion of the tower to the blade tip of the turbine at the highest point of its rotation.

Wind Energy Facility - All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, stormwater control measures, service roads and other appurtenant structures, facilities and equipment.

Wind Turbine – A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a nacelle body and a rotor with two or more blades.

- (d) **Use Regulations.** One or more SWES may be allowed on a lot in all zoning districts, only as an accessory use, after the issuance of a special permit in accordance with this section and Section 10.1.

(e) **Design Requirements**

(1) **Height.** The maximum permitted System Height is 140 feet.

(2) **Setbacks.**

- (i) The minimum horizontal distance from the base of the tower structure to any property line or road right-of-way shall be 125% of the system height.
 - (ii) The minimum horizontal distance from the base of the tower structure to any existing residence not occupied by the SWES applicant shall be at least 200 feet.
 - (iii) No part of the SWES, including guy wires and anchors, may extend closer to the property boundaries than the setbacks as set forth in Section 4.2.
- (3) **Unauthorized Access.** All SWES shall be designed and maintained to prevent unauthorized access.
- (4) **Appearance.** All SWES shall be painted a non-reflective exterior color designed to blend with the surrounding environment. No decorations or lights shall be allowed, unless required by the Federal Aviation Administration (FAA).
- (5) **Visual Impacts.**
- (i) The SWES shall be located as to minimize its visual impact on the neighborhood.
 - (A) To the extent practical the SWES shall be screened from neighboring properties.
 - (B) All electrical conduits must be located underground.
 - (C) No logos, designs, or other signage shall exceed two square feet in total area.
- (6) **Noise.** The AWEA Rated Sound Level of the SWES shall be 45 dB(A) or less. The operational noise of the SWES, as measured by the latest standards of the American National Standards Institute, shall not exceed 45 dB(A) or 5 dB(A) above ambient sound, whichever is less, for more than 15 minutes in any one day measured at an occupied dwelling. The Planning Board may waive the noise limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (7) **Shadow & Flicker.** All SWES shall be sited in a manner that does not result in significant shadow/flicker impacts on occupied buildings. A significant shadow/flicker impact is defined as more than thirty (30) hours of shadow/flicker hours per year on an occupied building. If significant shadow/flicker impacts occur, the owner of the SWES shall reduce the operation of the SWES or undertake other mitigation measures in order to decrease the time of shadow/flicker on any occupied building to less than thirty (30) hours per year. Buildings occupied by the SWES applicant/owner are exempt from this requirement. The Planning Board may waive the shadow & flicker limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.

(f) **General Requirements**

- (1) **Compliance.** The construction, operation, maintenance and removal of SWES shall be consistent with all applicable local, state and federal requirements, including all applicable health, safety, construction, environmental, electrical, communications, aviation, and state building codes.
- (2) **Operation & Maintenance.** The applicant shall maintain the SWES in good condition and operate the SWES in a safe manner.
- (3) **Standard.** Only SWES that meet the American Wind Energy Association's Small Wind Turbine Performance and Safety Standard (AWEA 9.1 – 2009) are allowed.
- (4) **Utility Provider Conditional Approval.** The applicant shall demonstrate that it has received conditional approval to connect the SWES to the electric grid from the utility provider. Off-grid SWES are exempt from this requirement.

(g) **Application Process.** Applications for a SWES special permit shall be filed in accordance with Section 10.1 and this section. An application for a SWES special permit must be prepared by a licensed engineer and contain the following:

- (1) **Site Plan.** A site plan with the following information:
 - (i) Property lines and physical dimensions of the applicant's property
 - (ii) Location, dimensions, and types of existing major structures on the applicant's property and adjacent property only if the property is part of the Fall Zone.
 - (iii) Any easements located within the Fall Zone
 - (iv) Location of the proposed SWES, foundations, guy anchors and associated equipment
 - (v) Setback requirements as outlined in this ordinance
 - (vi) The right-of-way of any public road that is adjacent to the property
 - (vii) Any overhead utility lines
 - (viii) Tower foundation blueprints or drawings
 - (ix) Tower blueprints or drawings
 - (x) SWES specifications, including manufacturer, system blueprints, model, rotor diameter, tower height, tower type, braking mechanisms, safety features, and nameplate generation capacity.
 - (xi) SWES that will be connected to the electric grid shall include a copy of the conditional approval letter from the electric utility provider.
 - (xii) Sound level analysis prepared by the SWES manufacturer or qualified engineer, if required.
 - (xiii) The applicant shall conduct a shadow and flicker analysis and submit its findings to the Planning Board. The shadow and flicker analysis shall, at a minimum, include a

list of all off- site inhabited buildings estimated to receive thirty (30) or more shadow/flicker hours per year.

