

Chapter 215 ZONING

Contents:

**§215-1. Purpose and Authority**

**§215-2. Definitions**

**§215-3. Districts**

**§215-4. Use Regulations**

- Permitted Uses
- Special Uses
- Prohibited Uses
- Nonconforming Uses and Lots

**§215-5. Dimensional Requirements**

- Area, Height and Bulk Regulations

**§215-6. Signage**

**§215-7. Off-Street Parking**

**§215-8. Driveways**

**§215-9. Wireless Communication Facilities**

**§215-10. Camps – Religious or Non-Profit Educational**

**§215-11. Solar Photovoltaic Installations**

**§215-12. General Regulations**

- Mobile Homes
- Farm Uses
- Fences and Walls

**§215-13. Administration and Enforcement**

- Violations and Penalties
- Zoning Board of Appeals
- Special Use Permits
- Planning Board
- Site Plan Review

**APPENDIX A – Zoning Map**

## §215-1 Purpose and Authority

- A. **Statement of Purpose.** The purpose of this chapter is to provide for the Town of Mount Washington all the protection authorized by M.G.L. c. 40A, and any amendments thereof, in order to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety and welfare, including, but not limited to, the following objectives:
1. To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers; to conserve health; and to lessen congestion on the roads.
  2. To facilitate the adequate provision for transportation, water supply, drainage, sewerage, parks, open space and other public requirements.
  3. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
  4. To preserve and increase amenities by the promulgation of regulations designed to:
    - a. Protect the Town's significant environmental features, areas of scenic beauty and sites, and structures of historic importance, and minimize the adverse effects of development on the Town's environmental and historic features.
    - b. Employ cooperatively the various measures taken by the Town's agencies and individual voters, under diverse legislative authority, for the protection and enhancement of the Town's existing rural character, open spaces, low density of population, and in the interests of the Town's orderly growth at a deliberate pace.
- B. **Scope.** For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures; the size and width of lots; the percentage of lot area that may be occupied; the size of yards; courts, and other open spaces; the density of population, and; the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.
- C. **Applicability.** All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning Bylaw.
- D. **Zoning Amendments.** This Bylaw may be amended or repealed at any Town Meeting of the Town of Mount Washington as provided by M.G.L. c. 40A, § 5.
- E. **Validity.**
1. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted regulations or bylaws or with deed restrictions or covenants, the most restrictive or the one imposing the higher standards shall govern.
  2. The chapter repeals and replaces the Zoning Bylaw adopted originally on August 16, 1989, the Wireless Telecommunication Facility Zoning Bylaw adopted on April 1, 2013,

the Solar Photovoltaic Installation Bylaw adopted on March 10, 2015, and any subsequent amendments to said bylaws thereto.

3. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision herein.

F. **Separability.** The provisions of this chapter shall be deemed to be separable. If any of its provisions, subsections, sentences, or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this chapter shall continue to be in full force and effect.

## §215-2. Definitions.

A. **Word Usage.** For the purpose of this chapter and unless the context of usage clearly indicates another meaning, the following rules of construction apply to the text of this chapter.

1. Words used in the present tense include the future; the singular number includes the plural; and the plural number includes the singular.
2. The words “used” or “occupied” include the words “designed,” “intended” or “arranged” to be “used” or “occupied.”
3. The words “building,” “structure,” “lot,” “land” or “premises” shall be construed as though followed by the words “or any portion thereof.”
4. The word “shall” is mandatory; the word “may” is permissive.
5. The words “including” or “such as” shall not limit a term to specified examples, but are intended to extend their meaning to all other instances or circumstances of like kind or character.

B. **Terms Defined.** For the purpose of this chapter, the following words and terms, as used herein, shall have the meanings or limitations of meaning hereunder defined, explained or assigned.

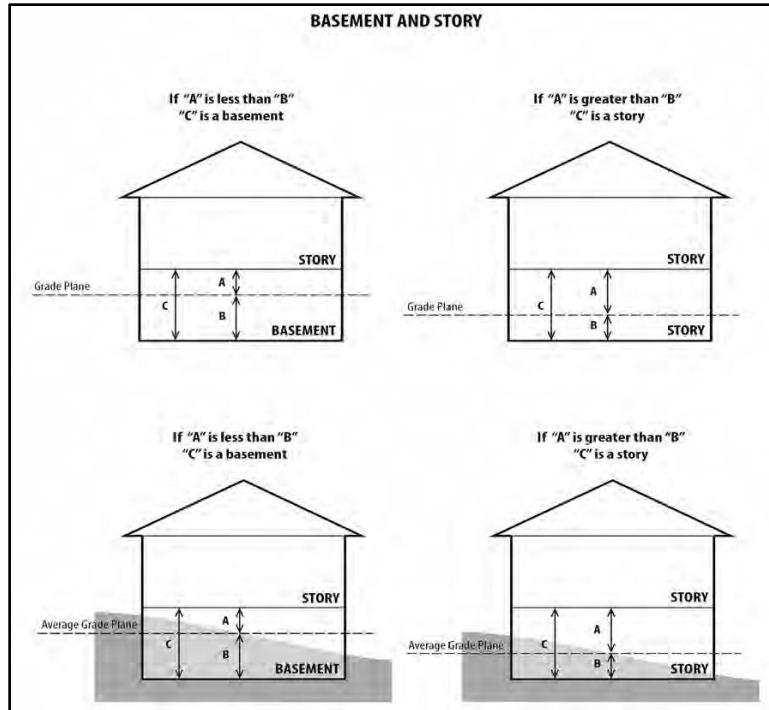
1. **ACCESSORY USE OR STRUCTURE:** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure. Accessory structures shall include, but not be limited to: trash enclosures, storage sheds, pools, private generators, private transformers, detached garages, ground-mounted solar photovoltaic installations, detached carports and unenclosed decks. Accessory structures shall not include dwelling units, public utility structures, fences or walls. Enclosed structures attached to a primary building shall be considered part of a primary building.
2. **AGRICULTURAL USE:** Any parcel of land that is used in the raising of agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This term does not include commercial riding stables, kennels or facilities for the raising of swine or fur-bearing animals.
3. **BED AND BREAKFAST:** A dwelling or accessory building in which three (3) rooms or fewer are rented by a resident family for transient guests, with or without meals, as an accessory use.
4. **BOARDING HOUSE (LODGING HOUSE):** Any house or building, or part thereof, in which six (6) or more persons are harbored, received or lodged for hire, or any building, or part

thereof, which is used as a sleeping place or lodging for six (6) or more persons not members of the family residing therein. [M.G.L. c. 145, Sec. 2.]

