

Wellfleet Selectboard
Wednesday February 15, 2023; 7pm
Virtual Meeting ~ Zoom
Meeting Agenda
Note start time 7pm

The Wellfleet Selectboard will hold a public meeting on **Wednesday February 15, 2023, at 7:00 p.m.** The Chapter 107 of the Acts of 2022, this meeting will be conducted in person and as a courtesy via remote means, per 940 MCR 29.10 and the Town's Remote Participation Policy. While an option for remote attendance and/or participation is provided as a courtesy to the public, the meeting/hearing may not be suspended or terminated if technological problems interrupt the virtual broadcast unless otherwise required by law.

Join the meeting hosted in Zoom by using the following link:

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

By Phone: **phone to +1 929 205 6099** and enter **Meeting ID: 856 8960 4806** | **Passcode: 611877** Landline callers can participate by dialing *9 to raise their hand.

To Participate during public comment:

- Zoom: Raise hand to be called on to speak.
- Phone: dial *9 to raise your hand.

It is at the Chair's discretion to call on members of the public. All speakers must to recognized to speak. If attending a meeting in person, please find the closest available microphone and confine any personal conversations to outside the meeting room. Anyone may record the session but must notify the Chair and may not interfere with the meeting to record it.

I. *Announcements, Open Session and Public Comments*

Note: Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

II. *Zoning Bylaw Food Establishment & DSPI*

III. *Zoning Bylaw Inclusionary Bylaw*

IV. *Adjourn Open Session to move into Executive Session; M.G.L. c.30A, Sec. 21*

purpose 7 ~ To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements," the Open Meeting Law- The Board will review and vote under the Open Meeting Law, G.L. c. 30A, s. 22, **consider the release of executive session minutes from**

- February 3, 2021, ~ **approved, NOT RELEASED ~ Town Counsel is Reviewing.**
- July 7th & 12th, 2021 ~ **approved, NO ACTION TAKEN ~ Town**

Counsel is reviewing.

- August 10, 2021, ~ approved, **NOT RELEASED** ~ Town Council is reviewing.
- November 9, 2021, ~ approved. **NOT RELEASED** ~ Town Council is reviewing.
- December 17, 2021. ~ approved, **NOT RELEASED** ~ Town Council is reviewing.
- January 4, 2022, ~ NOT VOTED
- January 20, 2022, ~ approved, **NOT RELEASED** ~ Town Council is reviewing.
- April 12, 2022, ~ approved, **NOT RELEASED** ~ Reviewed by Town Council.
- May 17, 2022, ~ approved, **NOT RELEASED** ~ Town Council is reviewing.
- May 24, 2022, ~ approved. **NOT RELEASED** ~ Reviewed by Town Council.
- April 15, 2022, ~ Not approved, not released. ~ Reviewed by Town Council.

on whether to approve the minutes dated

- June 7, 2022, ~ NOT VOTED
- June 10, 2022, ~ NOT VOTED
- June 16, 2022, ~ NOT VOTED
- August 30, 2022, ~ NOT VOTED
- September 1, 2022, ~ NOT VOTED
- October 4, 2022, ~ NOT VOTED
- November 15, 2022, ~ NOT VOTED
- December 20, 2022, ~ NOT VOTED
- January 12, 2023, ~ NOT VOTED

V. *Adjournment of Executive Session*

Subject: Sample Fast Food Definitions

From Ryan Curley

Hi all at the SB has been struggling with a definition of what is a fast food restaurant. I looked for Fast Food Definitions that are in the Zoning Bylaws of other jurisdictions and included them below.

Concord, MA

Drive-in or fast food restaurants are expressly prohibited. A drive-in or fast food restaurant is defined as any establishment whose principal business is the sale of foods or beverages in a ready-to-consume state, for consumption within the building or off-premises, and whose principal method of operation includes: (1) sale of foods and beverages in paper, plastic or other disposable containers; or (2) service of food and beverages directly to a customer in a motor vehicle.

Coronado CA

86.04.673 Restaurant, fast food.

“Fast food restaurant” means any establishment whose principal business is the sale of food prepared on site in a ready-to-consume state for consumption on or off the premises and whose design or operation includes three or more of the following characteristics:

- A. Food is usually served with disposable utensils.
- B. Food is usually packaged or served in disposable containers.
- C. Facilities, such as tables, seats and benches, for on-premises consumption of food are insufficient for volume of food sold.
- D. Food is usually ordered and paid for at a walk-up counter.
- E. Food is usually paid for prior to consumption. (Ord. 2062 § 2 (Exh. A), 2016)

Town of Lanesborough, MA

FAST-FOOD EATING ESTABLISHMENT

A place that has as its principal business the sale of prepared or quickly prepared foods or drinks in disposable containers or wrappers for consumption either on or off the premises, that may also include a drive-through window where food can be ordered and picked up.

Provincetown, MA

Fast Food Establishment shall be an establishment engaged primarily in the sale of fast food for consumption on or off the premises, fast food is food which is primarily a. intended for immediate consumption rather than for use as an ingredient in or component of meals, b. available upon a short waiting period and c. packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

Clinton MA

RESTAURANT: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurants."