- (xiv) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to all applicable state building codes and electrical codes.
 - (xv) Evidence of compliance or non-applicability with FAA regulations
 - (xvi) List of abutters to the applicant's property
- (2) **Operation & Maintenance Plan.** A plan which sets forth the general procedures for safe and effective operation and maintenance of the SWES including guy wires, anchors, support structures, and lubricants.
- (3) **SWES Removal Plan.** A plan for the removal of the SWES once it has reached the end of its useful life or is abandoned.
- (4) **Additional Information.** Additional information as requested by the Planning Board.
- (h) **Technical Review.** The special permit granting authority may hire an expert, at the applicant's expense and in accordance with M.G.L. Chapter 44 § 53G to assist the special permit granting authority with the technical review of application materials.
- (i) **Abandonment & Removal.**
- (1) A SWES shall be deemed abandoned when the SWES has not been in operation for a period of twelve (12) months.
 - (2) After twelve (12) months of non-operation, the Building Inspector shall provide written notification to the owner/operator that such SWES is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence that the SWES has been in operation during the relevant twelve (12) month period.
 - (3) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the SWES has been in operation for the relevant twelve (12) month period, then the SWES shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
 - (4) The owner/operator of the SWES shall remove the SWES and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the SWES within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the SWES and restore the site at the sole expense of the owner/operator.

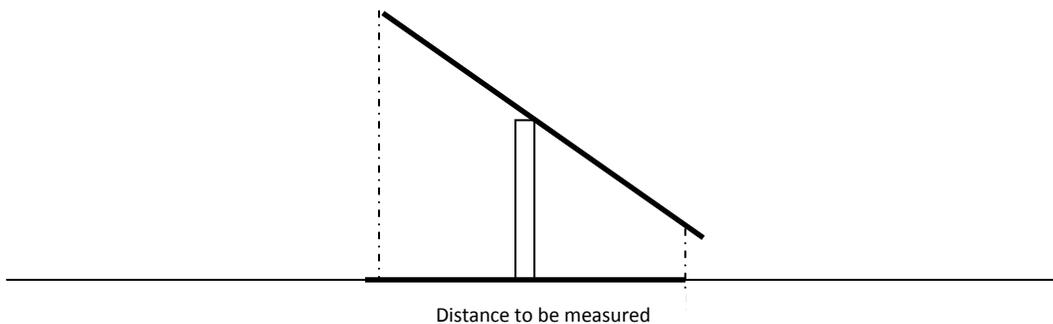
- (j) **Lapse of Approval.** Any special permit approved to construct, operate or modify a SWES pursuant to this Bylaw shall automatically expire if the SWES is not installed and operating within one (1) year from the date of approval or the SWES becomes abandoned or discontinued.

8.6 Solar Photovoltaic Installations

- (a) **Purpose.** The purpose of this section is to provide a permitting process for solar photovoltaic installations so that they may be utilized in a cost-effective, efficient, and timely manner to increase the use of distributed generation; to integrate these installations into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing solar photovoltaic technologies to be utilized.
- (b) **Applicability.** This section applies to solar photovoltaic installations proposed to be constructed after the effective date of this bylaw. This section also applies to material modifications that alter the type, number, configuration or size of the solar photovoltaic installation.
- (c) **Definitions.**

Large Scale Solar Photovoltaic Installation – A ground mounted solar photovoltaic installation that occupies one sixteenth (1/16th) of an acre or more of a lot or occupies less than one sixteenth (1/16th) of an acre of a lot, but the electricity generated is used primarily for off-site consumption.

Impervious Area of a Solar Panel - The area of impervious surface of a solar panel shall be calculated as if the solar panel projects straight down to the ground on each side, as illustrated in the figure below.



Small Scale Solar Photovoltaic Installation – Any size roof mounted or building mounted solar photovoltaic installation or a ground mounted solar photovoltaic installation that occupies less than one sixteenth (1/16th) of an acre of a lot and the electricity generated is used primarily for on-site consumption.

Solar Photovoltaic Installation – A device, structure, or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, generation of electricity, or water heating. This includes appurtenant equipment for the collection, storage and distribution of electricity to buildings or to the electric grid.

(d) Small Scale Solar Photovoltaic Installations.

- (1) A small scale solar photovoltaic installation may be allowed as a primary use or an accessory use in all zoning districts.
- (2) A small scale solar photovoltaic installation may only be constructed or materially modified after the issuance of a building permit by the Building Inspector.
- (3) A small scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude no higher than the highest point of the roofline, except as provided below.
 - (i) A small scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude above the highest point of the roofline, up to six (6) feet above the highest point of the roofline, only by special permit upon a finding by the Planning Board that the waiver is in the public interest and that the waiver is consistent with the intent of the Zoning Bylaws.
- (4) A small scale solar photovoltaic installation proposed to be ground mounted may not exceed a height of twenty feet (20’).
- (5) A small scale solar photovoltaic installation proposed to be ground mounted shall comply with all the setback requirements set forth in Section 4.2 including solar photovoltaic installations being installed as an accessory structure.
- (6) All impervious surfaces of a small scale solar photovoltaic installation, including solar photovoltaic panels shall be included in the maximum % lot coverage requirement in Section 4.2 unless the small scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.

(e) Large Scale Solar Photovoltaic Installations.

- (1) **Use Regulations.** Large scale solar photovoltaic installations may only be constructed or materially modified after the issuance of a special permit from the Planning Board in accordance with this section and Section 10.1 “Special Permits” in all zoning districts.
- (2) **Compliance.** The construction, maintenance, operation, modification and removal of the large scale solar photovoltaic installation shall comply with all applicable local, state, and federal requirements.

