



Town of Westminster

ZONING BYLAWS GENERAL BYLAWS

**APPROVED AT THE ANNUAL TOWN MEETING
MAY 7, 2016**

Changes approved by Attorney General on September 12, 2016

Ellen M. Sheehan
Westminster Town Clerk



**TOWN OF WESTMINSTER
OFFICE OF THE TOWN CLERK**

Ellen M. Sheehan
11 South Street
Westminister, MA 01473
(978) 874-7406
FAX (978) 874-7411
E-Mail: esheehan@westminister-ma.gov

October 11, 2016

On the date above written, I have posted copies of the By-Law amendments and General amendment passed at the Annual Town Meeting on May 7, 2016 and approved by the Attorney General of Massachusetts on September 12, 2016 at the following public places in the Town of Westminister:

Senior Citizen's Center
Town Hall
Public Safety Building
Forbush Memorial Library
Depot Package Store Bulletin Board (Precinct 1)

Ellen M. Sheehan
Town Clerk



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VOTE TAKEN AT ANNUAL TOWN MEETING MAY 7, 2016

An affirmative vote was taken before Article 1 to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 36. Voted to amend the Westminister Zoning Bylaw (Chapter 205 of the Code of the Town of Westminister, Massachusetts) to establish a new Village Center District, by:

**(2/3 vote required)
UNANIMOUS**

- (1) amending the Zoning Map of the Town of Westminister, as referenced in Article III (Zoning Districts), Section 205-6 - Zoning Map, so as to establish the location and boundaries of the new Village Center District, as shown on a map entitled "Town of Westminister, Massachusetts: Proposed Village Center Zoning District Boundaries", prepared by Community Opportunities Group, Inc., dated January 4, 2016 on file in the office of the Town Clerk; and,
- (2) amending Article III (Zoning Districts), Section 205-5 – Zoning Districts Designated, to replace the words "C-III (Downtown)" with the words "VC (Village Center)"; and,
- (3) amending Article VIII (Off-Street Parking and Loading Requirements), Section 205-33 - Number of Required Spaces, Subsection A, to replace the words "Commercial III Districts" with the words "the Village Center District" in the listing of Minimum Number of Spaces for the following Principal Uses: "Retail stores and services"; "Restaurants, theaters and other places of assembly exclusive of churches"; and "Offices"; and,
- (4) amending Article IX (Special Provisions) to insert a new Section 205-39 - Village Center District Regulations, as follows, or act in relation thereto:

205.39 – Village Center District Regulations

A. Purpose

The purpose of the Village Center District is to protect and strengthen the traditional New England character of the Westminister Village Center, encourage sustainable and attractive site design, and

promote a diverse and vibrant mix of commercial, residential, institutional, and recreational opportunities in support of the commerce, health, safety, and welfare of Westminster.

B. Applicability and Severability

The regulations within this section shall apply to those lots located in whole or part within the Village Center Zoning District. The regulations established herein shall be considered controlling wherein they should be found in conflict with other sections of this bylaw. The invalidity of any section or provision of this bylaw, or its application to any development proposal, shall not invalidate any other section, provision or application of this bylaw.

C. Special Use Regulations in VC District

(1) Upper Story Residential

Forgoing the limitations established for residential units in other sections of this Bylaw, this section shall control dimensional and density requirements for upper story residential units in the Village Center district. In order to encourage increased housing opportunities in Westminster, upper story residential uses above existing first floor commercial or institutional units may be created subject to the following limitations:

(a) Existing buildings

Upper story residential units may be created in buildings that existed at the time of the adoption of this bylaw (05/07/2016) provided that the following criteria are met:

- [1] The lot contains at least 7,500 square feet of area.
- [2] The provisions of Section 205.33 shall not apply to Upper Story Residential units. The parking requirement shall be one (1) parking space per unit.
- [3] Parking for any commercial uses shall be provided as established under Section 205.33. Spaces provided may be shared use spaces provided it can be demonstrated that the combination of uses do not have concurrent peak parking demands.
- [4] Any exterior alterations to provide adequate ingress or egress must be reviewed by the Planning Board as part of site plan review.
- [5] Dwelling units created must contain a minimum of 500 square feet of gross floor area.

(b) New construction

Upper story residential units may be provided as part of new construction provided that the following criteria are met:

- [1] The lot contains at least 15,000 square feet of area.
- [2] The proposed building does not contain more than 25,000 square feet of gross floor area. Dwelling units created must have a minimum of 500 square feet of gross floor area.
- [3] The provisions of Section 205.33 shall not apply to Upper Story Residential units. The parking requirement shall be one (1) parking space per unit.
- [4] Parking for any commercial uses shall be provided as established under Section 205.33. Spaces provided may be shared use spaces provided it can be demonstrated that the combination of uses do not have concurrent peak parking demands.

(2) Provisions for Multi-Use Lots

Lots may contain more than one principal use in addition to accessory uses in the Village Center District provided that all dimensional and parking requirements are met for all uses subject to the following exemptions:

- (a) Shared use parking spaces are allowed to count toward the parking requirement provided that it can be demonstrated the combination of uses do not have concurrent peak parking demands.

D. Additional Dimensional Requirements

The Planning Board may waive any additional setbacks by Special Permit provided that relief from such dimensions provides for site design that allows for additional landscaping, lighting, sidewalks, improved pedestrian or vehicular circulation, or other such amenities that provide a public benefit.

Table 205.39.1			
Dimensional Requirement	Front	Side	Rear
Maximum Building Setback ^{1,2}	20'	-	-
Minimum Parking Setback	20'	10'	-
Minimum Landscaped Buffer	5'	5'	-
Maximum Lot Coverage	80%		
Maximum Building Height for Upper Story Residential	35 feet		

1. Maximum building setback applies only to the principal structure on the lot; additional structures are not subject to this requirement.
2. Structures on lots with fifty (50) feet of frontage or less are exempted from this requirement.

E. Additional District Sign Regulations

- (1) Signs cabinets, moving signs, and other internally illuminated signs are prohibited.
- (2) Window and door signs shall not conceal more than 30% (thirty percent) of the total area of the windows and doors on a building façade that an individual business occupies.

