SECTION 6. SPECIAL REGULATIONS

6.1 Swimming Pools

Swimming pools must be compliant with all applicable State Building Codes (780 CMR: State Board of Building Regulations and Standards).

Note: §6.1 was amended by Article 20 at the 2000 Annual Town Meeting.

6.2 Earth Removal

The removal from any premises of more than 50 cubic yards of sand, gravel, stone, topsoil, or similar materials within any 12 month period shall be permitted only incidental to construction on the premises under a current Building Permit or, if authorized on Special Permit by the Board of Appeals, incidental to landscaping or site improvement in cases where no Building Permit is involved.

6.3A Public Building and School Conversion

Note: §6.3A was amended by Article 5 at the 2005 Special Town Meeting.

The Board of Appeals may grant a Special Permit for the conversion of public buildings or school buildings to multi-family residential use subject to the requirements and conditions set forth below.

6.3A.1 Objectives

The general objectives of permitting such conversions are:

a) To provide for continued use of unused public buildings or public or private school buildings.

b) To provide additional housing units, including diversity in type and affordability.

Note: §6.3A.1 b) was amended by Article 26 at the 2003 Annual Town Meeting.

6.3A.2 Buildings Eligible for Conversion

A public building or public or private school building located in any zoning district is eligible for conversion to multi-family use, but only provided it meets all of the following tests:

a) It was originally constructed not less than 20 years prior to the filing of the application for Special Permit.

b) It was used for not less than 15 years for public or school purposes.

c) It contains not less than 10,000 square feet in gross floor area

6.3A.3 Special Permit Criteria

Special Permits for building conversion shall be subject to the procedures and requirements of Section 7.3, Design and Site Plan Review. The proposal must be found by the Board of Appeals to meet all of the following, as well as complying with Section 7.3 and the Special Permit criteria of Section 7.4.3:

a) All the tests of Section 6.3A.2 have been met.

b) The conversion will result in not fewer than five additional dwelling units.

c) There will be provided a minimum of 1,200 square feet of lot area per dwelling unit. However, a minimum 1,000 square feet is allowed if the developer meets the following affordable housing requirements. The fifth housing unit and every third unit thereafter shall be an affordable housing unit; except that beginning with the 23rd unit, that 23rd unit and every fourth unit thereafter shall be an affordable housing unit. Nothing in this section shall preclude a developer from providing more affordable housing units than required under the provisions of this By-Law.

Note: §6.3A.3 c) was amended by Article 26 at the 2003 Annual Town Meeting.

d) Off-street parking shall be provided as required at Section 5.1.

e) There will be no exterior enlargements or extensions of the building other than those necessary to comply with applicable health, building and fire codes except such incidental changes as may be approved by the Board of Appeals enhancing the residential building while being in harmony with the neighborhood.

f) The proposed conversion will not create traffic hazards or volume greater than the capacity of the streets affected.

g) The proposed conversion will not be detrimental or injurious to the neighborhood.

h) Adequate and appropriate facilities will be provided for the proper operation of the converted building.

i) The converted premises will be adequately landscaped and outdoor parking areas appropriately screened, all in harmony with the neighborhood.

6.3A.4 Additional Conditions

The Board of Appeals may attach such additional conditions and limitations to a Special Permit granted under this Section as may be necessary to protect the neighborhood surrounding the property, and as may be necessary to encourage the most appropriate use of the land and building to be converted.

6.3B Public Building and School Conversion – 10,000 Square Feet or Less

Note: §6.3B was adopted by Article 5 at the 2005 Special Town Meeting.
§6.3B was amended by Article 18 at the 2007 Annual Town Meeting.

Conversion of public buildings with 10,000 square feet of gross floor area or less to multi-family residential use shall be permitted by-right, subject to the requirements and conditions set forth below and those found in Section 7.3 of these By-Laws.

6.3B.1 Objectives

The general objectives of permitting such conversions are:

a) To allow the re-use of surplus public buildings,

b) To allow multi-family use at an appropriate scale and density,

c) To promote the re-use and rehabilitation of historically significant structures,

d) To promote transit oriented development, and

e) To increase the diversity of housing.

6.3B.2 Buildings Eligible for Conversion

A public building of 10,000 square feet of gross floor area or less is eligible for conversion to multi-family use by-right, subject to Design and Site Plan Review by the Planning Board, but only provided the following criteria are fulfilled:

a) The building was originally constructed more than 20 years prior to the filing of the application for Design and Site Plan Review.

b) The building was used for more than 15 years for public or school purposes.

c) The building contains 10,000 square feet or less in gross floor area.

6.3B.3 Application

The Planning Board shall hear all petitions for multi-family use through the Design and Site Plan Review process. All applications shall follow the guidelines and submittal requirements found in Section 7.3 of these By-Laws.

6.3B.4 Approval Criteria

Applications for the conversion of a public building to multi-family use shall comply with the following criteria as well as the applicable objectives listed within Section 7.3:

a) Density shall not exceed three (3) dwelling units.

b) Off-street parking shall be provided at a ratio of not less than 1.5 spaces per unit to a maximum of two (2) spaces per unit. For proposed increases beyond 1.5 spaces per unit, the Planning Board shall determine that the spaces can be created within the footprint of the building (i.e. no reduction in the existing open space on the lot) or that

they can be provided off-site, provided that the applicant can exhibit long-term control over these spaces.

c) Only one (1) and two (2) bedroom units or a mix of these are allowed.

d) If applicable, the façade(s) of any building that is determined to be eligible for listing on the National Register of Historic Places will be appropriately rehabilitated, as provided for in the Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67).

e) The conversion to multi-family use shall comply with the provisions of Section 6.10, Inclusionary Housing of these By-Laws.

f) Open space surrounding existing buildings shall be maintained and any new outdoor parking areas shall be screened at a minimum with evergreens, all in harmony with the neighborhood. This screening shall be five (5) feet in height at the time of building occupancy and be planted not more than six (6) feet on center, provided that adequate sight lines for pedestrians and motor vehicles are maintained.

