

# TOWN OF WELLFLEET



## ZONING BY-LAWS

Amended at the Annual Town Meeting held on April 27, 2009

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**TOWN OF WELLFLEET  
ZONING BY-LAWS**

**SECTION I**

**1.1 PURPOSE** - In order to promote the health, safety, convenience and general welfare of its inhabitants, to lessen the danger of fire and congestion, and to improve the Town under the provisions of Chapter 40A of General Laws, the use, construction, repairs, alteration and height of buildings and structures and the use of premises in the Town are hereby regulated as hereinafter provided.

**SECTION II**

**2.1 DEFINITIONS** - In this By-law the following terms, unless a contrary meaning is required by the context, or it specifically prescribed, shall have the following meaning. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied". The word "person" includes a corporation or partnership as well as an individual.

Accessory Use - A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use of building. In buildings restricted to residential use, the office of a professional man, customary home occupations traditional to the Town, and workshops not conducted for compensation, shall be deemed accessory used.

Adult Bookstores - An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in §31, c. 272.

Adult Motion Picture Theatre - An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in §31, c. 272.

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

Adult Video Store - An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in said §31, c. 272

Alteration - As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Amusement, Indoor - A movie theater, bowling alley, or other commercial entertainment or recreation wholly carried on within an enclosed building.

Amusement, Outdoor - A drive-in theater, golf driving range, or similar facility other than a regulation golf course of not less than nine holes or any other commercial entertainment or recreation carried on in whole or in part outdoors; outdoor amusement shall not include a swimming pool, private or public, where no charge is made or where such is operated in connection with a hotel, motel, camp or club.

Amusement Park - A premise or any part thereof used to provide one or more mechanical devices, rides, games or any other like attractions to the public for hire or compensation of any kind, whether for a fee or by admission, or in connection with another service for which a fee is charged.

Antique Shop/Art Gallery - A building or part thereof used for exhibiting antiques or works of art and for retail sales of same. An Antique Shop/Art Gallery may be considered as a Home Occupation as defined herein, provided that it meets all the requirements of a "Home Occupation".

Apartment - A part of a multiple family dwelling consisting of a room or suite of rooms intended, designed or used as a residence. (Amended 4-30-85 ATM Art. 65)

Arcade - A building or part thereof used for the operation of more than ten automatic amusement devices for hire.

Area - Building - The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

Area - Net site - The total area within the property lines excluding external streets.

Auto Court - An area of land with one or more detached buildings with a single room of less than 300 square feet, with or without bath, used or designed to be used primarily as overnight sleeping accommodations for tourists.

Automatic Amusement Device - Any mechanical or electronic amusement device operated for hire, gain or reward including but Not limited to video or electronic amusement devices, automatic amusement devices as defined in Section 177A of Chapter 140 of the General Laws, and billiard tables.

Basement - A story partly underground but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a story for purposes of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet.

Bed and Breakfast - An owner occupied dwelling in which no more than three bedrooms accommodating not more than six persons are offered for rent for the primary purpose of furnishing overnight lodging and a breakfast meal to the overnight guests only.

Boathouse, Commercial - A facility for the construction, storage, rental, or servicing of boats for hire or compensation, and for the sale of boats and marine equipment.

Boathouse, Private - A facility for the storage of boats for private individual use and not for hire.

Building - A structure forming a shelter for persons, animals, property or an activity and having a roof. Where appropriate in the context the word "building" shall include the principal and accessory use or uses to which the building is put.

Building, Accessory - A supplemental building or a portion of a main building, the use of which is incidental to that of the main or principal building, and which is located on the same lot therewith.

Building, Detached - A building designed or intended for a single purpose surrounded by open space on the same lot.

Building, Front Line Of - The line of that face of the building nearest the front line of the lot. This face shall include sun parlors, enclosed projection from the main body of the building covered porches whether enclosed or unenclosed but not include steps.

Building Height - The vertical distance from the highest point of the roof to the average of the mean ground level existing grade of all sides of the building, such measurement to be based on the elevation of the lot in its natural state prior to construction, grading or filling.

Building, Principal - A building in which is conducted the main or principal use of the lot on which said building is situated.

Bulk Storage, Open - Exposed outside storage of sand, lumber, coal or other bulk materials or supplies.

Bulk Storage, Tanks - Exposed outside storage tanks, silos, or similar structures for the storage of oil, gas, fuels, or other liquids or materials, with the exception of those located upon a farm and employed for farm purposes.

Business Office - A building or part thereof devoted to the administration of a business or commercial enterprise which involves clerical, accounting and other administrative procedures but which excludes the receipt, processing and sale of merchandise; or a building or part thereof devoted to the professional office of a physician, lawyer, engineer, architect, accountant, real estate or insurance agent or broker, or similar activity.

Business, Personal Service - Any building or part thereof used for the purpose of rendering a service upon the premise to the public where the sale of a product is not involved.

Business, Retail Trade - A building or part thereof used for the storage and display for the retail sale of foods, drugs, clothing, hardware, furniture, appliances, books, and other items of merchandise commonly associated with or essential to the maintenance of home, person, and property. ATM 4/24/89

Camp - An area of land upon which is located, or upon which it is intended to locate the facilities required to operate upon a seasonal basis a continuing supervised recreational, health, and educational, religious, or athletic program, or a combination thereof, and for persons enrolled for periods of not less than one week.

Camper - A small, portable vacation vehicle used for living purposes, whether standing on wheels, attached to a mobile body or on rigid supports.

Campground - A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of tents or movable or temporary overnight dwelling facilities of any kind, exclusive of camps as defined by this section.

Cellar - A story partly underground and having more than one-half of its clear height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories.

Club - An organization with a state or national charter catering exclusively to members and their guests, and its premises and buildings used for recreational, athletic, education, religious, or civic purposes and conducted primarily without gain, provided there are not conducted any vending stands, merchandising or commercial activities except as required generally for its membership and the purposes of such club.

Cluster Development - A residential development with reduced sized lots clustered together into one or more groups separated from adjacent property and other groups within the development by open land.

Communication Structure - Any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation and including the antennas, wiring or other devices attached thereto; provided, however, that a communication structure shall not include an antenna used by a federally licensed amateur radio operator or a home TV antenna.

Communication Building - Any building utilized primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation and which is accessory to a communication structure.

Communication Appurtenance - Any antenna, device, wiring or equipment utilized in connection with the reception or transmission of electromagnetic radiation and which is attached to a pre-existing structure. A communication appurtenance shall not include an antenna utilized by a federally licensed amateur radio operator or a home TV antenna.

Contractor's Yard – Premises used by a building contractor or subcontractor principally for storage of equipment and supplies, fabrication of subassemblies, or parking of wheeled equipment.

Conversion of a Dwelling Unit - An alteration of a dwelling or change in its use, so as to accommodate a family or families in addition to the number for which it was used or designated at the time of the adoption of this by-law.

Corner Lot - A lot which has an interior angle of less than 135 degree at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135 degrees.

Cottage Colony - A group of two or more detached dwellings located on the same lot, each containing one dwelling unit only which is designed for independent family living including cooking facilities and occupied on a seasonal basis only. Seasonal shall be defined as a period commencing April 1 of each calendar year and terminating November 30 of the same calendar year. Each unit shall contain not less than 550 sq. ft. of floor area and not more than 768 sq. ft.

Court - An unoccupied open space, other than a yard, on the same lot with a building, which is bound on two or more sides by the walls of such building.

Court, Inner - A court enclosed on all sides by exterior walls of a building, or by exterior walls and lot lines on which walls are allowable.

Court, Outer - A court extending to a street line or opening upon any front, side or rear yard.

Coverage - The percentage of the lot area covered by the area of a building or buildings.

Dump - A lot of land or part thereof used for the disposal by abandonment, dumping, burying, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles, or parts thereof, or waste materials of any kind.

Dwelling - A building designed or used exclusively as the living quarters for one or more families.

Dwelling, One Family - A detached building containing one dwelling unit only and having side, front and rear yards.

Dwelling, Affordable Accessory - A dwelling unit within or attached to a principal dwelling, principal structure, garage or as a detached unit, not to exceed one thousand two hundred (1,200) square feet of Livable floor area. Accessory units shall be restricted to remain affordable by conditions attached to the Special Permit issued by the Zoning Board of Appeals and be occupied by income-eligible households in accordance with HUD Income and Fair Market Rental Guidelines.

Dwelling, Multiple Family - A detached building containing two or more dwelling units and having side, front and rear yards.

Erect - To build, construct, reconstruct, move upon, or conduct any physical development of a premises required for a building. To excavate, fill, drain or other such preparations for building shall also be considered to erect.

Family - One or more persons of which there may be not more than 5 unrelated persons occupying a dwelling unit and living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

Farm, Commercial - Any parcel of land which is used for gain in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits & the storage of equipment used. It excludes riding academies, livery or boarding stables & pet kennels.

Farm-Family, Agricultural - Any parcel of land or a portion thereof used for the raising of agricultural products for home consumption or for sale which use is secondary to the primary residential use of the property.

Farm-Family, Livestock - Any parcel of land or portion thereof used for raising and keeping of live stock and/or poultry which use is secondary to the primary residential use of the property. Specifically excluded from this definition are riding academies livery or boarding stables, and pet kennels. ATM 4/25/88

Funeral Home - A dwelling or other structure used & occupied by a professional licensed mortician for burial preparation and funeral services.

Filling Station - Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles & which may include facilities used or designed to be used for polishing, greasing, washing, spraying or otherwise cleaning or servicing such motor vehicles. Such use shall not include bodywork or the painting of vehicles or other than minor repair work.

Floor Area of a Building - The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar & basement floor areas not devoted to residential use, but including the area of roofed porches & roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor Area, Livable - The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes, excluding cellar, basement floor area not devoted to residential use.

Floor Area Ratio - The ratio of the total gross floor area of a building or buildings on one lot to the total area of the lot.

Game Room - A building or part thereof used for the operation of no more than ten automatic amusement devices for hire.

Garage, Private - A garage used for storage purposes only with a capacity of not more than 3 vehicles.

Garage, Public - Any garage not a private garage which is used for the sale, servicing, repair, storage or rental of automobiles and trucks and which in connection therewith supplies gasoline and oil to such motor vehicles.

Gift or Craft Shop - A building or part thereof used for the display & retail sale of crafts and items primarily designed as gifts & keepsakes as distinguished from the retail sale of food, clothing, hardware, furniture & items more commonly associated with or essential to the maintenance of home, person & property.

Guest House, Private - A detached or semi-detached building located upon the same lot with a one-family dwelling containing not more than 250 square feet and not containing cooking facilities, the use of said building being limited to the entertainment of relatives and friends without fee or other costs.

Guest House, Public - A one-family dwelling in which not more than six individual rooms are offered for rent for the primary purpose of furnishing overnight lodging to tourists, and which may provide a common dining area for persons staying at the guest house within the facility. It shall include Tourist Homes, but shall not include Hotel, Motel or Motor Inn.

Health Care Clinic – An outpatient facility that may include, but shall not be limited to, as an integral part of the clinic such related facilities as laboratories, therapy, administrative services, prescription services and staff offices for the diagnosis, treatment or other medical care of human ailments.

Home Industry - A business which:

- a) Is carried on by a member of the family residing in the dwelling unit
- b) Cannot meet the criteria for a Home Occupation, and
- c) Involves no retail sales, except for goods produced on the premises or incidental to services provided on the premises.

Home Occupation - An occupation or profession that is customarily carried on in a dwelling unit building or other structure accessory to a dwelling unit by a member of the family residing in the dwelling unit, such occupation or profession being clearly incidental and secondary to the use of the dwelling unit for residential purposes. Occupations and professions allowed under this definition shall be carried out subject to the requirements in Article VI, Section 6.22 of this Bylaw.

Hospital - An institution providing health services, primarily for in-patients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient department, training facilities, central service facilities, and staff offices.

Individual Storage Units – Single or multiple enclosed units for monthly or other rental for the

storage of personal belongings, related to services trades businesses, not having potable water or septic disposable services.

Industry, Heavy - The production, assembly, processing, finishing or manufacture of any object or material which results in or would result in noise, dust, odor, vibration, gasses or any objectionable feature that can or could be detected at any time off the premises upon which located.

Industry, Light - Fabrication, assembly, processing, finishing work or packaging in such a manner that noise, dust, odor, vibration, or similar objectionable features are confined to the premises and are in no way objectionable to abutting property.

Inn - A building, together with its accessory buildings, used or arranged or designed to be used to provide living accommodations, including room and meals served from central cooking and dining facilities operated under a common victualler license. An Inn may or may not serve meals to the general public. The definition here given shall also include that for a hotel.

Junk - Any article or material or collection thereof, which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

Junk Yard - The use of any area of any lot, whether inside or outside a building, for the storage, keeping or abandonment of junk, or scrap or discarded materials, or the dismantling, demolition or abandonment of automobiles or other vehicle(s) or machinery or parts thereof.

Line, Street - The dividing line between the street right of way and the lot.

Lodge, Building - Structure occupied by a non-profit social or civic organization as defined under "club".

Lot - Parcel of land occupied or intended to be occupied by one Principal Building or Principal Use and its accessory buildings, except as provided for in Section 5.4.13 of these By-laws, together with such open spaces as are required under the provisions of this By-law, having not less than the minimum area required by the By-law for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit for a building on such land.

Lot Area - The contiguous horizontal area of a lot exclusive of any area on a street or way open to public or private use and excluding that land which is swamp, pond, bog, dry bog, marsh, areas of exposed groundwater, or which is subject to flooding from storms and mean high tides.

Lot Frontage - That portion of a lot fronting upon and having access to a street. Measured continuously along one street line between side lot lines, or in the case of corner lots, between one side lot line and the mid-point of the corner radius. On curved streets, may alternatively be

measured as the straight-line distance between points on the side lot lines at the required setback line, provided that said lines are approximately straight and normal to the street line, and provided that 60% of the requirement can be met at the street line.

Lot Lines - The line bounding a lot as defined herein.

Marine Aquaculture - An activity related to the processing, harvesting, procurement, sale, or handling of fish, shellfish, or other water-related foodstuffs or products.

Motel - A building or group of buildings, whether detached or connected, each containing three or more units of at least 360 square feet used or designed to be used as individual sleeping and dwelling units, excluding cooking facilities, by transient traveler, tourists or vacationers. A motel may include accessory uses such as a restaurant and other secondary facilities commonly associated with the operation of a hotel or motel.

Motor Vehicle Car Sales - premises used for the display for sale of one or more new or used motor vehicles including automobiles, trucks, tractor or similar equipment.

Motor Vehicle Junk Yard - The use of any area of any lot or premises for the purpose of storing, keeping, dismantling, demolishing, junking, salvaging of parts to, or the abandonment of motor vehicles or motor-driven equipment.

Motor Vehicle Repair, Incidental – The repair of motor vehicles incidental to any use allowed under the Bylaw.

Motor Vehicle Repair Shop - A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles.

Noncomplying Structure – structures built without benefit of a permits or without benefit of an appropriate permit.

Nonconforming Use - A building or land lawfully occupied by a use that did not conform to the regulations of the district in which it is situated at the time of the adoption of zoning regulations and of any amendments thereto.

Nursing or Convalescent Home - Any dwelling or building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire, not including a hospital.

Nursery School - A school designed to provide daytime care for two or more children from two to six years of age inclusive, and operated on a regular basis.

Occupancy Permit - A permit issued by the Board of Selectmen, or a person designed by them authorizing the occupancy and the use of land and/or structures and buildings.

Open Space - An unoccupied space open to the sky on the same lot with a building, free of all

structures, parking, pavement or other uses that preclude landscaping.

Parking Space - That area required for parking one automobile, which in this By-law is held to be an area 9 feet wide and 20 feet long, not including passageways.

Parking, Public - An area used for the purpose of parking vehicles for a fee.

Parking, Private - Space for parking accessory to principal use, not to include parking for fee or parking of more than one commercial vehicle except on farms.

Pet Kennel - A building, structure or area used for the harboring of more than three dogs, cats or other domestic pets that are more than six month old.

Porch, Open - A porch that has no walls or windows other than that of the main building to which it is attached notwithstanding Town and State Building Codes, with which there must be compliance.

Principal Uses - Categories of uses listed in Section 5.3 of the Wellfleet Zoning By-laws as Residential, Commercial, Commercial (Heavy), Institutional and Farm Uses.

Quarry, Sand Pit, Gravel Pit, Top Soil Stripping - A lot of land or part thereof used for the purpose of extracting stone, sand, gravel, or top soil for sale or for use at a site removed from said lot, exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit had been made and said permit issued.

Restaurant - A building or part thereof to be used for the preparation, indoor sale, and consumption of meals and refreshments on the premises. Seating area for a restaurant may include open or outdoor terrace or patio upon issuance of a Special Permit.

Restaurant, Drive-In - Premises where meals and other items of nourishment and refreshment are offered for sale, and where any portion of these are consumed or intended to be consumed off-premises or within cars parked on the premises.

Riding Academy - Any establishment where horses are kept for riding, driving, or stabling for compensation or incidental to the operation of any club, association or other similar establishment.