F. Additional Site Plan Review Standards within the Village Center District

The following Site Plan Review standards shall apply within the Village Center District, in addition to the generally applicable standards in Section 205.34(F). The Planning Board may waive any additional site plan requirements provided that relief from such standards provides improved site design or other amenities that provide a public benefit.

(1) Building Placement and Orientation

- (a) Buildings and building entrances should be oriented to face Main Street. It is especially desirable for buildings to be oriented toward Main Street instead of parking lots.
- (b) Buildings should be placed on the front of lots near Main Street to gradually realign the buildings in the Village Center District and encourage a cohesive and consistent streetscape.

(2) Landscaping

- (a) A 5' landscaped buffer should be maintained along the front property line between the public sidewalk and buildings to encourage a more hospitable pedestrian experience. The use of shade trees within the landscaped buffer area along the front lot line is highly encouraged.
- (b) Landscaping should consist of a combination of non-invasive plantings that are inclusive of low ground cover plantings, trees, shrubs, flowers, and grasses.
- (c) Landscaping should be designed to be attractive in all seasons.
- (d) Landscaping should be used to help define spaces, entry sequences, and pedestrian areas as well as screen parking facilities, utilities, mechanical equipment, and waste management facilities.

- (e) Landscaping should be maintained so as not to obscure buildings, signage, or handicap accessibility features.

(3) Pedestrian Facilities

- (a) Sidewalks should be paved with concrete and integrated within site landscaping.
- (b) Pedestrian connections should be constructed between building entrances, parking areas, and should provide connectivity with other pedestrian facilities such as public sidewalks or walkways on adjacent sites where they exist.
- (c) Existing sites with insufficient pedestrian facilities, such as limited sidewalks or no separation for pedestrian and vehicular circulation, should upgrade those facilities when doing exterior building modifications or other site upgrades.

(4) Design of Parking Facilities

- (a) Parking facilities should be screened from the streetscape with landscaping. The parking facilities serving commercial, institutional, and mixed use lots with more than five contiguous spaces or more than one row of parking spaces should be bordered by landscaped buffers. The landscaped buffers should be maintained in good condition and should utilize plantings that are attractive in all seasons.
- (b) Parking should be located behind or to the side of buildings. Parking should not be located closer to the front lot line than the front façade of the principal structure on the lot.
- (c) Parking lots should be marked with striping and signage as needed to clearly identify expected vehicular circulation patterns, queuing areas, temporary and handicap parking, and other parking limitations.

(5) Building Facades and Materials

- (a) Exterior building materials inclusive of windows, siding, doors, trim, decking, and other typical materials should be selected for their consistency in appearance with the traditional New England architectural vernacular.
- (b) High quality materials should be used on building exterior. Where synthetic materials are used, they should be close in approximation and appearance to traditional materials.
- (c) Sustainable and environmentally friendly building materials should be used whenever possible.
- (d) Materials used on the front façade of a building should be carried around on all sides of the building.
- (e) Windows in commercial structures inclusive of storefront window systems and doors should not be obscured by opaque glass.

(6) Massing, Window Fenestration (arrangement, proportioning and design), and Doors

- (a) Buildings should utilize irregular footprints, material transitions, changes in roof slope, varying building heights and massing, and architectural features such as columns, bays, or other projections. Avoiding monotonous building facades or the appearance of out of scale buildings through architectural features is strongly encouraged.
- (b) Buildings on corner lots should be oriented to face both streets and utilize high quality materials on both facades.
- (c) Flat roofs are generally discouraged unless deemed otherwise appropriate by the Planning Board. Where flat roofs are constructed, they should be adorned with a decorative parapet wall or cornice to provide screening for rooftop

equipment and maintain a consistent appearance with the traditional New England architectural vernacular.

- (d) Roofs with gables, dormers, cupolas, chimneys, or other design features are encouraged.
- (e) Building facades should have an appropriate and proportionate number of windows and doors. Windows should be selected for their consistency with the style of the building. Where windows are replaced in historic structures, the glazing of the replacement windows should be consistent with that of the original windows.

(7) Utilities and Mechanicals

- (a) Open storage areas, service areas, loading facilities, and utility buildings should be screened from the view of neighboring properties, the street, and other structures using landscaping, fencing, or other appropriate methods.
- (b) Garbage dumpsters should be enclosed by opaque fencing which should be kept closed except when being serviced and landscaping.

(8) Signs and Illumination

- (a) Signs and banners should be constructed of substantial materials.
- (b) Second story signage should be discouraged.
- (c) Illumination for signs should be provided by lamps which cast light downward.
- (d) Lighting for signage or parking should not be cast onto neighboring properties. The use of shields and other mechanisms to prevent light pollution and nuisance should be utilized to the extent necessary.
- (e) The installation of pedestrian scale lamps adjacent to pedestrian areas is encouraged. Lamps should be selected for their consistency with the character of the Village Center and should be sited appropriately to avoid visual clutter. Tall lamp posts should not be used adjacent to building, but are acceptable in the interior of large parking areas.

ARTICLE 37. Voted to amend the Westminster Zoning Bylaw (Chapter 205 of the Code of the Town of Westminster, Massachusetts) by amending Article II (Definitions), Section 205.4 – Terms Defined, as follows, (new language appears in *italics* and deleted language appears as ~~striketthrough~~).

(2/3 vote required)
UNANIMOUS

ARTICLE II

Definitions

§ 205-4. Terms defined.

For the purposes of this chapter, the following words and phrases shall have the meanings or limitations of meanings herein defined. All present tenses shall include past and future tenses and all past tense the present. All singular terms shall include the plural and the plural the singular.

ACCESSORY

A. ACCESSORY BUILDING — A building devoted exclusively to a use accessory to the principal use of the lot on which it is located.

B. ACCESSORY USE — A use incident and subordinate to and on the same lot as a principal use.

ADULT BOOKSTORE — An establishment having a substantial or significant portion of its stock-in-trade printed matter, books, magazines, picture periodicals, motion-picture films, video cassettes, or coin-operated motion-picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual conduct as that term is defined in MGL c. 272, § 31; or an establishment having for sale sexual devices, which shall mean any device primarily designed, promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or anal area, or an establishment with a segment or section devoted to the sale or display of such materials.

