



# By-Laws & Zoning Laws of the Town of New Braintree Massachusetts

as amended 1973, 1977, 1978, 1980, 1981, 1987, 2008, 2009  
March 30, 1970

Also local Options Statutes  
Accepted and Rejected

Reprinted 2010

## Chapter 9 – Zoning By-Law

### SECTION 1 - PURPOSE AND GENERAL REGULATIONS

#### A. PURPOSE

This Zoning By-Law is adopted by the Town of New Braintree to promote the health, safety, convenience and general welfare of its inhabitants, to protect the community, to encourage the most appropriate use of land and to promote sound growth. The use of land and the construction, alteration, size, location and use of buildings and structures are hereby regulated as provided under the authority of Chapter 40A of the General Laws of the Commonwealth of Massachusetts.

#### B. BASIC REQUIREMENTS

Any building or structure hereafter erected, reconstructed, enlarged or moved, or any use of land in the Town of New Braintree shall conform to the provisions of this Zoning By-Law as set forth below. Uses not specifically listed as being allowed by right or by special permit within the Town are prohibited. A lot or parcel of land having an area or frontage of lesser amount than is required under Section IV Dimensional Requirements may be used for a one-family dwelling provided it was shown on a plan or described in a deed duly recorded or registered at the time of the adoption of this By-Law on March 30, 1970, or is otherwise exempted under the provisions of Chapter 40A of the General Laws.

#### C. NON-CONFORMING USES

The lawful use of any building, structure or land existing at the time of the adoption or subsequent amendment of this By-Law may be continued although such building, structure or use of land does not conform to the provisions of the By-Law, except that:

1. A non-conforming use shall not be increased or expanded nor shall any major alterations be made except on permit from the Board of Appeals.
2. A non-conforming use which has been discontinued for one year or more shall not be reestablished and all future use shall conform to this By-Law.

3. A non-conforming use or building which has been damaged or destroyed by fire or other accidental cause may be repaired, rebuilt, or replaced and used as before provided such restoration is started within one year from the date of such damage or destruction and does not exceed the footprint and height of the original non-conforming use or building.
4. A non-conforming use which has been changed to a more restricted or conforming use shall not, subsequently, be altered in such a way as to increase the degree of non-conformity.

## **SECTION 2 - ESTABLISHMENT OF A ZONING DISTRICT AND USE REGULATIONS:**

### **A. ZONING DISTRICT**

The entire Town of New Braintree is hereby designated as the Agricultural and Rural - Residential District.

### **B. USES ALLOWED BY RIGHT**

1. Single, detached one family dwelling.
2. Two-Family dwelling provided that floor area, lot size, water supply and sewage disposal requirements can be met.
3. Farm, orchard, greenhouse, tree nursery, truck garden or wood lot whether operated for private or commercial purposes. The retail sale of agricultural or horticultural products may be included with any of the above uses provided the major portion of the products for sale has been raised on the premises.
4. Governmental, Educational, Religious or other non-profit institutional use.
5. Private School, Nursery School or Kindergarten.
6. Accessory uses shall be permitted as follows, provided that they are customarily incidental to a permitted main use on the same premises and are not detrimental to a residential neighborhood. Except as indicated below, there shall be no exterior indication of the accessory use, no exterior display of merchandise, no set retail space, and no established store hours. No more than two persons who are not living on the premises are to be employed and no exterior alterations shall be made which will change the residential appearance of the dwelling.
  - a) Use of space in a dwelling for a customary home occupation such as dressmaking, laundering, baking, small repair shop, or office or studio (or similar use) provided such use is maintained by resident occupants and provided such activity is clearly secondary to the use of the premises for dwelling purposes.
  - b) Use of property in connection with his trade by a resident carpenter, contractor, electrician, painter, plumber or other artisan provided that no manufacturing or assembly work requiring substantially continuous employment shall be carried on and provided that all storage of materials, supplies or equipment shall be within the principal building or within suitable accessory buildings.

- c) Renting or providing rooms to lodgers, boarders or tourists provided that no separate cooking facilities are maintained, and provided that no more than three rooms are rented or provided. Accommodations shall be limited to a total of six persons in addition to the resident family.
- d) Pool provided it is used only by the residents of the premises and their guests, and provided that no portion of the water area shall be closer than 25 feet to any property line and provided that the pool is securely fenced as required per Massachusetts Building Code.

### C. USES ALLOWED BY SPECIAL PERMIT

By the Board of Appeals, by special permit after a public hearing and subject to appropriate regulations, if determined to be neither offensive nor detrimental to the neighborhood:

1. Retail activity operated by residents of the premises in a dwelling or accessory building. No more than two persons who are not residents in the dwelling may be regularly employed therein. Except for an accessory sign and for appropriate off-street parking facilities, no external change may be made in the residential appearance of the buildings or the lot. A small repair shop for radios, TV sets, electrical appliances or similar items, or limited facilities for the repair of automobiles may be set up under the stipulations set forth in this section provided that all such repairs and necessary storage shall take place in a suitable building which is consistent with the scale and architecture of the neighborhood.
2. Private Club not conducted for profit.
3. Waterfront or beach area for swimming or related activities when used for commercial purposes.
4. Nursing home, Mental Health Treatment Facilities, Orphanage or similar use.
5. (Amended June 18, 2001) Telephone exchange or other communications facility, natural gas or electric power facility, bus station or other public utility or carrier use, except for wireless communications facilities, including commercial broadcasting facilities, which are governed by the Zoning By-Law, Section 7.
6. Medical or dental center.
7. Commercial Kennel or Veterinary Hospital.
8. Barber or Beauty Shop.
9. Golf course or Golf Driving Range, Riding Stable, Cemetery, Airport, Camp for Children or Adults, Ski or Snowmobile Area.
10. Motel or restaurant in which all food is served on the premises. Appropriate off-street parking facilities, suitably surfaced, shall be provided.
11. Conversion of a dwelling, existing at the time of the adoption of this by-law into a two-family dwelling provided that floor area, lot size, water supply and sewage disposal requirements can be met.
12. Use of private lands, ponds and streams for rental or lease to individuals or organizations for purposes of hunting, fishing, nature study or similar purposes provided that 50 or more acres are

available for such use. Minimum lot, yard and building requirements shall apply to all structures erected therein.

13. Commercial camping or recreation area of 75 acres or more, under single ownership, for cabins, tents, camper units or trailers, for seasonal or part-time occupancy only. Under the provisions of this section the sites, facilities or buildings which are used or occupied for a maximum of 180 days during any 12-month period for recreational purposes shall not be subject to the lot area and yard requirements which pertain to other residential use. Except for supervisory or maintenance personnel, no recreation unit, building or site shall be occupied on a permanent basis. Any such recreational use of land or buildings shall be subject to the granting of an appropriate permit by the Board of Health (under the provisions of Sections 32A-D of Chapter 140 of the General Laws) prior to the public hearing before the Board of Appeals. A Site plan showing all camping and tenting areas, trailer or building sites, water supply and sanitary facilities must be filed with the Board of Health and with the Board of Appeals and it must be displayed at the public hearing.
14. Any retail business, consumer service or light manufacturing use if authorized by the Board of Appeals and subject to appropriate conditions and safeguards where such are deemed necessary. Commercial enterprises which create undue traffic congestion or are commonly regarded as hazardous, injurious, noxious, detrimental or offensive are expressly prohibited.
15. Windmills, solar panels except for residential and other forms of renewable energy. A site plan shall be presented to the Zoning Board of Appeals.