FAST-FOOD: An establishment whose principal business is the sale of preprepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter

Town of Princeton, MA

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast-food restaurant" or "drive-through restaurant."

Restaurant, fast-food: An establishment whose principal business is the preparation of food from a limited menu and selling the same directly to the customer in a ready-to-consume state, using throw-away food packaging, with ordering and sales typically conducted at a counter or a drive-through and pick-up window.

Restaurant, drive-through: A restaurant from which patrons may receive food or beverages through a window or other fixed station while remaining in their vehicles; including fast-food restaurants, coffee shops, ice cream shops, and similar food establishments with drive-up windows.

Sandwich Shop, Deli, Coffee Shop: A food service establishment, which may be mobile, where food is prepared and sold at retail and may or may not be consumed on the premises, such as sandwiches, soups, salads, pizza, coffee or baked goods, or other individually proportioned food items. For purposes of the By-law, a sandwich shop, deli, or coffee shop may include a walk-up service window, but does not include a fast food restaurant or a drive through restaurant.

(Amended May 10, 2016)

Belmont, MA

Restaurant, Fast Food - An establishment whose primary business is the sale of food for consumption on the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; (c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold; (d) which, because of the nature of the operation sells large volumes of food; but not including drive-up windows.

Plymouth, MA

RESTAURANT, FAST-FOOD – A commercial establishment for preparation, dispensing or service of food and beverages for consumption on- or off-premises, characterized by the food served being packaged or presented so as to be readily eaten off-premises; providing minimal, if any, table service; providing short wait times; and resulting in high sales volume and frequent customer turnover, with resulting high volume of vehicular traffic in comparison to that of a conventional Restaurant.

Great Barrington, MA

FAST-FOOD EATING ESTABLISHMENT: A type of restaurant, with or without a drive-up window for serving customers in motor vehicles, which has as its principal business the sale of pre-prepared or quickly prepared foods or drinks, often using disposable containers or wrappers, for consumption either on or off the premises.

Hingham, MA

Fast Food/Take-Out Restaurant An establishment offering prepared foods and beverages on a self-serve basis or ordered at a counter, to be consumed on or off the premises.

Hatfield, MA

Fast Food Restaurant: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off the premises. Orders are not generally taken at the customers table, and food is generally served in disposable wrapping or containers.

West Stockbridge, MA

FAST-FOOD EATING ESTABLISHMENT — A place that has as its principal business the sale of prepared or quickly prepared foods or drinks in disposable containers or wrappers for consumption either on or off the premises, and has a drive-through or drive-up facility.

Eastham, MA

RESTAURANT159: An establishment where food and drink are prepared, served and consumed primarily within the principal building or at outside seating on a deck or patio. Food may be prepared for consumption off the premises provided such take-out service is accessory to the restaurant use. This definition, with its provision for accessory take-out service, shall not be construed to allow any “Restaurant, Drive In” or “Restaurant, Fast Food” as defined in this section.

RESTAURANT, DRIVE-IN160: Premises where meals and/or other items of nourishment and/or refreshments are offered for sale, and where any portion of these are consumed or intended to be consumed in the open, off-premises, or within cars parked upon the premises. 130

RESTAURANT, FAST FOOD161: An establishment for the sale of on-or-off premises prepared food or drink packaged for takeout, whether for consumption on the premises or not, unless such sales are wholly incidental to a conventional restaurant or other use defined in this section, and including

establishments providing in-car service or window service or service at two (2) or more take-away stations within the town.

East Long Meadow MA

FAST-FOOD RESTAURANT — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises.

Hamilton, MA

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

Restaurant, fast-food: Establishment for the immediate sale of food or drink prepared on or off premises and served in disposable containers or wrappers for consumption on or off premises unless such sales are wholly incidental to a conventional restaurant or other use such as a grocery or convenience store or food market or other use defined in this chapter. Service is usually cafeteria style or from a serving counter. Such establishment may include inside seating, but table service is usually not provided or only incidental. All restaurant establishments providing in-car, drive-through service are included in this definition.

Scituate MA

FAST FOOD ESTABLISHMENT An establishment in which 40% or more of its annual sales (projected or actual) are derived from the sale of food and beverages in a ready-to-consume state directly to a customer from a servicing counter for consumption off the premises or for consumption on premises if said food or beverage is served in single service or disposable containers.

Revised through 2/01/23 version 004

Developments of Significant Planning Interest and Food Establishments

To see if the Town will amend the Wellfleet Zoning By-Laws by repealing the existing Chapter 235 - Section 6.29, Fast Food & Formula Restaurant Prohibition and replacing it with a new Chapter 235 - Section 6.29, Development of Significant Planning Interest and Food Service Establishments and by amending Chapter 235 -Sections 2.1, 5.3, and 8.4.2. by inserting text shown as underlined and deleting text that is ~~struck through~~ as follows, or take any action related thereto:

A. By amending Chapter 235 – Article II – Section 2.1 DEFINITIONS by inserting in alphabetical order new definitions for “Development of Significant Planning Interest,” “Food Establishment: Bakery,” “Food Establishment: Full-Service Restaurant,” “Food Establishment: Take-Out Restaurant,” “Food Establishment: Fast Food Restaurant,” and “Food Establishment: Drive-through Facility” and deleting the definitions of “Restaurant,” “Restaurant Drive-In,” “Restaurant Fast Food” and “Restaurant, Formula” as follows:

Development of Significant Planning Interest: Any of the Food Establishment categories defined in this By-law, Bulk Storage, Motor Vehicle Repair or Sales Shop, or any other commercial use that involves more than 4,000 square feet of floor area of commercial construction.

