


**TOWN OF CARVER**  
**OFFICIAL BULLETIN**

Amendments to the Town of Carver **ZONING BY-LAWS** adopted under Articles 27 of the Warrant for the Annual Town Meeting that convened on April 13, 2023 are attached hereto with the approval of the Attorney General as outlined in her letter dated November 13, 2023

ANY PERSON CLAIMING THAT THE AMENDMENTS TO THE ZONING BY-LAWS ADOPTED UNDER ARTICLE 27 OF THE APRIL 13, 2023 ANNUAL TOWN MEETING ARE INVALID BECAUSE OF A DEFECT IN THE PROCEDURE BY WHICH THE BY-LAWS WERE ADOPTED OR AMENDED MAY ONLY BE MADE WITHIN 90 DAYS OF THIS POSTING.

A COPY OF THE BY-LAWS MAY BE EXAMINED IN THE TOWN CLERK'S OFFICE.

A true record, attest:

  
\_\_\_\_\_  
Cara L. Dahill; Town Clerk CMC

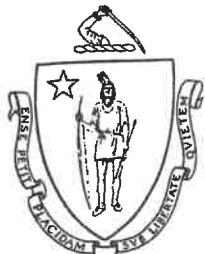
Said Amendments were posted at the following public places in Town:  
Town Hall, North Carver Post Office, Center Post Office, South Carver Post Office and the Carver Public Library.

DATE: **NOVEMBER 14, 2023**

Carver



TOWN CLERK, CARVER, MA  
2023 NOV 14 AM 9:54



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November 13, 2023

Cara Dahill, Town Clerk  
Town of Carver  
108 Main Street  
Carver, MA 02330

Re: **Carver Annual Town Meeting of April 11, 2023 -- Case # 10941**  
**Warrant Articles # 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31 32, 33, and 34**  
**(Zoning)**  
**Warrant Articles # 15, 16, and 24 (General) <sup>1</sup>**

Dear Ms. Dahill:

Article 27 - Under Article 27 the Town voted to make amendments to Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations." We approve the amendments except for text prohibiting deforestation that we determine conflicts with the solar protections in G.L. c. 40A, § 3, as highlighted by the court's decision in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022), and text regulating herbicides and pesticides that is preempted by state law.

In this decision we discuss the Attorney General's standard of review of town by-laws under G.L. c. 40, § 32; summarize the by-law amendments adopted under Article 27; and then explain why, governed by our review standard, we disapprove certain text. <sup>2</sup> We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law amendments. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

<sup>1</sup> In a decision issued August 8, 2023 we approved Articles 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, and 34 and by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Articles 27, 28, and 29 until November 11, 2023. We issued our decision on Articles 28 and 29 on November 10, 2023.

<sup>2</sup> During our review of Article 27 we received communication opposing to the by-law. We appreciate this correspondence as it has aided our review.

Carver

## **I. Attorney General's Standard of Review of Zoning By-laws**

Our review of Article 27 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "The legislative intent to preclude local action must be clear." Id. at 155.

As an amendment to the Town's zoning by-laws Article 27 must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

## **II. Article 27's Amendments to Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations"**

Under Article 27 the Town voted to add new text to and delete text from Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations." Article 27 added new text to (1) Section 3580.10, "Purpose," stating that one of the by-law's purposes is to promote the creation of conventional and "SMART/dual use" large-scale ground-mounted solar photovoltaic installations (LSGMSPI) in the Town; (2) Section 3580.21.2, "Required Documents," to add survey plans and engineering drawings to the list of required site plan review documents; (3) Section 3580.25.1, "Setbacks," to add setback requirements; and (4) Section 3580.50, "Change of ownership: Abandonment or Decommissioning," to allow a special permit to remain in effect under certain circumstances when there is a change in the LSGMSPI's ownership. Article 27 also amended Section 3580.32, relating to land clearing requirements, to read as follows (new text in bold):

3580.32. Land Clearing, Soil Erosion and Habitat Impacts **Pre-Construction Conference**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGMSPI or otherwise prescribed by applicable laws, regulations, and bylaws. **Not more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI**

Article 27 also amended Section 3580.33, relating to controlling vegetation, to read as follows (new text in bold and deleted text in strikethrough):

3580.33. Control of Vegetation. Mowing or the use of pervious pavers or geotextile materials underneath the LSGMSPI is the preferred method of vegetation control. Herbicides may only be used where it can be demonstrated that no danger is posed to groundwater supplies, or to local agricultural activities. **Use of chemical herbicides or pesticide is limited to those approved by the Department of Agriculture Pesticide Bureau.** ~~The Agricultural Commission and Board of Health are to approve all proposed herbicides.~~

The information summary provided in the Town Meeting Warrant states that the amendments were proposed by the Planning Board and were the result of a “lengthy study” conducted by the Town’s Solar and Battery Storage Moratorium Study Committee. The summary also states that the changes were recommended in order to balance the Town’s need to protect the health, safety, and welfare of its residents against the need to promote solar power development in the Town.

### **III. Section 3580.32’s Limitation on Deforestation Violates G.L. c. 40A, § 3 Solar Protections**

As detailed below, we disapprove 3580.32’s limitation on deforestation - “[n]ot more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI” - because it conflicts with the protections given to solar uses under G.L. c. 40A, § 3.

Solar energy facilities and related structures have been protected under Section 3 since 1985, when the Legislature passed a statute codifying “the policy of the commonwealth to encourage the use of solar energy.” St. 1985, c. 637, §§ 7, 8. *Id.* § 2. Section 3’s solar provision grants zoning protections to solar energy systems and the building of structures that facilitate the collection of solar energy as follows:

No zoning . . . bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

In adopting Section 3, the Legislature determined that certain land uses are so important to the public good that the Legislature found it necessary “to take away” some measure of municipalities’ “power to limit the use of land” within their borders. Attorney General v. Dover,

327 Mass. 601, 604 (1950) (discussing predecessor to G.L. c. 40A, § 3); see Cnty. Comm'rs of Bristol v. Conservation Comm'n of Dartmouth, 380 Mass. 706, 713 (1980) (noting that Zoning Act as a whole, and G.L. c. 40A, § 3, specifically, aim to ensure that zoning “facilitate[s] the provision of public requirements”). To that end, the provisions of Section 3 “strike a balance between preventing local discrimination against” a set of enumerated land uses while “honoring legitimate municipal concerns that typically find expression in local zoning laws.” Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 757 (1993). Over the years, the Legislature has added to the list of protected uses, employing different language—and in some cases, different methods—to limit municipal discretion to restrict those uses.

In codifying solar energy and related structures as a protected use under Section 3, the Legislature determined that “neighborhood hostility” or contrary local “preferences” should not dictate whether solar energy systems and related structures are constructed in sufficient quantity to meet the public need. See Newbury Junior Coll. v. Brookline, 19 Mass. App. Ct. 197, 205, 207-08 (1985) (discussing educational-use provision of Section 3); see also Petrucci v. Bd. of Appeals, 45 Mass. App. Ct. 818, 822 (1998) (explaining, in context of childcare provision, that Legislature’s “manifest intent” when establishing Section 3 protected use is “to broaden ... opportunities for establishing” that use). Indeed, the fundamental purpose of Section 3 is to “facilitate the provision of public requirements” that may be disfavored locally. Cty. Comm'rs of Bristol, 380 Mass. at 713.

The Supreme Judicial Court reaffirmed this principle in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022). In ruling that Section 3’s protections required Waltham to allow an access road to be built in a residential district for linkage to a solar project in Lexington, the Court explicitly noted that “large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth.” Id. at 782 (citing Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap, at 4, 59 n.43 (Dec. 2020) (“the amount of solar power needed by 2050 exceeds the full technical potential in the Commonwealth for rooftop solar, indicating that substantial deployment of ground-mounted solar is needed under any circumstance in order to achieve [n]et [z]ero [greenhouse gas emissions by 2050]”). The Court explained that whether a by-law facially violates Section 3’s prohibition against unreasonable regulation of solar systems and related structures will turn in part on whether the by-law promotes, rather than restricts, this legislative goal. Id. at 781. While municipalities do have some “flexibility” to reasonably limit where certain forms of solar energy may be sited, the validity of any restriction ultimately entails “balanc[ing] the interest that the . . . bylaw advances” against “the impact on the protected [solar] use.” Id. at 781-82.

Applying the requisite analysis to Section 3580.32’s limit on deforestation, we determine that the prohibition is an unreasonable solar regulation in violation of G.L. c. 40A, § 3 because it unduly restricts solar facilities. The record reflects no showing that this potentially significant limitation on new solar facilities is necessary to protect an important municipal objective that outweighs the protections given to solar under G.L. c. 40A, § 3. Tracer Lane II, 489 Mass. at 782. The by-law’s existing land clearing provisions require clearing of natural vegetation to be limited to what is necessary for the construction, operation, and maintenance of the LSGMSPI. Section 3580.32. It is unclear why Section 3580.32’s additional deforestation limitation - not more than thirty percent of forested land up to a maximum of five acres - is necessary to further protect the health, safety, or welfare of the Town. Other than the general reasons for the amendments to

Section 3580 provided in the Town Meeting Warrant, the Town provided no reasons for this deforestation limitation. Moreover, no other use in the Town is subject to a similar limitation on deforestation. Section 3580.32's deforestation provision effectively prohibits LSGMSPI that require clearing greater than thirty percent of the forested land or more than five acres. Because the text in Section 3580.32 limiting deforestation to "[n]ot more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI" is not narrowly tailored to promoting an important municipal objective that outweighs the legislatively determined public interest in allowing solar energy installations, we disapprove it. See Northbridge McQuade, LLC v. Northbridge Zoning Bd. of Appeals, Mass. Land Ct., No. 18 Misc 000519 \* 2 (June 17, 2019) (Piper, C.J.) (determining that before towns may regulate or prohibit solar installations, there must be an analysis of the need for such prohibition or regulation against the legislatively determined public interest in allowing solar energy installation).

#### **IV. Section 3580.33's Limitation on the Use of Herbicides and Pesticides to Control Vegetation at a LSGMSPI is Preempted by G.L. c. 132B**

Section 3580.33's limitation on the use of chemical herbicides and pesticides for vegetation control to only herbicides and pesticides approved by the Department of Agricultural Resources' Pesticide Bureau is preempted by G.L. c. 132B, the Massachusetts Pesticide Control Act ("Act").

