

ZONING BYLAW AMENDMENT – COTTAGE COLONIES:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article II DEFINITIONS by deleting text that is ~~struck through~~ and inserting text that is underlined as follows:

§235 - 2.1 Definitions

Cottage Colony - A group of two or more detached dwellings located on the same lot not within the NSP, each containing one dwelling unit only which is designed for independent family living including cooking facilities. Each unit shall contain not less than ~~550~~ 300 sq. ft. of floor area and not more than ~~768~~ 800 sq. ft.

Cottage Colony NSP - A group of two or more detached dwellings located on the same lot within the NSP, 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~~ 300 sq. ft. of floor area and not more than ~~768~~ 800 sq. ft

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – DEFINITION OF TREES:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article II – Definition **§235** 2.1 by inserting the following new definitions in alphabetical order or to do or act on anything thereon:

Community Wildfire Protection Plan (“CWPP”): A plan developed in the collaborative framework established by the Wildland Fire Leadership Council and agreed to by the local government, local fire department, federal land management agencies managing land in the vicinity of the planning area, and other stakeholders. A CWPP may address issues such as wildfire response, hazard mitigation, community preparedness, or structure protection - or all the above.

Invasive Plants: Plant species identified by the Massachusetts Invasive Plant Advisory Group as Invasive, Likely Invasive, or Potentially Invasive. **[Link for reference](www.massrnc.org/mipag)**

Locally Notable Trees: Native trees with a girth of 120 inches or greater measured at breast height (4.5') or below the lowest branching trunk, whichever is less. Or tree species listed as Endangered, Threatened, or of Special Concern by MassWildlife's Natural Heritage & Endangered Species Program Massachusetts

Timber: Woody plants and trees with a girth of sixteen (16) inches measured at breast height (4.5') or below the lowest branching trunk, whichever is less.

Tree Thinning: Tree removal in an immature forest stand that reduces tree density and between-tree competition performed by a certified arborist.

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – CUTTING OF TIMBER:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article VI – General Regulations by amending §235 -6.9 by deleting text that is ~~struck-through~~ and inserting text that is underlined as follows:

§235 6.9.1 CUTTING OF TIMBER WITHIN NSP

Within the National Seashore Park District, there shall be no cutting of timber except as permitted 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, provided said clearance or maintenance complies with Chapter 200, the Town’s Scenic Road bylaw, as applicable. .
- (d) as specified in a **Community Wildfire Protection Plan** by the Wellfleet Fire Department or the National Park Service.
- (e) the removal of Invasive Plants .

Exemptions:

This section shall not apply to federal, state or municipal projects.

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – LOCALLY NOTABLE TREES:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article VI – General Provisions by inserting a new Section §235- 6.9.3 as follows:

§235 6.9.3 Locally Notable Trees

Recognizing the value large older trees provide to wildlife and the unique role they play in the ecosystem they should be preserved whenever possible. No removal of or trimming of **Locally Notable Trees** shall be permitted until all necessary permits and approvals have been obtained unless there is an immediate threat to public safety, structures, or utilities.

§235 6.9.3.1 Removal of **Locally Notable Tree** shall require a special permit from the Zoning Board of Appeals as the **Special Permit Granting Authority, pursuant to §235-8.4B.** Any application for the removal of a **Locally Notable Tree** shall be referred to the **Conservation Commission** for comment prior a hearing per Ch. 40A, Sec. 9 before the Special Permit Granting Authority. A priority shall be placed on retaining these trees during the course of any construction activities or site plan and or landscaping.

§235 6.9.3.2 Applications for the trimming of a **Locally Notable Tree** shall be made to the Tree Warden and must include a letter from a certified arborist that the trimming poses little risk to the health of the tree prior to any such work being performed and such applications are subject to the approval of the Tree Warden. Said trimming includes that of the Tree’s root system. If the Tree Warden or Arborist determines that the trimming of a **Locally Notable Tree** poses a threat to its health, they shall refer the matter to the Special Permitting Authority, who will refer it to the Conservation Commission for comment prior to the hearing.

§235 6.9.3.3 EXEMPTIONS

This section shall not apply to the removal of **Invasive Plants**, diseased trees, or those posing an imminent threat to people, structures, roadways, or utilities .

This section shall not apply to federal, state, or municipal projects.

§235-6.9.3.4 Special Permits

The Board of Appeals acting as the SPGA, may grant a special permit for the removal of a **Locally Notable Tree** if it reaches a finding that there is no viable alternative to said removal.

