TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

DATE: 04/18/24

TO: DENISE SMITH, TOWN CLERK

FROM: GRACE BROWNELL, ADMINISTRATIVE ASSISTANT; MICHAEL ANTONELLIS, TOWN PLANNER/DIR. LU&IS

SUBJECT: ARTICLES SUBMITTED TO 05/02/24 ANNUAL TOWN MEETING WARRANT

CC: JOE LAYDON, TOWN MANAGER

Included within this memo are Planning Board recommendations on the following articles:

- Article 30 Road Acceptance- Azalea Lane ("JR Estates Subdivision");
- Article 31 Proposed Amendment to Zoning Bylaws; Addition of Sec. 300-7.7 Inclusion of Affordable Housing;
- Article 32 Proposed Amendment to Zoning Bylaws; Addition of Sec. 300-6.8 Solar Overlay District;
- Article 33 Proposed Amendment to Zoning Bylaws; Sec. 300-3.1 Table of Principle Uses within the Upton Center Business District (UCBD);
- Article 34 Proposed Amendment to Zoning Bylaws; Sec. 300-10.1 Definition; Sec. 300-3.1 Table of Principle Uses; Sec. 300-6.2 Personal Wireless Service Facilities.

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TOWN OF UPTON, MASSACHUSETTS

Planning Board

DATE: 04/09/24

TO: DENISE SMITH, TOWN CLERK

FROM: GRACE BROWNELL, ADMINISTRATIVE ASSISTANT

SUBJECT: ARTICLE 30 ROAD ACCEPTANCE – AZALEA LANE (JR ESTATES SUBDIVISION)

CC: DENNIS WESTGATE, ACTING TOWN MANAGER

Street Acceptance Plans of the road with the JR Estates Subdivision- Azalea Lane, were previously approved at Annual Town Meeting on June 23, 2020 and May 8, 2021. Due to the plans never being recorded and statuary timeline issues, the road acceptance was never finalized and Azalea Lane remains as a developer's-road. On March 26, 2024, the Planning Board held a public hearing to discuss the road acceptance. Upon closing on March 26, 2024 the Board voted (5–0) to recommend **favorable** action for the acceptance of Azalea Lane as a public road at Annual Town Meeting, subject to securing and documenting all easements to be approved by the Town Manager, Town Counsel, and DPW.

Katherine Robertson, Chair

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TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

DATE: 03/26/24

TO: DENISE SMITH, TOWN CLERK

FROM: GRACE BROWNELL, ADMINISTRATIVE ASSISTANT; MICHAEL ANTONELLIS, TOWN PLANNER, DIR. LU&IS

SUBJECT: ARTICLE 31 PROPOSED AMENDMENT TO ZONING BYLAWS; ADDITION OF SEC. 300-7.7 INCLUSION OF AFFORDABLE HOUSING

CC: JOE LAYDON, TOWN MANAGER

On March 12, 2024, the Planning Board held a public hearing to discuss the proposed modifications to the Upton Zoning Bylaws to include the addition of Section 300. 7.7 Inclusion of Affordable Housing for the purpose of promoting the inclusion of affordable housing as part of the new residential development. The Board voted (3-1) to recommend **favorable** action at Annual Town Meeting.

§ 300-7.7 – Inclusion of Affordable Housing

A. Purpose and intent. The purpose and intent of this zoning bylaw is to promote the inclusion of affordable housing as part of the development of housing overall in the Town of Upton. This is also known as Inclusionary Zoning. More specifically:

(1) The purpose of these provisions is to encourage a greater diversity of housing and the development of new or renovated housing that is affordable to eligible low- and moderate-income households in perpetuity or so long as allowed by law. At a minimum, affordable housing produced through this regulation shall be in compliance with the requirements set forth in MGL c. 40B, § 20 through 23 (as the same may be amended from time to time).

(2) It is intended that the Affordable Housing Units (AHU's) that result from the application of this bylaw be considered as Local Action Units (LAU's), in compliance with the requirements for the same as specified by the Executive Office of Housing and Livable Communities (EOHLC) or successor state agency or regulations.

(3) The LAU's created by this bylaw are intended to add to the town's Subsidized Housing Inventory (SHI) and contribute to local efforts to meet the state's requirement for affordable housing levels. Accordingly, these units must meet EOHLC's Local Incentive Program (LIP) criteria to be suitable for inclusion and counted in the Town's SHI.

(4) The application of these affordable housing provisions is intended to consider other important zoning objectives, such as those given in section 300-1.1 Purpose of these Zoning By-laws Specifically, to encourage the most appropriate use of land throughout the Town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the Town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, MGL c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

B. Applicability. In all zoning districts, including overlay districts, the Inclusionary Zoning provisions of this section shall apply to the following uses:

(1) Division of land. This section shall apply to the division of contiguous land held in single or common ownership into six (6) or more residential lots.

