

# LAND USE PERFORMANCE STANDARDS

For the Town of

## CHARLEMONT, MASSACHUSETTS

As voted September 28, 1981, Town Meeting and approved by the Attorney General on January 6, 1982, and amended at the May 6, 1985 Town Meeting and approved by the Attorney General on June 6, 1985, and amended at the May 1, 1995 Town Meeting and approved by the Attorney General on September 5, 1995, and amended at the October 19, 1999 Town Meeting and approved by the Attorney General on February 28, 2000.

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## ARTICLE I - PURPOSE

The purpose of this by-law is to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, drainage, schools, parks, open space and other requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of light and pollution of the environment; to regulate land uses that have an impact on the Town's natural, fiscal, and physical capacities; to maintain the scenic value of the Mohawk Trail as an attraction to recreation and tourist activities; and to preserve and increase amenities by the promulgation of regulations to fulfill said purposes, in accordance with the provisions of Chapter 40A, G.L., and Article 89 of the Amendments to the Constitution.

## Article II - ADMINISTRATION

### Section 21 Enforcement

21.1 Land Use review. The Building Inspector shall administer and enforce the Land Use By-law. Buildings or Structures may be constructed, altered or changed in use only upon certification by the Building Inspector that such action is in compliance with the then applicable By-law and that all necessary permits have been received from those agencies from which approval is required by Local, State and Federal law.

Issuance of a Building permit or Certificate of Use and occupancy, where required under the State Building Code, and a Special Permit if required by this By-law, shall serve as such certification. Applications for such certification shall be made to the Building Inspector who shall determine whether the proposal is eligible to proceed, requires a Special Permit, or is not in compliance with the By-law.

Certain minor activities which do not require a permit under the State Building Code and are not regulated elsewhere in this By-law do not require certification under Section 21.1.

21.2 Penalty. Any person violating any of the provisions of this By-law may be fined not more than Fifty Dollars (\$50) for each offense. Each day that such violation continues shall constitute a separate offense.

### Section 22 Board of Appeals

There is hereby established a Board of Appeals of three members and two associate members, to be appointed by the Selectmen, which Board of Appeals shall act on all matters within its jurisdiction under this By-law and chapter 40A of the General Laws in the manner prescribed by the said law and by this By-law.

### Section 23 Special permits

23.1 Special Permit Granting Authority special permits shall be granted by the Planning Board only for proposals in compliance with the provisions of this by-law, and of Chapter 40A, G.L., and upon written determination by the Planning Board that the proposal will not have adverse effects which overbalance its beneficial effects on the town, as measured by the purposes of the By-law. In acting on special permits the Planning Board shall consider the special permit Criteria listed in Section 32.2.

23.2 Procedures. Special permits shall only be issued following public hearings held within 65 days after filing of an application with the planning board, a copy of which shall forthwith be hand-delivered or sent by certified mail to the Town Clerk by the applicant.

23.3 Permit lapse. A special Permit shall lapse 24 months after the date of granting of the permit if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun sooner except for good cause. The 24-month period shall be extended by the time required to pursue and await the determination of an appeal (referred to in Section 17 of Chapter 40A, G.L.).

### Section 24 Validity

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof.

### Section 25 Applicability

Where the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this by-law shall control.

### Section 26 Amendments

These By-laws may be amended from time to time in the manner described in Chapter 40A, G.L..

### Section 27 Associate Member to the Planning Board

The first person serving as an associate member to the Charlemont Planning Board shall be appointed to serve until the next Town election pursuant to Massachusetts General Laws chapter 41, Section 11. Thereafter, the associate member shall be elected to serve for a term of three (3) years.

The chairperson of the Charlemont Planning Board may designate the associate member to sit on the Board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.