5. BUILDING: A roofed or walled structure used or intended for supporting or sheltering any use or occupation.
6. BUILDING HEIGHT: The height of any building or structure measured from the average grade to the highest point of the roof.
7. BUILDING LOT: A clearly defined parcel of land in one (1) ownership used or available for use as the site of one (1) or more buildings of sufficient area and dimensions to meet this chapter's minimum requirements.
8. BUILDING PERMIT: A construction permit issued by the building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as Chapter 215 of the Town Bylaw.
9. CUSTOMARY HOME OCCUPATION: An occupation conducted in the home of a self-employed resident of the home which is limited to the home, conducted at the home, and requires no more on-street or off-street parking than would ordinarily be used by the household. Customary home occupations do not include gift shops, antique shops, art galleries, or other similar retail establishments.
10. DWELLING UNIT: One (1) or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.
11. DWELLING, ONE-FAMILY: A detached residential building designed for and occupied by one (1) family only, not including mobile homes.
12. DWELLING, MULTI-FAMILY: A residential building containing two (2) or three (3) dwelling units, including houses that have been subdivided into separate dwelling units.
13. FAMILY: One (1) or more individuals related by blood, marriage, or adoption, or not more than five (5) individuals who are not so related living in a single dwelling unit.
14. 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 under regulations adopted by the board. 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. [M.G.L. c. 15D Sec. 1A]
15. GRADE: A gradient or slope, measured in its natural state for undeveloped properties and prior to new building construction for developed properties.
16. LOT FRONTAGE: The continuous distance along the street line (to be measured along one (1) street only), which provides access to the lot from its borders on the street, to be measured only where the lot has a depth of at least twenty (20) feet from the right-of-way line. A private street approved by the Planning Board under the Subdivision Control Law may provide frontage only for the lots which are contained within the approved subdivision.
17. MOBILE HOME (aka MANUFACTURED HOME): A portable, completely enclosed structure built on a permanent chassis, designed as a dwelling unit to be transported

after fabrication on its own wheels, or on a flatbed, or detachable wheels. For the purpose of this chapter, the term "mobile home" includes trailers incorporating the characteristics of mobile homes as herein defined.

18. MUNICIPAL USE: Use of land by the Town of Mount Washington in accordance with the general laws governing municipal powers and functions, including participation in regional uses.
19. NONCONFORMING USE OR STRUCTURE: A use or structure that lawfully existed at the time of adoption of this Bylaw, which does not currently conform to requirements of this Bylaw.
20. RIGHT-OF-WAY LINE: The right-of-way line of a street as established under public authority or as shown on a plan approved by the Planning Board or, if neither of the above apply, a line parallel to the center line of the road and measured from that centerline perpendicular back a distance of twenty-five (25) feet and parallel to the center line. The right-of-way line shall also be known as the "front property line" of a particular parcel.
21. ROAD/STREET: A public way or a way which the Clerk of the Town certifies is maintained and used as a public way; or a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law; or a way in existence when the Subdivision Control Law became effective in Mount Washington on July 31, 1970, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.
22. SETBACK: The area of the lot extending inward from a lot line for the distance specified in the zoning regulations in which no building or structure may be placed.
23. SETBACK, FRONT: The minimum unoccupied distance between a front property line and a structure, measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line twenty-five (25) feet from and parallel to the center line of the traveled way. A corner lot shall be considered to have two front setbacks.
24. SIGN AREA: The area of the sign face, not including supporting posts or sign bases.
25. STORY: That portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the grade plane or average grade plane of the ground adjoining such building.



26. **STRUCTURE:** Any construction, erection, assemblage or other combination of materials upon the land, necessitating pilings, footings or a foundation for attachment to the land, including, but not limited to, swimming pools and recreational courts.
27. **TINY HOUSE:** For the purposes of this bylaw, a "tiny house" shall be considered a mobile home/manufactured home if the chassis is permanently attached (780 CMR 120.K201), or a manufactured building/modular home if the chassis is not permanently attached (780 CMR 3502.0).
28. **VACATION AND SHORT-TERM RENTAL:** Rental of an owner-occupied residence or rooming unit in an owner-occupied residence for a period of time fewer than twenty eight (28) consecutive days within a twelve (12) month period.
29. **WETLANDS:** The Massachusetts Wetlands Protection Act shall define wetland areas.

**§215-3. Districts.**

- A. For the purpose of this Zoning Bylaw, the entire area of the Town of Mount Washington shall constitute a single zoning district with uniform regulations for every class or kind of structure or use permitted, known as the Residential (R-1) zone district (see Appendix A). In addition, the following types of overlay districts are hereby established:
  1. Wireless Communication Facility Overlay District (WCFOD). See §215-9.

**§215-4. Use Regulations.**

- A. **Compliance Required.** Within the R-1 zone district, no building or structure shall be erected, and no building, structure or land shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted by-right or set forth as permissible by

Special Permit from the Planning Board.

**B. Permitted Uses By-right; Permit Required from Building Inspector.** Uses which may be permitted after issuance of a permit from the Building Inspector:

1. Detached one-family dwellings.
2. Accessory use or structure incidental to a permitted principal use on the same building lot, as per the dimensional requirements of §215-5 (B).
3. Customary home occupations, which may involve the use of a room or rooms by a recognized profession, or by a resident carpenter, painter, plumber, electrician or similar trade.
4. Farm stands (see §215-12(C))
5. Small-Scale Solar photovoltaic installations (see §215-11)
6. Manufactured homes as temporary dwellings, as per M.G.L. c. 40A §3.

**C. Permitted Uses By-right; Site Plan Review Required.** Uses which may be permitted by site plan review in accordance with §215-13(F):

1. Uses to the extent protected or exempt pursuant to M.G.L. c. 40A, §3, or other state law, including, but not limited to, structures for religious purposes, agricultural uses or family child care homes, as specified within said law.
2. Camps, as defined by and subject to regulation under 105 CMR 430.000 et seq. and per §215-10.
3. Municipal Uses.

**D. Special Uses.** Uses which may be permitted by a Special Permit to be issued by the Planning Board in accordance with §215-13(E) and the provision of M.G.L. c. 40A:

1. Boarding houses.
2. Bed & breakfasts.
3. Multi-family dwellings.
4. Medium-Scale Solar photovoltaic installations (see §215-11).
5. Trailers or mobile homes as temporary dwellings, not pertaining to M.G.L. c. 40A §3. (see §215-12(A))
6. Wireless Telecommunication Facilities (see §215-9).
7. Uses not otherwise listed as a Permitted Use or Prohibited Use in this section, except as permitted in M.G.L. c. 40A §3.

**E. Prohibited Uses.**

- ~~1. Sites for collection, treatment, storage, burial, incineration or disposal of radioactive, hazardous and/or toxic waste, including, but not limited to wastes classified as low-level radioactive waste.~~
2. All Marijuana establishments defined in M.G.L. c. 94G are prohibited as a result of Annual Town Meeting of May 1, 2018 and Annual Town Election, May 8, 2018.
3. Large-Scale Solar photovoltaic installations (see §215-11).
4. Any use of land, buildings or structures which could create excessive and objectionable noise, fumes, odor, dust, electrical interference, nuisance, pollution, or undue traffic.

5. Mobile homes or mobile home parks, except as permitted in §215-12(A) and M.G.L. c. 40A §3.

**F. Nonconforming Uses and Lots.**

1. The lawful use of any building, structure or land existing at the time of adoption of this chapter, even if not in conformity with its provisions, notwithstanding §215-4(G)1, may be continued.
2. Any nonconforming building lot, whether developed or undeveloped, approved by Form A or under the subdivision regulations of the previous bylaw shall be continued as a building lot (buildable lot).
3. Lots established before 1970, whether developed or undeveloped, greater than or equal to two (2) acres in size but less than three (3) acres in size shall abide by the following regulations of the 1970 Zoning Bylaw:

Acreage Required	2 acres
Frontage Required	150'
Front Setback Min.	50'
Side Setback Min.	25'
Rear Setback Min.	25'

With the exception of these lot area, frontage and building setback requirements, said lots shall be subject to all other current Zoning Bylaw regulations.

4. Any undeveloped property less than two (2) acres in size shall require a special permit from the Planning Board in order to be developed.