### **SECTION 3 - SPECIAL REGULATIONS:**

#### **A. SIGNS ARE PERMITTED AS FOLLOWS**

1. One sign for each family residing on the premises indicating the name of the premises and the name of the owner or occupant provided such sign does not exceed eight square feet in area.
2. One sign, not exceeding eight square feet in area, for a permitted accessory use located on the premises.
3. Two signs, neither of which shall exceed eight square feet in area, indicating the sale of agricultural or horticultural products provided that the signs are only displayed during seasons in which such produce is for sale.
4. Temporary signs pertaining to the construction, lease or sale of the premises provided such signs do not exceed 16 square feet in total area.
5. Signs, announcements or bulletin boards not exceeding 16 square feet in area in connection with public, charitable or religious uses.
6. Signs for commercial activities allowed by the Board of Appeals shall not exceed 20 square feet in total area for any retail business or consumer service nor more than 40 square feet in total area for any light industrial use.
7. Signs for motels or restaurants shall not exceed 20 square feet in total area.

8. Directional or identification signs are allowed as a special exception where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to location or design not to exceed eight square feet. Signs must be removed promptly after advertised use ceases.
9. Signs are not to be affixed to Town-owned trees.

#### B. SPECIAL SIGN RESTRICTIONS

1. No sign or advertising device shall incorporate motion or be lighted by a change in light intensity.
2. Illumination of signs or other advertising devices shall be of a shielded or indirect nature only.

#### C. PARKING REQUIREMENTS

Under this By-Law it is intended that suitable off-street parking spaces shall be provided to meet the anticipated needs of all persons using buildings erected after the zoning By-Law becomes effective or where new uses of land are initiated. In granting permits under the zoning By-Law the Zoning Enforcement Officer shall ascertain that all necessary provisions for parking have been made on the premises.

#### D. LOTS ON INSTITUTIONAL PROPERTY

The Board of Appeals may grant a special exception to allow a reduction in lot and yard sizes below the requirements stated in this By-Law if the dwellings on those lots are served by a suitable water supply and sewage disposal system provided by the institution.

#### E. HOUSE NUMBERS ARE REQUIRED

House numbers are required with a minimum height of four-inch numbers of contrasting colors. The numbers must be visible from the street in both directions.

### **SECTION 4 - DIMENSIONAL REQUIREMENT - (Amended 6-25-07)**

Each dwelling or structure hereafter erected or placed on land within the Town shall be on a lot with a minimum area of at least 135,000 square feet. The contiguous feet measured along the street line. On corner lots, frontage shall be measured on only one street unless the angle between the two intersecting streets is greater than 135 degrees. The front yard shall be at least 50 feet measured from the street line and there shall be side and rear yards of at least 30 feet between any building or structure except fences and the lot line. On corner lots the front yard minimum applies to all buildings on each street.

(Amended 5-18-81) Before a building permit is issued, the application shall be circulated to the following boards for examination and approval: Select Board, Conservation Commission, Planning Board, Highway Superintendent, Fire Chief and Board of Health.

Minimum lot frontage shall be at least 250 feet.

## **SECTION 5 - ENFORCEMENT AND ADMINISTRATION**

### **A. ENFORCEMENT**

This Zoning By-Law shall be enforced by the Zoning Enforcement Officer. No building or structure shall be erected, altered or moved and no major use of land or of a building shall be commenced or changed unless a zoning permit has been issued by the Zoning Enforcement Officer. With each application for a permit to build, alter or change in use, there shall be filed with the Zoning Enforcement Officer a plan showing the lot and the location of the buildings or proposed building thereon. A surveyed plan may be required. Any person violating any provision of the By-Law may be fined not more than Three Hundred (\$300.00) Dollars for each offense. Each day that such violation continues shall constitute a separate offense. Notice of such offense shall be delivered by Zoning Enforcement Officer with the fines levied by the Select Board.

### **B. BOARD OF APPEALS**

There is hereby established a Board of Appeals of three regular members and two associate members to be appointed by the Select Board, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction as provided in Chapter 40A:

1. **APPEALS:** To hear and decide an appeal taken by any person aggrieved by reason of his or her inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or Board of the Town or by any person aggrieved by any decision of the Select Board or other administrative official on violation of any provisions of Chapter 40A of the General Laws or of this Zoning By-Law.
2. **SPECIAL PERMIT:** To grant a special permit as previously provided in this By-Law, when it is found that the use not be detrimental to the neighborhood. Special permits require a public hearing.
3. **VARIANCES:** To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular piece of land or to an existing building thereon, a variance from the terms of the applicable portions of the Zoning By-Law where, owing to conditions especially affecting such parcel or such building but not affecting generally the area in which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law but not otherwise.
4. Applications for special permits and variances shall be submitted to and reviewed by the Zoning Enforcement Officer, Select Board, Conservation Commission, Planning Board, Highway Superintendent, Fire Chief, and Board of Health.
5. Special permits and variances shall not take effect unless recorded with the Registry of Deeds. Special permits and variances expire in two years if not acted upon within two years of the date of final action by the Board of Appeals.

### **C. AMENDMENT**

This By-Law may be amended from time to time at an annual or special town meeting as provided in Section 5 of Chapter 40A of the General Laws.

## **SECTION 6 - DEFINITIONS**

In this By-Law, certain terms shall have the meanings indicated below:

- A. ACCESSORY USE OR BUILDING - A use or building which is customarily incidental or subordinate to the principal use or building.
- B. BUILDING - Any roofed structure, permanently located on a foundation on the land, used for housing or enclosing persons, animals or materials.
- C. DWELLING, ONE FAMILY - A building designed for and occupied by no more than one family.
- D. DWELLING, TWO-FAMILY - A building designed for or converted for occupancy by no more than two families living in separate dwelling units.
- E. FAMILY - One or more persons (including necessary domestic employees) residing in a single dwelling unit.
- F. FARM - A tract of land devoted primarily to agricultural or horticultural use. Includes necessary personnel, structures, buildings, animals and equipment but not residential or commercial structures other than those directly related to farm operation.
- G. HABITABLE FLOOR AREA - As defined in the State Department of Public Health's minimum standards of fitness for human habitation; in brief, those heated areas used daily for living, eating, cooking and sleeping but excluding garages, circulation areas, closets and other storage areas or space in a basement in which more than one half (1/2) of the height measured from the floor to the finished ceiling is below the average grade of the adjoining ground.
- H. LIGHT MANUFACTURING - Fabrication, processing, packaging, or assembly operation employing only electric or other generally noiseless and inoffensive motor power, utilizing hand labor or quiet machinery and processes, and free from agents such as odors, gas fumes, smoke, cinders, flashing or excessively bright lights, refuse matter, electro-magnetic radiation, heat or vibration.
- I. LOT - A tract of land under separate ownership, occupied or intended to be occupied by a dwelling or other principal building and the structures and areas adjacent to such use, having frontage on a street and defined by metes and bounds in a deed or shown on a plan recorded in the Registry of Deeds. Maximum slope on improved portions shall not exceed 3:1. Slopes in excess of 3:1 shall require a stamped engineered plan.
- J. SIGN - Any permanent or temporary exterior structure, device, letter, word, display, pennant, insignia or trade flag which is used as an announcement, direction or advertisement and which is visible from any public street or from abutting property.
- K. STREET - A public way, or a private way shown on an approved plan of a sub-division, which affords the principal means of vehicular access to abutting property and which, as defined, includes the entire right of way. If no right of way has been established it shall be deemed to extend 25 feet on each side of the center line of the traveled way and parallel thereto.