Food Establishment: Bakery - A commercial food service establishment primarily engaged in the preparation and retail sale of baked goods for off-site consumption. A bakery may include, as an accessory use, wholesale distribution of goods prepared on the site.

Commented [RR1]: SB added this language on 1/31/2022

Commented [RC2R1]: For discussion, should bakeries include onsite consumption as well?

Food Establishment: Ice Cream Parlor - An establishment where the primary activity is the retail sales of ice cream, frozen yogurt and/or similar products for consumption on or off the premises; provided, however, that this article shall not apply to restaurants where such ice cream, ices, or beverages are sold and consumed in connection with the serving of meals.

Food Establishment: Full-Service Restaurant – A commercial food service establishment where (1) meals are primarily freshly cooked and prepared to order on-premises and are served primarily for consumption on the premises, either indoors or outdoors; (2) customers may be provided with individual menus; (3) a restaurant employee serves the customers at the same table or counter where the meals are consumed. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Full-Service Restaurant operation may include ancillary bakery, delivery service and/or take-out service but may not include a drive-through facility.

Food Establishment: Take-Out Restaurant – A commercial food service establishment where (1) food is primarily freshly cooked or prepared on site by employees; (2) food and beverages are sold in disposable containers for off-premises consumption only; (3) the customers pick up their orders either at a counter inside the building or at a walk-up window.. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Take-Out Restaurant operation may include an ancillary delivery service but may not include a Drive-through facility.

Food Establishment: Fast Food Restaurant – A commercial food service establishment where (1) prepared food and beverages are sold in disposable containers for consumption either on the premises or off the premises; (2) the menu and operation are designed for quick service (3) the customers pick up their orders either at a counter or walk-up window; Or (4) serving pre-packaged and ready-to-eat meals and beverages that are not cooked or prepared fresh on the premises are served. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site.

Food Establishment: Drive-through Facility – A drive-up window or a mechanical device where customers waiting in motor vehicles may order and/or pick up prepared food and beverages from a food service establishment.

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. ATM 4/23/90

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. ATM 4/23/90.

Restaurant, Fast Food – A restaurant with drive-up window service, or that otherwise receives payment and/or dispenses products to patrons while in their vehicles. (ATM 4/25/11)

Restaurant, Formula – A restaurant that stands alone or with other use(s), and which prepares food and beverage on site for sale to the public, and which is required by contractual or other arrangement or as a franchise to offer any of the following features: Standardized menu, trademark or service mark, defined as a word, phrase, symbol, design or logo, or a combination of words, phrases, symbols, designs and/or architecture, façade, or color scheme that identifies the restaurant as one (1) of twenty five (25) or more other restaurants worldwide. (ATM 4/25/11)

B. By amending Chapter 235, Section V – Uses, Table 5.3.2 – Commercial, by striking from the table the uses of “**Restaurant, Indoor**,” “**Restaurant Drive-In**,” “**Restaurant Fast Food**,” and “**Restaurant Formula**” and inserting the uses of “**Food Establishment: Bakery**”; “**Food Establishment: Full-Service Restaurant**”; “**Food Establishment: Take Out Restaurant**”; “**Food**

Commented [RR3]: Is there anything else we can write in this definition to make this language stronger? The PB is concerned that a fast food restaurant could say they are a take out restaurant. They feel that the two definitions are not differentiated enough

Commented [CMM4R3]: Fast Food includes consumption on or off premises, while Take Out is only off-premises. However, I raise the question above about a clam shack putting out a few picnic tables--does that make it consumption on premises? In my opinion, it would, so are we prepared to not allow Take Out restaurants to offer picnic tables? Fast Food also includes the service of packaged and ready-to-eat meals, as opposed to Take Out which primarily prepares fresh food to order. Take Out and Fast Food are so similar that I think we have differentiated them as much as possible, but I am open to any suggesting the Planning Board may have.

Commented [RR5R3]: The Select Board would like a better definition for fast food. This was discussed at their 1/31/23 Meeting. There was also a question of whether or not the Town could limit franchises to (3?)