6.4 Elderly Housing

"Elderly Housing" as authorized in Section 3.3, Schedule of Use Regulations, shall comprise of multi-family dwellings operated by the Belmont Housing Authority (BHA) for occupancy by elderly persons or elderly families (as defined in Section 26J, Massachusetts General Law, Chapter 121 (Ter. Ed.) or 42 U.S. Code, Section 1402, both as amended, and equivalent provisions of law from time-to-time in force).

6.5 Cluster Development

The Board of Appeals may grant a Special Permit for any tract of land in a Single Residence District to be developed as a Cluster Development subject to the requirements and conditions set forth below:

6.5.1 Objectives

The general objectives of Cluster Developments are to encourage:

a) Preservation of open space for park, recreation, conservation or agricultural purposes.

b) Better utilization of natural features of the land through a greater flexibility of design.

c) More efficient provision of municipal services.

d) Creating opportunities for affordable housing.

Note: §6.5.1 d) was amended by Article 26 at the 2003 Annual Town Meeting.

6.5.2 Tract Size

The minimum tract areas upon which Cluster Developments may be allowed in the various Single Residence Districts are:

Single Residence A - 180,000 square feet

Single Residence B - 120,000 square feet

Single Residence C - 84,000 square feet

Single Residence D - 180,000 square feet

6.5.3 Number of Dwelling Units

a) The maximum number of dwelling units allowed within any Cluster Development shall be the number determined by dividing 85% of the area of the tract, exclusive of any wetlands or floodplain, by the minimum lot size permitted in the Single Residence District(s) within which the Cluster is located.

b) The maximum number of dwelling units allowed within the Cluster Development shall be the number determined by dividing 100% of the area of the tract, exclusive of any wetlands or flood plain, by 95% of the minimum lot size permitted in the single residence district(s) within which the cluster is located, provided that where five (5) or more housing units will be developed, the Board of Appeals determines that the developer complies with the following affordable housing requirements. The fifth housing unit and every third unit thereafter shall be an affordable housing unit; except that beginning with the 23rd unit, that 23rd unit and every fourth unit thereafter shall be an affordable housing unit.

Note: §6.5.3 b) was amended by Article 26 at the 2003 Annual Town Meeting.

6.5.4 Open Land

a) The area of open land shall equal at least 25% of the total area of the Cluster Development tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all the residents of the Cluster. Provision shall be made so that the open land shall be readily accessible to the owners and occupants of the lots in the Cluster, and owned by a corporation, association or trust whose owners or beneficiaries are all the owners and occupants of the lots, or by the Town, or otherwise as the Board of Appeals may direct in accordance with Massachusetts General Law, Chapter 40A.

b) In all cases, a perpetual restriction of the type described in Massachusetts General Law, Chapter 184, Section 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the open land shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Board of Appeals shall prescribe and may contain such additional restrictions on development and use of the open land as the Board of Appeals may deem appropriate after considering any comments which the Conservation Commission may choose to submit.

c) If a Special Permit is issued, the Board of Appeals may impose as a condition that the open land shall be conveyed by the applicant free of any mortgage interest or security interest and subject to a perpetual restriction of the type described in Section 6.5.4 a) prior to the issuance by the Building Inspector of a Building Permit for any dwelling or structure.

6.5.5 Dimensional Regulations

Except as otherwise provided in this Section, a Cluster Development tract shall comply with the frontage, setback, distance between buildings and building heights set forth in the Schedule of Dimensional Regulations contained in Section 4.2 of this By-Law. If the Cluster Development is divided into one or more individual lots, the frontage of each lot on a street or on a private road or way within the Cluster Development tract shall be as specified by the Board of Appeals consistent with fire safety, aesthetics and the character of the Cluster Development tract.

6.5.6 Attached Dwelling Units

The Board of Appeals may in its discretion allow a Cluster Development to consist in whole or in part of attached dwelling units if such units are not inconsistent with the aesthetics and physical appearance of the other buildings in the immediate vicinity.

6.5.7 Limitation of Subdivision

No lot shown on a plan for which a Permit is granted under this Section may be further subdivided and a notation to this effect shall be shown on the plan.

6.5.8 Design and Site Plan Review

Cluster Developments, whether or not containing attached dwelling units, are subject to the Design and Site Plan Review procedures and requirements of Section 7.3 of this By-Law.

6.5.9 Amendments

Following the granting by the Board of Appeals of a Special Permit under this Section, it may, upon application and for good cause shown after notice and a public hearing as required for granting a Special Permit, amend the plan solely to make changes in lot lines shown on the plan, provided, however, that no such amendment shall:

a) Grant any reduction in the size or change in location of the open land;

b) Grant any change in the layout of the ways;

c) Increase the number of lots; or

d) Decrease the dimensional requirements of any lot below the minimum dimensions permitted by this By-Law.

6.6 Floodplain District

Note: §6.6 was amended by Article 26 at the 2004 Annual Town Meeting.

6.6.1 Purposes

The purposes of this Section are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve natural flood control characteristics, to maintain the flood storage capacity of the floodplain, and to bring the Town of Belmont into compliance with the National Flood Insurance Program (42 U.S. Code 4001-4128), and regulations adopted pursuant thereto.

6.6.2 Definitions

Note: §6.6.2 was amended by Article 28 at the 2006 Annual Town Meeting.