**G. Nonconforming Structures**

1. A nonconforming use or structure which has been abandoned or not used for a period of two (2) years or more shall not be *reestablished*, except by Special Permit from the Planning Board.
2. A preexisting, nonconforming structure may be *expanded, extended or altered* by Special Permit from the Planning Board, provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Planning Board may impose reasonable conditions, safeguards or limitations on such Special Permits as per §215-13(E)(4).
3. A preexisting, nonconforming structure may be expanded (extended) into the side or rear yard by-right, provided said extension: is no closer to the front property line than the existing structure; is a minimum of fifty feet (50') from the front property line, meets the applicable side and rear setback requirements, and; does not increase the floor area of the structure by more than fifty percent (50%).
4. Any preexisting, nonconforming structure may be rebuilt or reestablished if damaged or destroyed by fire or other catastrophe or voluntarily demolished, as long as construction is commenced within five (5) years. The structure, as rebuilt or restored, shall be placed within the original building footprint and shall meet current height regulations. In the event that the proposed reconstruction would cause the structure to exceed the area of the original nonconforming structure or be located other than on the original footprint,



a Special Permit shall be required from Planning Board. If meaningful construction has not occurred within five (5) years of destruction or demolition as determined by the Building Inspector, the non-conforming structure may not be reestablished.

5. A preexisting, nonconforming structure may be increased in height by-right, provided that the resulting structure does not exceed the height limitations as listed in the Table of Dimensional Requirements and the existing building footprint remains the same.

**§215-5. Dimensional Requirements.** Any building used for dwelling purposes and any building or structure housing a permitted principal use, including any use authorized by a Special Permit, shall be so constructed and located on a lot as to meet the minimum requirements as set forth below, unless otherwise specified within this Zoning Bylaw.

**A. Table of Dimensional Requirements – Primary Structure.**

<b>Principal Structure(s)</b>	
<b>Requirements</b>	<b>R-1 Zone District</b>
Minimum Lot Area	3 acres*
Minimum Lot Frontage	200'
Minimum Front Yard Setback	100'
Minimum Side Yard Setback	35'
Minimum Rear Yard Setback	50'
Maximum Building Height	3 stories, but shall not exceed 35'
Max Lot Coverage	none
*see §215-5(C)(1)	

**B. Table of Dimensional Requirements – Accessory Structures.**

<b>Accessory Structures</b>	
<b>Requirements</b>	<b>R-1 Zone District</b>
Maximum number of accessory structures per lot	None
Maximum square footage of any accessory structure	600**
Minimum Front Yard Setback	100', or not closer to road than the existing principal building
Minimum Side Yard Setback	25'
Minimum Rear Yard Setback	25'
Maximum Building Height	26'***
**see §215-5(C)(3)	
***see §215-5(C)(9)	

### C. General Dimensional Requirements.

1. Only one (1) one-family dwelling is permitted per parcel.
2. Two (2) and three (3) family dwelling units shall require a minimum of five (5) and seven (7) acres, respectively.
3. Accessory structures larger than six hundred (600) square feet may be permitted upon issuance of a Special Permit from the Planning Board.
4. No building or structure shall be constructed on a building lot where the building or structure is to be situated on a grade which is greater than fifteen percent (15%).
5. No new building shall be constructed within two hundred (200) feet of any lake, pond, brook, wetland or any other body of water.
6. Any preexisting primary or accessory structure located within two hundred (200) feet of any lake, pond, brook or wetland shall require a Special Permit from the Planning Board to be expanded, extended or altered.
7. No septic or leaching field shall be placed within two hundred (200) feet of any lake, pond, brook or any other body of water.
8. No septic or leaching field shall be placed within twenty-five (25) feet of any property line.
9. Accessory structures used as tool sheds, storage sheds, playhouses, and similar structures (not including garages), when measuring less than two hundred (200) square feet, shall not exceed fourteen feet (14') tall.
10. Proposed buildings and structures shall abide by the regulations as set forth in the Massachusetts Rivers Protection Act.

**§215-6. Signage.** All signs applied to or affixed to a building or structure or which are visible at any time of the year from a public way or any neighboring premises must conform to these sign regulations.

### A. General Regulations.

1. One (1) permanent sign is permitted per parcel.
2. Any sign, whether affixed to a wall or freestanding, shall not exceed four (4) square feet in sign area.
3. Freestanding signs shall be set back at least ten (10) feet from the front property line.
4. Freestanding signs shall not exceed eight (8) feet above grade.
5. No sign shall use moving parts, noise-making devices or blinking, rotating, flashing, red or neon lights, or lights changing in intensity, and no sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.
6. No illuminated sign or lighting device shall be so placed or directed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or a nuisance.
7. No sign shall be located off the premises to which it applies, except as per §215-6(B)(1).
8. Supporting posts, columns or bases shall not contain any text, pictures, symbols or lighting, and shall be of neutral colors intended to blend in with the surrounding environment.
9. Signs shall not be placed within a road right-of-way.

**B. Signs requiring a Special Permit from the Planning Board.**

1. Off-premise directional signs contingent that they serve the public convenience and are not detrimental to the neighborhood with respect to size, location or design.

**§215-7. Off-Street Parking.** No building or structure, except for one-family residential buildings and their related accessory structures, shall be erected or enlarged unless the off-street parking requirements are provided as specified in this section. For the purpose of this section, an enlargement or addition of any building shall require the provision of off-street parking for the existing building as if it were newly constructed.

**A. Parking Requirements.**

1. The number of parking spaces shall be determined by the Planning Board as part of a Site Plan Review or Special Use Permit.
2. Required off-street parking facilities shall be provided on the same lot as the principal use they are designed to serve.
3. Parking Space Dimensions: Each required parking spaces shall not be less than 8.5' in width and nineteen (19) feet in length. Handicapped parking spaces shall not be less than twelve (12) feet in width and twenty (20) feet in length.
4. Drive aisles shall measure at least twenty-two (22) feet wide.
5. Parking lots shall be set back at least ten (10) feet from any lot line.
6. Greenbelt landscaping must be provided between a proposed parking lot and a road right-of-way, if the parking lot is within forty (40) feet of any right-of-way. Greenbelt landscaping shall consist of at least one (1) native deciduous tree, measuring at least 2" caliper upon planting, for every twenty (20) feet of road frontage, measured along the proposed parking lot. This requirement may be waived by the Planning Board if native greenbelt vegetation exists.

**§215-8. Driveways.**

**A. Permitting.**

1. No driveway or road abutting or intersecting any public way shall be constructed hereafter unless approval therefore is granted by the Board of Selectmen. Application for a permit for such construction shall be made in writing to the Board of Selectmen before such construction begins.
2. The Board of Selectmen may grant a permit for such construction upon such conditions as the Board deems proper. The Board may require the installation of culverts and such grading and surfacing as may be required. The construction work shall be done under the supervision of the Board of Selectmen and to its satisfaction. The entire expense of such construction shall be paid by the person to whom the permit was given.
3. The Board of Selectmen may require a bond to guarantee the faithful and satisfactory performance of the work and payment for any damage to public ways and facilities caused by or resulting from the work authorized by the permit. The amount of such bond shall be determined by the Selectmen and shall not exceed the estimated cost of the work and possible damage.

**B. Driveway Requirements.**

1. No driveway shall exceed fifteen percent (15%) in grade for any portion of their length.

**§215-9. Wireless Communication Facilities (WCF).**

**A. Purpose.** The purpose of this section is to:

1. Preserve the character and appearance of the Town while simultaneously allowing WCF to be developed.
2. Protect the scenic, historic, environmental and natural resources of the community.
3. Provide standards and requirements for planning, regulation, placement, construction, monitoring, design, modification and removal of WCF.
4. Preserve property values.
5. Minimize the total number and height of WCF throughout the community.
6. Locate WCF so as to minimize negative impacts such as, but not limited to, attractive nuisance, noise and falling objects; and to promote the general safety, welfare and quality of life of the community.
7. Require owners of such WCF to configure them so as to minimize and mitigate the adverse visual impact of said facilities where possible.
8. Require sharing and the clustering of WCF where possible.