- (3) **Site Control.** The applicant shall demonstrate legal control over the proposed site sufficient to allow for the construction and operation of the large scale solar photovoltaic installation.
- (4) **Utility Provider Conditional Approval.** The applicant shall demonstrate that it has received conditional approval to connect the large scale solar photovoltaic installation to the electric grid from the utility provider. Off-grid installations are exempt from this requirement.
- (5) **Operation & Maintenance.** The owner/operator of the large scale solar photovoltaic installation shall maintain the large scale solar photovoltaic installation and the site in good condition. This includes, but is not limited to the maintenance of access roads, stormwater control measures, security measures and vegetation screening.
- (6) **Liability Insurance.** Proof of liability insurance in an amount and form acceptable to the Planning Board shall be maintained until the large scale solar photovoltaic installation has been removed. All subsequent owners/operators shall continue to provide proof of liability insurance in the form and amount approved by the Planning Board to the Building Inspector on an annual basis.
- (7) **Financial Surety.**
 - (i) Applicants seeking to construct a large scale solar photovoltaic installation shall provide a form of surety to cover the cost of removal and restoration of the site in the event the site is abandoned. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed one-hundred twenty-five (125%) percent of the cost of removal. Applicants shall submit a fully inclusive cost estimate, which accounts for inflation, of the costs associated with the removal of the large scale solar photovoltaic installation prepared by a qualified engineer.
 - (ii) No less than ninety (90) days prior to the expiration of any financial surety required by this bylaw, the current operator of the large scale solar photovoltaic installation shall provide the Building Inspector with renewed, extended or replacement financial surety in an amount and form determined by the Planning Board in accordance with this bylaw.
- (8) **Design Requirements.**
 - (i) **Height.** Large scale solar photovoltaic installations shall not exceed twenty feet (20') in height.
 - (ii) **Setbacks.** Large scale solar photovoltaic installations shall comply with the setback requirements set forth in Section 4.2.
 - (iii) **Lighting.** No lighting of the solar photovoltaic installation is permitted, except for manually operated emergency lights for use only when operating personnel are on site.

- (iv) **Screening.** The large scale solar photovoltaic installations shall be screened year round with dense native vegetation from all adjoining properties and public and private ways.
 - (v) **Vegetation Clearing.** The clearing of vegetation shall be limited to that which is necessary for the construction, operation, maintenance, modification and removal of the large scale solar photovoltaic installation.
 - (vi) **Habitat Fragmentation.** All large scale solar photovoltaic installations shall to the fullest extent practicable be clustered and located in or adjacent to areas of the site where the land has already been cleared to avoid habitat fragmentation.
 - (vii) **Security Measures.** Large scale solar photovoltaic installations shall be secured with a seven (7) foot high fence constructed to prevent unauthorized persons from accessing the large scale solar photovoltaic installation.
 - (viii) **Signs.** The owner/operator shall install signs at the large scale solar photovoltaic installation as determined by the Planning Board in order to protect public safety.
 - (ix) **Emergency Access.** Large scale solar photovoltaic installations and access roads shall be constructed and maintained to allow for safe access by emergency vehicles.
 - (x) **Emergency Response Plan.** Upon the request of the fire chief or police chief, the owner/operator of the large scale solar photovoltaic installation shall cooperate with all local public safety officials to develop and occasionally update an emergency response plan.
 - (xi) **Underground Utilities.** All on-site utilities shall be located underground except where the utilities connect into the electric grid at the property boundary.
 - (xii) **Maximum % Coverage.** All impervious surfaces of the large scale solar photovoltaic installation, including solar photovoltaic panels shall be included in the maximum % lot coverage requirement in Section 4.2, unless the large scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.
- (9) **Filing Requirements.** Applicants seeking to construct or modify a large scale solar photovoltaic installation shall submit the following information to the Planning Board. All maps to be submitted must be drawn at appropriate scales and be signed by a registered professional engineer or licensed surveyor. The Planning Board may, in its discretion, waive any of the filing requirements.
- (i) **Contact Information.** Provide the applicant's and property owner's name, address, phone number, email address, and signature.
 - (ii) **Site Identification.** Provide the address and the map, lot and block number of the proposed site.
 - (iii) **Site Plans.** Provide site plans showing the following:
 - (A) Property lines of the proposed site.

- (B) Elevation contour lines at two-foot vertical intervals.
- (C) Outlines of all existing and proposed buildings and structures on the proposed site, including distances from the proposed large scale solar photovoltaic installation.
- (D) Existing and proposed access roads, driveways, public ways, private ways, and recreational trails on the proposed site.
- (E) Detailed layout of the proposed large scale solar photovoltaic installation, including but not limited to panel mounts, foundations, appurtenant equipment and fencing.
- (F) Detailed layout of the electric infrastructure to connect the large scale solar photovoltaic installation to the electric grid or net metering equipment.
- (G) Delineation of all wetland resources and associated buffer areas.
- (H) Locations of rare, threatened or endangered species existing on the site.
- (I) Proposed changes to the site, including grading, cut and fill, landscaping, native vegetation for screening and vegetation to be removed or altered.
- (J) Engineering controls at the site and on the access road to control erosion and sedimentation both during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of Environmental Protection's Stormwater Policy.