Unless otherwise defined below, the terms used throughout this Section shall have the meaning as defined by 780 CMR.

Area of Special Flood Hazard - The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

Development - Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

District - Floodplain District.

Flood Boundary and Floodway Map - An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (FHBM) - An official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or AE.

Note: §6.6.2 was amended by Article 28 at the 2006 Annual Town Meeting.
§6.6.2 was further amended by Article 24 at the 2010 Annual Town Meeting.

Flood Insurance Study - An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Regulatory Floodway see **Floodway**.

Special Flood Hazard Area - An area having special flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30 or VE.

Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

6.6.3 Use Regulations

a) The Floodplain District shall be considered as overlying other districts. Any uses permitted or allowed by Special Permit in the portions of the districts so overlaid shall continue to be permitted or allowed by Special Permit, subject to the provisions of this Section.

b) Except as provided below, the following shall be prohibited in the Floodplain District:

   1. New buildings or structures.

   2. Filling, dumping, excavation, removal, or transfer of any earth material which will restrict or increase flood water flow or reduce the flood water storage capacity.

c) The following shall be permitted in the Floodplain District:

   1. Land use for conservation of water, plants, and wildlife.

   2. Recreation, including play areas, wildlife reserves, golf, boating, and fishing where otherwise legally permitted.

   3. Grazing, farming, forestry, and nurseries.

   4. Proper operation and maintenance of dams and other water control structures, including temporary alteration of water level for emergency purposes.

   5. Addition or alteration to an existing structure, but if constituting a substantial improvement (see definition), only if authorized by Special Permit from the Board of Appeals.

6.6.4 Requirements

All development in this District, including structural and nonstructural activities, whether permitted by-right or allowed by Special Permit, must be in compliance with the following:

- 780 CMR 120.G of the Massachusetts State Building Code, which addresses construction in floodplains and floodways;

- 310 CMR 10.00, Wetlands Protection, Department of Environmental Protection;

- 310 CMR 13.00, Inland Wetlands Restriction, Department of Environmental Protection;

- Title 5, minimum requirements for the subsurface disposal of sanitary sewage, Department of Environmental Protection.

Note: §6.6.4 was amended by Article 26 at the1995 Annual Town Meeting.
§6.6.4 was further amended by Article 24 at the 2010 Annual Town Meeting.

6.6.5 Floodway Requirements

a) Floodway Data: In Zone A and Zone AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

Note: §6.6.5 a) was amended by Article 24 at the 2010 Annual Town Meeting.

b) In the regulatory floodways designated on the Belmont FIRM or Flood Boundary and Floodway Map no encroachments in the floodway shall be permitted which would result in any increase in the base flood discharge level.

c) Base Flood Elevation Data: Base Flood Elevation Data is required for subdivision proposals or other developments greater than 50 lots or five (5) acres, whichever is the lesser, within unnumbered A Zones.

6.6.6 Special Permit

Upon their receipt, applications for Special Permits in the Floodplain District shall be referred to the Planning Board, Board of Health, and Conservation Commission for their review and comment. In a riverine situation, the applicant shall notify the NFIP State Coordinator, Massachusetts Office of Water Resources and the NFIP Program Specialist in FEMA Region I of any proposed alteration or relocation of a watercourse. Special Permits for substantial improvements within the Floodplain District shall be approved only upon the Board of Appeals making the following determinations:

a) All requirements of Section 6.6, Floodplain District, are complied with.

b) No substantial increase in hazard to occupants of the premises or to others will result from the proposed improvements.

c) Reasonable efforts have been made, relative to the scale of the proposed improvements, to reduce any existing hazard or noncompliance with these requirements.

6.6.7 Waiver

If satisfied, based on a Letter of Map Amendment or Letter of Map Revision obtained by the applicant from FEMA, that the site of a proposed development or improvement is above the Base Flood Elevation shown on the FIRM, the Building Commissioner may waive compliance with this Section, and a copy of such waiver shall be filed with the Town Clerk.

Note: §6.6.7 was amended by Article 31 at the 1995 Annual Town Meeting.

6.7 Motor Vehicle Service Stations

Motor Vehicle Service Stations shall be granted a Special Permit only in conformity with the following:

6.7.1 Location

No location shall be approved if a vehicular entrance or exit will be so located as to create an unusual hazard. Sight distance shall be at least 250 feet in each travel direction. No vehicular entrance or exit will be so located so as to cross a major pedestrian flow, such as on sidewalks servicing churches, schools, recreation areas, or compact retail districts.

6.7.2 Egress Design

Driveway sidelines shall be separated from the sidelines of intersecting streets and other driveways on the premises by not less than 40 feet and from other lot lines by not less than 10 feet. Entrances and exits together shall occupy not more than 40% of the lot frontage, and shall be clearly channeled through use of curbed planting areas or similar devices.

6.7.3 Queues

There shall be adequate space off-street for not fewer than two vehicles to await service per filling lane.

6.7.4 Setbacks

No service building shall be located within 40 feet of a street line, and no pump or other dispensing device, movable sign or display, or temporary or permanent storage of merchandise shall be located within 20 feet of a street line.

6.7.5 Parking

Any parking or vehicle storage proposed in excess of the requirements of Section 5.1.2 must be justified in applying for a Special Permit, and may be subject to setback and screening requirements.

6.8 Wireless Telecommunications Facilities

Note: §6.8 was adopted under Article 31 at the 1998 Annual Town Meeting.

6.8.1 Use Regulations

No Wireless Telecommunications Facility shall be permitted to be constructed unless such Facility has completed Design and Site Plan Review pursuant to Section 6.8.4 and 7.3 and, if required by Section 3.3, a Special Permit has been issued pursuant to Sections 6.8.5 and 7.4. No Wireless Telecommunications Facility, other than an Interior Wireless Telecommunications Facility, shall be permitted in any Historic District subject to the provisions of §40 Article 3-315 of the General Bylaws of the Town.