L. STRUCTURE - A combination of materials assembled at a fixed location to give support or shelter or for other purposes. Shall include a building, framework, swimming pool, shed, platform, fence over six feet, tower or similar object.

M. TRAILER OR MOBILE HOME - A moveable or portable housing unit for temporary occupancy built on a chassis and originally designed to be independent of a permanent foundation.

N. VARIANCE - An exception which may be allowed by the Board of Appeals in the case of an individual property owner where strict endorsement of the conditions of this By-Law would create unusual hardship because of conditions which are unique to that lot or to existing or future buildings on said lot.

O. YARD, FRONT - Front yard shall mean a space extending for the full width of the lot between the front line of the nearest building wall and the street line, which street is determined by a certified plot plan done by a certified surveyor.

## **SECTION 7 – WIRELESS COMMUNICATIONS FACILITIES (Adopted June 18, 2001)**

### **A. INTENT**

This section contains specific requirements and restrictions to guide the development of wireless communications facilities in the Town of New Braintree. The requirements are intended to provide maximum wireless communications coverage as mandated by Section 704 of the Telecommunications Acts of 1996 while protecting the general welfare and aesthetic integrity of the Town of New Braintree. It is the intent of this section to provide for the establishment and/or expansion of cellular telephone, mobile radio, and personal communication and similar systems within the Town of New Braintree while providing for the protection of people and property and minimizing the adverse visual and operational effects of Wireless Telecommunications Facilities through careful siting, design, and screening. The Town of New Braintree has adopted this bylaw to:

- Maximize use of existing and approved towers and other structures to accommodate new antennas and transmitters in order to minimize the number of wireless communications facilities needed to serve the community.
- Encourage providers to co-locate their facilities on a single structure or site.
- Prevent the location of facilities in scenic areas.
- Site facilities below visually prominent ridge lines.
- Protect historic and residential areas from potentially adverse impacts of such facilities.
- Avoid potential damage to adjacent properties and personnel from facility failure (through engineering and careful siting of facilities).



- Maximize the benefits accruing from such facility to the Town and its inhabitants.

## B. DEFINITIONS

Wireless Communication Facility – structures and devices designed to facilitate cellular telephone service, personal communications services, and enhanced specialized mobile radio services as defined in Section 704 of the Federal Telecommunications Act of 1996. Also included are such facilities for any commercial broadcasting. Included are towers, antennae mounted on towers, other structures on the ground, and accessory structures such as buildings, sheds, junction panels and other items required for facility operations.

Not included in this definition are antennae and dishes used solely for residential television and radio reception and amateur radio facilities used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission provided the tower is not used for commerce.

## C. SITE SELECTION PREFERENCES

These regulations are written to indicate the Town of New Braintree preferences for facility locations. The following describes, in descending order, the Town's preferences for wireless communication facility sites.

1. On existing structures such as buildings, communications towers, smokestacks, utility structures and other like existing facilities and structures.
2. On government or educational institution structures.
3. On new towers away from land areas suitable for residential use.
4. On land not suitable for agricultural purposes.
5. On new towers in visually unobtrusive locations.

## D. SPECIAL PERMIT REQUIRED

Wireless Communications Facilities may be installed in the Town of New Braintree only upon issuance of a Special Permit. Special Permits for such installations may be issued subject to the restrictions herein and such conditions as the Board of Appeals may deem advisable. Extension, addition or other modifications to wireless communication facilities shall be subject to the issuance of a new Special Permit except where the original Special Permit has allowed for co-location as provided for in subsection E.3.

The Applicant shall pay for the services of an independent professionally qualified consultant in the field of radio frequency engineering to be selected by the Board of Appeals to evaluate an application and to advise the Board of Appeals on technical issues.

## E. USE RESTRICTIONS

1. All Wireless Communication Facilities shall be subject to the following restrictions:

- a) Facilities shall be sited in such a manner that the view of the facility shall be as limited as possible. Priority shall be given to concealment from residential areas and roads. Towers shall be painted or otherwise screened to minimize their visibility.
- b) Sites shall be planted and maintained with vegetation consistent with the surroundings. Sites shall be maintained in a clean, neat way and shall not be used for storage of any material or waste.
- c) Facilities shall be protected against unauthorized access. Fencing shall be compatible with scenic character of the neighborhood. The use of razor wire is prohibited.
- d) No facility shall include signs or devices for advertising except that every facility shall have a sign identifying the facility and shall include a telephone number for contact with the entity responsible for operations.
- e) Except as required by the Federal Aviation Administration, facilities shall not be artificially lighted.
- f) No facility shall be erected, maintained or operated in any way which may pose a hazard to persons or property in the Town of New Braintree.

2. Wireless Communication Facilities other than a tower shall include all facilities, in whole or in part, mounted on, erected on, or supported on an existing or new building or structure (such as water towers, steeples, silos, etc.) or on the ground. Such facilities include panels and antennae. Such facilities also include buildings and other structures which house equipment associated with commercial wireless communications. The following restrictions apply to Wireless Communication Facilities other than a tower:

- a) Installation on existing buildings shall be camouflaged or screened and designed to be harmonious and architecturally consistent with the building. Equipment associated with the facility shall be located within the building or otherwise concealed as to be not observable from the outside.
- b) Any element of the facility may project up to ten feet above the existing roof line of the building or up to five feet out from the plane of an existing wall or façade to which it is adjacent, provided such projections shall not violate yard or setback dimensional requirements.
- c) Building mounted facilities shall be designed and located to appear an integral part of the architecture of the building.

3. Wireless Communications Facility towers shall include all monopole and lattice tower facilities or other wireless communications structures that rise more than forty feet above the ground. The following restrictions shall apply to such facilities.

- a) To the extent feasible, all service providers shall co-locate on a single tower. Towers shall be structurally designed to accommodate the maximum number of foreseeable users within a tenyear period.

- b) New towers shall be permitted only upon a finding by the permitting authority that existing or permitted towers cannot accommodate the wireless equipment planned for the proposed tower.
- c) The base of the tower shall be a distance at least equal to the tower's height from any property line of the parcel on which the tower is sited.