General Laws Chapter 132B establishes the Massachusetts Department of Agricultural Resources' (MDAR) "exclusive authority in regulating the labeling, distribution, sale, storage, transportation, use and application, and disposal of pesticides in the commonwealth...." G.L. c. 132B, § 1. General Laws Chapter 132B, Section 2 defines "Pesticide" to include herbicides, as follows: "a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant...." The Act establishes a Pesticide Board within MDAR (Section 3) and authorizes the Pesticide Board to register pesticides for use in the Commonwealth if the Board determines that "a pesticide, when used in accordance with its directions for use, warnings and cautions and for the uses for which it is registered...will not generally cause unreasonable adverse effects on the environment...." (Section 7).

A town by-law that regulates the application of pesticides in a way that interferes with the purpose of the Act is preempted. Town of Wendell v. Att'y Gen., 394 Mass. 518, 528-529 (1985) (by-law that "contemplates the possibility of local imposition of conditions on the use of a pesticide beyond those established on a Statewide basis under the act" is preempted). Because the new by-law text in Section 3580.33 limiting the use of herbicides and pesticides at a LSGMSPI to only those approved by MDAR is preempted by state law, we disapprove it.<sup>3</sup>

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<sup>3</sup> The existing text in Section 3580.33 - "Herbicides may only be used where it can be determined that no danger is posed to groundwater supplies, or to local agricultural activities" is also preempted by G.L. c. 132B. The Town should discuss with Town Counsel a future town meeting vote to delete this text and the Town should not enforce this provision in the interim.

**V. The Remaining Approved Amendments to Section 3580.00 Must be Applied Consistent with G.L. c. 40A, § 3's Solar Protections**

We approve the remaining amendments to Section 3580.00 because, on the record before us, we cannot conclude that they amount to an unreasonable regulation of solar facilities in conflict with Section 3. If the proposed amendments, or the by-law's existing provisions, are used to deny a solar installation, or otherwise applied in ways that make it impracticable or uneconomical to build solar energy systems and related structures, such application would run a serious risk of violating G.L. c. 40A, § 3. See Tracer Lane II, 489 Mass. at 781 (Waltham's prohibition on solar energy systems in all but one to two percent of its land area violates the solar energy provisions of G.L. c. 40A, § 3.) As the court stated in PLH LLC v. Town of Ware, No. 18 MISC 000648 (GHP), 2019 WL 7201712, at \*3 (Mass. Land Ct. Dec. 24, 2019), aff'd, 102 Mass. App. Ct. 1103 (2022), "the review of the municipality conducted under the bylaw's special permit provisions must be limited and narrowly applied in a way that is not unreasonable, is not designed or employed to prohibit the use or the operation of the protected use, and exists where necessary to protect the health, safety or welfare." The Town should consult further with Town Counsel on this issue.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

*Kelli E. Gunagan*

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cc: Town Counsel Gregg J. Corbo



**FINAL VERSION OF BYLAW ARTICLE 27 3580 AMENDED BYLAW LARGE SCALE GROUND SOLAR PHOTOVOLTAIC INSTALLATIONS PROPOSED BY THE SOLAR/BATTERY STORAGE MORATORIUM COMMITTEE**

**3580.00. LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS**

3580.10. **Purpose.** The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations (LSGMSPI) **including conventional and SMART/dual use**, defined as those with a minimum nameplate capacity of 250 kW or greater or covering 1 acre or more of land, by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources, and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of LSGMSPI proposed to be constructed or materially altered after the effective date of this section **and shall follow the guidelines set forth in the MA DOER/MA DEP/Mass CEC Clean Energy Results Ground Mounted Solar PV Systems dated June 2015, as amended to the most current guideline.** To the extent that any particular provision of this bylaw is determined to be invalid, such invalidation shall not affect the validity of any other provision.

*Approved by AGO as amended 9/16/2022:*

Smaller scale ground or building mounted solar electric installations which are an accessory structure to an existing residential or non residential use do not need to comply with this Section, but must comply with the other provisions of Carver's Zoning Bylaws as applicable.

3580.15 Exemptions. Notwithstanding any other Zoning Bylaw provisions to the contrary, the following types of solar uses and structures are exempt from the provisions of Section 3580 and are considered as allowed uses and structures by right and customarily accessory and incidental to permitted principal uses: a. Roof-mounted solar electric installations on a new non-residential building within the GBP District; provided, however, that such uses and structures above shall comply with the other provisions of the Carver Zoning Bylaws as applicable, and with health and safety requirements of the Building Inspector and Fire Chief, and/or his/her designee



3580.20. General Requirements for all Large-Scale Solar Power Generation Installations. The following requirements are common to all LSGMSPI to be sited in designated locations:

3580.21. Site Plan Review. All LSGMSPI shall undergo site plan review prior to construction or modification by the Planning Board, prior to issuance of a building permit to ensure conformity with all applicable bylaws.

3580.21.1. General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer and Professional Land Surveyor licensed to practice in Massachusetts.

3580.21.2. Required Documents. Pursuant to the site plan review process, the project proponent shall provide a site plan showing:

**Surveyed Plans and engineered drawings of Commercial Solar Energy Facility signed and stamped by a Registered Land Surveyor and by a Professional Engineer licensed to practice in Massachusetts, showing the proposed layout of the system;**

- A. Existing Conditions: showing property lines and physical features including, but not limited to: wetlands and related buffer zones, rivers and associated riverfront areas, land subject to flooding, vernal pools, FEMA flood plains, logging or access roads, forested areas, forest density, existing vegetation, priority and estimated habitats;**
- B. Proposed changes to the landscape of the site including: grading, vegetation clearing, pollarding, as well as boundaries of proposed vegetative buffer;**
- C. Locations of public water supply as well as abutting properties' wells and septic systems;**
- D. Proposed surveyed layout of the system/facility and related structures, including final stormwater and other site management devices, fences, and the location of 20-foot wide access roads, including emergency vehicle turnarounds. Potential shading from nearby trees or structures should also be included;**
- E) Blueprints or drawings of the solar photovoltaic installation, and one or three line electrical diagrams detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system**
- F) Documentation of the major system components to be used, including makes and models of the PV panels, transformer, inverter, mounting system, and chemicals for cleaning and maintenance of equipment;**
- G. Landscape plan(s) pursuant to 12.3.8.7 detailing the proposed natural vegetative buffer and visual screen. Boundaries of existing vegetation shall be shown in lighter lines beneath;**
- H. Diagrams of sight lines from abutting residential and commercial structures and public ways, and visualizations of views of the site from which the facility would be visible;**
- I. Construction stormwater management and erosion control;**
- J. Post-installation stormwater management plan;**
- K. Prior to the issuance of a Building Permit the applicant shall provide to the Building Inspector and to the Special Permit Granting Authority Safety Data Sheet (SDS)/Materials Data Sheets (MDS) for all components of (internal and external), and products for, construction of the Solar Energy Facility.**
- L) Name, address, and contact information for proposed system installer, the project proponent (s), and property owners if different;**
- M) The name, contact information, signature of any agents representing the project proponent; and**



- i) Documentation of actual or prospective access and control of the project site (see also Section 3580.22);
- ii) An operation and maintenance plan (see also Section 3580.23);
- iii) District designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- iv) Proof of liability insurance; and
- v) Description of financial surety that satisfies Section 3580.53.

The Planning Board may require additional information, data or evidence as it deems necessary pursuant to the site plan review process.

3580.22. Site Control. The project proponent shall submit documentation of prospective access and control of the project site sufficient to allow for construction and operation of the proposed LSGMSPI.

3580.23. Operation & Maintenance Plan. The project proponent shall submit a plan for the operation and maintenance of the LSGMSPI, which shall include measures for maintaining safe access to the installation, **repair or replacement of nonfunctioning panels**, storm water controls, as well as general procedures for operational maintenance of the installation. A ground fuels maintenance plan shall be submitted during the site plan review process and be approved by the Fire Chief. The approved plan shall become a condition of the general site maintenance requirements outlined in section 3580.40.

3580.24. Utility Notification. No proposed LSGMSPI shall be submitted for review until evidence has been given to the Planning Board that the utility company that operates the electrical grid to which the installation is to be connected has been informed of the LSGMSPI owner or operator's intent to install an interconnected customer-owned generator, and that the electrical grid can safely transmit the proposed power output of the installation.

3580.25. Dimension and Density Requirements.

3580.25.1. Setbacks. For LSGMSPI, front, side, and rear setbacks shall be at least 50 feet on the applicant's property; provided, however, that where the lot is located in a Residential-Agricultural district, the setbacks shall not be less than 200 feet on the applicant's property. LSGMSPI shall be provided with 200 foot setbacks on all lot lines abutting the Residential-Agricultural district, regardless of the zoning designated for the proposed site. Vegetated screening shall be provided for a minimum of 50% of the specified setback.

Every abutting property shall be visually and acoustically screened from the installation through either existing vegetation or new plantings of not less than 8 feet in height at the time of planting staggered at a spacing of no more than 8 feet apart throughout the required setback dimensions. All required plantings shall be maintained throughout the project's life, and replaced as necessary. As an alternate to providing the required screening through vegetation, it is acceptable to increase the setback to 600 feet on the applicant's property while providing an acceptable alternate screening such as a stockade fence and single row of vegetation in close proximity to the project.



The provided screening shall obscure from view on all sides at least 50% or 100% if the project is located in the Residential-Agricultural zoning district, of the project from adjacent properties, including upper levels of existing structures at the time of construction, within three years of the start of construction or earthwork activities. Security fences, roadways, and equipment shall not be placed within the required setback, except for that which is required to access the site from an adjacent roadway, or to transmit the generated power to the grid. Access roads and transmission lines shall be placed in such a manner as to not create an unobstructed view of the project from adjacent property lines.