**B. Location.** WCFs shall be located in the Wireless Communications Facilities Overlay District (WCFOD), as illustrated on Appendix A, Town of Mount Washington Zoning Map.

**C. Consistence with Federal and State law; Severability**

1. This section is intended to be consistent with the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012 and M.G.L. c. 40A.
2. If any part of this section is held by a court of competent jurisdiction to be invalid, it shall not invalidate any other part of the Zoning Bylaw.

**D. Definitions.** The following terms shall have the meanings indicated, as they relate to this section:

1. WIRELESS COMMUNICATION FACILITY (WCF): Any tower or other support structure, including antennae, that will extend twenty (20) or more feet vertically, and any accompanying structure, building, access road, service utility or equipment that broadcasts or receives or carries Wireless Communication Services.
2. WIRELESS COMMUNICATION SERVICE (WCS): Any mobile service, wireless service, wireless exchange service, cellular service, personal communication service, mobile radio service, paging service, wireless data service, or public or private radio dispatch service and the like, including personal wireless services.
3. WIRELESS COMMUNICATION SERVICE PROVIDER (WCSP): Any person or entity providing Wireless Communication Services.
4. PERSONAL WIRELESS SERVICES (PWS): Mobile services, wireless services, and wireless exchange services and the like, including, but not limited to: cellular services, personal communications services, mobile radio services, and paging services.

**E. Permit Required; Exemptions.**

1. Unless otherwise exempt or required by state or federal law, WCF are only permitted by Special Permit from the Planning Board. No installation or construction of, or addition or modification to, any WCF shall commence until said special permit has been issued by the Planning Board finding that such WCF complies with this section and all other laws, rules and regulations. **Any modification to an existing facility that does not “substantially change” the physical dimensions of the tower or base station, as defined in the FCC Report and Order FCC 14-153 issued October 21, 2014, shall not require a Special Permit, but shall require that the owner or lessee of the tower provide written notification of such modification to the Planning Board.**
2. This section shall not prohibit a property owner’s ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communication signals on the property owner’s premises if the aggregate area of the largest face of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than twelve (12) feet above the roof of that portion of the building to which they are attached.
3. The Planning Board may waive any and all requirements hereunder for WCF needed of a public or emergency nature.

**F. Permit Application Requirements.** **In addition to the site plan submittal requirements listed in §215-13(F), applicants shall include the following supplemental information. ~~Said supplemental information may be waived by the Planning Board in whole or in part.~~**

1. The names and addresses of all abutters and those within 500’ of the WCF and its access. Abutters shall be determined without regard to any public right-of-way.
2. A vicinity map showing the entire vicinity within a 1,000-foot radius of the WCF, including the location of any tower, topography, public and private roads and driveways, buildings and structures, utilities, water bodies, wetlands, landscape features, historic sites and necessary wildlife habitats. It shall indicate the property lines of the proposed WCF site parcel and all easements or rights of way needed for access from a public way.
3. The location of the WCF on a USGS Topographic Map or a GIS-generated map compatible with Massachusetts Office of Geographic Information (MassGIS) standards and encompassing the area within at least a two-mile radius of the proposed tower site.
4. Elevation **drawings** of the **proposed** WCF illustrating all facades and indicating all exterior materials and colors of towers, buildings and equipment, drawn at a minimum scale of 1 inch = 50 feet.
5. In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.
6. Construction sequence and time schedule for completion of each phase of the entire project.
7. A report from a qualified engineer that:
  - a. Describes the WCF design and dimensions.
  - b. Documents the elevation above grade for all proposed mounting positions for antennas and the distances between antennas.
  - c. Describes the WCF capacity, including the number, elevation and types of antennas that said facility is proposed to accommodate.

- d. Describes the output frequency, number of channels and the power output per channel for each antenna and aggregate antenna outputs. A coverage map shall be provided.
  - e. Indicates that the proposed WCF will comply with all state and federal regulations, including but not limited to, radio frequency radiation.
8. The applicant shall provide a written, irrevocable commitment, valid for the duration of the existence of the WCF, to rent or lease available space for co-location on the tower or structure at fair-market prices and terms, without discrimination to other WCSPs.
  9. In the case of an application for additional antennas or other equipment to be installed on an existing WCF, a copy of the executed contract with the owner of the existing structure.
  10. Any additional information specified by the Planning Board as being required to evaluate each particular application.

**G. Independent Consultants.**

1. Upon submission of an application for a WCF permit, the Planning Board may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be determined by the Planning Board, including qualified professionals in telecommunications, engineering, structural engineering, monitoring of electromagnetic fields and such other fields as determined by the Planning Board. The consultant(s) shall work at the Planning Board's direction and shall provide the Planning Board such reports and assistance, as the Planning Board deems necessary to review an application.
2. Annual Radiation Survey.
  - a. The Planning Board may retain, at its sole discretion and at the WCF owner's cost, an independent telecommunications consultant each year to conduct a radiation survey at a sample of locations within the Town for the purpose of confirming that the WCF is operating within radiation standards established by the FCC and other public safety agencies.
  - b. The purpose of this survey is to verify the WCF ongoing compliance with public safety regulations, specifically those of the Massachusetts Department of Public Health, including as set forth in 105 CMR, Department of Public Health: 105 CMR 122.000: Non-ionizing radiation limits for the general public from non-occupational exposure to electromagnetic fields, employees from occupational exposure to electromagnetic fields and exposure from microwave ovens, or any revisions thereof, as the Department of Public Health may, by written notice, create.
  - c. The first Annual Radiation Survey shall be conducted prior to the commencement of WCF operations to establish a radiation baseline map against which subsequent Annual surveys can be compared. Subsequent annual radiation surveys will be scheduled by the Planning Board and conducted without notice in order to ensure that the WCF's are operating normally at the survey time.

#### H. Balloon Test.

1. The Planning Board may require the applicant, at its expense, to fly a four-foot diameter brightly colored balloon to show the location and maximum elevation of any proposed tower. If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test at 7 and 14 days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the Planning Board, in writing, of the date, time and location of the test, at least 15 days in advance of the test. The balloon shall be flown for at least eight consecutive daylight hours on seven days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further tests may be required by the Planning Board. The Planning Board shall have the right to require an adjustment to the date of balloon test commencement.

#### I. Criteria for Approval and Conditions. An application for a WCF permit shall be approved after a hearing when the Planning Board finds all the following criteria have been met and the application does not derogate from the intent and purpose of this section and the Zoning Bylaw:

1. The WCF will not be built on speculation. If the applicant is not a WCSP, the Planning Board may require the applicant to provide a copy of a contract showing that a WCSP is legally entitled to locate a WCF on lands owned or leased by the applicant.
2. The WCF will not project more than twenty (20) feet above the average elevation of the tree line measured within fifty (50) feet of the highest vertical element of the WCF, unless the proposed elevation is necessary, as determined by a qualified telecommunications engineer of the Planning Board's choice, to provide adequate WCS capacity or coverage or to facilitate co-location of WCF's.
3. The minimum distance from the base of any tower to any property line is not less than one hundred percent (100%) the total elevation of the tower, including antenna or equipment.
4. Towers shall not be closer than five hundred (500) feet from any existing dwelling.
5. The WCF will not be illuminated by artificial means and will not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law.
6. The applicant demonstrates that the WCF will be in compliance with all state, federal, and local laws and regulations, standards and requirements.
7. The applicant will maintain adequate insurance on the WCF. Applicant shall provide the Town annually with written evidence of insurance.
8. The WCF will be properly identified with appropriate warnings indicating the presence of radio frequency radiation. The Planning Board may condition a permit on the provision of appropriate fencing.
9. The WCF, in the judgment of the Planning Board, will not interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
10. No new WCF's shall be allowed if adequate coverage can be obtained with existing WCF's, if allowed.
11. The WCF will not have an undue adverse aesthetic impact. In determining whether a WCF has an undue adverse aesthetic impact, the Planning Board shall consider the following factors:

- a. The results of the balloon test, if conducted.
- b. The extent to which the proposed WCF has been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
- c. The extent to which access roads have been designed to minimize effects on the landscape.
- d. The duration and frequency with which the WCF will be viewed from a public highway or from public property.
- e. The degree to which the WCF will be screened by existing vegetation, topography, or existing structures.
- f. Background features in the line of sight to the Facility that obscure or make the WCF more conspicuous.
- g. The distance of the Facility from the point of view and the proportion of the WCF that is above the skyline.
- h. The sensitivity or unique value of a particular view affected by the WCF.
- i. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.