#### F. CESSATION OF USE AND OBSOLESCENCE

1. Wireless Communication Facilities that have not been used for one year shall be deemed to be abandoned. Within six months of the abandonment, the wireless communications facility shall be dismantled and removed at the expense of the party to whom the Special Permit is issued. The site shall be restored to its condition at the time of the original issuance of the Special Permit at the expense of the permit holder.
2. The petitioner for a Special Permit shall post a bond or other form of financial security suitable to the Treasurer, with the Town Treasurer in an amount sufficient to cover the cost of demolition, removal, and disposal of the wireless communication facility and the restoration of the site. Such bond or other instrument shall be increased annually at the rate of increase in the Consumer Price Index for Worcester County.
3. Any Special Permit issued under this Section shall include a condition stating the above requirement and further stating that, in accepting the Special Permit the Applicant and Owner grant the Town permission to enter the property for the purpose of removing an abandoned or discontinued facility. An Occupancy Permit will not be granted unless the Applicant and the owner of the land upon which the facility will be located provide a signed written statement to the Building Inspector granting the Town permission to enter the property and remove an abandoned or discontinued facility.

#### G. SUBMITTAL REQUIREMENTS - In addition to the general Special Permit requirements, the following items and information are required to be submitted as part of an application under this section:

1. A report by a professional engineer describing the general design and capacity of the proposed installation. The report shall include:
  - a) A site plan (or plans) showing the property boundaries of the parcel on which the facility is to be located. The plan shall show the location of and identify each component of the facility.
  - b) A physical description of each of the components including buildings, tower, fence, roadways, existing vegetation, ground contours, drainage. The physical description shall include outside dimensions, material, color, and lighting.
  - c) A description of the electronic components including frequency, modulations, and class of service.
  - d) Copies of all applicable permits required for this installation and a certificate of compliance with the terms and provisions of the license issued for the purpose of the installation by the Federal Communications Commission.

2. A site justification study which contains a description of other sites considered and the criteria and process used to eliminate other potential sites. This study shall include an evaluation of the feasibility of attaching the wireless communications components to existing structures.
3. A plan for a “balloon” or similar test designed to demonstrate the height and visibility of elements rising over forty feet above the ground. This plan shall include notice of the date and time and a rain date and time, suitable to include in the legal notice and notice to abutters.
4. A statement from the Applicant indicating how the proposal meets each item of subparagraph A. Intent.

H. SEVERABILITY CLAUSE - If any provision of this By-law is invalidated, such invalidation shall not invalidate any other provision.

## **SECTION 8 –SOLAR ENERGY FACILITIES (NON-RESIDENTIAL)**

### A. PURPOSE

The purpose of this section is to regulate the development of ground-mounted solar photovoltaic facilities (a “solar energy facility) by providing standards for the placement, design, construction, operation, monitoring, modifications, and removal of such energy facilities; to promote public safety; to protect and preserve farmland and open space as promoted by the Commonwealth of Massachusetts; to minimize impacts on the scenic, natural and historic resources of New Braintree; and to provide adequate financial assurance for the eventual decommissioning of such solar energy facilities.

### B. Applicability

This section applies to the installation of all ground mounted solar energy facilities that generate power utilized in part offsite from the installation location. Specifically, solar energy facilities are permitted as follows:

1. One (1) facility with name plate capacity of 250kw or greater for municipal government purposes, sited “As of Right” on one selected parcel of Town-owned land, described in Subsection C.4.
2. Facilities with name plate capacity of 250kw or greater, sited by “Special Permit.”
3. Facilities with name plate capacity of less than 250kw, sited by “Special Permit.”

This section also applies to future physical modifications that materially alter the type, configuration, or size of a solar energy facility or related equipment. Facility sitings shall be limited in number and location, as described in Subsection C.4. Solar energy facilities for the exclusive purpose of agriculture, with the power generated to be used on the property, are exempt from this Section in accordance with G.L. c.40A, s.3.

The Planning Board shall be the Special Permit Granting Authority. No facility may have a solar panel ("solar array") footprint greater than five acres, excluding the buffer zone area.

## **C. GENERAL REQUIREMENTS**

### **1. Site Plan Review**

All solar energy facilities, except for those explicitly exempted pursuant to Section B, shall undergo site plan review, including a public hearing, as part of the special permit process conducted by the Planning Board prior to construction, installation, or modification as provided in this Section.

### **2. Required Plans and Documents for Special Permit and Site Plan Review**

- a. Plans showing existing conditions and proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation and structures.
- b. Plans, blueprints, and/or drawings of the solar energy facility signed and stamped by a professional engineer licensed to practice in Massachusetts showing the proposed layout of the facility, views of the site from residences and public ways from which the facility would be visible, and the proposed installation with the planned screening for the facility in place.
- c. An electrical diagram detailing the solar energy facility, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- d. Technical specifications of the major system components, including the solar arrays, mounting system, and inverter;
- e. Contact information, including the name, address, telephone number, email address of the owner, applicant, proposed installer, and operator. This information shall be updated within 30 days whenever the land changes ownership, a new installer is retained by the owner or applicant, or a new operator takes over operation of the facility.
- f. Proof of actual or proposed control of the facility and access to the facility site sufficient to allow for installation and use of the proposed solar energy facility;
- g. An operation and maintenance plan, as described in Subsection C (3).

### 3. Operation and Maintenance Plan

The applicant shall submit a plan for the operation and maintenance of the solar energy facility. The plan shall include measures for maintaining safe access to the facility in all weather conditions, storm water controls, vegetation controls, and general procedures for operating and maintaining the facility and surrounding areas of the site.

### 4. Location and Dimensional Requirements

#### A. Large Facilities:

1. A Facility with name plate capacity of 250kw or greater, the solar array footprint not to exceed five acres, may be sited, "As of Right" on the following Town-owned parcel of land.

Location: An area of approximately 12.6 acres within the 2016 Assessors' Map 408, parcel 408-104.1, abutting Town Barn Road, and West Brookfield Road

2. Facilities with name plate capacity of 250kw or greater, the solar array footprint not to exceed ten acres, may be sited by "Special Permit."

The total number of these large facilities shall be limited to six facilities in operation concurrently within the Town. Included within this number are large facilities that have received a permit to operate from the Planning Board as of the effective date of this Solar Energy Facilities by-law.

All large facilities must meet the requirements of chapter IX, Section 4, of the By-Laws and Zoning of the Town of New Braintree. (Dimensional Requirement).

Siting Requirements: One of the following conditions must be met.

- a. The location of the facility, due to topography, tree lines, and/or vegetation, cannot reasonably be seen from a residence or public way during all seasons of the year.

Or

- b. The location of the facility is so distant from a residence or public way, and/or so obscured by topography, tree lines, and/or vegetation, that the visual impact of the facility is rendered negligible, as determined by the Planning Board, during all seasons of the year.

#### B. Small Facilities:

Facilities with name plate capacity of less than 250kw may be sited by “Special Permit” subject to the requirements of this Section.