Establishment: Fast Food Restaurant”; and “Food Establishment: Drive-Through Facility”, which shall be allowed by special permit (A) or prohibited (O) as follows in the various zoning districts:

5.3.2 Use Regulations:

5.3.2 Commercial	CD	R1	R2	NSP	C	C2
Food Establishment: Bakery	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
Food Establishment: Full-Service Restaurant	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
Food Establishment: Take-Out Restaurant	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
Food Establishment: Fast Food Restaurant	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>
Food Establishment: Drive-through Facility	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>
Food Establishment: Ice Cream Parlor	A	O	O	O	A	
Restaurant, Indoor	A	Ø	Ø	Ø	A	Ø
Restaurant, Drive-In	Ø	Ø	Ø	Ø	A	Ø
Restaurant, Fast Food	Ø	Ø	Ø	Ø	Ø	Ø
Restaurant, Formula	Ø	Ø	Ø	Ø	Ø	Ø

C. By repealing Chapter 235-Section 6.29 – Fast Food & Formula Restaurant Prohibition in its entirety and replacing it with a new Chapter 235, Section 6.29 - Developments of Significant Planning Interest by inserting the following underlined text:

6.29.1-Purpose:

The purpose of this bylaw is to regulate the location, traffic, scale, impacts, and visual features of Developments of Significant Planning Interest in Wellfleet to maintain the unique, small-scale, small-town character and the quality of life for all Wellfleet residents by preserving the individuality and distinctive appeal which are among the Town’s most recognized features. Preservation of the existing character, diversity, variety, and scale of commercial activities is vital to the continuation of Wellfleet’s ability to attract both residents and visitors. Wellfleet must retain its distinctive Cape Cod character, general welfare, and historical and cultural relevance.

This bylaw incorporates by reference and shall be construed consistently with the policy direction of the Town's Comprehensive Plan, the Cape Cod Commission Act, the enabling act of the Cape Cod National Seashore, and Wellfleet's designated historic districts, with which Wellfleet is intimately and intricately associated.

6.29.2 Application Requirements

Applicants for Special Permits for uses so controlled as **Developments of Significant Planning Interest** shall submit to the Zoning Board of Appeals three copies of the following:

- a) An application identifying the intended use and narrative description of the proposed use;
- b) A site plan prepared by a licensed architect, licensed landscape architect, or Registered Professional Engineer, showing proposed structures, building design, lighting, drives, parking, landscaping, screening, dust mitigation, and provision for stormwater management and drainage;
- c) A floor plan for all floors, an elevation plan of all sides of the proposed building and a plan or rendering showing the proposed building in relation to adjoining structures and abutting properties;
- d) A plan showing the dimensions, type, location and elevations of all proposed signs; and
- e) photographs of the premises in its current condition 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.

6.29.3 Special Permits for Development of Significant Planning Interest

6.29.3.1 Bulk Storage, Motor Vehicle Repair or Sales Shop.

In addition to Sections 8.4.2.1, 8.4.2.2, and 8.4.2.3 of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit for the following uses, **Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse.**

- (a) whether the proposed use will increase the intensity of use on the site to a level that will adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;
- (b) whether the proposed design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;

(c) whether the proposed design retains the historic characteristics if located within a designated historic district.

(d) whether the proposed design preserves the character-defining elements of an historic building and its setting when adapting to a new use.

(e) The use of permeable pavement or pavers for parking areas and walkways ;

(f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;

(g) whether the proposed use includes the storage or presence of hazardous and/or combustible materials;

(h) the overall impact of the proposed use on the health and safety of area residents.

6.29.4 Food Service Establishments or Other Commercial Developments involving more than 4,000 square feet of floor area

In addition to Sections 8.4.2.1, 8.4.2.2, and 8.4.2.3 of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit; provided, however, that the Special Permit Granting Authority shall not require strict compliance with the design criteria contained in this section with respect to food service establishments that are pre-existing nonconforming as of the date of adopting this zoning amendment at the Spring 2023 Annual Town Meeting but may grant waivers when the Special Permit Granting Authority finds such waiver(s) to be in the best interests of the Town or that strict compliance would cause an undue financial hardship to the food service establishment or that strict application of the design criteria would not be consistent with the existing style or character of the pre-existing nonconforming food service establishment:

- (a) Whether the proposed use is designed and operated in a manner that preserves the community's distinctive small-town character, including the following:
 - (1) the use of natural shingles or clapboards as exterior finishes;
 - (2) exterior lighting uses gooseneck or similarly designed lighting;
 - (3) use of permeable pavement or pavers for parking areas and walkways;
 - (4) whether the scale of the building is in keeping with a small-town, coastal setting;
 - (5) Preserve the character-defining elements of an historic building and its setting when adapting to a new use.
 - (6) whether the façade is broken up in terms of color scheme, use of materials and incorporates segments that protrude forward or are recessed to minimize the appearance of massing;
 - (7) whether the design is compatible with the character of surrounding properties or the zoning district;

- (8) use of native plantings of a suitable size, diversity and hardiness to survive Cape Cod's climate and minimize use of water, herbicides and pesticides;
- (9) use of small-scale, painted wooden signs that are externally illuminated;
- (10) When practical, whether parking is provided to the sides of the building and parking in the front of the building is minimized;
- (11) Whether the business model includes curbside pick-up or delivery of goods to patrons in their vehicles; and
- (12) Accessibility of the development for disabled individuals.

