

**TOWN OF OAK BLUFFS**

**RECODIFIED ZONING BY-LAWS**

**APRIL 2003**

**(Includes changes adopted through April, 2016)**

**A TRUE COPY ATTEST:**

**Laura B. Johnston**

**Town Clerk of**

**Oak Bluffs, MA**

# **ZONING BY-LAWS**

## **TOWN OF OAK BLUFFS, MASSACHUSETTS**

### **SECTION 1.0 PURPOSE AND AUTHORITY**

- 1.1 PURPOSE
- 1.2 AUTHORITY
- 1.3 SCOPE
- 1.4 APPLICABILITY
- 1.5 AMENDMENTS
- 1.6 SEPARABILITY

### **SECTION 2.0 DISTRICTS**

- 2.1. ESTABLISHMENT
- 2.2. OVERLAY DISTRICTS
- 2.3. MAP
  - 2.3.1. Rules for Interpretation of Zoning District Boundaries
  - 2.3.2. Amendment of Map
- 2.4. HEALTH CARE DISTRICT
  - 2.4.1. Purpose
  - 2.4.2. Permitted Uses
  - 2.4.3. Uses by Special Permit
  - 2.4.4. Permitted Accessory Uses and Structures
  - 2.4.5. General Regulations

### **SECTION 3.0 USE REGULATIONS**

- 3.1. PRINCIPAL USES
  - 3.1.1. Key
  - 3.1.2. If Classified Under More Than One Use
  - 3.1.3. Table of Use Regulations See Appendix A
- 3.2. ACCESSORY USES
  - 3.2.1. Permitted Accessory Uses in All Districts
  - 3.2.2. Nonresidential Accessory Uses in the B1 and B2 Districts
  - 3.2.3. Residential Accessory Uses in All Districts
    - 1. Family Daycare Homes
    - 2. Adult Daycare Homes
    - 3. Boarders in Single Family Dwelling
    - 4. Contractor's Yard

- 5. Storage or Parking of Commercial Landscaping equipment
- 6. Overnight Parking of Commercial vehicles
- 3.2.4. Home Business – As of Right
- 3.2.5. Home Business – By Special Permit
- 3.3. HOME OCCUPATIONS (Section Replaced by 3.2.4 and 3.2.5)
- 3.4. ACCESSORY OR GUEST APPARTMENTS
  - 3.4.1. Purpose
  - 3.4.2. Conditions
  - 3.4.3. Special Permit
- 3.5. NON-CONFORMING USES AND STRUCTURES
  - 3.5.1. General
  - 3.5.2. Abandonment
  - 3.5.3. Changes
  - 3.5.4. Exemption
  - 3.5.5. Special Permit
  - 3.5.6. Limitation of Restoration

**SECTION 4.0 DIMENSIONAL REGULATIONS**

- 4.1. GENERAL
  - 4.1.1. One Structure per Lot
  - 4.1.2. Change of Lot
  - 4.1.3. Table of Dimensional Requirements.
- 4.2. SPECIAL DIMENSIONAL REGULATIONS
  - 4.2.1. Eaves and Steps
  - 4.2.2. Corner Clearances
  - 4.2.3. Special Rules in the B! District
  - 4.2.4. More than One Dwelling on One Lot
  - 4.2.5. Lot Coverage
  - 4.2.6. Special Permit for Height in the HC District
  - 4.2.7. Special Permit for Setbacks Within the R-1 District
  - 4.2.8. Special Permit for Height in the B-1 District
- 4.3. SPECIAL PERMIT FOR AFFORDABLE HOUSING
  - 4.3.1. General
  - 4.3.2. Conditions
- 4.4. ACCESSORY STRUCTURES IN THE R1, R2, R3 AND R4 DISTRICTS
  - 4.4.1. Less than 100 Square Feet
  - 4.4.2. Less than 500 Square Feet; Used as a Garage
  - 4.4.3. (Withdrawn)
  - 4.4.4. Detached Bedroom
  - 4.4.5. Pools

## **SECTION 5.0 GENERAL REGULATIONS**

- 5.1. OFF STREET PARKING REQUIREMENTS
  - 5.1.1. General
  - 5.1.2. Applicability
  - 5.1.3. Required Off-Street Parking Spaces in the B1 District
  - 5.1.4. Special Permit
  - 5.1.5. Special Permit in the B-1 District
    - 1. Purpose
    - 2. Required Parking
    - 3. Special Permit
    - 4. Payment in Lieu
  - 5.1.6. Shared Parking
- 5.2. LOADING AREAS
  - 5.2.1. General
  - 5.2.2. Layout & Design
  - 5.2.3. Special Permit
- 5.3. SIGNS
  - 5.3.1. Purpose
  - 5.3.2. Definitions
  - 5.3.3. Applicability
  - 5.3.4. Sign Permits
  - 5.3.5. Design Standards and Guidelines
  - 5.3.6. Prohibited Signs
  - 5.3.7. Signs Allowed in all Districts
    - 1. Architectural Signs
    - 2. Awning Signs
    - 3. Directory Signs
    - 4. Parking & Directional Signs
    - 5. Agricultural Signs
    - 6. Temporary Signs
      - a. Construction Signs
      - b. Exterior of Building Sign
      - c. Oak Bluffs Events Sign
      - d. Window Signs
      - e. Theater Signs
      - f. Menu and Announcement Signs
      - g. Vehicular Signs
    - 7. Temporary Signs That Do Not Require A Permit
      - a. Political Signs
      - b. Real Estate Signs
  - 5.3.8 Regulations for Residential Districts

- 5.3.9 Regulations for Business Districts
- 5.3.10 Signs Requiring Special Permits in Business Districts
- 5.3.11 Pre-existing Non-conforming Signs
- 5.3.12 Advisory Sign Review Board
- 5.3.13 Penalty
- 5.3.14 Owner's Consent
- 5.4 ENVIRONMENTAL PERFORMANCE STANDARDS
  - 5.4.1 General
  - 5.4.2 Noise
  - 5.4.3 Solid Waste Storage
  - 5.4.4 Miscellaneous Standards
  - 5.4.5 Erosion Control
- 5.5 GENERAL LANDSCAPING REQUIREMENTS
  - 5.4.1 Purpose
  - 5.4.2 Applicability
  - 5.4.3 Landscaping Requirements for Certain Property Laws in the B-1 and B-2 Districts
  - 5.4.4 Coordination with Site Plan Approval
  - 5.4.5 Maintenance of Landscaped Areas

## **SECTION 6.0 SPECIAL REGULATIONS**

- 6.1 WIND ENERGY GENERATING FACILITY REGULATIONS
  - 6.1.1 Regulations
  - 6.1.2 Applicability
  - 6.1.3 Definitions
  - 6.1.4 Land Based Wind Energy Facilities Categories
    - 6.1.5 General Requirements For The Installation of Any Wind Facility
      - 6.1.5.1 Compliance with Laws, Ordinances and Regulations
      - 6.1.5.2 Technical Requirements
      - 6.1.5.3 Safety Wires
      - 6.1.5.4 Wind Speed Controls
      - 6.1.5.5 Towers
      - 6.1.5.6 Connections
      - 6.1.4.7 Monitoring
      - 6.1.4.8 Site Clearing
      - 6.1.4.9 Land Clearing
      - 6.1.4.10 Rooftop Systems
      - 6.1.4.11 Efficiency
      - 6.1.4.12 Interference
  - 6.1.6 Regulations
    - 6.1.6.1 Private Wind Facilities
    - 6.1.6.2 Municipal Wind Energy Generating Facilities
- 6.1.7 Special Permit

- 6.1.8 Terms of Use
  - 6.1.8.1 Decommissioning
  - 6.1.8.2 Removal Requirements
  - 6.1.8.3 Abandonment
  - 6.1.8.4 Surety
- 6.2 WINDMILLS (Replaced by 6.1)
- 6.3 UNREGISTERED MOTOR VEHICLES
- 6.4 TRAILERS
  - 6.4.1 General
  - 6.4.2 Exception
  - 6.4.3 Nonconforming Trailers
  - 6.4.4 Parking or Storage of Trailers

## **SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS**

- 7.1 CONVERSION TO DUPLEX
  - 7.1.1 General
  - 7.1.2 Conditions
- 7.2 CONVERSION OF AN EXISTING BUILDING TO APARTMENT UNITS
  - 7.2.1 Conversion of Existing One or Two Story Building
  - 7.2.2 Conversion of Existing Three Story Building to Apartment Units
  - 7.2.3 Conversion and Expansion of Existing Building to Apartment Units
- 7.3 FLEXIBLE DEVELOPMENT
  - 7.3.1 Purpose
  - 7.3.2 Definitions
  - 7.3.3 Applicability
  - 7.3.4 Procedures
  - 7.3.5 Design Process
  - 7.3.6 Modification of Lot Requirements
  - 7.3.7 Basic Maximum Number of Dwelling Units
  - 7.3.8 Density Bonus
  - 7.3.9 Affordable Component
  - 7.3.10 Types of Buildings
  - 7.3.11 Roads
  - 7.3.12 Parking
  - 7.3.13 Contiguous Open Space
  - 7.3.14 Ownership of the Contiguous Open Space
  - 7.3.15 Buffer Areas
  - 7.3.16 Storm water Management
  - 7.3.17 Decision
  - 7.3.18 Relation to Other Requirements

## **SECTION 8.0 SPECIAL DISTRICTS**

- 8.1 FLOOD PLAIN OVERLAY DISTRICT (FPOD)
  - 8.1.1 Statement of Purpose
  - 8.1.2 Floodplain Overlay District Boundaries
  - 8.1.3 Scope of Authority
  - 8.1.4 Permitted Uses
  - 8.1.5 Permitted Uses by Special Permit
  - 8.1.6 Prohibited Uses
  - 8.1.7 General Administration
  - 8.1.8 Special Permit Administration
  - 8.1.9 Regulations
  - 8.1.10 Fees
  - 8.1.11 Severability
  - 8.1.12 Definitions
- 8.2 WATER RESOURCE PROTECTION OVERLAY DISTRICT
  - 8.2.1 Legislative Findings and Purpose
  - 8.2.2 Definitions
  - 8.2.3 Location
  - 8.2.4 Prohibited Uses
  - 8.2.5 Permitted Uses
  - 8.2.6 Uses by Special Permit
  - 8.2.7 Special Permit Granting Authority
  - 8.2.8 Non-conforming Uses
  - 8.2.9 Violations
- 8.3 WIRELESS COMMUNICATION OVERLAY DISTRICT (WCOD)
  - 8.3.1 Purpose
  - 8.3.2 Location
  - 8.3.3 Applicability
  - 8.3.4 Uses Available by Special Permit
  - 8.3.5 Conditions
  - 8.3.6 Submittal Requirements
- 8.4 REGISTERED MARIJUANA DISPENSARY OVERLAY DISTRICT (RMDOD)
  - 8.4.1 Purpose
  - 8.4.2 Locations
  - 8.4.3 Applicability
  - 8.4.4 Definitions
  - 8.4.5 General Requirements and Conditions for all Registered Marijuana Dispensary.
  - 8.4.6 Special Permit Requirements

**SECTION 9.0 DISTRICTS OF CRITICAL PLANNING CONCERN**

*(RENUMBER WITHOUT CHANGING THE TEXT OF SECTIONS XIII AND XVIII AS NEW SECTION 9.0 AND INSERT HERE)*

**SECTION 10.0 ADMINISTRATION AND PROCEDURES**

- 10.1 ADMINISTRATION
  - 10.1.1 Permits
  - 10.1.2 Enforcement
  - 10.1.3 Penalties
- 10.2 BOARD OF APPEALS
  - 10.2.1 Establishment
  - 10.2.2 Powers
  - 10.2.3 Regulations
  - 10.2.4 Fees
- 10.3 SPECIAL PERMITS
  - 10.3.1 Special Permit Granting Authority
  - 10.3.2 Criteria
  - 10.3.3 Procedures
  - 10.3.4 Conditions
  - 10.3.5 Plans
  - 10.3.6 Regulations
  - 10.3.7 Fees
  - 10.3.8 Lapse
- 10.4 SITE PLAN REVIEW
  - 10.4.1 Applicability
  - 10.4.2 Exemptions
  - 10.4.3 Procedures
  - 10.4.4 Preparation of Plans
  - 10.4.5 Contents of Plan
  - 10.4.6 Waiver of Technical Compliance
  - 10.4.7 Minor Site Plan
  - 10.4.8 Approval
  - 10.4.9 Lapse
  - 10.4.10 Regulations
  - 10.4.11 Fee
  - 10.4.12 Appeal

## **SECTION 11.0 DEFINITIONS**

## **SECTION 12.0 SOLAR ENERGY SYSTEMS**

### **12.1. PURPOSE**

### **12.2. GENERAL REQUIREMENTS**

### **12.3. SOLAR ENERGY SYSTEMS PERMITTED BY RIGHT.**

12.3.1. Building-Mounted and/or Integrated Solar Energy System

12.3.2. Ground-Mounted and/or Pole-Mounted Solar Energy System

### **12.4. SOLAR ENERGY SYSTEMS ALLOWED BY SPECIAL PERMIT.**

12.4.1. Special Permits

12.4.2. Required documents

### **12.5. FURTHER REQUIREMENTS FOR LARGE-SCALE GROUND-MOUNTED SOLAR ENERGY SYSTEMS.**

12.5.1. Large-scale systems

12.5.2. Design Standards

12.5.3. Safety and Environmental Standards.

12.5.4. Monitoring and Maintenance.

### **12.6. SPECIAL DISTRICTS AND USES**

12.6.1. Agricultural land.

12.6.2. Contiguous open spaces

12.6.3. Community-shared solar energy system.

## **SECTION 1.0 PURPOSE AND AUTHORITY**

### **1.1 PURPOSE**

These regulations are enacted to promote the general welfare of the Town, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited by, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

### **1.2 AUTHORITY**

This Zoning By-law is enacted pursuant to the authority provided by General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

### **1.3 SCOPE**

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land in the Town are regulated as hereinafter provided.

#### **1.4 APPLICABILITY**

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning By-law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control. Uses not expressly allowed are prohibited.

#### **1.5 AMENDMENTS**

This By-law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

#### **1.6 SEPARABILITY**

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision herein.

### **SECTION 2.0 DISTRICTS**

#### **2.1 ESTABLISHMENT**

For the purpose of this By-law, the Town is divided into the types of zoning districts set forth below:

Residence One	R1
Residence Two	R2
Residence Three	R3
Residence Four	R4
Business One	B1
Business Two	B2



Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones. (*Amended ATM 4.13.10 Art. 23, AG Approved 8.30.10, Published 9.14.10*)

## **StormSmart Coasts Committee**

### **2.3 MAP**

The location and boundaries of the zoning districts are hereby established as shown on a map entitled, "Oak Bluffs Zoning Map," approved by the Attorney General on May 21, 2002. Said map is on file in the office of the Town Clerk. All explanatory legend and memoranda thereon or attached thereto are hereby declared to be a part of this By-law. Any change in the location of boundaries of a zoning district hereafter made through the amendments of this By-law shall be indicated by the alteration of such Map, and the Map, thus altered, is declared to be a part of the By-law thus amended. Photographic reductions of this Zoning Map may serve as copies of the Zoning Map.

**Article 13.** Voted in excess of the 2/3rds required to amend the "Oak Bluffs Zoning Map", as defined in 2.3 of the Oak Bluffs Zoning By-laws, by altering the boundary between the B-1 Zoning District and the R-1 Zoning district so as to include the property known as 52 Narragansett Ave (Assessors Map 11, Parcel 25) within the B-1 Zoning District.

Yes 97 No 37. (*Amended STM 1.18.05 Art 13, AG Approved 2.23.05, Published 3.11.06*)

#### **Petitioned Article**

**Article 8.** Voted in excess of the required 2/3rds to amend the Oak Bluffs **Zoning Map** by adding Assessors Map 7, Parcel 2 (82 Eastville Avenue) to the Health Care District (HCD).

(*Amended STM 10.20.09 Art 8, AG Approved 11.24.09, Published 12.8.09*)

#### **Petitioned Article**

**2.3.1. Rules for Interpretation of Zoning District Boundaries.** Where uncertainties exist as to the boundaries of districts as shown on the Zoning Map (Map) the following shall apply:

1. Where the boundary lines are shown upon the Map within the side lines of public and private ways, railroads or water courses, the center lines of such ways shall be the boundary lines.
2. Where the boundary lines are shown upon the Map, approximately on the location of property or lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.

3. Boundary lines located outside of such lines of public and private ways and shown approximately parallel thereto shall be regarded as parallel to such side lines and dimensions shown in figures on the Map between such boundary lines and side lines of public and private ways are the distances in feet of such boundary lines from such side lines, such distances being measured at right angles to such side lines unless otherwise indicated.
4. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said Map, by the use of identifications as shown on the Map, or by the scale of the Map.
5. Where a district boundary line divides a lot which was, as a matter of record, in existence on the effective date of this chapter, the Board of Appeals may permit, by special permit, the extension of the regulations of the less restricted district a distance not to exceed 30 feet beyond the district line into the remaining portion of the lot in the more restricted district.
6. Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.

**2.3.2 Amendment of Map.** Any change of the Zoning Map shall constitute an amendment of this By-law and the procedure for making such a change shall conform to the requirements for amending this By-law.

**2.4 Health Care District** (*Section added 4.12.06 ATM Art 20, AG approved and published 7.17.06*)

2.4.1 Purpose

The Health Care District is intended primarily for health care related uses, including but not limited to the following: hospitals, physicians offices, nursing and convalescent homes, long term care facilities, laboratories, elder and child care establishments, substance abuse services, and other uses associated with the maintenance and restoration of the physical and mental well-being of the residents of and visitors to Martha's Vineyard and other uses ancillary thereto.

2.4.2 Permitted Uses

In the Health Care District, no building or structure shall be constructed or altered, and no building(s), structure(s), or premises shall be used for any purpose except:

2.4.2.1 Any uses authorized in the R-1, R-2, R-3 and R-4 Residential Districts

2.4.2.2 A health care related use, consistent with the purposes set forth in Section 2.4.1 above and so long as the total floor area of all structures in the Health Care District used for health care related uses does not exceed 100,000 square feet.

#### 2.4.3 Uses by Special Permit

At any time that the total floor area of all health care related uses in the Health Care District exceeds 100,000 square feet, any additional or expanded health care related use(s) may only be granted by Special Permit. The Board of Appeals may grant a Special Permit for such health care related use(s). In determining whether to grant such a Special Permit, the Board of Appeals shall consider the factors set forth in Section 10.3 of this By-law.

#### 2.4.4 Permitted Accessory Uses and Structures Within the Healthcare District

Any use which is customarily accessory, subsidiary, and incidental to a permitted principal use, or any use which is supportive of or reasonably necessary for a permitted use shall be permitted on the same lot with said principal use.

#### 2.4.5 General Regulations

It shall be permissible to erect more than one (1) structure on a single lot in the Health Care District provided that the dimensional requirements of this Section 2.4 and Appendix B are met for such structures.

## **SECTION 3.0 USE REGULATIONS**

### **3.1 PRINCIPAL USES**

No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations, including the notes to the Schedule, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited.

**3.1.1 Key.** In the Table of Use Regulations, the following terms shall be employed:

Y	-	Permitted as of right
N	-	Prohibited
BA	-	Special permit/Board of Appeals
PB	-	Special Permit/Planning Board
SB	-	Special Permit/Selectboard

**3.1.2 If Classified Under More than One Use.** Where an activity may be classified as more than one of the principal uses listed in the Table of Use Regulations, the more specific classification

shall determine permissibility; if equally specific, the more restrictive shall govern.

### **3.1.3 Table of Use Regulations.** SEE APPENDIX A.

## **3.2 ACCESSORY USES**

**3.2.1 Permitted Accessory Uses in All Districts.** The following accessory uses are specifically permitted as of right or by special permit:

1. **Accessory Scientific Uses.** Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.
2. **Wireless Communication Equipment.** Wireless communications equipment may be placed on any appropriate existing structure, including a monopole authorized by special permit in the Wireless Communication Overlay District, upon site plan approval by the Planning Board. Such equipment may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission lines, and the like. In such cases, the facility height shall not exceed two (2) feet above the height of the existing structure or building. The construction of new monopoles shall be regulated by Section 8.3, herein.

**3.2.2 Nonresidential Accessory Uses in the B1 and B2 Districts.** Any use permitted as a principal use is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 10.4, shall also require site plan review and approval.

**3.2.3 Residential Accessory Uses in All Districts.** (*Amended 4.12.06 ATM Art.16, AG approved and published 7.17.06*)

Home businesses are allowed in accordance with Section 3.2.4 herein upon fulfillment of the application, fee, and all other requirements. The following specific uses are permitted as of right or by special permit when accessory to a residence in all districts as set forth herein.

1. **Family Day Care Homes.** Small family day care homes, are allowed as an accessory

use as of right. Large family day care homes may be authorized upon the grant of a special permit by the Board of Appeals.

**2. Adult Day Care Homes.** Small adult day care (up to six nonresident adults over the age of sixteen (16) may be offered as an accessory use of right; large adult day care (seven or more nonresident adults over the age of 16) may be authorized as an accessory use upon the grant of a special permit by the Board of Appeals *(Added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

**3. Boarders in Single-Family Dwelling.** The renting of rooms and/or furnishing of board to not more than three **unrelated** persons in a single family dwelling by the owner/occupant thereof shall be a permitted accessory use. The renting of rooms and/or furnishing of board to four or more **unrelated** persons shall be deemed a boarding house subject to the provisions of the Table of Regulations and G.L. c. 140 s. 22. *(Added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

**4. Contractor's Yard.** The use of a residential premises as a place for the storage of building materials or equipment is permitted as an accessory use on a parcel larger than 2 Acres as of right after site plan approval **by the Planning Board**, or by special permit of the Board of Selectmen on a smaller parcel. *(Added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

**5. Storage or Parking of Commercial Landscaping Equipment.** The use of a residential premises as a place for the storage or parking of commercial landscaping equipment or supplies is permitted as an accessory use on a parcel larger than 2 Acres as of right after site plan approval **by the Planning Board** or by special permit of the Board of Selectmen on a smaller parcel. *(Added STM 12.2.03, AG Approved 4.26.04, Published 4.9.04)*

**6. Overnight Parking of Commercial Vehicles.** *(Added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

The use of residential premises as a place for the overnight parking of commercial vehicles owned or operated by a resident of the premises is authorized as an accessory use, subject to the following limitations:

- a. One or two commercial vehicles less than 15,000 gvw are allowed as of right.
- b. three or more commercial vehicles less than 15,000 gvw are allowed by special permit of the Board of Selectmen.
- c. One or two commercial vehicles more than 15,000 gvw but less than 26,000 gvw may be allowed by special permit of the Board of Selectmen.