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – INCLUSIONARY ZONING:

To see if the Town will vote to amend Chapter 235, Article II DEFINITIONS by inserting the following new definitions in alphabetical order and to amend Chapter 235, Article VI by adding a new Section 6.28 Inclusionary Zoning Bylaw as follows:

§235 - 2.1 Definitions

Affordability Gap – the difference between the appraised value of a market-rate dwelling units within the proposed development and the appraised value of an affordable housing unit in Wellfleet comparable to the market-rate unit in terms of type, size, and number of bedrooms and calculated at the time of sale or issuance of a certificate of occupancy, whichever occurs sooner, for any market-rate unit in the proposed development. The applicant shall submit an appraisal of the development in question that was prepared by a licensed appraiser approved by the Town using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Town may obtain an expert peer review of the appraisal at the applicant's expense.

Affordable Housing Unit - a dwelling unit that is affordable to and occupied by a Low- or Moderate- Income Household and meets the requirements for inclusion on the Subsidized Housing Inventory maintained by the Department of Housing and Community Development.

Affordable Housing Restriction – A deed restriction entered into and enforceable under G.L. c. 184, §§31-33 in a form acceptable to the Town that restricts occupancy of an affordable housing unit to a low- or moderate-income-eligible purchaser or renter and which provides for the administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period allowed by law.

§235 – 6.28 INCLUSIONARY ZONING BYLAW

§235 – 6.28.1 Purpose and Intent

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

- A. Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; and
- B. Encouraging the creation of a range of housing opportunities for households of all incomes, ages, and sizes in order to support a strong, stable, and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Wellfleet residents;
- C. Mitigating the negative impact of residential development on the availability and cost of housing;

- D. Protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land; and
- E. Creating dwelling units eligible for inclusion on the Town's Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD).

§235 6.28.2 Applicability

In the CD, R1, R2, C, and C2 zoning districts, the inclusionary zoning provisions of this section shall apply to any project that results in a net increase of three or more dwelling units as part of a single application, whether by new construction, a change in use, or by the alteration or rehabilitation of existing structures, provided, however, this bylaw shall not apply to nursing homes

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

In order to contribute to the local stock of Affordable Housing, any residential project that results in a net increase of three or more dwelling units as part of a single application as described in Section 6.28.2 shall provide a percentage of the dwelling units as deed restricted Affordable Housing units. This Affordable Housing requirement shall be one-sixth (1/6) of the number of new dwelling units to be developed rounded up to the nearest whole number and shall be made a condition of a Special Permit, or the applicant shall meet the requirement in accordance with the following:

- A. Development of 3 to 6 new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 8.4.2 and a Payment in Lieu of providing the required number of affordable units to be made to the Wellfleet Affordable Housing Trust Fund to fulfill the Affordable Housing requirement.
 - (1) Payment shall be made in accordance with the following formula:
 - For 3-4 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(1/9)x(affordability gap)
 - For 4-6 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(1/6)x(affordability gap)
 - (2) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - (3) The Payment in Lieu shall be due:
 - a. upon the issuance of a certificate of occupancy of any market-rate unit in the development; or.
 - b. The total Payment in Lieu shall be divided by the total number of market rate units in the development, and the resulting quotient shall be payable upon the closing of each market rate unit
- B. Development of 7 or more new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 8.4.2 and at least one-sixth (16.67%) of the new units created shall be established as Affordable Housing units.

which shall be rounded up to the nearest whole number and shall be made a condition of a Special Permit, in any one or combination of methods provided for below:

- (1) The Affordable Housing units shall be constructed or rehabilitated on the site subject to the Special Permit, in accordance with §235 6.28.4; or
- (2) The Affordable Housing units shall be constructed or rehabilitated on a site other than the one subject to the Special Permit, in accordance with §235 6.28.4, provided justification is provided that on-site development of said units is not feasible and off-site development of said units is beneficial to the Town, and applicable Building or Zoning Permits are granted contemporaneously for both developments; or
- (3) A Payment in Lieu of providing Affordable Housing units shall be made to the Wellfleet Affordable Housing Trust Fund. Payment shall be made in accordance with the following formula:
 - a) For 7 or more new dwelling units, the Payment in Lieu = (total # of new dwelling units)x(1/4)x(affordability gap)
 - b) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - c) The Payment in Lieu shall be made upon the sale or certificate of occupancy of each market-rate unit, whichever occurs sooner or
- (4) A Land Donation in Lieu of providing Affordable Housing units shall be provided to the Wellfleet Affordable Housing Trust, provided that:
 - a) The receiving organization agrees in writing to accept the land;
 - b) The applicant demonstrates to the Zoning Board of Appeals' satisfaction that the land may support the future development of Affordable Housing;
 - c) The value of donated land shall be equivalent to or greater than the value of the required Payment in Lieu. The Zoning Board of Appeals may require, prior to accepting the donations of land to the Wellfleet Affordable Housing Trust as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Zoning Board of Appeals may obtain expert peer review of the appraisal at the applicant's expense; and
 - d) Closing on the land donation shall occur before the issuance of the first building permit.