ADULT LIVE ENTERTAINMENT ESTABLISHMENTS (CABARET) — Establishments which feature live entertainment which consists of entertainers engaging in sexual conduct or nudity, or topless and/or bottomless wait persons or employees or any other form of nude or partially nude service or entertainment as defined in MGL c. 272, § 31.

ADULT MINI-MOTION-PICTURE THEATER — An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to sexual conduct as defined in MGL c. 272, § 31, for observation by patrons therein.

ADULT MOTION-PICTURE THEATER — An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual conduct as defined in MGL c. 272, § 31, for observation by patrons therein.

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT RETAIL USE — An establishment having 35% or more of its stock-in-trade devoted to books, magazines, publications, tapes, films and/or other items that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas.

ADULT VIDEO STORE — An establishment having a substantial or significant portion of its stock-in-trade, videos, movies or other film, material which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL c.272, § 31.

APARTMENT

A. UNIT — Any room or suite of rooms forming a habitable unit for one family with its own cooking and food storage equipment and its own bathing and toilet facilities and its own living, sleeping and eating areas wholly within such room or suite of rooms.

B. APARTMENT BUILDING — A building containing four or more apartment units, with no portion of the building below the first story or above the second story used for dwelling purposes.

C. TOWNHOUSE APARTMENT — A group of attached one-family dwellings.

ARTISANAL MANUFACTURING — A workshop for the production, in whole or in part, of custom-made goods by a skilled craft-worker or artisan which are to be sold on site.

ASSISTED LIVING HOUSING — Housing units and associated facilities designed for the elderly who require daily assistance but who do not require nursing home care. An Assisted Living Housing Unit consists of the same characteristics as a Congregate Living Housing Unit. Associated facilities typically provide additional services beyond Congregate Housing, including daily meals and personal services, medical monitoring and supervision. Assisted Living shall refer to certified Assisted Living Residences only, as regulated under EOEA 651 CMR 12.02.

BIOTECHNOLOGY — Any technology that uses living organisms or parts of organisms to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses as defined by the US Office of Technology Assessment.

BUILD — Includes the words "erect," "construct," "alter," "enlarge," "move," "modify," "excavate," "fill" and any others of like significance.

BUILDABLE LOT — With the exception of the Village Center district, each lot shall have at least half of its minimum lot size required by zoning consisting of contiguous upland. The upland area shall be exclusive of any resource area as defined by Massachusetts Wetland Protection Act Regulations 310 CMR 10.00 or Chapter 202 of the Westminster General Bylaws.

BUILDING — Includes the word "structure," unless the context unequivocally indicates otherwise. "Building" shall also mean any three-dimensional enclosure by any building materials of any space for use or occupancy, temporary or permanent, and shall include foundations in the ground; also, all parts of any kind of structure above the ground, except fences and field or garden walls or embankment retaining walls.

BUILDING SUPPLY STORE — A retail store where building materials such as lumber, bricks, plywood, dry-wall, paneling, cement blocks and other cement products, and other building supplies are stored and sold. Such merchandise may be stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property at the property line where such materials are stored.

BUSINESS OFFICES — Establishments primarily engaged in the rendering of services to other businesses, such as photo-copying, printing, blueprinting shops, advertising firms, mail and packaging services, data processing and office support services, janitorial and building maintenance, employment agencies, protective services, office equipment repair and leasing, and other similar services.

BUSINESS SERVICES — Establishments primarily engaged in rendering services to other businesses, such as photo copying, printing, and blueprinting shops, advertising firms, mail and packaging services, data processing and office support services, janitorial and building maintenance, employment agencies, protective services, office equipment repair and leasing, and other similar services.

COMMERCIAL BOARDING OR TRAINING KENNEL - An establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment at which such services are rendered in exchange for consideration and in the absence of the owner of any animal; provided, however, that "commercial boarding or training kennel" shall not include an animal

shelter or animal control facility, a pet shop licensed under MGL Chapter 129, Section 39A, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

COMMERCIAL BREEDER KENNEL - An establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

***CONGREGATE LIVING HOUSING** — As defined by the MA Office of Elderly Affairs, congregate housing is a shared living environment designed to integrate the housing and services needs of elders and younger disabled individuals. The goal of Congregate Housing is to increase self-sufficiency through the provision of supportive services in a residential setting. Congregate Housing is neither a nursing home nor a medical care facility. It does not offer 24-hour care and supervision. Services are made available to aid residents in managing Activities of Daily Living in a supportive, but not custodial environment. Each resident has a private bedroom, but shares one or more of the following: kitchen facilities, dining facilities, and/or bathing facilities.*

***DAY CARE CENTER** - Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children under seven (7) years of age, or under sixteen (16) years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents.*

DOMESTIC CHARITABLE CORPORATION KENNEL — A facility operated, owned or maintained by a domestic charitable corporation registered with the Department of Agricultural Resources or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary hospital or clinic operated by a licensed veterinarian, which operates consistent with such purposes while providing veterinary treatment and care.

DWELLING

A. **DWELLING, ATTACHED** — A building designed for or occupied as a one-family residence and separated from another attached dwelling on one or both sides by a vertical party wall.

B. **DWELLING, DETACHED** — A building designed for or occupied as a one-family residence and separated from any other building except accessory buildings by side yards.

C. **UNIT** — Same as "apartment unit."

D. **ONE-FAMILY DWELLING** — A building designed for or occupied by one family.

E. **TWO-FAMILY DWELLING** — A freestanding building, designed or intended exclusively for residential use containing two dwelling units. (This can be two attached dwelling units.)

F. **EXISTING DWELLING** — A dwelling existing at the time of adoption of this chapter.

***ENTERTAINMENT AND RECREATIONAL FACILITIES** - Buildings used for public recreation including but not limited to bowling alley, gyms, dance and yoga studios, skating rink, theater or sport arena or concert hall, provided that such use is housed indoors in sound-insulated structures.*

FAMILY — Any number of individuals, including domestic employees, living together in a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more persons who are not within the second degree of kinship to each other, as defined by civil law, shall not be deemed to constitute a "family."

