

Chapter 235

ZONING

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[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet 4-15-1975 ATM. Amendments noted where applicable.]

ARTICLE I

Purpose**§ 235-1.1. Purpose statement.**

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 the 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.

ARTICLE II

Definitions**§ 235-2.1. Terms defined.**

In this bylaw the following terms, unless a contrary meaning is required by the context, or is specifically prescribed, shall have the following meanings. 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 or 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 uses.

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 MGL c. 272, § 31.

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 MGL c. 272, § 31.

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 MGL c. 272, § 31.

ADULT VIDEO STORE — An establishment having as 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 MGL c. 272, § 31.

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 PARK — A premises 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.

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.

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." **[4-24-1989 ATM]**

APARTMENT — A part of a multiple-family dwelling consisting of a room or suite of rooms intended, designed or used as a residence. **[Amended 4-30-1985 ATM by Art. 65]**

ARCADE — A building or part thereof used for the operation of more than 10 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 MGL c. 140, § 177A, and billiard tables.

BASEMENT — A story partly underground but having at least 1/2 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 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, 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, 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 premises 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.

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 1/2 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 APPURTENANCE — Any antenna, device, wiring or equipment utilized in connection with the reception or transmission of electromagnetic radiation and which is attached to a preexisting structure. A communication appurtenance shall not include an antenna utilized 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 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.

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 bylaw.

CORNER LOT — A lot which has an interior angle of less than 135° 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°.

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 square feet of floor area and not more than 768 square feet.

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.

CUSTOMER-OWNED GENERATOR — A large-scale ground-mounted solar photovoltaic installation owned by an entity other than the electric utility company. **[4-22-2013 ATM]**

DEGRADED OR PREVIOUSLY DISTURBED LAND — An area where the natural condition of the land or vegetation thereon has been significantly altered, by acts such as mowing, cutting, grading, excavation, paving or other construction activity, including land being redeveloped from prior commercial use. **[4-22-2013 ATM]**

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.¹

DWELLING, ACCESSORY — A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, on the same lot as a principal dwelling or other principal structure that shall be leased year-round. **[Added 6-26-2021 ATM by Art. 45]**

DWELLING, MULTIPLE-FAMILY — A detached building containing two or more dwelling units and having side, front and rear yards.

DWELLING, ONE-FAMILY — A detached building containing one dwelling unit only 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 five 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

1. Editor's Note: The definition of "dwelling, affordable accessory," which immediately followed this definition, was repealed 6-26-2021 ATM by Art. 45.

structures within the prescribed limits and the storage of equipment used. It excludes riding academies, livery or boarding stables and 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 livestock 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.

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 and 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 and basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

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.

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.

FOOD TRUCK — **[Added 4-23-2018 ATM by Art. 44]**

- A. A readily movable, non-motorized trailer or cart or a motorized wheeled vehicle that is designed and equipped to cook, prepare, and/or serve food for retail sale while parked on land other than a public or private street, and shall include any food truck, food cart, canteen truck, catering truck, breakfast truck, lunch truck, lunch wagon, or any other mobile food vehicle. All food trucks must be registered with the Massachusetts Registry of Motor Vehicles, as required.
- B. The following food truck uses are exempt from this definition and do not require a special permit:
 - (1) A food truck operating at a special event approved by the Selectboard, such as Oysterfest, a carnival or similar event;
 - (2) A food truck operating as an accessory use to an outdoor municipal or governmental recreational use, including but not limited to public beaches, municipal playing fields or similar use; and
 - (3) A food truck catering a private event in any zoning district, which shall remain on the property for a period not to exceed 24 hours.

FUNERAL HOME — A dwelling or other structure used and occupied by a professional licensed mortician for burial preparation and funeral services.

GAME ROOM — A building or part thereof used for the operation of no more than 10 automatic amusement devices for hire.

GARAGE, PRIVATE — A garage used for storage purposes only with a capacity of not more than three 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 and retail sale of crafts and items primarily designed as gifts and keepsakes as distinguished from the retail sale of food, clothing, hardware, furniture and items more commonly associated with or essential to the maintenance of home, person and property. **[4-24-1989 ATM]**

GUEST HOUSE, PRIVATE — A detached or semidetached 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 guesthouse within the facility. It shall include tourist homes, but shall not include a hotel, motel or motor inn. **[Amended 4-30-1985 ATM by Art. 67; 4-27-1992 ATM by Art. 38]**

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 OCCUPATION — A business activity conducted as an accessory use of a dwelling by a member of the resident family, either entirely within the dwelling, or within an accessory building located on the same lot, allowed by right as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.22 of this bylaw. This shall not include the following uses: tourist home; barber shop; beauty parlor; commercial stable or pet kennel; restaurant; nursing or convalescent home; funeral home.

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 — A commercial building providing one or more rental spaces for the storage of household goods, personal belongings and other non-toxic, non-hazardous items. Individual storage units shall not have a source of potable water or sanitary facilities.

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 herein 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.

JUNKYARD — 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 nonprofit 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 § 235-5.4N of these bylaws, together with such open spaces as are required under the provisions of this bylaw, having not less than the minimum area required by the bylaw 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 below 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 travelers,

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, tractors or similar equipment.

MOTOR VEHICLE JUNKYARD — 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 SHOP — A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles.

MOTOR VEHICLE REPAIR, INCIDENTAL — The repair of motor vehicles incidental to any use allowed under the bylaw.

NATIONAL SEASHORE PARK GROSS FLOOR AREA (NSPGFA) — Is defined as per § 235-5.4D.

NON-COMPLYING STRUCTURE — Structures built without benefit of a permit 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.

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.

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.

OCCUPANCY PERMIT — A permit issued by the Selectboard, or a person designated 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 bylaw is held to be an area nine feet wide and 20 feet long, not including passageways.

PARKING, PRIVATE — Space for parking accessory to a principal use, not to include parking for fee or parking of more than one commercial vehicle except on farms.

PARKING, PUBLIC — An area used for the purpose of parking vehicles for a fee.

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 months 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. **[4-25-1988 ATM]**

PRINCIPAL USES — Categories of uses listed in § 235-5.3 of the Wellfleet Zoning Bylaws as Residential, Commercial, Commercial (Heavy), Institutional and Farm Uses.

QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING — A lot of land or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil 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. **[4-23-1990 ATM]**

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. **[4-23-1990 ATM]**

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. **[4-25-2011 ATM]**

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, facade, or color scheme that identifies the restaurant as one of 25 or more other restaurants worldwide. **[4-25-2011 ATM]**

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, are 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 — A business activity which provides service to customers primarily in or on the customers' homes or premises, including but not limited to carpentry, masonry, plumbing and heating, electrical work, well drilling, appliance repair, home and lawn maintenance, and landscape services. Service trades may be conducted as a home occupation as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.22 of this bylaw.

SERVICE TRADE BUSINESS — A service trade that does not meet the limitations of § 235-6.22, Home occupations, or § 235-6.23, Service trade home business, of this bylaw. Service trade businesses may be allowed by special permit as shown in Use Regulations § 235-5.3B, Commercial.

SERVICE TRADE HOME BUSINESS (STHB) — An accessory use of a dwelling that does not meet the limitations of § 235-6.22, Home occupations, conducted by a member of the resident family, either entirely within the dwelling, or within an accessory building located on the same lot, allowed by special permit as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.23 of this bylaw.

SHED — A single -story detached accessory building or structure which has dimensions that do not exceed 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, AREA OF — See Article VII, Signs.

SIGNS — See Article VII, Signs.

SOLAR PHOTOVOLTAIC ARRAY — An arrangement of solar photovoltaic panels. **[4-22-2013 ATM]**

SOLAR PHOTOVOLTAIC INSTALLATION, LARGE-SCALE GROUND-MOUNTED (LSGMSPI) — A solar photovoltaic system, including all accessory structures, that is a principal use on a site of at least 8.5 acres in common ownership, and which is mounted on the ground (not roof-mounted), and has a minimum nameplate capacity of 250 kW direct current (DC).

SOLAR PHOTOVOLTAIC INSTALLATION, LARGE-SCALE GROUND-MOUNTED (LSGMSPI) SITE PLAN REVIEW — A review by the Planning Board to determine conformance with all applicable Town of Wellfleet zoning bylaws.

SOLAR PHOTOVOLTAIC INSTALLATION, RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in direct current.

STABLE, PRIVATE — An accessory building in which horses are kept for private use and not for hire, remuneration or 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 MGL c. 41, § 81L (Subdivision) of the General Laws.

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 bylaw 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 purposes 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 two feet, used or intended to be used for swimming or bathing and constructed, installed or maintained in 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.

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.

TOURIST HOME — (See Guest House.)

TRAILER HOME/MOBILE 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.

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.

ARTICLE III

Districts

§ 235-3.1. Establishment of districts. [Amended 4-29-1986 ATM by Art. 22]

For the purpose of this bylaw, the Town is hereby divided into the following types of districts:

Central District	CD
Residential 1	R1
Residential 2	R2
National Seashore Park	NSP
Commercial	C
Commercial 2	C2

§ 235-3.2. District objectives.

District objectives are as follows:

- A. 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.
- B. 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. **[Amended 4-29-1986 ATM by Art. 22]**
- C. Central District. To provide concurrent development of residential and nonresidential uses subject to conditions to assure spatial segregation of incompatible uses.
- D. 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.
- E. 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.
- F. 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.
 - (1) Activity type and mix:
 - (a) The proposal poses no environmental hazard because of use or storage of explosive, flammable, toxic or radioactive materials.
 - (b) The proposal will not result in air pollution or excessive noise.
 - (2) Site design:
 - (a) Scenic views from public ways and other developed properties are considerately treated in the design of the site.
 - (b) Topographic change is minimized.
 - (c) Unnecessary removal of existing trees or other important natural features is avoided.
 - (d) Pedestrian movement within the site and to other places is well provided for.
 - (e) Vehicular movement within the site is safe and convenient and arranged so as not to disturb abutting properties.
 - (f) Visibility of parking and service areas from public streets is minimized through facility location and the use of topography and vegetation.

- (g) Potential disturbances such as noise, glare, and odors are effectively confined to the premises through buffering or other means.
- (3) Facility design:
- (a) Scenic views from public ways and other developed properties are considerately treated in the design of buildings.
 - (b) Primary exterior materials match the appearance of materials commonly found on existing buildings within the Town (not to be construed by the Zoning Board of Appeals as authority to regulate or restrict materials regulated by the State Building Code).
 - (c) 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.
- (4) Landscaping, design and appearance standard:
- (a) A landscaped buffer strip of no less than 10 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.
 - (b) 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.

§ 235-3.3. Zoning Map.

Said districts are bounded as shown on the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk. That map and all explanatory matter thereon is hereby made a part of this bylaw. The responsibility for keeping the Zoning Map current will be that of the Selectboard or its designee.

§ 235-3.4. Interpretation of district boundaries.

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:

- A. 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.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or side lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at

such distance therefrom 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.

- D. 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.

ARTICLE IV

Application

§ 235-4.1. Application of regulations.

Except as specifically provided in this bylaw:

- A. 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.
- B. 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.
- C. 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 bylaw shall be included as a part of a yard or other open space similarly required for another building or use.
- D. 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 bylaw. This prohibition shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.
- E. Not more than one dwelling may be erected on a lot.

ARTICLE V

Uses

§ 235-5.1. Conformance with schedules.

- A. In the districts specified in § 235-3.1 and in accordance with objectives of the districts specified in § 235-3.2, no building, structure or premises shall be erected, altered or used except as set forth in the "Use Regulation Schedule" and "Intensity of Use Schedule" and as provided in § 235-5.3 and § 235-5.4.
- B. 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 § 235-8.4B
- PB Permitted only under a special permit issued by the Planning Board

§ 235-5.2. Permitted uses. [4-23-1990 ATM]

Permitted uses and uses authorized under special permits shall be in conformity with the provisions of § 235-5.3 (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 § 235-5.3 shall be deemed a prohibited use, except that a use not listed in § 235-5.3 may be allowed by special permit as provided for in § 235-8.4B from the Zoning 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 § 235-8.4B.

§ 235-5.3. Use regulations. [Amended 4-30-1985 ATM by Art. 60; 4-29-1986 ATM by Art. 22; 4-23-2018 ATM by Art. 45; 6-26-2021 ATM by Art. 45]

A. Residential.

	CD	R1	R2	NSP	C	C2
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
Conversion of dwelling unit	O	A	A	O	O	O
Dwelling, accessory	P	P	P	A	P	P
Dwelling, affordable	A	A	A	O	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 trade home business (STHB)	A	A	A	A	A	A
Signs ¹	P	P	P	P	P	P
Stable, private ²	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/mobile home	O	O	O	O	O	O

NOTES:

¹ In accordance with the provisions of Article VII of the bylaw.

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

B. Commercial. [Amended 6-11-2022 ATM by Art. 42²]

	CD	R1	R2	NSP	C	C2
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 ¹	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	O	O
Cottage colony	O	A	A	O	A	A
Filling station	O	O	O	O	A	O
Food truck	A	O	O	O	A	O
Funeral home	A	A	A	O	A	O
Game room	A ²	O	O	O	A ³	O
Garage, public	O	O	O	O	A	O
Gift or craft shop	A	O	O	O	A	O
Guesthouse, public	O	A	A	O	A	O
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

2. Editor's Note: Attorney General approval pending.

	CD	R1	R2	NSP	C	C2
Personal service (business)	A	O	O	O	A	O
Pet kennel	O	O	O	O	A	O
Registered marijuana dispensary (RMD)	O	O	O	O	A ⁴	A ⁴
Restaurant, indoor ⁵	A	O	O	O	A	O
Restaurant, drive-in ⁵	O	O	O	O	A	O
Restaurant, fast-food ⁶	O	O	O	O	O	O
Restaurant, formula ⁶	O	O	O	O	O	O
Retail trade (business)	A	O	O	O	A	O
Roadside stand, semi-permanent	O	O	O	O	O	O
Service trade business	O	O	O	O	A	A
Solar photovoltaic installation, large-scale ground-mounted (LSGMSPI)	O	O	O	O	O	P ⁷
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

NOTES:

- ¹ With the term "nudity" as defined by MGL c. 272, § 31.
- ² Only by not-for-profit organization or municipality on property principally occupied by said organization or municipality.
- ³ Only as an accessory, secondary use to an existing commercial use on the same lot.
- ⁴ Use authorized under special permits in the Medical Marijuana Overlay District in the C and C2 Zoning Districts as provided for in § 235-9.3 and as provided for in § 235-8.4B of these Zoning Bylaws.
- ⁵ 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.
- ⁶ The use limitations pertaining to fast-food restaurant and formula restaurant shall apply whether the use is a principal use or accessory use.
- ⁷ Provided parcel contains at least 75% degraded or previously disturbed land, is held in common ownership as of the date of this amendment, and subject to LSGMSPI site plan review by the Planning Board to assure compliance with the C2 District objectives contained in § 235-3.2, and as provided in § 235-10.3 of this bylaw.