### ARTICLE III - GENERAL REGULATIONS

The following regulations shall apply throughout the Town of Charlemont and to all land uses, unless otherwise specified herein

#### Section 31 Pre-existing Uses, Structures and Lots

31.1 Continuation and Restoration Any use of structure, whether conforming to this By-law or not, may be continued if that use of structure was lawfully existing at the time that it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause, but if discontinued for more than 24 months or abandoned, subsequent use shall comply with this By-Law.

31.2 Nonconforming Uses. Any use or structure not conforming with the By-law may be continued if the use or structure was lawfully existing at the time it became nonconforming, subject to the following:  
As provided in MGLA ch 40A, s6, a nonconforming single or two family dwelling may be altered or extended provided that doing so does not increase the nonconforming nature of said structure. Additions and accessory buildings which are associated with existing residences that are nonconforming by reason or being closer to lot boundaries than is permitted by these by-laws may be built as close, but not closer, to the lot boundaries than the existing residence. Other nonconforming structures or nonconforming uses of structures or land may be extended or changed to another nonconforming use only if granted a Special permit by the Planning Board, upon the Board's determination that the extension or change of use will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

31.3 Nonconforming Lots. Requirements for lot size, frontage, and front, side, and rear yards shall not apply to a lot for single-family or two-family residential use which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with other adjoining land, conformed to the then existing requirements,

and had less than the requirements of this By-law but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

31.4 Conformance. Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-law unless the use or construction is commenced within a period of six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### Section 32 Use Regulations

Any otherwise lawful activity meeting all requirements of this and other Town by-laws shall be permitted except as follows:

32.1 Uses Requiring Special Permit from Planning Board. For each of the following see also section 32.2 special Permit criteria.

- a) New buildings containing three or more dwelling units.
- b) Conversion of existing buildings into three or more dwelling units.
- c) Commercial, business, and industrial uses (excluding the Cottage Industry)
- d) Mobile homes, mobile home parks, and campgrounds.
- e) Uses involving four or more full-time, or equivalent, employees on the premises or which involve six or more parking spaces.
- f) Any development involving a total of more than 10,000 square feet of floor area.
- g) A building or structure over 32 feet in height.
- h) Off-premises signs providing directions to businesses or activities in abutting towns.
- i) Accessory scientific research or development, as provided by Paragraph 9 of Section 9, Chapter 40A.

32.2 Special Permit Criteria. In acting upon special Permits, the Planning Board shall consider the following criteria:

- a) The degree to which the activity, site plan, and building design are consistent with development of tourist activity in Charlemont.
- b) Capability of the Town to service the premises, considering existing roads, Town equipment, and other municipal services
- c) Impact on the Town's educational facilities.
- d) Consequences for adjoining premises of sound, light, odor, noise, or other disturbances.
- e) The degree to which the proposal results in topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.
- f) Sight distance and traffic safety at the entrance to the Mohawk Trail, Town roads or other public ways.
- g) Environmental compatibility of the proposal with the neighborhood character.
- h) Employment and fiscal consequences.

Section 33 Dimensional Requirements

A structure shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following requirements:

33.1 Lot Area.

- a) Basic minimum lot area for all permitted uses shall equal 45,000 square feet provided that existing ground slope in areas to be disrupted by construction averages 15% or less; bedrock, hardpan, and seasonal high water table are at least six feet below proposed finished grade; and percolation rate when tested as required by Title 5 of the state Environmental Code equals 10 minutes or less per inch. Where one or more of these conditions does not exist, basic minimum lot area shall equal 66,000 square feet.
- b) The required lot area for any multi-family dwellings and

mobile home parks shall be increased by one-third of basic minimum lot area for each dwelling unit in excess of one. The required lot area for motels and campgrounds shall be increased by one-third of basic minimum lot area for each two motel guest units or campground sites in excess of two.

- c) Required lot area shall be twice the basic minimum lot area for non-residential uses requiring on-site waste disposal systems with capacity of 2,000 gallons per day or more.