**3.2.4 Home Business – As of Right** *(Section added ATM 4.12.06 Art.16 – Replacing section*

*former 3.3, AG approved and published 7.17.06)*

One (1) home occupation may be conducted by the resident owner of a premises as of right upon fulfillment of the application, fee, and all other requirements, provided that it meets all of the following conditions:

Such business shall:

1. be conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
2. be clearly incidental and secondary to the use of the premises for residential purposes;
3. not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution in accordance with the provision in Section 5.0;
4. not utilize exterior storage of material or equipment (including the parking of commercial vehicles) except as may be otherwise allowed by the Zoning By-law;
5. not exhibit any exterior indication of its presence or and variation from residential appearance;
6. not produce any customer, pupil, client or delivery trips to the occupation site and has no non-residential employees; and
7. be registered as a business with the Town Clerk.

### 3.2.5 Home Business – By Special Permit

One (1) home occupation may be conducted by the resident owner of a premises upon the grant of a Special Permit by the Board of Selectmen upon fulfillment of the application, fee, and all other requirements. Such Special permit shall expire at the transfer of the property. Such Special Permit shall be subject to the following conditions:

1. No more than three (3) persons (excluding members of the family residing on the premises) shall be employed on the premises in the home occupation;
2. Such business shall be clearly incidental and secondary to the use of the premises for residential purposes;
3. Except for a permitted sign, there shall be no exterior display or exterior storage of merchandise, material or equipment and no indication of the home occupation or variation from the residential character of the area;
4. No offensive noise, vibration, smoke, dust, heat or glare shall be produced;
5. Traffic generated shall not exceed volumes normally found in residential neighborhoods;
6. Parking generated shall be accommodated off-street other than in a required front yard and shall be limited to five (5) parking spaces;
7. Such parking shall be screened from the street and all adjoining lots so as not to vary from the residential character of the area;
8. All home businesses shall conform to the rules and regulations of the Oak Bluffs Board of Health;
9. There shall be no retailing, wholesaling or rental of items not principally produced on the premises unless incidental to other allowed activities;
10. Items left for service shall be stored indoors within the prescribed area(s) set forth in subsection 12.

11. A home business shall be limited to not more than five (5) customers or persons utilizing a service on the premises at any one time;
12. The area used for a home business shall be limited to one of the following:
  - a. 750 sq. ft. within a dwelling
  - b. 750 sq .ft. within an accessory building
  - c. 750 sq .ft. within any combination of dwelling and accessory building.
13. The owner of any home business legally existing at the time of the adoption of this By-law must register with the Town Clerk within ninety (90) days of the effective date of this By-law;
14. If the owner of a legally pre-existing home business wishes to change or expand the home business s/he must apply for a Special Permit.

**3.3 HOME OCCUPATIONS** *(Section replaced STM 12.2.03 Art 15, AG Approved 3.26.04, Published 4.9.04)(This section was deleted and replaced by above section 3.2.4 and 3.2.5 at the 4.12.06 ATM Art. 16, AG approved and published 7.17.06).*

### **3.4 ACCESSORY OR GUEST APARTMENTS**

**3.4.1 Purpose.** For the purpose of (a) providing small additional dwelling units to rent without adding to the number of buildings in the Town, or substantially altering the appearance of the Town, (b) providing alternative housing options for elder residents, and (c) enabling owners of single family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership, an accessory or guest apartment is a permitted use in the R1, R2 and R3 Districts, subject to the following conditions:

**3.4.2 Conditions.** The Building Commissioner shall verify that all of the following conditions have been met:

1. A plot plan of the existing dwelling unit and proposed accessory apartment shall be submitted, showing the location of the building on the lot, proposed accessory apartment, location of any septic system and required parking. A mortgage inspection survey shall be sufficient to meet this requirement.
2. The house must have been owner occupied by the applicant for the five previous years and must continue to be owner occupied after the conversion is allowed. An affidavit shall be provided stating that one of the two dwelling units shall be occupied by the owner of the property, except for bona fide temporary absence; seasonal occupation by the owner shall not disqualify the applicant.
3. Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 750 sq. ft. in floor space and shall be located in the principal residential structure on the premises or in an accessory structure.

4. There must be at least 7500 square feet of open space on the lot which is unpaved and unoccupied by any structure.
5. The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family structure.
6. Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.
7. No permits under this section may be granted within the coastal district.

**3.4.3 Special Permit.** If the applicant is unable to satisfy one or more of the conditions set forth above, the Board of Appeals may, by special permit authorize such dwelling unit. Such special permit may be granted by the Board of Appeals only upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 10.3 of this Zoning By-Law, governing special permits.

### **3.5 NONCONFORMING USES AND STRUCTURES** (*Section replaced 4.12.05 Art. 17, AG Approved 7.13.05, Published 7.26.05*)

**3.5.1 General.** Except as hereinafter provided, a zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to applications made for Permits, Special Permits and Building Permits submitted before the first publication of the notice of public hearing on such by-law. This Zoning By-law shall apply except as provided herein to the following:

1. Any change or substantial extension of a non-conforming use.
2. Reconstruction extension or structural change of a non-conforming use.
3. Any alteration of a structure begun after the first publication of notice of public hearing of the by-law.

**3.5.2 Abandonment.** A non-conforming use which has been abandoned for a period of two (2) years shall not be reestablished and any future use shall conform with the Oak Bluffs Zoning By-Laws.

**3.5.3 Changes.** Once changed to a conforming use, no structure shall be permitted to revert back to a non-conforming use, except where this by-law makes provisions for Special Permit consideration.

**3.5.4 Exemption.** Where alteration, reconstruction, extension or structural change to a single or two family residential structure does not increase the non-conforming nature, neither public hearing nor Special Permit from the Board of Appeals is required for said alteration, reconstruction, extension or structural change.

**3.5.5 Special Permit.** No pre-existing non-conforming uses and structures shall be changed, moved or extended and no pre-existing non-conforming uses and structures or buildings shall be altered or enlarged or replaced by a new building except as permitted in Section 3.5.4, 3.5.6 and G.L. c. 40A, s.6 unless, upon application to the Board of Appeals for a Special Permit, the Board of Appeals has made a finding that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use or structure to the neighborhood.

**3.5.6 Limitation of Restoration.** In the case that any non-conforming building is damaged by fire or any other cause, restoration work must be undertaken within two (2) years of the time damage is inflicted unless, upon application to the Board of Appeals, it can be shown that restoration within the time limit is impossible, in which case extension of time may be granted. In the event that a non-conforming building is destroyed or damaged by fire or other cause, the same may be reconstructed or repaired on the same location for the same or less conforming use, provided that the new building may be equal in extent and character to the original structure

## **SECTION 4.0 DIMENSIONAL REGULATIONS**

### **4.1 GENERAL**

No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless otherwise exempted by this By-Law or by statute.

**4.1.1 One Structure per Lot.** Except as otherwise provided herein, not more than one principal structure may be placed on any lot.

**4.1.2 Change of Lot.** No existing conforming or non-conforming lot shall be changed in size or shape except through a public land taking or donation for road widening, drainage, or utility improvements or except where otherwise permitted herein, so as to create a non-conformity or increase the degree of non-conformity that presently exists. If land is subdivided, conveyed, devised or otherwise transferred in violation hereof, no building or other permit shall be issued with reference to said transferred land until the lot retained meets the requirements of this By-Law.

**4.1.3 Table of Dimensional Requirements.** See Appendix B.

### **4.2 SPECIAL DIMENSIONAL REGULATIONS**

**4.2.1 Eaves and Steps.** Projecting eaves and uncovered steps shall not be governed by this

Section 4.0.

**4.2.2 Corner Clearances.** On a corner lot no fence, wall, structure, planting shrubbery or foliage more than 30" in height above the plan of the established grade of the streets shall be erected in any part of a yard herein established, that is included within the street lines at points which are twenty (20) feet distance from their point of intersection measured along said street lines, which would materially obstruct the view of a driver of a vehicle approaching a street intersection.

**4.2.3 Special Rules in the B1 District.** Any structure in existence at the time of the enactment of this Zoning By-law that is higher than 35 feet or within 5 feet of the front lot line shall not be considered a non-conforming structure for the purposes of any proposed alteration or change to said structure.

**4.2.4 More than One Dwelling on One Lot.** No permit shall be granted for more than one dwelling structure per parcel or defined lot of land, unless each such structure complies with lot area requirements without counting any land twice, and the Planning Board certifies that each structure will be provided with access and utilities in the same manner as otherwise required for lots within a subdivision.

**4.2.5 Lot Coverage.** No permit shall be granted for the construction of a new dwelling that would occupy more than one third of the lot area.

**4.2.6 Special Permit for Height in the HC District.** Notwithstanding the provisions of the Table of Dimensional Requirements, the Board of Appeals may authorize by the grant of a special permit a structure not higher than fifty (50) feet. In addition to the criteria set forth in Section 10.3.2, the Board of Appeals shall consider the impact of such height increase and accompanying shadows on neighboring properties and view corridors. *(Section added 4.12.05 Art.16, AG Approved 7.13.05, Published 7.26.05)(Section renumbered ATM 4.12.06 Art 19, AG approved and published 7.17.06)*

**4.2.7 Special Permit for Setbacks Within the R-1 District.** The purpose of this provision is to maintain the historic character of the buildings and the streetscapes within an area consisting primarily of historic structures on very small lots and with much smaller setbacks than those required by current zoning regulations.

Within those sections of the R-1 Residential District consisting of the Copeland Overlay District Sections A, B, C, and D, the Board of Appeals may grant Special Permit relief from the requirements for the front setback(s) of a lot. *(Section added 4.12.06 ATM Art 22, AG approved and published 7.17.06)*

**4.2.8 Special Permit for Height in the B-1 District**

The height of a building in the B-1 District shall not exceed 35 (thirty-five) feet except for the

purpose of restoring or reproducing Victorian architectural features such as turrets or towers and/or decorative elements that extend above the main roof line. The Board of Appeals may grant a Special Permit in excess of 35 (thirty five) feet in dimensional height for such purpose if determined to be historically appropriate. In considering the Special Permit application, the Board of Appeals shall request comments from the Oak Bluffs Historical Commission on the appropriateness of the application. *(Section added ATM 4.12.06 Art 21, AG approved and published 7.17.06)*

**4.3 SPECIAL PERMIT FOR AFFORDABLE HOUSING**

**4.3.1 General.** The Planning Board may grant a special permit for the construction of an affordable dwelling unit on a lot having not less than five thousand square feet, subject to the following conditions.

**4.3.2 Conditions.**

1. The unit shall be sold at a price affordable to a household or person in Dukes County under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning not more than 80% median income. If the unit is to be constructed and occupied by the original applicant for the special permit, such applicant shall meet the income guidelines applicable for the sale of such unit and the unit shall be deemed to have a value no greater than the limits established by the Department for resale purposes.
2. The unit shall be deed restricted for a period of not less than THIRTY (30) years as affordable for persons or families in Dukes County under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 80% of the median income.
3. Prior to the sale or any subsequent sale of the unit, deed restrictions complying with the terms set forth above shall be approved as to form by the Board's legal counsel.
4. The lot shall be served by municipal water.
5. The structure shall meet the front setback requirement. The side and rear yard requirements for the district may be adjusted by special permit of the Planning Board.
6. Nothing herein shall be construed to waive otherwise applicable provisions of G.L. c. 40A, s. 6, Para. 4, governing the merger of lots.

**4.4 ACCESSORY STRUCTURES IN THE R1, R2, R3 AND R4 DISTRICTS**

(Amended 4/12/06 ATM Art. 15.)

**4.4.1 Less than 100 Square Feet.** The minimum setback between any

shed of one hundred (100) square feet or less and any lot line other than the street line shall be five (5) feet.

**4.4.2 Less than 500 Square Feet; Used as a Garage:** The minimum setback between any structure of five hundred (500) square feet or less used solely as a garage, and any lot line other than the street line shall be ten (10) feet.

**4.4.4 Detached Bedroom:** *(Added 4.12.06 ATM Art 15, AG approved and published 7.17.06)*

In any residential district, a detached bedroom is allowed by Special Permit issued by the Board of Appeals. A detached bedroom is defined as either a free-standing structure or a bedroom over a non-habitable accessory structure with all of the conditions set forth in Section 3.4.2 and the following:

1. Bedroom and bathroom only
2. No sitting room(s), no entrance alcove(s), no hallways
3. Living space to be no larger than four hundred (400) square feet, including but not limited to bathroom, closet(s) and enclosed porches
4. Bathroom plumbing only. Only one (1) each hand sink, toilet and tub/shower
5. No stove or refrigerator
6. There must be at least seven thousand five hundred (7,500) square feet of open space on the lot which is unpaved and unoccupied by any structure
7. Building Official is allowed right of entry for compliance inspection

**4.4.5 Pools** *(Section added 4.12.06 ATM Art 17, AG approved and published 7.17.06)*

4.4.5.1 General A swimming pool may be considered accessory to the use of a residence, subject to the following conditions:

4.4.5.2 Conditions

1. Such pool is used solely by the residents and their guests;
2. Except by Special Permit from the ZBA, no portion of the pool may be located within 20' of any property bound in zoning districts R1 & R2 and 50' in R3 & R4.
3. The pool is securely fenced and the enclosure shall meet the requirements of 780CMR 421.9; and
4. Such pool must meet all Board of Health setback requirements for septic and any other applicable regulations.

## **SECTION 5.0 GENERAL REGULATIONS**

### **5.1 OFF-STREET PARKING REQUIREMENTS**

**5.1.1 General.** Required parking shall be provided on the same lot as the main use it is to serve.

All required parking spaces shall be 9' x 18'.

**5.1.2 Applicability.** In the B1 District only, no structure shall be changed from residential to nonresidential or multifamily use and no permit to construct or enlarge a business structure shall be issued unless adequate off-street parking is provided and approved by the Planning Board.

**5.1.3 Required Off-Street Parking Spaces in the B1 District.**

1. Retail sales and services establishments: one parking space for each 100 sq. ft. of new floor area for the first 500 sq. ft. and one parking space for each additional new 200 sq. ft.
2. Places of public assembly: one parking space for every additional five seats within.
3. Restaurants, Theaters, Halls, Clubs: one parking space for each additional four seats.
4. Office or professional use: one parking space for each 150 sq. ft. of new gross floor area.
5. Inns, hotel or guest houses: one parking space for each 24 of the first additional five bedrooms and one parking space for each three additional bedrooms.
6. Other undefined uses: the number of parking spaces required will be determined by the Planning Board after evaluating the projected demands.

**5.1.4 Special Permit.** *(Section replaced STM 12.2.03 Art 16, AG Approved 3.26.04, Published 4.9.04)* Except in the B-1 District, any parking requirements set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit. Such cases might include:

- a. Use of a common parking lot for separate uses having peak demands occurring at different times.
- b. Age or other characteristics of occupants of the facility requiring parking which reduces auto usage.
- c. Peculiarities of the use which make usual measures of demand invalid.
- d. Availability of on street parking or parking at nearby municipally owned facilities.
- e. Where a special permit is granted, a reserve area to be maintained indefinitely as landscaped open space may be required sufficient to accommodate the difference between the spaces otherwise required and the spaces reduced by special permit. The parking/site plan shall show (in dotted outline) how the

reserve area would be laid out to provide the otherwise required number of spaces.

**5.1.5 Special Permit in the B-1 District.** *(Section added STM 12.2.03 Art 16, AG Approved 3.26.04, Published 4.9.04)*

1. **Purpose.** The B-1 District is the business area of Oak Bluffs. Parking generally provided on street to shoppers and business employees. This by-law has been adopted pursuant to M.G.L. c. 40A, s 9 in order to authorize an increase in intensity of uses in the B-1 District where the applicant provides traffic and pedestrian improvements and other amenities.
2. **Required Parking** Uses in the B-1 District shall meet the off street parking requirements set forth in Section 5.1.1, herein
3. **Special Permit** Where a proposed use in the B-1 District cannot meet the off street parking requirements set forth in Section 5.1.1 such off street parking requirements may be waived by special permit granted by the Planning Board where the applicant makes a payment in lieu to the Oak Bluffs B-1 District Parking Mitigation Trust.
4. **Payment in Lieu** Payments in lieu shall be calculated using the following formula:

Number of Required Off-street Parking Spaces	1-5	Each additional space 6-15	Each additional space after the first 15
Annual Payment in	\$100/space	\$75/space	\$50/space

**5.1.6 Shared Parking.** *(Renumbered from 5.1.5 STM 12.2.03 Art 16, AG Approved 3.26.04, Published 4.9.04)* Parking required for two (2) or more buildings or uses may be provided in combined facilities where it is evident that such facilities shall continue to be available for the several buildings or uses and where the parking provided meets all of the requirements of this section for each of the uses in the combination.

1. Evidence shall be submitted that parking is available within five hundred (500) feet of the premises, which lot satisfies the requirements of this by-law and has excess capacity during all or part of the day, which excess capacity shall be demonstrated by competent parking survey conducted by a traffic engineer registered in the Commonwealth of Massachusetts.
2. A contract, agreement, or suitable legal instrument acceptable to legal counsel, shall be filed with the application for building permit, occupancy permit, or special permit which shall specify the location of all spaces to be jointly used, the number of such spaces, the

hours during the day that such parking shall be available, and the duration or limit, if any on such parking.

3. Any reduction in area required for parking because of these joint use provisions may be required as reserved landscaped open space; such area shall be computed at the rate of four hundred (400) square feet per parking space.

4. Nothing in this section shall relieve the owner from providing parking facilities in accordance with this by-law if subsequently the joint use of parking facilities shall terminate.

**5.2 LOADING AREAS.** *(New section added 12.2.03 STM Art 17, AG Approved 3.26.04, Published 4.9.04)*

**5.2.1 General** All buildings requiring the delivery of goods as part of their function shall be provided with bays and suitable space for the off street maneuvering and loading of vehicles.

**5.2.2 Layout and Design of the Loading Facilities**

1. Individual loading spaces, maneuvering areas, entrances and exits shall be suitably identified with lines and arrows, as deemed necessary by the Building Commissioner.
2. Screening and Landscaping Requirements. Loading areas shall be screened in accordance with Section 5.4, herein.

**5.2.3 Special Permit.** The Planning Board may vary any requirement of Section 5.2 upon the grant of a special permit, where such relief will not result in substantial detriment to the neighborhood or the town.

## **5.3 SIGNS**

**5.3.1 Purpose.** The purpose of these regulations is to encourage signage in Oak Bluffs which will be appropriate to the Town's architectural styles and visual qualities, compatible with the Town's architecture and visual setting, appropriate to the activity announced, legible in the circumstances in which they are seen, and professional in appearance, construction and material.

**5.3.2 Definitions.** The following special definitions shall apply in this Section 5.3:

**ARCHITECTURAL SIGN:** An integral decorative or architectural feature of a building which may include letters or numbers relating to the building.

**AWNING SIGN:** An awning is any temporary or retractable covering or shelter which is supported entirely from the exterior wall of a building.

**BUILDING:** A structure enclosed within exterior walls, built, erected and framed of a combination of any materials, having a roof, to form a structure for the shelter of persons, animals or property.

**BUSINESS:** Activity of some continuity, regularity and permanency, means of material being and livelihood.

**ESTABLISHMENT:** A place of business or businesses, under one ownership, occupying a defined area comprised of a building or a portion thereof, and/or a lot or a portion thereof.

**FACADE:** Any separate face of a building.

**FRONTAGE:** A continuous portion of a property line dividing a lot and street line.

**FREE-STANDING SIGN:** A sign directly or indirectly, connected to the ground and not attached to any building or other structures. Under free standing sign, insert the words, "other structure" Any free-standing sign must be located entirely within the property bounds.

**HANGING SIGNS:** A sign attached at right angles to a building which has not more than 2 sides, and projects no more than 6 feet from the building.

**MENU BOXES:** A menu box is a weather-tight box constructed of wood with a glass, or plexiglass front and is used to display signs, bulletins, menus, photos and /or other information.

**MULTIPLE-OCCUPANCY BUILDING:** A building with more than one business establishment occupying the street level.

**OFF-PREMISE SIGN:** A sign which advertises or announces a use conducted, or goods that are available elsewhere than within the building or lot on which the sign is located. For the purposes of this bylaw, a political sign shall not constitute an off-premise sign.

**POLITICAL SIGN:** A non-premise sign which refers only to the issues or candidates involved in a political election and is designed to influence the action of voters.

**PRE-EXISTING NON-CONFORMING SIGN:** A legally erected sign which became non-conforming as a result of the enactment of or a change to zoning.

**PREMISES:** Any lot or building, or combination thereof, held under single lease or ownership of one business establishment.

**ROOF SIGN:** A sign which is erected, constructed, or maintained on or above the roof of a building.

**TEMPORARY SIGN:** A sign, including its supporting structure, intended to be maintained for a continuous period of not more than 30 days.

**VEHICULAR SIGNS:** Any sign on a vehicle which is attached to a structure or accessory which is not a part of the original design of the vehicle.