***FAMILY CHILD CARE HOME** - A private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age. The total number of children under 16 in a family child care home shall not exceed 6, including participating children living in the residence. Family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation as defined and regulated under MGL Chapter 15D, Section 1A, provided that any outdoor play area is screened by fence, wall or planting line from any neighboring residential structure.*

***FARMS** —Agriculture, orchard, horticulture, or silviculture, whether or not the farm is exempted under MGL Chapter 40A, §3, provided that any building housing farm animals be not less than 50 feet from the property boundary, unless the building was in existence at the time of adoption of this chapter.*

***FINANCIAL OFFICES** - A bank, savings and loan, credit union, mortgage office, lending institution, investment-company, with or without drive-thru services and/or automated teller machine.*

***FRONTAGE** - The continuous portion of the line separating a lot from a street to which the owner of the lot has a legal right of access and to which the owner could provide for vehicular access from a principal building or a required parking space. Frontage may be measured at the front yard setback line if the street is an arc of a curve with a radius of three hundred (300) feet or less, provided that there is, in any event, not less than a fifty-foot width of such frontage at the street.*

HEIGHT OF BUILDING — Measured as the vertical distance between the highest point of the roof and the mean finished grade of the ground adjoining the building.

HOME OCCUPATION — An activity customarily carried on by the permanent residents of a dwelling unit, inside the dwelling unit, requiring only customary home equipment. "Home occupations" do not include barbershops, beauty shops, commercial offices such as real estate or insurance, nor do they involve the sale of articles produced outside the dwelling unit nor the raising or production of products involving odor, vibration, smoke, dust, heat or other objectionable effects.

HOTEL and MOTEL — A structure containing sleeping rooms with or without a common eating facility, each room having its own private toilet facilities and each room let for compensation.

***INDEPENDENT LIVING HOUSING** - Housing units and associated facilities designed for the elderly who are self-sufficient and require no on-site personal or health care services. An Independent Living Housing unit consists of a room or group of rooms designed or intended to provide a habitable unit for one or more persons with provisions for cooking, living, sanitation and sleeping for the exclusive use of the household unit. Associated facilities may include substantial common and socializing areas and other amenities as regulated under HHS 107 CMR 10:00.*

KENNEL - A pack or collection of dogs on a premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel.

***LARGE FAMILY CHILD CARE HOME** - A private residence which, on a regular basis, receives for temporary custody and care during part, or all of the day, children under 7 years of age, or children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours children of school age, but the number of children under the age of 16 in a large family child care home shall not exceed 10, including participating children living in the residence. A large family child care home shall have at least 1 approved assistant when the total number of children participating in child care exceeds 6. Large family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation as defined and regulated under MGL Chapter 15D, Section 1A, provided that any outdoor play area is screened by fence, wall or planting line from any neighboring residential structure.*

***LIFE SCIENCES** - Advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenetics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science. (M.G.L, Chapter 130 of the Acts of 2008). Facilities that utilize animal testing of products are not included in this definition.*

***LIGHT MANUFACTURING** - Place of manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor are effectively confined to the premises or are disposed of in a manner that does not create a nuisance or hazard to safety or health.*

***LIVESTOCK FARMS** - Livestock or poultry, provided that any building housing livestock or poultry be not less than 50 feet from the property boundary unless the building was in existence at the time of adoption of this chapter. The raising of swine is permitted on parcels that are at least five acres in size.*

LOADING AREA - An off-street area for the loading and unloading of goods and materials from a vehicle.

LOT — The whole area of a single parcel of land undivided by a street under one ownership, with ascertainable boundaries established by deed or deeds of record or a segment of land ownership defined by lot boundary lines on a land division plan duly approved by the Planning Board under the Subdivision Control Statute.

LOT COVERAGE — The amount of area on a lot covered by the horizontal cross section of structures, exclusive of recreational facilities such as swimming pools, tennis courts, etc. for the use of the residents.

LOT FRONTAGE — The distance measured along the boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by a town, county, or state, or along ways shown on the definitive plans of approved subdivisions which have been secured or constructed, through which actual access to the potential building site shall be required.

LOT LINE, FRONT — A line dividing a lot from a street. On any lot bounded on more than one side by a street, the street boundary that is to be the lot front shall be so designated in any application for a permit to build on such lot.

LOT LINE, REAR — Except for a triangular lot, the lot line opposite the front lot line.

LOT LINE, SIDE — Any lot line not a front or rear lot line.

LOT WIDTH — As measured wholly within such lot, the shortest distance between side lot lines at the required front yard depth.

MARINA — A commercial enterprise having an area for the storage, mooring or service of boats, with frontage on a navigable body of water and with facilities for the landing of boats. If storage is to be on land and of a transient nature requiring frequent launchings and landings, it shall be inside a building.

MEDICAL MARIJUANA TREATMENT CENTER/REGISTERED MARIJUANA DISPENSARY - A Registered Marijuana Dispensary (RMD) as defined in the regulations promulgated by the Massachusetts Department of Public Health (DPH), 105 CMR 725.000. Such facilities shall be operated and managed by a not-for-profit entity registered with the state that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses or administers medical marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients and/or their personal caregivers.”

MOBILE HOME and/or TRAILER

A. MOBILE HOME — A transportable, single-family dwelling unit built on a chassis for year-round occupancy and containing the same water supply, waste disposal and electrical conveniences as immobile housing.

B. TRAILER — The following shall be considered a trailer.

(1) TRAVEL TRAILER — A vehicular portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation and having body width not exceeding eight feet and a body length not exceeding 32 feet.

(2) PICK UP COACH — A structure to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

(3) MOTOR HOME — A portable temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(4) CAMPING TRAILER — A folding structure mounted on wheels and designed for travel, recreation and vacation use.

MOBILE HOME OR TRAILER PARK — A parcel of land which has been planned and improved for the placement of mobile homes or trailers for transient or non-transient use and is designed to accommodate two or more mobile homes or trailers.