6.8.2 Dimensional Regulations

Except as otherwise provided in paragraph (d) of this subsection, all Wireless Telecommunications Facilities shall be required to comply with all applicable requirements set forth in Section 4.

a) No Freestanding Wireless Telecommunications Facility shall be permitted to be located within 500 feet of any Historic District subject to the provisions of Article 15 of the General By-Laws of the Town.

b) Except as otherwise permitted in this subsection, no Wireless Telecommunications Facility or appurtenant equipment storage building or structure, other than an Interior Wireless Telecommunications Facility, shall be permitted to be located within 50 feet of a single- or two-family dwelling.

c) A Wireless Telecommunications Facility or appurtenant equipment storage building or structure that is accessory to a principal use other than a single- or two-family dwelling, may be permitted to be located within 50 feet of a single- or two-family dwelling; provided, however, that, if such dwelling is located within a Single Residence or General Residence District, no such Facility, building or structure shall be permitted to be located within 25 feet of such dwelling.

d) No Freestanding Wireless Telecommunications Facility shall exceed 100 feet in height.

6.8.3 Performance Standards

a) All Wireless Telecommunications Facilities shall, at all times, be in compliance with all applicable standards of Federal law, State regulations including, but not limited to the Regulations of the Department of Public Heath, 105 CMR 122.000, the State Building Code and the published standards of the Electronic Industries Association.

    1. Prior to any significant change to an approved Wireless Telecommunications Facility or associated equipment, notice of such change shall be given to the Building Inspector, together with documentation or other evidence showing that the Facility will continue to be in compliance with such standards.

    2. At least annually, the operator of an approved Wireless Telecommunications Facility shall certify to the Building Inspector that the Facility continues to be in compliance with such standards.

b) Except as otherwise authorized by the Board of Appeals, a Freestanding Wireless Telecommunications Facility shall be completely fenced for security within an area no greater than 25 feet in radius from the base of the Facility tower, to a height of 6 feet. Such fencing shall be compatible with the character of the property and neighboring properties, and shall not be of barbed wire or razor wire.

c) All Wireless Telecommunications Facilities shall be constructed utilizing materials colors and textures that minimize the visual impact of the proposed Facility on the Town, the District and neighborhood in which the Facility is located, and adjoining properties. A Façade-Mounted Wireless Telecommunications Facility shall utilize materials, colors and textures that minimize the viewer's ability to distinguish the Facility from the building surface adjacent to it. Where appropriate, plantings and screening shall also be utilized to minimize such visual impact.

d) Except as specifically authorized by a Special Permit or required by the U.S. Federal Aviation Administration, no Wireless Telecommunications Facility shall incorporate any artificial exterior lighting.

e) No Wireless Telecommunications Facility shall incorporate any signs except for those essential for the provision of safety or ownership information. Each Wireless Telecommunications Facility shall incorporate a sign, approved by the Planning Board, providing essential emergency response information including, at a minimum, a telephone number that can be used to contact the Facility operator's representative at all times.

f) Any Freestanding Wireless Telecommunications Facility shall be designed so that, in the event of a structural failure, such Facility shall collapse and fall entirely within the boundaries of the lot on which it is located. Such design shall be certified by a professional engineer.

g) Except in an emergency, no servicing of a Wireless Telecommunications Facility or associated equipment, other than an Interior Wireless Telecommunications Facility, shall occur except during hours authorized by Special Permit.

h) All Wireless Telecommunications Facilities shall comply with §60 Article 6 of the General Bylaws of the Town of Belmont, governing sources of noise.

6.8.4 Submission Requirements for Design and Site Plan Review

In addition to the documents required to be submitted pursuant to Section 7.3, each application for Design and Site Plan Review of a Wireless Telecommunications Facility shall be accompanied by ten copies of the following:

a) Copies of all required franchises, licenses or other federal, state or local permits required for the operation of the proposed Facility or appurtenant equipment;

b) Plans and elevations demonstrating compliance with the Dimensional Regulations set forth in Section 6.8.2; and

c) Examples or renderings of the materials, colors and textures proposed to be used.

6.8.5 Special Permit Standards and Submission Requirements

a) Submission Requirements for Special Permits

Each application for a Special Permit for a Wireless Telecommunications Facility shall be accompanied by fifteen (15) copies of the following:

1. The owner's deed to the lot or lots upon which the Facility is proposed to be located, together with evidence of the Applicant's control of the Facility's proposed location.

2. An inventory of existing and approved Wireless Telecommunications Facilities owned or operated by the Applicant and located within two miles of the Belmont town line, as well as Facilities for which an application for approval has been filed with any governing authority, together with maps of existing or expected service coverage from such Facilities.

3. Evidence of the need for the proposed Facility and of how the proposed Facility addressed that need.

4. For any proposed Freestanding Wireless Telecommunications Facility, evidence that the need for such a Facility cannot be addressed by a Facility other than a Freestanding Wireless Telecommunications Facility.

5. A discussion of the feasibility of addressing such need with a Wireless Telecommunications Facility located on municipally-owned property.

6. For any proposed Freestanding Wireless Telecommunications Facility, evidence that a crane, balloon or other temporary representation of the height of the Facility has been brought to the site and kept in place for not less than 72 consecutive hours, together with photographs of such representation taken from a sufficient number of locations suitable for evaluating the visual impact of the proposed Facility on the Town, the District and neighborhood in which the Facility is proposed to be located, and adjoining properties.