C. Commercial (Heavy).

	CD	R1	R2	NSP	C	C2
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
Junkyard	O	O	O	O	O	O
Industry, heavy	O	O	O	O	O	O
Marine aquaculture	A	O	O	O	A	P
Motor vehicle junkyard	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

D. Institutional.

	CD	R1	R2	NSP	C	C2
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 ¹	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

NOTE:

¹ Special permit authorized under § 235-6.2E and § 235-8.4B of these Zoning Bylaws.

E. Farm uses.

	CD	R1	R2	NSP	C	C2
Farm, commercial	P	P	P	P	P	P
Farm-family, agriculture	P	P	P	P	P	P
Farm-family, livestock ¹	O	A	A	A	A	A
Greenhouse, commercial	P	P	P	P	P	O
Riding academy ¹	O	A	A	A	A	O
Stable, public ¹	O	A	A	A	A	O

NOTE:

¹ 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.

§ 235-5.4. Intensity of use schedule. [Amended 4-30-1985 ATM by Art. 61 and Art. 63; 4-29-1986 ATM by Art. 22; 4-25-2006 ATM by Art. 23]

A. Minimum lot requirements.

	CD	R1	R2	NSP	C	C2
Area (square feet)	20,000	30,000	40,000	3 acres	40,000	30,000
Frontage (feet)	125	135	135 ¹	200	200	135

NOTE:

¹ Increase to 200 feet on Route 6.

B. Minimum yard requirements.

	CD	R1	R2	NSP	C	C2	MSO
Front (feet)	25	30	30 ¹	50	100 ²	50 ^{3, 4}	25 ⁵
Side (feet)	20	25	25	35	35	35 ^{3, 4}	6
Rear (feet)	25	30	30	35	35	35 ^{3, 4}	15

NOTES:

- ¹ 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.
- ² 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 § 235-6.12A, Perimeter buffering). Front setbacks may be decreased to 50 feet for nonresidential 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.
- ³ Minimum yard requirements may be reduced to R1 requirements for residential uses with a special permit from the Zoning Board of Appeals.
- ⁴ Minimum front, side, and rear yard requirements for large-scale ground-mounted solar photovoltaic installations (LSGMSPI) shall be 100 feet, except for accessory structures, which shall be subject to minimum front, side, and rear yard setback requirements for the C2 Zoning District.
- ⁵ Front yard setbacks may be reduced to zero with a special permit from the Zoning Board of Appeals.

C. Maximum building coverage.

	CD	R1	R2	C	C2
Maximum building coverage	15%	15%	15%	25%	15%

D. Maximum National Seashore Park gross floor area (NSPGFA).

Lot Area	Maximum NSPGFA
Less than 10,500 square feet (just under 1/4 acre)	5% maximum building coverage
10,501 square feet to 21,000 square feet (1/4 to 0.48 acre)	1,050 square feet plus 7.4% of lot area over 10,500
21,001 to 42,000 square feet (0.48 to 0.97 acre)	1,825 square feet plus 3.2% of lot area over 21,000
42,001 to 84,000 square feet (0.97 to 1.92 acre)	2,500 square feet plus 1.43% of lot area over 42,000
84,001 to 126,000 square feet (1.92 to 2.89 acres)	3,100 square feet plus 1.2% of lot area over 84,000
126,001 square feet (2.89 acres and above)	3,600 square feet

NOTE:

The National Seashore Park gross floor area (NSPGFA) of a lot within the NSP District shall conform to the above table. In no event shall the dwelling exceed 2,800 square feet, nor shall the sum of the NSPGFA of a dwelling and its accessory buildings on any NSP District lot exceed 3,600 square feet.

- (1) National Seashore Park gross floor area (NSPGFA). The sum of the horizontal area(s) of the floors of a dwelling and all accessory buildings on a lot within the National Seashore Park District. All dimensions shall be measured between exterior faces of exterior walls, or exterior floor faces of decks.
- (2) For the purposes of calculating of NSPGFA, the following shall be included:
 - (a) Garage space, whether stand-alone or attached to or built into the dwelling or accessory buildings shall be attributed to the appropriate building.
 - (b) Basements, except areas as noted below.
 - (c) The sum of excess areas of: 1.) total porch area in excess of 400 square feet, and 2.) total deck area five feet or more above grade in excess of 400

square feet. The sum of such excess areas shall be attributed to the dwelling.

- (d) A guesthouse, private, which in the NSP District may exceed 250 square feet, and will be deemed an accessory building.
- (3) And the following shall be excluded:
- (a) Cellars and attics.
 - (b) Floor area with a ceiling height of less than five feet.
 - (c) Sheds: up to two sheds, plus one additional shed for each 1/2 acre above one acre of lot area. Any sheds beyond this limit shall be included in NSPGFA as accessory buildings.
 - (d) Basement areas used exclusively for heating, cooling, mechanical and electrical equipment necessary to the operation of the building.

E. Maximum height of buildings.

	CD	R1	R2	NSP	C	C2
Stories	2	2	2	2	2	2
Feet	28	28	28	28	28	28

- F. 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 are located shall apply.
- G. Intensity of use application to accessory dwelling units (ADUs). An accessory dwelling unit shall consist of a minimum of 200 square feet of livable floor area, subject to any requirements of the state. **[Amended 6-26-2021 ATM by Art. 45]**
- H. 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, except in the case of an accessory dwelling unit, as provided in § 235-6.21 of these Zoning Bylaws. **[Amended 6-26-2021 ATM by Art. 45]**
- I. 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 10. No motel unit shall be located nearer than 125 feet to a public way. All other front, side and rear yard requirements of the district in which located shall be complied with.
- J. Intensity of use application to commercial farm. A commercial farm shall require a minimum of five acres of land.

- K. Intensity of use application to camps. A camp shall require a minimum of four acres of land, exclusive of areas covered by water.
- L. 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.
- M. 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. **[4-23-1990 ATM]**
- N. 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 § 235-8.4B of the Wellfleet Zoning Bylaws.

ARTICLE VI General Regulations

§ 235-6.1. Nonconforming uses.

The lawful use of any structure of land existing at the time of enactment or subsequent amendment of this bylaw may be continued although such structure or use does not conform with provisions of the bylaw, subject to the following conditions: [Note: MGL c. 40A, § 6 attached (last few pages).³]

- A. Alteration or extension. No addition to or increase in the extent of a nonconforming use of a structure or land may be made, except that the Zoning 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 nonconforming.
- B. Restoration. In case of destruction or damage by fire or other catastrophe, a legally nonconforming 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 setback requirements in accordance with existing building code requirements, and not larger than previously (provided that reconstruction is started within 12 months and completed within 24 months of the catastrophe).
- C. Changes. A nonconforming 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.
- D. Discontinuance or abandonment. A nonconforming use, which has been abandoned, shall not be reestablished. Any nonconforming use discontinued for a period of two

3. Editor's Note: See Appendix B, included as an attachment to this chapter.

years or more shall not be reestablished, and any future use shall conform with this bylaw, unless reestablishment is authorized by special permit from the Zoning 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 4-30-1985 ATM by Art. 20]**

E. Alterations to nonconforming single- or two-family residential structures.

- (1) Nonconforming single- or two-family residential structures may be altered if:
 - (a) The Building Inspector determines that the alteration will not increase the nonconforming nature of the structure; or
 - (b) If the alteration will increase the nonconforming 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 nonconforming structure.
- (2) Conforming single- and two-family residential structures located on nonconforming 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 nonconforming use.
- (3) Permits issued under Subsection E(1)(b) and E(2)(b) of this section shall be subject to the provisions of § 235-8.4B(4) and § 235-8.4C(5) of this bylaw. In making the determination to issue the permit, the Zoning Board of Appeals may consider other criteria in § 235-8.4B.
- (4) For purposes of this section:
 - (a) "Alteration" means any alteration, reconstruction, extension, structural change, or replacement; and
 - (b) An "increase in the nonconforming nature of the structure" means any alteration that results in an increase in the volume of that portion of the structure presently nonconforming.

§ 235-6.2. Accessory buildings.

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 Article II of this bylaw, must be located a minimum of 30 feet from the front line and five 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.

§ 235-6.3. Parking requirements. [Amended 4-30-1985 ATM by Art. 66]

- A. 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:

Use	Spaces Required
Stores - retail business	At least 2 spaces for each establishment or 1 space for each 150 square feet of floor area, whichever is larger, plus 1 space for each 3 employees or nearest multiple thereof.
Banks and similar business	1 space for each 150 square feet of floor area plus 1 space for each 3 employees or nearest multiple thereof.
Inns, motels, tourist homes, etc.	1 space for each 2 sleeping accommodations plus 1 space for each 3 employees. Each double bed to be considered 2 sleeping accommodations.
Theaters, funeral homes and places of assembly	1 space for each 4 seats.
Restaurants - places serving food or beverages	1 space for each 4 seats plus 1 space for each 3 employees or nearest multiple thereof.
Residential areas	2 spaces for each individual dwelling unit; except in the case of apartments, where 1 1/2 spaces shall be provided for each unit.
Nonresidential uses	In all other cases of nonresidential uses in a residential area, there shall be provided at least 1 space for each 3 employees plus 1 space for each 150 square feet of gross floor area.
Industrial, manufacture and wholesale uses	1 space for each 3 employees based on the maximum number of employees the plant is designed to employ.
Bowling alleys	4 spaces for each alley.
Guest house	1 space for each sleeping room.
Health care clinic, medical or dental center or professional offices	4 spaces for 800 square feet of floor area plus 1 space for each 2 employees.

Use	Spaces Required
Bed-and-breakfast	In addition to the requirements for 2 parking spaces for each individual dwelling unit as specified above, 1 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.

B. Development of significant impact.

(1) Applicants for special permits for uses so controlled and which involve required parking for 10 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 § 235-6.20 or uses in the Main Street Overlay District herein under § 235-9.2 and regardless of floor area or the number of parking spaces, shall submit to the Zoning 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 Zoning Board of Appeals shall transmit one set of them to the Planning Board for its review and recommendation. **[Amended 4-25-2006 ATM]**

(2) Other uses. Parking requirements for all other uses not specifically mentioned shall be determined by the Zoning Board of Appeals for those uses controlled by special permit and by the Selectboard or by the Inspector of Building appointed by the Board for those allowed uses unless such use is subject to the provisions of § 235-6.3B of this bylaw.

(3) 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.

C. 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):

(1) A traffic impact study to determine the development's effect on road traffic-carrying capacity, road physical environment, and traffic and pedestrian safety.

- (2) A financial impact study to determine the development's effect on public service expenditures for administrative, police, fire, school and road maintenance services.

D. Egress. [Added 9-22-1986 STM by Art. 33]

- (1) Any driveway likely to carry more than 200 trips per average summer business day must comply with the following unless the Zoning 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 Works⁴ imposes requirements precluding compliance:

	On Route 6	Other Locations
Exiting vehicle unobstructed sight distance at edge of traveled way	350 feet	200 feet
Driveway center line separation from other driveway serving 100+ trips	275 feet	100 feet
Driveway center line 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

- (2) 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.

§ 235-6.4. 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:

- A. 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.
- B. 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 Zoning Board of Appeals.

4. Editor's Note: Now the Massachusetts Department of Transportation (MassDOT).

§ 235-6.5. Windmills.

- A. Windmills shall be permitted by a special permit from the Zoning Board of Appeals. No special permit for a windmill shall be granted unless the Zoning Board of Appeals makes a finding that the windmill complies with the following conditions:
- (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 20 feet. Setbacks will be measured to the center of the tower base.
 - (2) The maximum tower height shall be 65 feet from grade to the center of the rotor.
 - (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 10 feet from the ground. If a fence is used, it shall be no lower than five 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.
 - (4) The diameter of a rotor may not exceed 35 feet. The minimum height of the rotor shall not be less than 15 feet from the ground as measured from the lowest point of the arc of the rotor.
 - (5) The windmill shall not generate excessive noise, cause interruption of television or radio station reception or otherwise constitute a public nuisance.
- B. 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.
- C. For the purposes of the bylaw, the following definitions shall be applied:
- WINDMILL — A device which converts wind energy to mechanical or electrical energy.
- ROTOR — The blades plus the hub to which the blades of a windmill tower are attached.
- D. 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 § 235-8.2 of this bylaw.

§ 235-6.6. 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.

- A. 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.

- B. Application. Applicants shall submit five copies of an application and plans which shall comply with the requirements of the Wellfleet Subdivision Control Regulations⁵ 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 MGL Ch. 41, the Subdivision Control Law, and the special permit simultaneously.
- C. Other materials. The application materials shall indicate each landowner's 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.
- D. 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.
- E. 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.
- F. 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

5. Editor's Note: See Ch. 300, Subdivision Regulations.

Maximum Lot Coverage	15%
Maximum Height	See § 235-5.4E.

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.

- G. 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.
- H. 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.
- I. Roads.
 - (1) Pervious surfaces may be used except where grades require pavement.
 - (2) Right-of-way for roads may be reduced to 30 feet at the discretion of the Planning Board.
 - (3) Roadway width shall be minimum consistent with access for emergency vehicles.
 - (4) The road layout shall minimize cutting and grading.
 - (5) Other requirements of the Wellfleet Subdivision Control Regulations with regard to road design shall be complied with.⁶
- J. 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.
- K. 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.
- L. 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.
- M. 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

6. Editor's Note: See Ch. 300, Subdivision Regulations.

conservation or recreation, in utilizing natural features of the land, in allowing more efficient provision of streets, utilities and other public services.