**3580.25.1 a) Direct abutters to large-scale ground mounted solar photovoltaic installations (LSGMSPI) have the option of reducing the setbacks to a minimum of 50' along their common border of the project in a Residential-Agricultural (RA) zoning district by providing a signed affidavit that waives standard setback and screening requirements. The Applicants are required to contact all direct abutters affected to establish their willingness to enter into an agreement to waive the requirements. Signed affidavits must be provided to the Planning Board and on file with the Planning Board and referenced in the Special Permit decision.**

1b) Amend Section 3580.25.1 to allow setbacks **between arrays** to be reduced to a minimum of 12.5 feet by right where arrays are proposed in a **joint Application by owners, or common ownership of abutting properties.**

**b) Other Setbacks: Large Solar Energy Facilities shall be sited at least one hundred fifty feet (150') from abutting properties' wells and septic systems.**

3580.25.2. Maximum Site Density. For projects with 10-20 acres within the security fence or the inner limits of screening if no security fence, no more than 50% of the receiving lot may be developed. For projects greater than 20 acres, up to 66% of the receiving lot may be developed. The developed area shall include the area of the project within the security fence of inner limits of screening if no security fence, plus all other existing and proposed structures throughout the site.

1c) Amend Section 3580.25.2 to provide that when one project is proposed on multiple contiguous parcels, only one single application is required.

3580.25.3. Appurtenant Structures. All appurtenant structures to LSGMSPI shall be subject to regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements contained elsewhere within the zoning bylaws. All such appurtenant structures shall be architecturally compatible with each other and be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts. The project shall be designed so that the transformer (s) and inverter (s) are sited in the most remote location practical.

#### 3580.26. Design Standards

3580.26.1. Lighting. Lighting of LSGMSPI shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, shall be shielded to eliminate





glare from abutting properties, shall be directed downward, and shall incorporate cut-off fixtures to reduce light pollution.

3580.26.2. Signage. Signs on LSGMSPI shall comply with the Town of Carver's sign bylaw, Section 3500. Signage at all site entrances shall be required to identify the owner and provide a 24-hour emergency contact phone number. LSGMSPI shall not be used for the display of any advertising.

3580.26.3. Utility Connections. All utility connections **including associated equipment and utility equipment** from the LSGMSPI shall be placed underground or pad mounted, unless soil conditions, shape, or topography of the site **as verified by Town's Consulting Engineer** dictate above ground installation. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

3580.26.4. Hazardous Materials. Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to Mass DEP regulations 310 CMR 30.000, and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the LSGMSPI, including the photovoltaic panels or transformer (s), then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.

**3580.26.5 Glare: The solar PV modules shall be positioned in such a way that minimizes glare to greatest practicable extent on a residence or public way at any time during the day**

### 3580.30. Safety and Environmental Standards.

3580.31. Emergency Services. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, as built plans, and site plan to the Fire Chief and Emergency Management Director. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the LSGMSPI shall be clearly marked, and training required to allow emergency response personnel to safely shut down the LSGMSPI in event of an emergency provided at no cost to the Town as requested by the Town. The owner or operator shall identify a responsible person for public inquires throughout the life of the installation, all changes shall immediately be brought to the attention of the Town. Site access to LSGMSPI shall be conducive to emergency vehicle travel to allow for unimpeded access around the site at all times. Access requirements, not limited to gating, road widths and surfaces, etc. will be reviewed during the site plan review process, with approval being at the discretion of the Fire Chief.

3580.32. Land Clearing, Soil Erosion and Habitat Impacts**Pre Construction Conference**  
Prior to any site disturbance and construction, the limits of the approved buffer zones and any other approved site disturbances, shall be surveyed and clearly marked by a Professional Land Surveyor. Upon completion of the survey, the Professional Land Surveyor shall verify to the Planning Board, in writing, that the limit of work, as shown on the approved site plans, has been established on site.



Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGMSPI or otherwise prescribed by applicable laws, regulations, and bylaws.

#### **Mitigation Measures**

**(b) Mitigation for Loss of Forest Habitat within the Installation** If forestland is proposed to be converted to a LSGMSPI, the plans shall show mitigation measures that create a wildflower meadow habitat, pollinator species within and immediately around the LSGMSPI and a successional forest habitat in the surrounding areas managed to prevent shading until the installation is decommissioned and the site restored to forest. The special permit may be conditioned to effect and make enforceable this requirement.

**No clearing or site work can begin prior to a Preconstruction Conference held with the applicant, their contractor(s) and Town Staff including the Building Commissioner, Conservation Agent and Town Planner.**

3580.33. Control of Vegetation. Mowing or the use of pervious pavers or geo-textile materials underneath the LSGMSPI is the preferred method of vegetation control. Herbicides may only be used where it can be demonstrated that no danger is posed to groundwater supplies, or to local agricultural activities 3580.34. Panel Maintenance. Any and all materials used for maintenance of the LSGMSPI or other structures shall be properly disposed of and no harmful chemicals shall be used.

3580.40. Monitoring and Maintenance.

3580.41. Large-Scale Solar Photovoltaic Installation Conditions. The LSGMSPI owner or operator shall maintain the facility in good condition, including but not be limited to, snow removal, painting, structural repairs, **repair or replacement of nonfunctioning panels, on an annual basis** maintenance of landscaping and required screening, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for all maintenance.

3580.42. Modifications. All material modifications to a LSGMSPI made after issuance of the required building permit shall require site plan review and approval by the Planning Board for continued compliance of all applicable bylaws.

3580.43. Annual Reporting. The owner or operator of the LSGMSPI shall submit an Annual Report demonstrating and certifying compliance with the Operation and Maintenance Plan and the requirements of this bylaw and their approved site plan including control of vegetation, maintenance of screening, adequacy of road access, information on the maintenance completed during the course of the year, and the amount of electricity generated by the facility. 6 copies of the report shall be submitted to the Board of Selectmen no later than 45 days after the end of the calendar year.

3580.50. Change of ownership: Abandonment or Decommissioning

**3850.51 Ownership Changes. If the owner of the LSGMSPI changes or the owner of the property changes, the special permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special permit, site plan approval, and decommissioning plan. A new owner or operator of the LSGMSPI shall notify the Building**



**Commissioner of such change in ownership or operator within 14 days of the ownership change. A new owner or operator must provide such notification to the Building Commissioner in writing and meet with any permitting authority from which the original applicant received a permit.**

3580.52. Removal Requirements. Any LSGMSPI which has reached the end of its useful life, or has been abandoned consistent with Section 3580.52 of this bylaw, shall be removed no more than 120 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

3580.52.1. Physical removal of all LSGMSPI, structures, equipment, security barriers, and transmission lines from the site.

3580.52.2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

3580.52.3. Stabilization or re-vegetation of the site as necessary to minimize erosion and runoff. **Including the use of pollinator species and cranberry plants especially for Dual Use installations.**

3580.52. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSGMSPI shall be considered abandoned when it fails to operate for more than sixty days without the written consent of the Board of Selectmen. As a condition of approval, if the owner or operator of the LSGMSPI fails to remove the installation in accordance with the requirements of this section within 120 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation. The costs for the removal may be charged to the property owner.

3580.53. Financial Surety. Proponents of LSGMSPI shall provide a form of surety through an escrow account to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount determined to be reasonable by the Planning Board and form determined to be reasonable by the Treasurer, but in no event to be less than 75 percent nor to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified expert, which shall include a mechanism for calculating increased removal costs due to inflation.

The financial surety may also be used to replace and maintain all required landscaping and vegetative screening when in the opinion of the Planning Board the owner/operator has failed to do so. All costs incurred by the Town for maintenance activities shall be paid by the property owner within 90 days, or the maintenance costs may be charged to the property owner.

3580.60. Special Permit for LSGMPI. In the event that a Special Permit is required for a LSGMPI, the planning board may grant a Special Permit if the following conditions are met:



1. Such use will not nullify or substantially derogate from the intent or purpose of this bylaw;
2. Such use will not constitute a nuisance;
3. Such use will not adversely affect the neighborhood in which it is sited;
4. Such use complies with the standards for site plan review as spelled out in this bylaw;
5. The Planning Board may also provide for other conditions that it deems necessary.

3580.70. Dual Use Large Scale Ground-Mounted Solar Photovoltaic Installations  
 (“LSGMPI”)

2a) To add a new Section addressing required setbacks and screening for SMART/Dual Use Arrays as described below:

**SMART/Dual Use Array**

	<b>Array Height</b>	<b>Setback</b>	<b>% Screening in Setback</b>	<b>Abutters Notification</b>
<b>Residential - Agricultural</b>	<b>8' +</b>	<b>200' *</b>	<b>100% **</b>	<b>300'</b>

<p>* Planning Board may reduce setbacks, but in no instance shall setbacks be less than <b>50'</b> when abutting a Residential/Agricultural district.</p>
<p>** 100% screening shall be attained from the greater of abutting street grade or yard grade. Topographical situations may require flexibility in either setback or screening decisions.</p>

2b) To allow setbacks of a minimum of 12.5 feet if arrays are abutting a bog or other agricultural use as defined in G.L. c. 128, § 1A provided standard setbacks and screening requirements are waived in writing by all **affected** direct abutters in a Residential-Agricultural (RA) zoning district.

2b) To allow setbacks of a minimum of 12.5 feet if arrays are abutting a bog or other agricultural use as defined in G.L. c. 128, § 1A provided standard setbacks and screening requirements are waived in writing by all direct abutters in a Residential-Agricultural (RA) zoning district.





**TOWN OF CARVER**  
**OFFICIAL BULLETIN**

Amendments to the Town of Carver **ZONING BY-LAWS** adopted under Articles 28 and 29 of the Warrant for the Annual Town Meeting that convened on April 13, 2023 are attached hereto with the approval of the Attorney General as outlined in her letter dated November 10, 2023. The Attorney General's decision on Article 27 of this same Warrant has been extended to December 19, 2023.

ANY PERSON CLAIMING THAT THE AMENDMENTS TO THE ZONING BY-LAWS ADOPTED UNDER ARTICLES 28 AND 29 OF THE APRIL 13, 2023 ANNUAL TOWN MEETING ARE INVALID BECAUSE OF A DEFECT IN THE PROCEDURE BY WHICH THE BY-LAWS WERE ADOPTED OR AMENDED MAY ONLY BE MADE WITHIN 90 DAYS OF THIS POSTING.

A COPY OF THE BY-LAWS MAY BE EXAMINED IN THE TOWN CLERK'S OFFICE.

A true record, attest:

  
\_\_\_\_\_  
Cara L. Dahill; Town Clerk CMC

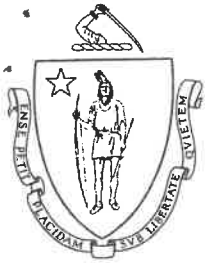
Said Amendments were posted at the following public places in Town: Town Hall, North Carver Post Office, Center Post Office, South Carver Post Office and the Carver Public Library.