Roadside Stand, Semi-Permanent - A structure of a semi-permanent type intended to be left in place over an extended period of time from which products, the major portion of which are produced upon the premises or are legally gathered from the sea or seashore, and displayed and offered for sale.

Roadside Stand, Temporary - A temporary and easily portable structure or device placed on private property by the side of a street or way for the purpose of displaying for sale perishable goods or items legally grown upon the premises or legally gathered from the sea, seashore, or the land, the same to be removed when not in use.

Seasonal - This term shall refer to a period of time commencing each calendar year on the first day of April and terminating the last day of November of each calendar year.

Service Trade –An occupation or business which provides service to customers primarily in or on the customers’ homes or premises, including but not limited to such trades as carpentry, masonry, plumbing and heating, electrical work, well drilling, lawn maintenance, and landscape services. Such service trades may be operated out of the provider’s residence subject to the requirements in Article VI, Section 6.23 of this By-law.

Shed - A single story detached accessory building or structure which has dimensions that do not exceed one hundred twenty (120) square feet of floor area or 12 feet in height, which is used for a purpose which is customarily incidental and subordinate to the use of the principal building, and which is located on the same lot. Such buildings or structures shall not be heated, and shall not be used as a dwelling unit, guest unit or commercial accommodation.

Sign - Any display of lettering, logos, pictorial matter, objects, colors, lights, or illuminated tubes, or the application or attachment of same to any device, surface, structure, boundary wall or fence, which is visible to any member of the public, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted on the premises, excluding window displays of merchandise. A single sign may have two sides that are facing in different directions and will be measured as the larger area of the sides.

Sign, Area of - An area determined by multiplying the extreme width by the extreme height of the sign, including borders, but excluding supports which do not bear advertisement.

Stable, Private - An accessory building in which horses are kept for private use and not for hire, remuneration of sale.

Stable, Public - A building in which two or more horses are kept for remuneration, hire or sale.

Street - A street or way other than a private way which meets the minimum requirements of the Planning Board as established in accordance with the provisions of Section 81L of Chapter 41 (Subdivision) of the General Law.

Street, Grade - The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

Street, Private - A way which has not been accepted by the Town as a public street or way, or one which has not been dedicated to public use in accordance with an approved subdivision or one in which the public has not acquired rights of usage by prescription.

Street, Public - A street or way laid out and accepted by the Town as a public way, or a state or county road or way.

Structure - Anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground, except a boundary wall or fence.

Studio (private) also artist studio - A building or part of a building generally limited to a one-room working space designed to accommodate an occupation relative to production of various forms of art, such as painting, sculpture, photography. Such a unit may be included within "home occupation" as defined in this By-law only when such unit meets all requirements of the "home occupation" definition.

Swim or Tennis Club (private) - A voluntary or corporate association owned solely by its members, the objectives, pursuits or purposes of which are social or recreational, operating or formed for the purpose of operating a club on a membership basis and not operated for profit, the principal facilities of which shall be a swimming pool or pools and/or tennis court or courts owned by it and maintained on the land owned or leased by it and which may maintain and operate on the same premises such accessory facilities owned by it as are usually provided by a swim or tennis club. Accessory facilities shall not include bowling alleys.

Swimming Pool - Any body of water or receptacle for water having a depth at any point greater than 2 feet, used or intended to be used for swimming or bathing and constructed, installed or maintained in or above the ground outside any building.

Tennis Court - Grass, clay or asphalt surfaced area uncovered and unenclosed by opaque sidewalls, used or intended to be used for tennis or tennis related actions and constructed, installed or maintained on or above the ground outside any building.

Swimming Pool and/or Tennis Club (public) - A town, state or federally owned or leased facility or facilities not operated for profit with any license, permit, or other type of usage fee utilized to defray cost related to the operation and maintenance of the facility. Principal facilities shall be a swimming pool or pools and or tennis court or courts. Accessory facilities generally associated with swimming pool(s) and /or tennis court(s) are to be included in this definition. Bowling alleys are not accessory facilities.

Temporary Structure - One to be used for less than six months.

Trailer Home/Mobil Home - A unit designed for living purposes which is built on a chassis and which was at any time portable, whether still standing on wheels or transferred to rigid supports.

Trailer Park - A tract of land occupied by or designed or intended for the occupancy of trailer homes or any similar vehicle.

Transport Terminal - Yards or structures for the storage and/or servicing of two or more commercial vehicles and the storage of materials in transit.

Tourist Home (see Guest House)

Use - The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

Vehicle, Commercial - Any vehicle used in business which is in excess of 10,000 lbs. gross vehicle weight.

Warehousing - Storage of bulk goods within a building for distribution but not for retail sale on the premises.

Wind Energy Conversion System or W.E.C.S. or Windmill - A device which converts wind energy to mechanical or electrical energy.

Wind Rotor - The blades, plus hub to which the blades are attached, that are used to capture wind for the purpose of energy conversion. The rotor is used generally on a pole or tower and, along with other generating and electrical storage equipment, forms a wind energy conversion system.

Yard - A space, on the same lot with a building.

Yard, Front - A space on the same lot with the building, between the front line of the building and the front line of the lot and extending to the side lines of the lot.

Yard, Rear - A space on the same lot with the building, between the rear line of the building and the rear line of the lot and extending the full width of the lot.

Yard, Side - A space on the same lot with the building, situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed the sideline.

### **SECTION III**

**3.1 ESTABLISHMENT OF DISTRICTS** - For the purpose of this By-law, the Town is hereby divided in the following types of districts:

- Central District ----- CD
- Residential 1 ----- R1
- Residential 2 ----- R2 (amended 4/29/86 ATM, Art.22)
- National Seashore Park -- NSP
- Commercial ----- C
- Commercial 2 ----- C2

**3.2 DISTRICT OBJECTIVES ARE AS FOLLOWS:**

Residential 1 - To provide moderate density residential environment in areas generally unserved by public utilities, but containing land characteristics to accommodate such densities without endangering the public's health, safety or welfare.

Residential 2 - To provide for variety and choice in residential environments and compatible employment opportunities avoiding the creation of hazards or congestion and wherever possible maintaining the character of rural environs.

Central District - To provide concurrent development of residential and non-residential uses subject to conditions to assure spatial segregation of incompatible uses.

Commercial - To provide for small and moderate-scale business development for local and transient service, at the same time preserving or enhancing ocean views from highway, preserving or enhancing landscaping, minimizing visibility of parked autos, and avoiding creation of hazards or congestion.

National Seashore Park - To provide for those residential and commercial uses that do not conflict with the regulations governing the activities of the National Seashore Park and are not incompatible with the character of the park, including the preservation of natural and scenic areas, as well as providing of certain recreational and leisure time activities for users of the park.

Commercial 2 – To provide for small and moderate-scale business development for local and transient service, low-intensity light industrial and enhanced service trade use.

A. Activity type and mix:

- (1) The proposal poses no environmental hazard because of use or storage of explosive, flammable, toxic or radioactive materials.
- (2) The proposal will not result in air pollution or excessive noise.

B. Site design:

- (1) Scenic views from public ways and other developed properties are considerably treated in the design of the site.
- (2) Topographic change is minimized.
- (3) Unnecessary removal of existing trees or other important natural features is avoided.
- (4) Pedestrian movement within the site and to other places is well provided for.
- (5) Vehicular movement within the site is safe and convenient and arranged so as not to disturb abutting properties.
- (6) Visibility of parking and service areas from public streets is minimized through facility location and the use of topography and vegetation.
- (7) Potential disturbances such as noise, glare, and odors are effectively confined to the premises through buffering or other means.

C. Facility design:

- (1) Scenic views from public ways and other developed properties are considerably treated in the design of buildings.
- (2) Primary exterior materials match the appearance of materials commonly found on existing buildings within the town (not to be construed by the Board of Appeals as authority to regulate or restrict materials regulated by the State Building Code).
- (3) Domestic scale is produced in the building's design through massing devices such as

breaks in wall and roof planes and through the design of architectural features.

D. Landscaping, design and appearance standard:

- (1) A landscaped buffer strip of no less than ten feet shall be provided adjacent to any public or private road to visually separate parking and other uses from the road, where feasible and without interfering with vehicular or pedestrian safety.
- (2) A landscaped buffer strip shall be provided adjacent to adjoining uses, excluding areas providing shared access and parking. The buffer strip shall be planted with a combination of grass, medium-height shrubs (evergreen varieties preferred) and shade trees.

**3.3 ZONING MAP** - Said districts are bounded as shown on a map entitled "Zoning Map Wellfleet, MA." Dated October 2004 which accompanies and which, with all explanatory matter thereon is hereby made a part of this By-law. The responsibility for keeping the zoning map current will be that of the Board of Selectmen or its designee.

**3.4 INTERPRETATION OF DISTRICT BOUNDS** - Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

3.4.1 Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.

3.4.2 Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

3.4.3 Where district boundaries are so indicated that they are approximately parallel to the center lines or side lines of streets, or the center lines of right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.

3.4.4 Where the boundary of district follows a stream or borders upon marsh land or projects into a pond or other body of water, said boundary line shall be deemed to be the center of said stream, abut the edge of said marsh and project across said pond or other body of water.

## **SECTION IV**

**4.1 APPLICATION OF REGULATIONS** - Except as specifically provided in this By-law:

- (1) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is or is proposed to be located.
- (2) No building shall hereafter be erected or altered to accommodate or house a greater number of

families, seasonally or permanently: to occupy a greater percentage of lot area: or to have narrower or smaller rear yards, front yards, side yards, and inner and outer courts than is specified herein for the district in which such building is or is proposed to be located.

(3) No part of a yard or other open space about any building or use required for the purpose of complying with the provisions of this By-law shall be included as a part of a yard or other open space similarly required for another building or use.

(4) No lot on which a building is located in any district shall be reduced or changed in size or shape so that the building or lot fails to comply with the lot area, width, frontage, setback or yard provisions of this By-law. This prohibition shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.

(5) Not more than one dwelling may be erected on a lot.

## SECTION V

**5.1 CONFORMANCE WITH SCHEDULES** - In the districts specified in Section 3.1 and in accordance with objectives of the districts specified in Section 3.2 no building, structure or premise shall be erected, altered or used except as set forth in the "Use Regulation Schedule" and "Intensity of Use Schedule" and as provided in Section 5.3 and 5.4 Symbols employed shall mean the following:

**P** – A permitted use

**O** – An excluded or prohibited use

**A** – Use authorized under special permits as provided for in Section 8.4.2

**PB** – Permitted only under a Special Permit issued by the Planning Board

**5.2 PERMITTED USES** - Permitted uses and uses authorized under special permits shall be in conformity with the provisions of Section 5.3 (Use Regulations) and shall not be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, dust, glare, odor, fumes, smoke, gas, sewage, refuse, noise, vibration, danger of explosion or fire, traffic congestion. Any use not listed as a permitted use in Section 5.3 shall be deemed a prohibited use, except that a use not listed in Section 5.3 may be allowed by special permit as provided for in Section 8.4.2 from the Board of Appeals provided said Board determines that the use closely resembles in its neighborhood impact(s) a use listed as permitted or authorized under special permit, in the same zoning district. Said determination shall be in addition to the required findings of the Board as provided for in Section 8.4.2. ATM 4/23/90.

### 5.3 USE REGULATIONS

(Amended 4/30/85 ATM, Art. 60; 4/29/86, Art. 22)

<b>5.3.1 Residential</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Bed and Breakfast	P	P	P	P	P	P
Boat House, Private	P	P	P	P	P	P
Camper	O	O	O	O	O	O
Cluster Residential Development	O	PB	PB	O	O	O

<b>5.3.1 Residential cont'd.</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Conversion of Dwelling Unit	O	A	A	O	O	O
Dwelling, Affordable Accessory	A	A	A	A	A	A
Dwelling, Multiple-Family	O	O	O	O	A	O
Dwelling, One-Family	P	P	P	P	P	P
Garage, Private	P	P	P	P	P	P
Guest House, Private	O	P	P	P	P	P
Home Occupation	P	P	P	P	P	P
Parking, Private	P	P	P	P	P	P
Personal Services (Business)	A	O	O	O	A	O
Roadside Stand, Temporary	O	P	P	O	P	P
Service Trades	A	A	A	A	A	A
Signs <sup>1</sup>	P	P	P	P	P	P
Stable, Private <sup>2</sup>	O	A	A	A	A	A
Studio, Private	P	P	P	P	P	P
Swimming Pool/Tennis Court, Private	P	P	P	P	P	P
Trailer Home/Mobil Home	O	O	O	O	O	O

<sup>1</sup> In accordance with the provisions of Section VII of this By-law.

<sup>2</sup> With the approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.

<b>5.3.2 Commercial</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Adult Bookstore	O	O	O	O	A	O
Adult Motion Picture Theatre	O	O	O	O	A	O
Adult Paraphernalia Store	O	O	O	O	A	O
Adult Video Store	O	O	O	O	A	O
Establishment displaying live nudity <sup>1</sup>	O	O	O	O	A	O
Amusement, Indoor	A	O	O	O	A	O
Amusement, Outdoor	O	O	O	O	A	O
Amusement Park	O	O	O	O	O	O
Animal Hospital	O	O	O	O	A	O
Antique Shop/Art Gallery	A	O	O	O	A	O
Arcade	O	O	O	O	A	O
Auto Court	O	O	O	O	O	O
Boat House, Commercial	A	A	A	O	A	O
Campground	O	O	O	O	O	O
Club	A	O	A	O	A	A
Communication Structure	O	A	A	A	A	A
Communication Building	O	A	A	A	A	A
Communication Appurtenance	A	A	A	A	A	A
Contractor's Yard	O	O	O	O	P	P

<b>5.3.2 Commercial cont'd</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Cottage Colony	O	A	A	O	A	A
Filling Station	O	O	O	O	A	O
Funeral Home	A	A	A	O	A	O
Game Room	A <sup>2</sup>	O	O	O	A <sup>3</sup>	O
Garage, Public	O	O	O	O	A	O
Gift or Craft Shop	A	O	O	O	A	O
Guest House, Public	O	A	A	O	A	O
Home Industry, Small	A	O	A	O	P	A
Home Industry, Large	O	O	A	O	P	A
Individual Storage Units	O	O	O	O	A	A
Industry, Light	A	O	O	O	A	A
Inn	O	O	O	O	A	O
Lodge	A	O	O	O	A	O
Motel	O	O	O	O	A	O
Motor Vehicle Repair, Incidental	O	O	O	O	A	A
Nursery School	A	A	A	O	O	O
Nursing Home	O	A	A	O	A	O
Office, Business	A	O	A	O	A	O
Parking, Public	A	O	O	O	A	O
Personal Service (Business)	A	O	O	O	A	O
Pet Kennel	O	O	O	O	A	O
Restaurant, Indoor <sup>4</sup>	A	O	O	O	A	O
Restaurant, Drive-In <sup>4</sup>	O	O	O	O	A	O
Retail Trade (Business)	A	O	O	O	A	O
Roadside Stand, Semi-Permanent	O	O	O	O	O	O
Swimming Pools/Tennis Club (Public)	O	O	O	O	A	O
Swimming Pools/Tennis Club (Private)	A	O	O	O	A	O
Trailer Park	O	O	O	O	O	O

<sup>1</sup> With the term “nudity” as defined by General Laws, Chapter 272, §31.

<sup>2</sup> Only by not-for-profit organization or municipality on property principally occupied by said organization or municipality.

<sup>3</sup> Only as an accessory, secondary use to an existing commercial use on the same lot.

<sup>4</sup> With the approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.

<b>5.3.3 Commercial (Heavy)</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Bulk Storage, Open	A	O	O	O	A	A
Bulk Storage, Tanks	A	O	O	O	A	A
Dump	O	O	O	O	O	O
Junk Yard	O	O	O	O	O	O
Industry, Heavy	O	O	O	O	O	O
Marine Aquaculture	A	O	O	O	A	P
Motor Vehicle Junk Yard	O	O	O	O	O	O
Motor Vehicle Repair Shop	O	O	O	O	A	O
Motor Vehicle Sales	O	O	O	O	A	O
Quarry, Sandpit, etc.	O	O	O	O	O	O
Transportation Terminal	O	O	O	O	A	O
Warehouse	O	O	O	O	A	A

<b>5.3.4 Institutional</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Camp	O	O	A	O	O	O
Cemeteries	O	A	A	O	O	O
Government Facilities	P	P	P	P	P	P
Health Care Clinic	A	A	A	A	A	A
Hospital	O	O	O	O	A	O
Municipal Purposes	P	P	P	P	P	P
Municipal Wind Turbine <sup>1</sup>	O	O	O	A	O	O
Public and Semi-Public Institutions of an Historic, Philanthropic or Charitable Nature	P	P	P	P	P	P
Religious Institutions	P	P	P	P	P	P
Utilities, with Open Storage	O	O	O	O	O	O
Utilities, without Open Storage	A	A	A	A	P	A

<sup>1</sup> Special Permit authorized under Section 6.25 and 8.4.2 of these Zoning By-laws

<b>5.3.5 Farm Uses</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Farm, Commercial	P	P	P	P	P	P
Farm-Family, Agriculture	P	P	P	P	P	P
Farm-Family, Livestock <sup>1</sup>	O	A	A	A	A	A
Greenhouse, Commercial	P	P	P	P	P	O
Riding Academy <sup>1</sup>	O	A	A	A	A	O
Stable, Public <sup>1</sup>	O	A	A	A	A	O

<sup>1</sup> With the approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.