**Set-backs:**

All facilities shall have front, side and rear yard setbacks of at least 50 feet for any fencing that is required by the Planning Board. Fencing shall be required to fully enclose the facility. Solar arrays and related equipment shall have front, side and rear yard setbacks of a minimum of 100 feet. In the event a front, side or rear lot line abuts one or more residences, the setback for that lot line shall be a minimum of 200 feet. Setback from a public way shall be at least 200 feet. A 50 foot minimum setback shall apply when the abutting parcel has the same owner and the same proposed use as that for the proposed facility. The Planning Board may allow a lesser setback along a property line, where, in its judgment, the proposed facility is not likely to negatively affect an existing or permitted land use on the abutting property. The Planning Board may require a greater setback along a property line, where in its judgment the proposed facility is likely to negatively affect an existing or permitted land use on the abutting property

**Screening:**

Where the front, side or rear yard faces and/or abuts one or more residences or a public way, a landscape architectural plan will be required. The plan’s object shall be to minimize to the greatest extent reasonable the visual impact of the facility. The plan shall show how, through the use of mature plantings, vegetation, berms, fencing, land contouring, and strategic placement of the solar panels and appurtenant structures, the facility will be screened from view from facing residences and public ways during all seasons of the year.

**Appurtenant Structures:**

All appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be subject to the set-back requirements and vegetative screening requirements, as described in subsections 4. B to avoid adverse impacts on the neighborhood, abutting properties, and public ways.

C. All solar energy facility installation construction must comply with Ch. 4, sec 1, a, b, c of the New Braintree By-Laws.

**5. Design standards**

- a. **Lighting:** Lighting shall be limited to that required for safety and operational purposes, and shall be consistent with state and federal law. The lighting

shall not be intrusive in any way on abutting properties, and shall incorporate full cut-off fixtures to reduce light pollution.

- b. Signage: The solar energy facility shall comply with the regulations for signs in Section 3 of this Bylaw. A sign shall be provided to identify the owner and operator and provide a 24-hour emergency contact telephone number. A solar energy facility shall not display any advertising, except for reasonable identification of the manufacturer, owner and operator of the solar energy facility.
- c. Utility connections: Where possible, all utility connections for the solar energy facility shall be located underground.
- d. There shall be no increase in background noise measured "A weighted" at the property line or a noise-sensitive receptor (for example, a higher terrain location that may be impacted or a location with sensitive persons such as a school). A noise analysis must be provided by the applicant and approved by the Planning Board.
- e. The solar panels shall be positioned in such a way that there is no possibility of glare on a residence or public way at any time during the day.

## **6. Emergency Services**

The applicant shall provide a copy of the operation and maintenance plan, electrical schematic, and site plan to the New Braintree Fire Chief and Police Chief. The applicant shall cooperate with local emergency services in developing an emergency response plan which will ensure that emergency personnel have immediate, 24 hour access to the facility. This plan shall be reviewed annually with local emergency officials and revised as necessary. Safety personnel may request at any time that the operator provide onsite training in accessing and shutting down the solar installation. All means of shutting down the solar energy facility shall be clearly marked. The operator shall identify a qualified contact person to provide assistance during an emergency. The operator shall update the contact information immediately, and so notify the New Braintree Fire Chief and Police Chief, whenever there is a change in the contact person.

### **D. FEES**

Upon receipt of an application for a special permit, the Planning Board may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the Board with its review of the application in accordance with the requirements of Section 53G of Chapter 44 of the Massachusetts General Laws. 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 add additional funds as needed upon notice. Upon approval of the application, any excess amount in the account attributable to the application, including any interest accrued, shall be returned to the applicant.



## **E. MONITORING AND MAINTENANCE**

1. Maintenance: The operator shall maintain the solar energy facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, integrity of security measures, and visual screening components. The operator shall be responsible for maintaining adequate access for emergency vehicles and maintenance equipment throughout the year with an annual inspection by the Fire Chief and the Police Chief.

2. Monitoring: An operation and maintenance report is to be filed annually with the Planning Board no later than 45 days after the end of the calendar year, confirming that the operation is ongoing and has not been abandoned, and that the operation and maintenance plan is being followed. Failure to file the report within the required time may be considered evidence that the facility has been abandoned and the Planning Board may take action as described in Subsection G.

\* All modifications to the solar energy facility proposed after issuance of the building permit which materially alter the type, configuration or size of the facility require approval of the Planning Board and Inspector of Buildings. The Planning board may specify, in the special permit, specific kinds, or standards for, modifications which shall be subject to further approval.

\* The applicant shall comply with any and all Federal, Massachusetts and Local installation and operation requirements, whether adopted before or after approval of a special permit.

## **F. BUILDING PERMIT AND BUILDING INSPECTION**

No solar facility shall be constructed, installed, or modified without first obtaining a building permit. The application for building permit must be accompanied by the fee required for a building permit.

## **G. DISCONTINUANCE, DECOMMISSIONING, ABANDONMENT AND REMOVAL**

### **1. Removal Requirements:**

Any solar energy facility that has reached the end of its useful life or has been discontinued, decommissioned, or abandoned, as defined below in Subsection G(3), shall be removed. The owner or operator shall physically remove the solar energy facility within one hundred fifty (150) days after the date of discontinued or abandoned operations or the date specified in a notice of discontinuance or decommissioning in compliance with the requirements of the Inspector of Buildings. The owner or operator shall notify the Planning Board by certified mail of any proposed date of discontinued operations or decommissioning and submit the plans for removal.

## **2. Removal:**

Removal shall consist of:

a. Physical removal of all equipment from the site, including, but not limited to, the solar arrays, structures, appurtenant equipment, security barriers, and electrical transmission line above and below grade.

Stabilization or re-vegetation of the site as necessary to return the site to its original state, and minimize erosion.

b. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal laws and regulations

## **3. Abandonment:**

Absent notice to the Planning Board, as provided above in Subsection G(1), of a proposed date of discontinuance or decommissioning the solar energy facility shall be deemed abandoned if the equipment is removed from the site, or if the operation of the facility is discontinued for more than one year. If the owner or operator fails to remove the solar energy facility in accordance with the requirements of Subsection G (2) within one hundred fifty (150) days of abandonment or discontinuance or the proposed date of decommissioning, the Town, or its agent, may enter the property and physically remove the solar energy facility and restore the site to its original state. As a condition of the Special Permit, the applicant and landowner shall agree to allow entry to remove an abandoned installation. The Town's cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

## **H. FINANCIAL SURETY**

Prior to commencing operation of the solar energy facility, the applicant shall provide a form of surety, either through escrow account, bond or otherwise, in an amount determined by the Planning Board to cover 125% of the cost of removal of the facility and site restoration. The applicant shall submit a fully inclusive estimate of the costs associated with removal, which shall be subject to review and approval by a qualified engineer retained by the Planning Board at the applicant's expense. The amount shall be increased annually to cover inflation, based on increases in the Consumer Price Index published by the U.S. Bureau of Labor Statistics. The amount of the surety shall be provided to the Planning Board every two years, no later than 45 days after the end of the calendar year, for a determination of whether it is still adequate or whether it shall be increased to satisfy increased cost estimates. Such surety shall not be required for municipal facilities owned and operated by the Town.