(2) Multiple dwelling units. This bylaw shall apply to the construction of six (6) or more dwelling units, whether on one or more contiguous parcels, alteration, expansion, reconstruction, or change of existing residential or non-residential space.

(3) Senior Housing Community. Senior Housing Communities pursuant to section 300-7.4 of this zoning bylaw shall be subject to the provisions of Section 300-7.7 herein.

(4) Planned Village Developments. Planned Village Development pursuant to section 300-6.4 of this zoning bylaw shall be subject to the provisions of Section 300-7.7 herein.

(5) The provisions of Subsection B (2) above shall apply to the construction of six (6) or more dwelling units on individual lots if said six or more lots are held in single or common ownership.

(6) To prevent segmentation of projects designed to avoid the requirements of this bylaw, parcels held in single or common ownership and which are subsequently divided into six (6) or more lots shall also be subject to this bylaw.

(7) To address the possible segmentation of projects over time, any construction that results in a net increase of six (6) or more dwelling units measured over a 36-month period shall be subject to this bylaw, that 10 year period is measured from the date of the issuance of the first Certificate of Occupancy.

(8) If the Special Permit Granting Authority (SPGA) determines that an applicant has established surrogate or subsidiary entities to avoid the requirements of this §B, then an Inclusionary Housing Special Permit shall be denied.

C. Inclusionary housing special permit. Pursuant to MGL c. 40A, § 9, the development of any project set forth in subsection B above shall require the grant of a Inclusionary Housing Special Permit (IHSP) from the Planning Board SPGA. The Special Permit shall be granted if the proposal meets the requirements of this bylaw.

D. Provision of affordable housing. As a condition for approval of a special permit, the applicant shall contribute to the local inventory of affordable housing by providing at least the number of AHU's specified below, which must be eligible for inclusion in the Town's SHI.

(1) For developments of six (6) to nine (9) ownership or rental units, at least one (1) unit of the total proposed dwelling units shall be affordable.

(2) For development of ten (10) to nineteen (19) ownership or rental units, at least two (2) units of the total proposed dwelling units shall be affordable.

(3) For development of twenty (20) to twenty-nine (29) ownership or rental units, at least three (3) units of the total proposed dwelling units shall be affordable

(4) For development of thirty (30) to forty-four (44) ownership or rental units, at least twelve and a half percent (12.5%) of the total proposed dwelling units shall be affordable.

(5) For development of forty-five (45) or more ownership or rental units, at least fifteen (15%) of the total proposed dwelling units shall be affordable.

(6) The following schedule is provided for allocating affordable units given a particular range of total lots in a subdivision or total units in a multi-family development.

Total Units	Minimum Affordable Units
6 to 9	1
10 to 19	2
20 to 29	3
30 to 44	12.5%
45 and greater	15%

(7) For the calculation of AHU's per §§ D(1) through D(6), fractions of one-half (½, 0.5) dwelling unit or more shall be rounded up to the nearest whole number, while lesser fractions shall be rounded down a fractional unit. For example, a proposed development of:

- 50 housing units (15% minimum) would require 7.5 affordable units, rounded up to 8 units (16%)
- 35 housing units (12.5% minimum) would require 4.375 affordable units, rounded down to 4 total affordable units (11.4%)

E. Preservation of affordability.

(1) All ownership developments shall be subject to a permanent affordable housing restriction and/or regulatory agreement, ensuring that the AHUs shall remain affordable in perpetuity, or so long as allowed by law, and each affordable unit shall be conveyed subject to a deed rider acceptable to and approved by the Town and EOHLC and granting the Town such rights as may be required to ensure that said AHU's remain affordable in perpetuity and be counted toward the Upton Subsidized Housing Inventory. In addition, no certificate of occupancy permit shall be granted for any home-ownership development containing affordable home-ownership units prior to the recording of the affordable housing restriction and/or regulatory agreement at the Registry of Deeds, as the SPGA shall deem appropriate.

(2) All multi-family rental developments with affordable housing units shall be subject to a regulatory agreement, ensuring that the AHUs shall remain affordable in perpetuity, or so long as allowed bylaw. Said regulatory agreement shall be approved by the Town and EOHLC. In addition, no certificate of occupancy permit shall be granted for any multi-family rental developments containing affordable home-ownership units prior to the recording of the regulatory agreement at the Registry of Deeds, as the SPGA shall deem appropriate.

(4) In the event that any rental unit is converted to a condominium ownership unit, the condominium unit shall be restricted in perpetuity as per §§ E(1) and E(2) above to ensure that it remains affordable to income-eligible households as prior to the condominium conversion.

(5) The Upton Affordable Housing Trust or its agent or designee shall monitor, oversee, and administer the details for all re-sale or re-lease of any affordable units in the Town.