(b) whether the proposed use contributes to the diversity of uses to assure a balanced mix of businesses available to serve residents and visitors;

(c) whether the proposed building design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;

(d) whether the proposed use will increase the intensity of use on the site to a level that will adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;

(e) whether the size, style and design of signage is appropriate to maintain the scale and character of Wellfleet;

(f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;

(g) whether the proposed use includes the storage or presence of hazardous or combustible materials;

(h) the overall impact of the proposed use on the health and safety of area residents;

6.29.2.3 Floor Area Applicability

Any increase in floor area shall be cumulative upon the adoption of this bylaw (ATM 2023).

6.29 FAST FOOD & FORMULA RESTAURANT PROHIBITION (ATM 4/25/11) Purpose: The Cape Cod seaside character of Wellfleet is unique, and is important to the people of the community and their collective identity as a community, as well as to the visiting public. Far more than most Cape Cod towns, Wellfleet retains its rural village character, which is integral to the fabric of the community. Wellfleet is also traditionally home to small, locally owned and operated businesses. In these senses, Wellfleet has maintained its identity in a manner rare in the region. The purpose and intent of the Formula Based Restaurant Prohibition is to address the adverse impact (in terms of noise, litter, traffic, and aesthetically inappropriate development) that standardized fast food and formula restaurants would have on Wellfleet's distinctive Cape Cod character, general welfare, and historical and cultural relevance as a rural community. These uses are therefore prohibited in order to preserve and protect the unique and locally-oriented community experience of Wellfleet, and all that this offers to its citizens and tourists alike as a treasured destination. This policy is also consistent with the policy direction of the Town's

~~Comprehensive Plan, the Cape Cod 77 Commission Act, and the enabling act of the Cape Cod National Seashore, with which Wellfleet is intimately and intricately associated.~~

Summary: When Wellfleet adopted both the Formula Business and Fast Food & Formula Restaurant provisions in 2011 the Attorney General warned the Town that both provisions but noted that at the time, no court rulings had been made. Both provisions used substantially the same language and definitions. The following year, Cumberland Farms, Inc. v. Board of Appeals of the Town of Wellfleet and the Town of Wellfleet challenged the validity of Section 6.30 Formula Business. In 2015 a ruling was made invalidating Wellfleet’s Formula Business provisions on the grounds that they (1) violated G.L. c.40A, §4, which requires that zoning regulations be uniform within a zoning district for each class or kind of structure or use permitted, and (2) imposed impermissibly vague and subjective special permit standards. We have also been advised that the definitions of Drive-In Restaurant and Fast Food Restaurants are likely too similar to prohibit one and allow the other. We have been informed by Town Counsel that the Fast Food and Formula Restaurants is similarly vulnerable to challenge. In order to protect the Town from development that it considers deleterious we need to amend our Zoning Bylaw. This proposal retains the prohibition on Fast Food Restaurants, strengthens our definitions, and gives the Zoning Board of Appeals additional tools to protect the character of Wellfleet and extends them to some other commercial uses of particular concern. It also defines certain light industrial uses or scale as activities that require additional considerations to be taken into account.

Town Counsel Comments 10/25/2022

I recognize that you are using definitions I provided in a memorandum regarding Formula Restaurants back in May 2022, so the definitions are fine. However, the definition for “Food Service Establishment” was intended to be a broad, overarching category applicable to all types of restaurants, whether take-out, full-service or fast food. I recommend deleting “Food Service Establishment” from Section 5.3 Use Regulations because a “Fast Food Restaurant” (which is a prohibited use) could argue that it fits the definition of “Food Service Establishment” (which is permitted by SP in three zoning districts). In fact, you might delete the definition of “Food Service Establishment” unless that term is going to be used in a broader sense elsewhere in the Zoning Bylaw.