NONCONFORMING

A. LOT — A lot that does not conform to a dimensional regulation prescribed by this chapter for the district in which it is located but was in existence at the time of adoption of this chapter and was lawful at the time it was established and conforms to the requirements of MGL c. 40A.

B. USE — A use of a building or lot that does not conform to a use regularly permitted by this chapter for the district in which it is located, but was in existence at the time of the adoption of this chapter and was lawful at the time it was established.

OCCUPIED — Includes the words "designed, arranged or intended to be occupied."

PARKING SPACE — An area containing adequate space, as determined by the Planning Board, to be used exclusively as a parking stall for one motor vehicle.

PERSONAL KENNEL - A pack or collection of more than 4 dogs, 3 months or older, owned or kept under single ownership for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the Department of Agricultural Resources, may be sold, traded, bartered or distributed if the transfer is not for profit.

PERSONAL SERVICES - Businesses where the primary occupation is the repair, care of, maintenance, or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Personal service establishments shall include but not be limited to: barber shops, beauty salons, manicurists, laundry, dry-cleaning and other garment servicing establishments, tailors, dressmaking shops, shoe repair shops, watch repair shops, opticians, tanning salons, and other similar places of businesses, but not including offices for physicians, dentists, and veterinarians.

PRIVATE NONPROFIT SOCIAL CLUB OR LODGE - Buildings and facilities owned by a corporation, association, person or persons for a social, educational, or recreational purpose, to which membership is required for participation and not primarily operated for profit nor to render a service that is customarily carried on as a business.

PROFESSIONAL OFFICES - An office or offices of recognized professions such as doctors, lawyers, licensed massage/ muscular therapists, engineers, artists, musicians, designers and others who through training are qualified to perform services of a professional nature.

PUBLIC UTILITIES - Investor-owned electric power, natural gas, and water utilities in the Commonwealth.

PUBLIC SERVICE CORPORATIONS – Those corporations located within the Commonwealth of Massachusetts that provide a public service or services, regulated by the MA Department of Public Utilities or the MA Department of Telecommunications and Cable, and which may be exempted from local zoning after a public hearing held by either department to determine the applicability of MGL Chapter 40A, Section 3 where the Town is notified as an interested party.

RECYCLING FACILITY - The use of land and/or structures for the collection and/or processing of used materials, excluding motor vehicles and excluding bottle and can redemption, whereby the resultant product is to be re-used in the same or different form or matter, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor are effectively confined to the premises or are disposed of in a manner that does not create a nuisance or hazard to safety or health.

RETAIL STORE - A business that sells consumer products directly to consumers and may include, but is not limited to department stores and stores that sell the following: furniture, clothing, hardware, household furnishing, sporting goods, electronics, and appliances,, provided that all storage and sales of

materials are conducted within a building and such building is no greater than 25,000 square feet of gross floor area.

SELF-SERVICE STORAGE (MINI-WAREHOUSE) FACILITY — An establishment consisting of a structure or group of structures containing separate storage spaces of varying sizes leased or rented for dead storage as individual leases. Individual storage spaces shall be leased or rented to tenants who are to have access to said space for the purpose of storing or removing personal property. No individual storage space shall exceed 900 square feet of gross floor area. Trucking terminals are specifically excluded from this definition and the intent is to limit the definition to that use set forth in Massachusetts General Laws, Chapter 105A, Self-Storage Facilities.

SHARED PARKING – Parking spaces that may be shared by different uses to be counted towards the parking requirement. Parking spaces to be shared should serve uses that have different hours of operation.

SIGNS — Includes any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag or representation used as or which is in the nature of an advertisement, announcement or direction or is designed to attract the eye by intermittent or rapid motions or illumination.

SPACE, HABITABLE — Those areas within the exterior walls of a dwelling which have headroom of not less than seven feet measured vertically upward from the top of the finished floor, but excluding basement areas and excluding areas in any accessory structure attached to any dwelling.

STORY — That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the average natural grade of the ground adjoining such building.

STREET — A public way or private way on record at the Registry of Deeds which affords a principal means of adequate access to abutting property and open to travel by the general public or a way shown on a subdivision plan duly approved by the Planning Board under the Subdivision Control Statute.

STRUCTURE — A combination of material assembled at a fixed location to give support or shelter, such as a building, tower, framework, platform, bin, sign or the like.

TRADE, PROFESSIONAL OR OTHER SCHOOL - A specialized instructional establishment that provides on-site training of business, commercial and/or trade skills (such as accounting, data processing, and computer repair).

UPPER STORY RESIDENTIAL – Dwelling units located above first floor commercial or institutional uses in the Village Center District.

USE — The purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

USE, PRINCIPAL — The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it is permitted to be used, occupied or maintained under this chapter.

VETERINARY KENNEL - A veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that “veterinary kennel” shall not include a hospital or clinic used solely to house dogs that have undergone veterinary treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.

YARD

- A. FRONT YARD — An open space extending the entire width of a lot from lot side line to lot side line between the front lot line or lines and the nearest point of a building.
- B. REAR YARD — An open space extending the entire width of a lot line from side line to side line between the rear lot line or the corner of a triangular lot farthest from the front lot line and the nearest point of the building.
- C. SIDE YARD — An open space extending along a side line of a lot (between the front yard and the rear yard on such lot) and extending between the side line of such lot to the nearest point of the building.

ARTICLE 38. Voted to amend the Westminster Zoning Bylaw (Chapter 205 of the Code of the Town of Westminster, Massachusetts) by revising the Land Space Requirements (Section 205, Attachment 2) as follows (new language appears in italics and deleted language appears as strikethrough).