**J. Continuing Obligations for Wireless Communication Facilities.**

- 1. The owner of a WCF shall, at such times as requested by the Planning Board, file a certificate showing that it is in compliance with all laws, standards and requirements regarding radio frequency radiation and that adequate insurance has been obtained for the WCF. Failure to file a certificate within the timeframe requested by the Planning Board, shall place the permit in violation and, at its sole discretion, may initiate procedures for permit revocation and WCF removal.
- 2. If the WCF covered by a permit granted under the Zoning Bylaw fails to begin operations within two (2) years from the date of permit issuance, the Planning Board may, at its sole discretion, deem the permit lapsed and void. In such case, the holder of such lapsed permit shall be required to apply for a new permit.

**K. Permit Revocation for Non-Performance.**

- 1. The Planning Board may, at its discretion, revoke the applicant's permit in the event of one or more of the following conditions of non-performance arising:
  - a. Failure to pay for the annual radiation survey within 90 days of invoice date.
  - b. Failure to file with the Town annual evidence of insurance before expiration of the then current policy.
  - c. Violation of any of the conditions under which the permit was issued.
- 2. Notice of non-performance shall be sent by certified mail after the Planning Board has documented the non-performance condition and has agreed that the condition is sufficient to require notice. The notice will contain instructions and time limits for corrective action. Notice shall be given to the address on the original application for Special Permit, unless the Planning Board has written notice of some other address. Notice shall be deemed given three days from mailing.



3. Failure by the permit holder to correct the non-performance will result in revocation of the permit and an order to discontinue operations. Subsequent to permit revocation, the permit holder must apply for a new permit if resumption of operation is desired.
4. Permit revocation shall constitute sufficient evidence of WCF abandonment by the permit holder.

**L. Removal of Abandoned Facilities.**

1. A WCF shall be deemed abandoned when it has not been in operation for a period of ninety (90) days.
2. After ninety (90) days of non-operation, the Building Inspector shall provide written notification to the owner/operator that such WCF is presumed to be abandoned. The owner/operator has thirty (30) days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the WCF has been in operation during the relevant ninety (90) day period.
3. If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the WCF has been in operation for the relevant ninety (90) day period, then said facility shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
4. The owner/operator of the WCF shall remove said facility and restore the site within one-hundred eighty (180) days of the date of the written notification of abandonment. If the owner/operator fails to remove the large-scale solar photovoltaic installation within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the WCF and restore the site at the sole expense of the owner/operator.

**§215-10. Camps – Religious or Non-Profit Educational.**

- A. **Purpose.** The purpose of this subsection is to provide Site Plan Review of religious or nonprofit educational camps without unreasonably impeding the religious, educational and nonprofit use.
- B. **Applicability.** Religious or Nonprofit Educational Camp uses exempt pursuant to M.G.L. c. 40A, §3, shall be subject to Site Plan Review for the limited purpose of imposing reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open spaces, parking and building coverage requirements, as set forth herein.
- C. **Definition.** “Camps” shall apply to any religious or nonprofit educational camp defined by and subject to regulation under 105 CMR 430.00 et seq. and the Mount Washington Board of Health Camp Regulation 100.00. A recreational camp for children “operates for any period of time between June 1 and September 30 of any year or not more than fourteen (14) consecutive days during any other time of year” (105 CMR 430.000).
- D. **General Requirements.**
  1. Any religious or nonprofit educational camp shall comply with all state and local regulations, including, but not limited to, the State Building Code, the State Sanitary Code, the State and Town Health Code, the Mount Washington Bylaws, the Mount

Washington Building Code and the Mount Washington Board of Health Camp Regulations.

2. Any religious or nonprofit educational camp cannot be operated by any nonreligious or for-profit educational groups or used for any nonexempt purpose.
3. A setback of two-hundred fifty (250) feet shall be maintained extending from the abutting property lines to all camp structures and designated communal areas, such as playing fields, picnic grounds and campfire areas. All setbacks shall be kept undeveloped and natural except for entrance and exit roadways.
4. Vegetated screening is required within fifteen (15) feet of the entire front property line, except for entrance and exit driveways.
5. Suitable off-street parking shall be provided for all facilities.
  - a. Parking space dimensions shall abide by the requirements listed in §215-7(A).
  - b. There shall be at least one (1) space for each sleeping room, one (1) space for each three (3) persons employed, one (1) space for each vehicle used in the operation of the camp, one (1) space for each regularly scheduled visitor's vehicle.
  - c. Handicap parking shall be provided in accordance with the Americans with Disabilities Act.
6. Parking areas for five (5) or more cars must be screened from public roads and from abutting properties, through the use of vegetated screening. Required plants for screening purposes shall include both trees and shrubs and may include ones existing on the site but in any case shall be sufficient to screen the camp from public view.
7. Any religious or nonprofit camp shall have adequate refuse disposal facilities.
8. Any religious or nonprofit educational camp shall have a minimum of one hundred (100) contiguous acres.
9. Any religious or nonprofit camp shall have a maximum building coverage of four percent (4%) of land area.
10. Site Plan Review approval shall be valid for two (2) years. If meaningful construction has not begun within two (2) years, as determined by the Building Inspector, the applicant shall reapply for Site Plan Review approval.

**E. Procedures.**

1. Each application for a religious or nonprofit educational camp shall be submitted **as per the requirements listed in §215-13(F)**.
2. Upon submission of an application for a religious or nonprofit educational camp, the Planning Board may require the applicant to provide a form of surety, either through an escrow account or bond to cover the cost of hiring independent consultants. The consultant(s) shall work at the Planning Board's direction and shall provide the Planning Board such reports and assistance, as the Planning Board deems necessary to review the application.

**F. Site Plan Requirements.** **In addition to the filing requirements listed in §215-13(F)(2), the site plan submittal shall include the following:**

1. Up-to-date documentation of religious or nonprofit educational status.
2. A copy of a valid deed(s) of the property being considered for a camp.

3. A list of all proposed uses including location on the site, proposed times of yearly and daily operation, and the number of individuals allowed to participate.
4. The location of recreation areas, including setback **distances to property lines**.
5. An application fee, as listed in the Mount Washington Fee Schedule.