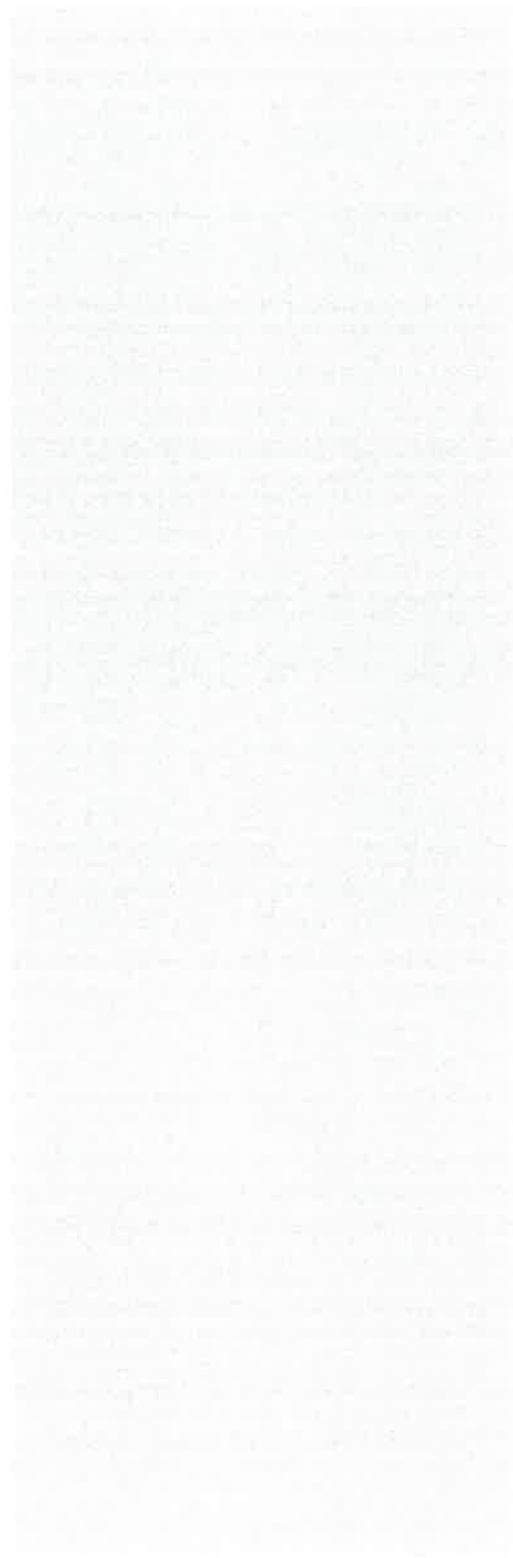
Commented [RC6]: Deleted but I used the term to organize the definitions after hearing some concerns expressed in a PB meeting so that they appear in order in the definitions together

Town Counsel Comments from email dated: 1/17/2023.

Attached is version 4 of the Development of Significant Planning Interest with edits to design criteria from Ryan and my proposed exemption language for pre-existing nonconforming food service establishments. The waiver language can be expanded or made more restrictive, as you see fit. I also tweaked the 4,000 SF of new commercial construction, since the consensus was that this bylaw would also apply to other commercial uses adding 4,000 SF of GFA, not just food establishments, bulk storage or MV repairs/sales.

to G.L. Ch. 40A, Sec. 6, which is also styled a special permit from the ZBA pursuant to Section 235-6.1.A of the ZBL.

840992/WELL/0082



ARTICLE NO. ## INCLUSIONARY ZONING BYLAW

- A. To amend Chapter 235, Article II DEFINITIONS by inserting the following definitions in alphabetical order

§235 - 2.1 Definitions

Affordability Gap – the difference ~~in~~ between the ~~apprised~~appraised value of dwelling units permitted pursuant to §235 – 6.28 Inclusionary Zoning Bylaw, ~~to and~~ affordable units with a comparable number of bedrooms eligible for inclusion in the Town’s Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD).

~~B. To repeal Chapter 235, Section 6.28, PROVISIONS TO ENCOURAGE THE DEVELOPMENT OF AFFORDABLE DWELLINGS IN WELLFLEET, and replace it with the following:~~

§235 – 6.28 INCLUSIONARY ZONING BYLAW

§235 – 6.28.1 Purpose and Intent

The purpose of this bylaw is to encourage development of new housing that is affordable to persons of various age and income levels in accordance with Massachusetts General Law, Chapter 40A, Section 9, which allows municipalities to adopt “incentive” bylaws ordinances for the creation of affordable year-round housing, and for the purposes of:

- A. Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; and,
- B. Encouraging the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Wellfleet residents;
- C. Mitigating the negative impact of residential development on the availability and cost of housing;
- D. Protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land;
- E. ~~to~~Creating dwelling units eligible for inclusion ~~in~~ the Town’s Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD) under the Local Initiative Program.

§235 6.28.2 Applicability

In the CD, R1, R2, C and C2 zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

- A. Any project that results in a net increase of ~~two-three~~ or more dwelling units as part of a single application, whether by new construction or by the alteration or rehabilitation of existing structures.

Commented [CMM1]: Should this compare the value of market rate units to affordable units within the proposed development?

Commented [CMM2]: Based on how this is set up, it appears the intent is to repeal the existing 6.28 and replace with this version. Please confirm that we are not keeping any of the existing provisions of 6.28, such as the definition of Affordable Dwelling Unit.

Commented [RC3R2]: Hi I think you are looking at an old copy of the zoning bylaws. We redid 6.28 at the STM. Because of some of the issues with it. It is not 6.26 Affordable Dwelling Developments

Commented [CMM4]: In my experience, imposing an affordability requirement when two or more units are applied for is an unusually low threshold. I have seen bylaws applying to 10 units or more and generally requiring 10% of those units to be affordable.

Commented [RC5R4]: We had settled on 3

ARTICLE NO. ## INCLUSIONARY ZONING BYLAW

- A. To amend Chapter 235, Article II DEFINITIONS by inserting the following definitions in alphabetical order

§235 - 2.1 Definitions

~~Affordability Gap – the difference in between the appraised value of dwelling units permitted pursuant to §235 – 6.28, Inclusionary Zoning Bylaw, ~~to~~ and affordable units with a comparable number of bedrooms eligible for inclusion in the Town’s Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD).~~

Commented [CMM1]: Should this compare the value of market rate units to affordable units within the proposed development?