(iv) **Technical Information.** Provide the following information:

- (A) Blueprints or drawings of the large scale solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the installation and any potential shading from nearby trees or structures.
- (B) One or three line electrical diagram detailing the solar photovoltaic installation, appurtenant equipment and electrical interconnection methods with all National Electric Code compliant devices.
- (C) Documentation of the major large scale solar photovoltaic installation components to be used, including but not limited to solar photovoltaic panels, panel mounts and inverter.

(v) Information sufficient to show that the proposed large scale solar photovoltaic will conform to Sections 8.6 (e)(3) to (e)(7).

- (10) **Technical Review.** Upon receipt of an application for a large scale solar photovoltaic installation, the Planning Board may engage professional and technical consultants, at the applicant's expense, pursuant to M.G.L. Chapter 44 § 53G to assist the Planning Board with its review of application materials. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this section shall be good grounds for denying the special permit application. Upon the

approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued shall be refunded to the applicant.

(11) Abandonment & Removal.

- (i) A large scale solar photovoltaic installation shall be deemed abandoned when the large scale solar photovoltaic installation has not been in operation for a period of twelve (12) months.
- (ii) After twelve (12) months of non-operation, the Building Inspector shall provide written notification to the owner/operator that such large scale solar photovoltaic installation is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the large scale solar photovoltaic installation has been in operation during the relevant twelve (12) month period.
- (iii) If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the large scale solar photovoltaic installation has been in operation for the relevant twelve (12) month period, then the large scale solar photovoltaic installation shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
- (iv) The owner/operator of the large scale solar photovoltaic installation shall remove the large scale solar photovoltaic installation and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the large scale solar photovoltaic installation within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large scale solar photovoltaic installation and restore the site at the sole expense of the owner/operator.

- (12) Lapse of Approval.** Any special permit shall automatically lapse if the large scale solar photovoltaic installation is not installed and functioning within two (2) years or the large scale solar photovoltaic installation is abandoned as defined in Section 8.6 (e)(11).

SECTION 9 OVERLAY DISTRICT REGULATIONS

9.1 Flood Prone Area and Wetland Regulations

(a) **Purpose of Regulations.**

- (1) To provide that lands in the Town subject to seasonal or periodic flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof or of the public generally.
- (2) To protect, preserve and maintain the water table and water recharge areas within the Town so as to preserve the present and potential water supplies for the public health and safety of the Town's residents.
- (3) To assure the continuation of the natural flow pattern of the water courses within the Town in order to provide adequate and safe floodwater storage capacity to protect persons against the hazards of flood inundation.

(b) **Required Application.** Any person desiring to establish any permitted use in the Flood Plain District involving or requiring the erection or new or alteration or moving of existing structures; or dumping, filling, transferring, relocation, or excavation of earth materials, or storage of materials or equipment, shall submit an application to the Planning Board for a special permit, describing in detail the proposed use of property and the work to be performed, accompanied by plans showing:

- (1) The location, boundaries and dimensions of the lot and existing and proposed structures, water courses and drainage easements, fill, means of access, and sewage disposal facilities;
- (2) Mean sea level elevation, with two (2) foot or less contour separation, of the existing and proposed developed areas, access ways, outdoor storage areas, and proposed surface of cellar and first floor structures.

(c) **Restrictions and Conditions.** The Planning Board may issue a special permit with such conditions, as it deems necessary in the interest of the public health, safety and welfare. Without limiting the generality of the foregoing, the Board shall insure:

- (1) That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural storage, or increase stormwater runoff so that water levels on other land are substantially raised, or danger from flooding is increased;
- (2) That safe vehicular and pedestrian movement to, over, and from the premises is provided in the event of flooding;

- (3) That the proposed methods of drainage and sewage disposal are approved by the Board of Health, and will not cause pollution or otherwise endanger health in the event of flooding;
 - (4) Granting of a special permit by the Planning Board under this section does not indicate in any way compliance with the provisions of the Wetlands Protection Act, Chapter 131, § 40 of the General Laws.
- (d) **Prohibitions.** No dwelling or industrial building shall be constructed in the Flood Plain District, nor shall land fill be permitted.