## 5.4 INTENSITY OF USE SCHEDULE

(Amended 4/30/85 ATM, Art. 61 & 63; 4/29/86 ATM, ART.22; 4/25/06 ATM, ART 23)

<b>5.4.1 Minimum Lot Requirements</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Area (Square Feet)	20,000	30,000	40,000	3 Acres	40,000	30,000
Frontage (feet)	125	135	135 <sup>1</sup>	200	200	135

<sup>1</sup>Increase to 200 feet on Route 6

<b>5.4.2 Minimum Yard Requirements</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>	<b>MSO</b>
Front (feet)	25	30	30 <sup>1</sup>	50	100 <sup>2</sup>	50 <sup>3</sup>	25 <sup>4</sup>
Side (feet)	20	25	25	35	35	35 <sup>3</sup>	6
Rear (feet)	25	30	30	35	35	35 <sup>3</sup>	15

<sup>1</sup> On Route 6 increase to 100 feet except front yard setback may be reduced to not less than 30 feet with a Special Permit from the Zoning Board of Appeals.

<sup>2</sup> Of which not less than 25% of the required front yard must be maintained with vegetative cover (20% of which must border Route 6 and meet requirements, as specified in 6.12.1, “Perimeter Buffering”). Front setbacks may be decreased to 50 feet for non-residential uses, provided building is wood-sided. Front setbacks may be decreased to 30 feet for residential uses with a Special Permit from the Zoning Board of Appeals.

<sup>3</sup> Minimum yard requirements may be reduced to R1 requirements for residential uses with a Special Permit from the Zoning Board of Appeals.

<sup>4</sup> Front yard setbacks may be reduced to zero with a Special Permit from the Zoning Board of Appeals.

<b>5.4.3 Maximum Building Coverage</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>C</b>	<b>C2</b>
Maximum Building Coverage	15%	15%	15%	25%	15%

<b>5.4.3.1 Maximum Site Coverage in the National Seashore Park</b>	
<b>Lot Area</b>	<b>Maximum Site Coverage</b>
Less than 10,500 sq. ft. (just under ¼ acre)	5% Maximum Building Coverage
10,501 sq. ft. to 21,000 sq. ft. (≈ ¼ to .48 acre)	1,050 sq. ft. plus 7.4% of lot area over 10,500
21,001 to 42,000 sq. ft. (.48 to .97 acre)	1,825 sq. ft. plus 3.2% of lot area over 21,000
42,001 to 84,000 sq. ft. (.97 to 1.92 acre)	2,500 sq. ft. plus 1.43% of lot area over 42,000
84,001 to 126,000 sq. ft. (1.92 to 2.89 acres)	3,100 sq. ft. plus 1.2% of lot area over 84,000
126,001 sq. ft. (2.89 acres and above)	3,600 sq. ft.

Within the NSP District with a Lot Area over 10,500 sq. ft., the following provisions shall apply:

(a) As used within this Section the following terms shall have the definitions indicated below:

**Dwelling Space Area** shall mean the total of the Floor Area, Livable within a dwelling plus the floor area of garage space attached to or built into a dwelling, and the floor area in excess of 750 square feet of the aggregate floor area of all Exterior Spaces.

**Exterior Spaces** shall mean screened porches, and decks thirty-six (36) inches or more above grade.

(b) Calculation of Site Coverage: Within the NSP District Site Coverage shall be calculated by adding the Dwelling Space Area to the gross horizontal area of the floors of any detached structure(s) having a roof. The following shall be excluded from this calculation: attic space, cellars and/or basement floor area not devoted to residential use, and any Shed. As indicated above, only the floor area in excess of 750 square feet of the aggregate floor area of the Exterior Spaces shall be included in the calculation of Dwelling Space Area.

(c) The Maximum Site Coverage of a Lot within the NSP District shall conform to the above table.

(d) In no event shall the site coverage of the Dwelling Space Area on any lot exceed 2,800 square feet nor shall the Maximum Site Coverage of any lot exceed 3,600 square feet.

<b>5.4.4 Maximum Height of Buildings</b>	<b>CD</b>	<b>R1</b>	<b>R2</b>	<b>NSP</b>	<b>C</b>	<b>C2</b>
Stories	2	2	2	2	2	2
Feet	28	28	28	28	28	28

**5.4.5 Intensity of Use Application to Multiple Family Dwellings**

The first unit of a multiple family dwelling or of an apartment building shall require a minimum land area equal to the lot requirements of the district in which located Each additional unit will require 8,000 square feet of land area. Front, side and rear yard and maximum building coverage requirements of the district in which the structures located shall apply. (Amended 4/30/85 ATM, Art. 64.

**5.4.6 Intensity of Use Application to Affordable Accessory Dwelling Units**

An Affordable Accessory dwelling Unit shall consist of a minimum of 150 square feet of Livable Floor area for a single occupant, or 250 square feet of Livable Floor Area for two occupants, subject to any requirements of the State Building code of State law.

**5.4.7 Intensity of Use Application to the Conversion of Dwelling Units**

No dwelling unit shall be converted into two or more units unless each resulting unit consists of a minimum of 600 square feet of livable floor area; the external appearance of the structure is not changed; the front, side and rear yard requirements of the district in which located are met; and the lot area is not less per dwelling than the lot requirement of the district in which located.

**5.4.8 Intensity of Use Application to Motels**

A minimum of an acre of land is required for the construction of a motel. Not more than 10 units

may be constructed upon an acre of land with an additional 4,000 square feet being required for each unit in excess of ten. No motel unit shall be located nearer than 125 ft. to a public way. All other front, side and rear yard requirements of the district in which located shall be complied with.

**5.4.9 Intensity of Use Application to Commercial Farm**

A commercial farm shall require a minimum of five (5) acres of land.

**5.4.10 Intensity of Use Application to Camps**

A camp shall require a minimum of four (4) acres of land, exclusive of areas covered by water.

**5.4.11 Intensity of Use Application to Cottage Colonies**

No cottage colony shall be constructed upon an area consisting of less than 40,000 square feet, and there shall be a minimum of 4,000 square feet for each unit with no part of one unit being located closer than 25 feet to another. The front, side and rear yard requirements of the district in which located shall be complied with.

**5.4.12 Intensity of Use Application to Restaurant**

The total of the indoor and outdoor seating of the restaurant shall not exceed the total capacity of the restaurant as licensed by the Town of Wellfleet. ATM 4/23/90.

**5.4.13 Intensity of Use Application to More Than One Allowed Principal Use and/or Principal Building on a Lot**

More than one allowed Principal Use and/or Principal Building may be permitted on a lot in District C and District C2 with a Special Permit granted by the Zoning Board of Appeals in accordance with Section 8.4.2 of the Wellfleet Zoning By-laws.

**SECTION VI  
GENERAL REGULATIONS**

**6.1 NONCONFORMING USES** - The lawful use of any structure of land existing at the time of enactment or subsequent amendment of this By-law may be continued although such structure or use does not conform with provisions of the By-law, subject to the following conditions: \*

\* Note: Mass. Gen. Laws C. 40A Sec. 6 attached (last few pages)

6.1.1 Alteration or extension - No addition to or increase in the extent of a non-conforming use of a structure or land may be made, except that the Board of Appeals may grant a Special Permit for expansion of existing campgrounds, mobile home parks, motels or motor courts, and cottage colonies using only those parcels employed at the time the use was made non-conforming.

6.1.2 Restoration - In case of destruction or damage by fire or other catastrophe, a legally non-conforming structure may be rebuilt in substantially the form it had at the time of the destruction or damage, or in any form if within applicable set-back requirements in accordance with existing building code requirements, and not larger than previously (provided that reconstruction is started within twelve month and completed within twenty-four months of the catastrophe).

6.1.3 Changes - A non-conforming use may be changed to a more nearly conforming use and once changed to a more nearly conforming or conforming use, no structure or land shall be permitted to revert to a less conforming use.

6.1.4 Discontinuance or Abandonment - A non-conforming use, which has been abandoned, shall not be reestablished. Any non-conforming use discontinued for a period of two years or more shall not be reestablished, and any future use shall conform with this By-law, unless reestablishment is authorized by Special Permit from the Board of Appeals, upon its determination that the discontinuation occurred despite good faith efforts of the owner to reestablish the use within two years, and that reasonable efforts will be made to mitigate any harmful impact upon the vicinity. (Amended 4/30/85 ATM, Art. 20)

6.1.5 Alterations to non-conforming single or two-family residential structures.

6.1.5.1 Non-conforming single or two-family residential structures may be altered if:

(a) the Building Inspector determines that the alteration will not increase the non-conforming nature of the structure; or

(b) if the alteration will increase the non-conforming nature of the structure, the Zoning Board of Appeals issues a special permit after determining that the alteration is not substantially more detrimental to the neighborhood than the existing non-conforming structure.

6.1.5.2 Conforming single and two-family residential structures located on non-conforming lots may be altered if:

(a) the structure after the alteration will continue to conform; or

(b) if the structure after the alteration will not continue to conform, the zoning Board of Appeals issues a special permit after determining the alteration is not substantially more detrimental to the neighborhood than the existing non-conforming use.

6.1.5.3 Permits issued under subsection (1) (b) and (2) (b) of this section shall be subject to the provisions of subsections 8.4.2.4 and 8.4.3.5 of this bylaw. In making the determination to issue the permit, the Zoning Board of Appeals may consider other criteria in Section 8.4.2.

6.1.5.4 For purposes of this section:

(a) "alteration" means any alteration, reconstruction, extension, structural change, or replacement;

and

(b) an "increase in the non-conforming nature of the structure" means any alteration that results in an increase in the volume of that portion of the structure presently non-conforming.

**6.2 ACCESSORY BUILDING** - No accessory building or structure, except a shed, permitted sign or a temporary roadside stand, shall be located within a required front or side yard area or nearer to the rear lot line than 10 feet. Sheds, as defined in Section II of this By-law, must be located a minimum of 30 feet from the front line and 5 feet from the side and rear lines. The door or access to a shed must be to the inside of the property on which it is located if a shed is located within 25 feet of the side lot line or 10 feet of the rear lot line.

**6.3 PARKING REQUIREMENTS** - Any building hereinafter constructed or converted to another use shall be so located on its parcel of land that there may be provided adequate off-street parking areas in conformance with the following minimum standards: (Amended 4/30/85 ATM, Art. 66)

6.3.1 Stores - Retail Business - At least two spaces for each establishment or one space for each 150 square feet of floor area, whichever is larger, plus one space for each three employees or nearest multiple thereof.

6.3.2 Office - Banks and Similar Business - One space for each 150 square feet of floor area plus one space for each three employees or nearest multiple thereof.

6.3.3 Inns, Motels, Tourist Homes, etc. - One space for each two sleeping accommodations plus one space for each three employees. Each double bed to be considered two sleeping accommodations.

6.3.4 Theater, Funeral Homes and Places of Assembly - One space for each four seats.

6.3.5 Restaurants - Places Serving Food or Beverages - One space for each four seats plus one space for each three employees or nearest multiple thereof.

6.3.6 Residential Areas - Two spaces for each individual dwelling unit except in the case of apartments where 1 ½ spaces shall be provided for each unit.

6.3.7 Non-Residential Uses - In all other cases of non-residential uses in a residential area, there shall be provided at least one space for each three employees plus one space for each 150 square feet of gross floor area.

6.3.8 Industrial, Manufacture and Wholesale Uses - One space for each three employees based on the maximum number of employees the plant is designed to employ.

6.3.9 Bowling Alleys - Four spaces for each alley.

6.3.10 Guest House - One space for each sleeping room.

6.3.11 Health Care Clinic, Medical or Dental Center or Professional Offices - Four spaces for 800 square feet of floor area plus one space for each two employees.

6.3.12 Bed and Breakfast – In addition to the requirements for two parking spaces for each individual dwelling unit as specified by 6.3.6, one parking space shall be provided for each bedroom in a new Bed and Breakfast and for each bedroom added to an existing Bed and Breakfast.

6.3.13a Other Uses - Parking requirements for all other uses not specifically mentioned shall be determined by the Board of Appeals for those uses controlled by special permit and by the Board of Selectmen or by the Inspector of Building appointed by the Board for those allowed uses unless such use is subject to the provisions of Section 6.3.13 of this By-law.

6.3.13b Central District Parking - Lots that are partly within the Central District and partly within the R1 Residential District may use the R1 portion of their lot for parking with a special permit from the Zoning Board of Appeals provided that adequate measures are taken to mitigate any adverse impact on abutting properties. Such mitigation may include, but not be limited to, fencing or screening to control the visibility of the parking, access to the parking area that protects public safety and is consistent with existing traffic patterns and flow.

6.3.13 "Development of Significant Impact" - Applicants for Special Permits for uses so controlled and which involve required parking for ten or more cars, or involve more than 4,000 square feet floor area of new construction or for any adult entertainment use regulated herein under section 6.20 or uses in the Main Street Overlay District herein under sections 9.2-9.5 and regardless of floor area or the number of parking spaces, shall submit to the Board of Appeals three copies of the following:

- a) an application;
- b) a site plan prepared by an architect, landscape architect, or Registered Professional Engineer, showing proposed structures, drives, parking, landscaping, screening and drainage;
- c) a ground floor plan and elevation of all proposed building and elevations of proposed signs; photographs of the premises and all adjoining structures.

Forthwith upon receipt of the above materials, the Board of Appeals shall transmit one set of them to the Planning Board for their review and recommendation.

6.3.14 Developer-Funded Impact Studies for "Development of Significant Impact" - The following developer-funded impact studies shall be required for "Developments of Significant Impact" unless deemed unnecessary by the involved Town board(s):

- a) A traffic impact study to determine the development's effect on road traffic-carrying capacity, road physical environment, and traffic and pedestrian safety.
- b) A financial impact study to determine the development's effect on public service expenditures

for administrative, police, fire, school and road maintenance services.

6.3.15 Egress - Any driveway likely to carry more than 200 trips per average summer business day must comply with the following unless the Board of Appeals grants a special permit for an alternative configuration, upon its determination that safety will be adequately protected, based on commonly employed engineering standards, or unless the Massachusetts Department of Public Works imposes requirements precluding compliance: (Added 9/22/86 STM, Art. 33)

	<b>On Route 6</b>	<b>Other Locations</b>
Existing vehicle unobstructed sight distance at edge of traveled way	350 feet	200 feet
Driveway centerline separation from other driveway serving 100+ trips	275 feet	100 feet

	<b>On Route 6</b>	<b>Other Locations</b>
Driveway centerline separation from intersecting street sideline	150 feet	50 feet
Maximum driveway width unless greater width justified by engineered design	24 feet	18 feet
Minimum curb radius	50 feet	25 feet
Acceleration/deceleration lanes required	Yes	No

No existing parcel shall be divided into lots with frontage, which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

**6.4 LOADING AND UNLOADING AREAS** - Berths shall be provided for the loading and unloading of stock, merchandise, equipment, supplies and other usual business and industrial commodities in accordance with the following conditions:

6.4.1 Retail Store and Service Establishments - For each retail store or service establishment with gross floor area of from 3,000 to 8,000 square feet at least one berth. Additional berths at the rate of one berth for each additional 8,000 square feet or nearest multiple thereof.

6.4.2 Manufacturing, Industrial and Other Commercial Use - One berth shall be provided for floor area up to 8,000 square feet and for larger floor areas additional berths as required by the Board of Appeals.

**6.5 WINDMILLS**

6.5.1 Windmills shall be permitted by a special permit from the Board of Appeals. No special permit for a windmill shall be granted unless the Board of Appeals makes a finding that the windmill complies with the following conditions:

6.5.1.1 The minimum setback distance for all windmills from any abutter's property line shall be at

least equal to the maximum height of the machine from grade plus twenty (20) feet. Set backs will be measured to the center of the tower base.

6.5.1.2 The maximum tower height shall be sixty-five (65) feet from grade to the center of the rotor.

6.5.1.3 Climbing access to the windmill tower shall be limited either by (I) the installation of a fence with locked gate around tower base or by (II) limiting tower climbing apparatus to no lower than ten (10) feet from the ground. If a fence is used, it shall be no lower than five (5) feet and constructed in such a manner as to restrict passage through said fence, including such construction as stockade, woven wood, chain link, etc., but excluding split rail.

6.5.1.4 The diameter of a rotor may not exceed thirty-five (35) feet. The minimum height of the rotor shall not be less than fifteen (15) feet from the ground as measured from the lowest point of the arc of the rotor.

6.5.1.5 The windmill shall not generate excessive noise, cause interruption of television or radio station reception or otherwise constitute a public nuisance.

6.5.2 A windmill will be considered abandoned if not operated for a period of two years or if it is designated as a safety hazard or a public nuisance by the Building Inspector. Once a windmill is designated as abandoned, the owner shall be required to immediately dismantle it.

6.5.3 For the purposes of the by-law the following definitions shall be applied: (I) windmill - a device which converts wind energy to mechanical or electrical energy; (II) rotor - the blades plus the hub to which the blades of a windmill tower are attached.