§ 235-6.6.1. Affordable flexible residential design. [Added 4-23-2018 ATM by Art. 40]

A. Purpose.

- (1) The purpose of this § 235-6.6.1 of the Wellfleet Zoning Bylaws is to provide a residential development zoning provision with flexible dimensional regulations to encourage efficient site layout that minimizes land consumption and creates opportunities for diversified and affordable housing. The Town wishes to encourage affordable flexible residential design (AFRD) as an alternative to conventional development because AFRD results in creation of more affordable housing for year-round residents, while allowing more design flexibility to encourage more efficient site layout and preservation of contiguous open space.
- (2) The goals of AFRD are:
 - (a) To encourage and to promote the provision of affordable housing for year-round residents.
 - (b) To allow greater flexibility and creativity in the design of residential developments.
 - (c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
 - (d) To facilitate the construction and maintenance of streets, utilities, and public services in a more efficient manner.
 - (e) To further housing and land use goals of the Local Comprehensive Plan.

B. Definitions. In this § 235-6.6.1, the following terms have the meaning indicated:

AFFORDABLE FLEXIBLE RESIDENTIAL DESIGN ("AFRD") — A residential development in which at least 30% of the base allowable density is composed of affordable dwelling units and buildings are clustered together with allowance for reduced lot sizes and frontage. The land not included in the building lots is preserved as open space. AFRD may include residential subdivisions or residential development where the property is held in condominium or other form of ownership in which the property is not subdivided.

BASE ALLOWABLE DENSITY — The maximum number of lots or units that could be built on a site under a conventional subdivision plan, as demonstrated in a preliminary subdivision plan, in accordance with § 235-6.6.1G.

COMMON OPEN SPACE — Any open space set aside, dedicated, designated, or reserved for use as passive recreation, natural buffers, and active recreation as permitted by this § 235-6.6.1. Common open space shall be contiguous wherever possible and shall not include roadways, parking areas, or private yards.

INCOME-ELIGIBLE HOUSEHOLD — A one or more person household whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the DHCD Guidelines.

OPEN SPACE — For the purposes of this § 235-6.6.1 of the Zoning Bylaws, open space shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for use and enjoyment of the owners and occupants of an AFRD, as permitted by this § 235-6.6.1.

C. Applicability.

- (1) AFRD is allowed by special permit under zoning, in accordance with this § 235-6.6.1, for development that proposes to provide at least 30% of the base allowable density number, as determined in accordance with § 235-6.6.1G, as affordable dwelling units for income-eligible households.
- (2) The minimum area required for an AFRD development is 60,000 square feet of contiguous upland.
- (3) AFRD is subject to the requirements of the Rules and Regulations Governing the Subdivision of Land, Wellfleet, Mass ("Subdivision Rules and Regulations"),⁷ as applicable, except where modification is allowed in accordance with § 235-6.6.1F, and subject to any other generally applicable non-zoning land use regulations. AFRD may be proposed in the NSP, CD, R1, R2, C, and C2 Zoning Districts; except that any AFRD development in the NSP must comply with the Act of Congress of August 7, 1961, which provided for the establishment of the Cape Cod National Seashore and the regulations promulgated thereunder. If subdivision approval is not required because a new roadway is not proposed, an applicant may nevertheless apply for AFRD subject to the requirements of this § 235-6.6.1.

D. Special permit granting authority. The Planning Board shall act as the special permit granting authority for AFRD applications. The Planning Board may adopt, and from time to time amend, rules and regulations consistent with the provisions of this § 235-6.6.1, MGL c. 40A and other provisions of the Massachusetts General Laws, and the Subdivision Rules and Regulations, and shall file a copy of said rules and regulations with the Town Clerk.

E. Relationship to Subdivision Rules and Regulations. Nothing herein shall exempt a proposed subdivision from compliance with other applicable provisions of the Wellfleet Zoning Bylaws or the Subdivision Rules and Regulations,⁸ nor shall it affect the right of the Board of Health to approve, condition or disapprove a subdivision plan in accordance with the provision of such Subdivision Rules and Regulations. In any case where the Subdivision Rules and Regulations conflict with zoning, the Wellfleet Zoning Bylaws govern.

F. Modification of subdivision roadway. The Planning Board may reduce applicable subdivision road construction standards (including but not limited to roadway width,

7. Editor's Note: See Ch. 300, Subdivision Regulations.

8. Editor's Note: See Ch. 300, Subdivision Regulations.

center line radii, curbing, cul-de-sac radius, drainage requirements, etc.), and notwithstanding these reductions, subdivision road constructions will not apply to base allowable density calculations in § 235-6.6.1G(2) where, in the opinion of the Planning Board, such reductions will result in enhanced overall site design and provide adequate and safe access for the development.

G. Base allowable density.

- (1) The base number of dwelling units permitted under AFRD shall not exceed that which would be permitted under a conventional ("grid") subdivision that complies with the Wellfleet Zoning Bylaws, Subdivision Rules and Regulations⁹ and any other applicable laws and regulations of the Town or the state.
- (2) To determine the base allowable density, an applicant shall submit a preliminary subdivision plan that demonstrates the allowable base number of units. The Subdivision Rules and Regulations shall apply to the preliminary subdivision plan layout without waivers.
- (3) The Planning Board may grant a density bonus for additional dwellings in accordance with § 235-6.6.1H. The number of dwelling units shall not exceed the base allowable density except where the Planning Board has granted a density bonus.

H. Density bonus. The Planning Board may grant a density bonus in exchange for the provision of deed-restricted affordable housing or lot(s). For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted.

I. Types of residential development. The allowable dwelling units may be developed as single-family or multiple-family dwelling units, provided that the number of dwelling units does not exceed the base allowable density as determined in § 235-6.6.1G, or as allowed in § 235-6.6.1H, where a density bonus is granted.

J. Dimensional requirements.

- (1) Minimum AFRD area. The minimum area for an AFRD development is 60,000 square feet contiguous upland.
- (2) Minimum lot size. There is no minimum size for lots within an AFRD. The limiting factor on lot size in AFRD is the need for adequate water supply and sewage disposal. Therefore, minimum lot size shall be sufficient to meet Board of Health requirements for disposal of sewage and protection of water supply.
- (3) Frontage. There is no numerical requirement for road frontage in AFRD. Each lot must have legal, actual and adequate frontage so as to allow vehicular access to a public way or a way approved under Subdivision Rules and Regulations.¹⁰ Actual and adequate frontage shall be determined by the Planning Board.
- (4) Setbacks. The minimum setback for any building from a property line shall be 10 feet. In no event shall any dwelling be closer than 20 feet to each other. However,

9. Editor's Note: See Ch. 300, Subdivision Regulations.

10. Editor's Note: See Ch. 300, Subdivision Regulations.

all setbacks from the perimeter lot line AFRD area shall be 30 feet for front and rear and 25 feet for sides.

K. Site design.

- (1) Lot arrangement. Lots shall be located in a manner that protects scenic views, wildlife habitat, hilltops, ponds, steep slopes, and other sensitive environmental resources and land of conservation value, while facilitating pedestrian and bicycle circulation.
- (2) AFRD proposals are required to design the site using the following process:
 - (a) Identify conservation value: areas such as wetlands, buffer zones, habitat, cultural resources, etc. shall be identified and removed from the base allowable density calculations as noted in § 235-6.6.1F.
 - (b) Place the dwellings to maximize residents' access to open space, preservation of views, privacy, etc.
 - (c) Align roads, ways, and trails to provide vehicular and pedestrian access.
 - (d) Draw lot lines around the dwellings, or in the case of a condominium development the designated areas shall be delineated.
- (3) Shared driveways. Shared driveways serving no more than five dwelling units may be allowed in the AFRD, provided that adequate vehicular access to the site has been provided by a way, or ways, that meets the following criteria:
 - (a) Minimum width: 10 feet, with two-foot clear area on each side and pull-off areas;
 - (b) Maximum grade: 10%;
 - (c) Driveway design can accommodate vehicular travel and provide direct ingress and a rapid response time for emergency vehicles. The Board may require that secondary access be provided for reasons of public safety and convenience.

L. Application requirements.

- (1) Pre-application meeting. A pre-application discussion is required between the applicant and the Planning Board. The purpose of this informal meeting is to introduce the applicant to the AFRD zoning and Subdivision Rules and Regulations and discuss the applicant's objectives prior to developing engineered plans and other application materials.
- (2) Application materials. Applicants shall submit 16 copies of an AFRD application and plans which shall comply with the submission requirements of the Subdivision Rules and Regulations and which shall also indicate proposed land and building area, location of common open space and upland area. The plans shall be prepared by a team including a registered civil engineer and a registered land surveyor.

- (a) Preliminary plan and existing conditions plans. Prior to submission of a special permit application, applicants shall submit a preliminary subdivision plan in accordance with the Subdivision Rules and Regulations for the purposes of determining the number of lots/units possible on in the AFRD (i.e., base allowable density), in accordance with § 235-6.6.1F. For this reason, it is recommended that a copy of an existing conditions plan be submitted at this stage. The existing conditions plan shall include but not be limited to existing topography at two-foot contours, wetlands, water bodies and the one-hundred-year floodplain, existing rights-of-way, easements, and existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths.
 - (b) Definitive plan. The definitive subdivision plan shall be submitted with the special permit application. Where an AFRD development is not a subdivision of land, the AFRD development plan shall conform to the submission requirements for a definitive plan.
 - (c) Other materials. Applicants shall also include a statement indicating the proposed use and ownership of the open space, where applicable.
- (3) The Planning Board may conduct the public hearing for the AFRD special permit concurrently with a public hearing for the subdivision in conformity with the provisions of MGL c. 41, §§ 81K - 81GG and the Subdivision Rules and Regulations.
 - (4) Strict compliance with the requirements of these Subdivision Rules and Regulations may be waived when, in the judgment of the Board, such action is in the public interest, and not inconsistent with the Subdivision Control Law. The application for approval of a definitive plan must be accompanied by a written request for waiver of strict compliance with the Subdivision Rules and Regulations, the regulation sought to be waived, the nature and location of the waiver sought, and a statement by the applicant's surveyor or engineer that such waiver is consistent with each of the purposes set forth in § 300-1.3 of the Subdivision Rules and Regulations.
- M. Approval criteria. The Planning Board may grant a special permit for an AFRD application upon making the following determinations:
- (1) The proposed development meets the goals and purposes of AFRD.
 - (2) The proposed development is suitable for the proposed location, and the layout of the developed areas, including buildings, roads, and utilities, conforms to the natural features of the parcel, minimizes the amount of land to be disturbed, protects sensitive resources on site, and provides an efficient design of streets and ways and utilities.
 - (3) The proposed development complies with the special permit standards of § 235-8.4B of the Wellfleet Zoning Bylaws.
- N. Common open space requirements.

- (1) Required open space. AFRD areas greater than 10 acres shall provide a minimum of 25% of the site area of the parcel as permanently protected open space, except where reduction is allowed, as set forth in § 235-6.6.1N(2) below. Applicants are encouraged to retain natural vegetation for screening, roadway buffers, and natural resource protection to the maximum extent feasible.
- (2) Applicants are encouraged to include wetlands and water bodies within the open space; however, the amount of wetland that may count towards the open space requirement shall not exceed the percentage of wetland on the entire site under existing conditions. Roadway rights-of-way shall not count toward the area to be provided as open space.
- (3) The Planning Board may reduce the open space requirement for AFRD proposals with one or more of the following characteristics:
 - (a) The number of affordable units provided exceeds 50% of the base allowable density.
 - (b) The project site is located within a 1/2 mile of Wellfleet Center Historic District or Paine Hollow Historic District.
 - (c) More than 50% of the existing project site is previously disturbed.
 - (d) The project site contains an historic structure(s), and the historic structure will remain in its current location or moved elsewhere on the site.
 - (e) The project is located adjacent to open-space land such as the National Seashore, conservation land, wetland, or similar type open-spaced areas, if the layout of the AFRD benefits outweigh the open-space benefits.

O. Permissible uses of open space.

- (1) Purposes. Open space shall be used solely for passive recreation or conservation purposes by residents. At least 1/2 of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the AFRD application.
- (2) Infrastructure in open space. A minimal amount of stormwater infrastructure may be located in the open space area, provided it is designed as low-impact development as defined by the Massachusetts Department of Environment Protection in its regulations and guidance and does not significantly impact the features to be preserved. If the applicant demonstrates to the satisfaction of the Planning Board that there are practical difficulties in locating required septic fields within the areas to be developed, the fields may be located in adjacent parts of the open space, provided the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the site plan.

P. Open space restriction.

- (1) Except as provided in § 235-6.6.1P(2), the open space shall be protected with a permanent restriction. The applicant shall provide a permanent restriction or restrictions (conservation, open space or similar) in favor of a government entity,

a land trust, homeowners' association, or a not-for-profit organization with a mandate that includes land conservation.

- (2) In the case of an AFRD that is less than or equal to 10 acres with more limited open spaces to be used primarily by its residents, the Planning Board may accept as adequate protection the combination of homeowners' association, deed or covenant restrictions, and the conditions in the special permit decision.
- Q. Encumbrances. All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.
- R. Design requirements. The location of open space provided through this § 235-6.6.1 shall be consistent with the policies contained in the Local Comprehensive Plan and the Open Space and Recreation Plan, as amended from time to time and on file with the Town. The following design requirements shall apply to open space and lots provided through this § 235-6.6.1, as applicable:
- (1) Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
 - (2) Open space shall be arranged to protect valuable natural and cultural environments such as wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
 - (3) Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
 - (4) Where the proposed development abuts or includes a body of water or a wetland, these areas and the 100 foot buffer to such areas, as stated in § 141-3 of the Wellfleet Environmental Protection Bylaw, shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
 - (5) The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
 - (6) Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.
 - (7) Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land.
- S. Affordability restriction.
- (1) As a condition to an AFRD special permit, the applicant shall be required to execute an affordable dwelling restriction ("restriction") for each affordable

dwelling unit using DHCD's universal Affordable Housing Deed Rider and governed by the terms and conditions of the DHCD Guidelines. All restrictions shall be for perpetuity or the longest period allowed by law. No certificate of occupancy shall be issued until the applicant has provided proof of recording of the restriction in the Registry of Deeds to the Planning Board and the Building Inspector. Local preference for affordable dwelling units shall be provided to the extent allowed by DHCD Guidelines.