(2/3 vote required)
UNANIMOUS

205, Attachment 2
Town of Westminster
Land Space Requirements
Chapter 205, Zoning

Zoning District	Minimum Lot Size (square feet)	Minimum Lot Frontage ¹ (feet)	Minimum Yard Depth ²			Maximum Building Height ³		Maximum Percentage of Lot Coverage ⁴
			Front ^{4,5} (feet)	Rear ⁴ (feet)	Side ⁴ (feet)	Stories	Feet	
Residence Districts								
R-I	50,000 ¹²⁻¹⁰	150 ^{5 4,12-10}	25	20	15	2½	35	20% ⁴
R-II	60,000 ^{15 12}	175 ^{5 4,15 12}	30	20	15	2½	35	20% ⁴
R-III	86,000	200	30	20	15	2½	35	20%
Commercial Districts								
C-I	40,000	150	40	40	20 ⁶	2	30	--
C-II	10,000	100	25	20	20 ⁶	2	30	--
C-III VC ⁷	--	--	15	20	10 ⁶	2	30	80%
Industrial Districts								
I-I	40,000	150 200	25 80	50	25 30 ⁸	4 2	50	65% 25%
I-II ^{13 11}	40,000	100	20 40	30	25 20 ⁸	4 2	50	65%
Floodplain and/or Wetland Protection Districts ⁹								

NOTES:

¹ ~~Frontage may be measured at the front yard setback line if the street is an arc of a curve with a radius of three hundred (300) feet or less, provided that there is, in any event, not less than a fifty foot width of such frontage at the street.~~

^{1 2} Not less than the *lot* frontage requirements shall be maintained throughout the front yard depth. ~~except as provided for in Note ¹ above.~~

^{2 3} On lots abutting streets on more than one (1) side, the front yard requirements shall apply to each of the abutting streets.

³⁻⁴ These height restrictions shall not apply to chimneys, water towers, skylights and other necessary features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy. ~~Note except that the height of wireless communications towers and associated facilities shall comply with the requirements of § 205-39.2, and the height of wind power generation facilities shall comply with the requirements of § 205-39.3. Wireless communications towers and facilities, of this chapter.~~ **[Amended STM 6-18-2001 by Art. 5]**

⁴⁻⁵ See Article IX, Section 205-37 (apartments and attached dwellings) for the dimensional requirements that apply to apartments and attached dwellings. ~~regarding uses permitted by special permit.~~

⁵⁻⁶ A dwelling need not be set back more than the average of the setbacks of dwellings on the lots adjacent to either side. If a vacant lot exists on one (1) side, it shall be considered as a dwelling set back the depth of the required front yard.

⁶⁻⁷ Except there is no requirement when the side of a building abuts another building.

⁷ See also Section 205-39 (D): Additional Dimensional Requirements.

⁸ ~~Height restrictions may be waived by the Board of Appeals for office buildings and motels, subject to the following conditions and those set forth in Article IX.~~

~~—A. Office buildings:~~

~~—(1) Minimum land area: five (5) acres.~~

~~—(2) Minimum frontage: three hundred (300) feet.~~

~~—(3) Minimum yard depths in addition to required yard depths: one (1) foot for each foot of height in excess of maximum allowed as a matter of right for the zoning district in which it is located.~~

⁸⁻⁹ Except fifty (50) feet when abutting a residential zone.

¹⁰ ~~Exclusive of recreational facilities such as swimming pools, tennis courts, etc., for the use of the residents.~~

⁹⁻¹¹ Floodplain restrictions are set forth in Article XI.

¹⁰⁻¹² **[Amended STM 11-2-1978 by Art. 4]**

¹¹⁻¹³ **[Added STM 10-10-1995 by Art. 17]**

¹⁴ ~~Except that if public wastewater disposal is not available, the yard depth and lot coverage for the I-II District shall be the yard depth and lot coverage specified for the I-I District.~~ **[Added STM 10-10-1995 by Art. 17]**

¹²⁻¹⁵ **[Added STM 10-12-1999 by Art. 15]**

¹⁶ ~~With the exception of the C-III district, each lot shall have at least half of its minimum lot size required by zoning consists of contiguous upland. The upland area shall be exclusive of any resource area as defined by Massachusetts Wetland Protection Act Regulations 310 CMR 10.00 or Chapter 202 of the Westminster General Bylaws.”~~ **[Added STM 5-5-2012 by Art. 45]**

(13) Family child care home (considered an accessory use under Item I-12)	Y	Y	Y	Y	Y	Y	Y	Y
(14) Trade, professional or other school conducted as a private business for gain	SP	N	N	Y	Y	Y	SP	SP
(15) Private nonprofit membership or social club or lodge	SP	SP	SP	Y	Y	Y	SP	SP
(16) Country Club, golf, swimming, tennis or other recreational facility	SP	SP	SP	Y	Y	Y	SP	SP
(17) Entertainment and recreational facilities operated as a business for gain, including but not limited to bowling alley, skating rink, theater or sport arena or concert hall, provided that such use is housed indoors in sound-insulated structures	N	N	N	Y	Y	Y	SP-N	SP-N
(18) Domestic charitable corporation kennel	SP-PB	SP-PB	SP-PB	N	N	N	N	N
(16) Government offices	N	N	N	N	N	Y	N	N
C. Agricultural Uses								
(1) Farms: agriculture, orchard, horticulture, or silviculture, exempted under MGL c. 40A, §3, provided that any building housing farm animals be not less than 50 feet from the property boundary, unless the building was in existence at the time of adoption of this chapter	Y	Y	Y	Y	Y	Y	Y	Y
(2) Farms: agriculture, orchard, horticulture, or silviculture, not exempted under MGL c. 40A, §3, provided that any building housing farm animals be not less than 50 feet from the property boundary, unless the building was in existence at the time of adoption of this chapter	Y	Y	Y	Y	Y	Y	Y	Y
(2) Livestock Farms	Y	Y	Y	Y	Y	Y	Y	Y
(3) One roadside stand per farm for sale of agricultural or horticultural products	Y	Y	Y	Y	Y	Y	Y	Y
(4) Farms: piggeries not exempted under MGL Chapter 40A, Section 3 on parcels less than five acres	N	N	N	N	N	N	N	N
(4) Sales places for flowers, garden supplies or agricultural produce partly or wholly outdoors, including commercial greenhouses not exempted under MGL Chapter 40A Section 3 on parcels less than 5 acres	SP	SP	SP	Y	Y	Y	SP	SP
(5) The raising of swine on parcels of five acres or more and exempted under MGL Chapter 40A, Section 3	Y	Y	Y	Y	Y	Y	Y	Y
D. Offices and laboratory								
Use	R-I	R-II	R-III	C-I	C-II	C-III VC	I-I	I-II