33.2 Lot Frontage. The minimum lot frontage shall be 150 feet measured along a public way or a way legally sufficient for the sub-division of land under the requirements of section 81L, Chapter 41, G.L.

33.3 Front yard. The minimum distance between the front lot line and any structure (other than a sign, fence or wall) shall be fifty (50) feet, except that the required distance shall be seventy-five (75) feet for a lot with the front lot line on the Mohawk Trail.

The Board of Appeals, after a hearing, may reduce the required front yard to a distance not less than the front yard of an existing abutting structure located within 100 feet or the common property line if the lot size or topography is such that a hardship would result from enforcement of the front lot requirements.

33.4 Side and Rear Yards. Any structure (other than sign, fence, or wall) shall be located at least 25 feet from any lot line other than a street line. However no side or rear yard need exceed the side or rear yard maintained for an existing abutting structure. In no case shall a structure be placed within 15 feet of the lot line.

33.5 Back Lot Development. A lot recorded or registered prior to the adoption of these By-laws and which has no contiguous land in common ownership may be divided into two lots even though one of the lots does not meet the minimum frontage requirement, provided that the following conditions are met:

- a) One lot shall nest all of the dimensional requirements of Section 33.
- b) The other lot shall have (1) a minimum of 20 feet of frontage; (2) a connecting strip from the street to the lot which as a minimum width of 20 feet; (3) width where the principal building is to be erected at least equal to the normal required lot frontage; and (4) lot area, exclusive of the connecting strip, at least equal to the normally required lot area.

33.6 Cluster Development. The Planning Board may grant a Special Permit for cluster development on parcels containing five times the minimum lot size or more, as authorized by Section 9 or chapter 40A. Usual lot area and frontage requirements shall not apply to individual lots. If open space equal to 30% or more of the cluster area is reserved, the Planning Board may grant a special Permit for an increase of up to 20% above the otherwise applicable density.

#### Section 34 Environmental Controls

34.1 Screening. Open storage and loading or service areas shall be screened from any adjacent residence or public way by planting or opaque fencing not inconsistent with neighborhood character.

34.2 Hazard. No use shall be allowed which would create hazard due to explosion, fire, or other similar causes. Other potentially hazardous conditions shall be fenced, covered, or otherwise rendered safe.

34.3 Erosion Control. The Building Inspector may require for any proposed development that site design, building design, and construction procedures be modified so as to protect soil from erosion or excessive uncontrolled surface water runoff. No grading or construction shall take place on slopes in excess of 25% except under special Permit from the planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface runoff, or other environmental degradation. To ensure compliance with these requirements, the Building Inspector or Planning Board may require topographic data prior to acting upon an application for a permit.

#### Section 35 Parking and Loading Requirements

35.1 Parking Requirements. All parking demand created by new structures or uses; additions to existing structures or uses, and change of use in existing structures shall be accommodated on the premises entirely off-street other than in a required front yard. Normally this will require two parking spaces per dwelling unit, one parking space per motel guest unit, one space per employee, one space per 150 square feet of retail floor space.

35.2 Parking Areas for 10 or More Vehicles. The following shall apply:

- a) Their use shall not require backing onto a public way.

- b) There shall be not more than one entrance and one exit from such lots per 300 feet of street frontage or fraction thereof. If necessary to meet this requirement, arrangements shall be made for shared egress.
- c) Such lots may be required to be screened from any abutting residential use by dense shrubs and trees or opaque fencing not inconsistent with the neighborhood character

35.3 Loading Requirements Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions or to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or off a public way, or be parked on a public way, or be parked on a public way while loading, unloading, or waiting to do so.