- (2) It shall be a condition upon every special permit issued under this § 235-6.6.1 that the applicant shall comply with any DHCD regulations under Chapter 40B of the Massachusetts General Laws and the DHCD Guidelines for qualification of the dwelling units created under this Subsection S towards the Town's subsidized housing inventory, including but not limited to the form of the affordable dwelling restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards and maximum rent or sale price.
- T. Severability. If any provision of this § 235-6.6.1 is held invalid by a court of competent jurisdiction, the remainder of § 235-6.6.1 shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this § 235-6.6.1 shall not affect the validity of the remainder of the Wellfleet Zoning Bylaws.

§ 235-6.7. 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.

- A. Denial of permit. The Selectboard 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.
- B. Right of appeal. Any applicant denied a permit under the provisions of this section shall have the right of appeal to the Zoning 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.

§ 235-6.8. 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 MGL c. 48, § 13.

§ 235-6.9. 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.

§ 235-6.10. Drainage and damming.

Within the National Seashore Park District there shall be no drainage, damming or relocating of any watercourse, except by publicly authorized agency for the purpose of pest control.

§ 235-6.11. (Reserved)**§ 235-6.12. Landscaping. [Added 4-29-1986 ATM by Art. 21]**

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.

- A. Perimeter buffering.
 - (1) Parking areas for 10 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 three feet, and from all other property lines by at least 10 feet.
 - (2) Alternatively, separation from Route 6 may be reduced to 20 feet and separation from all other property lines may be reduced to five feet, provided that not less than 20% of lot area is maintained with vegetative cover.
 - (3) 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 (two feet 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.

- B. 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 two inches 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 12 months. One required parking space may be omitted for each 300 square feet of planting area within the parking lot, on approval of the Zoning Board of Appeals as a condition of the special permit, upon the Board's determination that parking demand will still be adequately served.

§ 235-6.13. Floodplain District zoning regulation. [Added 4-30-1985 ATM by Art. 56; amended 4-28-2014 ATM by Art. 45]

- A. Floodplain District. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Wellfleet designated as Zone A, AE, AO or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Wellfleet are panel numbers 25001C0229J, 25001C0233J, 25001C0234J, 25001C0237J, 25001C0239J, 25001C0241J, 25001C0242J, 25001C0243J, 25001C0244J, 25001C0261J, 25001C0262J, 25001C0263J and 25001C0264J dated July 16, 2014. The exact boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Inspector and the Conservation Commission. 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 (780 CMR).
- B. Development regulations. The following requirements apply in the Floodplain District:
- (1) Within Zone A, where the one-hundred-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. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.
 - (2) Within Zone AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
 - (3) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (4) All subdivision proposals must be designed to assure that:

- (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (5) Within the Floodplain District are areas designated as coastal high hazard areas (Zone VE). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provisions shall apply: All new construction shall be located landward of the reach of the mean high tide.

§ 235-6.14. Special Flood Hazard District regulations. [Added 4-30-1985 ATM by Art. 57; amended 5-5-1987 ATM by Art. 73; 4-25-1988 ATM; 4-28-2014 ATM by Art. 45]

In special flood hazard areas subject to high wave impact and/or severe flood inundation (Zone A, AE, AO, VE) of the Barnstable County Flood Insurance Rate Map (FIRM) for the Town of Wellfleet dated July 16, 2014 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.

A. Within these zones the following uses are permitted:

- (1) Conservation of watercourses, plants and wildlife.
- (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.
- (3) Grazing, farming, agriculture and the harvesting of crops.
- (4) Temporary nonresidential structures used in connection with fishing, shellfishing, aquaculture, harvesting, storage or sale of products raised on the premises.
- (5) Dwellings, signs and parking lots lawfully existing prior to the adoption of these provisions.
- (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.
- (7) Boardwalks, wooden stairways, snow fences.
- (8) Non-commercial signs (as permitted in the residential districts, § 235-7.2 of the Wellfleet Zoning Bylaw), provided such uses do not affect the natural flow of any watercourse.

B. To meet minimum lot area requirements for uses allowed in the underlying zone, lots must have a contiguous lot area outside of the Floodplain District of at least 60% of the

minimum lot area requirement, and said area must be accessible from a street or way open to public or private use. For purposes of determining lot coverage, the entire lot area shall be the basis; however, all structures and related facilities must be confined to that portion of the lot which is not swamp, pond, bog, dry bog, marsh, areas of exposed groundwater or which lies within the Floodplain District.

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

- (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.
- (2) A showing of good and sufficient cause.
- (3) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Compliance in all respects with sections of the State Building Code (780 CMR) which address floodplain and coastal high hazard areas.
- (6) Approval of the Wellfleet Conservation Commission in accordance with MGL c. 131, § 40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw.¹¹

D. If an exemption is granted to construct a structure below the base flood elevation, the Zoning 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.

E. The Zoning 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.

F. In a riverine situation, the Wellfleet Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

- (1) Adjacent communities.
- (2) NFIP State Coordinator

Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104

11. Editor's Note: See Ch. 141, Environmental Protection.

(3) NFIP Program Specialist

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor

Boston, MA 02110

§ 235-6.15. (Reserved)**§ 235-6.16. (Reserved)****§ 235-6.17. Curb cut permits.**

- A. 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 onto and from a public way, to minimize soil/slope erosion, and to provide necessary drainage to areas adjacent to public ways.
- B. Definitions.
- ADJACENT PROPERTY OWNER — A person or entity owning property bordering on a way.
- DRIVEWAY — Privately owned access to and from a way.
- WAY — A Town-owned road/way.
- C. 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:
- (1) A plan showing location of the property, the proposed driveway, and the intersection of the driveway with the way;
 - (2) Specific details of drainage when required;
 - (3) Specific provisions to minimize slope or soil erosion if necessary;
 - (4) Such other identifying information that may be requested by the DPW.
- D. 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.
- E. 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.

- F. Appeal. Any person aggrieved by the inability to obtain the permit as requested may appeal to the Zoning Board of Appeals within 30 days of the date of the decision of the Director of Public Works.
- G. Fee. The Selectboard shall have the authority, from time to time, to set fees for this permit and any required inspections.

§ 235-6.18. Communication structures, buildings and appurtenances. [Approved 2-18-1987 by Attorney General; amended 7-17-1998]

- A. 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.
- B. Requirements. The Planning Board is hereby designated the special permit granting authority for special permits issued under § 235-6.18. 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 65 days of the filing of an application and shall issue a decision within 90 days following the date of the public hearing.
 - (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 ACECs have been digitized and are available at the EOEA Data Center, 20 Somerset Street, 3rd floor, Boston, MA 02108 (617-727-3888).
 - (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.
 - (3) Parking. Provisions for parking shall be in accordance with § 235-6.3A of this Zoning Bylaw.
 - (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 structures, buildings and appurtenances at the owner's expense.

- (5) **Removal.** An applicant and the landowner, 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 12 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) **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 preexisting structure.
- (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.
- (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.
- (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.
- (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.
- (11) **Environmental.**
 - (a) No hazardous waste shall be discharged on the site.

- (b) All run-off of stormwater 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 Chapter 135, Drainage Control, of the Wellfleet General Bylaws.
 - (c) 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.
- (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 preexisting structures, provided such installation shall preserve the character of the structure. The applicant has the burden of proving that there are no feasible preexisting structures.
 - (b) If the applicant demonstrates that there are no feasible preexisting 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.
- (13) Pre-application consultation. At least 30 days before submitting 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 preexisting 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 30 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.
- (14) Application submittal requirements. All written information submitted in accordance with § 235-6.18B(15) and (16) shall be certified by an appropriate licensed professional.
- (15) Applications for siting on public land or on a preexisting structure. If a communication structure, building or appurtenance is to be installed on a preexisting 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 one inch equals 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, one-hundred-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.
- (16) For all applications other than those set forth in § 235-6.18B(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 § 235-6.18B.
- (g) A description of the proposed prime and alternative site, including:
- [1] The most recent U.S.G.S. topographic quadrangle map (scale one inch equals 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 one inch equals 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 one inch equals 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, one-hundred-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 one inch equals 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 preexisting 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.G.S. topographic quadrangle map (scale one inch equals 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.
- (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.
- (18) Completeness. The Planning Board shall not approve any application that does not comply with all the requirements of this bylaw.
- C. Approval criteria. The Planning Board shall act in accordance with the standards and requirements set forth herein and in accordance with § 235-8.4B of this bylaw and with the Massachusetts General Laws.
- D. Severability. The invalidity of any section of this bylaw shall not invalidate any other section.
- E. The Planning Board may grant a special permit for an application which does not meet all the requirements of § 235-6.18, provided the Planning Board makes a written finding which states why such action is in the best interests of the Town.

§ 235-6.19. Bed-and-breakfast uses.

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 § 235-6.3A 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.

§ 235-6.20. Adult entertainment uses. [Amended 12-4-2000, AG approved 5-25-2000]

- A. Authority. This bylaw is enacted pursuant to MGL c. 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.
- B. Purpose.
- (1) 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 towns, 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.

- (2) 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.

C. Definitions. Adult entertainment uses shall include the following uses:

- (1) Adult bookstores, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (2) Adult motion picture theatre, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (3) Adult paraphernalia store, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (4) Adult video store, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (5) 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 MGL c. 272, § 31.

D. 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 MGL c. 119, § 63 or MGL c. 272, § 28. The applicant shall be responsible for all related costs for record check processing.
- (3) Location.
 - (a) Adult entertainment uses shall not be located within:
 - [1] 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

- [2] 500 feet from the nearest establishment licensed under MGL c. 138, § 12; or
 - [3] 500 feet from any other adult entertainment use.
- (b) 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.
 - (c) 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 § 235-5.4, 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 MGL c. 272, § 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 to Article VI, § 235-6.3B. 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 § 235-6.20D(3) above.
 - (12) No adult entertainment establishment shall employ any person or persons who would be excluded as a permit holder under this bylaw.

- E. 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.
- F. 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.
- G. Variances. (Disapproved and deleted by Attorney General May 25, 2000)
- H. Severability. 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.

§ 235-6.21. Accessory dwelling units (ADU). [Amended 6-26-2021 ATM by Art. 45]

- A. Purpose. To enable an increase of year-round rental housing opportunities; to encourage greater diversity of housing types appropriate to residents with varying needs; and to support a stable and diverse year-round community and a robust local workforce.
- B. Accessory dwelling unit (ADU). An accessory dwelling, as defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws, is an additional dwelling unit allowed on a single lot in all districts of the Town if in compliance with all Town, Commonwealth of Massachusetts and federal statutes, bylaws and regulations where applicable, unless otherwise allowed by this bylaw.
 - (1) Accessory dwelling units are allowed either as a detached building, or as a separate dwelling unit within or attached to a dwelling, a building used for a principal use; or within or attached to any accessory building, as defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws.
 - (2) Accessory dwelling units shall be no larger than 1,200 square feet of livable floor area as that term is defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws.
 - (3) In order to maintain its status as an accessory use to the principal use on the same lot, the ADU must be held in the same ownership as the principal use.
 - (4) The rights and requirements of this bylaw and/or special permit, as they apply to each ADU, shall run with the land upon any transfer of ownership of a property containing an accessory dwelling unit built under the provisions of this bylaw.
 - (5) A property owner may choose to cease to use an accessory dwelling unit by formally reporting its change in use to the agent designated by the Town Administrator to administer and monitor such units and altering it to meet the

requirements of a permitted use. The agent will then register this change in use with the Building Inspector, the Health Agent and the Town Assessor.

C. Procedure.

- (1) The property owner shall apply for a building permit and/or certificate of occupancy for an ADU. The Board of Health shall also review and inspect the ADU for compliance with the Health Code prior to the issuance of a certificate of occupancy.
- (2) Prior to the issuance of a certificate of occupancy, the ADU shall be registered with the agent designated by the Town Administrator who will administer and monitor such units, maintain a current record of such units and register them with the Town's Assessor, Building Department, and Health Department.

D. Monitoring. An Affidavit of Compliance signed by the property owner shall be submitted initially, when the unit is first occupied or used, and then annually, on September 1st or the nearest business day, to the agent designated by the Town Administrator to monitor and administer such units to confirm that the accessory dwelling unit or units are being leased for a minimum of a year, and not otherwise leased or occupied for any other purpose, and that they shall be used as a dwelling, according to the standards and conditions of this bylaw.

E. Enforcement and penalties. Upon a written determination by the Building Inspector that the property owner has failed to comply with these provisions, the property owner shall bring the unit or units into compliance within 30 days of such written notice pursuant to MGL c. 40A, § 7. In addition, the Building Inspector shall impose any and all fines and penalties referenced in § 235-8.3 of these bylaws.

F. Opportunity for affordable housing property tax exemption. A property owner who leases an accessory dwelling unit affordably and in compliance with this bylaw, as specified by the Special Act of 2010 and adopted by Wellfleet voters in May 2011, may apply to the agent designated by the Town Administrator to administer and monitor such units to receive an application for a property tax exemption.

§ 235-6.22. Home occupations.

A. Purpose. The purpose of this bylaw is:

- (1) To allow by right and regulate the conduct of a home occupation as an accessory use;
- (2) To allow residents to utilize their homes as a work place and a source of livelihood under certain circumstances and conditions;
- (3) To ensure home occupations are compatible with the neighborhoods in which they are located; and
- (4) To protect neighborhoods from adverse impacts of activities associated with home occupations.