9.2 Flood Hazard District Regulations

- (a) **Purpose of District.** The following regulations meet the minimum requirements of the National Flood Insurance Program and are administered by the Building Inspector in consultation with the Town of Cheshire Board of Health.
- (b) **Location of Overlay District.** The Flood Hazard District is herein established as an overlay district. The underlying permitted uses are allowed provided that they meet the following additional requirements as well as those of the Massachusetts State Building Code dealing with construction in flood plains. The Flood Hazard District includes all special flood hazard areas designated as Zone A, A1-A2-A4 in the Town of Cheshire Flood insurance rate maps (FIRM), and the flood boundary and floodway maps dated July 19, 1982, on file with the Town Clerk and Building Inspector. These maps as well as the accompanying Town of Cheshire Flood Insurance Study are incorporated herein by reference.
- (c) **Development Regulations.** The following requirements apply in the Flood Hazard District:
 - (1) Within Zone A, wherever the base flood elevation is now provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
 - (2) In the floodway, designated on the flood boundary and floodway map, the following provisions shall apply:
 - (i) All encroachments, including fill, new construction, substantial improvement to existing structures and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase flood levels during the occurrence of the one-hundred year flood, and
 - (ii) Any encroachment meeting the above standard shall comply with the flood plain requirements of the State Building Code, and
 - (iii) All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and

- (iv) Adequate drainage systems shall be provided to reduce exposure to flood hazards; and
 - (v) Base flood elevation (the level of the one-hundred year flood) data shall be provided by the applicant for proposals greater than fifty (50) lots or five (5) acres, whichever is less, for that portion within the Flood Hazard District.
- (3) Within Zone A-A1-A2-A4 all mobile homes shall provide that:
- (i) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
 - (ii) Adequate surface drainage and access for a hauler are provided;
 - (iii) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart, and reinforcement is provided for piers more than six (6) feet above ground level; and
 - (iv) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, are prohibited in the floodway.

9.3 Water Supply Protection District Regulations

- (a) **Purpose.** To promote the health, safety and welfare of the community by protecting, conserving and maintaining the quality and safe yield of the Town's public water supply resources from detrimental land uses and activities.
- (b) **Overlay District.** The Water Supply Protection District is an overlay district superimposed on the existing zoning districts established in this Bylaw. All regulations of the Town of Cheshire's Zoning Bylaw applicable to such districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.
- (c) **Applicability.** This bylaw shall not apply to structures or uses in existence or lawfully begun, or to a building permit or special permit issued before the first publication of the notice of the Public Hearing of this bylaw (May 2, 1998); nor shall it apply to the use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture consistent with M.G.L. Chapter 40A Section 3 except where specifically addressed in this bylaw.
- (d) **Location of District.** For the purpose of this Bylaw, there is hereby established within the Town of Cheshire a Water Supply Protection District, which consists of the Zone I and II areas (DEP approved recharge area) in the Town of Cheshire. The district is defined and bounded as shown on a map entitled "Zoning Map of Cheshire, Massachusetts" dated June 8, 2015, and on file in the Office of the Town Clerk, said map and all explanatory matter thereon are hereby declared to be part of this Bylaw.

- (e) **District Boundary Disputes.** The determination of the location and extent of the Water Supply Protection District (Zone II) shall be in conformance with the criteria set forth in 310 CMR 22.00 and in DEP's Guidelines and Policies for Public Water Systems.
- (f) **Prohibited Uses.** The following uses and activities are strictly prohibited within the Water Supply Protection District:
- (1) Landfills and open dumps as defined by 310 CMR 19.06, junkyards and automobile graveyards
 - (2) Landfilling or storage of sludge and septage
 - (3) The dumping and disposal of snow or ice removed from outside the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals for snow and ice removal.
 - (4) Facilities that generate, treat, store or dispose of hazardous wastes that are subject to M.G.L. Chapter 21C and 310 CMR 30.00, except for the following:
 - (i) Very small quantity generators as defined by 310 CMR 30.00 (facilities that produce or handle 220 lbs or less of hazardous wastes per month);
 - (ii) Household hazardous waste centers and events under 310 CMR 30.390
 - (iii) Waste oil retention facilities as required by M.G.L. Chapter 21, § 52A
 - (iv) Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
 - (5) The removal of soil, loam, sand, gravel or any other mineral substances' within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the material is redeposited within forty-five (45) days of removal on site to achieve a final grading greater than four (4) feet above the historical high water table, except for excavations for the construction of building foundations or the installation of utility works.
 - (6) Storage of liquid petroleum products with the following exceptions:
 - (i) Normal household, outdoor maintenance or structure heating uses
 - (ii) Waste oil retention facilities and emergency generators required by statute, rule or regulation
 - (iii) Treatment works approved under 314 CMR 5.00 for treating ground and surface water.
 - (iv) For the above exceptions the storage must be in freestanding containers within a building or above ground. An above ground storage container requires secondary containment to contain a spill equal to the container's total storage capacity.

- (7) Non-sanitary wastewater treatment facilities, except for the replacement or repair of existing systems which treat contaminated ground or surface water, and facilities approved by the Massachusetts Department of Environmental Protection (DEP).
- (g) **Conditional Uses.** The following uses are strictly prohibited from the Water Supply Protection District unless they are accomplished in accordance with the specified performance standards.
- (1) Storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
 - (2) Storage of commercial fertilizers and soil conditioners, as defined in M.G.L. Chapter 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
 - (3) Animal manure will be stored in a manner to prevent leaching of contaminants into groundwater in accordance with specifications of the Natural Resource Conservation Services.
 - (4) Storage of liquid hazardous materials, as defined in M.G.L. Chapter 21E, unless such storage is either in a free standing container within a building, or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.
 - (5) The rendering impervious of more than fifteen (15) percent of a lot, or 2,500 sq. ft., whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.
- (h) **Severability.** A determination that any portion or provision of this bylaw is invalid shall not invalidate any other portion or provision thereof.