[illegible]

(12) Building Supply Store for retail sale of merchandise such as, but not limited to, lumberyards and building supply yards wherein merchandise is stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property at the property line where such materials are stored	N	N	N	Y	N-Y	N	SP-N	SP-N
(13) Glass sales and repairs, including auto glass repair and service	N	N	N	Y	Y	Y-SP	SP	SP
(14) Business services such as copy center or office machine repairs	N	N	N	Y	Y	Y	Y	Y
(15) Adult bookstores, adult live entertainment, adult motion picture theater, adult mini-motion picture theater, adult video store, or adult paraphernalia store (see Section 205-37.2)	N	N	N	N	N	N	SP	SP
(16) Self-storage (mini warehouse facilities)	N	N	N	N	N	N	SP	SP
(17) Commercial boarding or training kennel	SP-PB	SP-PB	SP-PB	SP-PB	SP-PB	SP-PB	SP-PB	SP-PB
(18) Commercial breeder kennel	N	SP-PB	SP-PB	N	N	N	N	N
(19) Drive-in eating places where the motorist does not have to leave his car or where food is normally consumed outside the building	N	N	N	Y	Y	Y-SP	N	N
(20) Place for exhibition, fabrication, lettering or sale of gravestones	N	N	N	SP-Y	SP-Y	SP-Y	Y	Y
F. Automotive service and open air drive-in retail service								
(1) Gasoline service stations	N	N	N	SP	SP	SP	SP-N	SP-N
(2) Sale or rental of automobiles, boats, or other motor vehicles and accessory storage	N	N	N	Y	N	N	SP-N	SP-N
(3) Automobile and motorcycle repair shops, provided that all major work is carried out within the building	N	N	N	Y	N-Y	N-SP	SP	SP
(4) Bus or other large vehicle storage or repair	N	N	N	N	N	N	Y	Y
(5) Car washing establishments	N	N	N	Y	Y	Y	SP-N	SP-N
(6) Sales places for flowers, garden supplies or agricultural produce partly or wholly outdoors, including commercial greenhouses	SP	SP	SP	Y	Y	Y	SP	SP
(7) Drive-in banks	N	N	N	Y	Y	Y	Y	Y
(8) Drive-in eating places where the motorist does not have to leave his car or where food is normally consumed outside the building	N	N	N	Y	Y	Y	N	N
Use	R-I	R-II	R-III	C-I	C-II	C-III VC	I-I	I-II
(9) Place for exhibition, fabrication, lettering or sale of gravestones	N	N	N	SP	N	N	Y	Y

G. Industrial, wholesale and transportation uses								
(1) Laundries and dry-cleaning plants	N	N	N	N-Y	N-Y	N-SP	Y	Y
(2) Printing, binding, publishing and related arts and trades	N	N	N	N-Y	N-Y	N-SP	Y	Y
(3) Bottling of beverages, including spring water	N	N	N	N	N	N	Y	Y
(4) Plumbing, electrical or carpentry shop or other similar service or repair establishment	N	N	N	SP-Y	SP-Y	SP	Y	Y
(5) Light Manufacturing Place of manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor are effectively confined to the premises or are disposed of in a manner that does not create a nuisance or hazard to safety or health	N	N	N	N	N	N	Y	Y
(6) Wholesale business and storage in an enclosed and roofed structure	N	N	N	Y	N-SP	N-SP	Y	Y
(7) Wholesale business with outside storage	N	N	N	N	N	N	SP	SP
(8) Truck terminals	N	N	N	N	N	N	SP	SP
(9) <i>Artisanal Manufacturing</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>
H. Other principal uses								
(1) Mixed-use building containing retail, office, restaurant or consumer service establishments and residential dwelling units	N	N	N	N	Y	Y	N	N
(2) Open lot storage or sale of junk or salvaged materials	N	N	N	N	N	N	N	N
(3) Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to fire-fighting apparatus or other protective service	N	N	N	N	N	N	N	N
(4) Recycling facility	N	N	N	N	N	N	SP	SP
(5) Airports, air pads, private or commercial propeller, jet, helicopter, glider planes, <i>drone ports</i> , sale or rental of craft and storage	N	N	N	N	N	N	SP	SP
(6) Wireless communications towers and facilities	See Wireless Communications Overlay District Map August 2012.							
(7) Residential wind energy facilities – see Section 205.39.3	Y	Y	Y	Y	Y	Y	Y	Y
(8) Small wind energy facilities – see Section 205.39.3	N	SP-PB	N	N	N	N	N	N
(9) Medical Marijuana treatment center/registered marijuana dispensaries – see Section 205.39.4	N	N	N	N	N	N	SP-PB	SP-PB
Use	R-I	R-II	R-III	C-I	C-II	C-III VC	I-I	I-II
I. Accessory Uses and off-street parking								