7. Proposed hours during which the Facility and associated equipment may be serviced, and a description of regular maintenance procedures.

b) Special Permit Standards

Notwithstanding the provisions of Section 7.4.3, a Special Permit for a Wireless Telecommunications Facility shall be issued if, upon submission of all required materials and documents and compliance with the procedures set forth in Section 7.4.4, the Board of Appeals finds that:

1. The proposed Wireless Telecommunications Facility is reasonably necessary for the convenience or welfare of the public; and

2. The interests of the public convenience or welfare have been appropriately balanced against the interest of the Town, the District and neighborhood in which the Wireless Telecommunications Facility is proposed to be located, and adjoining properties.

   Such Special Permit shall be subject to any limitations imposed pursuant to Section 7.4.5.

c) Factors to Consider in Special Permit Decision

In making any Special Permit decision pursuant to this Section, the Board of Appeals shall consider, in addition to the preferred qualities set forth in Section 7.4, the following:

1. The height of the proposed Facility;
2. The proposed Facility's proximity to residential structures;
3. The nature and uses of adjacent and nearby properties;
4. Surrounding topography including, in particular, features that affect the provision of wireless telecommunication services;
5. Surrounding tree coverage and foliage;
6. The availability of existing structures and buildings so as to avoid the need for Freestanding Wireless Telecommunication Facilities;
7. The good faith efforts of the Applicant to locate the proposed Facility on an existing structure or building or to use a less visual obtrusive site or Facility design;
8. The availability of alternative technology not requiring the siting of the proposed Facility or permitting the utilization of a less obtrusive site or Facility design;
9. Any wireless telecommunications service benefits to the Town and its residents;
10. The good faith efforts of the Applicant to avoid making the proposed Facility a principal use of the lot; and,
11. Potential interference with other electronic devices within the Town.

Note: §6.8.5 c) was amended by Article 31 at the 1998 Annual Town Meeting.

6.8.6 Removal of Abandoned Wireless Telecommunications Facilities

Any Wireless Telecommunications Facility that is not operated, or that is not in compliance with Section 6.8.3 a) 2). for a continuous period of six months shall be considered abandoned, and the Building Inspector may, by appropriate notice sent by certified mail, order that such Facility be removed within 30 days. At the time of removal, the Facility and all associated debris shall be removed from the premises.

Any Special Permit issued pursuant to Section 6.8.5 shall require the holder of such Special Permit to post a bond or other surety, specifically approved by Town Counsel, in

an amount sufficient to guarantee the removal of the Facility in accordance with this Section and the lawful disposal of any components thereof. In the event that the posted amount does not cover the cost of such removal and disposal, the Town may place a lien upon the premises covering the difference in cost.

6.9 Affordable Housing

Note: §6.9 was adopted under Article 2 at the 1999 Special Town Meeting.
§6.9 was further amended by Article 2 at the 2006 Special Town Meeting.

The Planning Board may grant a Special Permit for any tract of land identified as Zone 6, General Residential District, on the McLean District Zoning Map, which Special Permit shall allow:

a) the construction and use of an apartment house or other multi-family dwellings which contain at least 25% “affordable units” as defined in Section 6.10.2 and which contain up to 40 dwelling units overall; and

b) the modification of any intensity or dimensional requirement set forth in Section 4.2 or Section 4.3 as necessary in the determination of the Planning Board to permit such development to contain the greatest practical number of affordable units, but in no event so as to allow more than 40 dwelling units overall.

6.10 Inclusionary Housing

Note: §6.10 was adopted under Article 17 at the 2013 Special Town Meeting.

6.10.1 Purpose

The purposes of this Section are to encourage the expansion and upgrade of the Town's affordable housing stock, in order to provide for a full range of housing choices for households of all incomes, ages and sizes; to prevent the displacement of low- to moderate-income Town residents; to increase the production of Affordable Units to meet existing and anticipated employment needs within the Town; to establish standards and guidelines in order to implement the foregoing; and to meet the requirements of MGL c. 40B and the Local Initiative Program.

6.10.2 Definitions

For purposes of this Section 6.10 of the Zoning By-Law, capitalized words shall mean as defined elsewhere in this By-Law or as defined below:

Affordable Housing Trust Fund - An account established and operated for the exclusive purpose of creating or preserving affordable housing in the Town. The Affordable Housing Trust Fund may be used for the following purposes within the Town: the purchase and improvement of land and Housing Units for the development of new and/or rehabilitated Housing Units for purchase or rental by Qualified Affordable Housing Purchasers or Tenants or to preserve existing affordable housing. Expenditures from the Affordable Housing Trust Fund shall be authorized by a majority vote of the Belmont Housing Trust.

Affordable Housing Unit - A Housing Unit that by Deed Restriction is and shall remain affordable to and occupied by a Qualified Affordable Housing Unit Purchaser or Tenant, and is eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program.

Belmont Resident – Since there is a "local preference" for some of the Affordable Housing Units, the people or households that may qualify for the local preference must be Belmont Residents, defined as follows:

a. an individual or family maintaining a primary residence within the Town of Belmont; or

b. an individual who is employed at least 30 hours per week within the Town of Belmont; or

c. a parent or guardian with children attending the Town of Belmont Public Schools.

Comparable Unit - When used with respect to quality, character, and room size, means that there are sufficient features in common between the Affordable Housing Unit and the Market Rate Housing Unit so as to render the units similar in nature. Moreover, while the actual design or finishes provided in the Affordable Housing Units versus the Market Rate Housing Unit may differ in a non-material fashion and still constitute Comparable Units, the same amenities proposed for the Market Rate Housing Unit must be provided for the Affordable Housing Units, including without limitation full kitchen, full bath, and parking. Further, the actual room size for the Affordable Housing Unit may not differ in any significant manner to that of the Market Rate Housing Unit.