SECTION 10 SPECIAL PERMITS & VARIANCES

10.1 Special Permits

This Bylaw provides for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit.

- (a) **Special Permit Granting Authority (SPGA).** Any Board designated as the SPGA in this Bylaw may hear and decide applications for special permits upon which such Board is specifically authorized to act under this Bylaw and in accordance with the provisions of M.G.L. Chapter 40A § 9.
- (b) **Application Filing Procedures.** An application for a special permit shall be filed with the Town Clerk and a copy of the application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the SPGA.
- (c) **Withdrawal.** An application for a special permit may only be withdrawn as set forth in M.G.L. Chapter 40A § 16.
- (d) **Public Hearing.** The SPGA shall hold a public hearing, for which notice has been given as set forth in M.G.L. Chapter 40A § 9, within sixty-five (65) days after the filing of a complete application.
- (e) **Required Findings.** Before granting a special permit for any use requiring such permit under the provisions of this Bylaw, the SPGA shall find that the proposed use:
 - (1) Is in compliance with all provisions and requirements of this Bylaw and in harmony with its general intent and purpose;
 - (2) Is essential or desirable to the public convenience or welfare at the proposed location;
 - (3) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
 - (4) Will not create undue traffic congestion or unduly impair pedestrian safety
 - (5) Will not overload any public water, drainage or sewer system or any other municipal facility to such extent that the proposed use or any existing use in the immediate area of the Town will be unduly subjected to hazards affecting the public health, safety or general welfare.
- (f) **Conditions.** Special permits may be granted with reasonable conditions, safeguards and limitations on time and use that the SPGA deems necessary to serve the purpose and intent of this Bylaw.
- (g) **Required Vote.** Special permits issued by a SPGA shall require an affirmative vote of at least four members of a five member board and a unanimous vote of a three member board.

- (h) **Time for Decision.** The SPGA shall take final action on special permit applications within ninety (90) days following the date of the close of the public hearing.
- (i) **Notice of Decision.** Notice of decisions shall be provided as set forth in M.G.L. Chapter 40A § 11.
- (j) **Constructive Approval.** Failure by the SPGA to take final action upon an application for a special permit within said ninety (90) days following the date of the close of the public hearing shall be deemed to be a grant of the permit applied for.
- (k) **Recording.** Special permits shall not take effect until the decision has been recorded as set forth in M.G.L. Chapter 40A § 11.
- (l) **Lapse.** Special permits granted under this section shall lapse one (1) year from the date of issuance, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by date except for good cause.
- (m) **Repetitive Applications.** A repetitive application for a special permit shall be handled as set forth in M.G.L. Chapter 40A § 16.
- (n) **Rules & Regulations.** A SPGA shall adopt and from time to time amend the rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the fees, size, contents, style and number of copies of plans and specifications and the procedures for the submission and approval of such permits.
- (o) **Technical Review Fees.** Upon submission of an application for a special permit under this Section, the SPGA may hire independent consultants to assist the SPGA in the review of the application, whose services shall be paid for by the applicant(s) in accordance with Chapter 44, § 53G, of the Massachusetts General Laws.

10.2 Variances

The Zoning Board of Appeals shall have the power to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this Bylaw.

- (a) **Petition Filing Procedures.** A petition for a variance shall be filed with the Town Clerk and a copy of the petition, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Zoning Board of Appeals.
- (b) **Withdrawal.** A petition for a variance may only be withdrawn as set forth in M.G.L. Chapter 40A § 16.
- (c) **Public Hearing.** The Zoning Board of Appeals shall hold a public hearing, for which notice has been given as set forth in M.G.L. Chapter 40A § 10, within sixty-five (65) days from its receipt of notice by the Board of such appeal, application or petition.

- (d) **Required Findings.** Before granting any variance, the Zoning Board of Appeals must find that:
- (1) Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
 - (2) A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant; and
 - (3) Desirable relief may be granted without substantial detriment to the public good without nullifying or substantially derogating from the intent and purpose of this Bylaw.
- (e) **Use Variances.** No variance may authorize a use or activity not otherwise permitted in the district in which land or structure is located; provided however, that such variances properly granted prior to January first, nineteen hundred seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.
- (f) **Required Vote.** The issuance of a variance shall require a unanimous vote of the three member Zoning Board of Appeals.
- (g) **Time for Decision.** The Zoning Board of Appeals shall act on a petition for a variance within one hundred (100) days from the date the petition is filed with the Board.
- (h) **Conditions.** The Zoning Board of Appeals may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structure to which the variance pertains by the applicant, petitioner or any owner.
- (i) **Notice of Decision.** Notice of decisions shall be provided as set forth in M.G.L. Chapter 40A § 11.
- (j) **Constructive Approval.** Failure by the Zoning Board of Appeals to act upon a petition for a variance within said one hundred (100) days from the date of the filing of the petition shall be deemed to be a grant of the variance applied for.
- (k) **Recording.** Variances shall not take effect until the decision has been recorded as set forth in M.G.L. Chapter 40A § 11.
- (l) **Lapse.** If the rights authorized by a variance are not exercised within one (1) year of the date of the grant of such variance they shall lapse, and may be reestablished only after notice and a new hearing pursuant to this section.
- (m) **Repetitive Petitions.** A repetitive petition for a variance shall be handled as set forth in M.G.L. Chapter 40A § 16.