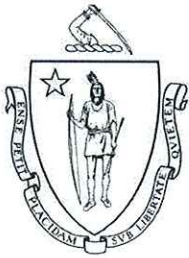
(1) Private garage for residents of a dwelling on the same premises	Y	Y	Y	Y	Y	Y	Y	Y
(2) Private greenhouse, toolsheds, tennis courts, swimming pools or other similar building or structure for domestic use	Y	Y	Y	Y	Y	Y	Y	Y
(3) The raising or keeping of animals, livestock or poultry as pets or for use by the residents of the premises, provided that no sty, paddock, building or similar enclosure for any animal may be less than 50 feet from any lot line	Y	Y	Y	Y	Y	Y	Y	Y
(4) Customary home occupation of the office of a resident physician, dentist, attorney-at-law, architect, engineer or member of other recognized profession similar to the aforementioned, provided not more than 3 persons shall practice or be employed on the premises at any one time, and further provided that there is no external change which alters the residential appearance of the buildings, and further provided there is no exterior storage	Y	Y	Y	Y	Y	Y	Y	Y
(5) The use of a portion of a dwelling or accessory building thereto by a resident builder, carpenter, painter, plumber, mason, electrician or other artisan or by a resident tree surgeon or landscape gardener for incidental work and storage in connection with their off-premises occupation, provided that there is no external change which alters the residential appearance of the buildings, and further provided there is no exterior storage of goods or materials	Y	Y	Y	Y	Y	Y	Y	Y
(6) Restaurants inside a building for the use of the primary occupants of the building, provided that there is no exterior evidence of the same	N	N	N	Y	Y	Y	Y	Y
(7) Restaurants primarily for the use of residents of an apartment building or group of apartment buildings, provided that there is no exterior evidence of the same	SP	N	N	Y	Y	Y	N	N
(8) Beauty shop, barbershop or newsstand for the resident under the same conditions as set forth in Subsection I(7) above	SP	N	N	Y	Y	Y	N	N
Use	R-I	R-II	R-III	C-I	C-II	C-III VC	I-I	I-II

(9) The use of a portion of a dwelling or accessory building thereto by the residents of the dwelling for an office or for the sale of antiques or like merchandise, provided that there is no exterior storage, that all work or sale of goods is carried on inside a building and that not more than 1 person shall be employed on the premises at any 1 time exclusive of the residents, and further provided there is no external change which alters the residential appearance of the buildings	Y	Y	Y	Y	Y	Y	Y/N	Y/N
(10) Personal services such as barbershops, beauty shops and like services, provided that there are no nonresidential employees, and further provided there are no external change which alter the residential appearance of the buildings	Y	Y	Y	Y	Y	Y	Y/N	Y/N
(11) Uses accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, provided that the proposed accessory use does not substantially <i>derogate detract</i> from the public good	SP	SP	SP	SP	SP	SP	SP	SP
(12) Family day-care service with no more than 6 children under 16 and no children sleeping overnight	Y	Y	Y	Y	Y	Y	Y	Y
(13) Retail use accessory to the principal manufacturing use	N	N	N	N	N	N	SP	SP
(14) Personal kennel	Y	Y	Y	Y	Y	Y	Y	Y

ARTICLE 40. Voted to amend the Westminster General Bylaws at Chapter 28, "Finances," by deleting Section 28-6, "Competitive bids required for certain work; exemptions," or act in relation thereto.

A true copy, Attest:

Ellen M. Sheehan
Town Clerk



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 12, 2016

Ellen Sheehan, Town Clerk
Town of Westminster
11 South Road
Westminster, MA 01473

RE: Westminster Annual Town Meeting of May 7, 2016 - Case # 8060
Warrant Articles # 36, 37, 38, and 39 (Zoning)
Warrant Article # 40 (General)

Dear Ms. Sheehan:

Articles 36, 37, 38, 39, and 40 - We approve Articles 36, 37, 38, 39, and 40, and the map pertaining to Article 36, from the Westminster May 7, 2016, Annual Town Meeting. We will return the approved map to you by regular mail. Our comments on Articles 37 and 39 are provided below.

Article 37 - Article 37 amends Article II, "Definitions," of the Town's zoning by-laws by making a number of additions (indicted by *italics*) and deletions (indicated by ~~striketrough~~). One change adds a new definition for "Farm" that provides as follows:

Agriculture, orchard, horticulture, or silviculture, whether or not the farm is exempted under MGL Chapter 40A, §3, provided that any building housing farm animals be not less than 50 feet from the property boundary, unless the building was in existence at the time of adoption of this chapter.

The definition of "Farm" requires buildings that house farm animals to be a minimum of 50 feet from the property boundary line. We approve the definition of "Farm." However, G.L. c. 40A, § 3, provides exemption from local zoning by-laws for certain agricultural uses and provides in relevant part as follows:

No zoning . . . by-law . . . shall . . . prohibit unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products. . . .

General Laws Chapter 128, Section 1A, defines agricultures and provides in pertinent part as follows:

“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market

These statutes together establish that, to the extent the use of land or structures constitutes commercial agriculture, the Town cannot require a special permit for, unreasonably regulate, or prohibit such activities: (1) on land zoned for agriculture; (2) on land that is greater than five acres in size; and (3) on land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales.

In certain circumstances the Town’s 50-foot setback requirement may be found to be an unreasonable regulation of agriculture in violation of G.L. c. 40A, § 3. The Town should discuss with Town Counsel the application of the definition’s setback requirement to agricultural uses to ensure that the Town does not violate G.L. c. 40A, § 3.

Article 39 - Article 39 amends the Town’s Table of Use Regulations (“Table”) by making a number of additions (indicated by *italics*) and deletions (indicated by ~~striketrough~~). One change adds “drone ports” to Section H (5) of the Table and allows them by special permit in the Town’s Industrial Districts and prohibits them everywhere else in Town.¹ We approve this change under Article 39. However, we strongly encourage the Town to discuss with Town Counsel whether this portion of the Table must be reviewed and approved by the Aeronautics Division within the Massachusetts Department of Transportation (MassDOT). See G.L. c. 90, § 39B, ¶ 5; see also *Hanlon v. Town of Sheffield* (AC 15-P-799) (May 13, 2016) (town’s zoning by-law that purports to regulate “the use and operation of aircraft on [an] airport or restricted landing area” cannot take effect until submitted to and approved by the Aeronautics Division).^{2 3}

¹ The Town does not define “drone ports.” We suggest that the Town discuss with Town Counsel adding a definition for “drone ports” at a future Town Meeting.

² The Town may contact MassDOT’s Aeronautics Division for this purpose at: Tracy W. Klay, Deputy General Counsel/Aeronautics Counsel, MassDOT and MBTA, 10 Park Plaza, Room 7760, Boston, MA 02116, Phone: 857-368-8768, email: Tracy.Klay@state.ma.us

³ We note that the existing text of Section H (5) prohibits airports, air pads, private or commercial propeller, jet, helicopter, glider planes, and the sale or rental of craft and storage. This text must also be approved by the Aeronautics Division.

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 that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Brian W. Riley