F. Timing of construction for affordable units.

(1) The construction of affordable units shall be commensurate with the construction of market rate units per the schedule in §§ D(1) through D(7) above. Should projects be built in phases, each phase shall contain the same proportion of affordable units to market rate units as the overall development.

(2) The building permit for the last-market rate unit shall not be issued until all affordable units have been constructed, unless an alternate construction schedule has been approved by the SPGA.

G. Siting of affordable units. The affordable units created under this bylaw shall be proportionally distributed throughout the proposed project, in terms of location, size, and type.

(1) Affordable units shall be provided within the development that requires the affordable units unless the requirements of this section are satisfied through a payment-in-lieu of providing affordable units.

(2) Their siting shall be integrated within the development along with the locations of the other dwellings, rather than segregated or concentrated in one area.

(3) The AHU's shall not be situated in less desirable locations than market-rate units and shall, on average, be no less accessible to public amenities such as transportation, recreation or open spaces, and shopping or other businesses.

(4) The location of each and every AHU shall be identified on the site plans and approved by the Planning Board pursuant to Section 300-9.4 of the Zoning Bylaw. In the case of multi-family dwellings, the locations of affordable units shall be identified on the building floor plans for each and every structure of this type and approved by the SPGA.

H. Minimum design and construction standards. The exterior appearance of the affordable units shall be compatible with and essentially indistinguishable from the other units in the development. The AHU's shall be designed with similar features and built with comparable quality materials with respect to the market-rate dwellings built.

I. Minimum lot size. The average lot size for affordable home units shall be comparable to those of their market-rate counterparts within the development.

J. Payment-in-lieu-of-units. As an alternative to the requirements of Subsection D and to the extent allowed by law, an applicant may provide a payment to the Upton Affordable Housing Trust ("AHT") to be used for the production of affordable housing in lieu of constructing ownership units within the proposed development.

(1) Payment-in-lieu-of-units ("PILU"). The applicant for development subject to this bylaw may choose a payment in lieu of the construction or provision of affordable ownership units to the AHT at the sole discretion of the SPGA. The fees shall be paid in increments prior to the issuance of a building permit for each and every unit, or otherwise at the sole discretion of the SPGA.

(2) Calculation of PILU. The fee of an affordable ownership unit shall be equal to eighty (80%) of the average listing price of comparable market-rate units of the same bedroom count within the proposed development. The SPGA shall make the final determination of the PILU. .

(3) PILU's are not applicable to affordable rental units. All rental units proposed within a multi-family development must be constructed and dedicated as affordable pursuant to 300-7.7 J (5).

(4) The incremental payments shall be equal to: the PILU as calculated for a single ownership unit in Subsection K(2) multiplied by the total number of affordable ownership units subject to PILU, divided by the total number of ownership units in the subject development. For example, a proposed development of 15 ownership units requires two affordable units per Subsection E. If the projected average sales price of each unit is $500,000, the total amount of the PILUs is $400,000 multiplied by two units, i.e., $800,000. The incremental cost is $800,000 divided by 15 units, i.e., $53,333 per unit.

(5) Timing of payment before issuance of building permits. Payment shall be received by AHT prior to issuance of building permit for each unit to be constructed.

(6) Revised calculation before issuance of building permits. The PILU calculation shall be confirmed with current market rates for the proposed development within sixty (60) days prior to issuance of building permit.

(7) Creation of affordable units. PILU's made to AHT in accordance with this section shall be used only for purposes of providing affordable housing for low- or moderate-income households. Using these payments, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, additional affordable units within existing or proposed developments, and other initiatives allowed under the Municipal Affordable Housing Trust Fund Law (MGL c.44. § 55C).

(8) If the AHT has been dissolved or is otherwise no longer in existence as of the time the application has been stamped received by the Town Clerk, then PILU's are to be paid to the Town and held in escrow for affordable housing production. Funds in escrow shall be transferred commensurate to the AHT upon its re-establishment.

K. Combining construction with payment-in-lieu-of units. A combination of construction of dwelling units and payment of fee-in-lieu of-units may be combined by the applicant to meet a single project's requirement if granted approval by the SPGA.

L. Local preference. To the maximum extent permitted by law, including the regulations of EOHLC, any IHSP granted hereunder shall include a condition that a preference for Upton residents, Town of Upton employees, employees of schools and businesses located within Upton, and families of students attending schools within Upton shall be included as part of the lottery and marketing plan for the affordable units.