SECTION 11 ADMINISTRATION, ENFORCEMENT AND APPEALS

11.1 Zoning Board of Appeals

(a) Establishment, Appointment and Removal.

- (1) A Zoning Board of Appeals is hereby established for the Town of Cheshire, said Board to consist of three (3) members and three (3) associate members.
- (2) The Board of Selectmen shall appoint members and associate members of the Board of Appeals for terms of such length and so arranged that the term of one member shall expire each year.
- (3) The Zoning Board of Appeals shall elect annually a chairman from its own number and a clerk, and may, subject to appropriation employ experts and clerical and other assistants.
- (4) Any member may be removed for cause by the Board of Selectmen upon written charges and a public hearing.
- (5) Vacancies shall be filled for unexpired terms in the same manner as original appointment.
- (6) The Chairman of the Zoning Board of Appeals may designate any associate member to sit on the Board in case of absence, inability to act or conflict of interest on the part of the member thereof or in the event of a vacancy on the Board until said vacancy is filled in the manner provided in this section.

(b) Powers of the Zoning Board of Appeals. The Zoning Board of Appeals shall have the following powers:

- (1) To hear and decide appeals in accordance with Section 11.4 of this Bylaw.
- (2) To hear and decide applications for special permits upon which the Board is empowered to act under this Bylaw
- (3) To hear and decide petitions for variances as set forth in Section 10.2.
- (4) In exercising the powers granted in this Bylaw, the Zoning Board of Appeals may in conformity with the provisions of Chapter 40A, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

(c) Rules and Regulations. The Zoning Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of this Bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

(d) Fees. The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

11.2 Planning Board

- (a) **Establishment.** The Town has voted to establish the existing Planning Board, under M.G.L. Chapter 41 § 81A, and the members of the Planning Board now in office shall serve as members of the Planning Board under Section 81A, with all the powers and duties allowed planning boards as detailed in M.G.L c.41 § 81A through 81GG, inclusive.
- (b) **Powers of the Planning Board.** The Planning Board shall have the following powers in addition to those established by the General Laws:
 - (1) To hear and decide applications for special permits upon which the Planning Board is empowered to act under this Bylaw.
- (c) **Associate Member.** The Planning Board is authorized to have one associate member. The associate member shall be appointed for a three-year term by a majority vote of the members of the Planning Board and the Board of Selectmen. The Chairman of the Planning Board may designate the associate member to sit on the Planning Board for the purposes of acting on a special permit application, or any other matter for which a quorum is required, in case of an absence, inability to act or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board.
- (d) **Rules and Regulations.** The Planning Board shall adopt rules and regulations not inconsistent with the provisions of this Bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.
- (e) **Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees.

11.3 Enforcement

- (a) **Enforcement Agent.** The Building Inspector shall be charged with the enforcement of this Bylaw and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this Bylaw; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this Bylaw.
- (b) **Request for Enforcement.** If the Building Inspector is requested in writing to enforce this Bylaw against any person allegedly in violation of the same and declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.
- (c) **Penalty for Violation.** Any person who violates any of the provisions of this Bylaw shall be fined not more than fifty (50) dollars for each offense. Each day that such violation continues shall constitute a separate offense.

11.4 Administrative Appeals to the Zoning Board of Appeals

- (a) **Standing to Appeal.** An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this Bylaw, by the Berkshire Regional Planning Commission, or by any person including an officer or board of the town, or of an abutting town aggrieved by an order of the inspector of buildings, or other administrative official in violation of any provisions of this Bylaw.
- (b) **Procedures.** The administrative appeal shall be filed within thirty (30) days from the date of the order and a public hearing held as set forth in M.G.L. Chapter 40A § 15
- (c) **Required Notice.** Notice of the public hearing shall be provided as set forth in M.G.L. Chapter 40A § 11.
- (d) **Administrative Record.** The Zoning Board of Appeals shall create a detailed record of the proceedings as set forth in M.G.L. Chapter 40A § 15.
- (e) **Required Vote.** The reversal of an administrative decision of the Building Inspector shall require a unanimous affirmative vote of the three member Zoning Board of Appeals.
- (f) **Time Limit.** The decision of the Zoning Board of Appeals shall be made within one hundred (100) days after the date of an appeal.
- (g) **Notice of Decision.** Notice of decisions shall be provided as set forth in M.G.L. Chapter 40A § 15.
- (h) **Constructive Approval.** Failure by the Zoning Board of Appeals to render a decision or act within one hundred (100) days after the filing of an administrative appeal shall be deemed a grant of the appeal.
- (i) **Repetitive Appeal.** A repetitive appeal shall be handled as set forth in M.G.L. Chapter 40A § 16.