#### **§215-11. Solar Photovoltaic Installations.**

- A. Purpose.** The purpose of this section is to provide a permitting process for solar photovoltaic installations so that they may be integrated into the Town of Mount Washington in a manner that minimizes their impact on the character of neighborhoods, on the scenic, historic and environmental resources of the Town and, at the same time, protects health and safety while allowing solar photovoltaic technologies to be utilized.
- B. Applicability.** This section applies to solar photovoltaic installations proposed to be constructed after the effective date of this Bylaw. This section also applies to material modifications that alter the type, configuration, and size of existing solar photovoltaic installations after the effective date of this Bylaw.
- C. Definitions.** The following definitions shall apply to this section:
1. Large-Scale Solar Photovoltaic Installation: Any roof-mounted, building-mounted, pole-mounted or ground-mounted solar photovoltaic installation with a total rated nameplate capacity exceeding 100kW.
  2. Medium-Scale Solar Photovoltaic Installation: Any roof-mounted, building-mounted, pole-mounted or ground-mounted solar photovoltaic installation that has a total rated nameplate capacity greater than 15kW and less than 100kW.
  3. Rated Nameplate Capacity: The maximum output of electrical power production of the photovoltaic system in alternating current.
  4. Small-Scale Solar Photovoltaic Installation: Any roof-mounted, building-mounted, pole-mounted or ground-mounted solar photovoltaic installation that has a total rated nameplate capacity of 15kW or less.
- D. Compliance with Laws and Regulations.** All Solar Photovoltaic Installations must comply with all local, state and federal regulations.
- E. Small-Scale Solar Photovoltaic Installations.**
1. Structure-mounted:
    - a. A structure-mounted solar photovoltaic installation with a total nameplate capacity of 15kW or less may be constructed or materially modified by-right after the issuance of a Building Permit from the Building Inspector.
    - b. A structure-mounted mounted photovoltaic installation when combined with a ground/pole mounted solar photovoltaic installation, may not exceed a total nameplate capacity of 15kW.
    - c. A structure-mounted solar photovoltaic installation may be installed on a primary building and on any accessory structures.

- d. A structure-mounted solar photovoltaic installation, proposed to be mounted on a building or roof top, may protrude no greater than five (5) feet from the highest point of the roof.
- 2. Ground-mounted or Pole-mounted:
  - a. A ground/pole-mounted solar photovoltaic installation with a total nameplate capacity of 15kW or less may be constructed or materially modified by-right after the issuance of a Building Permit from the Building Inspector.
  - b. A ground/pole-mounted solar photovoltaic installation when combined with a structure mounted solar photovoltaic installation may not exceed a total nameplate capacity of 15kW.
  - c. Any ground/pole-mounted solar photovoltaic installation must adhere to the Town's setback requirements **for accessory structures as per §215-5**.
  - d. Any ground/pole-mounted solar photovoltaic installation must have a buffer of vegetation between the solar array and all neighboring properties, including **houses opposite a street**. The intent is to provide year-round visual screening from existing residences to the array, and as such the location of the buffer can be modified to provide a more effective screen. This buffer shall be of undisturbed natural vegetation, or if existing vegetation is inadequate as determined by the Planning Board, then new landscaping shall be installed to provide screening. If the applicant provides information showing that the buffer would have a detrimental impact on the ability to generate power, the Planning Board may grant a waiver to reduce the size of the buffer, but shall not eliminate it.
  - e. A ground/pole-mounted solar photovoltaic installation may not exceed a height of fifteen (15) feet.
  - f. No lighting for any ground/pole mounted solar photovoltaic installation is permitted, except for manually operated emergency lights for use only when operating/repair personnel are on site.
  - g. A ground/pole-mounted solar photovoltaic installation may only be used as an accessory structure to a primary building. If the applicant provides information showing that this regulation would have a detrimental impact on the ability to generate solar power, the Planning Board may grant a Special Permit.

#### **F. Medium-Scale Solar Photovoltaic Installations**

- 1. Structure-mounted
  - a. A structure-mounted solar photovoltaic installation with a total nameplate capacity greater than 15kW and less than 100 kW may be constructed or materially modified after the issuance of a Special Permit from the Planning Board.
  - b. A structure-mounted solar photovoltaic installation with a total nameplate capacity greater than 15kW and less than 100kW when combined with a ground/pole mounted solar photovoltaic installation with a nameplate capacity greater than 15kW and less than 100kW, may not exceed a total nameplate capacity of 100kW or greater.

- c. A structure-mounted solar photovoltaic installation may be installed on a primary building and on any accessory structures.
  - d. A structure-mounted solar photovoltaic installation, proposed to be mounted on a building or rooftop, may protrude no greater than five (5) feet from the highest point of the roof.
2. Ground-mounted or Pole-mounted
- a. A ground/pole-mounted solar photovoltaic installation with a total nameplate capacity greater than 15kW and less than 100kW may be constructed or materially modified after the issuance of a Special Permit from the Planning Board.
  - b. A ground/pole-mounted solar photovoltaic installation with a total nameplate capacity greater than 15kW and less than 100kW when combined with a structure mounted solar photovoltaic installation with a nameplate capacity greater than 15kW and less than 100kW may not exceed a total nameplate capacity of 100kW or greater.
  - c. Any ground/pole-mounted solar photovoltaic installation must adhere to the Town's setback requirements **for accessory structures as per §215-5.**
  - d. Any ground/pole-mounted solar photovoltaic installation must have a buffer of vegetation between the solar array and all neighboring properties, including houses across the street. The intent is to provide year-round visual screening from existing residences to the array, and as such the location of the buffer can be modified to provide a more effective screen. This buffer shall be of undisturbed natural vegetation, or if existing vegetation is inadequate as determined by the Planning Board, then new landscaping shall be installed to provide screening. If the applicant provides information showing that the buffer would have a detrimental impact on the ability to generate power, the Planning Board may grant a waiver to reduce the size of the buffer, but shall not eliminate it.
  - e. A ground/pole-mounted solar photovoltaic installation may not exceed a height of fifteen (15) feet.
  - f. No lighting for any ground/pole mounted solar photovoltaic installation is permitted, except for manually operated emergency lights for use only when operating/repair personnel are on site.
  - g. A ground/pole-mounted solar photovoltaic installation may only be used as an accessory structure to a primary building. If the applicant provides information showing that this regulation would have a detrimental impact on the ability to generate solar power, the Planning Board may waive this requirement as part of the Special Permit process.

**G. Large-Scale Solar Photovoltaic Installations.** Large-Scale Solar Photovoltaic Installations with a total rated nameplate capacity exceeding 100kW are not permitted.

**H. Site Plans.** **In addition to the site plan submittal requirements in §215-13(F) for Site Plan Review, the following shall accompany a site plan review application for a solar photovoltaic installation:**

1. Detailed layout of the proposed solar photovoltaic installation, including, but not limited to, panel mounts, pole mounts, foundations, appurtenant equipment, potential shading from nearby structures and any areas of potential reflection that may have a detrimental impact on the road or neighboring properties, prepared and signed by an electrician or professional engineer licensed to practice in the Commonwealth of Massachusetts.
  2. An electrical diagram detailing the solar photovoltaic installation, associated components and electrical interconnection methods, with all Massachusetts Electrical Code compliant disconnects and overcurrent devices.
  3. Documentation of the major system components to be used, including PV panels, mounting system and inverter.
- I. Technical Review for Medium-Scale Solar Photovoltaic Installations.** Upon receipt of a Special Permit application for a Medium-Scale Solar Photovoltaic Installation, the Planning Board may engage professional and technical consultants at the applicant's expense. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice to the applicant. Failure to comply with this notice shall be grounds for denying the application.
- J. Financial Surety for Medium-Scale Solar Photovoltaic Installations.** The Planning Board may require the applicant for a Medium-Scale Solar Photovoltaic Installation to provide a form of surety, either through an escrow account, bond or otherwise to cover the cost of removing the facility in the event it may be required.
- K. Lapse of Approval.** Any Building Permit or Special Permit approval shall automatically lapse if the solar photovoltaic installation is not installed and functioning within 2 years of the registered permit, as determined by the Building Inspector.