M. Marketing plan for affordable units. Applicants creating affordable units under this bylaw are required to select qualified homebuyers or renters via lottery under an Affirmative Fair Housing Marketing Plan prepared and submitted by the applicant and approved by EOHLC and the SPGA. This Plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance with federal and state fair housing laws in effect on the date of the special permit or other permit application with the Town of Upton. No building permit for a development subject to the

Upton Inclusionary Zoning Bylaw shall be issued unless the SPGA has determined that the applicant's affirmative marketing plan complies with this requirement. The affirmative marketing costs for the affordable housing units shall be the responsibility of the applicant. The applicant shall also submit the affirmative marketing and resident selection plan for review by the AHT.

N. Related fees. The SPGA is authorized to retain professional consultants to advise the SPGA on any and all aspects of the application, the project's compliance with this bylaw, and to determine whether AHUs authorized by an IHSP will be included in the Town's SHI. The SPGA may require the applicant to pay reasonable costs to be incurred by the SPGA for the employment of outside consultants pursuant to SPGA regulations, as authorized by G.L. c. 44, § 53G.

O. Conflict with other bylaws. The provisions of this bylaw shall be considered supplemental of existing zoning by-laws. To the extent that a conflict exists between this section and others, the more restrictive section, or provisions therein, shall apply.

P. Severability. If any provision of this section is held invalid by a court of competent jurisdiction, the remainder of this section shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Upton Inclusionary Zoning bylaw.

Explanation/ Submitted by: *This Zoning Bylaw Amendment seeks to create a provision for Inclusionary Zoning by adding Section 300-7.7 Inclusion of Affordable Housing. Inclusionary zoning is a regulatory mechanism which requires all development of a certain size and number of dwelling units to provide a percentage of all dwelling units as dedicated affordable housing which may be added to the Town's Subsidized Housing Inventory. (2/3rds vote required)/ Planning Board.*

Katherine Robertson, Chair

TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

DATE: 03/26/24

TO: DENISE SMITH, TOWN CLERK

FROM: GRACE BROWNELL, ADMINISTRATIVE ASSISTANT; MICHAEL ANTONELLIS, TOWN PLANNER, DIR. LU&IS

SUBJECT: ARTICLE 32 PROPOSED AMENDMENT TO ZONING BYLAWS; ADDITION OF SEC. 300-6.8 SOLAR OVERLAY DISTRICT

CC: JOE LAYDON, TOWN MANAGER

On March 12, 2024 the Planning Board held a public hearing to discuss the proposed modifications to the Upton Zoning Bylaws to include the amendment to the Zoning Map and the addition of Section 300-6.7 Solar Overlay District to allow for the sitting of Large-Scale Ground-Mounted Photovoltaic Installations (LGSPI) in appropriate locations within the Solar Overlay District and impose reasonable restrictions on such installations. The Board voted (4-0) to recommend **favorable** action at Annual Town Meeting*:*

1. **Zoning Map Amendment**

   Amend the Zoning Map of Upton, Massachusetts, referenced in Section 300-2.2 of the Zoning By-laws, to add the Solar Overlay District as shown on the Map entitled "Solar Overlay District" dated March 11, 2024 and on file with the Town Clerk.

2. **Amend Section 300-2.1 by adding the following**

   J. Overlay District – Solar Overlay District

3. **Amend Section 300-3.1 Table of Principal Uses as follows with new language indicated by underline**

   38 Large-scale ground-mounted solar photovoltaic installations with rated nameplate capacity of 250 kW DC to 500 kW DC and that occupy from 40,000 square feet to 80,000 square feet of surface area (see § 300-6.6 for additional regulations) (see Note 10) (see Section 300-6.8 for the use in the Solar Overlay District)

   39 Large-scale ground-mounted solar photovoltaic installations with rated nameplate capacity greater than 500 kW DC or that occupy more than 80,000 square feet of surface area

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(see § 300-6.6 for additional regulations) (see Note 10) (see Section 300-6.8 for the use in the Solar Overlay District)

4. Add a new Section 300-6.8 as follows

Section 300-6.8 Solar Overlay District

A. Purpose.
(1) The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification, and removal of such installations that address public safety and minimize impacts on scenic, natural, and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.
(2) The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

B. Definitions. Where not expressly defined herein, terms used in this section shall be interpreted as defined and consistent with the provisions of Section 300-6.6 Large Scale Ground Mounted Solar Photovoltaic Installations (LGSPI).
C. Establishment of District. There is hereby in the Town of Upton one Solar Overlay District, the boundaries of which are shown on the Zoning Map on file with the Town Clerk.

D. Applicability.

a. All uses allowed by right or by special permit in the underlying zoning district shall be allowed by right in the Solar Overlay District and, in such case, shall be subject to provisions of these By-laws that are applicable to the underlying district.

b. All Large-Scale Ground Mounted Solar Photovoltaic Installations (LGSPI) proposed in the Solar Overlay District, shall be subject to the requirements and provisions of Section 300-6.6 Large Scale Ground Mounted Solar Photovoltaic Installations (LGSPI).

c. Large-scale ground-mounted solar photovoltaic installations with rated nameplate capacity of 250 kW DC or that occupy more than 40,000 square feet of surface area (see § 300-6.6 for additional regulations) shall be allowed by Special Permit in the Solar Overlay District."