**WALL SIGN:** A sign which is mounted flush to a wall and projects no more than 12 inches from it; or a sign which is painted upon, or applied to, a building.

**WINDOW SIGN:** A sign painted or posted on an interior translucent surface, including windows and doors, and which is within 12 inches of such surface.

**5.3.3 Applicability.** These regulations shall apply to all privately owned signs in Oak Bluffs.

**5.3.4 Sign Permits.** Except where otherwise exempted, a permit, to be issued by the Building Commissioner, is required for all signs.

**5.3.5 Design Standards and Guidelines.**

1. **Color.** Color should enhance the sign's legibility and compliment the sign's visual setting which may include the materials and styles of nearby buildings and landscape. Color choices indicated on this by-law's color chart are preferred.
2. **Design.** Design, including graphics, should be simple, legible, appropriate to the activity, and compatible with nearby architecture and/or landscape.
3. **Material.** Materials should be visually compatible with the materials of a buildings facade, materials recommended; wood, MDO plywood or metal. The use of plastic should be discouraged.
4. **Placement.** Placement should respect the basic design of a facade (preferably the design of the original facade) should relate to the positions of nearby signs, and should not obscure architectural/visual themes such as views, architectural shapes, spaces and details which are characteristic of the area.

**5.3.6. Prohibited Signs.** Signs affixed to poles, public buildings, benches, trees or any other public place without permission of the Board of Selectmen are prohibited.

**5.3.7 Signs Allowed in all Districts.** The signs listed below are allowed in all districts. Prior to the erection of signs, a review by the Advisory Sign Review Board is required.

1. Architectural Signs

2. Awning Signs

3. Directory Signs for Multi-occupancy buildings. A building with multi-occupancy may have one directory sign with an area not to exceed one square foot per tenant, or a total of ten square feet, whichever is less. (*Amended ATM 4.13.04 Art 11, AG Approved 5.28.04, Published 6.15.04*)

4. Parking and Directional Signs. Signs limited solely to directing on-premise pedestrian or vehicular traffic or regulating the use of parking areas and not to exceed 1 square foot in area per sign.

5. Agricultural Sign. If the majority of the produce sold by an establishment is grown on the premises, an agricultural sign or signs may be maintained, but the total area of such signs may not exceed 10 square feet for each establishment.

6. Temporary Signs Requiring Review by the Advisory Sign Review Board. A sign which describes or relates to a special situation or event may be maintained for a continuous period of not more than 30 days, except if a longer period is specified below. The temporary signs listed below are allowed provided the following conditions are met:

- a. Construction Sign. One construction sign may be maintained on the premises during construction provided its area does not exceed 8 square feet, and it is removed within 2 days after issuance of the certificate of occupancy.
- b. Exterior of Building Sign. All temporary signs attached to the exterior of a building may not exceed 5% of the two dimensional facade of the building.
- c. Oak Bluffs Events Signs. Signs may be displayed in conjunction with official Oak Bluffs holidays or any events permitted by the Board of Selectmen, or celebrations. Signs, not to exceed 20 square feet in size, may be displayed up to 30 days prior to the event and shall be removed within 2 days after the event.
- d. Window Signs. A window sign may cover no more than 30% of the area of the window in which it appears.
- e. Theater Signs. Signs announcing a specific film(s).
- f. Menu and Announcement Signs. Menu and announcement signs not to exceed 5 square feet in total area. For the purpose of this bylaw, menus and announcements shall be considered temporary signs even though maintained for a period of time to exceed 30 days. These signs shall be affixed to the

building and shall be contained in menu boxes or on a chalkboard.

- g. Vehicular Signs. One sign is permitted for the left and right sides of the vehicle. Maximum 2 signs per vehicle. Maximum 5 square feet for each sign.

7. Temporary Signs That Do Not Require A Permit.

- a. Political Signs.
- b. Real Estate Signs. One real estate sign is allowed which advertises only the premises on which it is located. Any property located on a dead end road is allowed one additional "off premises" sign on other than the premises for sale with the written permission of the landowner on whose land the additional sign is located. All real estate signs shall be a maximum of three (3) square feet and shall be removed within two (2) days of the signing of a purchase and sale agreement.

**5.3.8 Regulations for Residential Districts.** Prior to the issuance of a building permit for a wall, hanging, window, or free-standing sign which is to be erected in a Residential District, the Building Commissioner shall determine that the following conditions are met:

1. Each establishment may have one sign (wall, hanging, window; or free-standing). If the frontage of the premise is 100 feet or less on one street, the area of such sign shall not exceed 3 square feet. For each additional 25 feet of frontage on one street, the area of the sign may be increased one square foot up to a maximum area of 6 square feet. No free standing sign shall be within 10 feet of any street line nor extend more than 10 feet above ground.

2. Signs Requiring Special Permits. In Residential Districts, the Board of Appeals may allow, by special permit, an off premise free-standing sign to an establishment if the establishment's premise has access to the street on which the sign is located, and the distance between the premise and the sign does not exceed 1000 feet. In no event shall such a free-standing sign exceed 15 square feet in area nor extend more than 15 feet above ground.

**5.3.9 Regulations for Business District.** Prior to the issuance of a building permit for a wall, hanging, free standing or window sign which is to be erected in a Business District, the Building Commissioner shall determine that the following conditions are met:

1. Street Level Establishments. Each establishment may have 2 signs (in addition to parking, directional and directory signs); any combination of wall and/or window signs or a wall or window signs or a wall or window sign with either a free standing or hanging sign;

the total area of which shall not exceed 20 square feet, provided that the hanging or free standing sign does not exceed 8 square feet. A street level establishment in a multi-occupancy building may have one sign (in addition to parking, directional and directory signs); wall, hanging or window, the area of which is not to exceed 10 square feet.

2. Wall and hanging signs for a street level establishment shall not extend higher than whichever of the following is lowest:

- a. 25 feet above grade
- b. The top of the sills of the first level of windows above the ground floor.
- c. The lowest point of the roof

2. Above Street Level Establishments. Each above street level establishment may have one sign (in addition to parking, directory and directional signs); wall, hanging, window or free standing, the area not to exceed 10 square feet.

3. Establishments with 2 sides abutting a way. If a street level establishment has 2 or more building sides which abut a way which is open to routine public pedestrian or vehicular passage, then the establishment may have 2 signs (in addition to parking, directory and directional signs) on each building side with a combination of a wall or window sign, with either a hanging or free standing sign not to exceed 20 square feet, provided that the hanging or free standing sign shall not exceed 3 square feet. If the street level establishment in a multi-occupancy building has 2 or more building sides which abut a way which is open to routine public pedestrian or vehicular passage, then the establishment may have one sign (in addition to parking, directory and directional signs); wall, hanging, or window, not to exceed 10 square feet in area on each building side, provided that the area of the hanging sign shall not exceed 8 square feet.

4. Multi-occupancy Building Name Signs. Any sign designating a certain building by name, apart and separate from any business conducted on the premises, shall be permitted. The size of this sign shall be as follows: 10 square feet in area on a building with a facade that measures up to 20 linear feet. For each additional 5 linear feet, one more square foot may be added to the area of the sign.

**5.3.10 Signs Requiring Special Permits In Business Districts.** The following types of signs require special permits:

1. Unusual configuration, location or use of a building, the presence on a building of the maximum number of signs, and or total signage area specified herein. In granting a special permit, the Board of Appeals may allow an establishment a total area of a sign exceeding that allowed by right and exceeding the restriction specified herein. Prior to the grant of a

special permit for a sign, the Board of Appeals must find the sign consistent with the Sign Guidelines.

2. Self-illuminating signs
3. Signs with flashing or moving lights
4. Signs with visibly moving parts, except for signs indicating time or temperature or barber poles
5. Roof signs
6. Off-premise signs

**5.3.11 Pre-existing Non-conforming Signs.** A pre-existing, non-conforming sign may continue to be maintained. Any relocation, redesign, or altering in any way, including repainting in a different color or re-lettering, must be reviewed by the Advisory Sign Review Board of conformance to this by-law.

**5.3.12 Advisory Sign Review Board** There shall be an Advisor Sign Review Board whose purpose is to determine and advise the Building Commissioner and/or the Board of Appeals if the proposed, sign is in conformance with these Zoning By-laws. The Sign Review Board shall consist of one member of the Board of Selectmen, one member of the Planning Board, and three residents of Oak Bluffs appointed by the Board of Selectmen for three years staggered terms. All such proposals which are subject to the provisions of Section 5.3.7.6 shall be forwarded immediately by the Building Commissioner or by the Board of Appeals to the Advisory Sign Review Board. In reviewing applications submitted to it, the Advisory Sign Review Board shall apply the Sign Design Standards and Guidelines and other applicable provisions of these regulations. The Advisory Sign Review Board shall make such determination as it deems appropriate. All such determinations shall be made in writing to the Building Commissioner within 14 days of the Board's receipt of the application. Recommendations on signs requiring special permits shall be made to the Board of Appeals within 14 days of receipt.

**5.3.13 Penalty.** The penalty for the violation of this bylaw shall not exceed twenty dollars for each offense providing that each day such violation continues shall constitute a separate offense.

**5.3.14 Owner's Consent.** Prior to the issuance of a building permit for a sign, written approval of the owner of the premises upon which the sign is to be located shall be filed with the Building Commissioner.

## **5.4 ENVIRONMENTAL PERFORMANCE STANDARDS**

**5.4.1 General.** No activity shall be permitted in any district unless it shall be in conformity with

the standards for environmental protection included herein. The Building Commissioner may require an applicant for a building or occupancy permit to supply, at his expense, such technical evidence as is necessary in support of the application, and may, in connection therewith, and at the applicant's expense, obtain expert advice as necessary to review the plans and proposals of the applicant. After a permit is issued in accordance with this section, continuing compliance is required. When the Building Commissioner suspects a subsequent violation he may, as necessary obtain expert advice, which if the violation is established, shall be paid for by the violator, otherwise, by the town. The following standards are hereby established.

**5.4.2 Noise.** No use shall be permitted within the town which, by reason of excessive noise generated there from, would cause nuisance or hazard to persons or property, as set forth in 310 CMR 7.01.

**5.4.3 Solid Waste Storage.** Any accessory receptacle or structure with holding capacity of at least one hundred (100) cubic feet for temporary storage or solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be located not less than ten (10) feet from any structure and shall be screened from all adjacent premises and streets from which it would otherwise be visible in accordance with this by-law. Screening materials will not be attached to any structure.

**5.4.4 Miscellaneous Standards.**

1. Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spilling over to neighboring properties and into the night sky.
2. Cinders, dust, fumes, gases, odors, smoke, radiation, refuse or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state, federal, and town laws and regulations.
3. No process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in excess of ten (10) percent in line voltage off the premises.
4. All activities involving, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against hazards from fire and explosion, and with adequate fire fighting and fire suppression equipment standard in this industry. Burning of waste materials in the open contrary to state law is prohibited.
5. All materials which may be edible by or attractive to rodents or insects shall, when stored in or outdoors, be stored in tightly closed containers.

**5.4.5 Erosion Control.** Site design, materials, and construction processes shall be designed to

avoid erosion damage, sedimentation, or uncontrolled surface water runoff by conformance with the following:

1. No area or areas totaling 5,000 square feet or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or filled to a depth of 6 inches or more so as to destroy existing vegetation unless such activity is done in conjunction with an exempt agricultural use, or unless necessarily incidental to construction on the premises under a valid building permit, Special Permit, or endorsed definitive subdivision plan. The Planning Board may grant a special permit for such work where the Board ensures that runoff will be controlled so as to avoid soil erosion, and that the stripped surface will be stabilized immediately and thereafter. No stripped area or areas which are allowed by special permit shall remain through the winter without a stabilized surface, except in the case of agricultural activity where such temporary cover would be infeasible.
2. The Building Commissioner may require the submission of all information from the building permit applicant or the landowner, in addition to that otherwise specified herein, necessary to ensure compliance with these requirements, including, if necessary, elevations of the subject property, description of vegetative cover, and the nature of impoundment basins proposed, if any.
3. In granting a special permit hereunder, the Planning Board may require a performance bond to ensure compliance with the requirements of this Section.

**5.5 GENERAL LANDSCAPING REQUIREMENTS** *(New section added 12.2.03 STM Art 17, AG Approved 3.26.04, Published 4.9.04)*

- 5.5.1 **Purpose:** This section is designed to accomplish the following objectives: to provide a suitable boundary or buffer between residential uses and districts and nearby nonresidential uses; to define the street edge and provide visual connection between nonresidential uses of different architectural styles; to separate different and otherwise incompatible land uses from each other in order to partially or completely reduce potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, intrusion from artificial light (including ambient glare) or view of signs, unsightly buildings or parking lots; to provide visual relief and a source of shade in parking lots and other areas, and protection from wind in open areas; to preserve or improve the visual and environmental character of the town, as generally viewed from residential or publicly accessible locations; and to offer property owners protection against diminution of property values due to adjacent nonresidential use.
- 5.5.2 **Applicability.** The requirement of this section shall apply to any nonresidential use and to multifamily dwellings. By special permit, the Planning Board may authorize a reduction in the requirements of this section, where such reduction will not result in substantial detriment.

- 5.5.3 **Landscaping Requirements for Certain Property Laws in the B-1 and B-2 Districts** Property line(s) in the B-1 and B-2 Districts on the boundary with any Residence District shall be screened from the nonresidential uses by means of plantings, **fencing** or maintenance of trees of a species common to the area and appropriate for screening, spaced to minimize visual intrusion and providing a opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property in B-1 or B-2 Districts used for nonresidential purpose. No part of any building or structure or paved space intended for or used as a parking area may be located within the buffer area. Planted buffer areas along property lines with such residential districts shall be at least five (5) feet in depth.
- 5.5.4 **Coordination with Site Plan Approval.** The Planning Board shall require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at scale sufficient to determine compliance with the specifications set forth in this Section.
- 5.5.5 **Maintenance of Landscaped Areas.** The owner of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section and shall have a continuing obligation to comply with the provisions set forth herein. All plant materials required by this section shall be maintained in healthful condition. Dead limbs, refuse and debris shall be promptly removed. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Bark mulch and non-plant ground surface materials shall be maintained so as to control weed growth.

## **SECTION 6.0 SPECIAL REGULATIONS**

### **6.1 - WIND ENERGY GENERATING FACILITY REGULATIONS**

#### **6.1.1 Purpose**

This section is designed to accomplish the following objectives: to reduce the overall consumption of fossil fuels through energy conservation; to preserve and protect the cultural and natural environment; and to minimize the potential adverse effect on the character of the neighborhood with the construction and use of a wind energy generating machine.

#### **6.1.2 Applicability**

Except in the ocean waters within the corporate bounds of the Town of Oak Bluffs, use of a wind generating energy facility of any kind, as defined in this by-law, must be accessory to the primary use on the lot. Communal and Municipal wind energy generating facilities are exempt from this provision.

6.1.3 Definitions. The following special definitions shall apply in this section 6.1

**BLADE** – Extensions from the hub, which are designed to catch the wind and turn the rotor to generate electricity.

**BLADE-TIP HEIGHT** – The height as measured from the grade of the land below to the highest extension of the blade.

**CUT-OUT WIND SPEED** – The high wind speed at which the wind energy generating facility must shut down and/or turn perpendicular to the wind to protect itself from being over powered, typically 56 miles per hour.

**GROUND BLADE CLEARANCE** – The height as measured from the grade of the land below the wind energy generating facility to the lowest extension of the blade.

**HUB** – The center of the rotor to which the blades are attached.

**HUB HEIGHT** – The height as measured from the grade of the land below the wind energy generating facility to the center of the rotor or hub.

**NACELLE** – The frame and housing at the top of the tower. It protects the gear box and generator from weather and helps control the mechanical noise level.

**RATED NAMEPLATE CAPACITY** – The rated output of electric power from the producing equipment.

**ROTOR** – A wind energy generating facility’s blades and the hub to which they are attached.

**ROTOR DIAMETER** – The diameter of the rotor of a wind energy generating facility rotor measured as twice the length of the longest blade plus the hub width.

**TREE LINE BLADE CLEARANCE** – The height as measured from the top of the tallest object within 300 feet to the South and West of the base of the tower to the lowest extension of the blade.

**WIND ENERGY GENERATING FACILITY** – All equipment, machinery and structures, utilized in connection with wind-generated energy production, generation and sale, including related systems, whether underground, on the surface, or overhead and other equipment including but not limited to, rotor, electrical generator and tower, anemometers, transformers, substation, power lines, control and maintenance facilities, site access and service roads.

**WIND MONITORING OR METEOROLOGICAL (“test” or “met”) TOWER** – A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

#### **6.1.4 – LAND BASED WIND ENERGY FACILITIES**

**CATEGORIES** – A wind energy generating facility shall be divided into the following categories for permitting requirements:

A. Private:

1. Single Owner:

A facility designed to provide on-site electrical needs and not to exceed 150-feet in overall height.

2. Communal:

A facility designed to provide local residential electrical needs to its owners and not to exceed 150- feet in overall height. Residents may form associations or other legally binding forms of cooperative ownership for the purpose of accommodating wind energy generating facilities, where deeded easements and restrictions can be put on vacant land to create a common area that can be used for a wind energy generating facility. The association is to bear all the financial and maintenance responsibilities of a single owner under this regulation.

B. Municipal:

A publicly owned wind energy generating facility, for the benefit of the Town of Oak Bluffs.

**6.1.5 – GENERAL REQUIREMENTS FOR THE INSTALLATION OF ANY WIND FACILITY**

6.1.5.1 Compliance with Laws, Ordinances and Regulations:

The construction and operation of all such proposed wind energy generating facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements. The safety of the design and the construction of any wind energy generating facility, including towers and associated equipment and the compatibility of the tower structure with the rotors and other components, shall be certified by the manufacturer and by an engineer licensed by the Commonwealth of Massachusetts if the manufacturer is out of state or country. The owner/applicant of any wind energy generating facility shall provide proof of liability insurance for the installation, use and maintenance of the wind energy generating facility.

6.1.5.2 Technical Requirements:

A wind energy generating facility must meet the current minimum technical requirements for renewable energy installations funded by the Massachusetts Technology Collaborative to the extent they apply.

6.1.5.3 Safety Wires:

Safety wires shall be installed on the turnbuckles on guy wires of “Met” towers and guyed wind energy generating facility towers.

6.1.5.4 Wind Speed Controls:

All wind energy generating facilities should be equipped with manual and automatic cut-out wind speed controls. The rotor and cut-out wind speed control shall be certified by the manufacturer.

6.1.5.5 Towers:

All towers shall be monopole, guyed poles or guyed tilt ups and if they require external climbing apparatus, they shall have either tower climbing apparatus located not closer than

twelve (12) feet to the ground or be un-climbable by design for the first twelve (12) feet. The tower, blades, rotor, hub and nacelle shall be painted a neutral, non reflective color designed to blend with sky and clouds.

**6.1.5.6 Connections:**

All utility connections from the wind energy generating facility to the existing grid shall be underground.

**6.1.5.7 Monitoring:**

All equipment necessary for monitoring and operation of the wind energy generating facility shall be contained in the tower. If this is unfeasible, ancillary equipment may be located outside the tower or behind a year round landscaped or vegetative buffer.

**6.1.5.8 Site Clearing:**

Clearing of natural vegetation shall be limited to that which is necessary for the construction and maintenance of the wind energy generating facility – including roadways and power interconnects. Night lighting shall be prohibited unless required by state or federal law and shall be the minimum necessary.

**6.1.5.9 Land Clearing:**

Land clearing for the purposes of reducing wind turbulence in the vicinity of the turbine is prohibited unless the applicant can prove it is essential to operational requirements, does not adversely affect the natural resources in the area and that adequate erosion controls are proposed.

**6.1.5.10 Rooftop Systems:**

Wind energy generating facilities sited on top of, or attached to and extending above the ridgeline of, an existing structure shall comply with all applicable provisions of the latest 780 CMR version of the Massachusetts Building Code. Certification by an engineer licensed by the Commonwealth of Massachusetts shall be required of the existing structure the facility will be attached to.

**6.1.5.11 Efficiency:**

The wind energy generating facility should be able to provide the rated nameplate capacity, as per the manufacturer's specifications.

**6.1.5.12 Interference:**

A wind energy generating facility shall create no TV or radio interference.

**6.1.6 REGULATIONS**

**6.1.6.1 – Private Wind Facilities**

Private facilities may be allowed anywhere in Town subject to the following requirements:

1. It receives a building permit from the Building Department.
2. Freestanding wind energy generating facilities shall be located at least the blade tip height of the facility to the nearest property line, except in the case of a communal wind energy generating facility, the nearest property line of an owner who is not associated with the facility.
3. Freestanding wind energy generating facilities shall be located where they will not create

or be subject to turbulence from nearby wind energy generating facilities.

4. For a freestanding wind energy generating facility, the Tree Line Blade clearance shall be at least 30 feet.

5. Rooftop wind energy generating systems shall not extend more than ten feet above the ridgeline of the structure to which it is attached.

#### 6.1.6.2 – Municipal Wind Energy Generating Facilities

Municipal wind energy generating facilities may be located at least the blade tip height or 300 feet from the nearest dwelling or commercial structure and nearest property line, except in the case of a communal wind energy generating facility or wind energy generating facility association, the nearest property line of an owner not associated with the facility.

**6.1.7 SPECIAL PERMIT.** The Zoning Board of Appeals may vary, by special permit, any requirement of Sections 6.1.5.9 and 6.1.6.1.2, 3, 4 & 5 only with an approved siting plan from the Building Department and upon its written determination that the adverse effects of the proposed wind energy generating facility will not outweigh its beneficial impacts to the neighborhood.