6.5.4 Before applying for a special permit under this section, the applicant shall obtain the Building Inspector's approval of the proposed windmill. The Building Inspector shall approve the proposed windmill upon making the determination that it (I) will not constitute a safety hazard of a public nuisance and (II) complies with the State Building Code and any other applicable law. The Building Inspector's approval required herein shall be in addition to the building permit required by Section 8.2 of this by-law.

**6.6 CLUSTER RESIDENTIAL DEVELOPMENTS** - The Planning Board is hereby designated the special permit granting authority for all cluster residential developments and shall have the power to hear and decide applications for special permits as provided by this section.

6.6.1 Objective - to allow intensive use of land while at the same time maintaining existing character; preserve open space for conservation and recreation; introduce variety and choice into residential development; meet housing needs; and facilitate economical and efficient provision of public services.

6.6.2 Application - Applicants shall submit five (5) copies of an application and plans which shall

comply with the requirements of the Wellfleet Subdivision Control Regulations and which shall also indicate proposed land and building area, location of common open space and upland area. A registered land surveyor or equivalent licensed professional shall prepare the plans. Preliminary subdivision plans, if any, should be submitted to the Planning Board prior to the application for a special permit. The definitive subdivision plan shall be submitted with the special permit application. The Planning Board shall transmit copies of the application and plans to the Board of Health, Conservation Commission, Fire Department or any other agencies whose review is sought. Those agencies shall submit reports to the Planning Board within 35 days of the referral and the Planning Board shall make no decision upon the application until receipt of all such reports or until 35 days have elapsed. The Planning Board may hold public hearings under Ch. 41, the Subdivision Control Law and the special permit simultaneously.

6.6.3 Other Materials - The application materials shall indicate each landowners interest in the land to be developed, the form of organization proposed to own and maintain the open space and any common facility, the substance of covenants and grants of easements to be imposed upon the use of land or structures, and a development schedule.

6.6.4 Minimum Area/Number of Dwelling Units - A cluster development shall encompass at least 15 acres of contiguous land. The maximum number of dwelling units per cluster development shall equal the total upland area (minus land for road construction) divided by the minimum lot size in that district; if the development includes land in more than one district, the largest lot size shall be used to calculate the number of units allowed.

6.6.5 Open Space - Open space shall be preserved for recreation or conservation and shall include not less than 25% of the upland within the cluster development. The open space shall either be conveyed to and accepted by the Town or a non-profit organization, the principal purpose of which is the preservation of open space, or a corporation or trust owned or to be owned by the owners of lots or residential units in the development. If such a corporation or trust is used, ownership thereof shall pass with conveyance of the land or residential units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded, providing that such land be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadways.

6.6.6 Dimension Requirement for Cluster Development –

Minimum Lot Size	10,000 square feet
Minimum Frontage	no requirement
Minimum Front Yard	no requirement
Minimum Side Yard	no requirement
Minimum Rear Lot	no requirement
Maximum Lot Coverage	15%
Maximum Height	See Section 5.4.4

Setback from boundary of development: structures in the cluster development shall be sited to minimize the impact on abutting property; no structure within a cluster may come closer to the

boundary of the development than 35 feet. The minimum distance between dwelling units shall be 25 feet. The permitting authority may reduce these dimensional requirements upon clear demonstration that the proposed development offers exceptional advantages.

6.6.7 Drinking Water - The provisions for drinking water to each dwelling unit shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts.

6.6.8 Wastewater Disposal - The provisions for wastewater disposal shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts. No private septage or sewage treatment facility or advanced wastewater treatment equipment shall be used in cluster development.

6.6.9 Roads –

- a) Pervious surfaces may be used except where grades require pavement.
- b) Right of way for roads may be reduced to 30 feet at the discretion of the Planning Board.
- c) Roadway width shall be minimum consistent with access for emergency vehicles.
- d) The road layout shall minimize cutting and grading.
- e) Other requirements of the Wellfleet Subdivision Control Regulations with regard to road design shall be complied with.

6.6.10 Utilities and Easements - All utilities shall be installed underground. Easements shall be provided for public water, sewers, gas, and where applicable telecommunication services. Underwater storage of water for fire protection shall be provided in a manner acceptable to the Wellfleet Fire Department.

6.6.11 Clearing of Site - The site shall not be cleared prior to submission to and review by the Planning Board of a preliminary plan; or, if no preliminary is submitted prior to submission to and approval by the Planning Board of the definitive plan.

6.6.12 Design Guidelines - Applicants are encouraged to apply, where pertinent, the recommendations for Compact Residential Developments as set forth in pages 44 through 48 of "A Design Guideline Manual for Sustainable Development on Cape Cod" which is available from the Building Inspector, the Town Planner or the Cape Cod Commission.

6.6.13 Criteria - Special Permits for cluster development may be made upon the determination of the Planning Board that the plan meets all requirements of the Zoning Bylaw and is preferable to a conventional grid-type subdivision in preserving open space for conservation or recreation, in utilizing natural features of the land, in allowing more efficient provision of streets, utilities and other public services.

**6.7 COMMERCIAL, INDUSTRIAL AND GENERAL USE STANDARDS** - No activity shall be permitted in any district of the town unless its operation is conducted so that any noise, vibration, flashing, cinders, dust, fumes gasses, odors, smoke, radiation and electromagnetic interferences can be and are effectively confined to the premises. No such activity shall be allowed which is

detrimental to neighboring property by reasons of special danger of fire or explosion.

6.7.1 Denial of Permit – The Board of Selectmen or person designated by it, whichever may be responsible for the issuance of building or use permits, shall, subject to the applicant's right of appeal, deny a building, use, or occupancy permit if in his opinion he has reason to believe that said permit if issued and resulting use of said premises is contrary to the intent of this section.

6.7.2 Right of Appeal - Any applicant denied a permit under the provisions of this section shall have the right of appeal to the Board of Appeals and said Board, following a hearing with due notice thereof, may order the issuance of said permit if it finds that action taken in denying said permit was without sufficient reason.

**6.8 BURNING OF COVER** - Within the National Seashore Park District there shall be no burning of cover unless determined by the proper official to be necessary for the welfare and safety of the town and then such burning shall be in accordance with the requirements of Section 13, Chapter 48 of Massachusetts General Laws.

**6.9 CUTTING OF TIMBER** - Within the National Seashore Park District there shall be no cutting of timber except for the following reasons:

- a) by an owner for the purpose of reasonably controlling brush or trees;
- b) maintenance cutting in pastures;
- c) cutting for clearance or maintenance on right-of-way including those pertaining to public utilities or public highways.

**6.10 DRAINAGE AND DAMMING** - Within the National Seashore Park District there shall be no drainage, damming or relocating of any water course, except by publicly authorized agency for the purpose of pest control.

**6.11 CONDOMINIUM** - .( Repealed 4/25/2006)

**6.12 LANDSCAPING** -

The following requirements are intended to assure that vegetation provides visual contrast, separation between premises, and some protection from sun and wind. Alternatives to the following specifications may be authorized on approval of the Special Permit Granting Authority as a condition of the Special Permit based on the following criteria, taking into consideration existing vegetation, soils, and other site conditions, provided that effective screening, shading, and definition of property lines are achieved.

6.12.1 Perimeter Buffering - Parking areas for ten or more cars, outdoor storage areas, loading facilities, or similar service areas shall be separated from the Route 6 right-of-way by at least 35 feet, from all property lines in the Central District by at least 3 feet, and from all other property lines by at least 10 feet.

Alternatively, separation from Route 6 may be reduced to 20 feet and separation from all other

property lines may be reduced to 5 feet, provided that not less than 20% of lot area is maintained with vegetative cover.

Yards between parking, storage, loading, and service areas and property lines, including those bordering route 6, shall be vegetated (excepting drives, walks, tidal flats, etc.), through retention of existing plants and trees, or, where this is impossible, planted with native species, and must include trees (2' in caliper) sufficient in number that, if evenly spaced (which they need not be) their crowns would approximately meet each other at maturity. Brush or shrubbery must initially be essentially continuous to three feet or more in height, with mature height of at least four feet, except where that interferes with driver visibility. In the Central District, a combination of fencing and landscaping may be used where continuity of vegetation is inappropriate or impossible.

6.12.2 Parking Lot Plantings - Parking lots for 10 or more cars shall contain or be bordered within five feet by at least one tree per 10 parking spaces, trees to be of 2" caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree. Trees and shrubs that die must be replaced within twelve months. One required parking space may be omitted for each 300 square feet of planting area within the parking lot, on approval of the Board of Appeals as a condition of the Special Permit, upon the Board's determination that parking demand will still be adequately served.

### **6.13 FLOODPLAIN DISTRICT ZONING REGULATION**

(Added 4/30/85 ATM, Art. 56)

6.13.1 Floodplain District - The Floodplain District is herein established as an overlay district. The underlying permitted uses are allowed, provided they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction of Floodplain, Section 744.0.

The Floodplain District includes all special flood hazard areas designated as Zones A,AO,AH, V3,V4,V5,V6 A1-30 on the Wellfleet Flood Insurance Rate Map (FIRM) dated June 19,1985, as amended, on file with the Building Inspector and the Conservation Commission. This map as well as the accompanying Wellfleet Flood Insurance Study are incorporated herein by reference.

6.13.2 Development Regulations - The following requirements apply in the Floodplain District:

- a) Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data, and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation and flood-proofing requirements, as appropriate, of the State Building Code.
- b) In the A0 zones, new structures shall be elevated above the crown of the nearest street or above the depth number found on the Flood Insurance Rate Map (FIRM).
- c) Within the Floodplain District are areas designated as coastal high hazard areas (Zone V). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provisions shall apply:

1. All new construction shall be located landward of the reach of the mean high tide.

**6.14 SPECIAL FLOOD HAZARD DISTRICT REGULATIONS** - In special flood hazard areas subject to high wave impact and/or severe flood inundation (Zone V3, V4, V5, V6, A3, A4, A5) of the Wellfleet Flood Insurance Rate Map (FIRM) for the Town of Wellfleet dated June 19, 1985 and in accordance with any revisions or issuance, no new building shall be erected or constructed and no new subsurface disposal system installed except as authorized or required by the Board of Health; no paving; no existing structure shall be enlarged; no structure shall be moved except as landward of the reach of mean high tide; no dumping; no filling or earth transfer shall be permitted except as authorized by the Conservation Commission; and there shall be no additional mobile homes.

Amended 5/5/87 ATM, Art. 73)

6.14.1 Within these zones the following uses are permitted:

6.14.1.1 Conservation of water courses, plants and wildlife.

6.14.1.2 Outdoor recreation, including play areas, nature study, boating, fishing including shellfishing and marine aquaculture, and hunting where otherwise legally permitted, temporary structures relating to carnivals and recreational activities.

6.14.1.3 Grazing, farming, agriculture and the harvesting of crops.

6.14.1.4 Temporary non-residential structures used in connection with fishing, shellfishing, aquaculture, harvesting, storage or sale of products raised in the premises.

6.14.1.5 Dwellings, signs and parking lots lawfully existing prior to the adoption of these provisions.

6.14.1.6 Utility lines and facilities, and sewerage pipes installed according to plans approved by the Board of Health, the Conservation Commission and the Plumbing Inspector.

6.14.1.7 Boardwalks, wooden stairways, snow fences.

6.14.1.8 Non-Commercial signs (as permitted in the residential districts, Section 7.2 of the Wellfleet Zoning By-law) provided such uses do not affect the natural flow of any watercourse.

6.14.2 Lot requirements for uses allowed in the underlying zone may be comprised of up to 40% of floodplain district land, provided all structures and related facilities are confined to that portion of the lot situated outside of the floodplain district.

6.14.3 To appeal the restrictions in this section, application may be made to the Wellfleet Board of Appeals for a floodplain exemption from this floodplain bylaw in accordance with the following conditions:

6.14.3.1 A determination that the granting of an exemption will not result in increased flood

heights, decreased flood storage capacity, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing local laws.

6.14.3.2 Compliance in all respects with the State Building Code, Section 744.0. ATM 4/25/88

6.14.3.3 Approval of the Wellfleet Conservation Commission in accordance with MGL Chapter 131, S. 40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw.

6.14.4 If an exemption is granted to construct a structure below the base flood elevation, the Board of Appeals shall notify the applicant in writing over their signatures that the issuance of such an exemption will result in increased premium rates for flood insurance.

6.14.5 The Board of Appeals will maintain a record of all exemptions issued including justification for their issuance and report such exemptions issued in the Annual Report submitted to the Federal Insurance Administration.

**6.16 HOME INDUSTRY** - Home Industry (see definition) shall be allowed or allowed on special permit at locations as indicated in Section 5.3 Use Regulations, subject to the following:

6.16.1 For a Small Home Industry there shall be not more than four employees on the premises at any time who are not resident thereon, or eight such employees for a Larger Home Industry.

6.16.2 The floor area occupied by the business shall not exceed 2,000 square feet for a Larger Home Industry.

6.16.3 Regular outdoor parking of any vehicle having GVW rating in excess of 18,000 pounds or enclosed cargo area exceeding 500 cubic feet or a 12 passenger or larger bus shall be allowed only for a Larger Home Industry.

6.16.4 Any exterior storage of materials or equipment for a Home Industry must be so located and screened with evergreen plantings that it is not normally discernable from any location off the premises.

6.16.5 In the R2 District, Home Industry shall be approved on Special Permit only upon determination by the Board of Appeals that the industry is compatible with any potentially affected residential premises, that access poses no unusual hazard, that the use is likely to benefit year-round employment or service needs of the Town, and that the site plan minimizes visual intrusion of any parking or service areas.

## **6.17 CURB CUT PERMIT**

6.17.1 Purposes - The purpose of this bylaw is to provide conformity in design and construction of entrances and exits onto public ways within the Town of Wellfleet, to provide maximum protection to the public through the orderly control of traffic moving on to and from a public way, to minimize

soil/slope erosion, and to provide necessary drainage to areas adjacent to public ways.

#### 6.17.2 Definitions

- a) Adjacent property owner - a person or entity owning property bordering on a way.
- b) Driveway - privately owned access to and from a way.
- c) Way - a Town-owned road/way.

6.17.3 Procedure - Prior to commencing driveway construction, an adjacent property owner desiring to gain access to a Way shall make written application to the Director of the Wellfleet Department of Public Works and obtain a Curb Cut Permit from said department. The application shall include:

- a) a plan showing location of the property, the proposed driveway, and the intersection of the driveway with the Way;
- b) specific details of drainage when required;
- c) specific provisions to minimize slope or soil erosion of necessary;
- d) such other identifying information that may be requested by the DPW.

6.17.4 Design standards - The Director of the Department of Public Works in reviewing such application shall consider if the design and location of the proposed curb cut minimizes traffic hazards, the slope/soil erosion and provides adequate drainage.

6.17.5 Issuance - Upon review of the plans and a determination that the plans meet the above criteria, the DPW Director shall issue a CURB CUT PERMIT. Failure of the DPW Director to issue a permit within 10 days of the receipt of a completed application shall be deemed to be a grant of the curb cut permit as requested.

6.17.6 Appeal - Any person aggrieved by the inability to obtain the permit as requested, any appeal to the Zoning Board of Appeals within 30 days of the date of the decision of the Director of Public Works.

6.17.8 Fee - The Board of Selectmen shall have the authority from time to time, to set fees for this permit and any required inspections.

### **6.18 COMMUNICATION STRUCTURES, BUILDINGS AND APPURTENANCES**

6.18.1 Purpose. The purpose of this part of the Zoning bylaw is to establish requirements, guidelines, standards and procedures to regulate the permitting and installation of communication structures, buildings and appurtenances in a manner that minimizes adverse impacts in the Town of Wellfleet.

6.18.2 Requirements. The Planning Board is hereby designated the special permit granting authority for special permits issued under Section 6.18. No communication structure, building or appurtenance shall be erected, constructed or installed without first obtaining a special permit from the Planning Board. The Planning Board shall hold a public hearing within sixty-five days of the filing of an application and shall issue a decision within ninety days following the date of the public

hearing.

6.18.2.1 No communication structure, building or appurtenance shall be installed within the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). Complete designation documents are available upon request and full-size boundary maps drawn on USGS topographic quad sheets may be viewed by appointment at the ACEC Program office, Department of Environmental Management (DEM), 100 Cambridge Street, Room 1404, Boston, MA 02202. Boundaries of ACEC's have been digitized and are available at the EOE Data Center, 20 Somerset Street, 3rd floor, Boston, MA 02108. (617-727-3888)

6.18.2.2 Setbacks. the minimum distance from the perimeter of the communication structure to any property line shall be the height of the structure including any antennas or appurtenances plus 10 feet. The minimum distance from any guy wire, anchor or brace to any property line shall be the length of the guy wire or brace plus 10 feet. The setbacks for a communication building shall comply with the setback requirements of the zoning district.