E. Severability. The provisions of this bylaw are severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

Narrative and Findings
In recommending the adoption of the proposed Solar Overlay District and supporting zoning bylaw the Planning Board wishes to note the following reasons, considerations, and findings in support of the recommendation:

1. *In fall Town Meeting, November 2023, Upton considered a proposed Zoning Bylaw change which sought to allow LGSPI, 40,000 sq. ft and over, by Special Permit throughout all zoning districts with additional controls and regulations beyond what is currently within the zoning bylaw. It was explained at Town Meeting that recent caselaw has provided for clarification into an expanded interpretation regarding MGL 40A Section 3 which exempts Solar from "unreasonable regulation". Town Counsel had provided guidance to staff and the Planning Board that informed that approach so the Town may become compliant with applicable state law. Town Meeting rejected that proposal.*
2. *In pursuit of compliance with MGL 40A Section 3, and in recognition of Town Meeting concerns, the Planning Board revisited the issue to provide for a proposed overlay district which would restrict any new LGSPI to the proposed district, instead of town-wide, and provide for increased controls such as lowering the Special Permit trigger requirements to 40,000 sq.ft. instead of 80,000 sq.ft;*
3. *In consideration of land within town for the proposed Solar Overlay District there was a clear preference from the Board to avoid deforestation or large clearings of vegetation and trees for the sake of solar energy. The area selected for the proposed Solar Overlay District is a former sandpit, much of which is already cleared. While the Town has many large parcels of land potentially suitable and desirable for solar development, the Town does not have many large parcels of land which contain large clearings from a former use.*
4. *Much of the proposed district is regulated through the US Army Corps of Engineers (USACE) through flood easements below a certain elevation marker. This is not an uncommon condition given the area of town in which the district is proposed. However, whereas housing and other types of development might be severely limited on much of the site due to the presence of flood-plain, it is also not preferable. Allowing for solar, which can have additional controls placed on its use through the issuance of a Special Permit is a preferred way of allowing some type of development which will contribute to the town's tax levy without overburdening demand on public services.*
5. *Additionally, there is a stated preference by this Board as well as the public to be able to shield and block LGSPI from public view. The proposed overlay district is situated*

between many large parcels of land both privately and publicly owned. Were a LGSPI to be constructed within the proposed overlay district, it would exist at a lower grade than the surrounding properties and likely not visible given the grade change and a substantial existing vegetative and tree buffer which surrounds the property. Also, the back portion of the property which expands to account for much of the proposed overlay district area is only accessible through a 1,000+ ft cart path.

6. *The Town is committed to identify ways in which Upton can contribute in achieving the state's goals of reaching carbon-neutral status.*

The Planning Board feels that all of the reasons stated above, the existing conditions of the site, how the district is situated with respect to surrounding properties, the existing cleared area, the distinct remote-nature of the site, plus access to three-phase power, make this site an ideal location for the proposed overlay district.

Lastly, the Planning Board has given substantial consideration to concerns relative to spot-zoning. While the board acknowledges that despite the proposed district existing entirely within one parcel of land, the site is substantial in size amounting to over 86 acres of land. Additionally, the site's history as a sand pit, existing cleared lands, remote nature from neighborhoods and other findings provided above make the site a clear choice for the proposed overlay district.

In conferring with Town Counsel, the Planning Board has been assured that spot-zoning can be avoided as an issue so long as a proposed zoning change achieves a legitimate planning purpose. The Planning Board is confident in its recommendation and in the Board's rigorous evaluation of the site's usefulness as an overlay district in achieving legitimate planning purposes. The findings as presented above are intended to define the planning purposes for which the overlay district achieves. Those are stated again here, in short:

- *Furthering compliance with MGL Chapter 40A Section 3, with regard to the exemptions provided to solar.*
- *Providing incentive to develop existing cleared land by siting the overlay district where those lands exist.*
- *Siting the proposed overlay district in a remote area with limited view from the public right-of-way and distances from nearest residential uses*
- *Siting the proposed district in an area with access to three-phase power, ensuring that the use is feasible.*
- *Siting the proposed district on a potentially developable parcel of land for residential uses to off-set expensive costs pertaining to new road construction, maintenance, and associated costs and demands to public services.*
- *Taking part in achieving the state's carbon-neutral goals.*

Explanation/ Submitted by: *This Zoning Bylaw Amendment seeks to create a new zoning overlay district to allow for the location of Large-Scale Ground-Mounted Solar Photovoltaic Installations (LGSPI) within the boundaries of the district by Special Permit ("PB") issued by the Planning Board. Currently, LGSPI are allowed as-of-right and by Special Permit in the Commercial and Industrial (CI) district. (2/3rds vote required)/ Planning Board.*