## **I. INSURANCE – commercial solar facilities sited on Town of New Braintree-owned land**

Prior to commencing operation, **the owner or operator of a solar energy facility shall provide the Planning Board, with a copy to the Town Clerk, with a certificate of insurance showing that the property has a minimum of one million dollars in liability coverage by occurrence in the aggregate or five million dollars general liability insurance in the aggregate, and that the Town of New Braintree is an additional named insured thereon. Such a certificate shall be supplied on an annual basis to the Town upon the renewal of said insurance policy.**

**CHAPTER 9 OF THE NEW BRAINTREE BYLAWS, ZONING**  
**Section 9 - ADULT USE MARIJUANA ESTABLISHMENTS**

**A. PURPOSES**

The purpose of this bylaw is to regulate the time, place and manner of Adult Use Marijuana Establishments in accordance with the provisions of Massachusetts General Law Chapter 94G, Section 3 and regulations promulgated by the Cannabis Control Commission as 935 CMR 500.000. It is recognized that the nature of the substance cultivated, processed, and/or sold by Marijuana Establishments may have operational characteristics that should be located in such a way as to ensure the health, safety, and general well-being of the public while also supporting the right of legally authorized adults to access marijuana for their own use. The specific and separate regulation of Marijuana Establishments is necessary to advance these purposes.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws and 935 CMR 500.000, Marijuana Establishments will be permitted to provide the opportunity for the legal cultivation, product manufacturing, retail sale and other legally authorized uses of marijuana for non-medical adult marijuana use in a manner that complies with state regulations.

**B. APPLICABILITY**

This section applies to the operation of Adult Use Marijuana Establishments as defined in part C of this section. Nothing in this section shall be construed to supersede state law governing the sale and distribution of marijuana or any federal laws governing the interstate transportation or sale of the same. This section does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

**C. DEFINITIONS**

For the purposes of this section, the following terms shall have the following meanings hereby assigned to them.

1) Cannabis Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and promoting the growth of cannabis by a cannabis cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for cannabis cultivation. The cultivation and processing of marijuana in accordance with these regulations is considered to be a manufacturing use and shall not be deemed exempt from zoning as an agricultural use under the Town's Zoning Bylaw.

2) Cannabis or Marijuana or Marihuana: All parts of any plant of the genus Cannabis, not excepted in 935CMR500.002: Cannabis or Marijuana or Marihuana(a)through(c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c.94G,§1;provided that cannabis shall not include:

- (a) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
- (b) hemp; or
- (c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

3) Cannabis or Marijuana Products: Cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

4) Ceases to Operate: Means a Marijuana Establishment which closes and does not transact business for period greater than 180 days with no substantial action taken to reopen.

A determination that an establishment has ceased to operate may be based on its actual or apparent termination of operations.

5) Commission: The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, §76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St. 2016, c. 334 as amended by St. 2017, c. 55, M.G.L. c. 94G, and 935 CMR 500.000.

6) Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

7) Cultivation Canopy: An area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries, canopy may be noncontiguous, but each unique area included in the total canopy calculations shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

8) Dark Skies Standards: A design standard for lighting fixtures which minimizes glare, light trespass into the nighttime environment and generally reduces skyglow to the lowest level achievable.

9) Enclosed Area Cultivation: A Marijuana Cultivation operation located, in whole, in a building, greenhouse or other enclosed area which would be subject to security provisions of 935 CMR 500.110 (5)(a) and 935 CMR 500.120.

10) Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the

combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

11) Hemp Cultivator: an agricultural establishment authorized by the Massachusetts Department of Agricultural Resources to cultivate hemp for commercial and industrial purposes

12) Host Community: A municipality in which a Marijuana Establishment is located or in which an Applicant has proposed locating an establishment.

13) Host-Community Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Cannabis Establishment and a municipality setting forth additional conditions for the operation of a Cannabis Establishment, including stipulations of responsibility between the parties and a community impact fee reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center which fee shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center.

14) Licensee: A person or entity licensed by the Commission to operate a Marijuana Establishment under 935 CMR 500.000.

15) Manufacture: To compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

16) Marijuana Cultivator: An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

17) Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana- related business, except a medical marijuana treatment center. Marijuana establishments permitted in accordance with these regulations are considered to be a commercial and/or manufacturing use and are not considered being subject to any agricultural exemptions under zoning.

18) Marijuana Independent Testing Laboratory: A laboratory that is licensed by the Commission and is:

- (a) accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission;
- (b) independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- (c) qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, §34.

19) Marijuana Membership Club: An organization, club, lodge or other private grounds (non- profit and private) allowing on-site consumption of marijuana or marijuana products, regardless of whether

marijuana or marijuana products are sold on the premises, but not operating as a licensed Adult On-Site Marijuana Social Consumption Operator.

20) Marijuana Microbusiness: A collocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

21) Marijuana Process or Processing: To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

22) Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

23) Marijuana Research Facility: An entity licensed to engage in research projects by the Commission.

24) Marijuana Retailer: An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

25) Marijuana Transporter: An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

26) Open Area Cultivation: A marijuana cultivation operation conducted wholly in the open air, and not located in any building, greenhouse or other enclosed area which would be subject to security provisions of 935 CMR 500.110 (6) and 935 CMR 500.120. or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

27) Propagation: The reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.

28) Provisional Marijuana Establishment License: A certificate issued by the Commission confirming that a Marijuana Establishment has completed the application process.

#### **D. SCHEDULE OF USES**

For the purposes of this section, only those uses indicated in the schedule below shall be allowed in the Town of New Braintree.

**Abbreviations:** SP = Special Permit; N = No; Y = Yes (by-right use)

- |                                |    |
|--------------------------------|----|
| 1) Craft Marijuana Cooperative | SP |
| 2) Marijuana Cultivator        | SP |

3) Marijuana Product Manufacturer	SP
4) Marijuana Retailer	SP
5) Marijuana Independent Testing Laboratory	SP
6) Marijuana Microbusiness	SP
7) Marijuana Research Facility	SP
8) Marijuana Transporter	SP
9) Marijuana Membership Club	N

**E. ADDITIONAL REQUIREMENTS/CONDITIONS**

1) Special Permit Granting Authority: for the purposes of this section, the Special Permit Granting Authority shall be the Planning Board of the Town of New Braintree.

2) Enforcement: Any violations of the terms of a Special Permit granted under to this section and otherwise not of a criminal nature, shall be directed to the Zoning Enforcement Officer as defined by Section 5(A) of this zoning bylaw or in writing to the Special Permit Granting Authority.

3) State Law: Marijuana establishment operations shall conform at all times to General Laws, Chapter 94G, and regulations promulgated by the Commission as 935 CMR 500.000.

4) Special Permits granted under this section shall apply to no more than one Licensee and no Special Permit shall allow for the concurrent operation of two or more Marijuana Establishments on the same parcel of land.