### Section 36 Sign Regulations

36.1 On-Premise signs. Any dwelling or its accessory uses may have a single sign of not more than four square feet. Any non-residential premises may have a single on-premises sign of not more than eighteen square feet. In special instances, the Planning board may issue a Special permit for more than the number of signs herein before specified which have an aggregate total or not more than sixty four square feet, upon the Board's determination that the sign will serve the informational needs of the monitoring public, will not obscure the legibility of existing signs on adjacent premises, will not obstruct sight distance of traffic on the highway, will chiefly identify the local business rather than standard product brand names, employs minimum wording to enhance legibility, and is consistent with a rustic and rural character. The special permit shall specify the size and location of the sign(s) and impose other terms and regulations as the Planning Board may deem to be in the public interest. Internal signs serving a business or premises which are not visible from the road or adjoining premises and not intended to be viewed from a road are exempt from the provisions of Section 36.1.

36.2 Off-premise Sign. (See also Section 32.1 "Uses Requiring Special Permit".) Off-premise signs (Signs with content not relating exclusively to the premises they are on) shall be not more than 18 square feet in size.

36.3 General Sign Regulation. No sign shall flash or display movement. No sign shall be placed or erected near a Town street intersection in such a manner as to be a hazard to the safe flow of traffic.

## ARTICLE IV - SPECIAL REGULATIONS

The following regulations apply only to special locations or to special uses, as specified below.

### Section 41 Multi-family Dwelling

Special Permits authorizing multi-family dwellings shall be granted by the Planning Board only for proposals complying with the locational and density requirements of Article III, and if the Planning Board determines that the following are met:

- a) No structure shall be closer to another or to a side or rear lot line than its building height.
- b) Site design shall minimize topographic changes and removal of existing trees or other important natural features.
- c) Visibility of parking area from public ways shall be minimized through use of building placement, topography, or vegetative screening.
- d) Lot size shall be not less than required in section 33.1 (b).

### Section 42 Mobile Home Parks and Campgrounds

Special Permits for mobile home parks and campgrounds shall be granted only on parcels which are at least 10 times the size of the basic minimum lot area (33.1 (a)).

### Section 43 Timber Harvesting

Slash shall be cleared from within 50 feet of any public way and from within 25 feet of any stream or property line.

### Section 44 Cell Towers

#### PURPOSE

The purpose of these regulations is: 1) to minimize the adverse impact of wireless communications towers, antennas, and facilities on Charlemont's unique community character and natural amenities; 2) to minimize the overall number and height of such facilities; 3) to regulate the siting of towers in an effort to aid the provision of communication services; 4) to also ensure that no discrimination occurs with competing providers.

#### DEFINITION

A WIRELESS COMMUNICATION FACILITY; as used in this title, shall be defined in the same manner as in Title 47, United States Code, Section 332(c) (7) (C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave

signals used for communication, cellular phone, personal communication services, enhanced specialized mobile radio and any other wireless services licensed by the FCC and unlicensed wireless services.

#### CONDITIONS

- a. To the extent feasible, wireless communication facilities shall be placed on existing structures, including water tanks, towers and electrical transmission lines, or concealed within church spires, barn cupolas, and the likes.
- b. To the extent feasible they shall be co-located to minimize impact to the community and the environment.
- c. The height of any portion of the facility shall be limited so that it is no more than 30% higher than the height of any forest canopy within 1,000 feet.
- d. The height of any portion shall be limited so that no light is required by regulation;
- e. To the extent feasible, the design of the facility shall minimize the visual impact on the community and the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, landscaping, and screening.
- f. All facilities shall be maintained in good order and repair, including rust and failing paint.
- g. All wireless communication facilities which have not been used for their intended purpose for two years shall be dismantled and removed at the owners expense. The carrier shall have one (1) year to complete restoration of the land and removal of the facility.
- h. Any new tower or mono-pole shall not be erected nearer to a property line than a distance equal to twice the vertical height of the structure, nor shall it be allowed nearer than 800 feet to any existing residential structure;
- i. No advertising devices shall be allowed on any wireless communication facility.
- j. A bond will be posted for the removal, maintenance, or abandonment of the facility.
- k. Clearing shall be performed in a manner which will maximize preservation of natural beauty and conservation of natural resources; which will minimize marring and scarring of landscape of silting or wet lands;
- l. That no lighting be used on any portion of the facility unless required by code;
- m. That facilities not be located on ridge lines whenever possible;

#### REGULATIONS

- a. Adhere to all wetland regulations imposed by the Charlemont Conservation Commission.
- b. Adhere to all state and federal protection acts.
- c. That facilities be monitored and security of facilities be maintained.