Notwithstanding the foregoing, when used with respect to external appearance, location and bedroom distribution, means that the external appearance of the Affordable Housing Unit and the Market Rate Housing Unit must be so similar in nature so as to render them indistinguishable while the location of the Affordable Housing Units and the bedroom distribution of such units must be no different from that of the Market Rate Housing Unit.

Deed Restriction - A provision, acceptable in form and substance to the Town of Belmont, in a deed to real property that runs with the land in perpetuity or for the longest period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. Any Restriction created under this Section 6.10 shall survive any bankruptcy, insolvency, foreclosure, or other action, and shall not be subject to nullification for any reason. Additionally, the Restriction shall provide that in the event that any affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity to ensure that it remains affordable to households in the same income range as prior to the condominium conversion.

Development - A single parcel or set of contiguous parcels of land held in common ownership for which one or more building permits will be sought within a 24 month period of time. The number of Housing Units to be counted from any project shall be calculated as the net increase in the number of Housing Units as compared to the number of Housing Units in existence on such land as of the date that the building permit application is filed with the Town of Belmont Office of Community Development.

Dwelling Unit - A building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both refrigerator and sink) not shared with any other unit; or quarters for up to five persons in a dormitory, congregate dwelling, or similar group dwelling.

Housing Unit -

a. A Dwelling Unit; or

b. A habitable unit within a senior or assisted living facility.

Market Rate Housing Unit – Housing Units available to the general public on the open market, without price restrictions or consumer income limitations.

Median Income – the mid-point of incomes of households in the Boston Standard Metropolitan Statistical Area, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and regardless of housing type or ownership.

Mixed-Use Residential Development - A Development consisting of a combination of residential and non-residential uses.

Qualified Affordable Housing Unit Purchaser or Tenant - A household with total annual income that does not exceed eighty percent (80%) of the Median Income.

Residential Development – A Development consisting exclusively of Housing Units.

6.10.3 Applicability

This Section 6.10 shall apply to any Development with a residential component that requires a Special Permit pursuant to Section 3.3 of the Zoning By-Laws, Schedule of Use Regulations, or pursuant to any overlay district.

6.10.4 Requirements

1) Residential Developments that result in six (6) or more new Housing Units shall provide Affordable Housing Units as outlined in the table below:

Size of Residential Development	Percent of Affordable Housing Units Required for Residential Developments
6 to 12 Housing Units	10%
13 to 40 Housing Units	12%
More than 40 Housing Units	15%

2) Mixed-Use Residential Developments that result in ten (10) or more new Housing Units shall provide ten percent (10%) of the Housing Units within the subject Development as Affordable Housing Units.

3) Where the calculation of Affordable Housing Units results in a fractional unit greater than one-half (.5), the fraction shall be rounded up to the next whole unit. Where the calculation results in a fractional unit less than or equal to one-half (.5), the fraction shall be rounded down to the next whole unit.

4) Rental Developments with units for households at 50% or less of Median Income may reduce the total number of required Affordable Housing Units by an amount equal to the number of units available to households at 50% or less of Median Income, or by 25% of the Affordable Housing Units required, whichever is less.

5) Except for cash payments permitted in Section 6.10.5 with respect to for-sale Developments, Affordable Housing Units shall be provided within the Development that requires the Affordable Housing Units.

6.10.5 Cash Payment Option for For-Sale Affordable Units

1) The applicant for a Residential Development of 6 to 9 for-sale new Housing Units may choose to make a cash payment to the Affordable Housing Trust Fund in lieu of providing any Affordable Housing Units. Such cash payment shall be equal to five percent (5%) of the value of each Market Rate Housing Unit in the Development.

2) The applicant for a Development of 10 or more for-sale new Housing Units may appeal to the Board of Appeals (ZBA) to make a cash payment to the Affordable Housing Trust Fund in lieu of providing any Affordable Housing Units required under this Section 6.10. Such cash payment shall be equal to five percent (5%) of the value of each Market Rate Housing Unit in the Residential Development resulting in the Affordable Housing Unit or three percent (3%) of the value of each Market Rate Housing Unit in the Mixed-Use Residential Development resulting in the Affordable Housing Unit. In making its decision, the ZBA shall seek a recommendation from the Belmont Housing Trust and consider such recommendation on this appeal.

6.10.6 Selection of Qualified Affordable Housing Unit Purchasers or Tenants

The selection of Qualified Affordable Housing Unit Purchasers or Tenants shall be pursuant to the Local Initiative Program and shall be administered as follows:

a. The selection process shall include a plan for marketing of the Affordable Housing Units created under this Section 6.10. The duration and design of this plan shall reasonably inform all those seeking affordable housing, both within and outside the Town, of the availability of such units.

b. Belmont Residents shall be given preference for seventy percent (70%) of the Affordable Housing Units created under this Section 6.10.

c. Owners of Developments may sell or lease Affordable Housing Units to the Town of Belmont, the Belmont Housing Trust, the Belmont Housing Authority, or to a private nonprofit entity serving Belmont for the purpose of providing affordable housing opportunities within the Town, in order that such entity carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers or renters.

6.10.7 Timing of Construction

1) Occupancy permits for any new Market-Rate Housing Units or nonresidential space shall be issued at an equal ratio of occupancy permits for required Affordable Housing Units.

2) Affordable Housing Units shall be dispersed throughout the building(s) and shall be comparable to Market-Rate Housing Units. Affordable Housing Units provided under terms of this Section 6.10 shall be provided on-site in the subject Development.

   For an Affordable Housing Unit within a senior or assisted living facility, a comparable Affordable Housing Unit shall include the provision of mandatory living services.