5) Place:

a. No Marijuana Establishment shall be located on a parcel which is within five hundred (500) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located) of a parcel, occupied at the time the Applicant’s license application was received by the Cannabis Control Commission, by any of the following:

- i. A public or private school providing education in preschool, kindergarten or any of grades 1-12.
- ii. A public or private library
- iii. Duly licensed daycare centers
- iv. Churches, synagogues or other places of worship
- v. Public or private playgrounds

b. Except as provided by §E(5)(f) of this section, all aspects of any Marijuana Establishment, except for the transportation of product or materials, relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at an enclosed, fixed location and shall not be permitted to be located in a trailer, storage freight container, motor vehicle or other similar type potentially movable platform or enclosure.

c. No Marijuana Establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.

d. No Marijuana Establishment shall be permitted as a Home Occupation as defined by Section 2(B)(6)a of the zoning bylaw

e. No Marijuana Establishment is permitted to utilize or provide a drive-through service.

f. Open area cultivation, as defined by this section, shall be allowed in all places where marijuana cultivation establishments are allowed, provided that;

i. The open area marijuana cultivation complies with all screening, security and other provisions of 935 CMR 500, as well as all other relevant provisions of this bylaw;

ii. No open area cultivation shall take place within a distance less than or equal to one and one-half (1.5) linear miles from an established open area Hemp Cultivator, unless the Applicant is able to demonstrate sufficient provisions for the prevention of cross-pollination and contamination, acceptable to the Special Permit Granting Authority nor shall any hemp cultivator be allowed within the same distance of an existing open area Marijuana Establishment.

g. Enclosed area cultivation, manufacturing, processing, retail, and standards and testing establishments are encouraged to utilize existing buildings where possible.

#### 6) Time and Manner:

a. Any type of Marijuana Establishment may only be involved in the uses permitted by its license definition and may not include other businesses or services.

b. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.

c. The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall a Marijuana Establishment be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.

d. No Marijuana Establishment may commence operation or apply for a building permit prior to its receipt of all required permits and approvals including, but not limited to, its Final License from the Cannabis Control Commission.

e. The number of adult use marijuana retail establishments permitted to be located within the Town shall not exceed three (3) licenses or twenty-percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises where sold under chapter 138 of the General Laws, whichever is the larger number. For the purposes of determining this number, any fraction shall be rounded up to the next highest whole number.

f. Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets, and areas surrounding the premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of marijuana, excessive pedestrian or vehicular traffic, illegal drug activity under state or local law, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) or other obstructions in the public or private way (sidewalks and streets).



7) Design Standards: In addition to the general requirements in §E, parts 1 through 6, the following design standards shall also apply to all Marijuana Establishments in the Town of New Braintree:

a. Town Character and Aesthetic: To the extent reasonably possible, all structures utilized for any purpose by a licensed Marijuana Establishment shall be compatible in scale, design and aesthetic with the existing neighboring properties in particular, and with the rural, agricultural character of the Town of New Braintree in general.

b. Building Scale, Mass and Bulking:

i. Enclosed Structures: for the purposes of this section, an Enclosed Structure shall mean any structure, other than a standard Greenhouse, actively devoted to the cultivation, manufacture, transportation, storage or testing of marijuana products.

1. Maximum Building Footprint: The total combined footprint for all Enclosed Structures shall not exceed 13,500 square feet and no individual Enclosed Structure shall exceed 4,500 square feet in area.

2. Height: no Enclosed Structure shall exceed a total of forty (40) feet in height.

3. Spacing: Enclosed Structures shall be no less than twenty (20) feet apart and in no instance shall a Marijuana Establishment erect more than five (5) Enclosed Structures.

ii. Greenhouses: For the purpose of this section, a Greenhouse shall mean any structure with walls and roof made of transparent or translucent material in which plants requiring regulated climatic conditions are grown.

1. Greenhouses shall be allowed in all areas where Marijuana Cultivation is allowed provided that:

a. The greenhouse installation conforms to all regulations regarding security, screening, ventilation, odor and any other provisions of 935 CMR 500 and of this bylaw.

b. The total footprint of all structures devoted to active cultivation, including greenhouse space, does not exceed 13,500 square feet of total area.

c. No greenhouse exceeds a total height of twenty (20) feet

iii. Retail Establishments: the total gross floor area of Retail Marijuana Establishments shall not exceed 2,500 square feet.

iv. Setbacks: With the exception of Retail uses, all Marijuana Establishments shall have a minimum setback of 100 feet as measured from the nearest edge of any public right-of-way or abutting property boundary.

v. Roofing: No Enclosed Structure, as defined herein, shall have a roof pitch of less than 5/12, unless the applicant can demonstrate to the satisfaction of the Special Permit Granting Authority that any deviation from this standard is in better keeping with §E(7)(a) of this section.

c. Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from the outside of the building in which the Marijuana Establishment is located and shall comply with the

requirements of 935 CMR 500. No outside storage of marijuana, related supplies, or promotional material is permitted.

Any artificial screening device erected to eliminate the view from a public way shall also be subject to a vegetative screen and the Special Permit Granting Authority shall consider the surrounding landscape and views to determine if an artificial screen would be out of character with the neighborhood.

d. Ventilation and odor: all Marijuana Establishments shall be ventilated in such a manner that no:

- i. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and;
- ii. No odor from marijuana, marijuana products or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining use or property.

e. Signage: All signage shall comply with all other applicable signage regulations in the Zoning Bylaw and 935 CMR 500.

f. Lighting: to the extent permissible by state law and regulations, all Marijuana Establishments shall make every reasonable effort to minimize the effects of security and other necessary light installations on the surrounding community and shall comply with “dark skies” standards whenever possible.

g. Reuse of existing structures: If an Applicant intends to repurpose an existing structure, the Special Permit Granting Authority may, at its discretion, waive any of the provisions of §E(7)(b) provided that;

- i. The site plan otherwise conforms to any and all regulations in 935 CMR 500, AND;
- ii. Any waivers or other deviations from the standards established in §E(7)(b) shall be separately described in the notice of decision along with a clear, defensible rationale for each waiver.

#### 8) Reporting Requirements:

a. Prior to the commencement of the operation or services, any Marijuana Establishment approved under this section shall provide the Police Department, Fire Department, Building Commissioner/Inspector and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.

b. The local Building Inspector, Board of Health, Police Department, Fire Department, Board of Selectmen and Special Permit Granting Authority shall be notified in writing by the Marijuana Establishment facility owner/operator/ manager:

- i. A minimum of 30 days prior to any change in ownership or management of that establishment.
- ii. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.

c. Permitted Marijuana Establishments shall file an annual written report to, and appear before, the Special Permit Granting Authority no later than January 31st of each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.

d. The owner or manager of a Marijuana Establishment is required to respond by phone, text message or email within twenty-four hours of contact by a town official concerning their Marijuana Establishment at the phone number or email address provided to the Town as the contact for the business.