B. Requirements and standards. Home occupations shall conform to the following standards:

- (1) No more than two non-family members shall be employed in the home occupation.
- (2) There shall be no exterior sign or other display except as permitted under Article VII, Signs, and no exterior indication of the home occupation which detracts from or is in conflict with the neighborhood character.
- (3) No offensive effect of the home occupation shall be perceptible off-premises, including but not limited to noises, vibration, smoke, dust, odor, heat, glare, fire hazard, electrical disturbance or interference with communication devices or other hazard or nuisance.
- (4) The floor area in use by the home occupation shall not exceed 25% of the total floor area of the principal and any accessory buildings.
- (5) No exterior storage of home occupation related materials or equipment is permitted on the home occupation premises unless screened, if necessary, from abutters and street by a stockade-type fence six feet in height. However, equipment as noted in Subsection B(9) and (10) is exempt from screening, as well as any boats, vehicles, trailers or accessory structures. **[Amended 4-23-2018 ATM by Art. 37]**
- (6) Exterior storage of home-occupation-related materials or equipment shall not exceed 30% of the lot area for aquaculture, shellfishing, and fishing home occupations, and shall not exceed 15% of the lot area for all other home occupations.
- (7) The onsite sale of consumer goods shall be prohibited except for the sale of products or goods produced, fabricated or refurbished on the premises as a result of the home occupation.
- (8) The physical presence of the public and the regular physical presence of non-family member employees shall be limited to the hours between 7:00 a.m. and 8:00 p.m. Monday through Sunday from Memorial Day through Labor Day, and between 7:00 a.m. and 8:00 p.m. Monday through Saturday at all other times.
- (9) Traffic generated by the home occupation shall not significantly increase the volume of traffic in the neighborhood so as to create any traffic hazard, nuisance, or congestion. Any need for parking generated by the conduct of the home occupation shall be met off the street. Long-term parking (more than six hours) shall be limited to two vehicles, excluding the resident family's personal household vehicle(s).
- (10) No more than two motor vehicles (as that term is defined by MGL c. 90, § 1, but containing no more than six wheels), and no more than two trailers (as that term is defined by MGL c. 90, § 1, but not exceeding 16 feet in length), used exclusively in the home occupation, may be kept on the premises.
- (11) There shall be no disposal of toxic or hazardous materials on the home occupation premises.

§ 235-6.23. Service trade home business (STHB).

- A. Purpose. The purpose of this bylaw is:
- (1) To allow by special permit and regulate the conduct of service trade home businesses (STHBs) as an accessory use;
 - (2) To allow residents to utilize their homes as a work place and a source of livelihood under certain circumstances and conditions;
 - (3) To ensure STHBs are compatible with the neighborhoods in which they are located; and
 - (4) To protect neighborhoods from adverse impacts of activities associated with STHBs.
- B. Requirements and standards. STHBs shall conform to the following standards:
- (1) No more than three non-family members may report to the STHB premises for regular work;
 - (2) No exterior storage of STHB-related materials or equipment is permitted on the STHB premises unless concealed from view of abutters and street by a fence or suitable plantings of evergreen or deciduous shrubs and trees;
 - (3) Exterior storage of STHB-related materials or equipment shall not exceed 30% of the lot area;
 - (4) No more than two motor vehicles (as that term is defined by MGL c. 90, § 1, but containing no more than six wheels), and no more than two trailers (as that term is defined by MGL c. 90, § 1, but not exceeding 16 feet in length), used exclusively in the STHB, may be kept on the premises;
 - (5) There shall be no exterior sign or other display except as permitted under Article VII, Signs, and no exterior indication of the STHB which detracts from or is in conflict with the neighborhood character;
 - (6) No offensive effect of the STHB shall be perceptible off-premises, including but not limited to noises, vibration, smoke, dust, odor, heat, glare, fire hazard, electrical disturbance or interference with communication devices or other hazard or nuisance;
 - (7) The floor area in use by the STHB shall not exceed 30% of the total floor area of the principal and any accessory buildings;
 - (8) Traffic generated by the STHB shall not significantly increase the volume of traffic in the neighborhood so as to create any traffic hazard, nuisance, or congestion. Any need for parking generated by the conduct of the STHB shall be met off the street. Long-term parking (more than six hours) shall be limited to three vehicles, excluding the resident family's personal household vehicle(s);
 - (9) The physical presence of the public and the regular physical presence of non-family member employees shall be limited to the hours between 7:00 a.m. and

8:00 p.m. Monday through Sunday from Memorial Day through Labor Day, and between 7:00 a.m. and 8:00 p.m. Monday through Saturday at all other times; and

- (10) There shall be no disposal of toxic or hazardous materials on STHB premises.

§ 235-6.24. National Seashore Park District special permit.

A. Purpose of National Seashore Park District special permit.

- (1) 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.
- (2) Further, the purpose of the National Seashore Park District special permit is to ensure that the National Seashore Park District objectives found in § 235-3.2 of this bylaw are adhered to and that the proposed building changes are not detrimental to these objectives; and are compatible with these objectives.

B. 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:

- (1) Exceed the maximum National Seashore Park gross floor area (NSPGFA) listed in § 235-5.4D of this bylaw; or
- (2) Otherwise increase the nonconforming nature of the structure, within the standards of § 235-6.1E of this bylaw.
- (3) Nothing in § 235-6.24 shall be construed as authorizing the issuance of a special permit which exceeds the limitations set forth in Footnote 1 of § 235-5.4D.

C. Standards and criteria. In addition to the standards and criteria listed in § 235-8.4B of this bylaw, 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, floodplains, 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 twenty-five-year storm. Stormwater 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 § 235-5.4D NSPGFA (National Seashore Park gross floor area), 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 September 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 square feet of single-family dwelling living space as of September 1, 1959 is expandable to 1,500 square feet, and of this total sum another 750 square feet is allowable for an accessory building.

§ 235-6.25. Municipal wind turbines.

- A. Purposes. The purpose of this bylaw 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 alter the type or increase the size of such facilities or other equipment shall require a special permit.
- B. Definitions.

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° from grade, as measured from the base at grade of the support tower.

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 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.

WIND TURBINE (WT) — A device which converts wind energy to electrical energy, which typically includes a support tower.

C. General requirements.

- (1) The applicant shall be the WF operator, if one exists, and the Town of Wellfleet as the landowner.
- (2) Special permits.
 - (a) 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.
 - (b) 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 \$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.
- (f) Prior to filing an application for a special permit, but not more than 180 days prior to filing the application, the applicant shall arrange for a balloon or crane test at the proposed site or at a site not more than 100 feet from the proposed site. The balloon test shall be conducted for duration of not less than six hours during full daylight. The date range and time of the test shall be advertised in a newspaper of general circulation in the Town at least seven days prior to the test, but not more than 30 days prior to the test. In addition, notice shall be provided to the Town Administrator, abutters and abutting Historic Commissions and to the Town Clerks of all adjacent towns. The balloon test shall demonstrate the hub height and maximum rotor blade tip height of the wind turbine generator by tethering one balloon at the hub height and one balloon at the maximum tip height of a rotor blade for the turbine model to which the special permit will apply.

D. General siting standards.

- (1) The maximum allowable tip height shall be no greater than 400 feet.
- (2) Minimum setback distance for a WT from the applicant's property line shall be at least equal to the maximum tip height. Setbacks 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.

E. Design standards.

- (1) 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.
- (2) Lighting. WT(s) shall be lighted only if, and only to the extent, 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.

- (3) Signs. Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:
 - (a) Those necessary to identify the wind facility owner, provide a twenty-four-hour emergency contact phone number, and warnings of any danger at the base of the wind facility.
 - (b) 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.
 - (c) Advertising shall not be allowed on the WT except for reasonable identification of the manufacturer or operator of the wind facility.
- (4) 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.
- (5) 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.

F. Safety, aesthetic and environmental standards.

- (1) 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.
- (2) Unauthorized access. WTs and other structures part of the WF shall be designed to prevent unauthorized access.
- (3) 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.
- (4) 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) A wind facility will be considered to be violating these regulations if the source:
 - [1] Increases the broadband sound level by more than 10 dB(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 three decibels or more.
- (b) 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.
- (c) 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.
- (d) 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.
- (5) 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.

G. Monitoring and maintenance.

- (1) 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.
- (2) 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.

H. Abandonment or decommissioning.

- (1) 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 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:

- (a) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local and state disposal regulations.
 - (c) 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.
- (2) 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.
- (3) 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 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.

I. Application process and requirements.

- (1) All applications shall be filed with the Wellfleet Town Clerk along with 10 copies and the required fee. Pursuant to MGL c. 44, § 53G, 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.
- (2) Upon receipt of the application by the Wellfleet Town Clerk, the SPGA shall hold an advertised public hearing within 65 days. Said advertisement shall appear in a local newspaper of general publication no less than 14 days prior to the scheduled public hearing. It shall be the responsibility of the SPGA to notify abutters and abutters to abutters within 300 feet via first class mail, with said mailing to take place no less than 14 days prior to the scheduled public hearing.
- (3) 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 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-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 two-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 representations 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 and maintenance plan. The applicant shall submit a plan for maintenance of access roads and stormwater controls, as well as general procedures for operational maintenance of the wind facility.
- (4) 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.
- J. SPGA decision. The SPGA shall issue a decision within 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.
- K. Term of special permit.
 - (1) A special permit issued for a wind facility shall be valid for 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 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.
 - (2) The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

§ 235-6.26. (Reserved)

§ 235-6.27. (Reserved)

**§ 235-6.28. Provisions to encourage development of affordable dwellings in Wellfleet.
[Added 4-26-2011 ATM]**

- A. Purpose. The purpose of this bylaw is to further the goal of encouraging various lot sizes and housing types for persons of various income levels in accordance with MGL c. 40A, § 9, which allows municipalities to adopt "incentive" ordinances for the creation of affordable year-round dwellings, and for the purpose of helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and maintaining a stable economy by preventing out-migration of residents who provide essential services.
- B. Definitions.

AFFORDABLE DWELLING DEVELOPMENT — A tract of land of 50,000 square feet or more containing units of residential housing, of which at least 25% are encumbered by affordable dwelling deed restrictions.

DWELLING, AFFORDABLE — A dwelling unit which is subject to an affordable dwelling restriction, pursuant to § 235-6.28G, and on a minimum lot size of 20,000 square feet.

C. Authority.

- (1) The Planning Board is hereby designated the special permit granting authority for all affordable dwelling development applications under this bylaw, and shall have the power to hear and decide applications for special permits and to adopt regulations for carrying out its duties under this bylaw.
- (2) For the purpose of promoting the development of affordable dwellings in Wellfleet, the Planning Board may by special permit allow the creation of affordable dwellings in residential and commercial zoning districts consistent with § 235-5.3A of the Zoning Bylaws. All affordable dwellings created shall be for the primary and sole domicile of the eligible tenant or owner for year-round occupancy.

D. Special permit requirements for affordable dwellings.

- (1) The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable under § 235-6.3A where:
 - (a) The number of units to be restricted under § 235-6.28 equals or exceeds 25% of the total units; and
 - (b) The applicant demonstrates that the proposed parking is sufficient to address the parking needs of the affordable dwelling and/or affordable dwelling development.
- (2) The second unit created, and at a minimum, every fourth unit created thereafter, shall be deed restricted as permanently affordable units, per the applicable standards in § 235-6.28G below.
- (3) An affordable dwelling unit must have the following minimum areas:
 - (a) Studio: 250 square feet.
 - (b) One-bedroom units: 700 square feet.
 - (c) Two-bedroom units: 900 square feet.
 - (d) Three-bedroom units: 1,200 square feet.
 - (e) Four-bedroom units: 1,400 square feet.
- (4) The affordable dwelling development must conform to all other requirements of the Zoning Bylaw. In the event that a provision of § 235-6.28 conflicts with another provision of the bylaw, the provisions of § 235-6.28 shall control.

E. Standards and criteria. In reviewing applications under this bylaw, the Planning Board shall apply the following standards and criteria:

- (1) At least 25% of all dwelling units created under this bylaw shall be restricted as provided for under § 235-6.28G;

- (2) At least 25% of the total number of bedrooms within any affordable dwelling development shall be within said restricted dwelling units;
 - (3) The applicant has conformed to the standards and criteria of this bylaw and will deliver the needed affordable dwelling units;
 - (4) The proposed development is suitable for the proposed location, with proportions, orientation, materials, landscaping and other features that provide a stable and desirable character complementary and integral with the site's natural features;
 - (5) The development, density increase or relaxation of zoning standards has no material, detrimental effect on the character of the neighborhood or Town and is consistent with the performance standards in § 235-8.4B of the Wellfleet Zoning Bylaws.
- F. Area, setback and frontage requirements for affordable dwelling units and developments.
- (1) The Planning Board shall have discretion to reduce or suspend the minimum area and frontage requirements otherwise applicable under § 235-5.4A of the Wellfleet Zoning Bylaws for an affordable dwelling development; provided, however, that there must be at least 10,000 square feet of lot area for each bedroom created in an affordable dwelling development.
 - (2) Where an applicant proposes to divide the tract of land that is the locus of a proposed affordable dwelling development, the minimum lot size shall be 20,000 square feet for each affordable unit. All other units included in the development shall comply with lot area requirements in § 235-5.4A of this Zoning Bylaw.
 - (3) The Planning Board may, in its sole discretion, reduce the front, side or rear yard setback requirements of § 235-5.4B; provided, however, that said setbacks shall be no less than 10 feet.
 - (4) In the case of a subdivided lot, the Planning Board shall have discretion to reduce or suspend the minimum road width for access and frontage may be created through the establishment of a common driveway deemed to provide safe and adequate access.
 - (5) The Planning Board shall have the discretion to permit a density of less than 10,000 square feet for each bedroom if the applicant can demonstrate to the satisfaction of the Planning Board and the Board of Health that the sewage disposal system servicing the development will result in nitrogen loading of less than 10 parts per million.
- G. Affordable dwelling restrictions. As a condition to any special permit issued under § 235-6.28, the applicant shall be required to execute an affordable dwelling restriction ("restriction") in a form acceptable to the Planning Board. All restrictions shall be for perpetuity or the longest period allowed by law. The special permit shall not be exercised until the applicant records the restriction in the Registry of Deeds.
- (1) The restriction shall provide that units made available for ownership shall be made available to households earning at or below 80% of the Barnstable County median income (BCMI), adjusted for household size. The initial sales price of

such units shall be calculated on the basis of what a household at 70% of the BCMI could afford to pay (assume a household size of one more than the number of bedrooms in the unit). In determining this amount:

- (a) No more than 30% of the household's gross income may be allocated to housing costs (mortgage principal and interest, real estate taxes, house and private mortgage insurance, and any homeowners' association or condominium fees);
 - (b) Current interest rates offered for thirty-year, no-point fixed-rate loans with down payments of 5% of total cost shall be applied; and
 - (c) Current real estate taxes for the Town of Wellfleet shall be used.
- (2) Any lot containing an affordable dwelling shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the affordable dwelling except leasehold estates for the term of the restriction or sale to an income-qualified individual or family in accordance with § 235-6.28G below.
 - (3) It shall be a condition upon every special permit issued under this bylaw that the applicant shall comply with any Massachusetts Department of Housing and Community Development ("DHCD") regulations under Chapter 40B of the Massachusetts General Laws and guidelines for qualification of the dwelling units created under this bylaw towards the Town's subsidized housing inventory, including but not limited to the form of the affordable dwelling restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards and maximum rent or sale price.
 - (4) In the event that a dwelling unit subject to a restriction created under this bylaw becomes vacant, the owner shall give written notice to the Wellfleet Housing Authority. It is the intent of this bylaw that a local preference shall be used in filling vacancies to the extent permitted by DHCD regulations and guidelines and state or federal laws.
 - (5) An affordable dwelling available for rental shall be rented to households earning at or below 80% of the Barnstable County median income (BCMI), adjusted for household size. Maximum rents for studio, one-bedroom, two-bedroom, etc., units, respectively, shall be in accordance with current Housing and Urban Development (HUD) published Fair Market Rental Guidelines for Barnstable County.
 - (a) All occupants of the affordable dwelling shall, upon initial application and annually thereafter, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit.
 - (b) Property owners are required to submit to the Town or its agent information on the rents to be charged along with a lease for a one-year period. Each year thereafter they shall submit information to the Town or its agent on annual rents charged along with a one-year lease.