By: \_\_\_\_\_

\_\_\_\_\_  
John Woods; DPW Director

DATE: **NOVEMBER 14, 2023**





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
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November 13, 2023

Cara Dahill, Town Clerk  
Town of Carver  
108 Main Street  
Carver, MA 02330

**Re: Carver Annual Town Meeting of April 11, 2023 -- Case # 10941**  
**Warrant Articles # 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31 32, 33, and 34**  
**(Zoning)**  
**Warrant Articles # 15, 16, and 24 (General) <sup>1</sup>**

Dear Ms. Dahill:

**Article 27** - Under Article 27 the Town voted to make amendments to Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations." We approve the amendments except for text prohibiting deforestation that we determine conflicts with the solar protections in G.L. c. 40A, § 3, as highlighted by the court's decision in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022), and text regulating herbicides and pesticides that is preempted by state law.

In this decision we discuss the Attorney General's standard of review of town by-laws under G.L. c. 40, § 32; summarize the by-law amendments adopted under Article 27; and then explain why, governed by our review standard, we disapprove certain text. <sup>2</sup> We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law amendments. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

<sup>1</sup> In a decision issued August 8, 2023 we approved Articles 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, and 34 and by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Articles 27, 28, and 29 until November 11, 2023. We issued our decision on Articles 28 and 29 on November 10, 2023.

<sup>2</sup> During our review of Article 27 we received communication opposing to the by-law. We appreciate this correspondence as it has aided our review.

## **I. Attorney General's Standard of Review of Zoning By-laws**

Our review of Article 27 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "The legislative intent to preclude local action must be clear." Id. at 155.

As an amendment to the Town's zoning by-laws Article 27 must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

## **II. Article 27's Amendments to Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations"**

Under Article 27 the Town voted to add new text to and delete text from Section 3580, "Large-Scale Ground Mounted Solar Photovoltaic Installations." Article 27 added new text to (1) Section 3580.10, "Purpose," stating that one of the by-law's purposes is to promote the creation of conventional and "SMART/dual use" large-scale ground-mounted solar photovoltaic installations (LSGMSPI) in the Town; (2) Section 3580.21.2, "Required Documents," to add survey plans and engineering drawings to the list of required site plan review documents; (3) Section 3580.25.1, "Setbacks," to add setback requirements; and (4) Section 3580.50, "Change of ownership: Abandonment or Decommissioning," to allow a special permit to remain in effect under certain circumstances when there is a change in the LSGMSPI's ownership. Article 27 also amended Section 3580.32, relating to land clearing requirements, to read as follows (new text in bold):

**3580.32. Land Clearing, Soil Erosion and Habitat Impacts Pre-Construction Conference**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGMSPI or otherwise prescribed by applicable laws, regulations, and bylaws. **Not more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI**

Article 27 also amended Section 3580.33, relating to controlling vegetation, to read as follows (new text in bold and deleted text in strikethrough):

3580.33. Control of Vegetation. Mowing or the use of pervious pavers or geotextile materials underneath the LSGMSPI is the preferred method of vegetation control. Herbicides may only be used where it can be demonstrated that no danger is posed to groundwater supplies, or to local agricultural activities. **Use of chemical herbicides or pesticide is limited to those approved by the Department of Agriculture Pesticide Bureau.** ~~The Agricultural Commission and Board of Health are to approve all proposed herbicides.~~

The information summary provided in the Town Meeting Warrant states that the amendments were proposed by the Planning Board and were the result of a “lengthy study” conducted by the Town’s Solar and Battery Storage Moratorium Study Committee. The summary also states that the changes were recommended in order to balance the Town’s need to protect the health, safety, and welfare of its residents against the need to promote solar power development in the Town.

### **III. Section 3580.32’s Limitation on Deforestation Violates G.L. c. 40A, § 3 Solar Protections**

As detailed below, we disapprove 3580.32’s limitation on deforestation - “[n]ot more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI” - because it conflicts with the protections given to solar uses under G.L. c. 40A, § 3.

Solar energy facilities and related structures have been protected under Section 3 since 1985, when the Legislature passed a statute codifying “the policy of the commonwealth to encourage the use of solar energy.” St. 1985, c. 637, §§ 7, 8. *Id.* § 2. Section 3’s solar provision grants zoning protections to solar energy systems and the building of structures that facilitate the collection of solar energy as follows:

No zoning . . . bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

In adopting Section 3, the Legislature determined that certain land uses are so important to the public good that the Legislature found it necessary “to take away” some measure of municipalities’ “power to limit the use of land” within their borders. Attorney General v. Dover,

327 Mass. 601, 604 (1950) (discussing predecessor to G.L. c. 40A, § 3); see Cnty. Comm’rs of Bristol v. Conservation Comm’n of Dartmouth, 380 Mass. 706, 713 (1980) (noting that Zoning Act as a whole, and G.L. c. 40A, § 3, specifically, aim to ensure that zoning “facilitate[s] the provision of public requirements”). To that end, the provisions of Section 3 “strike a balance between preventing local discrimination against” a set of enumerated land uses while “honoring legitimate municipal concerns that typically find expression in local zoning laws.” Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 757 (1993). Over the years, the Legislature has added to the list of protected uses, employing different language—and in some cases, different methods—to limit municipal discretion to restrict those uses.

In codifying solar energy and related structures as a protected use under Section 3, the Legislature determined that “neighborhood hostility” or contrary local “preferences” should not dictate whether solar energy systems and related structures are constructed in sufficient quantity to meet the public need. See Newbury Junior Coll. v. Brookline, 19 Mass. App. Ct. 197, 205, 207-08 (1985) (discussing educational-use provision of Section 3); see also Petrucci v. Bd. of Appeals, 45 Mass. App. Ct. 818, 822 (1998) (explaining, in context of childcare provision, that Legislature’s “manifest intent” when establishing Section 3 protected use is “to broaden . . . opportunities for establishing” that use). Indeed, the fundamental purpose of Section 3 is to “facilitate the provision of public requirements” that may be disfavored locally. Cty. Comm’rs of Bristol, 380 Mass. at 713.

The Supreme Judicial Court reaffirmed this principle in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022). In ruling that Section 3’s protections required Waltham to allow an access road to be built in a residential district for linkage to a solar project in Lexington, the Court explicitly noted that “large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth.” Id. at 782 (citing Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap, at 4, 59 n.43 (Dec. 2020) (“the amount of solar power needed by 2050 exceeds the full technical potential in the Commonwealth for rooftop solar, indicating that substantial deployment of ground-mounted solar is needed under any circumstance in order to achieve [n]et [z]ero [greenhouse gas emissions by 2050]”). The Court explained that whether a by-law facially violates Section 3’s prohibition against unreasonable regulation of solar systems and related structures will turn in part on whether the by-law promotes, rather than restricts, this legislative goal. Id. at 781. While municipalities do have some “flexibility” to reasonably limit where certain forms of solar energy may be sited, the validity of any restriction ultimately entails “balanc[ing] the interest that the . . . bylaw advances” against “the impact on the protected [solar] use.” Id. at 781-82.

Applying the requisite analysis to Section 3580.32’s limit on deforestation, we determine that the prohibition is an unreasonable solar regulation in violation of G.L. c. 40A, § 3 because it unduly restricts solar facilities. The record reflects no showing that this potentially significant limitation on new solar facilities is necessary to protect an important municipal objective that outweighs the protections given to solar under G.L. c. 40A, § 3. Tracer Lane II, 489 Mass. at 782. The by-law’s existing land clearing provisions require clearing of natural vegetation to be limited to what is necessary for the construction, operation, and maintenance of the LSGMSPI. Section 3580.32. It is unclear why Section 3580.32’s additional deforestation limitation - not more than thirty percent of forested land up to a maximum of five acres - is necessary to further protect the health, safety, or welfare of the Town. Other than the general reasons for the amendments to

Section 3580 provided in the Town Meeting Warrant, the Town provided no reasons for this deforestation limitation. Moreover, no other use in the Town is subject to a similar limitation on deforestation. Section 3580.32's deforestation provision effectively prohibits LSGMSPI that require clearing greater than thirty percent of the forested land or more than five acres. Because the text in Section 3580.32 limiting deforestation to "[n]ot more than 30% of forested land up to a maximum of five acres per lot shall be deforested for any one LSGMSPI" is not narrowly tailored to promoting an important municipal objective that outweighs the legislatively determined public interest in allowing solar energy installations, we disapprove it. See Northbridge McQuade, LLC v. Northbridge Zoning Bd. of Appeals, Mass. Land Ct., No. 18 Misc 000519 \* 2 (June 17, 2019) (Piper, C.J.) (determining that before towns may regulate or prohibit solar installations, there must be an analysis of the need for such prohibition or regulation against the legislatively determined public interest in allowing solar energy installation).

#### **IV. Section 3580.33's Limitation on the Use of Herbicides and Pesticides to Control Vegetation at a LSGMSPI is Preempted by G.L. c. 132B**

Section 3580.33's limitation on the use of chemical herbicides and pesticides for vegetation control to only herbicides and pesticides approved by the Department of Agricultural Resources' Pesticide Bureau is preempted by G.L. c. 132B, the Massachusetts Pesticide Control Act ("Act").

General Laws Chapter 132B establishes the Massachusetts Department of Agricultural Resources' (MDAR) "exclusive authority in regulating the labeling, distribution, sale, storage, transportation, use and application, and disposal of pesticides in the commonwealth...." G.L. c. 132B, § 1. General Laws Chapter 132B, Section 2 defines "Pesticide" to include herbicides, as follows: "a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant...." The Act establishes a Pesticide Board within MDAR (Section 3) and authorizes the Pesticide Board to register pesticides for use in the Commonwealth if the Board determines that "a pesticide, when used in accordance with its directions for use, warnings and cautions and for the uses for which it is registered...will not generally cause unreasonable adverse effects on the environment...." (Section 7).