#### 6.1.8 TERMS OF USE

To ensure that the goals of this by-law are met in the face of evolving technology, wind energy generating facilities will expire at the end of the useful life of the facility or 20 years, whichever is less. At that time, the facility shall be removed by the applicant or, if the existing facility is still operable and efficient, the facility may be renewable by the Building Department for a term of no more than 5 years at a time. A new permit is required to install a replacement system. Submitting a renewal request shall allow for continued operation of the wind energy generating system until the Building Department acts. At the end of that period (including extensions and renewals), the wind energy generating facility shall be removed as required by this by-law.

##### 6.1.8.1 – Decommissioning

Upon a finding by the Building Inspector that the facility has been abandoned, or has been left in disrepair, or has not been maintained in accordance with its approved maintenance plan, the owner of the facility or land on which it is located shall be notified in writing by certified mail that the facility must be brought up to standard.

If required repairs or maintenance are not accomplished within 45 days from receipt of certified mailing, the facility may be deemed condemned and may be removed from the site by the Town within 90 days, at the property owner's expense. At the request of the property owner, the Zoning Administrator, with the concurrence of the Building Inspector, may allow extensions of these time periods.

##### 6.1.8.2 – Removal Requirements

Any wind energy generating facility which has reached the end of its useful life or has been abandoned must be removed. When the wind energy generating facility is scheduled to be

decommissioned, the owner(s) shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of physical removal of all wind turbines, towers, machinery, equipment, security barriers and accessory structures from the site. Disposal will occur of all solid and hazardous waste in accordance with all local and state waste disposal regulations. The owner may leave existing landscaping or below grade foundations in order to minimize erosion and disruption to vegetation.

#### 6.1.8.3 – Abandonment

A wind energy generating facility shall be considered abandoned if it fails to operate continuously for 12 months. If the owner fails to remove the facility within 90 days of a finding of abandonment by the Building Inspector, the town shall have the authority to enter the property and physically remove the facility, after a Board of Survey is conducted and a determination made that the structure is unsafe, at the expense of the property owner.

#### 6.1.8.4 – Surety

The Building Inspector may require the applicant to post a bond at the time of construction to cover costs for removal in the event that the town must remove the facility. The applicant, if required to include a bond in the permit application, 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. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the town's removal of the facility.

*(Section 6.1 added ATM 4.13.10 Art 26, AG Approved 8.30.10, Published 9.14.10)*

## **6.2 WINDMILLS (Section 6.2 deleted and replaced by Section 6.1)**

## **6.3 UNREGISTERED MOTOR VEHICLES**

*(Section added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

No person shall have more than one unregistered car or truck, un-garaged on premises owned by him or under his control, and under no circumstances shall an unsightly car or truck be stored in a front yard. This section shall not apply to premises licensed under Chapter 140 of the General Laws

## **6.4 TRAILERS**

*(Section added STM 12.2.03, AG Approved 3.26.04, Published 4.9.04)*

**6.4.1 General.** No mobile home, travel trailer or similar facility, however mounted, shall be occupied as a residence or parked or stored within the Town.

**6.4.2 Exception.** Notwithstanding the above, mobile homes, travel trailers and similar facilities may be:

1. Stored in any enclosed garage provided they are not used as a residence or a dwelling or for any purpose other than storage or parking.

2. Parked or stored for not more than 14 days provided they are not used as a residence or a dwelling or for any purpose other than storage or parking ; or
3. Used as office or storage in connection with a construction project.

**6.4.3 Nonconforming Trailers.** A nonconforming mobile home, travel trailer, or similar facility existing at the time of passage of this By-Law may not be replaced for any reason.

**6.4.4 Parking or Storage of Trailers.** Owners of travel trailers or Campers may park or store said travel trailers or campers on their own property, provided said travel trailers or campers are not used as a residence or dwelling house or used for a purpose other than storing or parking said travel trailers or campers.

## **SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS**

### **7.1 CONVERSION TO DUPLEX**

**7.1.1 General.** The conversion of a single family dwelling existing at the time this by-law was adopted to accommodate two or more families may be authorized upon the grant of a special permit by the Board of Appeals.

**7.1.2 Conditions.** The following conditions shall apply to such conversions:

1. Each dwelling unit shall be provided with at least one off-street parking space.
2. Sanitary sewerage shall be approved by the Board of Health.
3. The lot shall contain not less than 8,000 square feet of usable open space on the lot, unpaved and unoccupied by any structure.

### **7.2 CONVERSION OF AN EXISTING BUILDING TO APARTMENT UNITS**

**7.2.1 Conversion of Existing One or Two-Story Building.** A one or two-story existing building may be converted to apartment units, subject to the following conditions:

1. There shall be a maximum of two (2) apartment units for up to the first 5,000 square feet of lot area, and one (1) additional apartment unit for each additional 1,000 square feet of lot area.

2. The conversion shall comply with the rules and regulations of the Board of Health.

**7.2.2 Conversion of Existing Three-Story Building to Apartment Units.** An existing three-story building may be converted to apartment units, subject to the following conditions:

1. There shall be a maximum of three (3) apartment units for up to the first 5,000 square feet of lot area, and one (1) additional apartment unit for each additional 1,000 square feet of lot area.
2. Each apartment unit shall have one off-street parking space.
3. The conversion shall comply with the rules and regulations of the Board of Health.

**7.2.3 Conversion and Expansion of Existing Building to Apartment Units.** An existing building other than those set forth in Sections 7.2.1 or 7.2.2 may be converted to apartment units, subject to the following conditions:

1. There shall be a maximum of two (2) apartment units for up to the first 5,000 square feet of lot area, and one (1) additional apartment unit for each additional 1,000 square feet of lot area.
2. Each apartment unit shall have one off-street parking space.
3. The conversion shall comply with the rules and regulations of the Board of Health.

**7.3 FLEXIBLE DEVELOPMENT.** *(Section replaced 12.2.03 STM Art 18, AG Approved 3.26.04, Published 4.9.04)*

**7.3.1 Purpose:** The purposes of this section, Flexible Development, are

1. to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry and recreational use;
2. to preserve historical and archeological resources; to protect this natural environment, including varied landscapes and water resources.
3. to protect the value of real property;
4. to promote more sensitive siting of buildings and better overall site planning;
5. to perpetuate the appearance of the Town's traditional New England landscape;
6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. to offer an alternative to standard subdivision development;
8. to promote the development of housing affordable to low, moderate and median income families, and;
9. to promote the development of housing for persons over the age of fifty-five.

**7.3.2 Definitions.** The following terms shall have the following definition for the purpose of this section:

1. “Affordable to persons or families qualifying as low income” shall mean affordable to persons in the Dukes County metropolitan statistical area under the applicable guidelines of the Commonwealth’s Department of Housing and Community Development earning less than 50% of the median income.
2. “Affordable to persons or families qualifying as moderate income” shall mean affordable to persons in the Dukes County metropolitan statistical area under the applicable guidelines of the Commonwealth’s Department of Housing and Community Development earning more than 50% but less than 80% of the median income.
3. “Affordable units” shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as low or moderate median income. The affordable restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Town or its designee for a period not less than 120 days after notice thereof;
4. “Contiguous open space” shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the Flexible Development. Contiguous open space shall not include required yards, if any.
5. “Housing for persons with disabilities” shall mean a dwelling unit in compliance with the standards of the Americans with Disabilities Act and pertinent Massachusetts standards.
6. “Transfer lot” shall mean a parcel of land with not less than 20,000 square feet used to establish a density bonus in a Flexible Development. Such Transfer lot shall be (1) determined by the Planning Board to be of special importance because of its visual prominence or potential vista blockage, ecological significance or fragility, value as agricultural or recreational land, critical relation or proximity to the Town’s drinking water supply, or because it is identified in the Town’s open land space plan; (2) not wetlands, as defined in G.L. c.131, s 40 or not land used to satisfy dimensional requirements in any other development of land; (3) subject to a permanent conservation or agricultural restriction pursuant to G.L. 184 ss. 31-33

or conveyed to the Town, or conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space or other appropriate purpose.

**7.3.3 Applicability.** In accordance with the following provisions, a Flexible Development project maybe created, whether a subdivision or not, from any parcel or set of contiguous parcels of five acres or more held in common ownership and located entirely within the Town.

**7.3.4 Procedures.** Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. An application for Flexible Development shall be filed in accordance with the rules and regulations of the Planning Board.

1. Where the Flexible Development is a subdivision of land, a development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board, shall be submitted. Final engineering details regarding Flexible Development may be provided during the course of definitive plan review. In the event that the Flexible Development does not involve the subdivision of land, the development plan shall conform to the requirements for a definitive plan as set forth in such rules and regulations.

2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation, including an Order of Resource Area Delineation

3. Data on proposed wastewater disposal shall be submitted which shall be referred to a consulting engineer for review and recommendation.

4. The Planning Board may also require as part of the development plan any additional information necessary to make the determination and assessments cited herein.

**7.3.5 Design Process.** Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots and contiguous open space.

1. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.

2. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g. stream **and/or wildlife** corridors, wetlands) transportation (e.g. road and bicycle networks) and cultural

(e.g. recreational opportunities) connections to surrounding land uses and activities.

3. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. *Lot lines.* The final step is simply to draw in the lot lines (if applicable).

**7.3.6 Modification of Lot Requirements.** The Planning Board encourages applicants for Flexible Development to modify lot size, shape and other dimensional requirements for lots within a Flexible Development. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

**7.3.7 Basic Maximum Number of Dwelling Units.** The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning subdivision regulations, health regulations, wetland regulations and other applicable federal, state and local requirements (hereinafter, the Yield Plan). The Yield Plan shall be prepared in conformance with the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board; provided however, that in simple cases, such requirements may be waived by the Planning Board. In any event, the proponent shall have the burden of proof with regard to the design and engineering specifications shown on such Yield Plan.

1. The required affordable units for developments with more than ten units shall not count toward the Basic Maximum Number.

**7.3.8 Density Bonus** The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. All dwelling units awarded as a density bonus shall be two bedroom units. The density bonus for the Flexible Development shall not,

in the aggregate, exceed forty (40) percent of the Basic Maximum Number. Required Affordable Units shall not be counted in the computation. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances.

1. For each additional ten(10) percent of the site set aside as contiguous open space over and above the required forty (40) percent, a bonus of five (5) percent of the Basic Maximum Number may be awarded; provided however, that this density bonus shall not exceed thirty (30) percent of the Basic Maximum Number.
2. For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five (55), one (1) dwelling unit may be added as a density bonus; provided however, that this density bonus shall not exceed ten (10) percent of the Basic Maximum Number.
3. For each transfer lot, as defined in Section 7.3.2, two (2) dwelling units may be added as a density bonus; provided however, that this density bonus shall not exceed twenty (20) percent of the Basic Maximum Number.

**7.3.9 Affordable Component** As a condition of the grant of any special permit for a Flexible Development for any development creating more than ten (10) dwelling units, Affordable Units shall be required as follows:

1. Ten (10) percent of the units shall be affordable to persons or families qualifying a low income; or
2. Fifteen (15) percent of the units shall be affordable to persons or families qualifying as moderate income.

In computing this requirement, the total number of dwelling units (i.e. the total of the Basic Maximum Number and density bonus units) shall be used. Numbers shall be rounded down in the computation of this requirement.

**7.3.10 Types of Buildings** The Flexible Development may consist of any combination of single family, two family and multifamily residential structures. A multifamily structure shall not contain more than five (5) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding an articulated footprint and varied facades Residential structures shall be oriented toward the street serving the premises and not the required parking area. The Planning Board may require housing for persons with disabilities in appropriate circumstances.

**7.3.11 Roads** The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and

acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

**7.3.12 Parking** Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

**7.3.13 Contiguous Open Space** A minimum of forty (40) percent of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction pursuant to G.L. c 134 ss 31-33 and enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth, above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50) percent of the tract.
2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry or a combination of these uses, and shall be served by suitable access for such purposes.
3. The contiguous open space shall remain un-built upon, provided that the Planning Board may permit up to ten (10) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks and bikepaths.
4. Underground utilities and drainage easements to serve the Flexible Development site may be located within the contiguous open space.

**7.3.14 Ownership of the Contiguous Open Space.** The contiguous open space shall at the Planning Board's election be conveyed to:

1. the Town or its Conservation Commission
2. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
3. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the

Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance and if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall thereafter be recorded; (or)

4. In the alternative, a conservation restriction pursuant to G.L. c 184 ss. 31-33 shall be placed on the land.

**7.3.15 Buffer Areas.** A buffer area of fifty(50) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or(ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

**7.3.16 Stormwater Management** Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

**7.3.17 Decision** The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of the Flexible Development By-Law than would a conventional subdivision development of the same locus.

**7.3.18 Relation to Other Requirements.** The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of the Zoning By-Law.

## **SECTION 8.0 SPECIAL DISTRICTS**

### **8.1: THE TOWN OF OAK BLUFFS FLOODPLAIN OVERLAY DISTRICT BY-LAW**

#### 8.1.1: Statement of Purpose

The purposes of the Floodplain Overlay District are to:

- a) Limit development in areas subject to flooding, particularly high hazard V zones and AO zones in order to minimize potential loss of life, destruction of property, and environmental damage inevitably resulting from storms, flooding, erosion and relative sea level rise.
- b) Reduce or prevent public health emergencies resulting from surface and ground water contamination from inundation of or damage to sewage disposal systems and storage areas for typical household hazardous substances.

- c) Enable safe access to and from homes and structures for homeowners and emergency response personnel, such as police, fire, and rescue departments.
- d) Minimize monetary loss and public health threats resulting from storm damage to public facilities (water and gas mains; electric, telephone and sewer lines, streets, bridges, etc.).
- e) Prevent loss or diminution of the beneficial functions of storm and flood damage prevention or reduction and pollution prevention provided by wetlands, beaches, dunes, barrier beaches, the floodplain, and coastal banks
- f) Protect public access and ensure that areas of high public value remain open to the public.

8.1.2: Floodplain Overlay District Boundaries

The Floodplain District is herein established as an overlay district. The Floodplain Overlay District (FPOD) includes all special flood hazard areas within the Town of Oak Bluffs designated as Zone A, AE, AO, V, or VE on the Dukes County Federal Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Dukes County FIRM that are wholly or partially within the Town of Oak Bluffs are panel numbers 25007C0102H, 25007C0103H, 25007C0104H, 25007C0106H, 25007C0108H, 25007C0111H, 25007C0112H, 25007C0116H, dated July 6<sup>th</sup>, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Dukes County Flood Insurance Study (FIS) report dated July 6<sup>th</sup>, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the conservation commission and the zoning administrator.

8.1.3: Scope of Authority

a) Reference to Existing Regulations

The Floodplain District is established as an overlay district to all other districts and is superimposed on existing zoning districts. All uses, dimensional requirements, and other provisions of the bylaw applicable to such underlying districts shall remain in force and effect, except where the restrictions and requirements of the overlay district are more restrictive, the later shall prevail.

b) Reference to Other Applicable Laws and Regulations

In addition, all development in the district, including structural and non-structural activities, whether permitted by right or by special permit under this section must be in compliance with the following;

- a. Wetlands Protection Act, G.L. Ch. 131, s. 40;
- b. Massachusetts State Building Code, 780 CMR;
- c. Coastal Wetlands Restriction Act, G.L. Ch.130, s. 105
- d. Title 5 of the State Sanitary Code, 310 CMR 15.00
- e. Title 5 of the State Sanitary Code, 310 CMR 12.00

**8.1.3.1: Notification of Watercourse Alteration**

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

**Adjacent communities**

**NFIP Coordinator**

**Massachusetts Department of Conservation and Recreation**

**251 Causeway Street, Suite 600-700**

**Boston, MA 02114-2104**

**NFIP Program Specialist**

**Federal Emergency Management Agency, Region 1**

**99 High Street, 6<sup>th</sup> Floor**

**Boston, MA 02110**

**8.1.3.2: Other Use Regulations**

**All subdivision proposals must be designed to assure that:  
Such proposals minimize flood damage;  
All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and  
Adequate drainage is provided to reduce exposure to flood hazards**

(Voted to amend and add sections 8.1.3.1 & 8.1.3.2 ATM April 12, 2016, accepted by AG May 6, 2016 and posted May 18, 2016)

#### 8.1.4: Permitted Uses

Notwithstanding any other provision of this bylaw the following uses and activities are permitted by right within the entire FPOD:

1. Public access activities; however the structures in connection with these activities may be regulated as stipulated below.
2. Repair of existing foundations, unless the work replaces the foundation in total or repairs the foundation so as to constitute new construction or a substantial repair of a foundation.
3. Repair of existing structures, provided that the repair does not constitute a substantial improvement or a reconstruction.

#### 8.1.5: Permitted Uses by Special Permit

8.1.5.1: Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the entire FPOD:

1. Substantial repair to a foundation.
2. Restoration and construction of structures listed in the National Register of Historic Places or the official State Inventory of Historic Places.
3. Construction of water dependent structures as determined by MassDEP Chapter 91 (Waterways) Regulations.
4. Beach or dune nourishment and restoration of coastal resource areas as defined in the MA Wetlands Protection Act and Oak Bluffs Wetlands Bylaw
5. The repair or replacement of an existing septic system.
6. Replacement or repair of existing impervious surfaces, including, but not limited to, swimming pools, tennis/basketball courts, pavement, pavers, concrete slabs at grade, curbing, and retaining walls.

8.1.5.2: Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the A and AE Zone of the FPOD:

1. New construction of residential structures.
2. The construction of an addition or other alterations to an existing structure that results in an increase in floor area or intensity of use, or constitutes a substantial improvement.
3. Repair of a substantially damaged structure or reconstruction of an existing structure.
4. New construction of non-residential structures.
5. The following activities are allowed by Special Permit, provided a registered professional engineer certifies in writing that the activity will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow:
  - a) An increase in impervious surface, which may include, but is not limited to, swimming pools, tennis/basketball courts, pavers, concrete slabs at grade, curbing, and retaining walls.
  - b) The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged spoil.

- c) The excavation, dredging, removal, or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance.

8.1.5.3: Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the V and AO Zones of the FPOD:

1. Repair of a substantially damaged structure or reconstruction of an existing structure provided the work shall *not* increase floor area.
2. All new construction shall be located landward of the reach of mean high tide.

#### 8.1.6: Prohibited Uses

8.1.6.1: The following uses are prohibited within the entire FPOD:

1. The installation of a basement.

8.1.6.2: The following uses are prohibited within the V, VE and AO Zones of the FPOD:

1. New construction of residential structures.
2. The construction of an addition or other alterations to an existing structure that results in an increase in floor area.
3. Repair of substantially damaged structure or reconstruction of an existing structure that results in an increase in floor area.
4. New construction of non-residential structures, with the exception of water dependent structures.
5. Any increase in impervious surface on a residential lot. This may include, but is not limited to, swimming pools, tennis/basketball courts, pavers, concrete slabs at grade, curbing, and retaining walls. For water dependent projects allowed in the V, VE, and AO Zones, impervious surfaces accessory to the use is allowed provided a registered professional engineer certifies in writing that the impervious surface will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow.
6. With the exception of beach nourishment and raised septic systems and maintenance of existing non-residential uses, which must receive a Special Permit (see above), the following uses are specifically prohibited and may not be allowed by Special Permit:
  - a) The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged spoil, with the exception of landscaping fill that is permitted, provided a registered professional engineer certifies in writing that the fill will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow;
  - b) Draining, excavation or removal or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance.
7. The use of fill for structural support of buildings
8. Man made alterations to sand dunes

#### 8.1.7 General Administration.

- A. This bylaw hereby establishes a plan review committee, which shall consist of representatives from the Zoning Board of Appeals, Conservation Commission, Board of Health, Planning Board, and the Cottage City Historic District Commission and Copeland Plan District Review Board when the site is within their jurisdiction. The purpose of this committee is to advise the zoning enforcement officer on building permit decisions for properties in the FPOD.
- B. Before rendering a building permit decision, the building inspector shall receive written comments from the plan review committee, particularly on the following:
  1. Determination of any project's flood zone status, and

2. Determination of whether a proposed construction or alteration of the landform within the FPOD has received all necessary permits from those government agencies from which approval is required by federal, state, or town law.
- C. The building inspector shall:
1. Obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures; maintain records as to whether or not such structures contain a basement.
  2. Make a determination of substantial improvement or substantial damage (as defined) using the official records of the Tax Assessor.

#### 8.1.8 Special Permit Administration

- A. All special permits in the FPOD will be granted by The Board of Appeals and shall be administered as follows:
1. Before granting a special permit, The Board of Appeals shall file applications forms and plans to receive written comments from the plan review committee.
  2. The special permit granting authority shall impose conditions and requirements as deemed necessary to fulfill the purpose of this bylaw and as set forth in the regulations promulgated in accordance with MGL Chapter 40A section 9.
  3. The special permit granting authority may require such additional information and impose conditions as it finds necessary to protect the health, safety, and welfare of the public or the occupants of the proposed use, or of the floodplain district.
- B. The Board of Appeals may grant a special permit only upon:
1. A determination that the granting of the special permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or conflict with existing local by-laws; and
  2. Determination that the special permit is the minimum necessary to afford relief, considering the flood hazard.

#### 8.1.9 Regulations

The Board of Appeals may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures, and administration of this district by majority vote after conducting a public hearing to receive comments on any proposed revisions.

#### 8.1.10 Fees

The Board of Appeals shall obtain with each submission an Application Fee established by the Board to cover expenses connected with the review of the special permit and a technical review fee sufficient to cover professional review services for the project. The Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Board on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.

#### 8.1.11 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 this bylaw.

#### 8.1.12: Definitions

Definitions in this bylaw shall be consistent with the Massachusetts State Building Code, 780 CMR, the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) 59.1, and with Massachusetts Department of Environmental Protection (MassDEP) Chapter 91 (Waterways) Regulations.

ADDITION means an extension or increase in floor area or height of a building or structure.

ALTERATION means any Construction or Renovation to an Existing Structure other than Repair or Addition.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT means that portion of a building that is partly or completely below grade (see "Story above grade plan") and 780 CMR 502.1 and 1612.2).