- (6) This section shall not prevent a lot owner from building an affordable dwelling that meets the requirements of this bylaw and from transferring such dwelling and lot to an income-eligible immediate family member (sibling, parent or child) by gift or inheritance, provided that the restriction required by § 235-6.28G is properly recorded prior to issuance of a building permit.
- (7) Penalty. Failure to comply with any provision of this section may result in fines established in § 235-8.3 of the Wellfleet Zoning Bylaws. Any profits or proceeds from leasing, rental or sale which has not received prior consent from the Wellfleet Housing Authority shall be paid to the Wellfleet Affordable Housing Trust Fund.

H. Procedure.

- (1) The property owner shall complete and submit an application for a special permit to the Planning Board demonstrating that the standards and criteria of § 235-6.28E have been met.
- (2) The Planning Board shall hold a public hearing in accordance with the procedures and requirements set forth in MGL c. 40A, § 9.
- (3) After approval of the special permit, the property owner shall complete and submit to the Inspector of Buildings an application for a building permit.
- (4) The property owner shall obtain a certificate of occupancy from the Inspector of Buildings prior to the affordable dwelling(s) being occupied.

§ 235-6.29. Fast-food and formula restaurant prohibition. [4-25-2011 ATM]

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

ARTICLE VII

Signs**§ 235-7.1. Objectives.**

- A. To preserve and enhance Town character by requiring new or replacement signs which are compatible with their surroundings, are appropriately sized for their location and appropriate for the zoning district within which a sign is located without unduly restricting the conduct of lawful enterprise or expression.
- B. To promote the public welfare and safety through the elimination of roadside distractions.

§ 235-7.2. Definitions.

SIGN — Any display of lettering, logos, pictorial matter, flags other than governmental flags, banners, 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.

SIGN AREA — The area within a single rectangle enclosing all the display area of the sign(s), including borders, frames, structural members, and without deduction for open space or other irregularities. The area is determined by multiplying the extreme width by the extreme height above the lowest three feet of the supports. 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, TEMPORARY — Any sign that is displayed for not more than 30 days within a calendar year. All temporary signs shall be related to a temporary event or activity.

§ 235-7.3. Administration and exemptions.

- A. This bylaw shall be administered by the Building Inspector. Except as required by law and as otherwise set forth below, no sign shall be erected without a permit issued by the Building Inspector.
- B. Signs erected by the municipal, county, state or federal government as may be deemed necessary for their respective functions are exempted from the provisions of the Sign Bylaw.
- C. Signs required by municipal, county, state or federal regulation or law are exempted from the provisions of this Sign Bylaw.
- D. One flag per business, to a maximum size of 15 square feet, is exempted from the provisions of this Sign Bylaw.
- E. All signs must be located on the premises of the use, business, occupation, event or activity for which the sign conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly.

- F. All temporary signs shall be removed promptly upon conclusion of the events or activities announced thereon.
- G. A nonconforming sign in existence at the time of adoption of this bylaw shall be allowed to remain until one or more of the following conditions occurs: the sign is substantially relocated, replaced, reconstructed.
- H. When the provisions of this bylaw, or the drawing and specifications approved thereunder, or the terms of a permit issued thereunder, are not complied with, a stop-work or removal order shall be served on the property owner and/or his representative, tenant, or person in possession of the property by the Building Inspector, and a copy thereof shall be posted at the site of the violation. Such stop-work or removal order shall not be removed except by written notice from the Building Inspector's office after satisfactory evidence has been supplied that the violation has been corrected. Failure to comply with such stop-work or removal order shall constitute a violation of this bylaw. Any person violating any provision of the bylaw shall be fined as provided in § 235-8.3 from the time that the stop-work or removal order is first served, for each offense.
- I. Persons aggrieved by this bylaw, or actions of the Building Inspector relative to it, may appeal to the Wellfleet Zoning Board of Appeals pursuant to § 235-8.4A.

§ 235-7.4. Location of signs.

- A. All signs must be located on the premises in such a way as not to obstruct the view of traffic or create other safety hazards. Signs must be located with at least a two-foot setback from the property line.
- B. Signs that project over a public right-of-way shall be allowed only in the Central District and only on buildings which cannot meet setback requirements. Such signs shall not project more than three feet from the face of the building, and must have a minimum clearance of nine feet above the public right-of-way. No signs shall project over roadways. Signs projecting over a public right-of-way, including sidewalks, must be approved by the Selectboard.
- C. Signs, including temporary signs, shall not be placed on sidewalks.

§ 235-7.5. Signs not requiring permits.

- A. One sign for each family residing on the premises indicating the owner or occupant, provided that no sign shall exceed two square feet of sign area.
- B. One unlighted sign for home occupations on each premises not exceeding six square feet of sign area or five feet in height, advertising all home occupation(s).
- C. On each premises, not more than four unlighted directional signs, each not exceeding one square foot of sign area.
- D. On each premises, one unlighted sign related to the sale, rent or lease may be displayed while the premises, or any part thereof, is on offer for sale, rent or lease. Such sign shall not exceed six square feet of sign area or five feet in height, except in the

National Seashore Park District, where the sign shall not exceed two square feet of sign area, or three feet in height.

- E. On each premises, one unlighted sign may be displayed while the premises, or any part thereof, is subject to a valid building permit. Such sign shall not exceed six square feet of sign area or five feet in height and shall be related to the building permit. All such signs shall be removed prior to issuance of a certificate of occupancy.
- F. Signs not requiring permits under this § 235-7.5 shall not be included in the aggregate limits under § 235-7.6.

§ 235-7.6. Signs requiring permits.

- A. Service trade home business(es) may have one sign not exceeding six square feet of sign area or five feet in height on each premises.
- B. Except as provided in § 235-7.6C below, a business may have an aggregate total of 24 square feet of sign area on each premises, including temporary signs. No sign shall exceed 12 square feet of sign area. No freestanding sign shall exceed the greater of eight feet in height above the natural grade, or eight feet above the grade of the adjacent roadway. Signs may be attached to the building; however, signs attached to building sides shall not project more than three feet from the building and must have a minimum clearance of nine feet above the ground level. Signs shall not project above the roof line.
 - (1) For each premises located as provided in § 235-7.6B and having multiple businesses, the premises may have additional sign area of six square feet for each business.
- C. For a business on a premises having frontage on and access onto Route 6 and located in the Commercial District, the business may have an aggregate total of 64 square feet of sign area, including temporary signs. No sign shall exceed 36 square feet of sign area. No sign shall exceed the greater of 10 feet in height above the natural grade or 10 feet above the grade of the adjacent roadway. Signs may be attached to the building; however, signs attached to a building shall not project more than three feet from the building sides and must have a minimum clearance of nine feet above ground level. Signs shall not project above the roof line.
 - (1) For each premises located as provided in § 235-7.6C and having multiple businesses, the premises may have additional sign area of nine square feet for each business.
- D. One sign bearing the name of a subdivision or condominium, not to exceed 12 square feet of sign area or eight feet in height. Alternatively, the subdivision or condominium may have one ladder-type sign, not to exceed eight feet in height, bearing multiple names of residents, provided that each name sign does not exceed one square foot in sign area.

§ 235-7.7. General prohibitions.

- A. Flashing signs, signs containing moving parts, and signs which create the illusion of motion are prohibited.
- B. The source of any sign's illumination which is visible from any public way or from any premises other than that upon which the sign is located, or light which is directed above the sign toward the sky, is prohibited.
- C. All signs internally illuminated by means of any concealed light source are prohibited, except for directional signs.
- D. All neon, neon-like or signs made of lights, including but not limited to light-emitting diode (LED), are prohibited.
- E. Any sign which identifies a business, service, project, or activity that is defunct or which has not existed on the premises for 12 consecutive months or more shall be considered to be an abandoned sign and is prohibited.
- F. Off-premises signs are prohibited.
- G. Signs installed on the roof, or on building, shall not project above the ridge of said roof.

§ 235-7.8. Maintenance of signs.

- A. All signs must be maintained in a secure and safe condition.
- B. Any sign that is deemed by the Building Inspector to be unsafe, not properly permitted, or to be a prohibited sign must be removed forthwith upon issuance of a citation to the owner. After 30 consecutive days of non-compliance, the Building Inspector may cause the sign to be removed at the owner's expense, subject to constitutional limitations and pursuant to the Building Inspector's authority to enforce this bylaw under § 235-8.1. and MGL c. 40A, § 7.
- C. Wrapping of 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 § 235-7.3G of this bylaw.

ARTICLE VIII
Administration

§ 235-8.1. Enforcement.

This bylaw shall be enforced by the Selectboard or by an Inspector of Buildings appointed by it.

§ 235-8.2. 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.

- A. Construction or operations under a building or special permit shall conform to any subsequent amendment of this bylaw 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.
- B. Nonconforming structures 10 years or older. Any structure or alteration to a structure in existence for a period of at least 10 years shall be deemed to be a legally nonconforming structure under MGL c. 40A, § 7 and this bylaw, provided that no notice of an action, suit, or proceeding as to an alleged violation of MGL c. 40A or this bylaw has been recorded in the Registry of Deeds, as provided in MGL c. 40A, § 7.

§ 235-8.3. Penalty. [Amended 6-26-2021 ATM by Art. 45]

Any person violating any of the provisions of this bylaw may be fined not more than \$50 for each offense, except in the case of violations of § 235-6.21, Accessory dwelling units, the fine shall be \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

§ 235-8.4. Zoning Board of Appeals.

There is hereby established a Zoning Board of Appeals of five members and four associate members to be appointed by the Selectboard, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this bylaw in the manner prescribed in Chapter 40A of the General Laws. The Zoning Board of Appeals shall have the following powers:

- A. Appeals. To hear and decide any 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 of the General Laws, or by any officer or 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 Chapter 40A of the General Laws or of this bylaw.
- B. Special permits. The Zoning Board of Appeals shall be the special permit granting authority (SPGA) with the authority to hear and decide all applications for special permits, except for those special permits where the Planning Board is expressly designated as the SPGA. Granting of a special permit for an adult entertainment use shall be pursuant to the requirements of § 235-6.20, Adult entertainment uses, in addition to all other special permit requirements hereunder. The Zoning Board of Appeals, or the Planning Board acting as the SPGA, 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 or the vicinity, taking into consideration the stated district objectives (§ 235-3.2) and, where germane, the following matters:

- (1) Suitability of the proposed location for this proposal, taking the following 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.
- (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.
- (3) Building and site design, including consideration of the following:
 - (a) Whether scenic views from public ways and developed properties have been considerately 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.
- (4) Each application for a special permit shall be filed by the petitioner with the Town Clerk and a copy of said application, including the date and time of the filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the special permit granting authority (SPGA). Special permits shall be issued only following a public hearing to be held within 65 days of the date certified by the Town Clerk of the filing of the application after filing by the applicant of an application with the SPGA and with the Town Clerk, calculated from the date

certified by the Town Clerk. Special permits shall lapse within two years, and not including such time required to pursue or await the determination of an appeal from the grant thereof, if 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.

- (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 Zoning Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

C. Variances.

- (1) To grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this bylaw where the Zoning 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 bylaw 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 bylaw.
- (2) Effect on variances within park and notice of same. Applicants for variances or special permit shall be promptly notified by the Zoning 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 Zoning Board of Appeals of all applications or petitions made for variances or special permit to the bylaws 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 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.

§ 235-8.5. Appeals of Zoning Board of Appeals decisions.

Any person aggrieved by a decision of the Zoning Board of Appeals or the Planning Board acting as special permit granting authority (SPGA) 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 MGL c. 40A, § 17.

§ 235-8.6. Amendments.

This bylaw may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of MGL c. 40A, § 5.

§ 235-8.7. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

§ 235-8.8. Interpretation; conflict with other laws.

In their interpretation and application, the provisions of this bylaw 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 bylaw are at variance with the requirements of any other lawfully adopted rules, regulations or bylaw, the most restrictive or that imposing the higher standards shall govern.

§ 235-8.9. Effective date.

This bylaw shall take effect upon final approval of the Attorney General of the Commonwealth of Massachusetts, and its publication in accordance with MGL c. 40, § 32. Upon its effective date, it shall supersede the Zoning Bylaw voted by the Town October 18, 1966, and any amendments thereof previously in effect.

ARTICLE IX
Overlay Districts

§ 235-9.1. Wellhead Protection District.