A town by-law that regulates the application of pesticides in a way that interferes with the purpose of the Act is preempted. Town of Wendell v. Att'y Gen., 394 Mass. 518, 528-529 (1985) (by-law that "contemplates the possibility of local imposition of conditions on the use of a pesticide beyond those established on a Statewide basis under the act" is preempted). Because the new by-law text in Section 3580.33 limiting the use of herbicides and pesticides at a LSGMSPI to only those approved by MDAR is preempted by state law, we disapprove it.<sup>3</sup>

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<sup>3</sup> The existing text in Section 3580.33 - "Herbicides may only be used where it can be determined that no danger is posed to groundwater supplies, or to local agricultural activities" is also preempted by G.L. c. 132B. The Town should discuss with Town Counsel a future town meeting vote to delete this text and the Town should not enforce this provision in the interim.

**V. The Remaining Approved Amendments to Section 3580.00 Must be Applied Consistent with G.L. c. 40A, § 3's Solar Protections**

We approve the remaining amendments to Section 3580.00 because, on the record before us, we cannot conclude that they amount to an unreasonable regulation of solar facilities in conflict with Section 3. If the proposed amendments, or the by-law's existing provisions, are used to deny a solar installation, or otherwise applied in ways that make it impracticable or uneconomical to build solar energy systems and related structures, such application would run a serious risk of violating G.L. c. 40A, § 3. See Tracer Lane II, 489 Mass. at 781 (Waltham's prohibition on solar energy systems in all but one to two percent of its land area violates the solar energy provisions of G.L. c. 40A, § 3.) As the court stated in PLH LLC v. Town of Ware, No. 18 MISC 000648 (GHP), 2019 WL 7201712, at \*3 (Mass. Land Ct. Dec. 24, 2019), aff'd, 102 Mass. App. Ct. 1103 (2022), "the review of the municipality conducted under the bylaw's special permit provisions must be limited and narrowly applied in a way that is not unreasonable, is not designed or employed to prohibit the use or the operation of the protected use, and exists where necessary to protect the health, safety or welfare." The Town should consult further with Town Counsel on this issue.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

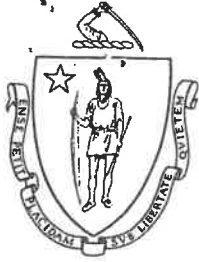
ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

*Kelli E. Gunagan*

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cc: Town Counsel Gregg J. Corbo





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November 10, 2023

Cara Dahill, Town Clerk  
Town of Carver  
108 Main Street  
Carver, MA 02330

Re: **Carver Annual Town Meeting of April 11, 2023 – Case # 10941**  
**Warrant Articles # 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34**  
**(Zoning)**  
**Warrant Articles # 15, 16, and 24 (General) <sup>1</sup>**

Dear Ms. Dahill:

**Articles 28 and 29** – Under Article 28 the Town voted to amend its zoning by-laws to add a new Section 3590 that imposes requirements for Tier 1, 2, and 3 Battery Energy Storage Systems (BESS). Under Article 29 the Town voted to amend Section 2230, “Use Regulation Schedule,” to add new entries for Tier 1, Tier 2, and Tier 3 BESS and to provide for the zoning districts where they are allowed as of right, by special permit, or are prohibited. We approve Articles 28 and 29 because we determine they do not conflict with state law, including the solar protections in G.L. c. 40A, § 3, as highlighted by the court’s decision in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022).

In this decision we discuss the Attorney General’s standard of review of town by-laws under G.L. c. 40, § 32; summarize the by-law amendments adopted under Articles 28 and 29; and then explain why, governed by our review standard, we approve Articles 28 and 29. <sup>2</sup> We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have

<sup>1</sup> In a decision issued August 8, 2023 we approved Articles 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, and 34 and by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Articles 27, 28, and 29 until November 11, 2023. We will issue our decision on Article 27 under separate cover.

<sup>2</sup> During our review of Articles 28 and 29 we received communication opposing Articles 28 and 29 on the basis that they assertedly impose unreasonable requirements on solar uses in violation of G.L. c. 40A, § 3 and prohibit Tier 3 BESS in almost the entire Town in violation of Tracer Lane II. We appreciate this correspondence as it has aided our review.

led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law amendments. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

## I. Attorney General's Standard of Review of Zoning By-laws

Our review of Articles 28 and 29 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "The legislative intent to preclude local action must be clear." Id. at 155.

As amendments to the Town's zoning by-laws Articles 28 and 29 must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

## II. Summary of Articles 28 and Article 29

Under Article 28 the Town amended the zoning by-laws to add a new Section 3590, "Battery Energy Storage Systems," that adds new definitions for BESS related terms and imposes requirements for Tier 1, Tier 2, and Tier 3 BESS in the Town. Section 3590.95 defines "Battery Energy Storage Management Systems (BESS)" as follows:

**Battery Energy Storage Management System (BESS):** An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

# **FINAL VERSION OF BYLAW ARTICLE 28 NEW BY LAW 3590 BATTERY ENERGY STORAGE SYSTEM ZONING BYLAW**

## **3590 BATTERY ENERGY STORAGE SYSTEMS**

**3590.10. Purpose.** The purpose of this Section is to advance and protect the public health, safety, welfare, and quality of life by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

1. To provide a regulatory scheme for the location, construction and operation of battery energy storage systems consistent with best practices and safety protocols;
2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems and to mitigate any potential impacts on abutting and nearby properties; and
3. To mitigate the impacts of battery energy storage systems on environmental resources such as agricultural lands, forests, wildlife, wetlands and other natural resources.

This Section shall be construed to be consistent with state law, including but not limited to the provisions of General Laws chapter 40A, section 3, and state regulations, including but not limited to the provisions of the State Building Code, State Fire Code, and State Electrical Code. In the event of any conflict between the provisions of this section and the provisions of state law or regulations, the state law and regulations shall prevail.

### **3590.20. Applicability**

1. The requirements of this bylaw shall apply to battery energy storage systems permitted, installed, decommissioned or modified after the effective date of this bylaw, excluding general maintenance and repair. BESS subject to this bylaw are only those that exceed the following capacities:

- Lead-acid with a capacity of greater than 70 kWh
- Nickel with a capacity of greater than 70 kWh
- Lithium-ion with a capacity of greater than 30 kWh
- Sodium nickel chloride with a capacity of greater than 20 kWh
- Flow with a capacity of greater than 20 kWh
- Other battery technologies with a capacity of greater than 10 kWh BESS that do not meet the threshold capacities above are not subject to this bylaw and are allowed by right in all zoning districts.

2. A battery energy storage system that is subject to this bylaw is classified as a Tier 1, Tier 2 or Tier 3 Battery Energy Storage System as follows:

- a) Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than 0.5MWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- b) Tier 2 Battery Energy Storage Systems have an aggregate energy capacity equal to or greater than 0.5 MWh but less than 1MWH or are comprised of more than one storage battery technology in a room or enclosed area.

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c) Tier 3 Battery Energy Storage Systems have an aggregate energy capacity greater than 1MWh or are comprised of more than one storage battery technology in a room or enclosed area.

### **3590.30. General Requirements**

1. All permits required by state codes, including but not limited to building permit, an electrical permit, and a fire department permit shall be required for installation of all battery energy storage systems.

2. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (a) contain or are otherwise associated with a battery energy storage system and (b) subject to the requirements of the State Building Code, shall be designed, erected, and installed in accordance with all applicable provisions of the State Building Code 780 CMR, State Fire Code 527 CMR 1.00, and State Electrical Code 527 CMR 12.00. All battery energy storage systems shall comply with NFPA 855, Standard for the Installation of Stationary Energy Storage Systems.

3. Energy storage system capacities, including array capacity and separation, are limited to the thresholds contained in NFPA 855.

4. All access roads should be at least 12' wide, constructed of an all-weather surface, and be cleared of obstructions on both sides by at least 2'. A 16' vertical clearance should be maintained for large vehicle access. Access gates erected onsite should be at least 12' wide, accessible via Carver Fire Department lock. Access to all four sides of each enclosure should be provided where practical.

### **3590.40. Permitting Requirements for Tier 1 Battery Energy Storage Systems**

Tier 1 Battery Energy Storage Systems are allowed by right in all zoning districts, subject to applicable provisions of the State Building Code, Electrical Code, Fire Code, and other applicable codes, and are subject to minor site plan review and such provisions of this bylaw as are applicable.

### **3590.50. Permitting Requirements for Tier 2 and Tier 3 Battery Energy Storage Systems**

Tier 2 and Tier 3 Battery Energy Storage Systems are subject to this bylaw and require the issuance of a special permit in those zoning districts identified in Use Regulations Schedule in Section 2230, and are subject to Site Plan Review pursuant to Section 3100. Tier 1 and Tier 2 BESS shall comply with the applicable requirements set forth in this bylaw, as well as this Zoning Bylaw, and the Carver General Bylaws. The following requirements apply to all Tier 1, Tier 2 and Tier 3 BESS subject to this bylaw, except where it is specifically noted to apply only to Tier 2 and Tier 3 BESS:

1. Utility Connections. All utility connections including associated equipment and utility equipment shall be placed underground or pad mounted, unless soil conditions, shape, or topography of the site as verified by the Town's Consulting Engineer dictate above ground installation. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

2. Signage. Signage shall comply with the requirements of Section 3500 of this Zoning Bylaw and the following additional requirements; in the event of a conflict between the provisions of Section 3500 and this section, the requirements of this section shall prevail.

a) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.



b) As required by the state electrical code, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

c) Signage compliant with ANSI Z535 shall be provided on doors to rooms, entrances to BESS facilities, and on BESS outdoor containers.

3. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety, security and operational purposes and shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, shall be shielded to eliminate glare from abutting properties, shall be directed downward, and shall incorporate cut-off fixtures to reduce light pollution.

4. Vegetation and tree-cutting. Areas within thirty feet on each side of Tier 2 or Tier 3 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

5. Setbacks. Tier 1, 2 and 3 Battery Energy Storage Systems shall be set back a minimum of 50 feet from all side, rear, and front lot lines. Tier 2 and Tier 3 BESS shall be set back a minimum of 200 feet from side, rear, and front lot lines that abut or are across a street from residential zoning districts or existing single, two-family, or multi-family structures. The minimum setback areas shall include a vegetated Buffer/Screening Area at least twenty feet wide along all property lines. Access drives and parking are allowed in the setback areas, but shall not intrude into the required Buffer Areas except where necessary to provide access or egress to the property. In addition, a minimum of 10 feet must be maintained, if within a building, between BESS components and all stored combustible materials, hazardous materials, high-piled storage, infrastructure.