COASTAL HIGH HAZARD AREA means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

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

DISTRICT means floodplain district.

EXISTING STRUCTURE means a structure erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500 year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

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

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

PERMIT means an official document or certificate issued by the authority having jurisdiction, which authorizes performance of a specific activity.

REGULATORY FLOODWAY - see FLOODWAY

REPAIR means the reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. STRUCTURE, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

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

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

WATER-DEPENDENT USE means a use that requires direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. It is any use that complies with or is specified in the DEP regulations at 310 CMR 9.12(2)

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

ZONE A1-30 and ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONE AH and ZONE AO means the 100-year floodplain with flood depths of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

ZONE A99 means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

ZONES B, C, AND X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

ZONE V means a special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

ZONE V1-30 and ZONE VE (for new and revised maps) means a special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

*(Section 8.1 Replaced ATM 4.13.10 Art.24, AG Approved 8.30.10, Published 9.14.0)*

*(Section 8.1 Amended ATM 4.12/2016 Art. 31 AG Approved April 6, 2016, Published May 18, 2016)*

## **8.2 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD)**

**8.2.1 Legislative Findings and Purpose.** The groundwater underlying this Town is the only source of its existing and future drinking water supply. The groundwater aquifer is integrally connected with, and flows into, the surface waters, lakes, streams and coastal estuaries which constitute significant recreational and economic resources of the town used for bathing and other water related recreation, shellfish and fishing. Accidental spills and discharge of petroleum products and other toxic and hazardous materials have repeatedly threatened the quality of such groundwater supplies and other related water resources on Martha's Vineyard and in other Massachusetts towns, posing potential public health and safety hazards and threatening economic losses to the affected communities. Unless preventive measures are adopted to prohibit discharge of toxic and hazardous materials and to control their storage within the town, further spills and discharge of such materials will predictably occur, and with greater construction, commercial and industrial development, population, and vehicular traffic in the Town of Oak Bluffs and on Martha's Vineyard. The foregoing conclusions are confirmed by findings set forth in the "Water Quality Management Plan for Martha's Vineyard", April 1978, prepared by the Martha's Vineyard Commission pursuant to Section 208 of the Federal Clean Waters Act; by the report entitled "Edgartown Water Resource Protection Plan", February 1983, prepared for the Edgartown Board of Health by Anderson-Nichols and Co., Inc. and "Public Drinking Water Resource Protection Plan", May 1985, by the Martha's Vineyard Commission. Therefore, it is the purpose of the WRPOD to protect the public health by preventing contamination of the groundwater resources providing water supply for the Town.

### **8.2.2 Definitions.**

**SEWERAGE FLOW:** All flow estimates shall be determined using procedures given in the Massachusetts State Environmental Code, Minimum Requirements for the Subsurface Disposal Sanitary Sewerage.

**TOXIC OR HAZARDOUS MATERIALS:** Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this zone of contribution. Toxic or hazardous materials include, without limitations, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids, and alkalis, and include products such as pesticides, herbicides, solvents and thinners. Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board: Airplane, boat and motor vehicles service and repair or storage; chemical and bacteriological laboratory operation; cabinet making; dry cleaning; electronic circuit assembly; metal plating, finishing and polishing; motor and machinery service and assembly; painting, wood preserving and furniture stripping; pesticide and herbicide application; photographic processing; printing; dye; car washes; landfills; mining lands; animal feed-outs; parking lots over 3,500 square feet which are not designed and constructed using impervious surfaces and oil retention catch basins.

**8.2.3 Location.** The WRPODs are shown on the Oak Bluffs Water Resource Protection Map dated January 24, 1986. Such Map is an official part of the town zoning map and shall be on file for public inspection with the Town Clerk and the Planning Board. The area delineated shows the zone of contribution for each municipal well, which is the area from which each well draws its drinking water. The WRPOD is an overlay district. To the extent that the regulations of the WRPOD are more strict than the regulations of the underlying district, the WRPOD shall control.

**8.2.4 Prohibited Uses.** The following uses are prohibited in the WRPOD:

1. New Underground fuel tanks
2. Chemical treatment of septic systems
3. Outside storage of road salt, fertilizers and pesticides

**8.2.5 The following uses are permitted in the WRPOD:** (*Section replaced 4.12.05 Art. 15, AG Approved 7.13.05, Published 7.26.05*)

1. Commercial or residential development with on-site subsurface sewerage disposal systems, provided that the wastewater flow estimates for new lots shall not exceed the standards of 310 CMR 15.00 for nitrogen sensitive areas.

**8.2.6 Uses by Special Permit.** The following uses are permitted in the WRPOD by special permit:

1. Any use established after the date of adoption of this by-law which involves the generation, use of storage of any toxic or hazardous materials in greater quantities than that associated with a normal household use.
2. Parking lots greater than 3,500 square feet, unless the lot shall have an impervious surface and shall be constructed with oil retention catch basins.

**8.2.7 Special Permit Granting Authority.** The Special Permit Granting Authority for the WRPOD shall be the Planning Board.

1. Submittals. In applying for a Special Permit under this section, the information listed below shall be submitted.
  - a. A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with the normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion, and leakage, and to provide for control of spills.
  - b. A description of potentially toxic or hazardous wastes to be generated, indication storage and disposal methods.
  - c. Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or wastewater system over 15,000 gallons per day capacity.
  - d. For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.
  - e. Analysis certifying compliance if required by the Planning Board, which shall be done by a technically qualified expert, at the expense of the applicant.
2. Review by other town agencies. Upon receipt of the Special Permit Application by the Planning Board, the Planning Board shall transmit one copy each to the Highway Department, the Board of Health, and the Water Department, for their written recommendations. Failure to respond in writing within 45 days shall indicate approval by said agencies. Five copies of the application shall be furnished by the applicant.
3. Special Permit Criteria. Special Permits shall be granted only where the Planning Board determines, in conjunction with the other town agencies as specified herein, that

- a. groundwater quality resulting from on-site waste disposal and other on-site operations will not fall below federal or state standards, if existing groundwater quality is already below those standards on-site disposal will result in no further deterioration.
- b. the intent of this by-law, as well as the criteria, has been satisfied, after consideration of the simplicity, reliability, and the feasibility of the control measures proposed and the degree of the threat to water quality which would result if the control measures failed.
- c. The Planning Board shall explain any departures from the recommendations of the other town agencies in its decision.

**8.2.8 Non-conforming Uses.** Any lawful use of land or building or part thereof at the adoption of this ordinance may be continued, with normal repairs and maintenance permitted, although such use does not conform to the provisions of this by-law, provided that:

- 1. A non-conforming use shall not be changed to another non-conforming use.
- 2. A non-conforming use shall not be expanded or enlarged.
- 3. A non-conforming use which has been discontinued shall not be resumed.
- 4. Any non-conforming building or land use damaged or destroyed by fire or other natural disaster may be repaired or replaced if the extent of damage is less than 50% of its fair market value prior to damage.

**8.2.9 Violations.** Written notice of any violation of this Section 8.2 shall be provided by the Building Commissioner and/or Zoning Enforcement Officer to the owner of the premises and to the Planning Board, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than 30 days be **allowed** for either compliance or finalization of a plan for longer term compliance.

### **8.3 WIRELESS COMMUNICATIONS OVERLAY DISTRICT (WCOD)**

**8.3.1 Purpose.** The purpose of this section is to establish areas in which wireless communications facilities may be provided while protecting the Town's unique community character. The WCOD has been created (a) to provide for safe and appropriate siting of wireless communications facilities consistent with the Telecommunications Act of 1996; and (b) to minimize visual impacts from such facilities on residential districts and scenic areas within the Town.

**8.3.2 Location.** The WCOD is composed of the following parcels, as set forth on the maps of the Town Board of Assessors:

- Map 8, Parcel 139
- Map 9, Parcel 36
- Map 11, Parcel 164
- Map 11, Parcel 292
- Map 16, Parcel 147
- Map 16, Parcel 180
- Map 16, Parcel 181
- Map 17, Parcel 110.10
- Map 22, Parcel 5
- Map 29, Parcel 155
- Map 29, Parcel 156
- Map 50, Parcel 29 \*
- Map 50, Parcel 30 \*
- Map 50, Parcel 31 \*
- Map 55, Parcel 2
- Map 55, Parcel 4

\*(Amended ATM 4/10/07, Art 19)(AG Approved 5/14/07)(Posted 5/21/07)

**8.3.3 Applicability.** The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superseded or added to herein.

**8.3.4 Uses Available by Special Permit.** A wireless communications facility (WCF) may be erected in the WCOD upon the issuance of a special permit by the Planning Board if the Board determines that the proposed facility will not cause substantial detriment to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

1. Communications needs served by the WCF;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Impact on neighborhood character, including aesthetics;
5. Impacts on the natural environment, including visual impacts;
6. Potential fiscal impact, including impact on town services, tax base, and employment;

and

7. New monopoles shall be considered only upon a finding that existing or approved monopoles or facilities cannot accommodate the equipment planned for the proposed monopole.

**8.3.5 Conditions.** All WCFs shall be subject to the following conditions:

1. To the extent feasible, service providers shall co-locate on a single facility. Monopoles shall be designed to structurally accommodate other potential users (within a ten year period) where technically practicable.
2. New free-standing WCFs shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed 100 feet above mean finished ground elevation at the base of the mounting structure, provided, however, that a monopole may be erected higher than 100 feet where co-location is approved or proposed, not to exceed a height of 140 feet above mean finished ground elevation at the base of the mounting structure. No variance shall be issued for a monopole higher than 140 feet.
3. All structures associated with WCFs shall be removed within one year of cessation of use. The Board may require a performance guarantee to affect this result.
4. Existing on-site vegetation shall be preserved to the maximum extent practicable.
5. The WCF shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.
6. Traffic associated with the WCF shall not adversely affect public ways.
7. Fencing may be required to control unauthorized entry to a WCF.

**8.3.6 Submittal Requirements.** As part of any application for a special permit, applicants shall submit, at a minimum, the following information.

1. A site plan consistent with the requirements for major site plan approval, as set forth herein at Section 10.4.
2. A narrative report describing the capacity of the WCF, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.
3. Copies of required federal and state permits, or a list of such permits to be acquired prior to construction.

**8.4 Registered Marijuana Dispensary OVERLAY DISTRICT (RMDOD) (Section 8.0 Amended STM 11/12/13, Article 13,(AG approved Dec. 16, 2013) (Posted 12/20/13)**

**8.4.1 Purpose.** The purpose of this section is to establish areas in which a Registered Marijuana Dispensary (RMD) may be located, while protecting the Town’s unique community character and while minimizing any adverse impact on adjacent properties, residential neighborhoods, elderly housing facilities, schools, and other places where children congregate, as well as other land uses potentially incompatible with an RMD. Since an RMD will serve both Oak Bluffs and the surrounding communities, the location of the RMDOD is designed to allow for ease of access by both private vehicles and public transportation, to provide sufficient parking, and to protect the confidentiality of customers served.

**8.4.2 Locations.** The RMDOD is composed of the following areas.

The following parcels, as set forth on the maps of the Town Board of Assessors:

Map 6 Parcel 43

Map 6 Parcel 46

Map 6 Parcel 46.1

Map 6 Parcel 9

Map 7 Parcel 1

Map 24 Parcel 7

Map 24 Parcel 8

Map 24 Parcel 9

Map 24 Parcel 10

Map 24 Parcel 11

Map 24 Parcel 12

Map 40 Parcel 10

Map 40 Parcel 11

Map 40 Parcel 11.1

**8.4.3 Applicability.** The RMDOD shall be construed as an overlay district regarding the locations identified in Section 8.4.2. All requirements of the underlying zoning districts shall remain in full force and effect. Any as-of-right uses shall remain as-of-right uses in the RMDOD, except these uses may be specifically superseded or added to by this Section. In addition, this Section provides that:

1. The cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use is prohibited, unless permitted as a RMD under this Section.
2. No RMD shall be established except in compliance with the provisions of this Section.
3. Nothing in this Section shall be construed to supersede federal and state laws governing the possession, sale, and distribution of narcotic drugs.
4. If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected.

**8.4.4 Definitions.**

1. **Registered Marijuana Dispensary** – A facility for the cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use, whether located inside a structure or building or not.
2. **Marijuana for Medical Use** – Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.
3. **Marijuana** – The same substance defined as “marijuana” under Chapter 94C of the Massachusetts General Laws.

**8.4.5 General Requirements and Conditions for all Registered Marijuana Dispensary.**

1. All RMDs shall be contained within a building or structure.

2. The hours of operation of a RMD shall be set by the Board of Appeals, but in no event shall a RMD be open and/or operating between the hours of 6:00 PM and 8:00 AM.
3. No special permit for a RMD shall be issued to a person who has been convicted of a felony or a violation of a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs. Further, no special permit for an RMD shall be issued to a non-profit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of a felony or a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs.
4. No special permit for a RMD shall be issued to a person who has been convicted of a violation of Massachusetts General Law Chapter 119, Section 63 or Massachusetts General Law Chapter 272, Section 28. Further, no special permit for a RMD shall be issued to a non-profit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of Massachusetts General Law Chapter 119, Section 63 or Massachusetts General Law Chapter 272, Section 28.
5. No RMD shall be located within 500 feet of any of the following structures or uses:
  - (a) any school attended by children under the age of 18;
  - (b) any licensed child care facility;
  - (c) any correctional facility, half-way house, or similar facility; or
  - (d) any other RMD.
6. No RMD shall be located within 500 feet of any playground, public park, public athletic field, or similar public recreational facility.
7. No smoking or burning of marijuana or marijuana-related products shall be permitted on the premises of a RMD.
8. No RMD shall be located inside a building containing residential units, including transient housing, or inside a movable or mobile structure such as a van or truck.

9. RMDs shall only sell, distribute or dispense in accordance with 105 CMR 725.
10. Signage for a RMD shall conform to the Oak Bluffs Zoning By-law Sign Regulations or 105 CMR 726, whichever is more limiting.
11. RMDs shall provide the Board of Appeals, Board of Selectmen and Police Department the with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.
12. No person who is not at least 21 years of age shall be permitted on the premises of a RMD during hours of operation unless that person is a qualified patient or accompanied by a caregiver or patient with a valid registration card.
13. All special permits issued under this Section will contain a condition that the RMD may not operate, and the special permit will not be valid, until the applicant has obtained all licenses and permits issued by the Commonwealth of Massachusetts and any of its agencies for the Facility.

#### **8.4.6 Special Permit Requirements.**

1. A RMD may only be allowed by special permit from the Board of Appeals in accordance with G.L. c. 40A, § 9, and Section 10.3 of the Zoning By-law, subject to the following statements, regulations, requirements, conditions and limitations.
2. A special permit for a RMD shall be limited to one or more of the following uses that shall be prescribed by the Board of Appeals:
  - (a) cultivation of Marijuana for Medical Use (horticulture);
  - (b) processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
  - (c) retail sale or distribution of Marijuana for Medical Use to Qualified Patients; or

- (d) wholesale sale of Marijuana for Medical Use to other RMDs located in Oak Bluffs or in another municipality but only in accordance with state regulations.

3. In addition to the application requirements set forth in Sections 8.4.6(1) and (2), of this Section, a special permit application for a RMD shall include the following:

- (a) a statement from the Applicant under oath, setting forth the following information:

- (i) the name and address of each owner, manager, member, partner and employee of the Facility, and a statement indicating whether the application conforms to Sections 8.4.6(1) and 8.4.6(2) above;
- (ii) the source of all marijuana that will be sold or distributed at the Facility, if applicable;
- (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Facility, if applicable; and
- (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Facility.

- (b) a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report.

- (c) evidence of the Applicant's right to use the site of the Facility, such as a deed, lease, purchase and sale agreement or other legally-binding document;

- (d) a certified list of all parties in interest entitled to notice of the hearing for the special permit application, taken from the most recent tax list of the town and certified by the Town Assessor;

- (e) proposed security measures for the RMD, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

4. **Outside Consultants and Review Fees.** An outside consultant review escrow deposit shall accompany the Application for special permit. The escrow for review fees is intended

to cover the Board's potential cost of hiring consultants to review the Applicant's compliance with the special permit requirements under this Bylaw, and may include the anticipated costs of legal counsel. The initial escrow deposit amount shall be set by the Board of Appeals on a case-by-case basis, when such consultants or counsel are deemed necessary. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an Application incomplete and be considered sufficient grounds for its denial.

- (a) The Applicant may appeal the selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Pursuant to G.L. c. 44, § 53G, the required time limits for action upon the Application by the Board of Appeals shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the Board of Appeals selection shall stand.
- (b). The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to G.L. c. 44, § 53G. Funds from the special account only for the purposes described above.

**5. Mandatory Findings.** The Board of Appeals shall not issue a special permit for an RMD unless it finds that:

- (a) the RMD is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- (b) the applicant has not provided materially false documents or testimony; and
- (c) the applicant has satisfied all of the conditions and requirements of Section 8.4.6.

**6. Annual Reporting.** Each RMD permitted under this Section shall, as a condition of its special permit, file a copy the Annual Report submitted to the state with Board of Appeals and the Town Clerk no later than January 31<sup>st</sup>

**7.** If required by the Board of Appeals, a full transcription or recording of the oral hearings shall be made at the Applicant's expense.

8. A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership and use of the premises as a RMD. A special permit may be transferred only with the approval of the Board of Appeals in the form of an amendment to the special permit.
9. Any violation of this Section shall be grounds for revocation of a special permit issued under this Section.
10. Any revocation of the RMD's license by the state shall be grounds for revocation of the Special Permit.

## **SECTION 9.0 DISTRICTS OF CRITICAL PLANNING CONCERN**

These Districts are subject to the Martha's Vineyard Commission Rules and Regulations.

(These sections (XIII and XVIII) have not yet been renumbered, but are herein combined and considered the new Section 9.0)

## **SECTION XIII Coastal Regulations**

The following shall be complied with for construction or any new principal structure in a Residential District, unless a Special Permit for an exception is granted by the Board of Appeals, upon their determination that special site or development circumstances eliminate any hazard to health or safety. "Elevation" in this Section shall be measured from U.S.G.S. datum.

1. Floor level of any structure used for human occupancy shall be not less than 10 feet elevation above mean sea level.
2. Individual sewage disposal systems shall not be subject to inundation in the event of coastal flooding to 10 feet elevation above mean sea level. Leach field drain tiles shall be not less than 50 horizontal feet inland from elevation above mean sea level, irrespective of groundwater elevation
3. Water supplies shall not be subject to interruption or contamination in the event of coastal flooding to 10 feet elevation above mean sea level.
4. **(This section was disapproved by the Office of the Attorney General)**

5. Setbacks required by Section VII, where abutting ocean front shall be measured from mean high water or the top of coastal bluffs if they exceed 15 feet vertical height. In determining the horizontal location of mean high water, top of coastal bluffs or the 10 feet elevation for the application of this Section, allowance shall be made for 10 years erosion continued at the historical rates indicated on “Map MF534 showing changes in the shoreline of Martha’s Vineyard”, by Clifford A. Kay, U.S.G.S., 1973.

6. Where he judges compliance with this Section to be questionable, the Inspector of Buildings may require certification of compliance by a registered land surveyor or qualified professional engineer retained at the expense of the applicant.

7. The non-conformance provision of Section VI-1 shall not apply, but those of VI-2 shall do so.

**Section XVIII Districts of Critical Planning Concern Regulations  
for the Town of Oak Bluffs—Adopted by the Martha’s Vineyard Commission (12/21/76)**

**1. Overlay Districts**

These regulations are overlay regulations. Overlay regulations are separate regulations which are superimposed over existing zoning districts, zoning regulations, health regulations, conservation regulations and other land use regulations affecting the town. These overlay regulations are supplementary to such existing regulations. Where there is a conflict the more limiting regulations shall prevail. These regulations apply to all land, all development, all uses and all permits and approvals within the following districts: Coastal District, Island Road District, Special Places District, Copeland Plan District, Oak Bluffs Harbor District and the Southern Woodlands District.

**A. Coastal District**

(1.) Purpose

To prevent flood damage, maintain water quality, assure adequate water supply, prevent pollution, promote wildlife habitats, assure the maintenance of cultural and historic sites and values, preserve and enhance the character of views, prevent damage to structures, land and water as a result of erosion, promote economic development of fisheries and related industries, and maintain and enhance the overall economy of the island.

(2.) Definition

The Coastal District includes the land, streams and wetlands of Oak Bluffs which lie

below ten (10) foot elevation above mean sea level, or within 500 feet of mean high water of a coastal water body exceeding ten (10) acres, or the ocean; and all land within 100 feet of streams and wetlands flowing into coastal water body; except that around East Chop it includes only the land lying less than ten (10) feet above mean sea level and the faces of the bluffs greater than 15 feet in height in the area bounded on the south by the junction of Commercial Avenue and Highland Drive, and thence around East Chop by the intersection of of Eastville Avenue extended to Vineyard Haven Harbor. The land bounded on the north by Highland Drive and on the south by Canonicus Avenue shall not be included within the Coastal District.

(3.) Coastal Regulations

Section XIII “Coastal Regulations” of the Oak Bluffs Zoning By-Laws is applicable within the District. No special permit for exception to the Coastal Regulations may be granted unless it is consistent with the regulations, restrictions and allowable uses established herein for the Coastal District. Likewise, no permit granting authority shall construe that compliance with the regulations herein exempts an applicant from the regulations and procedures of Section XIII of the Zoning By-Law.

(4.) Establishment of Zones within the Coastal District Shore Zone

Consisting of the land from mean low water to 100 feet inland of the island edge of any dune grass, wetland indicator species or stream flowing into a coastal water body and land 100 feet inland of the crest of any bluff exceeding a height of 15 feet.

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(5.) Uses Permitted

Only those uses permitted in the respective Zoning District which are consistent with the fragile nature of the area, such as outdoor recreation, conservation purposes and agricultural purposes.