6.18.2.3 Parking. Provisions for parking shall be in accordance with paragraph 6.3.7 of this Zoning bylaw.

6.18.2.4 Safety. Communication structure, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state and local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of a category 5 hurricane. If FAA or FCC regulations are changed then the owner or operator shall bring the structure, building and appurtenances into compliance with the new regulations within six months of the effective date of such regulations or earlier if a more stringent compliance schedule is included in the regulation. Failure to comply with any new regulations shall be grounds for removal of non-complying structure, buildings and appurtenances at the owner's expense.

6.18.2.5 Removal. An applicant and the land owner, if different from the applicant, must execute a covenant (or post a bond as set forth below) with the Planning Board agreeing to remove, within six months, all communication structures, buildings or appurtenances that have not been operated for four consecutive months unless the reason for non-operation is the result of major damage. In the event of major damage, the repair or removal of the structure, building or appurtenance must begin within six months of the damage date and must be completed within twelve months of the damage date. Failure to comply with the covenant shall be grounds for the removal of structures, buildings and appurtenances at the owner's expense. For the purpose of this paragraph, major damage shall mean damage to the communication structure or building caused through no fault of the owner or operator which prevents the owner or operator from using the equipment located thereon or therein. The applicant may as an alternative post a bond with the Treasurer of the Town of Wellfleet in an amount approved by the Planning Board and by an insurer approved by the Planning Board to cover the estimated costs of removal. If the applicant fails to remove the structure and/or buildings in accordance with the provisions of this paragraph, then the Town may use the bond to remove the structure and/or building and the balance of the funds, if any, will be returned to the applicant.

6.18.2.6 Fencing. Fencing shall be provided to control access to the site of the communication

structure and building and shall be consistent with the character of abutting properties. Fencing is not required for antennas or other appurtenances mounted on a pre-existing structure.

6.18.2.7 Lighting. Communication structures and appurtenances shall be lighted only if required by the FAA. Lighting of communication buildings and the site shall be limited to lighting required to provide safe access and shall be shielded from abutting properties.

6.18.2.8 Signs. There shall be no signs except a sign identifying the facility and a telephone number where the owner or operator can be reached on a twenty-four hour basis; a no-trespassing sign; and any signs required to warn of danger. All signs shall comply with the requirements of this bylaw.

6.18.2.9 Visual. The installation of a communication structure, building or appurtenance shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional vegetative screening shall be employed where practical and particularly to screen abutting residential property whether developed or not.

6.18.2.10 Regional Criteria. Siting, to the extent it does not conflict with provisions of this Bylaw, shall be consistent with regional criteria established by the Cape Cod Commission.

6.18.2.11 Environmental.

(1) No hazardous waste shall be discharged on the site.

(2) All run-off of storm water from communication structures, buildings and appurtenances, driveways and parking areas shall be contained on site; the amount of impervious surface on the site shall be minimized. Any road or other surface on the lot shall comply with Article 7, Section 30 of the Wellfleet General Bylaw.

(3) Under normal operating conditions, noise emanating from the communication structure, building or appurtenance at the boundary of the lot on which it is sited shall not be greater than would otherwise exist in the absence of the communication structure, building or appurtenance. These requirements shall be met for wind conditions between calm and 100 miles per hour. In accordance with procedures approved by the Planning Board, the applicant shall measure the sound level at the boundary of the site on which the communication structure, building or appurtenance will be sited before any development takes place and shall demonstrate by measurements that the sound level at the boundary during normal operation does not exceed the levels before development.

6.18.2.12 Siting standards. In addition to the other requirements of this bylaw the applicant must comply with the following standards.

A. Communication structures and appurtenances shall, if feasible, be located on pre-existing structures, provided such installation shall preserve the character of the structure. The applicant has the burden of proving that there are no feasible pre-existing structures.

B. If the applicant demonstrates that there are no feasible pre-existing structures, then a

communication structure, building and appurtenances shall, if feasible, be located on public land. The applicant shall have the burden of proving that there is no available public land.

C. Multiple, small towers are preferred to a single high tower.

D. Multiple antennas on a single structure at a single site are preferred if technically feasible, to multiple towers with fewer antennas.

E. Appurtenances mounted on or installed within an existing structure shall not increase the height of the structure. Any alteration of the appearance of the structure shall be minimized by design features which minimize the visibility of the appurtenance by the use of matching colors and textures and minimizing changes to the outside of the structure.

6.18.2.13 Pre-Application consultation. At least 30 days before submitted an application for a special permit for the installation of a communication structure, building or appurtenance the applicant shall consult with the Planning Board. The purpose of the consultation is to facilitate the permitting of communication structures, buildings and appurtenances by the exchanges of information between the applicant and the Planning Board in order to clarify and resolve concerns of the Board and to minimize potential problems with the application. The applicant shall submit the following written information to the Planning Board:

A. A survey of all sites for the installation of communication structures, buildings or appurtenances which are feasible for providing the intended services. The survey shall include a rationale for the selection of a prime and at least one alternative site. All sites in Wellfleet shall be located on the appropriate sheet(s) of the Wellfleet Assessor's Atlas;

B. A survey of all pre-existing structures which are capable of supporting the equipment necessary to provide the intended service and a technical report which demonstrates why any such structure cannot be used by the applicant;

C. The radiation pattern of all proposed antennas showing the frequency and intensity of radiation between ground level and 28 feet above ground level at all locations within Wellfleet;

D. Calculation of the sound level in decibels between ground level and 28 feet above ground level at 10, 50, 100 and 500 feet from the communication structure, building or appurtenance for wind velocities between calm and 100 miles per hour with all equipment operating at normal levels.

E. A delineation on the Assessor's Atlas of all areas in Wellfleet which will not be served by the proposed installation for the prime and an alternate site;

F. A statement of the services to be supported by the proposed communication structure, building or appurtenance;

G. A description of special design features to minimize the visual impact of proposed communication structures, buildings and appurtenances;

H. A certification that the applicant has complied with all federal and state requirements to provide the proposed service; and,

I. Within thirty days after the pre-application consultation, the applicant shall arrange to fly a three-foot diameter balloon at the primary and an alternate site at the maximum height of the proposed installation. The date and location of the flights shall be advertised at least 14 days, but not more than 21 days, before the flights in a newspaper with a general circulation in the Town of Wellfleet.

6.18.2.14 Application Submittal Requirements. All written information submitted in accordance with Section 6.18.2.15 and 6.18.2.16 shall be certified by an appropriate licensed professional.

6.18.2.15 Applications for siting on public land or on a pre-existing structure. If a communication structure, building or appurtenance is to be installed on a pre-existing private structure or on land or a structure owned, prior to the effective date of this Bylaw, by the federal government or the Commonwealth of Massachusetts, or on land or a structure owned by the town of Wellfleet, the applicant shall submit the following written information to the Planning Board:

A. A draft contract between the applicant and the owner (if different from the applicant).

B. A description of the proposed facility at the proposed prime and alternate sites including:

1. Height of the facility and its associated equipment and antennas;
2. Access roads and power supplies;
3. Type size and number of transmitters.

C. A site plan (scale not less than 1 inch = 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, 100 year flood zones waterways, wetlands and all associated equipment and structures on the site including elevations of all equipment and structures including sufficient detail to delineate the external finish of all structures and equipment; and,

D. A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters.

6.18.2.16 For all applications other than those set forth in 6.18.2.15, the applicant shall submit the following written information to the Planning Board:

A. A statement of the purpose for which the applications is made;

B. The exact legal name of each person seeking a special permit and the address or principal place of business of each such person. If any applicant is a corporation, trust, association, or other organized group, it shall also give the state under which it was created or organized;

C. The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders,

and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;

D. A statement of the need for the proposed facility with as much specific information as is practicable to demonstrate the need including a description of the proposed system and how the proposed facility would eliminate or alleviate any existing deficiency or limitation;

E. A statement of the benefits expected from the proposed facility with as much information as is practicable;

F. A description of the proposed facility at the proposed prime and alternate sites including:

1. Height of the facility and its associated equipment and antennas;
2. Access roads and power supplies;
3. Special design features;
4. Type, size and number of transmitters and receivers, as well as the signal frequency, power output, and power density at the tower base, site boundary, and building where people might be exposed to the maximum power densities from the facility;
5. A map showing any fixed facilities with which the proposed facility would interact;
6. The coverage signal strength, and integration of the proposed facility with any adjacent fixed facility, to be accompanied by propagation maps showing interfaces with any adjacent service areas; and,
7. A forecast of when maximum capability would be reached for the proposed facility and for facilities that would be integrated with the proposed facility;
8. Calculations confirming compliance with the structural, acoustical, environmental and siting requirements of paragraph 6.18.2.

G. A description of the proposed prime and alternative site, including:

1. The most recent U.S.C.G. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the site of the facility and any significant changes within a one mile radius of the site;
2. A map (scale not less than 1 inch = 200 feet) of the lot or tract on which the facility is proposed to be located showing the acreage and dimensions of such site, name and location of adjacent public and private roads or the nearest public road, and the names of abutting owners and portions of their lands abutting the site;
3. A site plan (scale not less than 1 inch = 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, 100 year flood zones, waterways, wetlands and all associated equipment and structures on the site including elevations of all equipment and structures including sufficient detail to delineate the external finish of all structures and equipment;
4. Where relevant, a terrain profile showing the proposed facility and access road and existing and proposed grades; and,
5. The most recent area photograph (scale not less than 1 inch = 1,000 feet) showing the proposed site, access roads and all abutting properties.

H. A statement explaining mitigation measures for the proposed facility including:

1. Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas;
2. Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas;
3. Establishment of vegetation proposed near residential, recreation and scenic areas;
4. Special design features made specifically so that the proposed structures, buildings and appurtenances shall blend with pre-existing structures and buildings; and
5. Methods for preservation of vegetation for wildlife habitat and screening;

I. A description of the existing and planned land uses of the proposed prime and alternative sites and surrounding areas;

J. A description of the scenic, natural historic, and recreational characteristics of the proposed prime and alternative sites and surrounding areas;

K. Sight line graphs to the proposed prime and alternative sites from visually impacted areas such as residential developments recreational areas, and historic sites;

L. A list describing the type and height of all existing and proposed communication structures, buildings and appurtenances within a ten mile radius within the search area, or within any other area from which use of the proposed prime or alternative structure might be feasible from a location standpoint for purposes of the application;

M. A description of efforts to share existing and proposed structures, or consolidate telecommunications antennas of public and private services onto the proposed facility;

N. A description of the technical alternatives and a statement containing justification for the proposed facility;

O. A description of rejected sites with a U.S.C.G. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the location of rejected sites;

P. A detailed description and justification for the site selected, including a description of siting criteria and the process by which other possible sites were considered and eliminated including, but not limited to, environmental effects, cost differential, coverages lost or gained, potential interference with other facilities and signal loss due to topographical features compared to the proposed prime and alternate sites;

Q. A statement describing hazards to human health, if any, with supporting data and references to regulatory standards;

R. A statement of the estimated costs for site acquisition and construction of a facility at the prime and alternative sites;

S. A schedule showing the proposed program of site acquisition, construction, completion, operation and relocation or removal of the existing facilities for the prime and alternative site;

T. A copy of any filing or application that the applicant has been required to make together with any decision with regard to such filing or application;

U. A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters;

V. Plans which show siting at a prime and at an alternate site;

W. A technical report which demonstrates that the maximum height of the installation is the minimum feasible to provide the intended service.

6.18.2.17 The Planning Board may also refer applications to the Board of Health and the Conservation Commission for review. Applications that propose the use of a site on National Park Service property shall also be sent to the Superintendent of the Cape Cod National Seashore.

6.18.2.18 Completeness. The Planning Board shall not approve any application that does not comply with all the requirements of this Bylaw.

6.18.3 Approval Criteria. The Planning Board shall act in accordance with the standards and requirements set forth herein and in accordance with sections 8.4.2 of this Bylaw and with the Massachusetts General Laws.

6.18.4 Severability. The invalidity of any section of this Bylaw shall not invalidate any other section.

6.18.5 The Planning Board may grant a special permit for an application which does not meet all the requirements of Section 6.18 provided the Planning Board makes a written finding which states why such action is in the best interests of the Town.

## **6.19 BED AND BREAKFAST**

Any Bed and Breakfast use, which is established or expanded, shall meet the requirements of the State Building code, the Board of Health, the fire Department and paragraph 6.3.12 of this Bylaw. No Bed and Breakfast use shall be established or expanded without a change of use permit issued by the Building Inspector. The Building Inspector shall not issue such a permit without a finding that all requirements of this Bylaw have been complied with.

## **6.20 ADULT ENTERTAINMENT USES**

### **6.20.1 Authority**

This Bylaw is enacted pursuant to M.G.L. Chapter 40A and pursuant to the Town's authority under

the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of sexually oriented businesses, also known as adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

#### 6.20.2 Purpose

It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of cities and town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in cities and towns. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Wellfleet and its inhabitants.

The provisions of this Bylaw have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this Bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this Bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

#### 6.20.3 Definitions

Adult entertainment uses shall include the following uses:

1. Adult Bookstores, as defined by G.L. Ch.40A,Section 9A (see Section 2.1)
2. Adult Motion Picture Theatre, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
3. Adult Paraphernalia Store, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
4. Adult Video Store, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
4. Any establishment which, to a substantial extent, or, as a principal use, displays live nudity for its patrons with the term "nudity" as defined in GL Ch. 272, Section 31.

#### 6.20.4 Adult entertainment uses by special permit, criteria, and conditions

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this bylaw and may be permitted only upon the grant of a special permit by the Zoning Board of Appeals. Such special permit shall not be granted unless each of the following standards has been met.

1. The application for a special permit for an adult entertainment use shall provide the name, address, and telephone number of the legal owner and all principal investors of the establishment, the legal owner and all principal investors of the property, and the manager of the proposed establishment.

2. No adult entertainment use special permit shall be issued to any person convicted of violating the provisions of M.G.L. chapter 119, Section 63 or M.G.L. Chapter 272, Section 28. The applicant shall be responsible for all related costs for record check processing.

3. Adult entertainment uses shall not be located within:

- a) 500 feet from the nearest church, school (public or private), public beach, park, playground, play field, youth center, children's day care center, licensed home day care facility, library (public or private), or recreation facility; or
- b) 500 feet from the nearest establishment licensed under M.G.L. Chapter 138, Section 12; or
- c) 500 feet from any other adult entertainment use.

The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest property line of any of the designated uses set forth above.

In addition, no structure that contains an adult entertainment use shall be closer than 100 feet to any R1, or R2 residential zoning district boundary.

4. No part of any structure that contains an adult entertainment use shall be closer than 50 feet to any lot line, nor shall any adult use be permitted on any parcel containing less than 50,000 square feet of lot area or 150 feet of frontage, irrespective of the minimum lot and setback requirements contained in Section 5.4, Intensity of Use Schedule.

5. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.

6. No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials, to the general public on the exterior of the building or on the interior where the same may be seen through any openings in walls or roofing, doorways, or glass or other like transparent material, any sexually explicit figures or words as defined in M.G.L. Chapter 272, Section 31.

7. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

8. The proposed adult entertainment use shall comply with the off-street parking requirements set forth in this Bylaw.

9. No adult entertainment use shall have any flashing lights or neon signs visible from outside the establishment.

10. No adult entertainment use shall have a freestanding accessory sign or off-premise sign.

11. No adult entertainment use shall be established prior to submission and approval of a site plan by the Zoning Board of Appeals, pursuant of SECTION VI, subsection 6.3.13. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest R1 and R2 residential zoning district and the nearest property line of each of the uses set forth in subsection 6.20.4(3) above.

12. No adult entertainment establishment shall employ any person or persons who would be excluded as a permit holder under this Bylaw.

#### 6.20.5 Conditions

The special permit granting authority may impose reasonable conditions, safeguards and limitations on the time or use of any special permit granted, and may require that any such special permit granted shall be personal to the applicant, shall not run with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.

#### 6.20.6 Expiration

A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be automatically renewable for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon public safety factors applied at the time that the original special permit was granted.

#### 6.20.7 Variances

(Disapproved and deleted by Attorney General May 25, 2000)

#### 6.20.8 Severalty

The provisions of this section are severable and, in the event that any provisions of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

### **6.21 AFFORDABLE ACCESSORY DWELLING UNITS**

Purpose: For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

6.21.1 Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

6.21.2 Affordable accessory dwelling units created under this by-law shall be occupied

exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

### 6.21.3 Requirements and Standards

- A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.
- B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.
- C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.
- D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.
- E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the “owner” shall mean one who holds legal or beneficial title.
- F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.
- G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.
- H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner’s ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

6.21.4 All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

6.21.5 Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information

on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

#### 6.21.6 Procedure

- A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.
- B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .
- C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.
- D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.
- E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

## 6.22 HOME OCCUPATIONS

### 6.22.1 Allowed occupations and professions

In particular, a home occupation, as defined in SECTION II, DEFINITIONS, includes, but is not limited to the following:

Antique Shop, Art Gallery, Artists Studio, and Craft Shop making and selling traditional Cape Cod products produced on the premises. ATM 4/24/89  
Dressmaker, home cooking & selling of such products produced upon the premises.  
Opening of shellfish, the storage and use of fishing equipment or other traditional fishing activities.  
Professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same.  
Real Estate Offices.  
Service trades (electrician, carpenter, general contractor, plumber, service contractor or the like).