Other Setbacks: Battery Energy Storage Systems shall be sited at least one hundred fifty feet (150') from abutting properties' wells and septic systems.

6. Dimensional. Tier 2 and Tier 3 Battery Energy Storage Systems shall comply with the dimensional limitations for principal structures of the underlying zoning district as provided in Section 2300 of this Zoning Bylaw, unless otherwise provided in this bylaw.

7. Fencing Requirements. Tier 2 and Tier 3 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a minimum eight foot high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building. Security barriers, fences, landscaping, and other enclosures must not inhibit required air flow to or exhaust from the BESS and components. Electrical equipment greater than 1,000V require a separate and additional means to restrict access. NFPA 855 requires specialty safety systems to be provided based on the BESS chemistry and installed location.

8. Screening and Visibility. Tier 2 and Tier 3 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area. Such features may not inhibit required air flow to or exhaust from the BESS and components and must comply with the setbacks established in paragraph 6 above.

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9. Noise: An Acoustic Study shall be provided in order to ensure that any increase in sound complies with Mass DEP requirement limiting any increase in ambient noise to be less than 10 decibels at the property line.

10. Mitigation for Loss of Carbon Sequestration and Forest Habitat. If land that is Forestland or has been Forestland within one year immediately preceding the filing an application to install a Tier 2 or Tier 3 BESS, the plans shall designate thereon an area of unprotected (meaning, not subject to G.L. c. 184, sections 31-33 at time of application) land on the same lot and of a size equal to two times the total area of Forestland that will be eliminated, cut, destroyed, or otherwise disturbed by such installation. Such designated land shall remain in substantially its natural condition without alteration, including prohibition of commercial forestry or tree cutting not related to the maintenance of the installation, until such time as the installation is decommissioned; except in response to a natural occurrence, invasive species or disease that impacts the trees and requires cutting to preserve the health of the forest.

11. Mitigation for Disruption of Trail Networks. If existing trail networks, old roads, or woods or cart roads are disrupted by the location of a Tier 2 or Tier 3 BESS, the plans shall show alternative trail alignments to be constructed by the applicant, although no rights of public access may be established hereunder.

12. Mitigation for Disruption of Historic Resources and Properties. Historic resources, structures and properties, such as cellar holes, farmsteads, stone corrals, marked graves, water wells, or pre-Columbian features, including those listed on the Massachusetts Register of Historic Places or as defined by the National Historic Preservation Act, shall be excluded from the areas proposed to be developed for a Tier 2 or Tier 3 BESS. A written assessment of the project's effects on each identified historic resource or property and ways to avoid, minimize or mitigate any adverse effects shall be submitted as part of the application. A suitable buffer area as determined by the PEDB shall be established on all sides of each historic resource.

13. Batteries. Failed battery cells and modules shall not be stored on the site and shall be removed no later than 30 days after deemed failed by the BESS operator or cell/module manufacturer. The operator shall notify the Carver Fire Department in advance if the type of battery or batteries used onsite is to be changed.

14. Decommissioning Plan. The applicant shall submit with its application a decommissioning plan for Tier 2 or Tier 3 BESS to be implemented upon abandonment and/or in conjunction with removal of the facility. The owner or operator of the BESS shall notify the Building Commissioner in writing at least twenty days prior to when a Tier 2 BESS or Tier 3 will be decommissioned. Decommissioning of an abandoned or discontinued Tier 2 BESS or Tier 3 shall be completed within six months after the facility ceases operation. The decommissioning plan shall include:

- a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- c. The anticipated life of the battery energy storage system;



- d. The estimated decommissioning costs and how said estimate was determined;
- e. The method of ensuring that funds will be available for decommissioning and restoration;
- f. The method by which the decommissioning cost will be kept current;
- g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
- h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

15. **Decommissioning Fund.** The owner and/or operator of the energy storage system, shall continuously maintain a fund or other surety acceptable to the Town, in a form approved by the Planning Board and Town Counsel, for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. All costs of the financial security shall be borne by the applicant.

16. **Proof of Liability Insurance.** The applicant or property owner shall provide evidence of commercially liability insurance in an amount and type generally acceptable in the industry and approved by the PEDB prior to the issuance of a building permit, and shall continue such insurance in effect until such facility has been decommissioned, removed, and the site restored in accordance with this bylaw.

**3590.60. Site plan application.** For a Tier 2 or Tier 3 Battery Energy Storage System the site plan application shall include the following information, in addition to that required by Section 3100 of this Zoning Bylaw:

1. A one- or three-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all State Electrical Code compliant disconnects and over current devices.
2. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
3. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
4. Large-scale fire test data, evaluation information, and calculations, and modeling data. For any of the following, UL 9540A fire test data must be made available to the Planning Board and Fire Department for review: - BESS systems with a capacity of greater than 50kWh - BESS systems with spacing between arrays of less than 3 feet
5. Safety data sheet (SDS) that address response safety concerns and extinguishment.



6. Commissioning Plan. The system installer or commissioning agent shall prepare a commissioning plan prior to the start of commissioning. Such plan shall be compliant with NFPA 855 and document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in applicable state codes. Where commissioning is required by the Building Code, battery energy storage system commissioning shall be conducted by a Massachusetts Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required by applicable state codes shall be provided to Zoning Enforcement Officer and the Carver Fire Department prior to final inspection and approval and maintained at an approved on-site location.

7. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with state codes, including documentation that BESS components comply with the safety standards set forth in subsection 3590.80.

8. Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth state codes and NFPA 855. Maintenance provisions will be driven by manufacturer requirements for the specific listed system.

9. Depending on the location of the BESS in relation to and its interaction with the electrical grid, interconnection will be completed per 527 CMR 12.00. System interconnections into utility grids shall be in accordance with NFPA 855. An accessible disconnect is required per 527 CMR 12.00.

10. Prior to the issuance of the building permit, engineering documents must be signed and sealed by a Massachusetts Licensed Professional Engineer.

11. Emergency Operations Plan. An Emergency Operations Plan compliant with NFPA 855 is required. A copy of the Emergency Operations Plan approved by the Carver Fire Department shall be given to the system owner, the local fire department, and local fire code official. For so long as the BESS is operational, the operator shall provide the Fire Department, Police Department, Building Commissioner, and Town Manager's office with contact information for personnel that can be reached 24 hours per day every day, and this contact information shall be updated by the operator whenever there is a change in the information. The operator shall also be required to have an official representative be present onsite not later than two hours after notification by the Fire Chief, Police Chief, or their designee. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

b. Procedures for inspection and testing of associated alarms, interlocks, and controls, including time intervals for inspection and testing.

c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down



equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

f. Procedures for safe disposal of battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment and any affected soils from the facility.

g. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

**12. Yearly Site Inspection Plan. Such plan shall specify that a yearly site plan is conducted by a Massachusetts Licensed Professional Engineer to document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in applicable state codes.**

**3590.70. Ownership Changes.** If the owner of the battery energy storage system changes or the owner of the property changes, the special permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Building Commissioner of such change in ownership, or operator within 14 days of the ownership change. A new owner or operator must provide such notification to the Building Commissioner in writing and meet with any permitting authority from which the original applicant received a permit.

### **3590.80. Safety**

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

a. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),

b. UL 1642 (Standard for Lithium Batteries),

c. UL 1741 or UL 62109 (Inverters and Power Converters),

d. Certified under the applicable electrical, building, and fire prevention codes as required.





e. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

2. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department.

3. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

**4. Yearly Site Inspection. A yearly inspection shall be conducted by a Massachusetts Licensed Professional Engineer per the Yearly Site Inspection Plan. A Corrective action plan shall be developed for any open or continuing issues that are reported. A report describing the results of the site inspection and corrective action plan shall be provided to the Carver Fire Department, Police Department, Carver Building Commissioner and Town Manager's Office.**

### **3590.90. Abandonment**

The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than 90 days. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, after compliance with any applicable state and federal constitutional requirements, enter the property and utilize the available bond and/or security for the removal of a Tier 2 BESS or Tier 3 and restoration of the site in accordance with the decommissioning plan.

### **3590.95 Definitions**

As used in this bylaw, the following terms shall have the meanings indicated. Terms that are not defined herein or elsewhere in this Zoning Bylaw shall be as defined in NFPA 855 if applicable.

ANSI: American National Standards Institute

Battery or batteries: A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this bylaw, batteries utilized in consumer products are excluded from these requirements.

Battery Energy Storage Management System (BESS): An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

Cell: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

Commissioning: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.



**Dedicated-Use Building:** A building that is built for the primary intention of housing battery energy storage system equipment, and complies with the following:

1. The building's only use is battery energy storage, energy generation, and other electrical grid related operations.
2. No other occupancy types are permitted in the building.
3. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
4. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
  - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

**Direct abutter:** an owner of property, as shown on the most recent applicable tax list, that is adjacent to the property(ies) seeking a permit.

**Forest Land:** an ecosystem at least one acre in size stocked with trees capable of producing timber or other wood products which have not been developed for other uses.

**Nationally Recognized Testing Laboratory (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NFPA:** National Fire Protection Association. **Non-Dedicated-Use Building:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**Non-Participating Property:** Any property that is not a participating property.

**Non-Participating Residence:** Any residence located on non-participating property.

**Participating Property:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.



**FINAL VERSION OF BYLAW ARTICLE 29 AMEND USE TABLE FOR BATTERY STORAGE**

**ARTICLE II. USE, DIMENSIONAL, AND TIMING REGULATIONS**

**2100. DISTRICTS**

2110. Establishment. For the purposes of this By-Law, the Town of Carver is hereby divided into the following districts:

RESIDENTIAL-AGRICULTURAL . . . . .	RA
GENERAL BUSINESS . . . . .	GB
VILLAGE BUSINESS . . . . .	VB
GREEN BUSINESS PARK . . . . .	GBP
HIGHWAY COMMERCIAL . . . . .	HC
VILLAGE . . . . .	V
INDUSTRIAL "A" . . . . .	IA
INDUSTRIAL "B" . . . . .	IB
INDUSTRIAL "C" . . . . .	IC
AIRPORT . . . . .	AP
SPRING STREET INNOVATION DISTRICT . . . . .	SSID

"Overlay" districts are also hereby created:

- (1) WATER RESOURCE PROTECTION DISTRICT (see Section 4300)
- (2) WETLAND DISTRICT (see Section 4400)
- (3) PLANNED TOURIST COMMERCIAL DISTRICT (PTCD) (see Section 4500)
- (4) WIRELESS COMMUNICATION FACILITIES DISTRICT(WCF) (see Section 4600)
- (5) PLANNED NEIGHBORHOOD DEVELOPMENT (PND) OVERLAY DISTRICT (see Section 2800)
- (6) LANDFILL OVERLAY DISTRICT (see Section 4680)

The boundaries of these districts are defined and set forth on the map entitled, "Zoning Map, Town of <sup>1</sup>Carver, Massachusetts", dated September 1999, as amended June, 2010 and as may be subsequently amended by vote of Town Meeting. This map is on file with the Town Clerk. This map and all explanatory matter therein are hereby made a part of this Zoning By-Law.