- A. 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.
- B. Districts established.
 - (1) For the purposes of this section, there are 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:
 - (a) 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.

- (b) District II - the land within a 1/2 mile radius of the Coles Neck well.
 - (2) The Wellhead Protection Districts established by this section are shown on the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk.
 - (3) These overlay districts shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses.
- C. 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.
- D. Use regulations.
- (1) Allowed:
 - (a) 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.
 - (b) 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.
 - (c) For purposes of this § 235-9.1, "normal household use and household quantity of hazardous material or waste" means any or all of the following:
 - [1] 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
 - [2] 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
 - [3] A quantity of hazardous waste at the very small quantity generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.353.
 - [4] Change in ownership shall require conversion to a double-wall oil tank.
 - (d) For purposes of this § 235-9.1, "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.

- (2) Prohibited:
- (a) Landfills and open dumps as defined in 310 CMR 19.006;
 - (b) Landfilling of sludge or septage as defined in 310 CMR 32.05;
 - (c) Automobile recycling, automobile graveyards and junkyards as defined in MGL c. 140B, § 1;
 - (d) Stockpiling and disposal of snow and ice from highways and streets located outside of the Wellhead Protection District that contain de-icing chemicals such as sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
 - (e) Sales, storage or transportation of liquid petroleum products of any kind, except those incidental to:
 - [1] Normal household use;
 - [2] The heating of a structure; or
 - [3] Required waste oil retention facilities;
 - (f) Storage of sludge or septage;
 - (g) 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;
 - (h) Storage of animal manure except when associated with a permitted use, in accordance with the Board of Health standards for best management practices;
 - (i) Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21E, except the following licensed or permitted activities:
 - [1] Very small quantity generators (VSQG) as defined under 310 CMR 30.00;
 - [2] Waste oil retention facilities required by MGL c. 21, § 52A; and
 - [3] Water remediation treatment works approved under 314 CMR 5.00;
 - [4] Home occupations and service trades operating in accordance with VSQG codes and the Wellfleet Zoning Bylaws and Board of Health Regulations;
 - (j) 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 acres, provided storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

- (k) The use, generation, storage, treatment or disposal of toxic or hazardous materials or wastes in quantities greater than those associated with normal household use;
- (l) 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;¹²
- (m) 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;
- (n) Storage for resale of heating fuels, including but not limited to oil, coal, gas and kerosene;
- (o) Metal plating, finishing and polishing;
- (p) Chemical and bacteriological laboratories;
- (q) Commercial boat, motor vehicle, and aircraft cleaning, service and repair;
- (r) Commercial furniture stripping, painting and refinishing;
- (s) Treatment or disposal works that are subject to 314 CMR 5.00, Groundwater Discharge Permit Program, except the following:
 - [1] 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);
 - [2] 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);

12. Note: In approving Subsection (l), the Attorney General calls our attention to the protections accorded to agriculture under state law. MGL c. 40A, § 3, provides protection to agriculture and provides in pertinent part as follows:

No zoning. . . bylaw 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 c. 40A, § 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 MGL c. 40A, § 3.

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 MGL c. 40A, § 3, to prohibit such earth removal activities. Thus, they remind the Town to apply Subsection (l) in a manner consistent with the protections accorded to agriculture under state law.

- [3] Treatment works approved by the Department of Environmental Protection (DEP) designed for the treatment of contaminated ground or surface waters;
- (t) 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.
- (u) 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:
 - [1] 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
 - [2] In cluster subdivisions the total sewage flow shall be calculated based on the number of percable lots in the entire parcel;
 - [3] Lots which are protected by the provisions of MGL c. 111, § 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;
 - [4] Alternative sewage disposal systems meeting the requirements of and approved by the Board of Health;
- (v) 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 permit 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 2.00¹³), 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;
- (w) Any other use which involves as a principal activity or use the generation, storage, use, treatment, transportation or disposal of hazardous materials.
- (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 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.

13. Editor's Note: See the Uniform Plumbing Code in 248 CMR 10.00.

- (4) Site clearing. A minimum of 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.
- (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 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 45 days shall be considered a confirmatory response.

§ 235-9.2. Main Street Overlay District. [Added 4-25-2006 ATM]

- A. Purpose and intent. This bylaw 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.
- B. 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 the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk. Within the Main Street Overlay District, special permits are required under this bylaw for all uses and structures required to obtain a special permit by the underlying Central District zoning district.
- C. Special permit granting authority. The special permit granting authority for this bylaw shall be the Zoning Board of Appeals.
- D. Special permit criteria. In addition to the special permit criteria listed in § 235-8.4B of this Zoning Bylaw, applicants for special permits in the Main Street Overlay District must meet the following requirements:
 - (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.
 - (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.

E. Height, setback and building coverage within the Main Street Overlay District:

- (1) Height. The maximum height of any new or expanded existing structure shall be 28 feet.
- (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 six feet, and the rear line setback shall be 15 feet.
- (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.

F. 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.

G. 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 nonresidential land uses within the Main Street Overlay District. Allowable uses shall be those listed in the underlying Central District within § 235-5.3 of this Zoning Bylaw and the following:

- (1) Conversion of dwelling unit.
- (2) Arcade.
- (3) Inn.
- (4) Restaurant, indoor.

- (5) Guesthouse, private.
 - (6) Guesthouse, public.
 - (7) Nursing home.
- H. Severability. 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 Bylaw.

§ 235-9.3. Medical Marijuana Overlay District (MMOD). [Added 4-28-2014 ATM]

- A. Establishment. The Medical Marijuana Overlay District (MMOD) is established as an overlay district, which is shown on the Zoning Map on file with the Town Clerk. Within the MMOD, all requirements of the underlying district(s) remain in effect, except where these regulations provide an alternative to such requirements. If the provisions of the MMOD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control. Land within the MMOD may be used either for (1) a registered marijuana dispensary (RMD), in which case the requirements set forth in this section shall apply; or (2) a use allowed in the underlying district, in which case the requirements of the underlying district shall apply.
- B. Purpose. To provide for the location of RMDs in accordance with the Humanitarian Medical Use of Marijuana Act, MGL c. 94C, App. § 1-1 et seq., in locations suitable for lawful RMDs and to minimize adverse impacts of RMDs on adjacent properties, residential neighborhoods, historic sites, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security, modification and removal of RMDs.
- C. Definitions. Where not expressly defined in the Zoning Bylaws, terms used in the MMOD Bylaw shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act, MGL c. 94C, App. § 1-1 et seq., and the Commonwealth of Massachusetts Department of Public Health (MDPH) Regulations promulgated thereunder, 105 CMR 725.001 et seq., as they may be amended or superseded, and otherwise by their plain language.

REGISTERED MARIJUANA DISPENSARY (RMD) — Also known as a "medical marijuana treatment center," means a not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes [including development of related products such as edible marijuana-infused products (MIPs), tinctures, aerosols, oils, or ointments], transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to a site of dispensing, cultivation, and/or preparation of marijuana, which site is expressly designated in the Certification of Registration issued by the MDPH.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — As used in this § 235-9.3, the Town of Wellfleet Zoning Board of Appeals.

STATE LAW — Collectively, MGL c. 94C, App. § 1-1 et seq. and the MDPH Regulations promulgated thereunder, 105 CMR 725.001 et seq., as they may be amended or superseded, and any successor or re-codified version of any regulation issued by an agency of the Commonwealth of Massachusetts with jurisdiction for certifying or regulating the production and/or sale of marijuana for medical use.

D. Location.

- (1) The MMOD consists of certain portions of the land within the C and C-2 District, as follows:¹⁴
 - (a) Commercial District. The land described in the Town of Wellfleet Zoning Bylaw, District Descriptions, as Subsections (2) and (3); and
 - (b) Commercial 2 District. The land described in the Town of Wellfleet Zoning Bylaw, District Descriptions, as Subsection (1).
- (2) An RMD may be permitted in the MMOD pursuant to a special permit granted pursuant to this § 235-9.3 and § 235-8.4B of the Wellfleet Zoning Bylaws.
- (3) An RMD may not be located within 300 feet of the following:
 - (a) School, including a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university;
 - (b) Child-care facility;
 - (c) Playground;
 - (d) Youth center;
 - (e) Public beach or pond; or
 - (f) Other facility in which minors commonly congregate, excluding the Cape Cod National Seashore and the Cape Cod Rail Trail.
 - (g) Notwithstanding the above, the properties separated by U.S. Route 6 from an RMD shall be excluded from this list of protected uses.
- (4) The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Subsection D(3) to the nearest point of the property line of the proposed RMD.
- (5) A special permit issued pursuant to this section may, at the discretion of the SPGA, provide for reduction of the distance from protected uses pursuant to Subsection D(3) by no more than 25%, provided that:
 - (a) The applicant demonstrates that the RMD would otherwise be effectively prohibited within the municipality; and

14. Editor's Note: See the district descriptions in Appendix A, included as an attachment to this chapter.

- (b) The applicant demonstrates that the RMD will employ adequate security measures to prevent diversion of marijuana to minors or those who are not qualifying patients or customers pursuant to state law.

E. General requirements and conditions.

- (1) All RMDs shall be contained within a building or structure, except that no RMD shall be located inside a building containing a residential unit, including transient housing such as motels and cottages, or in buildings that contain the office of a medical doctor or doctor of osteopathy or other professional practitioner authorized by state law to issue a certification for a qualifying patient for the use of marijuana.
- (2) The hours of operation of an RMD shall be set by the SPGA, but in no event shall said RMD be open to the public between the hours of 8:00 p.m. and 8:00 a.m.
- (3) Except as specified in state law, no smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises or grounds of any RMD.
- (4) Signage for RMDs. In addition to meeting the requirements of state law and the Town of Wellfleet Zoning Bylaws, the following additional requirements and restrictions shall apply:
 - (a) A sign visible from the exterior of the building in which the RMD is located shall be displayed either by posting on the building exterior in close proximity to the entrance or by placement in a window in close proximity to the entrance with the text facing and legible from the exterior, which states: "Registration card issued by the MA Department of Public Health required." The required sign shall not exceed six square feet in area, shall be easily readable, and shall not be included in the signage calculation in Subsection E(4)(b).
 - (b) Exterior signage shall comply with Wellfleet Zoning Bylaws, except that:
 - [1] No RMD shall have a permanent or temporary freestanding accessory sign or off-premises signage;
 - [2] Permitted signage, excluding any state-required signage, shall be limited to 12 square feet in area;
 - [3] In accordance with state law, no RMD external signage shall be illuminated except for a period of 30 minutes before sundown until closing.
 - (c) Be in accordance with all other provisions of state law.
- (5) Fencing and gates shall be in accordance with state law and with all Town of Wellfleet Bylaws. To the extent practicable, fencing shall be consistent with the character of surrounding properties.

- (6) Landscaping shall be in compliance with Wellfleet Zoning Bylaws, except that in accordance with state law, RMDs shall maintain trees, bushes, and other exterior vegetation so that they do not allow for a person or persons to conceal themselves from sight.
- (7) Lighting shall be designed and maintained so as to protect adjacent properties and the night sky from intrusive lighting; however, in accordance with state law, the exterior perimeter of the RMD shall be sufficiently lit to facilitate surveillance.
- (8) Security and alarm systems for RMDs shall be in accordance with state law and Town of Wellfleet General Bylaws, and shall be adequate to prevent and detect diversion, theft, or loss of marijuana or unauthorized intrusion, utilizing commercial-grade equipment.
- (9) Pesticide and fertilizer storage and use shall be in accordance with state law and with all applicable state and local statutes, bylaws, and regulations.
- (10) Solid and liquid waste, including waste composed of or containing marijuana, finished marijuana, marijuana-infused product, or byproducts of marijuana processing shall be stored, secured, managed, and disposed of in accordance with state law and all other applicable statutes and bylaws and regulations of the Town.
- (11) In accordance with MGL c. 44, § 53G and regulations adopted by the Zoning Board of Appeals, the SPGA may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the SPGA Board with its review of any application pursuant to this bylaw. Failure of the applicant to pay for any such consultant review expense shall be grounds for denial of the application.

F. Special permit procedure.

- (1) The SPGA shall act in accordance with provisions, regulations, requirements, conditions and limitations set forth in this § 235-9.3 and in accordance with § 235-8.4B of the Wellfleet Zoning Bylaw, and with state law and any other applicable Massachusetts General Laws.
- (2) An applicant for the RMD special permit shall file with the Wellfleet Town Clerk all required forms, plans and supporting documentation along with an original and 12 copies and required fees. The Town Clerk shall stamp the application with the date received and shall immediately notify the SPGA of a submitted application packet.
 - (a) The SPGA may refer any application pursuant to this bylaw for review by other boards, departments or officers as it deems appropriate, including, but not limited to, the Inspector of Buildings, Fire Department, Planning Board, Police Department, Board of Health, the Conservation Commission, the Department of Public Works. Such boards, departments or officers shall review the application and shall submit their written recommendations, if any, to the referring authority within 35 days of receipt of referral of the application, or the application shall be deemed to be unopposed.