## **§215-12. General Regulations**

### **A. Mobile Homes, Trailers and Recreational Vehicles**

1. Mobile homes may be permitted to be used as temporary living quarters on any building lot for a period not to exceed twelve (12) months, in conjunction with an active building permit to construct a single-family residence, upon the issuance of a permit from the Building Inspector. A one-time extension of an additional twelve (12) months may be granted via a Special Permit from the Planning Board.
2. Mobile homes may be permitted to be used as temporary living quarters by-right on any building lot in the event that the primary dwelling is destroyed by fire or other natural holocaust, as per §215-4(B)(6) and M.G.L. c. 40A, §3.
3. Outside storage of mobile homes, trailers and recreational vehicles, except as permitted in subsections 215-12(A)(1)-(2), shall not be placed any closer to the front property line than the principal structure.
4. Mobile homes shall not be occupied in any instance other than those listed in subsections A(1) and A(2) above .

**B. Farm Uses.**

1. All grounds used for pasturing or other purposes involving unrestrained animals must be properly fenced.
2. Structures for livestock or poultry must abide by the accessory structure setback regulations as per §215-5(B).

**C. Farm Stands.**

1. Shall be operated by a resident of the premises.
2. A major portion of the natural products for sale shall be produced on the premises.
3. The stand shall be set back at least twenty (20) feet from any right-of-way line.
4. Shall have no illumination of any kind at or for such display or stand after dark.
5. The products for sale shall be confined to the applicable growing and harvesting seasons.

**D. Fences and Walls.**

1. Fences and walls shall not be placed within the road right-of-way.
2. Chain-link fencing shall not be located any closer to the front property line than the primary structure.
3. Fences and walls shall not exceed eight (8) feet in height.

**§215-13. Administration and Enforcement.**

**A. Administration.** This chapter shall be enforced by the Board of Selectmen through the Building Inspector appointed by the Board as provided in the State Building Code.

1. No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this chapter and any other applicable Town bylaws and regulations, the State Sanitary Code and the Board of Health Regulations, the Planning Board's Subdivision Control Regulations and the Wetlands Protection Act, if applicable.

**B. Construction and use as provided in permits.**

1. Except as otherwise noted in this Bylaw, no building or structure shall be erected, altered, or moved in Mount Washington without a written permit issued by the Building Inspector. Such permits shall be applied for in writing to the Building Inspector. The Building Inspector shall not issue any such permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of this Bylaw, except as may have been specifically permitted otherwise by action of the Planning Board, Board of Appeals, or the Board of Selectmen, provided a written copy of the decision governing any such permission be attached to the application and to the resulting building permit issued. One copy of each such permit as issued, including any conditions or restrictions attached thereto, shall be kept on file in the office of the Building Inspector.
2. Accessory structures less than two hundred (200) square feet in gross floor area shall not require a building permit, but shall still abide by the Table of Dimensional Requirements as per §215-5(B).
3. The Building Inspector shall, within ten (10) days after receipt of an application to build, transmit a copy thereof for review to the Board of Health, Board of Selectmen, Planning

Board and the Conservation Commission. The Building Inspector must issue or deny permit applications within thirty (30) days.

4. Special Permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Zoning Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided herein.
5. Construction or operation under a building or Special Permit shall conform to any subsequent amendment of this chapter unless the permit is issued before the date of the Town Meeting at which such amendment is adopted, and the use or construction is commenced within a period of not more than six (6) 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.

**C. Violations and Penalties.**

1. The Building Inspector, upon being informed in writing of a possible violation of the Zoning Bylaw or on his/her own initiative shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The Building Inspector, on evidence of any violation, after investigation and inspection, shall give written notice of such violation to the owner and to the occupant of such premises. The Building Inspector shall demand in such notice that such violation be remedied within a reasonable time, designated therein by the Building Inspector. Such notice and demand may be given by mail addressed to the owner at the address appearing on the most recent real estate tax records of the Town and to the occupant at the address of the premises of such seeming violation.
2. If, after such notice and demand, such violation has not been remedied within the time specified, the Building Inspector shall notify the Board of Selectmen of the Town who shall take such action or initiate such proceedings in the name of the Town as it shall deem appropriate and necessary to prevent, correct, restrain, or abate any violation of this Bylaw.
3. Whoever shall violate any provision of this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be subject to fines as per the Mount Washington Fee Schedule. Each day such violation continues after the date of notice of such violation from the Town's enforcement agent shall constitute a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it deems necessary to prevent or remedy any violation.
4. If the Building Inspector is requested in writing to enforce this chapter against any person allegedly in violation of it and the Building Inspector declines to act, he shall notify in writing the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.

**D. Zoning Board of Appeals.**

1. Membership and Authority. There shall be a Zoning Board of Appeals consisting of five (5) members and two (2) associate members, to be appointed by the Board of



Selectmen as provided in M.G.L. c. 40A, § 12. The Board shall act within its statutory powers as provided in M.G.L. c. 40A, § 14, and on matters within its jurisdiction under this chapter in a manner prescribed in M.G.L. c. 40A, § 15. The Zoning Board of Appeals shall serve also as the Board of Appeals under the Subdivision Control Law as provided in M.G.L. c. 41, § 81Z.

2. Appeals. The Board is authorized to hear and decide an appeal, as provided in M.G.L. c. 40A, § 8, taken by any person aggrieved by reason of their inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c. 40A; by the Berkshire County Regional Planning Commission; or by any person, including an officer or board of the Town or of an abutting town, aggrieved by an order or decision of the Building Inspector or another administrative official, in violation of any provision of M.G.L. c. 40A or by this chapter. Any such appeal must be taken within thirty (30) days from the date of the order of decision which is being appealed by filing a notice of appeal with the Town Clerk, as provided in M.G.L. c. 40A, § 15. The cost of any studies or reports, including those of legal counsel required by the Zoning Board of Appeals is to be borne by the applicant or applicants.
3. Variances. The Board may authorize upon application, petition or appeal with respect to a particular land or structure a variance from the terms of this chapter where the Board specifically finds that:
  - a. There are special circumstances relating to the soil conditions, shape or topography of such land or location of structures and especially affecting such land or structures, but not affecting generally the zoning area in which it is located; and
  - b. A literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the applicant, petitioner or appellant; and
  - c. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.
4. Conditions, safeguards and limitations. When granting a variance, the Zoning Board of Appeals may impose conditions, safeguards or limitations, both of time and use, including the continued existence of any particular structure. Such conditions, safeguards or limitations may include, but not be limited to, the following:
  - a. Front, side and rear yards greater than the minimum required by this chapter; screening buffers or planting strips, fences or walls as specified by the Zoning Board of Appeals.
  - b. Limitations upon the size, number of occupants, method and time of operation, time duration of the permit or extent of facilities;
  - c. Regulations of number and location of driveways or other traffic features; and off-street parking or other special features beyond the minimum required by this chapter.
5. Appeals, applications and petitions. Any appeal, application or petition to the Zoning Board of Appeals must be filed with the Town Clerk who shall forthwith transmit a copy thereof to the Zoning Board of Appeals