Katherine Robertson, Chair

TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

DATE: 03/26/24

TO: DENISE SMITH, TOWN CLERK

FROM: GRACE BROWNELL, ADMINISTRATIVE ASSISTANT; MICHAEL ANTONELLIS, TOWN PLANNER/DIR. LU&IS

SUBJECT: ARTICLE 33 PROPOSED AMENDMENT TO ZONING BYLAWS
SEC. 300-3.1 TABLE OF PRINCIPLE USES WITHIN THE UPTON CENTER BUSINESS DISTRICT (UCBD); USES IN THE UPTON CENTER BUSSINESS DISTRICT

CC: JOE LAYDON, TOWN MANAGER

On March 12, 2024, the Planning Board held a public hearing, to discuss the proposed amendment to the Upton Zoning Bylaws Sec. 300-3.1 Table of Principle; uses in the Upton Center Business District to allow certain retail businesses as of right within the UCBD. The following uses would be permitted by-right: "music store" and "and other similar retail business". After discussion of the proposed amendment the hearing was closed. The Board voted (4-0) to recommend **favorable** action at Annual Town Meeting.

(2/3rds vote required)/ Planning Board.

Katherine Robertson, Chair

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TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

DATE:	04/09/24
TO:	DENISE SMITH, TOWN CLERK
FROM:	GRACE BROWNELL, ADMINISTRATIVE ASSISTANT
SUBJECT:	ARTICLE 34 PROPOSED AMENDMENT TO ZONING BYLAWS SEC. 300-10.1 DEFINITION; SEC. 300-3.1 TABLE OF PRINCIPLE USES; SEC. 300-6.2 PERSONAL WIRELESS SERVICE FACILITES
CC:	JOE LAYDON, TOWN MANAGER

On March 12, 2024, the Planning Board held a public hearing to discuss the proposed amendments to the Upton Zoning Bylaws Sec. 300-10.1 Definitions; Sec. 300-3.2 Accessory Uses and Structures; Sec. 300-6.2 Personal Wireless Service Facility. The bylaw amendment seeks to change terminology of the Section Title for 300-6.2 currently titled Wireless Data Transfer Facility; Add new definitions relative to new uses identified within Sec. 300-6.2 per this amendment; and add new uses identified in Sec. 3000-6.2 within the list of accessory uses and structures, most notably the introduction of "small wireless facility" as a use or structure, which will be required to obtain a Special Permit. After discussion of the proposed amendment the hearing was closed on March 26, 2024. The Board voted (4-1) to recommend **favorable** action at Annual Town Meeting, per the condition that the language is modified to reflect that the uses outlined herein are to be governed by the Special Permit process, per Sec. 300-9-3.

(2/3rds vote required)/ Planning Board.

WARRANT ARTICLE LANGUAGE

To see if the Town will vote to amend the Town of Upton Zoning By-laws Section 300-10.1 Definitions, 300-3.2 Accessory uses and structures, and Section 300-6.2 Wireless Data Transfer Facilities to regulate small wireless facilities and make related changes as follows, with additions indicated by underline and deletions indicated by strike through, or take any other action relative thereto:

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Article 10 Definitions

§ 300-10.1 Definitions and word usage.

Add the following two definitions, for consistency with federal regulation:

PERSONAL WIRELESS SERVICE FACILITY (or simply FACILITY)

A facility as defined in 47 CFR 1.6002(i), such as may from time to time be amended. This definition covers antennas of all sizes, and their attendant structures, used for the purpose of providing personal wireless services.

SMALL WIRELESS FACILITY

A facility as defined in 47 CFR 1.6002(l), such as may from time to time be amended. A Small Wireless Facility may without limitation be secured to a pole or suspended on a line that connects two poles.

Modify the following definition:

WIRELESS DATA TRANSFER FACILITY

Transmission, monitoring or receiving antennas systems, their support structure and any peripheral attached thereto, that allow transfer of data through the air without a physical connection, other than a Small Wireless Facility. It does not refer to the structures housing the electronic systems necessary to operate the antennas.

Article 3 Use Regulation

§ 300-3.1 Table of Principle Uses

C. Table of Principle Uses. Table A. – Table of Principal Uses by District

Principal Use		SRA	SRB	SRC	SRD	AR	GB	C&I	MGF	UCBD
36	~~Personal wireless~~ Wireless data transfer facilities (see § 300-6.2 for	PB	PB	PB	PB	PB	PB	PB	PB	N

	additional regulations)									

§ 300-3.2 Accessory uses and structures

Add one section:

D. Accessory uses in all districts. Installation of a Small Wireless Facility is permitted in all districts, subject to the provisions of § 300-6.2, subsection G.