2120. Boundary Definition. Except when labelled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad, or utility easement center or layout lines, boundary or lot lines at water body shoreline or the channel of a stream, shall be construed to be actually at those lines; when shown approximately parallel, perpendicular, or at an angle to such lines shall be construed to be actually parallel, perpendicular, or at an angle thereto. When not located in any other way, boundaries shall be determined by scale from the map.

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**PART A AMEND 2230**

**2200. USE REGULATIONS**

2210. General. No structure shall be erected or used or land used except as set forth in Section 2230, "Use Regulation Schedule", or in Section 2240, "Accessory Buildings and Uses", unless exempted by Section 2250, or by statute. Uses not expressly provided for herein are prohibited.

Symbols employed below shall mean the following:

- Y A permitted use.
- N An excluded or prohibited use.
- SP A use authorized under special permit from the Board of Appeals as provided under Section 5300.
- SP\* A use authorized under special permit from the Planning Board as provided under Section 5300.
- SP# A use authorized under special permit from the Board of Selectmen as provided under Section 5300.

2220. Applicability. When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2230. Use Regulation Schedule

Principal Use	USE REGULATION SCHEDULE										
	RA	HC	GB	VB	V	GBP	IA	IB	IC	AP	SSID
<b>A. RESIDENTIAL</b>											
Detached single-family dwelling	Y	N	Y	N	Y	N	N	N	N	N	N
Conservation subdivision	SP*	N	N	N	N	N	N	N	N	N	N
Duplex and Two Family Dwelling	SP*	N	SP*	SP*	SP*	N	N	N	N	N	N
Planned Neighborhood Development	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*
Townhouse Development	SP*	SP*	SP*	N	SP*	N	N	N	N	N	N
Mixed Use Structures	N	N	Y	Y	Y	N	N	N	Y	N	SP*
Dwelling units above commercial or office uses	N	N	SP*	SP* <sup>6</sup>	SP* <sup>6</sup>	N	N	N	SP*	N	SP*

<sup>6</sup> see Section 2273





Agricultural use exempted by G.L. c. 40A, s. 3	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Agricultural use not exempted by G.L. c. 40A, s. 3	SP	N	Y	Y	Y	N	Y	Y	Y	Y	N
Cranberry receiving station	SP	N	SP*	N	N	N	Y	Y	Y	Y	N
Child care facility or day care facility exempted by GL c. 40A, s. 3	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Municipal facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Airport	N	N	N	N	N	N	N	N	N	Y	N
Heliport	N	N	N	N	N	N	SP*	SP*	N	SP*	N
Cemetery	SP	N	SP	N	SP	N	N	N	N	SP	N
Earth Removal+	Y	N	Y	N	N	N	Y	Y	N	Y	N
Mobile Home Park	SP	N	N	N	N	N	SP	SP	N	SP	N

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Principal Use	USE REGULATION SCHEDULE										
	RA	HC	GB	VB	V	GBP	IA	IB	IC	AP	SSID
<b>B. COMMERCIAL</b>											
Office, including medical office	N	Y	Y	Y	SP*	Y	Y	N	Y	SP*	Y
Bank, including free-standing ATM & drive-in facilities	N	Y	Y	Y	SP*	Y	SP*	N	SP*	SP*	SP*
Retail sales with manufacturing or assembly in a building less than 20,000 sq. ft. building footprint.	N	Y	SP*	Y	SP*	Y	SP*	SP*	N	SP*	SP*
Retail sales or rental less than 80,000 square feet in gross floor area for a single structure without display outdoors	N	Y	Y	N	SP*	Y	SP*	N	N	N	SP*
Retail sales or rental less than 80,000 square feet in gross floor area for a single structure with display outdoors	N	Y	SP*	N	N	SP*	SP*	N	N	N	SP*
Retail sales or rental less than 25,000 sq. ft. in gross floor area for a single structure without display outdoors	N	Y	SP*	Y	N	Y	SP*	N	N	N	SP*
Retail sales or rental less than 25,000 sq. ft. in gross floor area for a single structure with display outdoors <sup>1</sup>	N	Y	SP*	Y	N	Y	SP*	N	N	N	SP*
Motor vehicle service station	N	SP*	SP*	SP*	N	N	Y	N	N	N	N
Motor vehicle repair shop	N	SP*	SP*	SP*	N	N	Y	N	N	N	N
Establishment for the sale or consumption of alcoholic beverages, with or without entertainment, including clubs,	N	SP	SP	SP	SP	N	SP	SP	N	SP	SP



whether for profit or not for profit												
<b><u>B. COMMERCIAL</u></b>	<b>RA</b>	<b>HC</b>	<b>GB</b>	<b>VB</b>	<b>V</b>	<b>GBP</b>	<b>IA</b>	<b>IB</b>	<b>IC</b>	<b>AP</b>	<b>SSID</b>	
Junkyard or automobile graveyard	N	N	N	N	N	N	N	N	N	N	N	N
Hospital or sanitarium	N	Y	SP	N	N	Y	SP	N	N	N	SP	
Convalescent or nursing home, or assisted elderly housing	SP	Y	SP	N	N	N	SP	N	N	N	Sp	
Hotel or motel	N	Y	SP*	N	N	Y	SP*	N	N	N	SP	
Bed and Breakfast	SP*	N	Y	Y	SP*	N	N	N	N	N	SP	
Print shop	N	Y	SP*	Y	N	Y	Y	N	Y	N	Y	
Craftsman/Tradesman	N	Y	Y	Y	Y	Y	N	N	Y	N	Y	
Essential services	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Service shop	N	Y	Y	Y	Y	N	N	N	Y	N	Y	
Restaurant, not including fast-food or drive-in restaurant	N	Y	Y	Y	SP*	SP*	SP*	N	N	SP*	Y	
Fast-Food or drive-in restaurant	N	SP*	SP*	SP*	SP*	N	N	N	N	SP*	SP*	
Places of assembly	N	SP*	SP*	N	SP*	N	SP*	N	N	N	N	
Animal Hospital or Hobby or Commercial Kennel <sup>2</sup>	SP*	SP*	SP*	SP*	SP*	SP*	Y	SP*	N	N	SP*	
Drive-in service at facility other than restaurant or bank	N	SP*	SP*	SP*	SP*	SP*	SP*	N	SP*	SP*	SP*	
Adult Use	N	N	N	N	N	N	SP	SP	N	N	N	
Landscaping business <sup>3</sup>	SP*	N	SP*	N	SP*	N	Y	N	N	N	N	
Nursery/Greenhouse	Y	N	Y	SP*	SP*	N	Y	Y	Y	N	N	
Car wash	N	N	SP*	N	N	N	Y	N	N	N	N	
Commercial recreation, outdoors <sup>3</sup>	SP*	N	SP*	N	N	N	SP*	N	N	N	N	
Major Commercial Project	N	SP*	SP*	N	SP*	SP*	SP*	SP*	N	SP*	SP*	
Tattoo Parlor/Body Piercing	N	SP*	N	N	N	N	SP*	SP*	N	N	N	



Non-Exempt educational use	N	Y	N	SP*	N	Y	SP*	SP*	N	N	Y
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Principal Use	USE REGULATION SCHEDULE											
	RA	HC	GB	VB	V	GBP	IA	IB	IC	AP	SSID	
<b>C. INDUSTRIAL</b>												
Light manufacturing in a building with less than 20,000 sq.ft. building footprint	N	N	N	N	N	Y	Y*	Y*	N	SP*	Y	
Light manufacturing in a building with more than 20,000 sq.ft. building footprint	N	N	N	N	N	Y	SP*	Y	Y	N	Y	
Manufacturing, processing, assembly, or fabrication in a building with less than 20,000 sq. ft. building footprint	N	N	N	N	N	Y	SP*	SP*	N	N	N	
Manufacturing, processing, assembly, or fabrication in a building with more than 20,000 sq. ft. building footprint	N	N	N	N	N	Y	SP*	SP*	N	N	N	
Wholesale, warehouse, or distribution facility in a building with less than 20,000 sq. ft. building footprint	N	N	N	N	N	Y	Y	Y	Y	SP*	SP*	



Wholesale, warehouse, or distribution facility in a building with more than 20,000 sq. ft. building footprint	N	N	N	N	N	Y	SP*	SP*	N	SP*	SP*
Bituminous concrete or concrete batching plant	N	N	N	N	N	N	N	SP*	N	N	N
Contractor's yard	N	N	N	N	N	SP*	SP*	SP*	Y	N	SP*
Sawmill <sup>4</sup>	SP	N	SP*	N	N	SP*	SP*	SP*	N	N	N
Truck, bus or freight terminal	N	N	N	N	N	SP*	SP*	SP*	N	SP*	N
Auto Body Shops	N	N	N	N	N	N	Y	Y	N	N	N
Self-Storage Facility	N	N	N	N	N	Y	Y	N	N	Y	N
Research and Development facilities, not limited to Renewable or Alternative Energy research and development facilities	N	N	N	N	N	Y	Y	Y	Y	N	Y

Principal Use	USE REGULATION SCHEDULE										
	RA	HC	GB	VB	V'	GBP	IA	IB	IC	AP	SSID
<u>C. INDUSTRIAL</u>											
Large-scale ground mounted solar photovoltaic	SP*	N	N	N	N	SP*+ +	SP*	SP*	SP*	SP*+ +	N



installations											
<b>Battery Storage Tier 1</b>	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Battery Storage Tier 2</b>	SP*	SP*	SP*	N	N	SP*	SP*	SP*	SP*	SP*	SP*
<b>Battery Storage Tier 3</b>	NSP*Y	SP* Y	NSP* Y	NSP* Y	NSP* Y	N	SP* Y	SP* Y	SP* Y	SP* Y	NSP* Y

+ Allowed by right with approval by the Earth Removal Committee under the General Bylaws.  
 ++ Denotes Large Scale Ground Mounted Solar Photovoltaic limited to 15% maximum area within the underlying zoning district  
 +++ See Section 4950

- <sup>1</sup> Outdoor displays and sales of flowers and plants are allowed by special permit in the Village District.
- <sup>2</sup> The raising, breeding, and training of dogs that qualifies as agricultural use under G.L.c. 40A Section 3 shall be allowed on parcels of more than 5 acres in any district. See Section 6.1 of the General By-laws
- <sup>3</sup> Minimum sites of 5 acres in RA district
- <sup>4</sup> Minimum sites of 5 acres in RA District
- <sup>5</sup> Does not include package treatment plants as accessory uses to subdivision, commercial or industrial development which are permitted by right as an accessory use structure.