- a. Required public hearing. The Zoning Board of Appeals shall hold a hearing on any application, petition or appeal transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in M.G.L. c. 40A, § 11, and after having notified the Town's Planning Board and the Planning Boards of adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the Planning Board as provided in M.G.L. c. 40A, § 15.
  - b. Review by other boards and agencies. The Zoning Board of Appeals shall, within ten (10) days after receipt of an application, petition or appeal, transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, the Conservation Commission and any other Town agency at the discretion of the Zoning Board of Appeals. Any board or agency to which such matters are referred for review shall make such recommendations as they deem appropriate in writing to the Zoning Board of Appeals; provided, however, that failure to make recommendations within thirty (30) days of receipt of the application by such board or agency of the matter for review shall be deemed lack of opposition thereto.
6. **Incomplete Applications.** The Town Clerk or the Zoning Board of Appeals may reject any incomplete application within thirty (30) days of its filing with the Town Clerk.
  7. **Use Variances.** Use variances shall not be granted by the Zoning Board of Appeals.
  8. **Decisions.** The decision of the Zoning Board of Appeals shall be made within one hundred (100) days after the date of the filing of an application, petition or appeal with the Town Clerk. Failure by the Board to act within said one hundred (100) days shall be deemed to be the grant of the relief, application or petition sought in accordance with provisions of M.G.L. c. 40A, § 15.
  9. **Performance Guarantees.** A performance bond or a deposit of moneys or negotiable securities in an amount determined by the Zoning Board of Appeals to be sufficient to cover the cost of all or any part of the conditions specified in the variance may be required of the applicant; as an alternative, a covenant may be filed, executed and duly recorded by the owner of record running with the land, whereby such conditions as specified in the variance shall be completed before the variance is utilized.
  10. **Expiration of variance.** If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, they shall lapse and may be reestablished only after notice and a new hearing as provided in §215-13(D)(5)(a) herein.

#### **E. Special Use Permits.**

1. **Unless specifically designated otherwise, the Planning Board shall act as the Special Permit Granting Authority (SPGA).**
2. **Rules and Regulations.** The Planning Board may adopt rules and regulations for the administration of this section. An application for a Special Permit shall be filed in accordance with such Rules and Regulations.
3. **Findings Required.** Before granting a Special Permit for any use requiring such permit under the provisions of this chapter, the SPGA shall find that the proposed use:

- a. Is in compliance with all provisions and requirements of this chapter, and in harmony with its general intent and purpose;
  - b. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
  - c. Will not create undue traffic congestion or unduly impair pedestrian safety;
  - d. Will not adversely affect any water supplies or drainage systems or any municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety or general welfare.
4. Conditions, Safeguards and Limitations. Special Permits may be issued subject to such conditions, safeguards or limitations as the SPGA may impose for the protection of neighboring uses or otherwise serving the purposes of this chapter. Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the Special Permit. Such conditions, safeguards or limitations may include, but not be limited to, the following:
- a. Front, side and rear yards greater than the minimum required by this chapter; screening buffers or planting strips, fences or walls as specified by the SPGA.
  - b. Limitations upon the size, number of occupants, method and time of operation, time duration of the permit or extent of facilities;
  - c. Regulations of number and location of driveways or other traffic features; and off-street parking or other special features beyond the minimum required by this chapter.
5. Site Plan Review Required. Any application for a Special Permit shall be accompanied by a **site plan, including all information as listed in §215-13(F).**
6. Required Public Hearing. The SPGA shall hold a hearing on any application transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in M.G.L. c. 40A, § 11, and after having notified the Planning Boards of adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the SPGA as provided in M.G.L. c. 40A, § 15.
7. Review by Other Boards and Agencies. The SPGA shall, within ten (10) days after receipt of an application for Special Permit, **transmit a copy to the boards or agencies as listed in §215-13(F)(3).**
8. Fees. **The SPGA may adopt reasonable administrative fees and technical review fees for applications for Special Permits. Upon the receipt of an application for a Special Permit, the SPGA may engage professional and technical consultants, at the applicant's expense, pursuant to M.G.L. c. 44 §53G to assist the SPGA with its review of application materials. The SPGA may direct the applicant to deposit funds with the SPGA for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this section shall be good grounds for denying the Special Permit application. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued shall be refunded to the applicant. Such fees shall be listed in the Mount Washington Fee schedule.**

9. Decisions and Vote Requirements. The SPGA shall act within ninety (90) days following the date of public hearing. Failure to take final action upon an application for Special Permit within said ninety (90) days shall be deemed to be a grant of the permit applied for. Special Permits issued by the SPGA shall require a vote of at least four (4) members of the five-member board.
  10. Performance Guarantees. A performance bond or a deposit of moneys or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the conditions specified in the Special Permit may be required of the applicant; as an alternative, a covenant may be filed, executed and duly recorded by the owner of record running with the land, whereby such conditions as specified in the Special Permit shall be completed before the Special Permit is utilized. All conditions shall have been certified as satisfactorily completed by the Planning Board before the final release of the performance guaranty or covenant.
  11. Expiration of Special Permit. A Special Permit shall lapse within two (2) years if a substantial use or construction has not begun under the permit within said period, as determined by the Building Inspector.
  12. Planning Board Membership. The Planning Board shall consist of five (5) members and one (1) associate member. The Board of Selectmen and the Planning Board by a majority of each board, acting pursuant to M.G.L. c. 40A §9, may appoint the associate member for a three (3) year term. The Chairman of the Planning Board may designate the associate member to sit on the Planning Board for the purposes of acting on a special permit or site plan review application, or any other matter for which a quorum is required, in case of absence, inability to act or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board.
- F. Site Plan Review.** For the purpose of assuring proper drainage, safety, administering provisions of this Bylaw in regard to parking areas, signs, screening and to assure adequate consideration for abutting landowners, a site plan shall be submitted for all new construction, as per §215-4(C)-(D), except as otherwise noted within this Bylaw.
1. Site plan review shall be conducted by the Planning Board.
  2. Filing Requirements. Five (5) copies of the site plan shall be submitted to the Planning Board, drawn to scale and include the following, unless waived by the Planning Board:
    - a. Physical address (if one exists) and the map, lot and block number of the proposed site.
    - b. The names, mailing addresses, phone numbers, email addresses, and signatures for the applicant, owner and representative if applicable.
    - c. The proposed use and description of all structures whether temporary or permanent.
    - d. Property lines of the proposed site and all those within six hundred feet (600') of the property.
    - e. Elevation contour lines at two-foot vertical intervals.
    - f. Outlines of all existing and proposed buildings and structures on the proposed site, including building setbacks.
    - g. The floor area and height of proposed buildings.
    - h. The location and nature of any external lighting.

- i. The location of permanent and temporary sanitary provisions, including garbage disposal.
  - j. The location and size of proposed signs.
  - k. The location, height and materials of existing or proposed fencing.
  - l. Existing and proposed access roads, driveways, public ways, private ways, and recreational trails on the proposed site.
  - m. Proposed grading, cut or fill
  - n. Delineation of all wetland resources and associated buffer areas, in accordance with the Massachusetts Environmental Policy Act (MEPA) guidelines and regulations.
  - o. Locations of rare, threatened or endangered species existing on the site, in accordance with the Natural Heritage Endangered Species Program (NHESP) guidelines and regulations.
  - p. Native vegetation to be removed or altered or any additional landscaping proposed.
  - q. Engineering controls at the site and on the access road to control erosion and sedimentation both during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of Environmental Protection's Stormwater Policy.
3. Review by Other Boards and Agencies. The Planning Board shall, within ten (10) days after receipt of an application for site plan review, transmit a copy thereof for review to the Board of Health, the Zoning Board of Appeals, the Board of Selectmen, the Road Superintendent, the Building Inspector, the Zoning Enforcement Officer and the Conservation Commission. Any other municipal board or any other agent, at the discretion of the Planning Board, may be consulted. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate, in writing, to the Planning Board. However, the failure to make recommendations within thirty (30) days of receipt of the application by such board or agency of the matter for review shall be deemed lack of opposition thereto.
  4. The Planning Board shall review and act upon the site plan with all deliberate speed, within thirty (30) days of its receipt, and notify the applicant of approval on the earliest date possible. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 30 days lapse from the date of the submittal of the site plan without action by the Planning Board.

# APPENDIX A