#### SUBMITTAL REQUIREMENTS

All special permit applications for wireless communication facilities shall be made and filed in compliance with the procedural requirements of MGL Chapter 40A Section 9. In addition, five copies of the following information, professionally prepared, must be submitted for an application to be considered complete:

- a. A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed facility, streets, topography, landscape features, and structures within 1,000 feet;
- b. A detailed site plan and elevations at a scale of 1" = 10' or larger;
- c. Color renderings and/or photographs of the visual impact of the proposed facility from a minimum of three lines of sight locations, with more locations if required by the Planning Board;
- d. Technical specification of the proposed facility, for structural integrity and potential capacity for the carriers, prepared by a Massachusetts registered professional engineer.

- e. A description of technical, economic, and other reasons for the proposed location, height and design;
- f. In the event the Planning Board determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant;

EXEMPTIONS The following types of wireless communication facilities are exempt from this section:

1. Amateur radio towers used in accordance with the terms of any amateur radio service license by the FCC, provided that;
  - a. the tower is not used or licensed for any commercial purpose,
2. Satellite dishes and antennas for residential uses.

PERFORMANCE GUARANTEES AND FEES:

1. Towers and Personal Wireless Service Facilities shall be insured by the owner(s) against damage to the persons or property. Annual proof of said insurance, shall be filed with the Town Clerk.
2. Applicant, upon obtaining a permit, shall obtain a financial surety sufficient to cover the cost of removal of the facility and the redemption of the landscape as defined under CONDITIONS; g, should the facility cease to operate.
3. A filing fee of \$200 shall be submitted with the application to cover the cost of processing and notification.

## ARTICLE V - DEFINITIONS

In this by-law the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed:

Accessory Building - A structure such as a garage, shed, or outbuilding which does not contain housekeeping facilities and whose purpose is incidental or subordinate to the primary purpose of the property.

Building - A structure enclosed within exterior walls or firewalls, built and erected and framed of a combination of any materials whether portable or fixed, having a roof to form a structure for the shelter of persons, animals, or property.

Building Height - The vertical distance from the mean finished grad of adjoining ground to the highest point of the roof for a flat or shed roofs, the deck line for mansard roofs, or the mean height between eaves and ridge for gable, hip, and gambrel roofs. Not included are spires, cupolas, antennae, or other parts or structures which do not enclose potentially habitable floor space.

Cottage Industry - Any customary home occupation, including professional offices, conducted by a resident of the premises in a room or rooms of a dwelling or accessory building, with no more than two (2) employees and requiring no significant exterior changes to the structure.

Cluster Development - A residential development in which buildings and accessory uses are clustered together into one or more groups separate from adjacent property and other groups within the development by intervening open land.

Dwelling - Any structure, including mobile homes, containing one or more dwelling units.

Dwelling Unit - A building or portion of a building providing kitchen and living quarters for a single housekeeping unit.

Lot - A continuous parcel of land in single ownership, with legally definable boundaries.

Mobile Home or Trailer - Any vehicle or object whether resting on wheels, jacks, or other foundation having no motive power and which is so designed as a dwelling unit which permits its transportation as a complete unit. It shall contain complete electrical, plumbing, and sanitary facilities. This definition shall not include those vehicles known as camping or travel trailers or motor homes.

Structure - A combination of materials assembled at a fixed location to give support or shelter such as a building, framework, retaining wall, fence, sign, or the like.