2240. Accessory Buildings and Uses. Any use permitted as a principal use is also allowed as an accessory use, as are others customarily accessory and incidental to permitted principal uses.

- a. The occupation or profession shall be carried on wholly within the principal building, or alternately the home occupation may be carried on within a structure accessory thereto.

2241. Home Occupations As of Right. Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by a resident of that dwelling; provided, however, that all of the following conditions shall be satisfied:

- a. The occupation or profession shall be carried on wholly within the principal building; or alternately the home occupation may be carried on within a structure accessory thereto which has been in existence at least three (3) years, without extension thereof.
- b. Not more than thirty (30) percent of the combined floor area of the residence and any qualified accessory structures shall be used in the home occupation.



- c. No person not a member of the household shall be employed on the premises in the home occupation.
- d. The home occupation shall not serve clients, customers, pupils, salespersons, or the like on the premises.
- e. There shall be no sign, exterior display, no exterior storage of materials, and no other exterior indication of the home occupation, or other variation from the residential character of the premises.
- f. No disturbance, as defined in Section 3410, shall be caused, nor shall the home occupation use or store hazardous materials in quantities greater than associated with normal household use.
- g. Traffic generated shall not exceed volumes normally expected in a residential neighborhood.

2242. Home Occupations by Special Permit. Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by a resident of that dwelling upon the issuance of a special permit by the Board of Appeals; provided, however, that all of the following conditions shall be satisfied:

- a. All of the requirements of Section 2241.a, 2241.b, and 2241.g.
- b. Not more than one (1) person not a member of the household shall be employed on the premises in the home occupation.
- c. An unlighted sign of not more than three (3) square feet in area may be permitted. The visibility of exterior storage of materials and other exterior indications of the home occupation, or other variation from the residential character of the premises, shall be minimized through screening and other appropriate devices.
- d. Parking generated by the home occupation shall be accommodated off-street, other than in a required front yard, and shall not occupy more than 35% of lot area.
- e. No disturbance, as defined in Section 3600, shall be caused. The use or storage of hazardous materials in quantities greater than associated with normal household use shall be subject to design requirements to protect against discharge to the environment.

2243. Accessory Scientific Uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.

2244. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than one person in a single-family dwelling by the owner/occupant thereof shall be a permitted accessory use. The renting of rooms and/or furnishing of board to two, three or four





persons in a single-family dwelling by the owner/occupant thereof shall be an accessory use permitted upon the issuance of a special permit by the Board of Appeals.

2245. Dimensional Regulation: Accessory Uses. Accessory structures may not be placed within required yards; provided, however, that

- a. permitted signs may be located within a required front yard; and
- b. a permitted one-story accessory structure may be located within a required rear or side yard provided that it is not located within 10 feet of any property line or in front of the front line of the principal building. However, where a detached single-family dwelling is located one hundred (100) feet or more back from the front lot line, an accessory building may be placed within the front yard provided that said accessory structure is located no closer than sixty (60) feet from the front property line and meets all other setback requirements for an accessory structure. An accessory structure in a mobile home park may be located any distance from any property line, provided it is behind the front line of the principal structure and at least five (5) feet from any dwelling.
- c. garages, tool sheds, shops, well houses, and the like shall not exceed a floor area of 700 square feet. Barns or buildings used to house animals or poultry shall not exceed a floor area of 600 square feet, unless located on a lot greater than 5 acres.

2246. Major Recreational Equipment. No major unregistered recreational equipment shall be stored on any lot in a residential district other than in a carport or enclosed building or behind the front building line of the principal building, provided however that such equipment may be parked anywhere on residential premises for a period not to exceed seventy-two (72) hours. No such equipment shall be used for living or housekeeping purposes when stored on a residential lot, or in any location not approved for such use. All equipment which does not conform to these regulations shall be considered nonconforming.

2250. Nonconforming Uses and Structures.

2251. Applicability. This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

2252. Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

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2253. Nonconforming Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- a. Reconstruction, extension or structural change of a nonconforming structure, provided said reconstruction, extension or change does not increase an existing nonconformity or create a new nonconformity including, but not limited to, an extension of an exterior wall at or along the same nonconforming distance within a required yard. Except as provided in Section 2254, any increase in an existing structural nonconformity or creation of a new structural nonconformity may be permitted only upon the issuance of a variance.
- b. Alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
- c. Reconstruction after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within eighteen (18) months after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure.

2254. Nonconforming Single and Two Family Residential Structures. Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Zoning Enforcement Officer that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. In the event that the Zoning Enforcement Officer determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

2255. Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law.

2256. Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert back to a nonconforming use.

2257. The following circumstances shall not be deemed to increase the non-conforming nature of any residential structure:

- a. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient area, where the alteration will also comply with all of said current requirements.



b. alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements.

c. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

d. alteration to the side or face of a structure which encroaches upon a required yard or setback area, where the alteration will not encroach upon such area to a distance greater than the existing structure; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.

e. alteration to a non-conforming structure which will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded.

#### 2260. Accessory Apartments.

2261. Purpose. For the purpose of enabling elderly (as defined by 55 years of age and older) and/or handicapped persons to provide small additional dwelling units to rent or reside in without adding to the number of buildings in the Town, or substantially altering the appearance of the Town for the reason of (a) enabling elderly/handicapped owners of single family dwellings to share space and the burdens of home ownership or (b) providing an alternative housing option for elderly/handicapped persons. Accessory apartments shall not be allowed in a Townhouse Development pursuant to Section 3900.

An accessory apartment is incorporated within or attached to a single-family dwelling and is a subordinate part of the single-family dwelling and complies with the criteria below.

#### 2262. Requirements.

- a. The gross (floor) living area shall not be greater than or be limited to eight hundred (800) square feet.
- b. Once an accessory apartment has been added to a single-family residence, the accessory apartment shall never be enlarged beyond the eight hundred (800) square feet.
- c. The owner(s) of the residence in which the accessory unit is created must continue to occupy the single-family house as their primary residence. The Permit shall automatically lapse if the owner no longer resides at the home.
- d. This section shall specify that the owner must reside at the home. The owner shall provide to the Building Commissioner a notarized letter stating that the owner does live at this home and that this is their primary residence.
- e. Any new outside entrance to serve an accessory apartment shall be located on the side or in the rear of the building.
- f. Only one (1) accessory apartment may be created within a single-family house or house lot.



- g. An accessory apartment may not be occupied by more than three (3) people.
- h. All parking to the single-family home and the accessory apartment shall be provided off-street.

2263. Conditions of Issuance of Permit. Permit for an accessory apartment is only good for three (3) years. Subsequent permits issued for an existing accessory apartment shall be granted after certification by affidavit is made by the applicant to the Building Commissioner that the accessory apartment has not been extended, enlarged or altered to increase its original dimensions, as defined in the initial permit application, and that the unit still meets the requirements of 2262.

#### 2270 Accessory Dwelling Units above Commercial Developments.

##### 2271. Purpose

For the purpose of allowing a mixture of different types of residential housing in the Town without increasing the number of buildings, or substantially altering the appearance of the Town and to allow greater utilization of commercial developments, a special permit may be granted in accordance with the following requirements.

##### 2272. Procedure

The Planning Board is hereby designated the Special Permit Granting Authority (SPGA) for Accessory Dwelling Units above Commercial Developments. Accessory dwelling units above commercial developments may only be allowed in the Village and General Business Districts.

The SPGA shall follow the procedural requirements for special permits as set forth in Section 9 of M.G.L. Chapter 40A. After notice and public hearing and after due consideration of the reports and recommendations of other town boards, commissions and or departments, the SPGA may grant such a permit.

Commercial buildings may be permitted a base density of two accessory dwelling units to be located on the second floor. Additional accessory dwelling units may be permitted in the special permit application by the transferring of development rights. The number of accessory dwelling units that may be permitted shall be determined by using the total gross square feet of first floor commercial space multiplied by .001. The maximum number of accessory dwelling units allowed for any commercial building shall be 15.

##### 2273. Design Requirements

- a. All commercial developments with accessory dwelling units shall be limited to a maximum of two stories.
- b. The primary entrance/stairway to the second story accessory dwelling units shall be enclosed.
- c. One clearly marked parking space within 100 feet of the primary entrance should be provided per unit. This space may be double counted towards the total parking requirement





of the development depending on the commercial uses, traffic flow and other site conditions as determined by the Board. In cases where the Board may have concerns about the total number of parking spaces, a condition of the permit may require the applicant to provide additional spaces.

- d. The development shall conform to the applicable requirements of Title V of the State Environmental Code and compliance with any conditions which may be imposed by the Board of Health with regard to sanitary wastewater disposal on the site.
- e. The Architectural details including the textures of the walls and roof materials of new building or additions to existing buildings should enhance the rural character of the development and surrounding area. The use of pitched roofs, dormers and setbacks to alter the roofline is encouraged.
- f. Design shall meet Massachusetts State Building Code.
- g. All commercial developments with accessory dwelling units shall be limited to 1,000 square feet of total gross livable space/unit.
- a. Dwelling units may be allowed on the ground floor under this Special Permit provision in a Village (V) or Village Business (VB) District provided they meet all other requirements under *Section 2270*.