Within the Inland Zone, permitted uses also include detached single family dwelling and non-habitable, minor accessory structures normally used for personal, family and household purposes which are subject to the regulations and restrictions of Section XVIII 1A (7).

In addition, within the Inland Zone, permitted uses shall also include existing health care related uses, including, but not limited to, the following: hospitals, physician offices, nursing and convalescent homes, long term care facilities, laboratories, elder care and child care services establishments, substance abuse services and other uses associated with the maintenance and restoration of the physical and well-being of the residents of and visitors to Martha’s Vineyard and other uses ancillary thereto.

(6.) Uses Requiring Special Permit from the Board of Appeals

(a.) Within the Shore Zone, the Board of Appeals may grant a Special Permit for any of the following:

(i.) Alterations to buildings and additions to existing residential structures, provided that such additions or alterations shall not result in additional sewage flow or sewage capacity if said building or structure is served by onsite sewage disposal facilities.

- (ii.) Fish processing facilities requiring or not requiring on site sanitary disposal systems.
- (iii.) Minor dredging, filling or alteration of a wetland or beach required for one of the above approved structures or uses.
- (iv.) Repair or replacement of on site sanitary disposal or sewage treatment facilities, including any structures, devices and appurtenances to be used in connection therewith, provided however, that such repair or replacement constitutes an improvement to the existing disposal or treatment facilities and has been approved by the Massachusetts Department of Environmental Protection or the Oak Bluffs Board of Health, as appropriate.
- (v) A structure partially located in the shore zone shall be considered as entirely in the shore zone.

(7.) Other Regulations and Restrictions

- (a.) Unless a Special Permit is granted allowing a greater height, the height of structures, as measured vertically from mean natural ground level to the highest point of the roof is restricted to:
  - (i.) twenty four (24) feet for a pitched roof
  - (ii.) thirteen (13) feet for a flat or shed roof.
- (b.) Any ground water well shall require a permit from the Board of Health before installation, and shall be located at least two hundred (200) feet from any salt water body.
- (c.) Any sanitary disposal facility shall be located a minimum of two hundred (200) feet from any salt water body.
- (d.) There shall be a minimum separation of three hundred (300) feet between sanitary disposal facilities. However, in cases where lots have at least sixty thousand (60,000) square feet of area and were created after December 21, 1976, the Board of Health may modify the three hundred (300) foot separation required between sanitary disposal facilities if the Board finds such modification will not jeopardize water quality.
- (e.) No portion of a sanitary disposal facility shall be located less than five (5) feet from any domestic water supply well.
- (f.) No sanitary disposal facility shall be located less than six hundred (600) feet from a public water supply well nor less than two hundred (200) feet from any domestic water supply well.
- (g.) Where compliance with these regulations is not possible, due to the dimensions of a lot existing in separate ownership from adjoining lots before December 22, 1976, the requirements (b through g) may be modified by the Board of Health.

**B. Island Road Districts**

(1.) Purpose

To allow for safe access and travel along the roads; and to protect the visual

character, diversity of landscape and historic features of the journey along the roads. And to protect historic places and retain special ways open primarily for uses such as walking and horseback riding.

(2.) Major Roads

Consisting of the area lying within 200 feet of the right of way of the following roads:

- (a.) Barnes Road south of the intersection of Barnes and County Roads.
- (b.) The Edgartown – Vineyard Haven Road.
- (c.) The Beach Road from Canonicus Road south to the Town Boundary.

(3.) Special Ways

Special Ways have not yet been designed in Oak Bluffs.

(4.) Uses Permitted

Any residential, recreational, agricultural or open space use as permitted in the respective Zoning Districts, subject to the regulations and restrictions set forth below.

(5.) Regulations and Restrictions

- (a.) No stone wall shall be moved, removed or otherwise altered, except for repair, except by Special Permit from the Board of Appeals.
- (b.) Any additional vehicular access to the public road must be at least 1,000 feet, measured on the same side of the road from any other vehicular access, except that if this requirement would prevent at least one (1) access to a public road from each lot held in separate ownership from the lots contiguous thereto as of December 22, 1976, each such lot shall be located as far as practicable from all other ways located on either side of the road, No land shall hereafter be divided, or sold, if such lot or lots would not be entitled to a way to provide vehicular access to a public way as provided herein. Board of Appeals may grant a Special Permit to allow access(es) at a closer interval than provided herein.
- (c.) Structures erected within the District shall not, except by Special Permit, exceed the following heights:
  - (i.) in a wooded area, 24 feet maximum for a pitched roof
  - (ii.) 13 feet for a flat roof.
- (d.) Fencing: Any fence, wall, planting, shrubbery or foliage more than thirty-six inches in height, which could materially obstruct the view between the road and the nearest public waterway shall require a Special Permit from the Zoning Board of Appeals in accordance with Island Road District DCPC Regulations, Section XVIII 1-B-6.

(6) Special Permit(s)

Special Permits required within these regulations for the Island Road District shall be the responsibility of the Board of Appeals.

## **C. Special Places District**

(1.) Purpose

To physically protect the place or resource; to protect visual or other access; to buffer these places with a greenbelt which is natural or landscaped; to protect the quality of the ponds and wildlife habitats; to keep development in the immediate vicinity that is compatible and does not cause, or is not adversely affected by erosion.

(2.) Designated Special Places

Duarte Pond: Consisting of the land and waters lying within 100 feet of the extreme high-water mark

(3.) Uses Permitted

Any uses permitted within the respective Zoning Districts which do not require the construction, erection, installation or placement of any structure, sanitary disposal facility, road or way or fence; such as uses for outdoor recreation, conservation purposes and agricultural purposes.

(4.) Uses Requiring Special Permit from the Board of Appeals

Any use permitted under the respective Zoning Districts, may be allowed by Special Permit provided that there is no other location upon the lot on which the structure or uses may be located.

(5.) Regulations and Restrictions

No on site sanitary disposal facility may be installed, placed or located in a Special Place District for an inland pond.

**D. Copeland Plan District**

Regulations within the Copeland Plan District shall apply to all privately owned property.

**(1.) Definitions exclusive to this Section.**

(a.) Building

A combination of materials forming shelter for persons, animals or property.

(b.) Exterior Architectural Feature

Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water.

(c.) Structure

A combination of materials other than a building, including any fence, wall, light, sign, terrace, walk or driveway.

**(2.) Boundaries**

(a.) **(Section I)** Beginning at the intersection of the centerline of Lake Avenue and the B-1 zoning district boundary as of August 8, 1991 southerly along said zoning district boundary to the intersection of the centerline of Samoset Avenue and said zoning district boundary and hence easterly along the centerline of Samoset Avenue to a point where the extended centerline of said avenue meets the mean low waterline and hence northerly along mean low waterline to a point where the mean low waterline meets the extended centerline of Lake Avenue and hence westerly along the centerline of Lake Avenue to the point of origin.

**(b.) (Section II)** Beginning at the juncture of the centerline of Sea View Avenue and Samoset Avenue and running westerly then northwesterly then southwesterly along the centerline of Samoset Avenue to the juncture of the centerline of Circuit Avenue and Samoset Avenue and hence southwesterly along the centerline of Circuit Avenue to the juncture of the centerline of Circuit Avenue and a line drawn through the northern boundary of Lot 135, Map 11 and hence easterly along the rear lot lines of Lots 135, 136, 137, 122, 123, 124, 110, 110.1, 111, 112, 113, 114, 98, 97, map 11 and Lot 136, Map 10 to the intersection of Naumkeag Avenue and Tuckernuck Avenue and hence northerly along the centerline of Naumkeag Avenue to a point some 70 plus or minus feet north of said intersection and hence easterly to the centerline of Sea View Avenue at a point some 70 plus or minus feet north of the centerline of Tuckernuck Avenue and hence northerly along the centerline Sea View Avenue to the point beginning, exclusive of any properties currently zoned for business use.

**(c.) (Section III)** Beginning at the juncture of the centerline of East Circuit Avenue and Naumkeag Avenue and running southeasterly along the centerline of Naumkeag Avenue for 113 plus or minus feet then easterly to the southwestern corner of Lot 147, Map 10 and hence east northeasterly along the rear lot line of Lots 147, 148, 149, 150, Map 10 to the centerline of Sea View Avenue and hence northerly along said centerline to a point 70 plus or minus feet north of the centerline of Tuckernuck Avenue and hence westerly to a point some 70 plus or minus feet north of the intersection of Naumkeag Avenue and Tuckernuck Avenue and hence southerly along the centerline of Naumkeag Avenue to said intersection and hence westerly along the rear lot line of Lot 136, Map 10, Lots 97, 98, 114, 113, 112, 111, 110.1, 110, 124, 123, 122, 137, 136, 135, Map 11 to intersect the centerline of Circuit Avenue and hence southerly along said centerline to a point where the extension of the rear lot line of Lot 27, Map 17 meets said centerline and hence east northeasterly along the rear lot lines of Lot 27, Map 17, Lots 133, 132, 131, 126, 127, 128, 105, 106, 107, 108, 99, Map 11, Lots 139, 138, 137, Map 10 to intersect the westerly lot line of Lot 142, Map 10 and hence southerly along said lot line 75 plus or minus feet and hence easterly along the southerly lot line of Lot 142, Map 10 to intersect the centerline of Naumkeag Avenue and hence southerly along said centerline to the point of beginning. Included also is the prominent feature exposed at low tide and easterly of the beach to the east of Sea View Avenue known as Lover's Rock.

**(d.) (Section IV)** Beginning at the juncture of the centerline of South Circuit Avenue and Circuit Avenue and running northeasterly along the

centerline of Circuit venue to a point where the extension of the rear lot line of Lot 27, Map 17 meets said centerline and hence northeasterly along the rear lot lines of Lot 27, Map 17, Lots 133, 132, 131, 126, 127, 128, 105, 106, 107, 108, 99, Map 11 Lots 139, 138, 137, Map 10 to intersect the westerly lot line of Lot 142, Map 10 and hence southerly along said lot line 75 plus or minus feet and hence easterly along the southerly lot line of Lot 142, Map 10 to intersect the centerline of Naumkeag Avenue and hence southerly along said centerline to the juncture of the centerline of East Circuit Avenue and Naumkeag Avenue and running southeasterly along the centerline of Naumkeag Avenue for 113 plus or minus feet then easterly to the southwestern corner of Lot 147, Map 10 and hence east northeasterly along the rear lot lines of Lots 147, 148, 149, 150, Map 10 to the centerline of Sea View Avenue and hence southerly along the centerline of Sea View Ave. to the juncture of the centerline of Sea View Avenue and South Circuit Avenue and hence westerly along South Circuit Avenue to the point of beginning.

**(e) (Section V)** to consist of the area within the following boundary beginning at the intersection of Dukes County Avenue and New York Avenue northwesterly along the centerline of New York Avenue to its intersection with East Chop Drive and thence northerly along the centerline of East Chop Drive to its intersection with Plymouth Avenue and thence along with centerline of the southerly loop of said Plymouth Avenue to its intersection with Laurel Avenue and thence southwesterly along the centerline of Laurel Avenue to its intersection with Moss Avenue and thence southeasterly and easterly along the centerline of said Moss Avenue to the western boundary of Parcel 67 on Assessors' Map 8 and thence southerly along the western boundaries of Parcels 67 and 66 on Map 8 to New York Avenue and thence westerly along the centerline of said New York Avenue to its intersection with the eastern end of Chestnut Avenue and thence southwesterly along the centerline of Chestnut Avenue to its intersection with Pacific Avenue and thence southwesterly along the centerline of Pacific Avenue to its intersection with Simpson Avenue and thence southeasterly along the centerline of Simpson Avenue to its intersection with Brunswick Avenue and thence southwesterly along the centerline of said Brunswick Avenue to its conclusion and thence southwesterly along the centerline of Truman Avenue to its intersection with Graham Avenue and then southeasterly along the centerline of Graham Avenue to its intersection with Rowland Avenue and thence northeasterly along the centerline of Rowland Avenue to its intersection with Huntington Avenue and thence easterly along the centerline of Huntington Avenue to its intersection with the western boundary of Parcel 337 on Assessors' Map 11 and thence southerly and easterly along the boundary of said Parcel 337 to

Dukes County Avenue and thence northerly along the centerline of said Dukes County Avenue to the point of origin; exclusive of properties of the Town of Oak Bluffs identified as Parcels 76, 123, 134, 140, 141.1 and 259 on Assessor's Map 8.

(Added ATM 4/13/04, Art. 14)

**(f) (Section VI)** Beginning at the intersection of the centerlines of Oak Bluffs Avenue and Sea View Avenue Extension, thence northwesterly along the centerline of Sea View Avenue Extension to its intersection with Circuit Avenue Extension and thence southwesterly, southerly and southeasterly along the centerline of Circuit Avenue Extension to its intersection with Oak Bluffs Avenue and thence northeasterly along the centerline of Oak Bluffs Avenue to the point of origin.

**(3.) Uses:** Any use permitted in Section III 1 and 2 of these By-Laws is also permitted in the Copeland Plan District.

**(4.) Appropriateness**

**(a.) General**

Any change to the exterior of an existing structure, addition to an existing structure or new construction shall be limited to the Victorian Style architecture prevalent within the district at the turn of the century (1900). No change to an exterior architectural feature shall radically alter the exterior appearance of the building or structure in such a way as to damage the visual integrity of the surrounding viewscape. The asymmetrical skyline of the district is to be preserved and enhanced. The physical character of the landscape shall enhance rather than detract from the prevalent Victorian architecture and shall enhance the inviting and open "village green" of the park. Variety is to be maintained as a key element in the fabric of the overall park presentation. Views from abutting properties shall be preserved.

**(b.) Height**

The maximum height of building and structure elements shall be 50 feet. The roofline shall be asymmetrical in keeping with the Victorian architecture prevalent in Oak Bluffs at the turn of the century (1900) and shall allow sufficient passage of air and light.

**(c.) Demolition**

This sub-section shall apply only to elective demolition, not to demolition ordered by appropriate authority for health or safety reasons.

(i.) Demolition shall be allowed only when the existing building or structure is determined to have no relationship to the district or when its retention would result in significant economic hardship and when all the requirements below have been satisfied.

(ii.) If an applicant's request for permission to demolish a building or structure is based upon structural inability or advanced deterioration,

a technical report prepared by an architect or engineer registered in Massachusetts shall be submitted, detailing the nature and extent of the specific problems, and providing reasonably accurate cost estimates for their correction.

(iii.) Applications for permission to demolish existing structures shall be accompanied by complete plans for the new development proposed on the site. There shall be submitted a timetable and a budget for both the demolition and the reconstruction as well as satisfactory evidence that adequate financing is available. The Town may require the posting of a performance bond or the establishment of an escrow account to guarantee the completion of any such project.

(d.) Window and Door Coverings

No building or structure in the Copeland Plan District shall use unfinished or unpainted plywood or other material to cover window or door areas except in case of emergency, and in an emergency, the covering shall be removed within 14 days. Permanent off-season window or door coverings shall not extend beyond the existing window or door areas.

(5.) No building or structure shall be constructed seaward of Sea View Avenue which would be of such a height as to break the view of Ocean Park from Nantucket Sound and Vice Versa. Lover's Rock shall be protected.

(6.) Administration

(a.) This section shall be administered by the Building Official in accordance with Section VIII.

(b.) Proposed new construction, additions to existing structures or changes to the exterior architectural features shall be reviewed by the Copeland Plan District Review Board for appropriateness. Said Board shall determine that a proposed change is appropriate before any other permits may commence. Said Board may alternatively determine that a proposed change is appropriate before any other Town permits may be issued, or before work not requiring other permits may commence. Said Board may alternatively determine that a proposed change is inapplicable to the By-Law or that adherence to the By-Law would cause significant economic hardship. Failure of such Board to make written response to the applicant and the Building Official within thirty (30) days to a request for review shall constitute approval. The Building Official may alternatively determine that a proposed change is inapplicable to the By-Law or that adherence to the By-Law would cause significant economic hardship.

(c.) The applicant shall provide sketches, diagrams, narrative description and/or plans sufficient for review under Section XVIII D

(d.) The Copeland Plan District Review Board shall consist of membership as follows: One member of the Park Commission or their designee, one member of the Planning Board or their designee, the Building Official, **one**

**member of the Cottage City Historic District Commission\***, one member of the Board of Selectmen or their designee and two (2) owners of property within the Section of the District being reviewed to be appointed by the Board of Selectmen. Vote of the Board shall be by majority vote. Five (5) members shall constitute a quorum. (\*Amended STM 1/18/05 Art. 12)

## **E. Oak Bluffs Harbor District**

### **(1.) Purpose**

To maintain an effective visual and physical connection between Oak Bluffs Harbor and surrounding lands; to achieve architectural consistency; to protect Oak Bluffs Harbor environmentally; to protect the economic, recreational and residential viability thereof and strive to maintain its uniqueness for future generations.

### **(2.) Boundary**

All that land and water contained within a line beginning at the intersection of East Chop Drive (a.k.a. Commercial Avenue) and Lake Avenue, thence easterly along the centerline of Lake Avenue for a distance of 1,485± feet to the intersection of Lake Avenue and Oak Bluffs Avenue, thence easterly along the centerline of Oak Bluffs Avenue for a distance of 100± feet to its intersection with Circuit Avenue Extension, thence northerly along the centerline of Circuit Avenue Extension for a distance of 915± feet to its intersection with the centerline of Sea View Avenue Extension, thence northeasterly for a distance of 100± feet from said intersection perpendicular to the mean low water mark of the shore of Nantucket Sound, thence northwesterly and northeasterly along the mean low water mark of Nantucket Sound to the northeasterly most point of the rock jetty on the southern side of the mouth of Oak Bluffs Harbor (a.k.a. Lake Anthony), thence across the mouth of Oak Bluffs Harbor to the northeasterly most point of the rock jetty on the northern side of the mouth of Oak Bluffs Harbor, thence southwesterly and northwesterly along the mean low water mark of the Nantucket Sound for a distance of 3,200± feet to its intersection with the centerline of East Chop Drive (a.k.a. Commercial Drive), thence southerly along the centerline of East Chop Drive for a distance of 1,400± feet to the point of origin.

### **(3.) Site Plan Review**

The Plan Review Committee shall review all permit applications for structures proposed to be visible from Oak Bluffs Harbor or from the nearest public way. The Permit Granting Authority (Building Inspector, Conservation Commission, e.g.) or the Special Permit Granting Authority (Zoning Board of Appeals, e.g.) shall refer applications to the Committee for this purpose, in accordance with Districts of Critical Planning Concern Regulations, Section 5.2. Generally, structures shall be sited so as to maximize pedestrian views between Oak Bluffs Harbor and the nearest public way, and exterior architectural style and features shall be compatible with surrounding structures and shall be consistent with the Oak Bluffs Harbor

District Design Guidelines. The Plan Review Committee shall also review all applications for Special Permits in Section 7.6, in accordance with the Districts of Critical Planning Concern Regulations, Section 5.2.

**(4.) Dimensional Requirements**

(a) General

To the degree reasonably possible, structures shall be sited so as to preserve views between Oak Bluffs Harbor and the nearest public way. Scale, bulk and proportions of structures shall be compatible with the surrounding area and consistent with the Oak Bluffs Harbor District Design Guidelines.

(b.) Minimum Setbacks:

	R1	R2	B1
(i.) between any structure and any street	20'	25'	5'
(ii.) between any structure, including an accessory building, and a side lot line	20'	25'	5'
(iii.) between any structure associated with a non water-dependent use and the Mean Low Water line of Oak Bluffs Harbor	25'	25'	
(iv.) between any structure associated with a non-water dependent use and the landward edge of the Town bulkhead walk			3'
(v.) between any structure associated with a water dependent use and Oak Bluffs Harbor	0'	0'	0'

(c) Fencing

Any fence, wall, planting, shrubbery or foliage more than thirty-six inches in height, which could materially obstruct the view between Oak Bluffs Harbor and the nearest public way, shall require a Special Permit from the Zoning Board of Appeals, following review by the Plan Review Committee in accordance with Districts of Critical Planning Concern Regulations, Sections XVIII 1 E-(3) and 2.

(d)Height

Permitted heights for structures in the Oak Bluffs Harbor District shall be the same as those in the underlying B1, R1 and R2 Districts, as in Section VII of the Zoning By-Laws.

(e.) Permitted Uses

--all uses permitted in the underlying B1, R1, and R2 Districts, as in Sections III and V-1 of the Zoning By-Laws.

(f.) Specially Permitted Uses

(i.) for which Special Permits may be granted by the Board of

Appeals, as in Section VII 5-D of the Zoning By-Laws, following review by the Plan Review Committee in accordance with Districts of Critical Planning Concern Regulations, Sections XVIII 2B and XVIII E3

- (ii.) in the B-1 District; all uses for which Special Permits may be granted by the Board of Appeals in the underlying B-1 District, as in Section V-1 of the Zoning By-Laws, and a privately owned marina;
- (iii.) in the R-2 District; all uses for which Special Permits may be granted by the Board of Appeals in the underlying R-2 District, as in Section III of the Zoning By-Laws, except the following uses which are prohibited: boat yards and boat services, conversion of a one-family house to accommodate more than two families, hotels, rooming and boarding houses, semi-detached two-family dwellings;
- (iv.) in the R-1 District; all uses for which Special Permits may be granted by the Board of Appeals in the underlying R-1 District, as in Section III of the Zoning By-Laws.

#### **F. Southern Woodlands District**

The Southern Woodlands District of Critical Planning Concern (“the District”) is an overlay district, and the regulations set forth herein are separate regulations which are superimposed over existing zoning regulations and non-zoning regulations. Where there is a conflict between these overlay regulations and other regulations, the regulations more restrictive to land or other developments shall prevail. These regulations apply to all uses of land and buildings or structures on land within this overlay district.