9) Issuance/Transfer/Discontinuance of Use:

a. Special Permits/Site Plan Approvals shall be issued to the Marijuana Establishment owner only.

b. Special Permits/Site Plan Approvals shall be issued for a specific type of Marijuana Establishment on a specific site/parcel only.

c. Special Permits/Site Plan Approvals shall be non-transferable to either another Marijuana Establishment owner or another site/parcel.

d. Special Permits/Site Plan Approvals shall have a term limited to the duration of the Applicant's ownership/control of the premises as a Marijuana Establishment, and shall lapse if:

- i. The Marijuana Establishment ceases operation (not providing the operation or services for which it is permitted) for 180 days; and/or
- ii. The Marijuana Establishment's registration/license by the Cannabis Control Commission expires or is terminated.

e. The Marijuana Establishment shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.

f. In the event that any Marijuana Establishment has reasonable grounds to temporarily cease operations for a period greater than 180 days, the Special Permit Granting Authority may, at its discretion, extend the term limit defined in §E(9)(d)(i), provided that;

- i. The licensed Marijuana Establishment submits to the Special Permit Granting Authority a written statement explaining the need for such an extension, the steps being taken to resume operations and the amount of time considered necessary to realize those steps; AND
- ii. No such cessation of operations shall be for a period longer than 365 days in total.

g. A marijuana cultivator or manufacturer shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.

h. Prior to the issuance of a Building or Occupancy Permit for a Marijuana Establishment, the Applicant shall be required to furnish evidence that a decommissioning bond or other form of financial security pursuant to the requirements of 935 CMR 500.105 §16 has been posted with the Commission in an amount which shall be sufficient to cover the costs of removing all materials, plants, equipment and other paraphernalia in the event the Applicant fails to do so.

- i. Should the applicant not furnish sufficient evidence, or such financial security is deemed insufficient in the opinion of either the Special Permit Granting Authority or Town Treasurer to cover potential costs to the Town for the removal of said material, the Applicant shall post with the Town Treasurer an addition bond or other form of financial security acceptable to said Treasurer in an amount set by the Special Permit Granting Authority, which shall cover any and all potential costs to the Town for the removal of said material.
- ii. In the event that the Town finds a Licensed Marijuana Establishment to have ceased operations, the Building Inspector shall give the owner 30 days' written notice in advance of taking any action. Should the Applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building inspector prior to the expiration of the 30 days written notice, any bond posted with and under the control of the Town Treasurer shall be returned to the Applicant.
- iii. All licensed Marijuana Establishments in the Town of New Braintree shall be required to furnish to the Town an annually updated estimate of decommissioning costs which shall include any increases resulting from changes to operations, annual inflation or any and all other factors, as well as a full accounting of any bonds or other financial securities held with the Commission and/or the Town. The owner shall be responsible for the cost of any annual increases in posted bonds necessary to cover the cost of decommissioning.
- i. The Special Permit Granting Authority may hire, at the applicant's expense, professional, third-party consultant(s) of their choosing to assist them in evaluating the Special Permit application, terms of the host-community agreement, estimating any bond amounts as required by §E(9)(h) of this bylaw, or any other requirements contained herein.

**F. APPLICATION REQUIREMENTS**

A Marijuana Establishment shall only be allowed by Special Permit from the Special Permit Granting Authority in accordance with MGL c.40A §9 and other provisions of this chapter. All Special Permits for Marijuana Establishments shall be subject to following requirements and conditions:

- a. **Community Host Agreement:** All applications for a Special Permit shall include an executed Community Host Agreement with the Town through the Board of Selectmen.
- b. **Community Outreach Meeting:** All applications for a Special Permit shall include certification that a Community Outreach Hearing in accordance with 935 CMR 500 has occurred. Additionally, the applicant shall demonstrate that reasonable efforts have been made to ensure that any and all handouts, presentations and other audio/visual materials utilized in a public hearing have been designed so as to accommodate the needs of sight and/or hearing-impaired residents.
- c. **Site Plan Approval:** No Special Permit for any Marijuana Establishment shall be issued without site plan approval by the Special Permit Granting Authority. In addition to the standards set forth herein, the site plan must meet all dimensional, parking, and other requirements set forth by this zoning bylaw.

d. License Requirements:

- a. The Applicant shall submit proof that the application to the Commission has been deemed complete by the Commission pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as an integral component of the application to the Planning Board and no Special Permit application shall be deemed complete by the Planning Board until this information is provided.
- b. No Special Permit shall be granted by the Planning Board to an applicant without the Marijuana Establishment first having been issued a Provisional License from the Marijuana Control Commission pursuant to 935 CMR 500.
- c. No person shall operate a Marijuana Establishment without having a license in good standing from the Cannabis Control Commission.

e. Security Plan: All applications for a Special Permit shall include a security plan describing all proposed security measures including lighting, fencing, gates and alarms, and any other such measures that will satisfy the requirements of 935 CMR 500.110.

f. Odor Control Plan: All applications for a Special Permit shall include an Odor Control Plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative of odor control including maintenance of such controls.

g. Management Plan: All applications for Special Permit shall include a management plan with a comprehensive description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to the Marijuana Establishment or off-site direct delivery.

h. Energy Use Plan: All applications for a Special Permit shall include an energy use plan which shall demonstrate best practices for energy conservation, water usage, and waste disposal. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.

i. Decommissioning Plan: All applications for Special Permit shall include a plan providing for the decommissioning of the Marijuana Establishment. Such decommission plans shall include a cost estimate provided by a qualified, third-party expert and shall detail dismantling, disposal of equipment and all other reasonably anticipated costs associated the decommissioning of the Marijuana Establishment, along with detailed accounting of any bonds posted with the Commission in accordance with 935 MCR 500 and §E(9)(h) of this section. The Special Permit Granting Authority/Planning Board reserves the right to request a comparison estimate provided by an independent, qualified professional estimator of the board's choosing, the cost of which shall be borne by the Applicant.

j. Waivers: The Applicant shall be required to submit specific information regarding any waivers from 935 CMR 500.000 granted by the Commission. The Special Permit Granting Authority shall consider said waivers based on the following Commission criteria in 935.CMR.500.

- a. Compliance would cause undue hardship to the investor;
- b. If applicable, the requestor's non-compliance does not jeopardize the health or safety of any patient or the public;

- c. If applicable, the requestor has instituted compensating features that are acceptable to the Planning Board; and
- d. The requestor provides to the Planning Board written documentation, in a form and manner determined by the planning board, supporting its request for a waiver.

k. Other Requirements:

- a. The name and address of each owner and operator of the Marijuana Establishment facility/operation.
- b. Proof of Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500.
- c. Evidence that the Applicant has site control and right to use the site for a Marijuana Establishment facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement.
- d. A notarized statement signed by the Marijuana Establishment organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons.
- e. A detailed floor plan identifying the areas available and functional uses (including square footage).
- f. All signage being proposed for the facility.
- g. A pedestrian/vehicular traffic impact study to establish the Marijuana Establishment's impacts at peak demand times, including a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along access areas including, but not limited to the public right of ways, will not be unreasonably obstructed.

## **G. FINDINGS**

In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find all the following:

1. The Marijuana Establishment is consistent with and does not derogate from the purposes and intent of this Section and the Zoning Bylaw.
2. That the Marijuana Establishment facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
3. That the Marijuana Establishment facility demonstrates that it meets or exceeds all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations; and
4. That the Applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw;
5. That the Marijuana Establishment facility provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured on-site or via delivery.

6. That the Marijuana Establishment facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

#### **H. SEVERABILITY**

If any provision of this section is found to be invalid by a court of competent jurisdiction, the remainder of this section shall not be affected but shall remain in full force. The invalidity of any provision of this section shall not affect the validity of the remainder of this zoning bylaw.