3) All documents necessary to ensure compliance with this Section 6.10 and the Local Initiative Program provisions shall be subject to the review and approval of the Special Permit Granting Authority and Town Counsel. Such documents shall be a condition of the Special Permit and executed prior to the issuance of any Certificate of Occupancy.

6.10.8 Rental Development Annual Oversight and Monitoring

1) There shall be a monitoring agent for rental Developments with Affordable Housing Units, to be agreed upon by the owner of the Development and the Special Permit Granting Authority.

2) The owner shall be responsible for all payments charged by, or related to, the monitoring agent.

3) An annual independent compliance audit shall be submitted to the Town by the monitoring agent to insure compliance with this Section 6.10 and the Local Initiative Program provisions.

6.10.9 General Provisions

1) Enforcement of this Section 6.10, as it applies to all Developments, shall be the responsibility of the Town of Belmont Inspector of Buildings.

2) Provision of accessible Housing Units shall be as determined by Federal Regulations. Standards for accessible units shall comply with 24 C.F.R. Section 8.32.

3) This Section 6.10 shall not apply to the rehabilitation of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation nor repair shall increase the density, bulk, or size of any such building or structure which previously existed prior to the damage or destruction thereof except in conformance with this Section 6.10.

4) This Section 6.10 shall not apply to Developments under Massachusetts General Laws (MGL) Chapter 40B.

6.10.10 Severability, Conflict with Other By-Laws

1) If a court of competent jurisdiction holds any provision of this Section 6.10 invalid, 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 Section shall not affect the validity of the remaining sections or parts of sections or the other By-Laws of the Town of Belmont.

2) Nothing contained in this Section 6.10 shall be construed to apply to the use of land or structures for religious or educational purposes if doing so would violate the applicable provisions of M.G.L. Chapter 40A, Section 3.

3) To the extent this Section 6.10 is silent on a particular issue or conflicts with the Local Initiative Program, the requirements of the Local Initiative Program shall govern.

6.11 Historic Accessory Building Preservation

Note: §6.11 was adopted under Article 31 at the 2009 Annual Town Meeting.

6.11.1 Purpose

The purpose of this Section is to promote the preservation of unique Historic Accessory Buildings by permitting their adaptive reuse for uses that may not otherwise be permitted under this Zoning By-Law, thereby making their functional preservation and restoration feasible.

6.11.2 Definition

A “Historic Accessory Building” is an accessory building such as a free-standing barn, greenhouse or carriage house built before 1921, which is located on the same lot as the principal building to which it is accessory, and which is either:

a) listed on the Inventory of the Historic and Archaeological Assets of the Commonwealth as maintained by the Massachusetts Historic Commission; or

b) listed on the National Register or State Register of Historic Places; or

c) specifically designated as a “Historic Accessory Building” by the Belmont Historic District Commission, using the criteria for evaluation established for determining eligibility for the National Register of Historic Places.

6.11.3 Applicability

The Planning Board may grant a Special Permit for the reuse of a Historic Accessory Building in any residential district of the Town, allowing the adaptation of such Building for use as a home occupation, or for one accessory dwelling unit.

Note: §6.11.3 was amended by Article 32 at the 2009 Annual Town Meeting.

6.11.4 Procedure

a) An Application for a Special Permit under this Section shall comply with the procedures and requirements set forth in Section 7.4 of this Zoning By-law, and the Planning Board’s Special Permit Regulations.

b) Upon receipt of an Application, the Planning Board shall forward a copy of the Application to the Historic District Commission for its review and recommendations concerning the proposed exterior treatments of the Building, including such things as windows, roofing and siding materials, and landscaping. Such recommendations shall include:

1) the Commission's assessment as to whether the proposed reuse and associated exterior alterations would adversely affect the historic landscape or the architectural and historic integrity of the principal building or the Historic Accessory Building itself; and

2) specific conditions which the Commission believes should be imposed on the Special Permit in order to prevent any adverse effects.

The Historic District Commission shall hold a public hearing and make recommendations to the Planning Board within thirty-five (35) days of the Commission's receipt of the Application. Otherwise, the Application shall be deemed approved.

c) The Planning Board may issue a Special Permit under this Section only if it finds that the proposed reuse and any related building alterations and site development meet all of the applicable Special Permit criteria set forth in Section 7.4.3, and

1) are generally in harmony with the neighborhood;

2) will neither generate excessive traffic, parking, noise or density impacts on the abutters, nor create other detrimental effects on the neighborhood;

3) will preserve and/or restore the original architectural features of the Building to the maximum extent practicable;

4) will not adversely affect the historic landscape or the architectural and historic integrity of the principal building or the Historic Accessory Building itself; and

5) will not result in any enlargement or relocation of the Historic Accessory Building.

d) If the Historic Accessory Building is proposed to be used for a home occupation, the Planning Board must also find that the following criteria are or will be met in addition to the criteria set forth in Section 6.11.4 c):

Note: §6.11.4 d) was amended by Article 32 at the 2009 Annual Town Meeting.

1) There will be no exterior display or visible storage of supplies or equipment to be used on or off the premises, or other variation from the residential character of the premises;

2) Not more than one person who is not a member of the household will be employed on the premises;

3) There will be no production of offensive noise, vibration, odors, fumes, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects;

4) No articles will be sold or offered for sale on the premises;

5) Traffic generated, including pick up and deliveries, will not exceed that normally expected in the residential neighborhood in which the Historic Accessory Building is located; and

6) All parking will be provided on-site, and not within a required front yard.

e) If the Historic Accessory Building is proposed to be used for an accessory dwelling unit, the Planning Board must also find that the following criteria are or will be met in addition to the criteria set forth in Section 6.11.4 c):

1) The accessory dwelling unit use will be incidental to the ownership and use of the principal structure on the same lot; and

2) The accessory dwelling unit or the principal structure will be occupied by the owner of the subject premises, except for bona fide temporary absences.