However, a home occupation shall not be interpreted to include the following:

- Tourist home
- Barber shop & beauty parlors
- Commercial stables & kennels
- Restaurants & tea rooms
- Convalescent homes
- Mortuary establishments
- Stores, trades or business not herein accepted.

#### 6.22.2 Requirements and Standards

Home Occupations shall conform to the following standards:

- 1) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
- 2) No more than one person outside the family shall be employed in the home occupation.
- 3) There shall be no exterior display, no exterior sign except as permitted under Section VII, no exterior indication of the home occupation or variation from the residential character of the principal building.
- 4) No offensive noises, vibration, smoke, dust, odor, heat or glare shall be produced.
- 5) The floor area used by the home occupation shall not exceed 25% of the total floor area of the principal and any accessory building.
- 6) No outside storage of home-occupation-related materials or equipment is permitted on the occupant's premises unless concealed from view of neighbors and street by a fence or suitable plantings of evergreen or deciduous shrubs and trees.

### **6.23 SERVICE TRADES**

#### 6.23.1 Requirements and Standards

Service trades, as defined in SECTION II, DEFINITIONS, may be operated out of the provider's residence subject to the following restrictions:

- A. The business is secondary to the use of the dwelling unit for residential purposes;
- B. No more than two (2) employees other than household members may report to the provider's residence for regular work on the premises;
- C. No outdoor storage of service-related materials or equipment is permitted on the provider's premises unless concealed from view of neighbors and street by a concealing fence enclosing said materials and equipment;
- D. No more than two (2) motor vehicles (as that term is defined by the Massachusetts General Laws, Chapter 90, Section 1, but containing no more than six (6) wheels), used exclusively in the service trade, may be kept on the provider's premises;
- E. Deliveries may be made to the provider's premises no more frequently than an average of five (5) times a weeks;
- F. There shall be no exterior sign or other display except as permitted under the Sign Code for a residential district, and no exterior indication of the service trade which detracts from or is in

conflict with the residential character of the principal building and area;

G. The buildings and premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emission of odor, gas smoke, dust, noise, and electrical disturbances. In the case of electrical disturbances, no equipment or process shall be used which unreasonably creates visual or audible interference in any radio or television receivers off the premises.

H. The floor area used shall not exceed thirty percent (30%) of the total livable floor space in the principal building; and

I. All parking shall be off-street, and long term parking (more than six (6) hours) shall be limited to two (2) vehicles, excluding the resident's personal household vehicle.

## **6.24 NATIONAL SEASHORE PARK SPECIAL PERMIT**

### **6.24.1 PURPOSE OF NATIONAL SEASHORE PARK DISTRICT SPECIAL PERMIT**

The purpose of the National Seashore Park District Special Permit is to review proposed structures and alterations to existing structures to ensure protection of the legitimate interests of the adjoining property owners; to encourage construction that is sensitive to the scale, size and massing of buildings; to protect continued public visual access to ponds, rivers, marshes, the ocean and the bay; to provide additional means of addressing environmental needs and concerns of the Town, and to recommend alternatives so that development or redevelopment minimizes the impact on abutting land, the neighborhoods and the community at large.

Further, the purpose of the National Seashore Park District Special Permit is to ensure that the National Seashore Park District Objectives found in Section 3.2 of this By-law, are adhered to and that the proposed building changes are not detrimental to these objectives; and are compatible with these objectives.

### **6.24.2 APPLICABILITY**

A National Seashore Park District Special Permit is required for any private property within the boundaries of the Cape Cod National Seashore whose owner proposes to tear down, build anew, make alterations to, or relocate existing buildings, or add new accessory buildings that would:

a. exceed the Maximum Site Coverage in the National Seashore Park District listed in Section 5.4.3.1 of this By-law, or

b. otherwise increase the nonconforming nature of the structure, within the standards of §6.1.5 of this By-law.

c. nothing in Section 6.24 shall be construed as authorizing the issuance of a special permit which exceeds the limitations for Dwelling Space Area and for Site Coverage set forth in Section 5.4.3.1(d).

### **6.24.3 STANDARDS AND CRITERIA**

In addition to the standards and criteria listed in Section 8.4.2 of this By-law, the following criteria shall apply to properties within the National Seashore Park District that are subject to a Special Permit:

1. The landscape shall be preserved in its natural state insofar as practical. The Board shall encourage the applicant to avoid grade changes and the removal of native vegetation and soil. Any grading or earth-moving shall be planned and executed in such a manner, and retain to the extent practicable final contours consistent with existing terrain both on and adjacent to the site.
2. Proposed buildings and foundations shall to the extent practicable, minimize alteration on steep slopes, flood plains, hilltops, dunes, coastal banks, scenic views and wetlands to preserve the integrity and scenic qualities of natural features whenever possible. Proposed developments shall take into account and, to the extent practicable, minimize obstruction of water views and other scenic views from publicly accessible locations.
3. Proposed developments shall preserve and protect unusual or rare natural and/or historical features. Development and redevelopment shall not interfere with legal access. Proposed developments should minimize obstruction of water views and other scenic views from publicly accessible locations. Electric, telephone, cable and other utility lines shall be installed underground unless the Board determines that the benefits to be achieved are outweighed by costs or other factors.
4. The protection of unusual or significant environmental resources including protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies is critical and shall be evaluated. All runoff shall be recharged on site based on a calculated 25-year storm. Storm water infiltration systems shall be designed so that run-off shall not be increased, groundwater recharge is maximized, pollution impacts are minimized and neighboring properties will not be adversely affected.
5. Lighting must be consistent with General Bylaws of the Town of Wellfleet. There shall be protection of adjacent properties and the night sky from intrusive lighting. Consideration should be given to the placement of decks and patios and their potential for noise pollution and its adverse impact on adjacent properties.
6. In addition to the Maximum Site Coverage table allowance for the lot size, the Board shall consider the Cape Cod National Seashore's 50% Use Guideline. Proposed development shall not exceed the 50% formula unless the Board finds that the development shall not have a significant adverse impact on the scenic views and on the prevailing scale, mass and character of the neighborhood and zoning district.

The Cape Cod National Seashore's 50% expansion guideline is based on "the livable area of the single-family residence that existed as of Sept 1, 1959" and allows for 50% expansion to the single-family dwelling; and of this expansion total sum another 50% is allowed for use on an accessory structure(s). For example, 1,000 sq. ft. of single-family dwelling living space as of

September 1, 1959 is expandable to 1,500 sq. ft., and of this total sum another 750 sq. ft. is allowable for an accessory building.

## **6.25 MUNICIPAL WIND TURBINES**

Purposes – The purpose of this by-law is to allow by Special Permit utility scale wind facilities on municipally owned land and to provide for standards for the placement, design, construction, monitoring, upkeep, modification and removal of wind facilities that address public safety and consideration of environmental and community impacts, including impacts on scenic, natural, historic resources, and provide adequate financial assurance for decommissioning. Any physical modifications to existing wind facilities that alters the type or increases the size of such facilities or other equipment shall require a Special Permit.

### **6.25.2 Definitions**

Utility-Scale Wind Facility – a wind facility with a rated capacity of 100 KW or more and where the primary use of the facility is electrical generation to be provided into the electrical grid.

Wind Turbine (WT) – A device which converts wind energy to electrical energy, which typically includes a support tower.

Wind Facility (WF) – All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Rotor - The blades plus the hub to which the blades are attached

Tip Height - Height of the tip of the rotor blade when extended 90 degrees from grade, as measured from the base at grade of the support tower.

### **6.25.3 General Requirements**

A. The Applicant shall be the WF operator, if one exists, and the Town of Wellfleet as the land owner.

B. Utility-Scale Wind Facilities shall be permitted by a Special Permit from the Planning Board acting as the Special Permit Granting Authority (SPGA) provided that the Planning Board makes a finding that the wind facility complies with the following conditions:

- 1) the specific site is an appropriate location for such use;
- 2) the use is not expected to adversely affect the surrounding area or neighborhood;
- 3) there is not expected to be any serious hazard to the public and general welfare of the Town, and no nuisance is expected to be created by the use;
- 4) the potential environmental benefits outweigh the potential adverse environmental impacts;

- 5) adequate and appropriate facilities and resources will be provided for the proper operation of the use.
- 6) adequate resources will be provided for the removal of the WF after its useful life.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

C. Compliance with Laws, Ordinances and Regulations - The construction and operation of all such wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all safety, construction, environmental, electrical, communications and aviation requirements.

D. Proof of Liability Indemnification - The Applicant shall provide evidence of adequate indemnification for all risks, including possibly by way of liability insurance in an amount and for the duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility. There shall be a minimum indemnification amount equal to two million dollars (\$2,000,000).

E. Site Control - The applicant shall provide documentation of the actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent use or construction of any structure for human habitation within the setback areas.

#### 6.25.4 General Siting Standards

- A. The maximum allowable Tip Height shall be no greater than four hundred (400) feet.
- B. Minimum setback distance for a WT from the Applicant's property line shall be at least equal to the maximum Tip Height. Set backs will be measured to the center of the tower base. The setback from an Applicant's lot line may be reduced with the written permission or granting of an easement to the Town by the abutting property owner(s) and the SPGA. Setbacks for facilities other than the tower will conform with Wellfleet Zoning Bylaws.

The SPGA may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a Special Permit under the provisions of this Section.

#### 6.25.5 Design Standards

- A. Color and Finish - The SPGA shall approve the WT color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.
- B. Lighting - WT(s) shall be lighted only, and only to the extent, if required by the Federal

Aviation Administration. Lighting of the other parts of the WF, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be designed to minimize glare, and otherwise shielded and down cast to reduce light pollution.

C. Signs - Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:

- 1) Those necessary to identify the wind facility owner, provides a 24-hour emergency contact phone number, and warnings of any danger at the base of the wind facility.
- 2) Educational signs providing information about the facility and the benefits of renewable energy are exempt from the sign code, but must be approved as part of the SPGA permit process.
- 3) Advertising shall not be allowed on the WT except for reasonable identification of the manufacturer or operator of the wind facility.

D. Utility Connections - Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

E. Appurtenant Structures - All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever feasible, structures should be shaded from view by vegetation and/or clustered to avoid adverse visual impacts.

#### 6.25.6 Safety, Aesthetic and Environmental Standards

A. Emergency Services - The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the SPGA. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

B. Unauthorized Access – WT's and other structures part of the WF shall be designed to prevent unauthorized access.

C. Shadow/Flicker - A shadow and flicker analysis performed by an independent qualified engineer in order to determine the degree and effect of potential shadow and flicker upon abutting dwellings.

D. The wind facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the SPGA agree that those provisions shall not be applicable. A Wind Facility will be considered to be violating these regulations if the source:

- 1) Increases the broadband sound level by more than 10dB(A) above ambient, or
  - 2) Produces a "pure tone" condition - when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.
- These criteria are measured both at the property line and at the nearest inhabited dwelling. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from the DEP.

For purposes of permit application consideration the SPGA will accept a sound modeling analysis performed by an independent qualified engineer which is consistent with the Massachusetts Department of Environmental Protection guidance for sound measurement (310 CMR 7.10) based on the WF manufacturer's sound information on the proposed WT.

The SPGA, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

E. Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations and ordinances.

#### 6.25.7 Monitoring and Maintenance

A. Facility Maintenance - The wind facility shall be maintained in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security and safety measures. Site Access and Control shall be maintained to an acceptable level. The recipient of the Special Permit shall be responsible for the cost of maintaining the wind facility and any access road(s) and the cost of repairing any damage occurring as a result of operation and construction.

B. Modifications - All modifications to a wind facility made after issuance of the special permit shall require approval by the SPGA as provided in this section.

#### 6.25.8 Abandonment or Decommissioning

A. Removal Requirements - Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than one hundred fifty (150) days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored, if a natural site to a state of reasonable conditions to revert back to its pre-construction natural state, or if a previously developed site a state similar to its prior state. More specifically, decommissioning shall consist of:

- 1) Physical removal of all wind turbines, structures, equipment, security barriers and

transmission lines from the site.

2) Disposal of all solid and hazardous waste in accordance with local and state disposal regulations.

3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave designated below-grade foundations in order to minimize erosion and disruption to existing vegetation.

B. Abandonment - Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the SPGA. The SPGA shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the owner/operator fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property and physically remove the facility.

C. Financial Surety - The SPGA may require the applicant to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the facility, of an amount and form determined to be reasonable by the SPGA, but in no event to exceed one hundred twenty five percent (125%) of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.

#### 6.25.9 Application Process & Requirements

All applications shall be filed with the Wellfleet Town Clerk along with ten (10) copies and the required fee. Pursuant to section 53G of Chapter 44 of the Massachusetts General Laws, the SPGA shall have the authority to require that the applicant pay for necessary professional services reasonably required to review and to analyze adequately the contents of any site plan or related impact study.

Upon receipt of the application by the Wellfleet Town Clerk, the SPGA shall hold an advertised public hearing within sixty-five (65) days. Said advertisement shall appear in a local newspaper of general publication no less than fourteen (14) days prior to the scheduled public hearing. It shall be the responsibility of the SPGA to notify abutters and abutters to abutters within three hundred (300) feet via first class mail, with said mailing to take place no less than fourteen (14) days prior to the scheduled public hearing.

All Applications submitted under this section for final review shall include:

A. Completed application form.

B. Certified list of abutters and abutters to abutters within three hundred (300) feet prepared and certified by the Town of Wellfleet Assessor.

C. A site plan. All site plans shall be prepared by a Registered Land Surveyor or Registered Civil Engineer. All site plans shall be prepared at an appropriate scale suitable for the content of the topic covered on the sheet and shall include the following:

- 1) The location and boundaries of the lot including monuments, adjacent street/ways and a list showing names and addresses of direct abutters and abutters to the abutters within 300 feet,
- 2) Existing and proposed topography showing five (5) foot contours showing benchmark used and significant land features, natural and man made, including, but not limited to, the location of wetlands, streams, bodies of water, drainage swales and areas subject to flooding,
- 3) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc., including dimensions and all elevations,
- 4) The existing and proposed location of driveways, walkways, access and egress points, and the location and number of parking spaces, all proposed changes to the landscape of the site, including grading, vegetation clearing and planting, and exterior lighting, other than FAA lights, and screening vegetation.

D. Certification of height approval from the Federal Aeronautics Administration (FAA)

E. Visualizations - The SPGA shall select between three and six sight lines, including from the nearest dwelling(s) and other public ways and or sites, with a view of the WF(s), for pre- and post-construction view representations. Sites for view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

- 1) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WT(s) on the pre-construction photographs of existing views.
- 2) All view representation will include descriptions of the locations, distances, and focal length of camera lens used.

F. Include approvals from other regulatory boards and commissions required, including but not limited to the Board of Health, the Conservation Commission, the Historic Review Commission, but with the exception of a Special Permit from the Zoning Board of Appeals, if anticipated, or other permits which legally must succeed the Site Plan Approval by the SPGA.

G. Operation & Maintenance Plan - The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility.

The SPGA shall have the right upon good cause to waive all or any part of the above site plan content requirements, such waiver to occur within a duly noticed public meeting or public hearing.

#### 6.25.10 SPGA Decision

The SPGA shall issue a decision within ninety (90) days following the date of the public hearing. The applicant shall be responsible for filing the SPGA decision at the Barnstable Registry of Deeds or Land Court, as applicable. Prior to the issuance of a building permit, the applicant shall present evidence of such recording to the Building Commissioner and the Planning Board Secretary.

#### 6.25.11 Term of Special Permit

A special permit issued for a wind facility shall be valid for twenty five (25) years, unless extended or renewed. The time period may be extended or the permit renewed by the SPGA upon satisfactory operation of the wind facility. Request for renewal must be submitted at least one hundred eighty (180) days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the SPGA acts. At the end of that period (including extensions and renewals), the WF shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquires and complaints throughout the life of the project.

## **SECTION VII SIGNS**

**7.1 OBJECTIVES** - To preserve and enhance town character by requiring new or replacement signs which are compatible with their surroundings and are appropriately sized for their location. To promote the public welfare and safety through the elimination of roadside distractions.

### **7.2 SIGNS NOT REQUIRING PERMITS**

7.2.1 One sign for each family residing on the premises indicating the owner or occupant provided that no sign shall exceed two square feet in area.

7.2.2 One sign not over six square feet in area advertising a Home Occupation.

7.2.3 Directional signs not exceeding one square foot in area.

7.2.4 One temporary unlighted sign not over six square feet in area pertaining to the sale, rent or lease of the premises, except in the National Seashore Park District, where the sign shall not exceed two square feet in area.

7.2.5 One temporary unlighted sign not over six square feet in area pertaining to the construction or renovation of the premises, such sign to be removed upon completion of the work.

### **7.3 SIGNS REQUIRING PERMITS**

7.3.1 One sign not over six square feet in area advertising a Home Industry.

7.3.2 A business other than Home Industry or Home Occupation located off Route 6 may have an aggregate total of twenty-four square feet of sign area. This includes the main business sign, which shall not exceed twelve square feet in area, and all accessory signs, including temporary signs.

7.3.3 Businesses having frontage on Route 6 may have an aggregate total of one hundred square feet of sign area. This includes a main business sign, which shall not exceed sixty-four square feet in area, and all accessory signs, including temporary signs.