Article 6 Special Regulations

Amend nomenclature to distinguish different types of facility, and add a section regulating the installation of Small Wireless Facilities:

§ 300-6.2. Personal Wireless Service facilities.

A. Purpose and intent. The purpose of this section is to regulate ~~wireless data transfer~~ personal wireless service facilities (herein abbreviated "facility" or "facilities") such that these services may be provided with the minimum harm to the public health, safety and general welfare by:

(1) Protecting the general public from hazards associated with ~~wireless data transfer~~ such facilities.

(2) Minimizing visual impact from ~~wireless data transfer~~ such facilities.

(3) Preventing adverse impact on local property values.

(4) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

B. Special permit granting authority. A wireless data transfer facility shall only be allowed by a special permit. The Planning Board shall act as the special permit granting authority (SPGA) for wireless data transfer facilities in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for wireless data transfer facilities in accordance with the provisions of this Zoning Bylaw.

C. Application in zoning districts. A wireless data transfer facility shall be allowed by special permit in all zoning districts in accordance with the requirements and regulations of the Town of Upton Zoning Bylaw.

D. Applicability and exemptions.

(1) This section applies to any wireless data transfer facility. The following specific uses are exempt:
   (a) Satellite dishes or antennas used exclusively for residential use.
   (b) Police, fire, ambulance and other public emergency dispatch.
   (c) Citizens band radio.
   (d) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose and the tower is removed upon loss or termination of said FCC license.

(2) A nonexempt wireless data transfer facility or repeater facility that shares a tower or other structure with any exemptions listed above shall not be considered exempt from this bylaw for any reason.

(3) Existing towers may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in this Zoning Bylaw.

(4) Wireless data transfer devices and wireless data transfer accessory buildings may be located totally within existing buildings and existing structures in all zoning districts, subject to a special permit granted by the Planning Board.

E. Consistency with federal law. These regulations are intended to be consistent with the Telecommunications Act of 1996[1] in that:

(1) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.

(2) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

(3) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

F. Wireless Data Transfer Facility: Design requirements and performance standards. All wireless data transfer facilities erected, installed and/or used shall comply with the following design requirements and performance standards:

(1) Shared use. Shared use of towers by commercial wireless data transfer carriers is required unless such shared use is shown by substantial evidence to not be feasible.

(2) Height.
   (a) The maximum allowed height of a tower shall be 150 feet. The Planning Board may grant a waiver of the maximum allowed height limitation under this section for a tower not to exceed 200 feet in total if the Planning Board finds that the increased height is in the best interest of the Town.

(b) Data transfer devices located on a structure shall not exceed 10 feet in height above the roofline of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roofline, such as water tanks, the height of the data transfer devices shall not exceed 10 feet above the highest point of the structure.

(3) Co-location. In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this bylaw, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is fewer than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.

(4) Proximity to existing residence. Towers shall be located a minimum of 750 feet from an existing residential dwelling or proposed dwelling in a permitted submission.

(5) Setback. A tower shall be set back from the property lines of the lot on which it is located by a distance equal to 1 1/2 times the overall vertical height of the tower and any attachments.

(6) Screening requirements.

(a) All exterior wireless data transfer facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless data transfer facilities, equipment and fixtures visible against a building or structure shall be colored to blend with such building or structure. Wireless data transfer facilities, equipment and fixtures visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.

(b) Data transfer devices shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets and residences. Freestanding dishes or data transfer devices shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences, and to limit the need to remove existing vegetation. All equipment shall be screened, colored, molded and/or installed to blend into the structure and/or the landscape.

(7) Fencing. Fencing shall be provided to control access to wireless data transfer facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board. Any entry to the proposed access road shall be gated (and locked) at the intersection of the public way, and a key to the lock provided to emergency response personnel.

(8) Lighting. Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the Federal Aviation Administration.

(9) Parking. There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not be used for the permanent storage of vehicles or other equipment.

(10) Access. For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless data transfer facility accessory buildings, and shall be designed to provide proper storm drainage.

G. Small Wireless Facility. This bylaw section is to permit regulation of the installation of small wireless facilities outside of public property.

(1) No small wireless facility shall be placed, installed, constructed or modified without first obtaining Special Permit approval from the Planning Board.

(2) The Planning Board shall adopt and may from time to time amend policies, rules and regulations relative to approval under this section 300-6.2(G). All policies and amendments shall be subject to a public hearing. Adoption of policies and amendments shall require a simple majority vote of the Planning Board.

(3) A copy of the policies, rules and regulations shall be kept on file with the Town Clerk and shall apply to and set forth the following:

a) The application process, including public hearing requirements, evaluation criteria and timing for action by the Planning Board.

b) The form and contents of the application and application fee.

c) Applicable design, placement, safety, and aesthetic criteria.

d) Requirements for modification, abandonment and annual recertification.