The boundaries of the District are as follows:

All land and water included within and bordered by a line beginning at the southeasterly corner of the lands of the Town of Oak Bluffs located approximately 1,945 ± feet from the intersection of County Road and the Edgartown-Vineyard Haven Road; thence northerly 2,293.4 ± feet to the northeasterly corner of Lot 53, Map 43; thence westerly along the property line of said lot 1,340 ± feet to the northwesterly corner of said Lot 53; and thence southerly 59 ± feet; and thence northwesterly along the bounds of Lot 2, Map 42, 2,597.23 ± feet; and thence southwesterly 729.53 ± feet along the westerly bound of Lot 2, Map 42; and thence westerly along the southerly bound of Lot 7.7, Map 36, some 213 ± feet; and thence southerly along the westerly bound of Lot 10, Map 36 some 436 ± feet; thence westerly along the northerly bound of Lot 2, Map 41 some 1,357 ± feet; and thence southerly 240.16 +or- feet along the easterly bound of Lot 13, Map 36; and thence southwesterly along the bound of said Lot 13 some 131.96 + or – feet; and thence westerly along the southerly bound of said Lot 13 some 242.76 + or – feet to an intersection with the easterly bound of the R.O.W. of Barnes Road; thence southerly 2,996 . ± feet along the easterly bound of said R.O.W. to the southwesterly bound of Lot 5, Map 41; and thence easterly along the southerly bound of said Lot 5 some 215 ± feet to a juncture of said bound with Old Holmes Hole Road, so called; and thence easterly along said Old Holmes Hole Road, so called, to the intersection of the westerly bound of Lot 15, Map 49;

and thence northeasterly along the northwesterly bound of Lot 15, Map 49 some 1,092.61 ± feet, and thence southeasterly along the southwesterly bound of the lands of the Town of Oak Bluffs to the point of origin. (Lot and Map refer to Assessors Maps 1998, Town of Oak Bluffs)

(1.) Purpose Of These Regulations

The purpose of these regulations is to protect and preserve the special characteristics and values of the District, while providing for appropriate development. These special characteristics and values include, but are not limited to: quality and quantity of water supply; wildlife habitat; a network of trails, roads and ancient ways; archaeological sites; extensive woodlands. The regulations shall maintain and enhance the recreational uses of the District.

(2.) Permitted Uses

In the District, the following uses and activities are permitted as of right: Any residential, recreational, agricultural, open space or municipal use allowed in their respective underlying zoning districts subject to Site Plan Review.

(3.) Uses Allowed By Special Permit

The Planning Board shall be the special permit granting authority (SPGA) for special permits required under this bylaw. In reviewing Special Permit applications, the Planning Board shall apply the general special permit criteria set forth in Section VIII-5-D of the Zoning Bylaw, the standards set forth below, and the standards set forth in Section 6.0 of the District of Critical Planning Concern Regulations of the Oak Bluffs Zoning bylaw. The Planning Board shall request and receive comments from the Oak Bluffs Historical Committee, the Site Plan Review Committee and any other Town Boards as it deems necessary in order to carry out its responsibilities. The following applications for development shall require a special permit from the Planning Board:

- (a.) Any residential, recreational, agricultural, open space or municipal use allowed by special permit in their respective underlying zoning districts subject to regulations and restrictions as set forth below.
- (b.) Enlargement or alteration of any pre-existing, non-conforming uses, but not including a change in the nature of the pre-existing, non-conforming use.
- (c.) Any use allowed as of right or by special permit that involves handling or storage of toxic or hazardous materials in quantities greater than those associated with normal household use.
- (d.) Any use allowed as of right or by special permit that will render impervious more than 15% or 2,500 square feet, whichever is greater, of any lot or project area if project area exceeds one lot.
- (e.) Developments involving five or more residential units or fifteen or more acres.
- (f.) Any use allowed as of right or by special permit that would require land clearing/grading activities in the District of an area greater than one third (1/3) the lot size.
- (g.) Uses allowed as of right or by special permit that involve developments

on slopes greater than twelve (12) percent.

(h.) Uses allowed as of right or by special permit involving parking lots designed to accommodate twenty (20) or more vehicles, or larger than four thousand (4,000) square feet.

(i.) Any use allowed as of right or by special permit that would require a new road to intersect with a “special way” as defined below.

(j.) Any use allowed as of right or by special permit which has been reviewed under Sect. 5.9 Preservation of Archaeological sites and has been found to be of archaeological significance, or is listed in the Massachusetts Historical Commission’s Inventory of Historic and Archaeological Assets of the Commonwealth.

(k.) Any antenna or tower except for non-commercial radio and television antennas with a maximum overall height of 45 feet.

(l.) Any municipal use not allowed as of right which is owned by or operated by the town.

(m.) Relocation of Special Ways within the District for the purpose of preserving continuity of the designated Special Way, creating connections and/or public access to a trail system throughout the District or for the safety of trail users. The Planning Board does not have legal jurisdiction to grant or extinguish public right-of-way.

(n.) Any removal of trees on slopes steeper than or equal to twelve (12) percent.

(4.) Referral Uses

Any use allowed as of right or by special permit that would require withdrawal, on average, more than 100,000 gallons/day of water for any period of three consecutive months, as stated in the Mass. Water Management Act (M.G.L. c21G) effective March 1986, shall require a referral to the MVC as a DRI.

(5.) Prohibited Uses

Any use not expressly listed above as allowable either as of right or by special permit is hereby prohibited.

(6.) Site Plan Committee

(a) Authorization

The Southern Woodlands DCPC Site Plan Review Committee (SPRC) is hereby designated in order to comply with the Martha’s Vineyard Commission Decision which requires the Town to establish a Site Plan Review Committee.

(b.) Composition

The Site Plan Review Committee is established by order of the Selectmen and shall consist of one sitting member of and appointed by each of the following: Board of Selectmen, Planning Board, Conservation Commission, Trails and Byways Committee, Building Department, Water District, Oak Bluffs Historical Commission, Board of Health, and one member of the public at large appointed by the Board of Selectmen. The Building Official

shall coordinate the activities of the Committee. Members of the Committee shall serve one year terms. Until the committee is established, the Board of selectmen shall serve as the Site Plan Review Committee. If a member should resign or be unable to serve, the board or committee from which he/she comes shall appoint a new member to complete his/her term.

(c.) Duties and Responsibilities

The Site Plan Review Committee shall review all applications for special permits and/or site plan approval required under this bylaw. It shall hold meetings with an applicant and with the SPGA. The Committee shall submit its recommendations in a written report to the Planning Board, with a copy to the Town Clerk, within thirty (30) business days of receipt of an application, except that this time may be extended for up to fifteen (15) business days by written request to the SPGA, provided that the SPGA agrees. The SPGA will make no final determination on an application until such report is received and reviewed. Unless extended, failure of the Committee to issue its recommendations within thirty (30) business days of receipt shall be construed as a recommendation of approval of the application.

(7.) Site Plan Review/Special Permit Standards

(a.) Any use allowed either as of right or by special permit shall require a site plan approval from the Planning Board. However, upon application of the landowner or developer, the Planning Board may exempt particular uses allowed as of right from all or part of the site plan review upon a finding that requiring a site plan review for the particular project in question is not necessary to protect the interests of this bylaw or may permit site data collection necessary to support an application for a Site Plan and/or Special Permit. Before making such a finding, the Planning Board shall notify and receive the recommendations of the Oak Bluffs Historical Commission, the Site Plan Review Committee and any other Town boards as it deems necessary in order to determine whether such a finding is appropriate. The SPGA shall notify all boards represented on the Site Plan Review Committee of each application undergoing site plan review to give them an opportunity to comment.

(b.) Where it deems it appropriate in order to facilitate the purpose of this bylaw, the Planning Board may require the applicant to submit an Open Space Development Plan as set forth in Section 12 of the Oak Bluffs zoning bylaw.

(c.) Unless extended, failure of the SPGA to issue its decision within 120 business days of receipt of the application shall be construed as an approval of the application.

(8.) Site Plan Review Regulations For Stormwater Management

Land uses and developments within the District that require a site plan review shall conform to Section 44 of the Oak Bluffs Subdivision Rules and Regulations.

(9.) Site Plan Review Regulations For Preservation Of Archaeological Sites

There will be no disturbance within the District, and no special permit or site plan approval will be issued, until the following are completed:

(a.) Subject to Sect 5.7 Site Plan Review/Special Permit Standards, any application for site plan review shall require the submission of an archaeological assessment of the area of the site to be disturbed. The findings of this assessment shall be forwarded to the Massachusetts Historic Commission (MHC) for review. Results of the MHC review shall be forwarded to the OBHC and the SPGA within 30 business days. Should there be evidence of significant finds, further assessment of part or all of the remainder of the site shall be conducted by the applicant. Any assessments may be reviewed by the SPGA's consultant, the cost of such consultant shall be paid by the applicant. The OBHC and MHC shall submit their final comments no later than 90 business days from the time the application was received.

(b.) The SPGA, as a result of the archaeological assessment, may require the applicant to have an archaeologist on site during project.

(c.) To the maximum extent feasible, land uses or developments shall avoid causing any adverse effect on areas determined by the OBHC to be sites of archaeological significance, and/or on areas listed in the Massachusetts Historical Commission's Inventory of Historic and Archaeological Assets of the Commonwealth. The term adverse effect includes, but is not limited to, the destruction or alteration of such sites or areas, the isolation of such sites or areas, the isolation of such sites or areas from their surrounding environment, and the introduction of visual, audible, or atmospheric elements that are out of character with, or alter the setting of such sites or areas.

(10.) Site Plan Review Regulations For Preservation Of "Special Ways"

(a.) Certain trails, roads and ancient ways within the District contain many of the characteristics of "Special Ways" as set forth in the MVC Decision designating the Island Road District as a District of Critical Planning Concern, December 22, 1975. The purpose of the special way regulation is to protect the ancient way resource in a way that protects historic values, the visual character, diversity of landscape and recreational uses, while preserving the integrity and qualities of the trails, roads and ancient ways. It is necessary in order to preserve the use of these ways for alternative forms of transportation.

(b.) Roads, trails and ancient ways considered as Special Ways currently include: Chaise Road, Old Back Road to Oak Bluffs, Back Road Connector, Road to Farm Neck and Old Holmes Hole Road, as portrayed on a map prepared by the Trails and Byways Committee for the Town, dated November 1998.

(c.) Any development subject to site plan approval, including removal of

vegetation, other than for historical preservation, shall be prohibited within 50 feet of either side of the center line of a Special Way, except for access where rights of way exist. The 50 foot buffer shall in general be a naturally vegetated buffer, but may on approval by the Planning Board have vegetation added to it to complete the allowed width and to provide adequate protection. Reduction of buffer width may only be allowed upon a finding by the Planning Board that mitigation measures, whether by replacement landscaping, building orientation or other site specific consideration, benefit trail users and the general public and do not compromise the purpose of the District.

(d.) No fences, walls, structures or obstructions shall be erected, placed or constructed within the Special Way except for gates, bars or stiles designed to allow passage of non-vehicular travel or for vehicular travel where such rights-of-way exist.

(e.) No Special Way shall be widened, paved or hard-surfaced. No grading or maintenance of Special Ways may occur without a site plan review and approval.

(f.) In areas where an existing or proposed right of way crosses a Special Way, the trail crossing shall be marked at both sides of the right of way crossing by an appropriate small sign, to be determined by the SPRC, indicating the crossing, and the right of way surface as it passes over the Special Way shall be made of non-impervious surface only (gravel, etc).

(g.) Except for vehicles necessary for maintenance of the ways or where rights of way exist, no motorized vehicles shall be permitted to operate on Special Ways within the District.

(11.) Site Plan Review Regulations For Preservation Of Woodland And Habitat  
There will be no disturbance within the District and no special permit or site plan review initiated until the following are completed:

(a.) Subject to Section XVIII F 7 Site Plan Review/Special Permit Standards, any application for a site plan review shall require the submission to the SPGA and the Site Plan Review Committee of a natural resources inventory and management plan for the site. The SPGA may require an additional natural resources inventory and management plan to further evaluate the site to be conducted at the applicant's expense. The SPGA may hire its consultant, at the applicant's expense, to review the natural resource inventory and management plan. The Site Plan Review Committee shall forward its written comments to the SPGA within 30 business days of receipt of the plan(s).

(b.) Use of a site shall, to the maximum extent feasible, maintain large contiguous woodlands within the District in order to support the needs of wildlife for breeding, feeding and normal movement.

(c.) Except for areas surrounding single family dwellings, fences and other structural barriers shall be placed so as not to interfere with the movement

of wildlife within the District.

(d.) Natural, indigenous vegetation shall be encouraged or enhanced, as shown in plans for application for a permit. Disturbed areas shall be revegetated as rapidly as possible within a time required by the Planning Board.

(12.) Site Plan Review Regulations For Landscape And Topography

(a.) Existing natural vegetation shall be retained inside the District, within 100 feet of Barnes and County Roads; and within 50 feet of all other boundaries of the District.

(b.) Within the District, no structure may be located within 150 feet of Barnes and County Roads, and within 100 feet of all other boundaries of the District.

(c.) To the maximum extent possible, structures shall not be built on ridges or hilltops, and developments shall avoid impairing views of hill tops and ridge lines from the surrounding areas. The SPGA may require an analysis of impacts on views, and this may include, but is not limited to, requiring the applicant to submit pre-development and computer-generated post-development photographs showing the impact of a proposed development on the view.

(d.) Activities which involve filling, grading, excavation or similar activities shall require a written soil erosion and sedimentation control plan. In order to create the least potential for erosion, development shall be designed to fit the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided, and natural contours shall be followed as closely as possible. An erosion and sedimentation control plan shall accompany such applications.

(e.) All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including erosion, mass soil movement, improper drainage, or water pollution, during and after construction. A soils report, prepared by state-certified professionals, shall accompany the application.

(f.) To the maximum extent feasible, development projects shall retain mature stands of trees, rare types of trees, trees at site perimeter, and contiguous vegetation with adjacent sites.

(g.) To the maximum extent feasible, understory vegetation beneath the dripline of preserved trees shall also be retained in an undisturbed state.

(h.) Revegetation plans should avoid the planting of non-native trees and grasses to the maximum extent possible.

(13.) Site Plan Review Regulations For Nitrogen Management

(a.) The following shall be preliminary and temporary standards for nitrogen loading in the District and in Lagoon Pond and Sengekontacket Pond. They shall be used until such time as the Board of Health (BOH) promulgates regulations to replace them. The BOH regulations will be consistent with

the intent of the temporary standards, which will be used as guidelines. The BOH will also develop regulations to monitor nitrogen levels in the above areas. These data shall be used to establish a current baseline of nitrogen levels and to determine trends in the future.

(b.) Land uses and developments within the District shall conform to the following performance standards for nitrogen management:

(i.) No land use or development in the District shall result in a cumulative nitrogen concentration of 3mg/1 or more in groundwater.

(ii.) No land use or development in the District shall result in a cumulative nitrogen concentration of 1 mg/1 or more in Lagoon Pond and Sengekontacket Pond.

(iii.) Department of Environmental Protection (DEP) document "Nitrogen Loading Computer Model Instruction Manual Version 1.0", dated 1996, or later shall be used for methodology. Appendix A of that document contains default values for several sources of nitrogen.

(14.) Miscellaneous

(a.) Should an provision or provisions of this bylaw be deemed invalid by a court of competent jurisdiction, such provision or provisions shall be severed and the remaining, valid provisions of the bylaw shall remain in full force and effect.

(b.) The bylaw shall be interpreted and implemented so as to be consistent with federal and state constitutional provisions, laws, and regulations governing the use and development of private property. To that end, the Planning Board is hereby authorized to grant variances from the provisions of this bylaw if the Planning Board finds that literal enforcement of the bylaw would cause a taking of property without compensation within the meaning of the federal and state constitutions, as interpreted by the courts. The Planning Board may also grant a variance if it specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the District a literal enforcement of this bylaw would involve substantial hardship, financial or otherwise, to the general permit applicant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of purpose of the bylaw.

(c.) The Planning Board may require a performance guarantee in a form acceptable to the town to cover the costs associated with compliance with any special permit and/or site plan approval issued under this bylaw. Within ninety days of the effective date of this bylaw, the Planning Board shall adopt regulations pursuant to General Laws Chapter 44, Section 53G which shall authorize the Planning Board to impose, in its discretion, an application

fee for special permits or site plan approvals under this bylaw to fund the employment of outside consultants to assist the Planning Board in reviewing any such applications.

## 2. Special Permits

A. In granting Special Permits for development allowed within the Overlay Districts the Special Permit Granting Authority shall consider the purposes of the appropriate District and find that the proposal assures protection against adverse environmental impact including the following where applicable:

- (1.) Pollution of surface or groundwater or of water bodies.
- (2.) Salt intrusion of public and private domestic water supply wells.
- (3.) Inadequate water supply to meet the anticipated demand of the proposed activity or use or reduction of water supply available to other properties.
- (4.) Noise and air pollution.
- (5.) Destruction of wildlife habitats and damage to wetlands or littoral ecology.
- (6.) Damage to marine fisheries and shellfish.
- (7.) Unnecessary interruption of the visual amenities of the site.
- (8.) Unnecessary decrease in agricultural use or potential. productivity of land.
- (9.) Construction not in harmony with landscape type.
- (10.) Erosion resulting from or caused by development.

B. All Special Permits applicable within the Special Places District, Coastal District and Oak Bluffs Harbor District shall be reviewed by the Plan Review Committee. The Special Permit Granting Authority shall refer applications to the Committee for this purpose. The Plan Review Committee's report to the Special Permit Granting Authority shall be in writing and comment on how the application conforms to the goals of the District and the guidelines for decision which the Special Permit Granting Authority must consider.

Failure of the Plan Review Committee to report to the Special Permit Granting Authority within 15 days after receipt of the application shall be construed as a recommendation of approval. The Plan Review Committee is established by order of the Selectmen and consists of a member from and appointed by at least two of the following organizations or individuals; Board of Health, Conservation Commission, Building and Zoning Inspector, Board of Selectmen, Planning Board and the Martha's Vineyard Commission. Until the Plan Review Committee is so established, the Board of Selectmen is the Plan Review Committee.

## 3. Definitions

### A. *Beach*

That area of land adjoining any pond, lake stream, creak, ocean, sea or water which is subject to tidal or wave action.

### B. *Bluff*

That land adjacent to a beach or coastal wetland which shows the effect of wave erosion or other down slope erosion causing it to be steeper than the otherwise natural slope of land.

*C. Flat Roof*

Any roof other than a pitched roof.

*D. Pitched Roof*

Any roof which has a rise of at least one inch for every 4 inches of run.

*E. Marina*

A facility, which provides dockage or berthing for more than five (5) vessels and may also provide vessel services.

*F. Water Dependent Use*

A use requiring direct access to or location in tidal waters.

*G. Non-water Dependent Use*

A use which does not require direct access to or location in tidal waters.

## **SECTION 10.0 ADMINISTRATION AND PROCEDURES**

### **10.1 ADMINISTRATION**

**10.1.1 Permits.** This By-Law shall be administered by the Building Commissioner. Pursuant to the State Building Code, the Building Commissioner may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth.

Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification.

**10.1.2 Enforcement.** The Building Commissioner shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.

**10.1.3 Penalties.** The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be Three Hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

### **10.2 BOARD OF APPEALS.**

**10.2.1 Establishment.** There is hereby established a Board of Appeals of five (5) members and two associate members appointed by the Board of Selectmen. (*Amended 4/12/06 ATM Art 13, AG approved and published 7.17.06*)

**10.2.2 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section 10.3, or as otherwise specified.
2. To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals shall not grant use variances.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

**10.2.3 Regulations.** The Board of Appeals or other Special Permit Granting Authority may adopt rules and regulations for the administration of its powers. (*Amended ATM 4.13.04 Art 13, AG Approved 5.28.04, Published 6.15.04*)

**10.2.4 Fees.** The Board of Appeals or other Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits. (*Amended ATM 4.13.04 Art 13, AG Approved 5.28.04, Published 6.15.04*)

### **10.3 SPECIAL PERMITS.**

**10.3.1 Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

**10.3.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the

proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

**10.3.3 Procedures.** Special permit applications shall be governed by the rules and regulations of the special permit granting authority. Whenever an application for a special permit is filed with a special permit granting authority, the applicant shall also file, within five (5) working days of the filing of the completed application with said authority, copies of the application, accompanying site plan, and other documentation, to the Board of Health, Conservation Commission, Building Commissioner, Director of Public Works, Police Chief, Fire Chief, Sewer Commission, and water department for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant.

**10.3.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

**10.3.5 Plans.** An applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.4, herein.

1. The provisions of this Section 10.3.5 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may establish procedures governing such applications by regulation.

**10.3.6 Regulations.** The special permit granting authority may adopt rules and regulations for the administration of this section.

**10.3.7 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**10.3.8 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

## **10.4 SITE PLAN REVIEW**

**10.4.1 Applicability.** The following types of activities and uses require site plan review by the Planning Board:

1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure involving more than 500 square feet;
2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose;
3. Grading or clearing more than ten percent (10%) of a lot, or 5,000 square feet, which ever is smaller, except for the following: landscaping on a lot with an existing structure or a proposed single or two family dwelling; clearing necessary for percolation and other site tests, work incidental to agricultural activity, work in conjunction with a approved subdivision plan, or work pursuant to an earth removal permit.

### **10.4.2 Exemptions**

1. This Section 10.4 shall not apply with regard to any project governed by Section 9.0, herein.
2. A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.