~~B. To repeal Chapter 235, Section 6.28, PROVISIONS TO ENCOURAGE THE DEVELOPMENT OF AFFORDABLE DWELLINGS IN WELLFLEET, and replace it with the following:~~

Commented [CMM2]: Based on how this is set up, it appears the intent is to repeal the existing 6.28 and replace with this version. Please confirm that we are not keeping any of the existing provisions of 6.28, such as the definition of Affordable Dwelling Unit.

§235 – 6.28 INCLUSIONARY ZONING BYLAW

§235 – 6.28.1 Purpose and Intent

~~The purpose of this bylaw is to encourage development of new housing that is affordable to persons of various age and income levels in accordance with Massachusetts General Law, Chapter 40A, Section 9, which allows municipalities to adopt “incentive” bylaws ordinances for the creation of affordable year-round housing, and for the purpose of:~~

- A. ~~Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; and,~~
- B. ~~Encouraging the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Wellfleet residents;~~
- C. ~~Mitigating the negative impact of residential development on the availability and cost of housing;~~
- D. ~~Protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land;~~
- E. ~~Creating dwelling units eligible for inclusion in the Town’s Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD) under the Local Initiative Program.~~

§235 6.28.2 Applicability

~~In the CD, R1, R2, C and C2 zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:~~

- A. ~~Any project that results in a net increase of two or more dwelling units as part of a single application, whether by new construction or by the alteration or rehabilitation of existing structures.~~

Commented [CMM3]: In my experience, imposing an affordability requirement when two or more units are applied for is an unusually low threshold. I have seen bylaws applying to 10 units or more and generally requiring 10% of those units to be affordable.

§235 6.28.3 Mandatory Provision of Affordable ~~or Community~~ Housing for Development of New Residential Units

In order to contribute to the local stock of Affordable ~~and Community~~ Housing, any residential project that results in a net increase of two or more dwelling units as part of a single application as described ~~development identified in Section 6.28.2~~ A shall provide a percentage of the dwelling units as ~~deed restricted Affordable and/or Community~~ Housing units. For purposes of this bylaw, "Affordable Housing" shall mean a dwelling unit that is affordable to and occupied by a Low or Moderate Income Household and meets the requirements for inclusion on the Subsidized Housing Inventory maintained by DHCD. This Affordable ~~/Community~~ Housing requirement shall be one-sixth (16.67%) of the new dwelling units developed rounded up to the nearest whole affordable unit and shall be made a condition of a Special Permit, or the applicant shall meet the requirement in accordance with the following:

- A. Development of 3 to 6 new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals and a Payment in Lieu of providing the required number of an affordable units to be made to the Wellfleet Affordable Housing Trust Fund to fulfill the Affordable ~~/Community~~ Housing requirement.
 - (1) Payment shall be made in accordance with the following formula:
 - For 3-4 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(16.67%)x(affordability gap)x(67%)
 - For 4-6 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(16.67%)x(affordability gap)x(100%)
 - (2) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - (3) The Payment in Lieu shall be made at and upon the sale or certificate of occupancy of each unit, whichever occurs sooner. When the development consists of year-round rental units, a lien shall be filed against the property which states that the Payment in Lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use
- B. Development of 7 or more new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals and at least one-sixth (16.67%) of the new units created shall be established as Affordable ~~or Community~~ Housing units in any one or combination of methods provided for below:
 - (1) The Affordable ~~or Community~~ Housing units shall be constructed or rehabilitated on the site subject to the Special Permit, in accordance with **§235 Section 6.28.4**; or
 - (2) The Affordable ~~or Community~~ Housing units shall be constructed or rehabilitated on a site other than the one subject to the Special Permit, in accordance with **§235 6.28.4**, provided justification is provided that on-site development of units is not feasible and off-site development of units is beneficial to the Town, and Special Permits are granted contemporaneously for both developments; or
 - (3) A Payment in Lieu of providing Affordable ~~or Community~~ Housing units shall be made to the Wellfleet Affordable Housing Trust Fund. Payment shall be made in accordance with the following formula:

Commented [CMM4]: You have not defined Affordable or Community Housing. Affordable Housing has a clear understanding under G.L. c. 40B and its related regulations, but Community Housing is not defined under this statute. If the intent is for Affordable and Community Housing to be interchangeable, I suggest we use Affordable Housing, as that term is given meaning under G.L. c. 40B. You may also want to insert the definition in the Definitions section of the ZBL, rather than here.

Commented [CMM5]: There is no SP criteria for approval of the dwelling units, other than the requirement for providing affordable units. Will Sec. 8.4.2 be the default for SP criteria? If so, we should cross-reference to that section.

Commented [CMM6]: I am not sure I understand the math here. Wouldn't it be easier to require a developer to make a payment equal to the value of the required number of Affordable Housing Units multiplied by the median sales price of a Wellfleet market-rate home comparable in type, size, and number of bedrooms over a period of XX months prior to the date of application submission, provided the amount of such payment shall not be decreased based on the value of an Affordable Housing Unit. Data for sales could be provided by the Wellfleet Assessors.