Note: §6.11.4 e) was amended by Article 32 at the 2009 Annual Town Meeting.

6.11.5 Conditions of Approval

In granting a Special Permit under this Section, the Planning Board shall require that a perpetual preservation restriction on said Building and its landscape context be granted to the Town or other appropriate body or preservation organization under the provisions of Massachusetts General Laws, Chapter 184, Section 31. The form of such preservation restriction shall be subject to review and approval by Town Counsel.

In addition, the Planning Board may impose such other conditions, safeguards and limitations on time or use that it determines to be appropriate to assure compliance with the applicable criteria set forth in Section 6.11.4 including, but not limited to conditions:

a) prohibiting the Special Permit from being transferred to a subsequent owner without the approval of the Planning Board;

b) specifying the required number of on-site parking spaces and their location;

c) limiting the business operations of a home occupation, such as the number of patrons/clients visiting the premises, hours of operations, and hours and location of deliveries;

d) requiring installation of additional landscaping;

e) requiring continuing maintenance of landscaping;

f) requiring a restrictive covenant to be imposed on the subject property, prohibiting the division or reduction in size of the lot on which the Historic Accessory Building is located.

6.11.6 Nonconforming Historic Accessory Buildings

Any exterior or interior alteration to a preexisting nonconforming Historic Accessory Building made pursuant to a Special Permit issued under this Section shall be deemed not to constitute an “alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent” requiring consideration and a Special Permit by the Board of Appeals under Section 1.5.3.

6.11.7 Compliance with Applicable By-Laws

Except as expressly provided in this Section, the grant of a Special Permit for the reuse of a Historic Accessory Building shall not relieve the applicant from the need to comply with all other applicable Town By-laws and Regulations.

6.12 Religious and Municipal Building Preservation

Note: §6.12 was adopted under Article 31 at the 2013 Annual Town Meeting.

6.12.1 Purpose

The purpose of this Section is to promote the preservation of Religious and Municipal Buildings by permitting their adaptive reuse for residential or commercial use (or combination thereof) that may not otherwise be permitted under this Zoning By-Law.

6.12.2 Buildings Eligible Under this By-Law

A Religious or Municipal Building located in any zoning district is eligible for a Special Permit under this Section 6.12 if:

a) The building, or at least one of the buildings located on the property, was always used for religious or municipal purposes; and

b) The Religious or Municipal Building was originally constructed prior to 1950.

6.12.3 Uses Allowed by Special Permit

The Planning Board may grant a Special Permit to allow a Religious or Municipal Building, as identified under Section 6.12.2, to be used for other residential or commercial uses (or any combination thereof) than otherwise would be allowed in the underlying zoning district.

6.12.4 Incentives for Preservation

In order to permit the adaptive reuse of Religious or Municipal Buildings, the Planning Board may grant a Special Permit to:

a) Reduce the on-site parking requirements;

b) Modify Inclusionary Housing requirements of Section 6.10; and

c) Increase, within the existing buildings, the number of stories and dwelling units allowed by the underlying zoning district.

6.12.5 Special Permit Procedure

a) An Application for a Special Permit under this Section shall comply with the procedures and requirements set forth in Section 7.4 of this Zoning By-law.

b) Applicants are encouraged to meet informally with the Planning Board and Historic District Commission to discuss the proposal prior to submittal of a formal Application.

c) Upon receipt of an Application, the Planning Board shall forward a copy of the Application to the Historic District Commission for its review and recommendations concerning the proposed exterior treatments of the Religious or Municipal Buildings, including such things as windows, roofing and siding materials, and landscaping. Such recommendations shall include:

   1) the Commission's assessment as to whether the proposed exterior alterations would adversely affect the historic landscape or the architectural and historic integrity of the principal historic building itself; and

   2) specific conditions which the Commission believes should be imposed on the Special Permit in order to prevent any adverse effects and promote appropriate rehabilitation as provided for in the Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67).

   The Historic District Commission shall hold a public hearing and make recommendations to the Planning Board within thirty-five (35) days of the Commission's receipt of the Application. Otherwise, the Application shall be deemed approved by the Historic District Commission.

d) Upon receipt of an Application, the Planning Board shall forward a copy of the Application to the Belmont Housing Trust for its review and recommendations concerning Inclusionary Housing. The Belmont Housing Trust shall make recommendations to the Planning Board within thirty-five (35) days of the Commission's receipt of the Application. Otherwise, the Application shall be deemed approved by the Belmont Housing Trust.

e) The Planning Board may grant a Special Permit for development of a Religious and Municipal Building if it finds that the conditions for approval for Special Permits set forth in Section 7.4.3 of this Zoning By-Law have been met.

f) In granting a Special Permit under this Section 6.12, the Planning Board shall require that a perpetual preservation restriction on the Religious or Municipal Building be granted to the Town or other appropriate body or preservation organization under the provisions of Massachusetts General Laws, Chapter 184, Section 31. The form of such preservation restriction shall be subject to review and approval by Town Counsel.

6.12.6 Nonconforming Buildings

Any exterior or interior alteration to a preexisting nonconforming Religious or Municipal Building made pursuant to a Special Permit issued under this Section shall be deemed not to constitute an "alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent" requiring consideration and a Special Permit by the Board of Appeals under Section 1.5.3.

6.12.7 Rules and Regulations

The Planning Board shall be charged with administering this By-Law and may promulgate rules and regulations to implement its provisions.