7.3.4 Multiple businesses sharing frontage on Route 6 may have one identifying sign not exceeding eight square feet in area mounted on or projecting from the building.

7.3.5 One sign bearing the name of a subdivision or condominium, not to exceed eighteen square feet in area OR one ladder type sign bearing multiple names of residents, provided that each name occupies a portion of the sign which does not exceed one square foot may be erected at the entrance of a subdivision or unimproved Town way.

### **7.4 GENERAL PROHIBITIONS**

7.4.1 Flashing signs, signs containing moving parts, and signs which create the illusion of motion are prohibited.

7.4.2 The source of any sign's illumination which is visible from any public way or from any lot other than that upon which the sign is located is prohibited.

7.4.3 All signs internally illuminated by means of a concealed light source whereby all incandescent fluorescent, or neon devices are shielded from view by opaque or translucent materials, are prohibited, except for directional signs. All neon signs are prohibited.

7.4.4 Any sign which identifies a business, service, project, activity, or lessor which is defunct or which has not existed on the premises for twelve months or more shall be considered to be an abandoned sign and is prohibited.

### **7.5 LOCATION OF SIGNS**

7.5.1 All signs shall be set back from roadways by a distance of five feet, and must be located on the owner's property in such a way as not to obstruct the view of traffic.

7.5.2 Signs installed on the roof may not project above the ridge of said roof.

7.5.3 Signs, which project over a public way, may be installed only in the Central District on buildings, which cannot meet setback requirements, and such projection is limited to six feet from

the face of the building. The minimum clearance of projecting signs shall be eight feet from the public way.

7.5.4 Free-standing signs along Route 6 may not exceed a height of twelve feet above the paved surface of the roadway or eight feet above existing grade. Freestanding signs off Route 6 may not exceed eight feet in height.

## **7.6 MAINTENANCE OF SIGNS**

7.6.1 All signs must be maintained in a secure and safe condition.

7.6.2 Any sign which is deemed by the Building Inspector to be unsafe or to be a prohibited sign must be removed forthwith upon issuance of a citation to the owner. After 30 days of non compliance, the Building Inspector may cause the sign to be removed at the owner's expense.

7.6.3 Wrapping signs is prohibited. Signs may be removed for winter storage or covered with painted plywood panels or other rigid material. Removal of signs for storage or maintenance shall not jeopardize protection provided under Section 7.7 of this Sign Code.

## **7.7 NON-CONFORMING SIGNS**

7.7.1 Non-conforming signs in existence at the time of adoption of this bylaw shall be allowed to remain until such time as the premises are transferred or sold and the name or use is changed.

## **7.8 PERMITS**

7.8.1 No sign shall be erected or altered without a permit granted by the building Inspector, except that signs authorized by Sections 7.2.1, 7.2.2, 7.2.3, 7.2.4 and 7.2.5 may be erected without a sign permit.

(Attorney General approval with the understanding that signs containing non-commercial messages may be displayed without the requirement of obtaining any form of permit. See Matthews v. Needham, 764 F.2d 58 (1985))

## **SECTION VIII ADMINISTRATION**

**8.1 ENFORCEMENT** - This By-law shall be enforced by the Board of Selectmen or by an Inspector of Buildings appointed by it.

**8.2 PERMITS REQUIRED** - No building shall be built, altered or moved and no use of land or building shall be begun or changed without a permit having been issued. No building shall be occupied until application for permits shall be accompanied by a plan showing the lot, the area, and the building location on said lot with reference to front, side and rear lot lines.

8.2.1 Construction or operations under a building or special permit shall conform to any subsequent

amendment of this by-law unless the use or construction is commenced within a period of not less than six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

8.2.2 Noncomplying, nonconforming structures 10 years or older. Noncomplying nonconforming structures which are 10 years or older and which are provided protections under MGL c.40A, §7 are entitled to treatment as lawfully pre-existing non-conforming structures as provided in this Bylaw.

**8.3 PENALTY** - Any person violating any of the provisions of this By-law may be fined not more than \$50.00 for each offense. Each day that such violation continues shall constitute a separate offense.

**8.4 BOARD OF APPEALS** - There is hereby established a Board of Appeals of five members and four associate members to be appointed by the Selectmen, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this By-law in the manner prescribed in Chapter 40A of the General Laws. The Board of Appeals shall have the following powers:

8.4.1 Appeals - To hear and decide and appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A, General Laws, or by any officer of Board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings or person or persons acting in that capacity, or other administrative official in violation of any provision of Chapt. 40A, General Law or of this By-law.

8.4.2 Special Permits - Except as provided in Section 6.6 and Section 6.18, the Board of Appeals shall have the authority to hear and decide all applications for special permits. Granting of a special permit for an adult entertainment use shall be pursuant to the requirements of Section 6.20, Adult Entertainment Uses, in addition to all other special permit requirements hereunder. The Board of appeals, or the Planning Board under Section 6.18, shall not grant a special permit unless it finds that the benefits of the proposal to the town will outweigh any adverse effects on the Town of the vicinity, taking into consideration the stated district objectives (Section 3.2) and, where germane, the following matters:

8.4.2.1 Suitability of the proposed location for this proposal, taking the follow into consideration.

- a) Nearby land uses, and whether they would be supported by or damaged by having the proposed use nearby.
- b) Uses of the site which would be displaced by or preempted by this use.
- c) Adequacy of roads, drainage, and other public services in relation to the location.
- d) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from a proposal such as this, considering erosion, siltation potential groundwater or surface water contamination, habitat disturbance, or loss of valuable natural vegetation.

8.4.2.2 Activity type, mix, and intensity, taking the following into consideration.

- a) Whether the proposal contributes to the diversity of services or housing opportunities available locally.
- b) Seasonal consequences, including addition to peak period congestion.
- c) Service to local, in preference to regional, markets and to year-round, in preference to seasonal, activities.
- d) For business developments, likelihood of year-round employment opportunities being created for residents, and the quality of those opportunities.
- e) For residential developments, how substantially, if at all, the proposal contributes to housing affordable for year-round residents.

8.4.2.3 Building and site design, including consideration of the following.

- a) Whether scenic views from public ways and developed properties have been considerably treated.
- b) Whether reasonable efforts have been made to minimize visibility of parking and service areas from public streets.
- c) Whether any traditional public access to or along the shoreline has been maintained.

8.4.2.4 Special permits shall be issued only following public hearings held within sixty-five days after filing of an application with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant. Special permits shall lapse within two years and including such time required to pursue or wait the determination of an appeal from the grant thereof, in a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

8.4.2.5 Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon issuance of special permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

8.4.3 Variances - To grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this by-law where the Board of Appeals specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and specifically affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-law.

8.4.3.1 Effect on Variances within Park and Notice of Same - Applicants for variances or special permit shall be promptly notified by the Board of Appeals that the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, property which is made the subject of a variance or exception that, in his opinion, fails to conform or is in any manner opposed to or inconsistent with the purposes of the Cape Cod National Seashore. The Secretary of the Interior shall be given notice by the Board of Appeals of all applications or petitions made for variances or special permit to the By-laws for the Seashore District, and he shall be

provided notice by the Planning Board of all applications for building permits involving the Seashore District: all such notices to be given within seven (7) days of receipt of the applications or petitions. Subsequently, to meet the requirements of the Act of Congress of August 7, 1961, the Secretary shall be given notice by the appropriate board of any variance, or exception, or, building permit, granted or denied for within the Seashore District.

**8.5 APPEALS OF BOARD OF APPEALS DECISIONS** - Any person aggrieved by a decision of the Board of Appeals must appeal within 20 days after filing of the Board's decision with the Town Clerk to either the District Court, the Land Court or the Superior Court, in accordance with the provisions of M.G.L. Ch. 40A.

**8.6 AMENDMENTS** - This By-law may be amended from time to time at an annual or special town meeting in accordance with the provisions of Section 6 of Chapter 40A, G.L.

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

**8.8 INTERPRETATION, CONFLICT WITH OTHER LAWS** - In their interpretation and application, the provisions of this By-law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this By-law are at variance with the requirements of any other lawfully adopted rules, regulations or By-law, the most restrictive or that imposing the higher standards, shall govern.

**8.9 EFFECTIVE DATE** - This By-law shall take effect upon final approval of the Attorney General of the Commonwealth of Massachusetts, and its publication in accordance with Section 32, Chapter 40, G.L. Upon its effective date, it shall supersede the Zoning By-law voted by the Town October 18, 1966, and any amendments thereof previously in effect.

## **SECTION IX OVERLAY DISTRICTS.**

### **9.1 Wellhead Protection District**

#### 9.1.1 Purpose

The purpose of this section is to protect the health, safety, and welfare of the community by ensuring that development and redevelopment in this district will not prohibit the siting of a well serving a Public Water System.

#### 9.1.2 Districts Established

For the purposes of this section, there is hereby established in the Town of Wellfleet two Wellhead Protection districts which are overlay districts superimposed on the zoning districts. The Wellhead Protection districts consist of:

District I – the land bounded by LeCount Hollow Road from 150 feet west of its intersection with Ocean View Drive to State Route 6; State Route 6 from LeCount Hollow road to Old County Road; Old County Road from State Route 6 to Cahoon Hollow Road; Cahoon Hollow Road from Old County Road to a point 150 feet west of its intersection with Ocean View Drive; a line 150 feet west of Ocean View Drive running from Cahoon Hollow road to LeCount Hollow Road excluding any land that lies in a Commercial District on the effective date of this bylaw.

District II – the land within a one-half mile radius of the Coles Neck well.

The wellhead Protection districts established by this section are shown on a map entitled “Wellhead Protection Districts in the Town of Wellfleet”, dated April 2005, which is on file in the office of the Town Clerk.

These overlay districts shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses.

### 9.1.3 Boundaries

If the Wellhead Protection District boundary passes through a lot which cannot be subdivided, the entire lot shall be deemed to be within the Wellhead District. If the Wellhead Protection District boundary passes through a lot which may be subdivided, such lot shall be comprised of a portion of the Wellhead Protection District as delineated by the District boundary; and if such a lot is subsequently subdivided, any created lots will be treated in the same way as a lot which cannot be subdivided.

### 9.1.4 Use Regulations

#### 9.1.4.1 Allowed:

1. All uses permitted in the underlying zoning districts except those uses specifically prohibited herein shall be allowed in a Wellhead Protection District. Nothing contained in the following list would prohibit uses customarily incidental to the principal use of land for residential purposes. New residential development, and maintenance, repair and alteration of existing structures are allowed with appropriate permits.
2. Nothing contained in the following list would prohibit uses customarily incidental to the use of land for outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted; foot, bicycle and/or horse paths and bridges.
3. For purposes of this Section 9.1, “normal household use and household quantity of hazardous material or waste”. Means any or all of the following:
  - a) 550 gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator, and

- b) 25 gallons (or the dry weight equivalent) or less of other hazardous materials on site at any time, including oil not used for heating or to supply an emergency generator, and
- c) a quantity of hazardous waste at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353.
- d) change in ownership shall require conversion to a double wall oil tank

4. For purposes of this Section 9.1, "commercial" means requiring use, generation or storage of hazardous materials or waste in quantities greater than those allowed for normal household use and household quantities.

9.1.4.2 Prohibited:

1. Landfills and open dumps as defined in 310 CMR 19.006;
2. Landfilling of sludge or septage as defined in 310 CMR 32.05;
3. Automobile recycling, automobile graveyards and junkyards as defined in MGL c. 140B, Section 1;
4. Stockpiling and disposal of snow and ice from highways and streets located outside of the Wellhead Protection district than contain de-icing chemicals such as sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
5. Sales, storage or transportation of liquid petroleum products of any kind, except those incidental to:
  - a) normal household use,
  - b) the heating of a structure or
  - c) required waste oil retention facilities;
6. Storage of sludge or septage;
7. Storage or disposal of road salt or de-icing chemicals unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
8. Storage of animal manure except when associated with a permitted use, in accordance with the Board of Health standards for Best Management Practices;
9. Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21E except the following licensed or permitted activities:
  - a) Very small quantity generators (VSQG) as defined under 310 CMR 30.00;
  - b) Waste oil retention facilities required by MGL c.21C, Section 52A; and
  - c) Water remediation treatment works approved under 314CMR 5.00;
  - d) Home occupations and Service Trades operating in accordance with VSQG codes and the Wellfleet zoning By-laws and Board of Health Regulations;

10. Storage of pesticides, herbicides, fertilizers and soil conditioners except for normal household use or for use in agriculture, horticulture, floriculture or viticulture on parcels of land of more than five (5) acres, provided storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

11. The use, generation, storage, treatment or disposal of toxic or hazardous materials or wastes in quantities greater than those associated with normal household use.

12. The removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works;

(In approving Section 9.1.4.2(12) the Atty Gen. calls our attention to the protections accorded to agriculture under state law. MGL Ch. 40A,S3, provides protection to agriculture and provides in pertinent part as follows:

No zoning...by-law shall...prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture;...except that all such activities may be limited to parcels of more than five acres in area not zoned for agriculture, horticulture, floriculture, or viticulture.

General Laws Ch. 40a, S. 3, states that all agricultural uses must be allowed as of right on land zoned for agriculture and on land that is greater than five acres in size; therefore, a municipality cannot restrict agricultural uses in those areas. A municipality is allowed to restrict agricultural uses on land less than five acres that is not zoned for agriculture. Thus, it would be inconsistent with state law to prohibit, require a special permit, or unreasonably regulate agricultural uses that enjoy the protections accorded under GL c40AS3.

Depending on the circumstances, earth removal activities may qualify as normal and customary maintenance and improvement of agricultural land. Earth removal may be necessary for a number of agricultural purposes, e.g. leveling of land for growing areas and preparing land for farm structures. In those instances, it would be inconsistent with GL C40A S3, to prohibit such earth removal activities. Thus, they remind the town to apply Section 9.1.4.2 (12) in a manner consistent with the protections accorded to agriculture under state law.)

13. Underground fuel storage tanks except as required for the use of liquid propane for normal residential use, the heating of a structure or to supply an emergency generator;

14. Storage for resale of heating fuels, including but not limited to oil, coal, gas and kerosene.

15. Metal plating, finishing and polishing;

16. Chemical and bacteriological laboratories.

17. Commercial boat, motor vehicle, and aircraft cleaning, service and repair.

18. Commercial furniture stripping, painting and refinishing.

19. Treatment or disposal works that are subject to 314CMR 5.00, Groundwater Discharge Permit Program, except the following:

a) the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);

b) the placement of an existing subsurface sewage disposal system(s) with wastewater treatment works with a design capacity no greater than the design capacity of the existing system(s);

c) treatment works approved by the Department of Environmental Protection (DEP) designed for the treatment of contaminated ground or surface waters.

20. Auto service or repair, trucking and bus terminals, gas stations, commercial laundry, dry cleaning establishments, car washes, airports, commercial accommodations, industrial and commercial uses which discharge process wastewater on-site; parking lots set apart primarily to accommodate off-site activities.

21. Individual sewage disposal systems that are designed to receive more than 110 gallons of sewage per quarter acre under ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater, provided that:

a) replacement or repair of a system, which will not result in an increase in design capacity over the original design capacity of 310 CMR 15.00, whichever is greater, shall be exempted, and

b) in cluster subdivisions the total sewage flow shall be calculated based on the number of percable lots in the entire parcel;

c) lots which are protected by the provisions of MGL c. 111 Section 127P as of the effective date of this bylaw shall be permitted to install individual sewage disposal systems in accordance with the applicable provisions of the State Sanitary Code during the period of protection if any;

d) alternative sewage disposal systems meeting the requirements of and approved by the Board of Health;

22. Any floor drainage systems in existing facilities, in facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas which discharge to the ground without a DEP permits or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the State plumbing code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies;

23. Any other use which involves as a principal activity or use, the generation, storage, use, treatment, transportation or disposal of hazardous materials.

#### 9.1.4.3 Lot Coverage:

Unless the applicant demonstrates that all run-off is recharged on-site, no more than 15% of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed of on-site, no more than fifty-percent (50%) of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.

#### 9.1.4.4 Site Clearing

A minimum of thirty (30%) of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.

#### 9.1.4.5 Exemptions

The Zoning Board of Appeals may grant a special permit to exempt a use from the requirements of this section, provided that the applicant demonstrates that the proposed use at that location cannot adversely affect any developed or planned public water supply. Applications for such a special permit shall be referred to the Water Commissioners, Conservation Commission, Planning Board and Board of Health within seven (7) days of their receipt for their review and comment prior to the conclusion of the Zoning Board of Appeals' hearing on the proposal. Failure by any of the above named commissions or boards to respond to the Zoning Board of Appeals within forty-five (45) days shall be considered a confirmatory response.

## **9.2 Main Street Overlay District**

### 9.2.1 Purpose and Intent

This by-law enables the development and redevelopment of Wellfleet's village center (a portion of Main Street) in keeping with its historic development patterns, including the size and spacing of structures and open spaces.