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

- A. Affordable Housing units created in accordance with this bylaw shall have a deed restriction and Regulatory Agreement to regulate the future re-sale or rental of the unit and that requires the units to remain income restricted in perpetuity or the longest period

allowed by law. Said deed restriction and Regulatory Agreement shall be consistent with the forms used in the Local Initiative Program and Regulatory Agreement approved by DHCD. The Regulatory Agreement shall be prepared in a form acceptable to Town Counsel by the Applicant and submitted for review and approval. The Regulatory Agreement will be executed by the Applicant, the Town of Wellfleet and DHCD and shall be recorded with the Barnstable County Registry of Deeds or and

- B. The applicant shall be responsible for preparing and submitting any documentation that may be required to receive Local Action Unit approval from DHCD and to qualify the Affordable Housing Units for listing on the SHI. The applicant shall also be responsible for providing annual compliance monitoring and certification to the Town or its monitoring agent and to pay for the costs of the Town for providing such compliance monitoring.
- C. No Building Permit shall be issued for any units in the development until the Zoning Board of Appeals receives evidence that the Affordable Housing deed restriction has been approved by DHCD or by Town Counsel.
- D. No Certificate of Occupancy shall be issued for any units in the development until the Building Commissioner receives evidence that the Affordable Housing deed restriction has been executed and recorded at the Barnstable County Registry of Deeds or that the Payment in Lieu has been made in accordance with this bylaw or as modified by the Special Permit conditions.
- E. Affordable Housing units shall be integrated with the rest of the development or with the off-site location and shall be comparable to and indistinguishable from market rate units in exterior design, including appearance, construction and quality of materials, and in energy efficiency.
- F. The number of bedrooms in each Affordable Housing unit shall be made a part of the Special Permit and shall be based on local need as determined by the Zoning Board of Appeals in consultation with the Wellfleet Housing Authority.
- G. Owners and tenants of on-site Affordable Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.
- H. The development of Affordable Housing units shall take place at the same rate and timeframe as the development of market rate units.
 - 1) Building Permits for any phased development shall be issued at a ratio of no greater than five (5) market rate units to one (1) Affordable Housing unit. Building Permits for subsequent phases shall not be issued unless all the required Affordable Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
 - 2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of five (5) market rate units to one (1) Affordable Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless and until all Affordable Housing units are occupied.

- I. All Affordable Housing Units created under this bylaw shall be occupied by income-eligible purchasers or tenants. No Affordable Housing Unit created under this bylaw shall be used as a Short-Term Rental, as such term is defined by General Laws Chapter 64G.

§235 6.28.6. Segmentation Prohibition

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. “Segmentation” shall be defined as dividing one parcel of land into two or more parcels of land in that cumulatively results in a net increase of three or more dwelling units above the number existing thirty-six (36) months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section.

§235 6.28.7 Conflict with Other Bylaws

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

§235 6.28.8 Severability

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

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – INTENSITY OF USE OF MULTI-FAMILY DWELLINGS:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws, Chapter 235, Article V – Uses, Section 235-5.4(F) by deleting the text that is ~~struck through~~ as follows, or to do or act on anything thereon:

§235 - 5.4(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. (Amended 4/30/85 ATM, Art. 64.)~~

(Requested by the Selectboard)

ZONING BYLAW AMENDMENT – ZONING ENFORCEMENT PENALTY:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article VIII – Administration, Section 8.3 Penalty by deleting the ~~striketrough~~ language and adding the underlined language as follows, or take any other action relative thereto.

[Amended 6-26-2021 ATM by Art. 45]8.3 PENALTY

~~8.3 Penalty Any person violating any of the provisions of these Bylaws may be fined not more than \$50.00 for each offense, except in the case of violations of Section 6.21 Accessory Dwelling Units, the fine shall be \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.~~

§ 235-8.3 Penalty.

- A. Any person, association, firm or corporation violating any of the provisions of this bylaw may be fined \$300 for each offense. Each day that such a violation continues shall constitute a separate offense. This bylaw may be enforced by noncriminal disposition pursuant to the provisions of General Laws Chapter 40, Section 21D.

- B. **Accessory Dwelling Units:** Any person, association, firm or corporation violating § 235-6.21 Accessory dwelling units (ADU), may be fined \$300.00 for each offense. Each Accessory Dwelling Unit in violation shall be a separate violation. Each day that such violation continues shall constitute a separate offense. This bylaw may be enforced by noncriminal disposition pursuant to the provisions of General Laws Chapter 40, Section 21D.

(Requested by the Selectboard)