11.5 Judicial Appeals

- (a) **Appeal Procedure.** Any person aggrieved by a decision of the Zoning Board of Appeals or any SPGA may appeal the decision to a court of the Commonwealth as set forth in M.G.L. Chapter 40a § 17.
- (b) **Independent Legal Counsel.** The Town of Cheshire must provide any officer or Board with independent legal counsel for appealing a decision of the Zoning Board of Appeals or SPGA and for taking such a subsequent actions as parties are authorized to take.

11.6 Election Day – No Public Hearings

No public hearing shall be held on any day on which a state or municipal election, caucus or primary is held in the town.

11.7 Amendment

This Bylaw and the boundaries of the districts as established hereunder, may from time to time be amended at a town meeting in accordance with the provisions of M.G.L. Chapter 40A § 5.

11.8 Validity

Should any section or provision of this Bylaw be declared unconstitutional or invalid, that decision shall not affect the validity of any other section thereof.

SECTION 12 DEFINITIONS

For the purpose of this By-Law, the word "person" includes a partnership, firm, association, or corporation, or other entities, words in the present tense include the future and words in the singular number include the plural and vice versa. Certain terms or words shall be defined as follows:

ACCESSORY USE OR BUILDING: A use or a building customarily incidental and subordinate to the principal use or building and located on the same lot as the principal use or building or on an adjacent lot under the same ownership.

BILLBOARD: Any sign of more than 25 square feet. **BUILDING:** Any structure having a roof or intended for the shelter, housing or enclosure of persons, animals, materials or motor vehicles.

BUILDING: Any structure having a roof or intended for the shelter, housing or enclosure of persons, animals, materials or motor vehicles.

BUILDING HEIGHT: The vertical distance from the finished grade at any point under consideration to the highest point of the roof.

BUILDING LINE: A line parallel to the property line at the street at a distance at least equal to the required front yard distance.

CAMPER: Commonly called travel trailers, pick-up coaches and tent trailers, but not designed for permanent dwelling.

CORNER LOT: A lot with two adjacent sides facing on a street, or different streets so that the interior angle of the intersection is not more than 120 degrees.

DWELLING: A building primarily used or primarily designed for use in whole or in part for human habitation.

DWELLING UNIT: one or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.

EFFECTIVE DATE OF THIS BY-LAW: The effective date of this By-Law shall be the date on which it is adopted at a town meeting.

FAMILY: Any number of persons living together as a single housekeeping unit.

FRONT YARD: An open space between the principal buildings and the front line extending the full width of the lot.

GARAGE: A building used primarily for storage of motor vehicles in which no business or services connected with motor vehicles is conducted.

HOTEL, LODGING HOUSE, MOTEL OR INN: A building in which space is used or rented for lodging or feeding people as paying guests on a transient or permanent basis.

LOT: A plot or parcel of land held in identical ownership occupied or capable of being occupied by one principal building and accessory buildings or uses customarily incident to it, including open spaces as required by this By-Law.

LOT DEPTH: The average distance between the street line and the rear lot line measured along the lot side lines.

LOT FRONTAGE: The distance between the lot side lines as measured along a town accepted street line, or a street line in a subdivision approved by the Planning Board.

MOBILE HOME: A vehicular portable completely enclosed structure built as a permanent dwelling unit to be transported after the fabrication on its own wheels or on a flatbed or detachable wheels. For the purpose of this Bylaw, the term "Mobile Home" includes trailers incorporating the characteristics of mobile homes as defined herein.

MOBILE HOME PARK: The term "Mobile Home Park" shall be used in this By-Law as that term is used and defined in Massachusetts General Laws Chapter 140, Sections 32F through 32L inclusive.

MOTOR HOME: A portable dwelling that may be registered and insured for highway use, designed to be used for travel, recreational and vacation uses.

MULTIFAMILY DWELLING: A building arranged, or designed to be occupied by three or more families living individually under one roof.

NON-CONFORMING USE: A lawfully existing building, structure or use of a building, structure or land which does not on the effective date of this By-Law conform to the regulations of the district in which it is situated.

ONE FAMILY DWELLING: A dwelling designed for or occupied by a single family.

REAR YARD: An open space the full width of the lot extending from the rear line of the building to the rear line of the lot. In case of a corner lot the rear yard shall not extend beyond the building set back line of the side street.

SIDE YARD: An open space between the building and the adjacent side line of the lot and extending from the front yard to the rear yard.

STREET: A public way or a way maintained and used as a public way or a way approved by the Planning Board under subdivision control regulations giving access to the lot. Street shall be deemed to include the entire width of the right of way.

TWO FAMILY DWELLING: A dwelling designed for or occupied by two families.

PERMIT GRANTING AUTHORITY: Permit granting authority shall mean the Cheshire Board of Appeals.

PRIVATE CLUB: A non-profit organization, with written bylaws, formed to further the common social interests, or hobbies, of its members.

SPECIAL PERMIT GRANTING AUTHORITY: Special permit granting authority, shall mean the Cheshire Planning and Zoning Board of Appeals as designated in this By-Law.

ZONING: Zoning, as used in this chapter, shall mean ordinances and By-Laws adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.