(4) The policies described in section (2) shall be intended to preserve the aesthetic character of the Town; to safeguard public safety, health and welfare; protect the

financial interests of the Town; and to protect against intangible public harm resulting from unsightly or out-of-character deployments.

(5) The Select Board shall adopt the policies, rules and regulations described in section 2 above, with necessary modifications applicable to rights-of-way and other lands under the control of the Select Board. These policies, rules and regulations shall also be kept on file with the Town Clerk.

H. General requirements.

(1) No wireless data transfer facility may be erected except upon the issuance of a special permit by the Planning Board and approval under site plan approval as set forth in § **300-9.4** of the Zoning Bylaw and subject to all of the provisions of this section. It is recommended to the applicant to undertake both the special permit and site plan approval procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged, provided there is one lead applicant responsible for all submissions and further provided that no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

(2) All owners and operators of land used in whole or in part for a wireless data transfer facility and all owners and operators of such wireless data transfer facility shall, as a continuing condition of installing, constructing, erecting and using a wireless data transfer facility, permit other FCC-licensed commercial entities seeking to operate a wireless data transfer facility to install, erect, mount and use compatible wireless data transfer equipment and fixtures on the equipment mounting structure on reasonable commercial terms, provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless data transfer facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless data transfer equipment or fixtures.

(3) Each proposed construction of a new wireless data transfer facility, tower, wireless data transfer device or wireless data transfer accessory building shall require an initial special permit. Any extension in the height of, addition of wireless data transfer accessory buildings or wireless data transfer devices to, or replacement of any wireless data transfer facility shall require an amendment to the special permit previously issued for that facility or, in the case where there is no special permit, an initial special permit.

(4) New wireless data transfer facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:

(a) The applicant has used reasonable efforts to co-locate its proposed wireless data transfer facilities on existing or approved facilities; and;

(b) The applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e., the height, structural integrity, weight-bearing and wind-resistant capacity of the existing or approved facility) and radio frequency engineering (i.e., height, coverage area, etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequent engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission. [Amended 5-8-2021 ATM by Art. 16]

(5) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional.

(6) A wireless data transfer facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this bylaw.

I. Criteria for granting special permit.

(1) Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of § **300-6.2** herein, § **300-9.4** of this Zoning Bylaw and MGL c. 40A, § 9.

(2) When considering an application for a wireless data transfer facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New towers shall only be considered after a finding that existing (or previously approved) towers suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed use(s), taking into consideration radio frequency engineering issues and technological constraints.

(3) When considering an application for a proposed data transfer device to be placed on a structure, the Planning Board shall take into consideration the visual impact of the unit from the abutting residences and streets.

J. Conditions. The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of the Zoning Bylaw, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of **§ 300-6.2** herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed, in writing, with the granting of a special permit or

issuance of a approval. As a minimum, the following conditions shall apply to all grants of special permit relating to a wireless data transfer facility pursuant to this section:

(1) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and Federal Aviation Administration, and required maintenance shall be filed with the Building Commissioner by the special permit holder, with a copy received by the Planning Board no later than January 31 of each year. [Amended 5-8-2021 ATM by Art. 16]

(2) Removal of abandoned towers and facilities. Any wireless data transfer facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such tower and facility shall remove same within 90 days of receipt of notice from the Planning Board, notifying the owner of such abandonment. If such tower or facility is not removed within said 90 days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless data transfer facility from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of 3% for the term of the lease. The term of the bond shall be for the full term of any lease, plus 12 months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.

(4) For all towers, an agreement must be executed whereby the user will allow the installation of municipal data transfer devices at no cost to the Town of Upton, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town-controlled data transfer devices.

(5) For all towers located on nonmunicipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, whereupon towers are located, if any Town-wide or Town-controlled telecommunications are located thereon.

(6) For all towers located on municipal property, a certificate of insurance for liability coverage in amounts determined by the Board of Selectmen must be provided, naming the Town as an additional insured.

(7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town-owned property by the user.

(8) All permittees shall be required to file annually on or before February 1 with the Upton Planning Board a complete list of all wireless data transfer facility locations in the Town then used by the permittee, including data transfer devices mounted on the interior of a building or structure.

(9) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.

(10) Any future extension or addition of a wireless data transfer facility or construction of new or replacement towers shall be subject to an amendment of the special permit, following the same procedure as for an original grant of a special permit.

(11) Prior to construction, the permittee shall provide a recorded copy of a restrictive covenant prohibiting construction on all areas contained in the setback/fall areas.

K. Severability. If any section of this bylaw is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.

Katherine Robertson, Chair