### 9.2.2 Overlay District Defined

The Main Street Overlay District shall extend along the south side of Main Street, one lot in depth, from Bank Street to Holbrook Avenue. The Main Street Overlay District established by this section is shown on a map entitled "Main Street Overlay District in the Town of Wellfleet", dated April 2006, which is on file in the office of the Town Clerk. Within the Main Street Overlay District, special permits are required under this by-law for all uses and structures required to obtain a special permit by the underlying Central District zoning district.

### 9.2.3 Special Permit Granting Authority

The special permit granting authority for this by-law shall be the Zoning Board of Appeals.

### 9.2.4 Special Permit Criteria

In addition to the Special Permit criteria listed in Section 8.4.2 of this Zoning By-law, applicants for Special Permits in the Main Street Overlay District must meet the following requirements:

9.2.4.1 Pedestrian Access. Provision for safe and convenient pedestrian access shall be incorporated into plans for new construction of buildings and parking areas and must be designed in concert with landscaping plans noted below. New construction should be considerate of pedestrian access to buildings, sidewalks and parking areas and should be completed with considerations of pedestrian safety, handicapped access and visual quality.

9.2.4.2 Landscaping and Appearance. Landscape design plans should ordinarily be prepared by a landscape architect, although the Zoning Board of Appeals may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of this regulation.

a) A landscaped buffer strip or some other type of screening may be required adjacent to adjoining properties. This buffer strip shall be planted with a combination of grass, appropriate height shrubs, shade trees or other type of screening.

b) Exposed storage areas, machinery, garbage "dumpsters," service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods compatible with the goals of this regulation.

c) To ensure that landscaped areas are maintained, the Zoning Board of Appeals shall include as a provision of any special permit granted that a condition of said special permit is the maintenance of the landscaping as approved by the Zoning Board of Appeals.

### 9.3 Height, Setback and Building Coverage within the Main Street Overlay District:

#### 9.3.1 Height

The maximum height of any new or expanded existing structure shall be 28 feet.

#### 9.3.2 Minimum Yard Requirements

The front yard setback of any new or expanded existing structure may be reduced to a zero line setback to continue the existing development pattern. The side yard setback shall be 6 feet, and the rear line setback shall be 15 feet.

#### 9.3.3 Building Coverage

Maximum building coverage within the Main Street Overlay District shall be 33%. Building Coverage shall be calculated using the entire area of the lot (upland and lowland) exclusive of any areas on a street or way open to the public.

### 9.4 Parking Requirements

Recognizing that parking requirements in the underlying zoning district may hamper development of village-style land use and development, the Zoning Board of Appeals is

authorized to reduce or waive the parking requirements specified for the use or structure proposed. In determining the appropriate reduction, if any, the Zoning Board of Appeals may give consideration to the hours of usage of the proposed use or structure, hours of usage of other uses or structures within the Main Street Overlay District, amount of "shared" parking with other uses, the opinions of merchants, residents and municipal officials as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use or structure, as well as other relevant information to assist the Zoning Board of Appeals in determining the need for additional parking for motor vehicles.

### 9.5 Allowable Uses

Recognizing that village-style development entails a mixture of uses, the Zoning Board of Appeals is authorized to allow a mix of residential and non-residential land uses within the Main Street Overlay District. Allowable uses shall be those listed in the underlying Central District within Section 5.3 of this Zoning By-law and the following:

Conversion of Dwelling Unit	Guesthouse, Private
Arcade	Guesthouse, Public
Inn	Nursing Home
Restaurant, Indoor	

### 9.6 Severability

The invalidity of any section or sections or parts of any section or sections of this by-law shall not affect the validity of the remainder of Wellfleet's zoning bylaw.

## **DISTRICT DESCRIPTIONS**

The following descriptions are made to further delineate certain districts shown on this map:

**RESIDENTIAL 2:** Land included in an area bounded as follows:

On the south by the Town of Eastham;

On the west, by the State Highway, Route 6;

On the north, by the northerly boundary of lots 1 through 5 as shown on a plan made for Fred Hendrickson, said plan recorded in the Barnstable County Registry of Deeds, plan book 231, page 157;

On the east, by the boundary of the Cape Cod National Seashore. (Amended 4/26/99 ATM)

**CENTRAL DISTRICT:** Lands included in an area bounded as follows: Commencing at a point on the southerly sideline of Mill Hill Road, said point being one hundred feet (100.00') easterly of the easterly sideline of Briar Lane; thence southerly by a line parallel to and one hundred feet (100.00') easterly of the easterly sideline of Briar Lane to the easterly sideline of Ryder Court; thence northerly by the easterly sideline of Ryder Court to a point lying one hundred fifty feet (150.00') northerly of the northerly sideline of Main Street; thence easterly by a line parallel to and

one hundred fifth feet (150.00') northerly of the northerly sideline of Main Street as defined on a plan entitled "The Commonwealth of Massachusetts, Plan of Road in the Town of Wellfleet, Barnstable County, Discontinued as a State highway by the Department of Public Works, April 17, 1962, Scale 40 feet to the inch", recorded in the Barnstable County Commissioners' Office, volume 64, pages 4779 through 4784, to the easterly sideline of Squire's Pond Lane; thence southerly by the easterly sideline of Squire's Pond Lane to a point lying one hundred feet (100.00') northerly of the northerly sideline of Main Street; thence easterly by a line parallel to and one hundred feet (100.00') northerly of the northerly sideline of Main Street as defined on said plan to the westerly sideline of School Street; thence southerly by the westerly sideline of School Street to the northerly sideline of Main Street; thence southerly across Main Street to the intersection of the southerly sideline of Main Street as defined on said plan and the westerly sideline of Whit's Lane; thence southerly by the westerly sideline of Whit's Lane and continuing on the extension of said line across East Commercial Street to the southerly sideline of East Commercial Street; Thence southerly and perpendicular to said southerly sideline of East Commercial Street to Mean High Water Mark; thence southerly and westerly by an irregular line following the Mean High Water Mark to a point three hundred feet (300.00') westerly of the westerly intersection of Kingfish Blvd. and Mayo Beach Road; thence northerly by a line perpendicular to said Mayo Beach Road across Mayo Beach Road to a point two hundred feet (200.00') northerly of the northerly sideline of Mayo Beach Road; thence easterly by a line parallel to and two hundred feet (200.00') northerly of the northerly sideline of Mayo Beach Road to a point lying two hundred (200.00') westerly of the westerly sideline of Commercial Street; thence northerly by a line parallel to and two hundred feet (200.00') westerly of the westerly sideline of Commercial Street to the northerly sideline of Holbrook Avenue'; thence southeasterly by the northerly sideline of Holbrook Avenue to a point lying one hundred feet (100.00') westerly of the westerly sideline of Commercial Street; thence northerly by a line parallel to and one hundred feet (100.00') westerly of the westerly sideline of Commercial Street to a point lying one hundred feet (100.00') southerly of the southerly sideline of Bank Street; thence northwesterly by a line parallel to and one hundred feet (100.00') southerly of the southerly sideline of Bank Street to a point lying one hundred feet (100.00') southerly of the southerly sideline of Main Street; thence westerly by a line parallel to and one hundred feet (100.00') southerly of the southerly sideline of Main Street to the westerly sideline of Holbrook Ave.; thence southerly by the westerly sideline of Holbrook Avenue to a point lying one hundred fifty feet (150.00') southerly of the southerly sideline of West Main Street; thence westerly by a line parallel to and one hundred fifty-feet (150.00') southerly of the southerly sideline of West Main Street to the easterly sideline of Howland Lane; thence northerly by the easterly sideline of Howland Lane to the southerly sideline of West Main Street; thence northerly across West Main Street by a line perpendicular to Main Street to a point lying one hundred fifty feet (150.00') northerly of the northerly sideline of West Main Street; thence easterly by a line one hundred fifty feet (150.00') northerly of the northerly sideline of West Main Street to a point lying one hundred feet (100.00') westerly of the westerly sideline of Briar Lane;

thence

northerly by a line parallel to and one hundred feet (100.00') westerly of the westerly sideline of Briar Lane to a point lying on the extension of the southerly sideline of Mill Hill Road; thence easterly across Briar Lane by said extension and by the southerly sideline of Mill Hill road to the point of beginning.

Lands included in an area bounded as follows: Commencing at a point lying on the northerly sideline of Main Street, formerly Route 6A, said monument lying twenty-one and 89/100 feet (21.89') southeasterly of the point of tangency lying opposite station 324+04.48 as shown on a plan entitled, "Plan of Road in the Town of Wellfleet, Barnstable County, Discontinued as State highway by the Department of Public Works, April 17, 1962, scale 40 feet to the inch", thence

N 13 degrees - 25'-46" E a distance of one hundred fifty and 07/100 feet (150.07') to a concrete bound; thence

N 08 degrees - 11' - 32" E a distance of one hundred sixty-one and 90/100 feet (161.90') to a concrete monument; thence

N 08 degrees - 09' - 50" E a distance of one hundred seventy and 42/100 feet (170.42') to a point on the southerly sideline of Long Pond Road, said point lying fifty and 74/100 feet (50.74')

northeasterly of the point of curvature opposite station 17+01.09 as shown on the 1949 State Highway Alteration Plan; thence

easterly by the southerly sideline of Long Pond Road to the intersection of said southerly sideline with the westerly sideline of Route 6; thence southerly by the westerly sideline of Route 6 to the northerly sideline of Main Street; thence

northwesterly by the northerly sideline of Route 6 to the point of beginning.

### **COMMERCIAL:**

(1) Land inclusive in an area bounded on the south by the Town of Eastham, on the west by West Road, on the east by Route 6 and on the north by Gill Road.

(2) Lands included in an area bounded as follows: Commencing at the intersection of the westerly sideline of Route 6 and the northerly sideline of Lieutenant's Island Road; thence

westerly by the northerly sideline of Lieutenant's Island Road to a point lying three hundred feet (300.00') westerly of the westerly sideline of Route 6; thence

northerly by a line parallel to and three hundred feet (300.00') westerly of Route 6 to the southerly sideline of Old Wharf Road; thence

easterly by the southerly sideline of Old Wharf Road to the westerly sideline of Route 6; thence southerly by the westerly sideline of Route 6 to the point of beginning.

(3) Land inclusive in an area beginning at a point at the intersection of Route 6 and 6A, then following the easterly side of Route 6A until it rejoins Route 6, thence proceeding along the easterly and northerly side of Route 6 to a point 300 feet west of the intersection of Route 6 and Old County Road, thence; northerly on a line perpendicular from Route 6 for 300 feet, thence; easterly on a line parallel and 300 feet from Route 6 to the railroad right-of-way, thence southeasterly along said railroad right-of-way to a point which is perpendicular from said right-of-way to the southerly point of the intersection of Route 6A and Route 6, thence easterly along said perpendicular to the point of beginning.

(4) Land inclusive in an area beginning at the intersection of Cove Road and Route 6, thence southerly 950 feet along Route 6 to a point, thence westerly on a line perpendicular from Route 6 for a distance of 500 feet, thence northerly on a line parallel to, and 500 feet from, Route 6 until said

line meets Cove Road, thence easterly along Cove Road to the point of beginning.

(5) Land inclusive in the area beginning at the intersection of School Street and Route 6, thence along the southern and western side of School Street to Long Pond Road, thence along the northern side of Long Pond Road to a point 300 feet east of the intersection of Route 6, and Long Pond Road, thence southerly along the line parallel and 300 feet from Route 6 to the railroad right-of-way, thence northwesterly along said right-of-way to Route 6, thence northerly along Route 6 to the point of beginning.

(6) Lands included in an area bounded as follows: Commencing at a point on the northerly sideline of Pine Point Road, said point lying three hundred feet (300.00') westerly of the westerly sideline of Route 6; thence northerly by a line parallel to and three hundred feet (300.00') westerly of the westerly sideline of Route 6 to the centerline of the east arm of Duck Creek; thence easterly by the centerline of the east arm of Duck Creek to the westerly sideline of Route 6 approximately opposite station 269 as shown on the 1949 State Highway Alteration Plan; thence southerly by the westerly sideline of Route 6 to the northerly sideline of Pine Point Road; thence westerly by the northerly sideline of Pine Point Road to the point of beginning. (Amended 4/30/85 ATM, Art. 59)

## **Commercial 2:**

1) Land included in an area bounded as follows:

On the south, by the northerly boundary of lots 1 through 5 as shown on a plan made for Fred Hendrickson, said plan recorded in the Barnstable county Registry of Deeds, plan book 231, page 157;

On the west, by the easterly sideline of the State Highway, Route 6;

On the north, by the boundary of the Cape Cod National Seashore;

On the east, by the boundary of the Cape Cod National Seashore.

2) Land included in an area bounded as follows:

On the south, by the boundary of the Cape Cod National Seashore;

On the west, by the easterly sideline of the State Highway, Rte 6;

On the north, by Blackfish Creek;

On the east, by the boundary of the Cape Cod National Seashore

3) Land included in an area bounded as follows:

On the south, by the northerly sideline of Designers road;

On the east, by the easterly sideline of the State Highway, Rte 6;

On the north, by the southerly boundary of land owned by the commonwealth of Massachusetts, formerly land of the Penn Central Transportation Corporation;

On the east, by the westerly sideline of the Old King's Highway (also known as the Old County Road) as shown on the March, 1970 layout made for the Town of Wellfleet).

4) Land included in an area bounded and described as follows:

Beginning at a point on the westerly sideline of the State Highway, Route 6, at its intersection with the northerly sideline of Kelley Way; thence

Westerly by the northerly sideline of Kelley Way to the southwest corner of Lot 8 as shown on a plan made for the Oliver Real Estate Trust and Reven A. Oliver, said plan recorded in the

Barnstable County Registry of Deeds, plan book 538, page 96; thence  
Northwesterly by the westerly boundaries of lots 8 and 7 as shown on said Oliver plan, a distance of  
three hundred forty-nine and 54/100 ft. (349.54') to a point; thence  
Northwesterly a distance of one thousand four hundred and seventy-two ft. (1,472'), more or less, to  
a point on the northerly boundary of lot 7 as shown on L.C.P. #17425N, said point being five  
hundred ft. (500.00') west of the westerly sideline of the State Highway, Route 6; thence  
Westerly by the northerly boundary of lots 7,6,46 and 45 as shown on L.C.P. #17425N and  
#17425U to the easterly sideline of Cove Road; thence  
Northerly by the easterly and southerly sideline of Cove Road to a point on the southerly side of  
Cove Road, said point being five hundred ft. (500.00') westerly from the westerly sideline of the  
State Highway, Route 6; thence  
Southeasterly on a line parallel to and five hundred ft. (500.00') westerly from the westerly sideline  
of the State Highway, Route 6 to a point; thence  
Northeasterly on a line perpendicular to the last mentioned course to a point on the westerly sideline  
of the State Highway, Route 6, said point being nine hundred fifty ft. (950.00') southerly from the  
intersection of the southerly sideline of cove road with the westerly sideline of said route 6; thence  
Southeasterly by the westerly sideline of said Route 6 to the point of beginning.

5) Land included in an area bounded as follows:

On the north, by the boundary of the Cape Cod National Seashore; On the northeast, by the westerly  
sideline of Pole dike road; On the east, by L.C.C. #37990; On the southwest by L.C.C. #32885;  
Being land shown on a plan made for the Town of Wellfleet, and recorded in the Barnstable County  
Registry of Deeds, plan book 283, page 64.

6) Land included in an area bounded as follows:

On the south, by Coles Neck road;  
On the west, by lots 26 and 27 as shown on L.C.P. #29786F;  
On the south, by lots 23, 24, and 25 as shown on L.C.P.#29786F;  
On the northwest, by the easterly sideline of Whitetail Lane;  
On the north, by lot 37 as shown on L.C.P. #29786G;  
On the west, by lots 36 and 37 as shown on L.C.P. #29786G;  
On the north, by the boundary of the Cape Cod National Seashore;  
On the east, by the easterly boundary of lot 3 as shown on L.C.P. #29786B;  
On the south, by Coles Neck Road;  
On the west, by lot 8 as shown on L.C.P. #29786C;  
On the east, by lot 6 as shown on L.C.P. #29786C.

Unless otherwise noted, district boundaries outside of and parallel to streets are measured from the  
street lines. North axis shown refers to true north. Districts are not shown to exact scale.  
Accompanying distances identified on this map shall be used in determining district dimensions.

I HEREBY CERTIFY THAT THE FOREGOING ZONING BY-LAWS WERE ADOPTED AT A  
SPECIAL TOWN MEETING HELD APRIL 15, 1975.

AMENDMENTS THEREOF. APPROVED BY THE ATTORNEY GENERAL JULY 15, 1975.

Amendments approved by the Attorney General on February 20, 2009

ATTEST: \_\_\_\_\_  
TOWN CLERK

DATE: \_\_\_\_\_

**Massachusetts General Law, Chapter 40A, §6**

Existing structures, uses, or permits; certain subdivision plans; application of chapter

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections twenty-nine through thirty-three, inclusive, of chapter ninety-three, & to chapter ninety-three D.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but a least fire thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirements of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two-family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to

the existing zoning requirements as of January first, nineteen hundred an seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership.

The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and , if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of the subdivision control law. Such appeal shall stay, pending an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to the extent aforesaid, the ordinance or by-law made then applicable by such waiver.