Commented [CMM7]: This seems like a loophole where a developer could rent the unit in perpetuity and avoid the Payment in Lieu? Regardless I don't know that a lien is the best mechanism. The payment will be memorialized through the SP and/or the affordable housing deed restriction and can be enforced thru same.

Commented [CMM8]: What if a developer is required to provide 2 affordable units and offers to create one at a property that is already developed? There would be no contemporaneous SP for the off-site unit.

- a) For 6-7 or more new dwelling units, the Payment in Lieu = (total # of new dwelling units)x(16.67%)x(affordability gap)x(150%)
 - b) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - c) The Payment in Lieu shall be made at and upon the sale or certificate of occupancy of each unit, whichever occurs sooner. When the development consists of year-round rental units, a lien shall be filed against the property which states that the Payment in Lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use. ~~of:~~
- (4) A Land Donation in Lieu of providing Affordable or Community Housing units shall be provided to the Wellfleet Affordable Housing Trust, provided that:
- a) The receiving organization agrees in writing to accept the land; and
 - b) The applicant demonstrates to the Zoning Board of Appeals's satisfaction that the land serves the future development of Affordable ~~and/or Community Housing; and~~
 - c) The value of donated land shall be equivalent to or greater than the value of the required a Payment in Lieu. The Zoning Board of Appeals may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Zoning Board of Appeals may obtain expert peer review of the appraisal at the applicant's expense; and
 - d) Closing on the land donation shall occur before the issuance of the first building permit.

Commented [CMM9]: Same comment as above re: lien.

§235 6.28.4 Provisions Applicable to Affordable and Community Housing Units Located On-Site and/or Off-Site

- A. Affordable and Community Housing units created in accordance with this bylaw shall have a use deed restriction and Regulatory Agreement to regulate the future re-sale or rental of the unit and ~~s~~ that requires the units to remain income restricted in perpetuity or the longest period allowed by law. Said deed restriction and Regulatory Agreement shall be consistent with the forms used in the Local Initiative Program and Regulatory Agreement approved by DHCD. The Regulatory Agreement shall be prepared by the Applicant and submitted to Town Counsel for review and approval. The Regulatory Agreement will be executive by the Applicant, the Town of Wellfleet and DHCD and shall be recorded with the Barnstable County Registry of Deeds or ~~and for so long as the unit or project does not conform to the otherwise applicable underlying zoning requirements, and any such restriction shall be held by the Town and be released only by a vote of Town Meeting as provided for by state law. Such restriction shall also grant the Town a right of first refusal to purchase a unit in the event that a subsequent qualified purchaser cannot be located, which the Town shall have the right but not the obligation to exercise and shall not release the deed restriction if a qualified purchaser cannot be located.~~

Commented [CMM10]: The deleted language is usually included in 40B projects where the development does not comply with zoning. This will not be the case here.

B. The applicant shall be responsible for preparing and submitting any documentation that may be required to receive Local Action Unit approval from DHCD and to qualify the Affordable Housing Units for listing on the SHI. The applicant shall also be responsible for providing annual compliance monitoring and certification to the Town or its monitoring agent and to pay for the costs of the Town for providing such compliance monitoring.

B.C. No Building Permit shall be issued for any units in the development until the Zoning Board of Appeals receives evidence that the Affordable Housing deed restriction has been approved by DHCD, or the Community Housing restriction has been approved by Town Counsel.

C.D. No Certificate of Occupancy shall be issued for any units in the development until the Building Commissioner receives evidence that the deed housing restriction has been executed and recorded at the Barnstable County Registry of Deeds.

D.E. Affordable and Community Housing units shall be integrated with the rest of the development or with the off-site location, and shall be comparable to and indistinguishable from market rate units in exterior design, including appearance, construction and quality of materials, and in energy efficiency.

E.F. The number of bedrooms in each Affordable or Community Housing unit shall be made a part of the Special Permit and shall be based on local need as determined by the Zoning Board of Appeals in consultation with the Wellfleet Housing Authority.

F.G. Owners and tenants of Affordable and Community Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.

G.H. The development of Affordable and Community Housing units shall take place at the same rate and timeframe as the development of market rate units.

- 1) Building Permits for any phase shall be issued at a ratio of five (5) market rate units to one (1) Affordable/Community Housing unit. Building Permits for subsequent phases shall not be issued unless all the required Affordable and/or Community Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
- 2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of five (5) market rate units to one (1) Affordable/Community Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless and until all Affordable and/or Community Housing units are occupied.

§235 6.28.5 Maximum Incomes and Selling Price; Affordable and Community Housing Inventory

Maximum rents and/or sale price shall not exceed 30% of an occupant's or tenant's annual income for a household at or below 80% of Area Median Income adjusted by household size.

§235 6.28.6. Segmentation Prohibition

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. "Segmentation" shall be defined as subdividing one parcel of land into two or more parcels of land in such a manner that each parcel can support only a single dwelling unit or phased development that cumulatively results in a net increase of two or more dwelling units above the number existing

thirty-six (36) months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section.

§235 6.28.7 Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

§235 6.28.8 Severability

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