- (b) All plans and maps shall be prepared, stamped and signed by the appropriate registered design professional licensed to practice in the Commonwealth of Massachusetts, at a scale not greater than one inch equals 30 feet. Site plans shall include North arrow and locus map.
- (c) Applications shall include all additional materials and fees as required by the SPGA, including the following:
- [1] Twelve copies of the applicant's application to and Certificate of Registration as an RMD received from the MDPH;
 - [2] A single copy of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the RMD;
 - [3] The name and address of each owner of any interest in the RMD or the property on which it is proposed to be located;
 - [4] If the applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly situated individuals and entities and their addresses. If one or more of the above are entities rather than persons, the applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
 - [5] Evidence of the applicant's ownership of or right to use and control the site of the RMD for the RMD, as applicable, such as a deed or lease; for any property located within the Cape Cod National Seashore (CCNS), a copy of the notice sent by registered mail, return receipt requested, to the Superintendent of the CCNS;
 - [6] A detailed floor plan of the premises of the proposed RMD that identifies the square footage available and describes the functional areas of the RMD, including areas for the preparation of any MIP;
 - [7] Detailed site plans that include the following information:
 - [a] Compliance with the requirements in § 235-6.3B(2) (Other Uses) of the Wellfleet Zoning Bylaws for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of this bylaw, to the extent not in conflict with any term of the registration of the RMD;
 - [b] Provision for convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
 - [c] Provision for convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;

- [d] Analysis of the adequacy of the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises, including designated parking for home delivery vehicle(s), as applicable;
 - [e] Proposed building elevations; design and appearance of structures, signs, screening and landscaping; and
 - [f] Provisions for adequate water supply, septic, surface and subsurface drainage and light;
- [8] A description of the security measures, including but not limited to lighting, fencing, gates, and employee security policies, approved by MDPH for the RMD;
 - [9] A copy of emergency procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies, approved by MDPH for the RMD;
 - [10] A copy of the policies and procedures for patient or personal caregiver home-delivery approved by MDPH for the RMD;
 - [11] A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by MDPH;
 - [12] A copy of proposed waste disposal procedures;
 - [13] Proof of liability insurance that is in accordance with 105 CMR 725.105(Q);
 - [14] A description of proposed financial surety to satisfy the requirements of Subsection K(2); and
 - [15] Any waivers from MDPH issued for the RMD.
- (3) After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other Town boards and departments, the SPGA shall determine whether the application meets the standards, purpose and intent of § 235-9.3 and the standards and conditions of § 235-8.4B generally applicable to special permits, and if so determined, may approve the special permit with conditions consistent with this bylaw.
- G. Special permit conditions on RMDs. The SPGA may impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect groundwater quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this § 235-9.3 and the Wellfleet Zoning Bylaws. In addition to any specific conditions applicable to the applicant's RMD, a special permit granted under this bylaw shall include the following general conditions:
- (1) Hours of operation, including dispatch of home deliveries.
 - (2) The permit holder shall file a copy of any Incident Report required under state law with the Inspector of Buildings and the SPGA within 24 hours of creation by

the RMD. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.

- (3) The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by MDPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Inspector of Buildings and SPGA within 48 hours of receipt by the RMD.
 - (4) Each RMD permitted under this bylaw shall as a condition of its special permit file an annual report with the SPGA no later than January 31, providing a copy of all current applicable state permits, licenses, and registrations for the RMD and/or its owners, certificate of liability insurance that is in accordance with state law and demonstrate continued compliance with the conditions of the special permit.
 - (5) The permit holder shall provide to the Inspector of Buildings and Chief of the Police Department the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
 - (6) The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the RMD.
 - (7) The special permit shall lapse upon the expiration or termination of the applicant's registration by MDPH.
 - (8) The permit holder shall notify the Inspector of Buildings and SPGA in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with MDPH.
 - (9) As-built conditions, post-construction, shall be submitted to the Inspector of Buildings prior to issuance of an occupancy permit. Any changes or subsequent alterations to previously filed as-built conditions shall be submitted to the Inspector of Buildings upon completion of work.
- H. Off-site cultivation as authorized by RMD Certificate of Registration. In the case of cultivation of marijuana at a site other than the dispensary, where, 1.) the Certificate of Registration identifies the cultivation site, and 2.) the cultivation site meets the requirements of MGL c. 40A, § 3 for exemption from the use restriction in the zoning district in which the cultivation site is located, the cultivation of marijuana at such a site shall not require an additional special permit pursuant to Subsections F and G; but shall be considered within the area subject to the conditions imposed on the RMD special permit.
- I. Prohibition against nuisances. No use shall be allowed in the MMOD which creates a nuisance, including loitering, to abutters or to the surrounding area, or which creates any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

- J. Modification and alteration. All modification, remodeling, expansion, reduction, or other physical, non-cosmetic alteration of an RMD made after issuance of the special permit shall require approval by the SPGA as provided in this § 235-9.3.
- K. Abandonment or discontinuance of use.
- (1) An RMD shall be required to remove all material, including plants, products, waste, equipment and other paraphernalia:
 - (a) Prior to surrendering its state-issued licenses or permits; or
 - (b) Within six months of ceasing operations, whichever comes first; and
 - (c) In accordance with state law and all other applicable federal, state, and local requirements.
 - (2) The SPGA shall require the applicant to post a bond at the time of construction in an amount adequate to pay the costs of removal of the RMD in the event the Town must remove the RMD . The value of the bond shall be based upon the ability to completely remove all the items noted in Subsection K(1) and properly clean the RMD at prevailing wages. The value of the bond shall be determined based upon the applicant's supporting information provided to the SPGA, consisting of three written bids to meet the noted requirements. Use of consultants by the SPGA may be required at the expense of the applicant when evaluating or comparing the bids. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the Town to remove the RMD at prevailing wages. Notwithstanding the above, the bond amount is subject to review by the SPGA every three years.

ARTICLE X

Large-Scale Ground-Mounted Solar Photovoltaic Installations

[Added 4-22-2013 ATM]

The purpose of this bylaw is to provide a review process for proposed large-scale ground-mounted solar photovoltaic installations (LSGMSPI) and provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, repair and/or removal of LSGMSPI. This section also pertains to physical modifications that alter the type, configuration, or size of these installations or related equipment.

§ 235-10.1. Compliance with laws, bylaws, policies and regulations.

The construction and operation of all LSGMSPI shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All structures and fixtures forming part of a LSGMSPI shall be constructed in accordance with the State Building Code.

§ 235-10.2. Building permit and building inspection.

No LSGMSPI shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

§ 235-10.3. LSGMSPI site plan review.

LSGMSPI with 250 kW or larger of rated nameplate capacity shall require LSGMSPI site plan review by the Planning Board prior to issuance of a building permit to authorize construction, installation or modification as further provided in this section. Reviews shall be conducted to assure compliance with this Article X of the Zoning Bylaw, and with the C2 District objectives contained in § 235-3.2 of the Zoning Bylaw. In accordance with Section 22(c) of the Massachusetts Green Communities Act,¹⁵ LSGMSPI site plan review shall be expedited and completed within one year after the date at which the Planning Board has determined the LSGMSPI site plan review application is complete.

- A. General. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts, at a scale of one inch equals 40 feet.
- B. Application process and requirements.
 - (1) In accordance with MGL c. 44, § 53G, the Planning Board may engage, at the applicant's cost, professional and technical consultants, including legal counsel, to assist the Planning Board with its review of the application. Failure to comply with the section shall be grounds for denial of the application.
 - (2) Application submission. Applicants for LSGMSPI site plan review shall file with the Wellfleet Town Clerk all required forms, plans and supporting documentation along with 14 copies and required fees. The Town Clerk shall stamp the application with the date received and shall immediately notify the Chair of the Planning Board of a submitted application packet.
 - (3) Completeness review. The Planning Board shall, within 30 calendar days of the receipt of the application by the Town Clerk, determine whether the application is complete or incomplete and shall notify the applicant in writing by certified mail.
 - (4) Incomplete applications. If the Planning Board determines the application to be incomplete, the Board shall provide the applicant with a written explanation as to why the application is incomplete and request the information necessary to complete the application. Any additional information submitted by the applicant starts a new 30 calendar day completeness review.
 - (5) Waiver of provisions. Upon the applicant's written request submitted as part of the application, the Planning Board may waive strict compliance with any provision of this Article X if it deems it in the public interest and determines that the intent of this Article X has been maintained.

15. Editor's Note: See Acts of 2008, Ch. 169; and MGL c. 25A, § 10.

- C. Required documents. An application for LSGMSPI site plan approval shall include the following documents:
- (1) A site plan showing:
 - (a) North arrow and locus map;
 - (b) Property lines and physical features, including roads, delineation of any wetlands, and pre- and post-construction topography for the project site;
 - (c) Proposed changes to the natural vegetation and landscaping present at the site, as well as proposed grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - (d) Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - (e) Provisions for parking locations on site for at least two service vehicles;
 - (f) An electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - (g) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - (h) Name, address, license verification and contact information for proposed system installer(s);
 - (i) Name, address, phone number and signature of the project applicant(s), as well as all property owner(s);
 - (j) The name, contact information and signature of any agent(s) representing the project proponent(s);
 - (2) Documentation of actual or prospective access and control of the project site that satisfies § 235-10.4;
 - (3) An operation and maintenance plan that satisfies § 235-10.5;
 - (4) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a Zoning Map with the parcel(s) identified is suitable for this purpose);
 - (5) Proof of proposed liability insurance that satisfies § 235-10.12;
 - (6) Description of financial surety proposed to satisfy the requirements of § 235-10.11C; and
 - (7) Evidence of utility company notification and acceptance of intent to install an interconnected customer-owned generator that satisfies § 235-10.6.

§ 235-10.4. Site control.

The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

§ 235-10.5. Operation and maintenance plan.

The project applicant shall submit a plan for the operation and maintenance of the LSGMSPI, which shall include measures for maintaining safe access to the installation and accessory structures, including but not limited to stormwater controls at the site, and shall provide details as to the proposed general procedures for operation and maintenance of the installation.

§ 235-10.6. Utility notification.

No LSGMSPI site plan approval shall be issued and no LSGMSPI shall be constructed until satisfactory evidence has been submitted to the Planning Board to demonstrate that the utility company that operates the electrical grid where the installation is to be located has deemed to have accepted the solar photovoltaic installation owner's or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

§ 235-10.7. Accessory structures.

All accessory structures to LSGMSPI shall be subject to Town of Wellfleet Zoning Bylaws concerning the bulk and height of structures, lot area, setbacks, and open space, parking and building coverage requirements, except that no accessory structure to LSGMSPI shall exceed 15 feet in height. All such accessory structures, including but not limited to equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to minimize visibility when viewed.

§ 235-10.8. Design standards.

- A. Fencing. Fencing shall be provided to control access to the LSGMSPI site and shall be consistent with the character of surrounding properties.
- B. Landscape and appearance. In accordance with C2 District objectives, the LSGMSPI 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 screening shall be employed where practical and particularly to screen surrounding property.
- C. Lighting. Lighting of LSGMSPI shall comply with local, state and federal law. Lighting of accessory elements or structures shall be limited to that required for safety and operational purposes, and shall be shielded to avoid unnecessary visibility from

surrounding properties. Where feasible, lighting of the LSGMSPI shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

- D. Signage. There shall be no signs on LSGMPI except a sign identifying the owner or operator and a twenty-four-hour emergency contact phone number; no-trespassing signs; and any signs required to warn of danger. All signs shall comply with Article VII of the Wellfleet Zoning Bylaws.
- E. Utility connections. To the extent practical, as determined by the Planning Board, in consideration of soil conditions, shape and topography of the site and requirements of the utility receiving the power, all utility connections from or to the solar photovoltaic installation shall be installed underground; however, electrical transformers for utility interconnections may be above ground if required by the utility receiving the power.
- F. Height. Solar photovoltaic arrays shall not exceed 10 feet in height off the ground at their tallest orientation as measured at the highest point of the ground under the array. Accessory structures to LSGMSPI shall be subject to height requirements set in § 235-10.7 of this bylaw. **[Amended 4-23-2018 ATM by Art. 42]**

§ 235-10.9. Safety and environmental standards.

- A. Emergency services. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. The Planning Board or the Fire Chief may require the owner or operator to cooperate with designated Town or regional emergency service providers in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner and operator, if not the owner, shall identify a responsible person and contact information for providing response to public inquiries throughout the presence of the installation at the site, whether or not operational.
- B. Land clearing, soil erosion, stormwater control, and habitat impacts. Clearing of natural vegetation shall be limited to that necessary for the construction, operation and maintenance of the LSGMSPI or otherwise required by applicable laws, regulations, and bylaws. All stormwater control plans shall either maintain or diminish preexisting runoff conditions. Any road or other surface on the lot shall comply with Chapter 135, Drainage Control, of the Wellfleet General Bylaws.
- C. Hazardous waste. No hazardous waste shall be discharged on the site.
- D. Herbicide and pesticide use. Use of herbicides and pesticides shall be consistent with all applicable Town of Wellfleet bylaws and policies.
- E. Sound levels. The sound levels under normal operating conditions, measured at the boundary of the lot on which the installation is sited, shall not be more than five decibels greater than would otherwise exist in the absence of such a facility.

§ 235-10.10. Monitoring and maintenance.

- A. Solar photovoltaic installation conditions. The LSGMSPI owner and operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to,

painting, structural repairs, continued compliance with landscaping and screening requirements, control of vegetation, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief. The owner and operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), other than public ways.

- B. Modifications. All LSGMSPI external modifications requests made after the issuance of the original required building permit shall be forwarded to the Planning Board. All significant external modifications shall require LSGMSPI site plan review by the Planning Board.

§ 235-10.11. Abandonment or decommissioning.

- A. Removal requirements. Any LSGMSPI which has reached the end of its useful life or has been abandoned consistent with § 235-10.11B of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Wellfleet Town Clerk and the Chair of the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
- (1) Physical removal of all LSGMSPI, structures, equipment, security barriers and transmission lines from the site;
 - (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and
 - (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- B. Abandonment. Absent notice to the Town Clerk of a proposed date of decommissioning or written notice of extenuating circumstances approved by the Planning Board, the solar photovoltaic installation shall be deemed abandoned within the meaning of this section when it fails to transmit power to the grid for more than one year. If the owner or operator of the LSGMSPI fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the grant of Planning Board approval for the facility shall be deemed to be the consent of the owner and operator for the Town to enter the property and physically remove the installation and restore the site at the sole expense of the owner/operator.
- C. Financial surety. Applicants for LSGMSPI projects shall provide a form of surety, either through escrow account, bond or otherwise, satisfactory to the Planning Board, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, in an amount not to exceed 125% of the projected cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs

associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

§ 235-10.12. Proof of liability insurance.

The owner or operator of LSGMSPI shall provide the Town Clerk and the Planning Board with a certificate of insurance showing that the property has a minimum of \$2,000,000 in liability coverage, and that the Town of Wellfleet is an additional named insured thereon. Such a certificate shall be supplied on an annual basis upon the renewal of said insurance policy.

§ 235-10.13. Lapse of approval.

A building permit approval shall automatically lapse if the LSGMSPI is not installed and functioning within two years or the LSGMSPI is abandoned.