### **10.4.3 Procedures.**

1. Use, Structure, or Activity Available As of Right. An application for a building permit to perform work as set forth herein available as of right shall be accompanied by an approved Site Plan. Prior to the commencement of any activity set forth herein available as of right, the project proponent shall obtain site plan approval from the Planning Board. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also

submit a copy of the site plan to the Sewer Commission, applicable water district, Board of Health, Director of Public Works, Police Chief, Fire Chief, the Building Commissioner, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of the Board as constituted and shall be in writing. No building permit shall be issued by the Building Commissioner without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

2. Use or Structure Available by Special Permit or Variance. An application for a special permit or a variance to perform work as set forth herein shall be accompanied by an approved Site Plan. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Sewer Commission, applicable water district, Board of Health, Director of Public Works, Police Chief, Fire Chief, the Building Commissioner, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of the Board as constituted and shall be in writing. No special permit or variance shall be issued by the Board of Appeals without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board. Where the Planning Board approves a site plan "with conditions", and said site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

3. Where the Planning Board serves as the special permit granting authority, it shall consolidate its site plan review and special permit procedures.

4. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

5. No deviation from an approved site plan shall be permitted without modification thereof.

**10.4.4 Preparation of Plans.** Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met

and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=20'.

**10.4.5 Contents of Plan.** The contents of the site plan are as follows:

1. Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the planning board. The plans are as follows:
  - A. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the planning board.
  - B. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
  - C. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
  - D. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
  - E. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.
2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.
3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.
4. The site plan shall be accompanied by drainage calculations by a registered professional

engineer. Storm drainage design must conform to Town's subdivision regulations.

5. The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Planning Board may require that such narrative assessments be prepared by qualified experts.

6. Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

**10.4.6 Waiver of Technical Compliance.** The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 10.4.5 where the project involves relatively simple development plans or constitutes a minor site plan.

**10.4.7 Minor Site Plan.** Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by Section 10.4.5; provided, however, that the scale of the site plan may be 1' = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.

**10.4.8 Approval.** Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm water drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and threat of air and water pollution;
2. Maximize pedestrian and vehicular safety both on the site and egress from it;
3. Minimize obstruction of scenic views from publicly accessible locations;
4. Minimize visual intrusion by controlling the visibility of parking, storage, or other

outdoor service areas viewed from public ways or premises residentially used or zoned;

5. Minimize glare from headlights and lighting intrusion;
6. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
7. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
8. Ensure compliance with the provisions of this Zoning By-Law, including parking, signage, landscaping and environmental performance standards.

**10.4.9 Lapse.** Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

**10.4.10 Regulations.** The Planning Board may adopt reasonable regulations for the administration of site plan review.

**10.4.11 Fee.** The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

**10.4.12 Appeal.** Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## **SECTION 11.0 DEFINITIONS**

In this by-law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the by-law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words defined or not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly

evident in this by-law.

**Accessory building or structure:** A subordinate building or structure located on the same lot as the main, or principal building or structure or principal use, the use of which is customarily incidental to that of the principal building or structure or use of the land.

**Accessory use:** A use customarily incidental to that of the main or principal building or use of the land.

**Adult day care facility:** A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

**Agricultural use, nonexempt:** Agricultural use of property not exempted by G.L. c. 40A, s. 3, but excluding the raising of swine or fur bearing animals.

**Alterations:** 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 (1) location or position to another.

**Animal clinic or hospital:** A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

**Assisted Living Residence:** A facility as defined in the Code of Massachusetts Regulations.

**Bed and breakfast Establishment:** Accommodations with not more than four (4) bedrooms occupied by bed and breakfast guests in which the owner of the establishment resides. Bed and breakfasts are intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

**Boarding or Lodging House:** A dwelling or part thereof in which lodging is provided by the owner or operator to more than four (4) boarders. Where four (4) or more unrelated individuals rent a dwelling, it shall be considered a boarding house.

**Boat yard or boat service:** Facility servicing marine vessels.

**Building:** A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

**Building Commissioner:** The Building Inspector/Zoning Officer of the Town.

**Building Coverage:** That percentage of the lot or plot area covered by the roof area of a building

or buildings.

**Building Height:** The vertical distance from the grade plane to the average height of the highest roof surface. When a building faces more than one street, the height shall be measured from the average of the grade at the center line of each street front. Not included are spires, cupolas, antennae, or similar parts of structures which do not enclose potentially habitable floor space.

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

**Business or Professional Office:** A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

**Campground:** An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment, which is primarily used for recreational purposes and retains on open air or natural character.

**Child Care Facility:** A day care center or school age child care program, as those terms are defined in G.L. c. 28A, s. 9.

**Club or Lodge, Private:** Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization, whether non-profit or for profit catering exclusively to members and their guests and the public where authorized by a Special Permit of the Planning Board for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

**Commercial Recreation, Indoor:** A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly shall include theatres, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

**Commercial Recreation, Outdoor:** Drive-in theatre, Golf Course, Driving Range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation, with accessory uses carried on in whole or in part outdoors, except those activities more specifically designated in this By-Law.

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

**Craft or Artisan Shop:** A shop selling the goods, wares, or products of a craftsperson, artisan, or artist.

**Dwelling:** A building designed and occupied as the living quarters of one (1) or more families. Single- and two-family dwellings shall be designed for and occupied by not more than one (1) or two (2) families, respectively. A multifamily dwelling shall be one designed for and occupied by three (3) or more families.

**Earth Removal:** Extraction of sand, gravel, top soil, or other earth for sale or for use at a site removed from the place of extraction exclusive of the grading of a lot preparatory to the construction of a building for which a building permit has been issued, or the grading of streets in accordance with an approved definitive plan, and exclusive of granite operations.

**Educational Use, Non-exempt:** Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

**Erect:** To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain, and the like preparation for building shall also be considered to erect.

**Essential Services:** Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

**Family:** Any number of related individuals, or not more than four (4) unrelated individuals, living and cooking together on the premises as a single housekeeping unit.

**Family Day Care Home:** Any private residence operating a facility as defined in G.L. c. 28A, s. 9.

**Farm Stand, non-exempt:** Facility for the sale of produce, wine and dairy products on property not exempted by G.L. c. 40A, s. 3.

**Floor Area, Gross:** The total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

**Floor Area Ratio (FAR):** A mathematical expression determined by dividing total floor area of a building by the area of the lot on which it is located. For example, a one acre lot with a FAR of .75 could contain 32,670 square feet of gross floor area ( $43,560 \times .75 = 32,670$ ).

**Funeral Home:** Facility for the conducting of funerals and related activities such as embalming.

**General Service Establishment:** A facility providing general services such as small appliance or equipment repair, shoe repair, tailor, upholsterer, and the like.

**Hazardous Material:** Any substance which is listed in, but not limited to, the EPA priority pollutants as described in section 307(a) of the Clean Water Act, as amended.

**Health Care Facility:** Facility as defined in the HC District, herein.

**Home Business:** The use of a room or rooms in a dwelling for customary home occupations by resident occupants, including craft, trades, professional, or office use.

**Impervious:** Any area impenetrable by surface water.

**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 be considered junk.

**Junkyard or Automobile Graveyard:** The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

**Kennel, Commercial:** A commercial establishment in which more than three (3) dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold located on at least five (5) acres of land.

**Light Manufacturing:** Fabrication, assembly, processing, finishing work or packaging.

**Lot:** A continuous parcel of land with legally definable boundaries.

**Lot Area:** The horizontal area of the lot exclusive of any area in a street or recorded way open to public use.

**Lot, Corner:** A lot with two (2) adjacent sides abutting upon streets or other public spaces.

**Lot, Depth of:** The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

**Lot, Frontage of:** A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection

is greater than one hundred and twenty (120) degrees. Vehicular access to a building site on the lot shall be exclusively through the frontage of the lot unless otherwise authorized by Special Permit by the Planning Board.

**Lot Line:** A line dividing one lot from another or from a street or any public place.

**Lot, Width of:** The horizontal distance between side lot lines, measured parallel to the lot frontage at the front yard setback line.

**Manufacturing:** A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

**Medical Center or Clinic:** A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

**Mobile Home:** A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

**Motel or Hotel:** A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such hotel or motel may claim residency at such location.

**Motor Vehicle Body Repair:** An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

**Motor Vehicle General Repairs:** Premises for the servicing and repair of autos, but not to include fuel sales.

**Motor Vehicle Light Service:** Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

**Municipal Facilities:** Facilities owned or operated by the Town.

**Nonconforming Structure:** A lawfully preexisting structure, which, because of an amendment to

the Zoning By-law, no longer conforms to the dimensional requirements set forth therein.

**Nonconforming Use:** A lawfully pre-existing use, which, because of an amendment to the Zoning By-law, no longer conforms to the use regulations set forth therein.

**Nursing or Convalescent Home:** Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**Parking Garage:** A structure which is accessory to a commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the customers, visitors and employees of such an establishment.

**Personal Service Establishment:** A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

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

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

**Retail:** A facility selling goods but not specifically listed in the Table of Use Regulations.

**Retail Food Shop:** Shop selling food at retail, including bakery, sandwich shop, etc.

**Rotor:** The blades plus the hub to which the blades of a Windmill tower are attached.

**Sign:** Any privately owned permanent or temporary structure, device, billboard, letter, word, banner, pennant, insignia or representation which is used as, or which is in the nature of, an advertisement, announcement, or direction, and which is within public view. The following shall not be considered signs: a) Flags and insignia of any government; b) Legal notices, identification, informational or directional signs erected, required or endorsed by governmental bodies; c) Signs indicating only the names of the owner or occupant, street number, cottage name and/or date of construction of a building not to exceed 1 square foot in area. Specific sign types and other definitions are set forth in Section 5.3.

**Sign Area:** In the case of free-standing signs and where a sign has a background color, surface, or finish material which is different from the building or window face, the area shall include that surface on which all the message, symbols, or designs are displayed, but not including supporting

frame-work. Where individual letters, symbols, message or designs are attached to or painted on a building face or window, the area shall be the smallest imaginary rectangle which encompasses and fully contains the extremities of all copy and graphics. Only one side shall be included in computing the area of a double-faced sign.

**Solid Waste Disposal Facility:** Refuse transfer station, composting plant, solid waste recycling operation and any other works or use approved by the Massachusetts Department of Public Health and the Board of Health for processing, handling, treating, and disposing of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items, and sludge but not raw sewage, and similar waste items.

**Street:** An accepted town way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the subdivision control law, or a way determined by the planning board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Structure:** A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. \* For the purposes of this bylaw, a fence six (6) feet or less in height, or a wall four (4) feet or less in height shall not be considered a structure.

\*Amended ATM 4/8/2008 Art 25. AG Approved 5/14/08, Posted 6/6/08.

**Temporary Structure:** A structure without any foundation or footings to be removed within a twelve-month time period. Said structure shall conform to the requirements of the Table of Dimensional Requirements and shall receive a permit from the Building Commissioner.

**Town:** The Town of Oak Bluffs.

**Toxic Materials:** A combination of pollutants including disease-carrying agents, which after discharge and upon exposure, ingestion, inhalation, and assimilation into any organism can cause death, disease, mutations, deficiencies, or malfunctions in such organisms or their offspring.

**Warehouse:** A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

**Windmill:** A device which converts wind energy to mechanical or electrical energy.

**Yard:** A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

Yard, Front: A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

Yard, Rear: A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

Yard, Side: A yard situated between the nearest point of 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 a side line.

**Article 17.** A motion was made, seconded and voted by 2/3 vote to amend Section 12 of its Zoning Bylaw by adopting the following:  
(Voted ATM April 14, 2015 Art. 17, approved by AG August 4, 2015 and published June 10, 2015)

**Section 12.0 Solar Energy Systems.**

**12.1 Purpose.** The purpose of this bylaw is to promote the use of solar energy by providing 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.

**12.2 General requirements.** The following are common to all solar energy systems:

A. Compliance with Law and Regulations: The construction and operation of all proposed solar energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, communications and aviation requirements.

B. Expiration: A permit issued pursuant to this by-law shall expire if the solar energy system is not installed and functioning within 24 months from the date the permit is issued or the solar energy system is abandoned.

C. System conditions: Owners of solar energy systems shall be responsible for maintaining them in good condition. Maintenance shall include, but not be limited to, structural repairs and integrity of security measures.

D. Access to the site shall be maintained at a level acceptable to the local Fire Chief and Emergency Services. The project owner shall be responsible for the costs of maintaining the solar energy system and any access road(s), and the cost of repairing any damage occurring as a result of operation and construction.

E. A Solar Energy System shall not be used to display advertising, including signage, streamers, pennants, tinsel, balloons, flags, banners or similar materials.

F. The manufacturer and equipment information, warning, or indication of ownership shall be allowed on any equipment of the Solar Energy System provided that they comply with the prevailing sign regulations.

G. Reasonable efforts shall be made to place all utility connections from solar energy installations 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.

H. Modifications: Any material modifications or expansions to a solar energy system not permitted as-of-right, or of design that exceeds or will exceed the limits defining as-of-right systems under this bylaw, shall require a Special Permit from the Zoning Board of Appeals as provided for here, except for routine maintenance and replacement of components.

I. Violations: It is unlawful for any person to construct, install, or operate a solar energy system that is not in compliance with this bylaw or with any condition contained in an approval or permit issued pursuant to this bylaw.

J. Use: All Solar Energy Systems shall be permitted solely as an accessory use, incidental to the primary use of the property, unless otherwise permitted under the provisions of M.G. L. c. 40A, § 3.

### **12.3 Solar Energy Systems Permitted by Right.**

#### **12.3.1. Building-Mounted and/or Integrated Solar Energy System.**

A. A Solar Energy System shall be considered to be building mounted and/or integrated if it is designed to be permanently mounted on a building or other structure. This definition applies to Solar Energy Systems of any capacity that are designed to be in direct contact with a building or structure.

B. No building-mounted and/or integrated Solar Energy System shall exceed the building or structure height limits of the underlying district, unless the Building Inspector determines that that proposed facility complies with M.G. L. c. 40A, § 3.

C. A building-mounted and/or integrated Solar Energy System shall not overhang more than twelve (12) inches beyond the existing roof.

D. No building-mounted and/or integrated Solar Energy System shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit.

E. Building-mounted and/or integrated Solar Energy Systems may be located in any zoning district.

#### **12.3.2. Ground-Mounted and/or Pole-Mounted Solar Energy System.**

A. Ground-mounted and/or pole-mounted Solar Energy Systems shall be considered permitted by right if said system:

1. has a gross panel area of less than 1,000 square feet;
2. is less than twelve feet in height;
3. is not located in within the front yard, defined as the area between the front façade of the dwelling extended to the side property lines and extending to the street line (corner lots have two (2) front facades).

Ground-mounted and/or pole-mounted Solar Energy Systems not meeting any one of these criteria shall require a Special Permit from the Zoning Board of Appeals, as provided for under Zoning Bylaw Section 12.4.

B. Setbacks. For ground- and pole-mounted Solar Energy Systems, setbacks shall be as follows:

R1: Twenty (20) ft., front, side and rear

R2: Twenty-five (25) ft., front; twenty (20) ft., side and rear

R3 and R4: Fifty (50) ft., front, side and rear

B1: Ten (10) ft., front, five (5) ft., side and rear

B2: Twenty (20) ft., front, side and rear

Healthcare: Ten (10) ft., front, five (5) ft., side and rear.

C. The design, location and screening shall minimize the impacts on surrounding properties, maintain safe accessibility, and limit storm water runoff.

D. The inclusion of on-equipment safety and security features shall be favored over fencing and other visible, perimeter safety and security measures.

E. No ground-mounted and/or pole-mounted Solar Energy System shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit.

F. Ground-mounted and/or pole-mounted Solar Energy Systems may be located in any zoning district, subject to the provisions of Zoning Bylaw Section 12.3.2 (H).

G. Appurtenant Structures: All appurtenant structures to ground-mounted and pole-mounted Solar Energy Systems shall be subject to Zoning Bylaw dimensional and density regulations, concerning the bulk and height of structures, lot area, 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. Whenever reasonable, structures should be shaded from view by vegetation or other means and/or joined or clustered to avoid adverse visual impacts.

H. Ground-mounted and/or pole-mounted Solar Energy Systems shall not be located within the Cottage City Historic District, Harbor District, within the Shore Zone or Island Roads District.

#### **12.4 Solar Energy Systems Allowed by Special Permit.**

**12.4.1. Special Permits.** Ground-mounted and/or pole-mounted Solar Energy Systems not specifically permitted by right shall require a Special Permit from the Zoning Board of Appeals. In granting a Special Permit, the Zoning Board of Appeals shall consider the following:

Effects on special habitats or endangered species

Impact on the character of the surrounding neighborhood

Efficacy of existing natural screening, and remedies to meet any deficiencies

Erosion, drainage and storm-water runoff

Solar access and clearing.

**12.4.2. Required documents.** The following documents shall be provided to the Zoning Board of Appeals. The ZBA may waive any of these requirements or impose other conditions as necessary.

A. A Site Plan showing:

1. Property lines and physical features, including roads, for the project site;

2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, vegetative or other screening of structures;

B. Blueprints or drawings of the solar energy system showing the proposed layout of the system and any potential shading from nearby structures;

C. Documentation of the major system components to be used, including panels, mounting system, and inverter;

D. Name, address, and contact information for proposed system installer;

E. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

F. The name, contact information and signature of any agents representing the project proponent;

G. Documentation of actual or prospective access and control of the project site.

## **12.5 Further requirements for large-scale ground-mounted Solar Energy Systems.**

**12.5.1 Large-scale systems.** Ground-mounted and/or pole-mounted Solar Energy Systems having a gross panel area of more than 10,000 square feet shall require a Site Plan Review prior to consideration of a Special Permit by the Zoning Board of Appeals. The Site Plan Review Committee shall consist of at least one but no more than two members each of the Town Planning Board, the Zoning Board of Appeals, the Energy Committee and Conservation Commission. In reviewing the Site Plan, the Committee will consider:

The impact on open space

Visual impact, particularly from public roads, contiguous open spaces, protected natural areas, scenic views and ancient ways

Extent of any grading and vegetative clearing, if required

Consistency with the planning objectives of the Town's Local Comprehensive Plan, and other adopted planning objectives, for open space, development, and other parameters;

Integration and consistency with the Town's initiatives for renewable energy

**12.5. 2 Design Standards.** The following shall be considered design standards for large-scale Solar Energy Systems.

A. Lighting: lighting of large-scale ground-mounted Solar Energy Systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be shielded down to protect abutting properties, per Zoning Bylaw Section 5.4.4.1. Lighting of the Solar Energy System shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

B. Signage: Signs on large-scale ground-mounted solar Energy Systems shall comply with Zoning Bylaw Section 5.3 (Sign Regulations). A sign consistent with the Town's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. This sign shall be visibly displayed at the entrance to the installation. Solar photovoltaic installations shall not be used for displaying any advertising and may be used for the identification of the manufacturer or operator of the Solar Energy System only.

### **12.5.3 Safety and Environmental Standards.**

A. Emergency Services: The large-scale ground-mounted Solar Energy System owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town's Fire Chief. The owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the Solar Energy System shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

B. Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted Solar Energy System or otherwise prescribed by applicable laws, regulations, and bylaws.

### **12.5.4 Monitoring and Maintenance.**

A. Solar Energy Systems Installation Conditions: The large-scale ground-mounted Solar Energy System owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and other emergency services providers. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

#### **B. Abandonment or Decommissioning**

1. Removal Requirements: Any large-scale ground-mounted Solar Energy System which has reached the end of its useful life or has been abandoned consistent with Zoning Bylaw Section 12.5.4.B.2, below, shall be removed. The owner shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the ZBA by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

- a. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site;
- b. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;

c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The ZBA may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

2. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Solar Energy System shall be considered abandoned when it fails to operate for more than one year without the written consent of the ZBA. If the owner of the large-scale ground-mounted Solar Energy System 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 Town may enter the property and physically remove the installation either with the owner's explicit consent or by order of a court of competent jurisdiction.

## **12.6 Special districts and uses**

**12.6.1. Agricultural land.** On parcels of a minimum of five-acres area actively devoted to agricultural use, as defined in M.G.L. Chapter 61A, or which otherwise enjoys protection as agricultural land under M.G.L. c. 40A, § 3, ground-mounted and/or pole-mounted Solar Energy Systems may be permitted subject to all applicable provisions of this and any other town bylaw, and:

The reduction (if any) of land in agricultural use shall not cause the total remaining land in agriculture use to fall below the minimum acreage requirements under M.G.L. 61A.

Design of the ground-mounted and/or pole-mounted Solar Energy System shall favor concurrent use of the land for livestock grazing or similar sustainable use.

**12.6.2. Contiguous open spaces.** Ground-mounted and/or pole-mounted Solar Energy Systems may be located on contiguous open space, as created and defined under Zoning Bylaw 7.3.13 (Flexible Development) or its predecessor by-law. Said systems shall be allowed under the agricultural use exemption of Section 7.3.13, provided that:

A. The portion of open space dedicated to a Solar Energy System shall not exceed twenty-five (25) percent of the contiguous open space parcel which it occupies.

B. Alternatively, if a subdivision contains multiple open spaces, a ground-based Solar Energy System may be consolidated to a single parcel of contiguous open space, and use no greater than twenty five (25) percent of the sum of the area of all its contiguous open space parcels.

C. A Solar Energy System created under Zoning Bylaw 12.6.2 shall be exempt from the requirements of 12.2 (J).

**12.6.3. Community-shared solar energy system.** A community-shared solar energy system is defined as a solar energy system that provides net metering credits to three or more utility accounts, whose participants have an interest in the production of the system or the entity that owns the system, in the form of formal ownership, a lease agreement or net metering contract. No more than two participants shall receive net metering credits in excess of those produced annually by 25kW of nameplate DC capacity, and the combined share of said participants' capacity shall not exceed fifty percent (50%) of the total capacity of the system. A community-shared solar energy system shall be exempt from the requirements of 12.2 (J).

**Planning Board**

**2/3 vote required**

**Executive Summary:** This by-law provides owners of residential and commercial properties the right to construct and operate building-mounted and small-scale ground mounted solar energy systems that are incidental to the primary use of the property. The by-law also provides a protocol for review of large-scale solar energy systems, exemptions for community-shared systems, certain safety and technical requirements, and guidelines for conversion of existing agricultural land.